

The Legality of Secession: the Legitimacy of Separatist Movements in Western Sahara, Somaliland and South Sudan

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In the decades following decolonization, nationalist movements seeking self-determination have emerged throughout the developing world. Although many of these movements have gained political control of territory on the ground, only some have been welcomed into the international community. This case study examines the factors which determine the level of recognition received by break-away states in three developing nations. The primary reasons considered in this paper are recognition by international institutions, the recognition of countries themselves and de-facto authority through the use of force.

Separatist movements have long been a widespread phenomenon, but for an array of reasons existing states are often reluctant to acknowledge them. Individual countries use the tool of recognition to fit their own political agenda, which is why the number of states each country has relations with can vary extensively. While outside recognition has always been an element of a state's legitimacy, the modern era of globalization and international cooperation has made it de rigueur. Membership in transnational institutions such as the United Nations, IMF and World Bank now serve as the primary determinants of recognition, along with relations with the community of nations that are part of these organizations. Although political theorists have generally argued that self-determination and compliance with international law should be the key determinants of state recognition, there is some evidence that decisions made in Washington and other Western capitals are, in fact, the key factors which determine whether or not a state is recognized by the international community. The former stems from the idealist nature of the post-WW2 framework of the international law which, stemming from the League of Nations and inherited by the UN, sought to dismantle colonial empires in favor of independent democratic states. The latter on the other hand is a natural successor to the realist notion that the self-interest of hegemons governs all aspects of any supposed international law. In this paper, I contrast three nationalist movements pursuing statehood, taking into account important aspects such as economic development, domestic sentiment, political structure and transparency as well as relations with the outside world. The three case studies researched all have differing levels of recognition and inclusion in the international community: one being declared a legitimate state, another remaining a partially recognized state and alternatively a movement devoid of recognition.

The International Community and Secession

Since Woodrow Wilson implemented his agenda of Fourteen Points in 1918, the principles of self-determination and freewill for all people have been considered the critical values of the international community. Wilson's philosophy was monumental because it conflicted with the accepted understanding that states only acted for themselves, forging a "balance of power" in which countries used international diplomacy as a tool to strengthen themselves or weaken rivals. The Fourteen Points juxtaposed the balance of power approach because it was based on the idea of collective security, embodied by a united international community that opposed aggression by any power. (Mingst Snyder 17) This change allowed state- seeking nationalists in

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Europe to insinuate that they were defended by conceptions of international legitimacy and security, which they utilized to form new states on the continent and later abroad.

With the advent of the United Nations in 1948 and independent states cementing their sovereignty throughout the developing world, a precedent was set that the days of global empires were finished. In the 20th Century, however, many countries which had successfully achieved independence from colonial control found themselves dealing with separatist factions of their own. The rise of separatist movements in post-colonial countries occurred for a myriad of reasons, many specific to the historical, economic and cultural context within each particular country. One of the primary causes of modern separatism was that the borders delineated by Europeans during the colonial era did not reflect the ethnic and cultural demographics of populations within newly independent states. A major tool used by European empires was the principle of "divide and rule" which meant that colonies were administered in such a way that the indigenous population would never unite into a singular resistance movement. Cultural and ethnic differences between tribes and groups were popularized by colonial authorities, encouraging conflict among heterogeneous societies. For example, the borders of countries like Iraq or the Democratic Republic of Congo were based on the political needs of European leaders rather than any natural or preconceived cultural boundaries. The sectarian strife of Iraq or the ethnic divides of the DRC are thus clear examples of the intentions of the colonial system.

As a result the domestic populations of many states were like wise varied in composure with sectarian, tribal and ethnic differences that strained any shared national consciousness. Under these conditions, separatism flourished among groups that found themselves marginalized by central governments which did not represent their interests.

During the Cold War, separatists were urged on by the two competing superpowers, each trying to displace their rival's allies in the developing world. Stability among states in Africa, the Middle East and South Asia was greatly hampered by this, forcing governments to constantly worry about their territorial integrity. (Hechter 279) Secessionists throughout this period were often ideologically- motivated groups seeking to achieve their objectives through violent action, armed to fight states sponsored by the United States or Soviet Union. These movements' stated principles reflected that of their benefactors, Soviet-backed secessionist groups being Marxist in character and US-backed groups being free-market or at the very least anti-communist. (Hechter 281) Following the collapse of the Soviet Union in 1991, secessionist movements swelled in number, though largely for non- ideological reasons. Notable thinkers at the end of the 20th century noted that the conflicts of the future would be cultural, even civilizational in some cases, in clear contrast to the conflicts of the past century. (Huntington 1-3) New awakenings in ethnic, tribal and religious identity thus formed the core motivations of contemporary separatists, fostering new movements and invigorating existing ones.

Since 1990, twenty six countries have seceded from states that considered their lost territory integral to their national sovereignty. (Copp 240) Many of the new states se were previously part of now dissolved multinational conglomerations, namely Yugoslavia and the Soviet Union. These two federations survived on the shared ideologies of communism and after their collapse were inherited by smaller ethnically based states. This new order thus represents the "civilizational" separatism that became the international norm. There are hundreds of active separatist movements in the world today, only these twenty six achieved their aims in the last twenty years. In this paper, I will investigate why the international system widely recognizes some new states and keeps others in diplomatic limbo. Many policy makers state their reasoning is based on idealist philosophy, that the population seeking independence is oppressed by their current government and needs freedom. Economic potential and military might are the prominent factors for more realist thinkers, which means if a people seeks independence they must be financially viable or well-armed. Marxists and others would contend that recognition is a tool of a

Western led international system to award or punish parts of the developing world. In this mindset, secession would only occur if the rump state was an adversary to Western interests. I hypothesize that the latter is the closest to reality, even if its proponents are quixotic at times. I aim to explain each of these theories concisely and prove the latter's relevance with three unique case studies.

What Determines International Recognition?

The modern world has two main pillars for a state's inclusion in the community of nations, relations with said community and membership in international institutions. Recognition is primarily gaged by these two mediums, their status being acceptable to the institution because of one or a combination of the specified theories. The most powerful members of the community of nations, notably the United States, are of special importance for a new state's recognition as other countries tend to follow their decisions.

The United Nations is largely considered the main forum for international dialogue and thus serves a profoundly symbolic importance in measuring a nation's recognition. Admission into the United Nations is decided by both the UN General Assembly and the UN Security Council. The former is a legislative body including all UN members, each wielding one vote when deciding on various issues of international importance. The latter is controlled by fifteen states, ten rotating among members of the assembly and five held by permanent members that exercise the most power. (Bishop 930) These five members are the United States, Russia, the People's Republic of China, France and Great Britain. Although probably outdated when considering the European members, they represent the strongest power brokers in the world. The Security Council recommends new states for membership that the assembly proceeds to vote on, meaning that this small group of nations has first say on who joins the United Nations. Institutions dealing with economics, although not directly associated with recognition, are conduits for linking in with the world market. This is especially important in an era of globalization, with the exchange of goods and services greater than ever before as countries become more and more interconnected. With international trade increasingly being contingent on following global market standards, as the "IMF-World Bank link is of profound importance to policy makers in the developing world, usually having more pull in a state's treasury than the populace". (Mosley 337)

Recognition by superpowers or great powers is of greater importance to a state seeking legitimacy than the average state, these countries having more potential in economic and political spheres. America's stance on issues in the world is currently the most important, as "American primacy in the global distribution of capabilities is one of the most salient features of the contemporary international system." (Ikenberry, Mastanduno, Wohlforth) Lobbyists for secessionist movements therefore make their first overseas trip to Washington, where the halls of power offer the most opportunity for their objective. Although entities like China and the European Union have their own significant levels of influence, the former likely to contend for the top, the United States remains the global hegemon. A source of argument among academics is why policy makers in international institutions and powerful countries act the way they do in terms of recognition, producing prevailing theories that differ widely.

Liberal thinkers contend that a secessionist needs a moral right to leave their rump state; their cause must therefore be just in order to validate any diplomatic recognition. Just cause requires that the seceding territory's population be predominantly for the move, which can only be measured through a democratic referendum. Such a referendum would only materialize in the aftermath of a state-sponsored persecution of the population in question or a grass roots movement of a new national consciousness.

Alan Buchanan, a renowned Canadian liberal theorist, believes that a “group has a general right to secede only if it has suffered certain injustices, for which secession is the appropriate remedy of last resort” (Copp 224) The territorial integrity of a foreseen rump state must not be infringed by outside powers without clear violations of international law, namely the human rights of any separatist group. Buchanan is later quoted in his assessment of potential separatists today, noting that pro-independence groups in the developed world such as with the Quebecois or Scottish have not received widespread support among their ethnic counterparts. Only a humanitarian crisis can be a cause for a population to be predominantly for secession and thus receive diplomatic recognition. Bangladesh’s Liberation War against Pakistan in 1971 purportedly only received international support (namely India) after Bengali civilians were targeted by the Pakistani military. (Copp 226)

Realist theory dictates that secession has a material price, one that must be paid in either blood or gold. For a state to successfully receive widespread recognition, they must be able to offer their international backers tangible assets. A secessionist must be well-armed enough to project its authority over the territory it wants to legally acquire, but most importantly have the wealth to bribe foreign powers with promises of profitable trade links.

US social scientist Immanuel Wallerstein states that “inevitably, some regions will be richer than others, and if the ethnic claim to power combines with relative wealth, the case for secession is strong...” (Horowitz 170) Wallerstein cites the former breakaway state of Katanga in the Democratic Republic of Congo, which despite not receiving international recognition had the active support of Belgium precisely because of its material wealth. Historians widely agree that powers in Western Europe were anxious to recognize Katanga if its mercenary-led forces gained the upper hand against the Congolese, proven by undisclosed communiqués between European capitals during the period (1960-1963).

Any altruistic notions of self-determination or human rights are dismissed in this model, only raw power determining any alteration of existing documented borders. Under realist theory, the former can even be retrograde to a secessionist’s cause, Hudson Meadwell citing “dissolutions that formed states such as the Ukraine were highly controversial to their citizens, half of the country considering themselves ethnically Russian and thus opposed to separating from their homeland.” (Meadwell 20) A separatist force therefore may find the opinion of the international community of higher value than the populace they seek to control.

Neo-Marxists consider the post-Cold War world as dominated by American interests, who control international economic institutions to bend the developing world to US friendly policies. With the United States and its Western allies forming a key majority on the UN Security Council, membership in the club of nations is contingent on satisfying their demands on new states. While China and Russia serve as constraints to pure Western domination of the United Nations, the mere fact that the organization is headed in New York alludes to the fact that Western primacy reigns first. Neo-Marxists also point out that even if the UN General Assembly overwhelmingly approves of a state, the United States considers its own interests overriding and willingly goes against international trends, such as its refusal to accept Palestine’s UN application. (Sarsar 458)

Although Neo-Marxist theory is in some regards synonymous with Realism, in that both see recognition as driven by material gain, Neo-Marxism distinguishes US realist policy from others. In a way legitimizing American exceptionalism, historian Dov Lynch notes that although backing by other great powers can give a secessionist de facto control of territory, external sovereignty or outside recognition will inevitably be denied to them. Lynch cites secessionist enclaves within the former Soviet Union as an example of states with “absolute sovereignty within their borders but no judicial status in the international arena.” (Lynch 839) The breakaway territories of Transnistria, Nagorno-Karabakh, South Ossetia and Abkhazia are all self-proclaimed independent states within sovereign states that they are in frozen conflict with. Russia supports all

four with material assistance and the latter two with diplomatic recognition, yet none are members with the United Nations or have widespread acceptance in the international community. The People's Republic of China, the other member of the Security Council not considered "Western" is likewise hampered by contemporary international law's conception of recognition. Despite the PRC having considerable diplomatic clout, the country is not recognized by every UN member, twenty three opting to recognize the Republic of China in Taiwan. (Copp 242) With the ROC being a rival claimant for "Chinese identification", only the United States and its Western allies are in complete control of the status of our the international system.

Research Design

I postulate that the Neo-Marxist theory purported by Dov Lynch and others is the closest to reality, although liberal and realist ideologies both have their significant influences. Neo-Marxism trumps these latter two for a number of reasons, chiefly in dealing with the way in which the contemporary international system has been constructed. Any effective international system must be the construct of the hegemons that back it, as they serve as the primary enforcers of such a system and must therefore be in total agreement with its principles. The embodiment of this structure is the United Nations, which generally served American interests above those of the Soviet Union, as was evident in the Korean War and the a number of Soviet boycotts of the UN Security Council. (Snyder 20) The United States has had a number of disagreements with UN policies but the latter institution has above all complied with US doctrine, especially in cases of state recognition. Given the dominant role the US has played in the history of the UN, the United States will remain king-maker in cases of recognition for as long as its status of sole super power lasts and possibly for a good time after. Idealism can serve as a *cassus-belli* for recognition as humanitarian reasons almost always a justification for secession yet the hegemon must accept that such a problem exists. De-facto control of a territory is likewise important for a separatist to succeed but as many Eastern European enclaves have discovered, this does not create a conventional state.

To test my hypotheses, I researched three political movements that advocated secession from existing states and established some sort of control over the territory they considered their cultural homeland. All of these entities are located in North Africa, on the peripheries of the Arab world. I chose entities from the same region to obtain a more uniform perspective on recognition, more clearly seen if the cultural and societal differences of the secessionists are vaguely similar. North Africa is of particular interest because of its recent history of decolonization, making the region's borders artificial and subject to active secessionist movements. The upsurge of rebellion in the Maghreb following the Arab Spring is also of particular interest, perhaps not directly affecting the territories described but certainly influencing their strategies in state-building for the future.

Case 1: Somaliland

The Republic of Somaliland is a self-declared state in the northern region of Somalia, recognized by no country and considered an integral part of the Somali Republic. This separatist entity mirrors the borders of the British protectorate of Somaliland, which colonized the northern portion of Somalia in 1888, the Italians taking the rest. (Lewis 45) The two European powers administered their respective parts of Somalia very differently, the British ruling indirectly through tribal chieftains and the Italians attempting direct rule through foreign bureaucrats. Regional expert Mark Bradbury notes that this divide has had a profound impact on the regional power structures, as "Somaliland's indigenous leadership has an air of legitimacy that the rest of Somalia is sorely lacking in". (Bradbury 127) Although the two regions having historical differences in former

European masters, they are both ethnically and religiously homogenous, Somalis being the dominant ethnic group and Sufi Islam the major faith. Despite this reality, the tribal nomadic structure of Somali society is a cause for great rift between neighboring communities, who consistently quarrel over limited pasture in a domestic economy that depends largely on live stock.

Conflict and turmoil in Somalia rose sharply following the collapse of the dictatorial regime of Siad Barre in 1991, which has been followed by twenty years of anarchy in Somalia proper. (Bradbury 78) Shortly after Barre's overthrow, a group of tribal leaders led by Abdirahman Ahmed Ali Tuur initiated the de-facto secession, seeking a sense of stability separate from the chaos of Mogadishu. (Bradbury 80) Unrecognized Somaliland has since outperformed its legitimate sovereign in both stability and growth, serving as a hub of commerce in a region known for war and famine. The state was proposed in a referendum to all Somalilanders in 2011, over 97% advocating the secession. While Somalia suffers from an Islamist insurgency headed by the fundamentalist Al-Shabaab, Somaliland is kept relatively secure by a standing army and internal police force. (Bradbury 189) The two also differ in the mandate their governments have, Somaliland has had two parliamentary and presidential elections, the government directly elected by the people. Although candidates have generally been elected on tribal lines, international monitors were determined to be free and fair. (Bradbury 190) This is in stark contrast to Somalia, which is represented internationally through the Transitional Federal Government, a body never directly elected by the people of Somalia. Despite this, the TFG is backed by the African Union and United Nations, both accepting it as the sole authority in Somalia.

Somaliland is recognized by no state despite having full de-facto control of its territory and having a supposedly "just cause" for separation. Somalilanders routinely say that even before the Somali state collapsed in 1991, Somalilanders were discriminated against as all the country's power was held by elites whose origins were in the south. Eric Laroche, the UN Coordinator for Somalia, claims that the entity cannot be recognized because it would only fuel "more chaos in Somalia". (Farah Lewis 370) Other theorists disagree with this logic, Ahmed Farah claiming that the international community has no desire to stir up the flames of Somali nationalism and possibly cause uprisings in Somali communities seeking self-determination elsewhere in the region. (Farah Lewis 372) The Ogaden region in Ethiopia and the North Eastern Province of Kenya are both predominantly Somali and have sought secession from their governments since the decolonization period. With both Kenya and Ethiopia being stalwart Western allies, the international community values their opinion more than an unrecognized state in a lawless country.

Case 2: Western Sahara

The Western Sahara is a disputed territory on the edge of North Africa, a sparsely populated area with no more than half a million inhabitants. (San Martin 17) Colonized by the Spanish in the 19th century, European withdrawal brought the territory into immediate war in 1971. Both Morocco and Mauritania sought Spanish-backed territorial gains in Western Sahara and were resisted by indigenous "Sahrawis", tribes of mixed Arab-Berber heritage who live nomadically in the region. (San Martin 20) They were represented by the Polisario Front, which proclaimed the Sahrawi Arab Democratic Republic as an independent country in Western Sahara. Warfare between the Polisario Front and Western Sahara's neighbors last for a quarter of a century, the Mauritians withdrawing in 1979 and the Moroccans signing a ceasefire in 1991. (Omar 56)

The ceasefire left the SADR and Morocco the sole claimants of Western Sahara, while the actual territory was split in two between the West occupied by Morocco and the east the SADR. This materialized in a wall built by the Moroccans to separate the Sahrawi refugee camps from

the more profitable coastal areas of the territory. (Munene 71) Both sides claimed that they had traditional rights over the area, the Moroccans identifying it as part of a “greater Morocco” theory developed in the 1950s by ultranationalists. (Omar 60) The Sahrawis meanwhile thought of the present, identifying a voter list of 85,000 people on both sides of the wall that they sought to draw a democratic referendum from. The ceasefire agreed upon has the objective of eventually hosting a referendum, but no move has been agreed upon by both sides, leaving the territory victim to a frozen conflict. (San Martin 113)

The Sahrawi Arab Democratic Republic is a partially recognized sovereign state. The United Nations has viewed the Western Sahara as a non-decolonized territory since the Spanish withdrawal, meaning the organization recognizes that no definite government has assumed control of its borders. While this does not implicitly legitimize the SADR, it does not grant full sovereignty to the Kingdom of Morocco. (San Martin 98) Forty nine countries, all in the developing world, recognize the SADR as a sovereign state. One of the most significant of those that accept Sahrawi sovereignty is Algeria, Morocco’s traditional rival, thus making the relationship a classic case of *realpolitik*. Intergovernmental organizations in the region are split on the Western Saharan case. The generally conservative Arab League identifies the Western Sahara as exclusively Moroccan territory, not surprising given the League’s long history of stifling Berber nationalism. (Munene 75) The African Union in contrast views the SADR as a sovereign state, at the expense of Morocco’s membership in the organization. This policy makes Morocco the only continental African country to not be a member of the AU, which as an organization had deep ties to Qaddafi’s Libya and other anti-Western African regimes. (Van Walraven 198)

The Sahrawi Arab Democratic Republic has partial recognition because of the conflicting forces at work in the entity’s foreign relations. Realist policies enacted by Algeria and Qaddafi-Libya used the Sahrawi movement as a tool to weaken the resolve of their rival in the Kingdom of Morocco. Both of these Maghreb countries contributed heavily in support of regimes throughout sub-Saharan Africa, causing the African Union to vote to admit the SADR as a member. On the other side, Morocco is a key ally to NATO countries and the United States looks to it as an indispensable ally in a dangerous region. While Western nations may recognize the basis for the Sahrawi claim to the Western Sahara, they nonetheless will not risk offending an asset in the Middle East. The UN notes that both sides have influential backers but American core interests keep the area in a stasis of disputed territory.

Case 3: South Sudan

South Sudan is the newest state to join the community of nations, declaring its independence on July 9th, 2011 and joining the United Nations and African Union shortly after. The country emerged six years after the Second Sudanese Civil War, which lasted over twenty years and claimed somewhere between 1 and 2.5 million lives. One of the bloodiest conflicts of the past century, the war was fought along ethnic lines, the black largely Animist and Christian south versus the Muslim Arab north. (Nyaba 103)

Sudan was formerly a construct of the Egyptian empire of Muhammad Pasha Ali, which encouraged the Arabs of Khartoum to expand the state south into the Nile river valley. After a brief stint of British protection Sudan declared independence in 1956, those in Khartoum soon consolidating all of the powers of the new state into a quasi-empire. (Nyaba 52) Sudan has been a pariah in the international community recently, being accused of war crimes in both its western largely black region of Darfur and South Sudan. After decades of intermittent conflict that continue to this day, the South Sudanese voted overwhelmingly for independence in January 2011, a process monitored by international observers after strong pressure on Khartoum. The government is dominated by the Sudan People’s Liberation Movement, an umbrella organization

of former rebels that overwhelmingly triumphed in this year's elections. International observers worried that the vote was not balanced due to the lack of basic institutions in South Sudan, the new country being one of the poorest in the world. (Kiir 56) Since the state declared independence, the possibility of war has not been diminished between blacks and Arabs, border conflicts being reported by international media outlets continuously.

Table 1: Comparison Table

Countries	Recognition	Status of Rump State	Economic Indicators	Democratic Indicators
South Sudan	Member of UN, African Union, Over 115 State Recognitions	Sudan is target of US-led trade embargo, Khartoum government accused by ICC of war crimes, Sudan is claimed to be active belligerent in relations with all sub-Saharan neighbors	GDP \$13.277 Billion, GDP per Head \$1546, Population below poverty line 51%	Elections held for independence referendum in 2011 with 95% turnout, deemed free and fair despite irregularities. The Committee to Protect Journalists has voiced concerns over media freedoms
Western Sahara	Member of African Union, 41 State Recognitions	Major non-NATO ally of United States, leading Arab League Member, Free Trade agreements with both US and EU	GDP \$900 million, GDP per Head \$2500, Unemployment rate unavailable	The SADR stages elections for individual members of congress regularly, largely deemed free and fair, most recent election being in 2008 which was the 12 th legislative election in history of Western Sahara
Somaliland	Not a member of any international institution, devoid of state recognitions	TFG in Somalia accepted by Arab League, African Union, sponsored by US through International Somali Contact group	GDP Per Head \$226 each year, 73% of Somaliland population live in poverty, 43% live in extreme poverty, unemployment widespread	Has held two presidential and parliamentary elections which have been deemed free and fair, state based on referendum on territorial integrity

(UHUBSO, EconomyWatch, CIA Factbook)

South Sudan was given full diplomatic recognition by the outside world for a number of reasons. The most obvious is humanitarian, the regime Khartoum widely accepted to be responsible for genocide in Darfur and not concerned about the well-being of sub-Saharan "blacks" in general. Sudan is unfortunately not the only country that is suffering from acts of ethnic cleansing however, the legitimization of South Sudan being for secondary reasons as well. Sudan is a country which has repeatedly been a pariah to the West, harboring high-level members of al-Qaeda and disregarding Western pressure on its genocidal agenda. (Hellmich 45) Omar al-Bashir, the President of Sudan, is wanted by the International Criminal Court for Crimes against Humanity in Darfur. Although this is not directly related to South Sudan, it is indicative of the

contempt the international community has for the regime in Khartoum, giving the South Sudan leeway to part from the rump state. South Sudan can be seen by America as a pro-Western bulwark created out of the expense of a country that has long been a thorn in their geo-political policy. With Western support, and China and Russia obligated to accept the humanitarian reasons for separation, South Sudan was warmly welcomed into the international community.

Conclusion

Becoming a fully-fledged member of the international community is a difficult endeavor for states seeking recognition, as most countries do not like the prospect of the territorial integrity of existing borders being challenged. Africa, a continent with borders demarcated by foreigners that have no true historical basis, is home to especially insecure states in regards to borders. Secessionists are therefore hard-pressed to find overt support from outside powers, especially in a unipolar system where all countries first look to one capital to gage foreign reaction. Washington is the primary key for any secessionist's objective of legitimacy, inferring what policies such an entity must take to reach said goal. The South Sudanese Liberation Movement recognized the path it had to take to become part of the community of nations, specifically to take the US line on any foreign or domestic policy. South Sudan thus succeeded in its quest for statehood despite having little actual resources on hand to improve upon its own infrastructure. For movements like the two other case studies, such an example may be the only fruitful path in an era of American hegemony.

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