



MEKELLE UNIVERSITY SCHOOL OF LAW

**The Application of International Human Rights Law in  
Unrecognized Entities under International Law: the case of  
Somaliland**

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A thesis submitted to the School of Law in partial  
fulfillment of the requirements for the LL.M in International  
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**To: School of Law**

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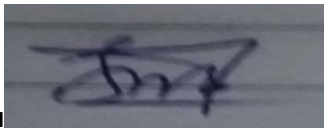
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## **Abbreviations**

International Human Rights Law (IHRL)

United Nations (UN)

De facto regimes (DFRs)

United states (US)

Universal Declaration of Human rights (UDHR)

International Covenant on Civil and Political Rights (ICCPR),

The International Covenant on Economic, Social and Cultural Rights (ICESCR)

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)

The Committee on the Elimination of Racial Discrimination (CERD),

African Charter on Human and Peoples' Rights (ACHPR)

Convention on the Rights of the Child (CRC)

## ***Abstract***

*Somaliland, an unrecognized de facto state in East Africa, controls its own territory and has all the governmental structures necessary to govern its people. However, it is not a member of the United Nations, the African Union, or other international organizations, and it does not have the capacity to participate in signing international human rights treaties. As a result, it lacks opportunities to voice its ideas and opinions in the international arena. One major issue is the lack of recognition, which prevents it from directly entering the international legal system and becoming part of international human rights treaties.*

*Therefore, the main research question I addressed in this thesis was: “How do unrecognized de facto states apply international human rights laws, especially in the case of Somaliland?” In this study, we explored how Somaliland has developed its own principles through its constitution and legislative acts, using these mechanisms to align with international human rights laws. The primary research objectives are to examine the international human rights obligations of unrecognized de facto entities and to analyze how Somaliland implements international human rights law within its national policies, standards, legislation, and institutional mechanisms.*

*In conclusion, this thesis argues that unrecognized de facto states should have a role and a voice in the implementation of international human rights law, as they are the most effective governing authorities within their territories.*

# CHAPTER ONE: INTRODUCTION

## Background of study

International human rights laws are universal, and it is important to ensure that they are implemented throughout the world. However, the implementation of the International Human Rights Law (IHRL) to unrecognized entities can present several challenges and problems due to the unique political and legal status of these entities. Unrecognized entities are territories or political entities that have declared independence or seek recognition as sovereign states but are not formally recognized by the international community.

The International human rights law and other angles of international law are structured in such a way that the primary subject is the states, with the intention that they are the ones with the main responsibility for the protection of human rights.<sup>1</sup> This state-centric approach to international law and human rights is at the core of efforts to respond to the First and Second World Wars and other global grave human rights atrocities such as the Holocaust.<sup>2</sup> These atrocities had a profound impact on shaping the contemporary human rights framework.

The international human rights law has historically been based on protecting people from state abuse, and safeguarding human rights was the government's main responsibility. Even when the rights of others are violated, it was considered that the government has failed in its duty to protect human rights.<sup>3</sup> but with the rise of various non-state actors and de facto regimes, states are no longer the only entity that can obstruct or implement the enjoyment of human rights, but also non-state actors and de-facto entities can violate<sup>4</sup> or implement human rights.

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<sup>1</sup> McCorquodale, Robert, '*Non-State Actors and International Human Rights Law*' (2009). In Sarah Joseph and Adam McBeth (eds), *International Human Rights Law* (Edward Elgar, 2009) 97-114, available at SSRN: <https://ssrn.com/abstract=2065391>.

<sup>2</sup> Kabasakal Arat, Zehra F, '*Looking beyond the State but Not Ignoring It*' (2006). *A Framework of Analysis for Non-State Actors and Human Rights* in Andreopoulos, George J and Juviler, Peter H (eds), *Non-State Actors in the Human Rights Universe* (Kumarian Press 2006) 3

<sup>3</sup> Reinisch, August, '*The Changing International Legal Framework for Dealing with Non-State Actors*' (2005). In Philip Alston (ed), *Non-State Actors and Human Rights* (OUP 2005) 37-38.

<sup>4</sup> Hessbruegge, Jan and Hessbruegge, Jan, "*Human Rights Violations Arising from Conduct of Non-State Actors*" (March 14, 2005), *Buffalo Human Rights Law Review*, Vol. 11, 2005, available at SSRN: <https://ssrn.com/abstract=2408964>.

In recent times, there have been discussions about questioning other actors in human rights laws, such as unrecognized de facto entities and non-state actors. There can be no de jure power at anytime and anywhere, but anyone who obtains de facto power becomes an entity that may have control over territories. It is necessary to consider and examine the importance of implementing international human rights laws in these areas.

Regarding human rights inside unrecognized entities, one must consider the actual conditions and status of those people's rights without taking into account their political or legal status because these rights include basic freedoms like the right to life, liberty, and personal security, the freedom of speech, and the right to be treated fairly and impartially by the law. In addition to undermining these entities, disregarding human rights in unrecognized de facto entities also goes against international human rights frameworks and justice ideals.

Despite this, unrecognized de facto entities implement relevant international human rights laws through various strategies. Some of the problems that arise include their inability to participate in the signing of international conventions related to human rights and the inability to have their voices heard on international platforms. Unrecognized entities handle this issue differently based on their internal rules.

Concerning the self-proclaimed "Republic of Somaliland," is chosen as the subject among de-facto states as the focus of this thesis, a significant portion of the research questions concern the relevant practices by and regarding Somaliland. On the one hand, this thesis surveys Somaliland's interactions with the international human rights regime, including Somaliland's participation, implementation and attempted involvement in international human rights organizations, particularly those affiliated with the United Nations.

Somaliland is a de facto state that lacks recognition worldwide. It is not a member of the United Nations, human rights organizations, the African Union, or any international institutions. It gained independence from the British in 1960 and, four days later, united with Italian Somaliland to form the Somali Republic on July 1, 1960. Thirty years later, in 1991, A civil war and other atrocities made by the Siyad Barre Regime to the Isaaq Somaliland Tribe has led to succeed them from Somalia. The northern part of Somalia, now known as Somaliland, declared its separation from Somalia, but the international community has not recognized it as a sovereign nation. Even after 33 years, no country has officially recognized Somaliland as an independent state. Nonetheless,

Somaliland has established a functioning government system that includes a police force, courts, and a justice system. It also has a constitution that complies with international law and commits to upholding international human rights conventions. For instance, Somaliland's constitution declares its adherence to international human rights laws, humanitarian principles, and other universal human rights standards, implementing them on par with nations of similar status. Additionally, Somaliland has formulated human rights policies aligned with international human rights laws and established a human rights commission as a government institution dedicated to protecting, developing, and promoting human rights in Somaliland.

## **Statement of the Problem**

Since de facto state entities are not recognized, there are problems concerning their cooperation with international organizations, such as participating in international human rights treaties. They do not have opportunities to voice their ideas and opinions in the international arena. One problem is the lack of recognition, which prevents them from directly entering the international legal system and becoming part of international human rights treaties. Another problem is limited access to international human rights mechanisms, which hinders their pursuit of seeking justice. IHRL mechanisms are typically designed to address issues between recognized states, making it challenging for these entities to assert their rights on the international stage.

Somaliland which is unrecognized de facto state, faces numerous challenges such as political isolation, and the lack of international platforms and that however, the world is not well-informed about its domestic laws and their compliance with international human rights standards. However, Somaliland has taken a critical step necessary for its citizens and the global community concerned with international human rights laws which is deserved to explore. It has improved Human rights policies, human rights legislative acts enacted by the parliament, and implemented international Human Rights Treaties on human rights in their legal system and that greatly needs support and cooperation of the international community as they're playing a vital role in fostering international integration of human rights.

## **Research Objectives**

The primary objective of this study is to examine the basis and mechanisms through which Somaliland implements international human rights treaties and to analyze how these are integrated into its legal system. This focus is warranted, as human rights issues receive significant attention in today's media, and many states prioritize human rights in their foreign policy and international relations to enhance their global reputation. This is because human rights have become an indispensable component of contemporary diplomacy and international relations.

### **The specific objectives of the study include:**

- To critically analyze the criteria for statehood, the concept of recognition, and the status of unrecognized entities within the framework of international relations.
- To explore the international human rights obligations of unrecognized de facto entities.
- To examine how Somaliland implements international human rights law within its national human rights policies, standards, legislation, and institutional mechanisms.

## **Research Questions**

The research attempts to answer the following research questions:

- What is the interplay between the criteria of statehood, the concept of recognition, and the notion of unrecognized entities?
- What are the obligations of International human rights law for unrecognized de facto entities?
- How does Somaliland implement and integrate international human rights treaties into its legal system?

## **Methodology**

This study employed doctrinal legal research method, to scrutinize and elucidate legal rules, their forms, and their operational aspects. By employing the doctrinal legal research method, the study tries to “systematize, rectify and clarify the law on any particular topic by a distinctive mode of analysis to authoritative texts that consist of primary and secondary sources. In other words, the method views the existing normative framework as a self-contained discipline and aims to answer research questions using law itself. It is a formal, rule-based approach to law that methodically analyzes legal sources and use them in legal analysis and reasoning. Accordingly, within this study, a thematic analysis was conducted to identify and organize key themes emerging from the collected legal documents. These themes pertained to the legal frameworks governing the implementation of human rights norms at the international, regional, and national levels with particular attention to their application within the context of unrecognized states. Subsequently, relevant facts and interpretations were examined to assess how these legal frameworks have been understood, interpreted, and operationalized in the specific case of Somaliland.

## **Significance of the study**

This study is significant because it brings attention to unrecognized de facto states that nevertheless implement international human rights laws. It is particularly important to examine, in a focused manner, how such norms are applied within unrecognized entities, with Somaliland serving as a central case study. Although not a member of the United Nations, there are several states and territories that demonstrate a clear commitment to upholding international human rights standards. Somaliland, in particular, presents a compelling example it has operated as an unrecognized de facto state for over three decades, maintaining a functioning government, legal system, police force, and judiciary. Despite its lack of formal recognition, Somaliland has adopted and implemented international human rights principles in a manner comparable to recognized UN member states.

# CHAPTER TWO: THE CRITERIA OF STATEHOOD AND CONCEPT OF RECOGNITION AND THE NOTION OF UNRECOGNIZED ENTITIES

## Introduction

In the context of international law regarding statehood, there exists an international requirement established by international law that demands in-depth analysis. It is essential to differentiate between statehood and the international recognition of statehood since these are two distinct concepts.

Many de facto states in the world have met the criteria for statehood but have not obtained international recognition. Therefore, the evaluation focuses on the international recognition of the government's fundamental international responsibilities at all times, a privilege exclusive to States with complete international legal identity. In the nineteenth century international law could be defined as "the body of rules that States applied in their dealings with one another" and the State could be defined as regarded as "the only actor authorized to appear on the stage of international legal system."<sup>5</sup> A government that receives international recognition collaborates with the global community, becoming a member of the United Nations with the ability to enter into and sign international treaties on human rights. In contrast, unrecognized de facto states do not enjoy such cooperation privileges. This is an issue that needs to be widely discussed and comprehended when it concerns international human rights laws.

Although states alone have complete legal personality in the international legal system,<sup>6</sup> in recent times, de facto regimes and non-state actors have emerged.<sup>7</sup> that obligate them to respect international laws and human rights, and it is not necessary to meet the requirements of statehood.<sup>8</sup>

An inter-governmental organization, for example, may have international legal identity apart from the states that compose it.<sup>9</sup> Constituent instruments of various international organizations, such as

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<sup>5</sup> Lowe, Vaughan, *International Law* Oxford University Press, (Oxford, 2007) 14-15p.

<sup>6</sup> Aust, Anthony, *Handbook of International Law* (CUP Cambridge 2005) 16p.

<sup>7</sup>) Alston, Philip, *The "Not-a-Cat" Syndrome: Can the International Human Rights Regime Accommodate Non-State Actors?* (Oxford University Press, 2005)

<sup>8</sup> Jessup, Philip Caryl *The Subjects of a Modern Law of Nations* (1947) 45 Michigan Law Review. 383-389p.

<sup>9</sup> Lauterpacht. H *International Law and Human Rights*, (Stevens & Sons, Ltd.1950) 12-19 p

the United Nations Charter<sup>10</sup>, frequently express the requirement for legal ability in order to promote the achievement of their goals.

This chapter will analyze and discuss in-depth the criteria of statehood. We will explore what is required of a country to fulfill its statehood. I will also address the concept of recognition, covering its definition, benefits in the international legal system, different theories of recognition, and finally, I will discuss the notion of unrecognized entities, what it means to be unrecognized, and the definition of “unrecognized”. The chapter will then attempt to conceptualize the thesis's central focus. Specifically, the concept of "unrecognized entities." A definition of "unrecognized" entities will be provided.

## Criteria for statehood

There are proposed criteria for achieving statehood. The 1933 convention on the rights and duties of states, known as the 'Montevideo Convention,' sets the minimum criteria that are generally accepted to be met in order to achieve statehood<sup>11</sup> but it is unclear whether other conditions are required. These criteria are always used when writing or evaluating statehood issues, and they are the most used in scholarly literature on this statehood matter. In this chapter, we will use the Montevideo criteria as a benchmark to analyze what is called statehood. We will discuss each criterion in detail, considering the literature and emphasizing the importance of each criterion for statehood. Without them, the possibility or existence of statehood will be obscured.

In Article 1 of the Montevideo Convention, the conventional standards for statehood are outlined. They are listed in the following order: (a) a permanent population; (b) a defined territory; (c) government; and (d) the capacity to engage in international relations.<sup>12</sup>

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<sup>10</sup> Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI, art 104. Article 104 reads: “*The Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes*”. Such legal capacity is further elaborated in Article 1(1) of the 1946 Convention on the Privileges and Immunities of the United Nations.

<sup>11</sup> D Grant, Thomas, ‘*Defining Statehood, The Montevideo Convention and Its Discontents*’ (1999) Columbia J Transnatl L 403, 417

<sup>12</sup> *Convention on the Rights and Duties of States* (adopted 26 December 1933, entered into force 26 December 1934) 165 LNTS 19 (*Montevideo Convention*) art 1.

## Permanent Population

Permanent population can be defined as a number of people who live together in a community, irrespective of their racial, religious, cultural, or linguistic background or differences.<sup>13</sup> The fact that individuals coexist in a place is crucial. The Montevideo Convention does not define "permanent population" in terms of the number of individuals or population that can establish a government or give rise to a permanent population. There is no set minimum quantity. We can only understand the reality of governments worldwide in terms of population. There are many countries in the world, some with a population of billions and above, others with a population of more than millions, some with a hundred thousand, and some with a thousands. Therefore, when the term 'permanent population' is used, the reality of the countries can be directly understood based on their population numbers. For example, Nauru, with a population of less than 10,000 people, is a member of the United Nations (whose membership is limited to states), and its status as a state is generally recognized by the international community.<sup>14</sup>

On the other hand, cross-border migration is not impeded by the need for permanency.<sup>15</sup> Normal changes in population size do not impede an entity's claim to statehood. However, it has been argued that the viability of an entity as a State may be in doubt if the number of people comprising it is very small. Two indicators remain critical in determining the existence of a permanent population: the population's "intention to inhabit the territory on a permanent basis" and the habitability of that territory. The latter would appear to preclude Antarctica from meeting this requirement.<sup>16</sup>

## Defined Territory

To the purpose of exercising its exclusive sovereignty, any state needs a territory basis. International law does not, however, set a minimal need in this regard. There seems to be a general consensus that a state's physical size has little bearing on its ability to support a permanent

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<sup>13</sup> Jennings, Robert & Watts, Arthur *'Oppenheim's International Law'*. Volume 1. (1992) 121p.

<sup>14</sup> Damrosch, Lori Fisler & Murphy, Sean D. *'International Law: Cases and Materials'* (2009) 308p  
Crawford, James *'The Creation of States in International Law'* 2007) 52p.

<sup>15</sup> Geldenhuys, Deon *'Contested States in World Politics'* (Palgrave Macmillan, 2009) 8p.

<sup>16</sup> J. Peter A. Bernhardt (n 32) 308. *'Sovereignty in Antarctica'* see  
C Joyner, Christopher *'Antarctica and the Law of the Sea'* (1992) p41-67. Martinus Nijhoff Publishers

population and form an efficient government.<sup>17</sup> Neither would a lack of territorial contiguity alone disqualify an entity from attaining statehood. For instance, regions like Alaska, Hawaii, and Guam that are not a part of the 48 states and the District of Columbia are included in the territory of the United States (US).<sup>18</sup> Moreover, as state practice demonstrates, the concept of a "defined territory" does not necessitate that an entity's geographical frontiers be completely uncontested.<sup>19</sup> The legal identity of the State remains unchanged notwithstanding geographical changes (such as secession, accretion, and so on) that may alter the legal status of the particular area in question.

## **Government**

The third need is that there be a functioning political system or government. According to Crawford, this is essential to a putative state's statehood claim.<sup>20</sup> Recent experience, however, indicates that other elements (such substantial international recognition or UN admittance) can make up for a lack of actual authority over a whole region. Moreover, observers and state policy suggest that a state does not vanish from existence once it is founded only because its previously functioning government is no longer in office. Somalia is a prime example of a state whose administration is ineffective for the last thirty years but which is nonetheless recognized internationally as a state and as a member of the UN.

## **Capacity to Enter into Relations with other States**

In order to meet this need, an entity must be able to conduct international interactions with other nations within the confines of its own constitutional framework on a political, technological, and financial basis. States are considered to require the ability to interact with other states, which is defined as "legal independence from the authority of any other state," in order to participate in

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<sup>17</sup> Mendelson, M H '*Diminutive States in the United Nations*' (1972) 21 ICLQ 609-611p.

See Shearer, I.A '*Starke's International Law*' (11th edn, Butterworths, 1994) 89p.

<sup>18</sup> Damrosch and others (n 32) 309. See also Crawford, *The Creation of States* (n 17) 47; Shearer (n 39) 85-86p.

<sup>19</sup> When delivering remarks on the admission of Israel to the UN, Philip Jessup, the then US representative to the Security Council, advocated that "the concept of territory does not necessarily include precise delimitation of the boundaries of that territory". Instead, it denotes that "there must be some portion of the earth's surface which its people inhabit and over which its government exercises authority". UNSC Official Record (2 December 1948) UN Doc S/PV.383, 11p.

<sup>20</sup> Crawford, James '*The Creation of States in International Law*' (2007) 55-56p.

international relations. However, experience seems to suggest that a state can assign authority over foreign affairs to another state without endangering the former's status as a sovereign entity.<sup>21</sup>

## **Non-Montevideo criterions for Statehood**

Although the previously mentioned requirements are generally acknowledged, there is debate over whether or not they are totally adequate to determine statehood.<sup>22</sup> Below is an introduction and discussion of additional needs that critics have often brought up.

### **Independence**

While some consider the requirement of independence to be part of the criterion of "capacity to enter into relations with other States,"<sup>23</sup> De jure (formal) independence and de facto (real) independence are two ideas that arise from the notion that independence is "a synonym for sovereignty" in the context of statehood. the entity must consider itself to be a State and its governmental duties must be assigned to separate authorities that are not part of another State.<sup>24</sup> the government must maintain some degree of sovereignty over its territory and cannot act or make decisions on behalf of a third state.<sup>25</sup>

### **Permanence or Stability**

This need is generally not to be interpreted as a statehood criterion, but rather as a reflection of the Montevideo standards; it is particularly pertinent when some of the conventional statehood requirements are not completely satisfied or when another State's rights are in jeopardy. Put differently, the ongoing and steady presence of a system can be used as proof that it meets the requirements for conventional statehood. But statehood is defined by fulfilling the conventional requirements; stability or durability does not seem to be a prerequisite for statehood in and of itself.

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<sup>21</sup> Dunoff, J.L. & R Ratner Steven, *'International Law: Norms, Actors, Process'* (Aspen Law & Business 2002) 110p.

<sup>22</sup> Crawford, James *'The Creation of States in International Law'* 89-95p.

<sup>23</sup> Brownlie, Ian & Crawford, James *'Brownlie's Principles of Public International law'* (2019) p 129p

<sup>24</sup> Crawford, James *'The Creation of States in International Law'* (2<sup>nd</sup> edn, 2007) 89-95p.

<sup>25</sup> Crawford, James *'The Creation of States in International Law'* (2<sup>nd</sup> edn, 2007) 89-95p.

To efficiently carry out its international legal commitments, an entity seems to need a condition of permanence or stability. When evaluating the stability of a state, scholars have identified the following factors to take into account: "(1) peaceful and orderly transfer of power; (2) absence of external threats; (3) freedom from external control; (4) internal stability; (5) popular support evidenced by a free vote; and (6) adoption of a constitution."<sup>26</sup>

## **Legality of Establishment**

When deciding whether a state should become a state, the events surrounding its founding are usually taken into account. For instance, a state's claim to statehood may be questioned if the outcome of a unilateral declaration of independence is viewed as illegitimate and adverse to the state's geographical integrity.<sup>27</sup> It is widely acknowledged that a situation created by a violation of the prohibition on the use of force or other established rules of international law should not be recognized as legal.

## **Recognition**

Firstly, it is crucial to understand that Recognition may be divided into two categories: government recognition and state recognition. A community that fulfils the requirements for statehood is recognized as a state, and the state that grants recognition affirms that the state has "the rights and duties that flow from statehood." However, government recognition does not mean that new areas of international law are created. By acknowledging the new administration, the recognizing State is implying that it properly represents its State.<sup>28</sup>

As previously stated, the issue of recognition is closely related to the question of statehood. The constitutive theory and the declaratory theory have historically been the two main views in the literature about the nature of recognition.<sup>29</sup> The constitutive theory states that the acknowledgment

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<sup>26</sup> Blix, Martin Hans *'Contemporary Aspects of Recognition'* (1970) 587, 635-36p.

<sup>27</sup> *Madzimbamuto v Lardner-Burke* [1969] 1 AC 645, 722-28 (PC). See also Jericho Nkala, *The United Nations, International Law, and the Rhodesian Independence Crisis* (OUP 1985) 43-52; Restatement (Third) of Foreign Relations Law (n 23) § 202(2) ("A state has an obligation not to recognize or treat as a state an entity that has attained the qualifications for statehood as a result of a threat or use of armed force in violation of the United Nations Charter".)

<sup>28</sup> Peterson, M.J *'Recognition of Governments: Legal Doctrine and State Practice'* (1997) 1-2p.

<sup>29</sup> Lauterpacht, Hersch, *'Recognition in International Law'* (2012) 38p. See also, Taylor & Francis. *'Criteria for determining statehood: John Dugard's recognition and the United Nations'* (1988).

of existing States, rather than the above-mentioned requirements of statehood, determines the personality of a prospective State. The latter, the declaratory perspective, maintains that the recognition process is separate from the statehood debate. In other words, a state is formed when its real circumstances satisfy the prerequisites for statehood, and recognition by other states is only an admission of this fact.

## **1. Legal Effect of Recognition**

Under both municipal and international law, the act of recognition is followed by effects. The grant of State recognition may result in the conferment of privileges and immunities, globally speaking, the recognition of a new state denotes "a legal acknowledgement of a factual state of affairs," as well as the awareness that it has obligations and legal rights under international law.

The widely accepted declaratory theory of recognition holds that other states' recognition of a state does not establish its factual existence. For this reason, even in the event that a state is not officially recognized as such, "its territory cannot be considered no-land; man's there is no right to overfly without permission; ships flying its flag cannot be considered stateless"; and "non-recognition is not synonymous with denying any status under international law."<sup>30</sup> There is no legal vacuum for unrecognized entities; in fact, some contend that they ought to adhere to internationally accepted norms.

## **2. The notion of “Unrecognized Entities”**

While there are a number of reasons why entities with features like to those of a state are not universally recognized, certain commonalities may be noted. These entities' lack of international recognition limits their relations with other States and international organizations and raises doubts about their ability to uphold their legal commitments and enjoy rights under international law. Conversely, these bodies carry out tasks like to those of a state, and their territories are often outside the jurisdiction of the States that possess de jure authority over such areas (referred to as the "parent State").

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<sup>30</sup> Frowein, J. A., & Bernhardt, Rudolf 'De Facto Régime' (1987). See also, 'Encyclopedia of Public International Law, instalment 10' (North-Holland 1987) 73p.

The purpose of this thesis is not to investigate the general legal standing of unrecognized organizations under international law. Instead, it looks at how these organizations could be covered by international human rights law. In order to conceptualize the idea of "unrecognized entities," it is necessary to take into account the nature of international human rights legislation, since this emphasizes the necessity of looking into the research topics posed in this thesis.

Theoretically, the parent State is obligated under international human rights law to protect the territory of an unrecognized entity. However, because the governing body and the region in issue are independent of and not under the jurisdiction of the parent State, applying international human rights responsibilities does not lead to their practical implementation. The theoretical and actual applications of international human rights legislation in certain domains seem to have diverged as a result.

Various types of non-State actors and de facto regimes have emerged in the context of modern international law, and many of these entities are likely to take acts that affect people's rights to enjoy their human rights. Some have proposed that under international law, these players might be granted rights and obligations based more on "capacity" than "subjectivity" and "personality."<sup>31</sup> While only States possess the full capacity of international ability to act, various non-State actor and de facto categories have varying capacities to act and are thus governed by various international legal norms that place rights and duties on those actors.

International law has, on occasion, made it clear that responsibilities under international law must be enforced. This is the situation with the laws governing armed conflicts, which control the conduct of the parties involved directly.<sup>32</sup>

Human rights have historically been understood as both a system of laws "regulating the relationship between the government and the governed" and as essential safeguards against the misuse of sovereign authority by nations.<sup>33</sup> here has also been a contention that when "an entity

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<sup>31</sup> Clapham, *Human Rights Obligations* (n 14) 70-73

<sup>32</sup> H. Lauterpacht, 'General Rules of the Law of Peace' in E. Lauterpacht (ed), *International Law: Collected Papers of Hersch Lauterpacht*, vol 1 (CUP 1970) 284.

<sup>33</sup> Liesbeth Zegveld, *Accountability of Armed Opposition Groups in International Law* (CUP 2002) 40.

exercising powers analogous to those of governments" engages in relations with individuals under its jurisdiction, human rights standards can be applied.<sup>34</sup>

Certain accords pertaining to human rights specifically expand the definition of responsibility bearers to encompass "entities exercising effective power."<sup>35</sup> However, it is still challenging to ascertain whether unrecognized entities are subject to international human rights duties in the lack of a clear prescription.<sup>36</sup>

## **Criteria of “Unrecognized Entities”**

The concept above classifies the requirements for "unrecognized entities" into three categories: de facto independence, the Montevideo criteria of statehood, and a lack of broad State recognition.<sup>37</sup>

The details of each of the "unrecognized entities" requirements are provided below.

### **Traditional Criteria of Statehood**

The first step is for the entity in issue to objectively meet the requirements of a State, which are outlined in Article 1 of the 1933 Montevideo Convention. These requirements include having a permanent population, a defined territory, a government, and the ability to interact with other States.<sup>38</sup>

According to earlier statements, "unrecognized entities" are organizations that resemble states and have interactions with the population they rule that are comparable to those between a state and its subjects. As a result, this thesis uses the same meaning of the statehood requirements for deciding whether or not a particular entity qualifies as a "unrecognized entity" when applying the criteria in and of themselves.

Rebel organizations who do not possess a defined territory within a State and only sometimes resort to violence are distinguished from unrecognized entities. On the other hand, certain armed

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<sup>34</sup> Nigel S Rodley, 'Can Armed Opposition Groups Violate Human Rights?' in Kathleen E. Mahoney and Paul Mahoney (eds), *Human Rights in the Twenty-First Century: A Global Challenges* (Kluwer Academic Publishers 1993) 300.

<sup>35</sup> UNGA Res 3452 (XXX) (9 December 1975) UN Doc A/RES/3452(XXX), preamble

<sup>36</sup> Clapham, *Human Rights Obligations* (n 14) 71

<sup>37</sup> Tsai, Pei-Lun (2015). "*The Application of International Human Rights Law to Unrecognized Entities: The Case of Taiwan.*" PhD thesis, University of Nottingham, 2015, p. 41

<sup>38</sup> Convention on the Rights and Duties of States (n 21) art 1.

groups that participate in hostilities covered under 1949 Geneva Conventions' Additional Protocol II can be regarded as "unrecognized entities."<sup>39</sup>

There should be a "government" for the unrecognized organizations that has actual authority over the disputed region. Thus, it must "exercise all the functions of a sovereign government in maintaining law and order, establishing and maintaining courts of justice, adopting or imposing laws regulating the relations of the inhabitants of the territory to one another and to the government.

While it's likely that unrecognized organizations may have some challenges in having relationships with other nations, they should be able to do so. Note, however, that this characteristic speaks more to one's "ability" to engage into partnerships of this type than to their actual creation.<sup>40</sup>

## **De Facto Independence**

De facto independence requires that the government of the concerned entity maintain some degree of control over its territory and refrain from acting or making choices that are like to those of another State. Stated differently, "foreign control overbearing the entity concerned decision-making on a wide range of high policy matters and doing so systematically and on a permanent basis".

## **Lack of General Recognition**

The statehood of the entity in question must be disputed and not widely acknowledged from the perspective of the international community. This research takes a constitutive approach to the nature of recognition by using non-recognition as a criterion, which does not imply that recognition is a prerequisite for statehood.

Entities lacking international recognition may have challenges when trying to engage in international relations or participate in the international legal framework, despite the dispute around constitutive versus declaratory theories. These groups usually aren't allowed to join international organizations, and they can't sign multilateral treaties.

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<sup>39</sup> See Scott Pegg, *International Society and the De Facto State* (Ashgate 1998) 30-32.

<sup>40</sup> Tsai, Pei-Lun (2015). "*The Application of International Human Rights Law to Unrecognized Entities: The Case of Taiwan*." PhD thesis, University of Nottingham, 2015, p. 43

it is typically difficult for those entities to participate in multilateral treaties since the "parent State" maintains sovereignty over all of its individual regions and "sole representation power."<sup>41</sup>

## Conclusion

Since the purpose of the thesis is to examine the implementation of international human rights law to unrecognized entities, this chapter has given an overview of the theories relevant to international legal personality of statehood, recognition, and the idea of unrecognized entities. States are the only entities with complete international legal identity and are bound by all the regulations controlling rights and responsibilities under international law, including international human rights law, despite the growth of international law.

Many criteria have been offered for defining statehood but few have garnered the kind of criteria that the Montevideo criteria have. Probably the most controversial is the recognition problem. It is challenging for an entity to engage with other States as an equal member of the international community, to enjoy rights and assume obligations in the same manner as other States without recognition, despite the consensus of intellectual opinion and the majority of international practice that recognition has no constitutive effect on statehood.

In order to examine the legal standing and international human rights responsibilities of "unrecognized entities," these entities are those that accomplish de facto independence and satisfy the traditional standards of statehood, also known as the "Montevideo criteria," but are not commonly recognized as states by the international community. Utilizing this concept, the thesis looks into the status of these entities that resemble states and whether or not the international legal system acknowledges that these entities may be subject to the application of international human rights.

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<sup>41</sup> B R Bot, *Nonrecognition and Treaty Relations* (A W Sijthoff 1968) 15.

# CHAPTER THREE: OBLIGATIONS OF DE FACTO STATES UNDER INTERNATIONAL LAW AND INTERNATIONAL HUMAN RIGHTS

## Introduction:

While de facto states are generally thought to lack the same rights and obligations as states, this does not mean that they can freely act in violation of international law, and the possibility of de facto entities, as defined in this thesis, bearing obligations under international human rights law has been raised.

De facto regimes possess real territorial and effective power, placing them in charge of upholding international human rights laws. The traditional perception asserts that only governments bear the international responsibility to protect human rights. However, with the rise of de facto regimes and non-state actors, they are eroding the special responsibility of states alone to protect human rights. The implementation and protection of international human rights of states alone creates a logical inconsistency with reality. When the country and the power that held de jure legitimacy vanish, it becomes necessary to consider the theory of effective control by de facto regimes.

De Facto Regimes are entities that's inside a state and effectively control territory<sup>42</sup>. These regimes are de facto rather than de jure. As a result, the de facto regimes lose its whole international identity when other countries refuse to acknowledge its legitimacy. Since these regimes are not the lawful or legitimate government of the region, even if they have actual influence and power over it, their authority and control over it are matters of fact rather than law.<sup>43</sup>

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The issue of the responsibility of international obligations for de facto states is not directly mentioned in international conventions. However, various understandings or interpretations can be derived to align with the reality of de facto entities. Examining the UN Charter and its international responsibility to protect, customary international law, international human rights laws such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural

<sup>42</sup> Michael Schoiswohl, *De Facto Regimes and Human Rights Obligations— The Twilight Zone of Public International Law*, 6 AUSTRIAN REV. INT'L & EUR. L. 45, 50 (2001).

<sup>43</sup> *Legal English: "De Facto/De Jure,"* Wash. Univ. Law (Dec. 28, 2012), <https://onlinelaw.wustl.edu/blog/leg>

Rights (ICESCR), along with the human rights of people globally, the Geneva Conventions, and the responsibilities in non-international armed conflicts, provides a comprehensive framework. Similarly, legal doctrines such as the doctrine of effective power will be considered, and we will discuss its nature and the responsibilities transferred to de facto states when the legal government disappears, or territories undergo changes.

## International Customary law

International customary law is one of the primary sources of international law, guiding the conduct of states as well as non-state actors and de facto authorities<sup>44</sup>. It plays a key role in ensuring compliance with international legal norms and promoting respect for the universally recognized principles of customary international law.

Fundamental human rights such as the right to life, the prohibition of torture and cruel, inhuman or degrading treatment, the prohibition of slavery and servitude, the prohibition of arbitrary detention, the principle of non-discrimination, and minimum due process and fair trial guarantees have attained the status of customary international law and, in some instances, jus cogens norms<sup>45</sup>. These rights are therefore universally binding, even on states that have not ratified the corresponding international treaties<sup>46</sup>.

The principles of international customary law establish the fundamental norms that all states are obligated to respect, including international human rights law.<sup>47</sup> Every state is required to uphold these principles responsibly, adhering to the principle of good faith (*bona fide* conduct), which obliges states to exercise their authority in good faith.<sup>48</sup> Even de facto states must act in good faith and respect international human rights law; they cannot invoke sovereignty or effective control as justification for abusing rights or committing violations.<sup>49</sup>

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<sup>44</sup> *Statute of the International Court of Justice*, art. 38(1)(b)

<sup>45</sup> *Prosecutor v Furundžija* 1998, para. 153; *Barcelona Traction, Light and Power Company, Ltd (Belgium v Spain)* 1970, paras. 33–34

<sup>46</sup> *North Sea Continental Shelf (Federal Republic of Germany v Denmark; Federal Republic of Germany v Netherlands)* 1969, para. 77; Henkin 1990.

<sup>47</sup> Shaw, M.N., *International Law*, 8th edn, Cambridge University Press, Cambridge, 2017 p. 112.

<sup>48</sup> Brownlie, I., *Principles of Public International Law*, 7th edn, Oxford University Press, Oxford, 2008.

<sup>49</sup> Aust, A., *Modern Treaty Law and Practice*, 3rd edn, Cambridge University Press, Cambridge, 2010; Cassese, A., *International Law*, 2nd edn, Oxford University Press, Oxford, 2005.

## Erga Omnes Obligations

In international law, there are responsibilities that every state must respect and fulfill, which are binding on all members of the international community. These are called *erga omnes* obligations, meaning duties owed “toward all.”<sup>50</sup> The term *erga omnes* obligation was introduced for the first time by the International Court of Justice (ICJ) in the *Barcelona Traction* case (1970).<sup>51</sup> In that case, the Court distinguished between the responsibilities that states owe to one another and those owed to the international community as a whole.

*Erga omnes* obligations protect fundamental values and rights that concern humanity universally, such as:

- The prohibition of genocide, slavery, and racial discrimination;
- The right to self-determination of peoples; and
- The prohibition of aggression and crimes against humanity.<sup>52</sup>

Because these obligations reflect collective responsibilities of all states, *erga omnes* obligations reinforce the idea of international law as a system founded not only on consent but also on shared moral and legal principles. Accordingly, *de facto* states such as Taiwan, Northern Cyprus, Somaliland, and Abkhazia are increasingly acknowledged in practice and jurisprudence as entities that may bear responsibilities under customary international law, especially where *erga omnes* obligations are involved.<sup>53</sup>

## Universal Declaration of Human rights (UDHR)

The Universal Declaration of Human Rights, adopted by the United Nations in 1948 and serving as the foundation for the human rights of people worldwide<sup>54</sup>, is intended to be universally accepted and implemented as international customary law, without regard to politics or other

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<sup>50</sup> Malcolm N. Shaw, *International Law*, 9th ed. (Cambridge: Cambridge University Press, 2021), 83.

<sup>51</sup> *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, Judgment, I.C.J. Reports 1970, p. 3.

<sup>52</sup> Antonio Cassese, *International Law*, 2nd ed. (Oxford: Oxford University Press, 2005), 130–132.

<sup>53</sup> James Crawford, *The Creation of States in International Law*, 2nd ed. (Oxford: Oxford University Press, 2006), 387–389.

<sup>54</sup> *Universal Declaration of Human Rights*.<sup>54</sup> United Nations, iii, available at: [https://www.un.org/en/udhrbook/pdf/udhr\\_booklet\\_en\\_web.pdf](https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf).

factors. Although the framework is independent from politics and pertains to the human rights of people worldwide, it can be interpreted as inclusive of individuals living under de facto regimes.

The Universal Declaration of Human Rights is written in inclusive language. The word "everyone" is used without distinction between people living anywhere in the world. It is intended for everyone, irrespective of recognized governments, unrecognized entities, politics, geography, jurisdictional bases, or any other considerations.

For instance, Article 2 of the UDHR states, "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional, or international status of the country or territory to which a person belongs, whether it be independent, a trust, non-self-governing, or under any other limitation of sovereignty."<sup>55</sup> This means it should be applied directly to every person and every country, whether recognized or unrecognized. It is important to implement and accept the provisions of the UDHR.

Therefore, many unrecognized countries have accepted the UDHR, and their constitutions have compelled them to respect and obey it. For example, the country of Kosovo has incorporated the UDHR into its constitution. Article 22 of the Constitution of Kosovo addresses the "Direct Applicability of International Agreements and Instruments." In its first clause, it explicitly states that they accept the UDHR, affirming, "Human rights and fundamental freedoms guaranteed by the following international agreements and instruments are guaranteed by this Constitution, are directly applicable in the Republic of Kosovo and, in case of conflict, take precedence over provisions of laws and other acts of public institutions: (1) Universal Declaration of Human Rights."<sup>56</sup>

Similarly, there are many governments that adhere to the UDHR but are not recognized or face legal ambiguity, existing as de facto regimes, such as Somaliland and Abkhazia. For instance, Abkhazia's constitution explicitly declares its commitment to the UDHR and international human

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<sup>55</sup> *Universal Declaration of Human Rights.* United Nations, 6, available at: [https://www.un.org/en/udhrbook/pdf/udhr\\_booklet\\_en\\_web.pdf](https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf) .

<sup>56</sup> *Constitution of the Republic of Kosovo [Serbia]*, page 6, June 2008. Available at: <https://www.refworld.org/docid/5b43009f4.html> [Accessed 28 November 2023].

rights laws. Article 11 of Abkhazia states, "The Republic of Abkhazia shall recognize and guarantee the rights and freedoms proclaimed in the Universal Declaration of Human Rights, the International Covenants of Economic, Social, Cultural, Civil, and Political Rights, and other universally recognized international legal instruments."<sup>57</sup> This commitment signifies progress and alignment with international standards.

Therefore, we can assert that the UDHR is crafted for the entire people worldwide and is articulated in inclusive language. As mentioned earlier, unrecognized countries and de facto regimes have embraced the UDHR. Consequently, it can be concluded that the obligations outlined in the UDHR are among the responsibilities acknowledged by de facto regimes and unrecognized entities, which must be fulfilled.

## **International Humanitarian Law**

International humanitarian law is important for humanity and every country in a war situation, and it is necessary to carry out in order to minimize the loss of the war and its effects. Every time there is a war, the parties to the war may not be only governments or international armed conflict, but there can also be wars between rebels and governments, *de facto regimes*, and non-state actors, or what is known as non-international armed conflict. Therefore, it is necessary to apply International Humanitarian Laws and other international laws in humanitarian situations.

In general, when discussing situations involving non-international armed conflicts, Additional Protocol II establishes the responsibility that must be assumed by the warring parties, whether they are a government, a rebel, or any other non-international entity involved in an internal war. Protocol II on the Protection of Victims of Non-International Armed Conflicts to the Geneva Conventions of 8 June 1977, defines a non-international armed conflict as one; "*Which takes place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups that, under responsible command, exercise such control over a*

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<sup>57</sup> *Constitution of Abkhazia*. Available at: <https://abkhazworld.com/aw/reports-and-key-texts/607-constitution-of-the-republic-of-abkhazia-apsny>. Last visited 29 November 2023.

*part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol”<sup>58</sup>*

Therefore, when discussing non-international armed conflict, the definition can be interpreted to include even unrecognized de facto regimes, and they must be accorded respect. Moreover, unrecognized entities are obligated to implement international humanitarian law, ensuring the protection of civilians and proper treatment of prisoners.

## **The doctrine of effective power**

As mentioned earlier, international law does not expressly address the obligations of unrecognized entities and de facto regimes. Therefore, we ground the debate on the human rights obligations of unrecognized de facto regimes in legal doctrines, such as the legal doctrine of effective power. This doctrine applies to unrecognized de facto regimes in the territory they govern, where the power belongs to them and, in reality, does not exist within the parent state's de jure jurisdiction.

In the event that a legal lacuna occurs inside unrecognized de facto entities territory, unrecognized de facto entities are required to fill it because of their quasi-governmental power, unrecognized de facto regimes (DFRs) have a significant influence on international decision-making and are recognized as international legal bodies with associated legal obligations. This recognition is conceptually distinct from recognizing DFRs as states, a distinction that attends to the political concerns surrounding the legitimization of DFRs while simultaneously guaranteeing their responsibility for violations of human rights.<sup>59</sup>

Similar to unrecognized de facto bodies controlling a region, human rights violations are an international matter susceptible to international jurisdiction, holding those guilty accountable. In such cases, it becomes essential to protect human rights. Human rights protection is guaranteed as long as the ruling authority has effective control in the region. This means that the need to protect human rights is never neglected. If de facto governments seize power in the absence of a de jure

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<sup>58</sup> Protocol Additional to The Geneva Conventions Of 12 August 1949, And Relating to The Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, Article 1, paragraph 1. [Online] Available at: [https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.35\\_AP-II-EN.pdf](https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.35_AP-II-EN.pdf)

<sup>59</sup> Tan, Daron. "Filling the Lacuna: De Facto Regimes and Effective Power in International Human Rights Law." International Law and Politics, vol. 51, no. 435.

legitimate government, they are obligated to respect human rights in compliance with the idea of effective control.

## **Conclusion**

In this chapter, we have explored the international obligations of unrecognized de facto entities in both international law and human rights. Generally, these entities lack treaty-making capacity due to their non-recognition. As a result, international laws do not explicitly address them, with the primary focus being on states. Consequently, we have applied certain international human rights laws, interpreting them in the context of entities lacking recognition. Examples include the International customary law principle and Erga Omnes Obligations, Universal Declaration of Human Rights (UDHR) and the International Humanitarian Law (IHL) Geneva Conventions, including Additional Protocol II.

We discussed the Universal Declaration of Human Rights (UDHR) and noted that it is written in inclusive language. This means that, in addition to recognized governments, even unrecognized de facto entities accept it, as stated in their constitutions. Consequently, we assume that the UDHR and its responsibilities are crucial for implementation by governments lacking formal recognition.

We also discussed International Humanitarian Law as outlined in the Geneva Conventions, which mandates the respect and adherence to humanitarian rules during times of war. Consequently, we emphasize the responsibility of unrecognized de facto states, particularly in reference to Additional Protocol II and its provisions for the management of non-international armed conflicts.

In conclusion, we discussed the theory of effective power, highlighting those unrecognized de facto states are the actual rulers over the territories they govern. In these cases, where no other power exists and the government holds de jure legitimacy vanished, the responsibility for protecting and promoting human rights falls upon the de facto states."

# **CHAPTER FOUR: IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS LAW UNDER THE LEGAL SYSTEM OF SOMALILAND**

## **Introduction**

For the last 33 years, Somaliland has established laws, institutions, and policies to implement international human rights laws. Since Somaliland does not have treaty-making capacity, nor can it participate in international human rights conventions, the way it implements and interacts with international human rights laws is a matter of acceptance and responsibility. International human rights laws and conventions that are incorporated into its laws, such as its constitution, legislative acts, policies, and institutions, are implemented just as the countries with the treaty-making capacity that can participate in and sign the international human rights conventions.

The first part of this chapter focuses on the de facto statehood of Somaliland, exploring its history of independence and separation from Somalia. This part assess Somaliland's statehood in accordance with the requirements outlined in the 1933 Convention on the Rights and Duties of States (Montevideo Convention) and moves on to the second part to examine how Somaliland's laws, including the constitution, legislative acts, and the rules of government institutions, align with and implement international human rights laws. Finally, the chapter address the challenges that Somaliland faces in implementing international human rights laws.

## **Somaliland Constitution**

When Somaliland declared its independence and separation from Somalia in 1991, a transitional government was established within the first two years. Two years later, in 1993, a complete government was established, and Mohamed Haji Ibrahim Egal became the second president of Somaliland, elected to office. Following this, Somaliland commenced its constitutional-making process, but it hasn't much improved as the government has been involved in addressing local conflicts and engaging in peacemaking and state-building efforts. This process took considerable

time; however, on May 31, 2001, a referendum was held, with 99.99% of the population voting in favor, leading to its conclusion.<sup>60</sup>

The constitution of Somaliland represents the highest level of acceptance and implementation of international human rights laws. The third part of the constitution specifically addresses the strengthening of human rights principles, while international human rights standards such as the UDHR are specifically mentioned as being respected.

In accordance with Article 10, paragraph 2, of the constitution of Somaliland, explicitly states the implementation and adherence to the United Nations Charter and international law. Moreover, the constitution affirms its commitment to respecting the Universal Declaration of Human Rights. It states, "The Republic of Somaliland recognizes and shall act in conformity with the United Nations Charter and with international law, and shall respect the Universal Declaration of Human Rights."<sup>61</sup>

Similarly, Somaliland has declared in its constitution that it respects international treaties, such as those on human rights, which Somalia has signed. Article 10, paragraph one of the Somaliland Constitution states "The Republic of Somaliland shall observe all treaties and agreements entered into by the former state of Somalia with foreign countries or corporations, provided that these do not conflict with the interests and concerns of the Republic of Somaliland."<sup>62</sup>

Therefore, Somaliland is fully recognized and affirms its commitment to implement the international conventions on human rights, especially those signed by the government of Somalia. These include the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD),<sup>63</sup> the Convention

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<sup>60</sup> Ibrahim Hashi Jama. "Making the Somaliland constitution and its role in democratization and peace." Available at: <https://www.c-r.org/accord/somalia/making-somaliland-constitution-and-its-role-democratisation-and-peace>

<sup>61</sup> Republic of Somaliland. (2000). Constitution of the Republic of Somaliland. [Online] Available at: [http://www.somalilandlaw.com/Somaliland\\_Constitution\\_Text\\_only\\_Eng\\_IJSSL.pdf](http://www.somalilandlaw.com/Somaliland_Constitution_Text_only_Eng_IJSSL.pdf) [ 25.5.2024].

<sup>62</sup> Republic of Somaliland. (2000). Constitution of the Republic of Somaliland. [Online] Available at: [http://www.somalilandlaw.com/Somaliland\\_Constitution\\_Text\\_only\\_Eng\\_IJSSL.pdf](http://www.somalilandlaw.com/Somaliland_Constitution_Text_only_Eng_IJSSL.pdf) [ 25.5.2024].

<sup>63</sup> International Justice Resource Center. (n.d.). Country Factsheet Series: Somalia. [Online] Available at: <https://ijrcenter.org/wp-content/uploads/2017/11/Somalia.pdf> [15th February 2024].

on the Rights of the Child (CRC), the African Charter on Human and Peoples' Rights, and many others.

Somaliland's constitution generally adheres to international human rights standards and conventions. The third part of the Somaliland constitution directly guarantees fundamental rights, humanitarian aspects, political rights, and various other aspects of human rights. This section, titled "The Rights of the Individual, Fundamental Freedoms, and the Duties of the Citizen," comprehensively covers all human rights. Notably, Article 22 ensures Political, Economic, Social, and Electoral Rights; Article 23 guarantees Freedom of Movement and Association; Article 24 addresses the Right to Life, Security of the Person, Respect for Reputations, and Crimes against Human Rights; and Article 25 pertains to the Right to Liberty, Guarantees, and Conditions of Rights and Freedoms.<sup>64</sup>

## **Legislative acts**

Somaliland has undergone various parliamentary sessions since 1997, during which many laws have been enacted covering every aspect of life, governance and administration. These laws encompass taxation and finance, regional and municipal self-government, human rights, justice, and litigation, as well as regulations pertaining to crucial facets of citizens' lives.

Somaliland lacks the capacity to sign international conventions related to human rights, but it has nonetheless passed legislations through parliamentary means and ratified them to align with human rights standards at the international level. Somaliland's parliament has enacted many laws pertaining to human rights in accordance with international human rights conventions.

These laws that were passed by the parliament include the law on the protection of children's rights based on the "Child Rights Convention, the "Rape and Gender-Based Violence Act," and the Somaliland National Human Rights Commission Act. We will focus on each one to explain the structure and how these regulations incorporate the purpose of international human rights regulations.

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<sup>64</sup> Republic of Somaliland. (2000). Constitution of the Republic of Somaliland. [Online] Available at: [http://www.somalilandlaw.com/Somaliland\\_Constitution\\_Text\\_only\\_Eng\\_IJSL.pdf](http://www.somalilandlaw.com/Somaliland_Constitution_Text_only_Eng_IJSL.pdf) [ 25.5.2024].

## **Somaliland Child Rights Protection Act (CPA)**

Somaliland's parliament has approved the Somaliland Children's Rights Act, and the President of Somaliland has signed the Act to implement the Children's Rights Protection Act, Law No. 102/2022, in accordance with Article 90 of the Constitution of the Republic of Somaliland, Articles 38, 76, and 7 of the Constitution of the Republic of Somaliland. The Decision of the House of Representatives, Decision No. GW/KF04/941/2022, dated September 10, 2022, ratified the Bill of Rights for Children, Law No. 102/2022 and that he signed for the implementation of the Law on the Protection of Children's Rights, Law No. 102/2022.<sup>65</sup>

Although Somaliland has enacted laws, since it is not yet recognized as a state by the United Nations, there are numerous issues, including the rights of children living in Somaliland, which are not monitored by international institutions such as the United Nations. Unrecognized countries do not report to human rights organizations under the United Nations. Consequently, there are no government reports or reports prepared by social organizations submitted. This situation sometimes leads to violations of children's rights and a lack of accountability for such violations.<sup>66</sup>

But despite this, Somaliland has aligned its children's rights laws with international standards, such as the Convention on the Rights of the Child. Therefore, the governance of children's rights in Somaliland is primarily governed by local legislation.

## **Somaliland National Human Rights Commission**

In November 2007, Somaliland Government presented the Somaliland National Human Rights Commission Bill 2007 to its parliament, aiming to establish the Somaliland Human Rights Commission.<sup>67</sup> This initiative was guided by international best practices observed in various countries in the world for protecting human rights issues within their borders, as well as by the Paris Principles, which are international standards governing the establishment and framework of National Human Rights Institutions (NHRIs).<sup>68</sup>

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<sup>65</sup> *Children's Rights Protection Act, Law No. 102/2022*, Ministry of Education, Science and Fine Arts of the Republic of Somaliland, available at: <https://mesaf.govsomaliland.org/article/xeerka-ilalinta-xuquuqda-caruurta-jsl>

<sup>66</sup> Hopman, M., Jama, G. A., & Warshel, Y. (2024), "BORN IN A NON-EXISTENT PLACE?" p. 4

<sup>67</sup> *Somaliland National Human Rights Commission Bill 2007*, (2007), p. 1, Available at:

[http://www.somalilandlaw.com/Somaliland\\_National\\_Human\\_Rights\\_Commission\\_Bill\\_Somali.pdf](http://www.somalilandlaw.com/Somaliland_National_Human_Rights_Commission_Bill_Somali.pdf)

<sup>68</sup> *Principles relating to the Status of National Institutions (The Paris Principles)*, (1993), p. 1, Adopted 20 December 1993 by General Assembly resolution 48/134.

On October 30, 2010, the Somaliland Parliament approved the Somaliland National Human Rights Commission bill, thereby enacting the law that established the Somaliland Human Rights Commission. Subsequently, on December 25, 2010, the President of Somaliland signed the law following the parliament's decision of approval.<sup>69</sup>

According to the Somaliland Human Rights Commission Law, the Somaliland Human Rights Commission remains an independent body, free to carry out its duties accordingly. This law, along with international human rights law, principles of justice, and the tenets of good governance, empowers the Commission to conduct its work and investigations without any undue burden on its activities.<sup>70</sup>

The purpose of the Human Rights Commission Act is to regulate all activities related to challenges and crimes pertaining to human rights and fundamental freedoms of citizens, without violating other laws of the country.<sup>71</sup>

In conclusion, we summarize that the Somaliland Human Rights Commission was established for the protection and enforcement of international human rights laws and those enacted by the Parliament of Somaliland. It serves as an independent body tasked with investigating human rights violations in Somaliland, aiming to meet international standards and prevent human rights abuses.

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<sup>69</sup> Somaliland National Human Rights Commission Law, Law No: 39/2010, p. 3.

<sup>70</sup> Article 2 "*General principle of the law*" of the Somaliland National Human Rights Commission Law, Law No: 39/2010, p. 5.

<sup>71</sup> Article 6 "*purpose of the law*" of the Somaliland National Human Rights Commission Law, Law No: 39/2010, p. 6.

## Conclusion

In this chapter, I tried to look at how Somaliland implements international human rights laws. In the first part of this chapter, I talked about learning about Somaliland, the history of independence, and separation from Somalia. We assessed Somaliland's statehood in accordance with the requirements outlined in the 1933 Convention on the Rights and Duties of States (Montevideo Convention), the purpose of which was to know about the statehood capacity of Somaliland. We have said that Somaliland has met the requirements of the Montevideo Convention, which is a permanent population, defined territory, effective government, and the capacity to enter into relations with other states. In each of these points, we have provided examples to strengthen and justify that argument.

In the second part of this chapter, I discussed how the laws of Somaliland, especially the constitution and parliamentary rules, implement international human rights laws. I have examined the constitution and presented Somaliland's constitution upholds international human rights laws, focusing on strengthening principles and respecting UDHR standards. It complies with the United Nations Charter and international law, abiding by the Universal Declaration of Human Rights. Additionally, Somaliland respects international treaties, including those signed by the Somali government. The constitution affirms its commitment to implementing international conventions on human rights, including the International Covenant on Civil and Political Rights, ICESCR, CAT, CERD, CRC, and the African Charter on Human and Peoples' Rights.

In the final part of our chapter, I discussed that Somaliland has a parliament and parliamentary rules that implement human rights regulations. I mentioned that Somaliland has a Children's Rights Act, which its parliament enacted, referring to the Child Rights Convention. Additionally, we stated that Somaliland has a Human Rights Commission Act, following the international standards of the "Paris Principles," which govern the establishment of human rights commissions in countries. Therefore, Somaliland has a human rights commission that monitors and investigates human rights violations occurring in Somaliland.

## **Chapter Five: Conclusion and Recommendation**

### **Conclusion**

As we mentioned above, the subject of our exploration, which I focused on in the thesis, was how de facto states that lack recognition implement international human rights laws, with a particular focus on the case of Somaliland. Accordingly, the first chapter tried to see the interplay between the criteria of statehood, the concept of recognition, and the notion of unrecognized entities, the obligations of international human rights law for unrecognized de facto entities, and particularly how Somaliland implements and integrates international human rights treaties into its legal system.

The thesis also discussed and explained in detail the statehood criteria of the Montevideo Convention, such as a permanent population, a defined territory, an effective government, the capacity to enter into international relations with other states, and other proposed non-Montevideo requirements. By so doing the thesis addressed unrecognized entities and their international status. Additionally, the thesis also focused on the theories and effects of recognition and how non-recognition works and what it means, such as when countries with recognition have higher privileges than unrecognized de facto entities.

Chapter three of the paper focused on the obligations of de facto states under international law and international human rights law. I noted that international law treaties generally do not directly mention the responsibilities of unrecognized entities in de facto states. However, I tried to explain that there is an implied responsibility in the international rules imposed on de facto states. I examined the UDHR and the Geneva Conventions, which separately call on people worldwide to respect international rules. I mentioned that this responsibility applies globally to both recognized and unrecognized countries. I also discussed the "doctrine of effective power," which places responsibility on de facto states to respect international human rights rules as they are the de facto authority controlling the territory. Primary responsibility rests on de facto states rather than de jure entities because the latter have no authority or jurisdiction over the territory controlled by the de facto power.

In the fourth chapter, I focused on how Somaliland implements international human rights laws, particularly the mechanisms it uses and its rules, such as its constitution, legislative acts, and institutions. In this regard was clearly discussed that Somaliland's constitution serves as the primary means for accepting the implementation of international human rights laws. I analyzed the constitution of Somaliland, which specifically mentions that it respects and stands for the implementation of the UDHR and the UN Charter, as well as the international human rights conventions that Somalia has signed. These include the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Rights of the Child (CRC), the African Charter on Human and Peoples' Rights, and others. Additionally, the thesis discussed the legislative act that align with international Human rights norms and standards in order to implement international Human rights laws in Somaliland. The fact that Somaliland has also established a commission for the protection of human rights reveals that Somaliland despite its recognition has gone steps in order to adhere to the international standards of the Paris Principles. Therefore, Somaliland implements such mechanisms to regulate international human rights.

## Recommendations

In light of the study concluded, the researcher puts forward the following recommendations:

1. The United Nations should establish an office dedicated to monitoring the human rights situation in unrecognized de facto states. This office should also engage with these entities to develop mechanisms and strategies for implementing international human rights laws within the territories under their control. Respect for human rights and human dignity must not depend on formal recognition as a nation-state.
2. International UN human rights conventions should take into account the unrecognized de facto states and give them a role so that their voices can be heard and they can provide explicit acceptance, as they are the ones who actually maintain effective power over the territory of the de facto states.
3. Unrecognized de facto states must take responsibility to facilitate the implementation of international human rights standards, as human rights are important to their people irrespective of their recognition as a nation state.
4. The unrecognized de facto entities should come together to discuss how to implement international human rights rules in the territories where they have effective power and cooperate in their implementation.

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