THE OGADEN SOMALIS - A CASE FOR SELF-DETERMINATION

A dissertation submitted in Partial
Fulfilment of the requirements for the
LLB Degree, University of Nairobi

By:

C.A. OTUNGA

NAIROBI

MAY 1984

DEDICATION

For the people of Namibia

A B B R E V I A T I O N S

A.J.I.L.	American Journal of International Law
P.C.I.J.	Permanent Court of International Justice
I.C.J.	International Court of Justice
I.L.A.	International Law S Association
I.L.M.	International Legal Materials
I.J.I.L.	Indian Journal of International Law
G.A.	General Assembly
S.C.	Security Council
O.A.U.	Organisation of African Unity
U.N.	United Nations
I.C.L.Q.	International Comparative Law Quarterly
N.F.D.	Northern Frontier District
Res.	Resolution

C O N T E N T S

A C K N O W L E D G E M E N T S

The completion of this work would not have been possible without the generous and untiring assistance of my supervisor, Prof. D. Kappeler, who displayed admirable understanding of my difficulties when unavoidable circumstances caused a delay in the timely completion of this exposition. For his deliberations on the N.F.D. Somalis, I am indebted to Dr. Okoth-Ogendo and for lengthy time consuming discussions on S.W. Africa, I thank Mr. A.G. Ringera.

Finally, my thanks go to Mrs. G.A. Ogallah for her tireless assistance at the typing and proof stage.

INTRODUCTION

SELF-DETERMINATION AND THE OGADEN SOMALIS

The primary concern of this dissertation will be the problem of principles of international law that seem to find no expression in practical situations. The principle of self-determination has presented problems to both lawyers and political scientists as its legal applicability had not been established. There is a wealth of theories which have held sway for a long time that the principle of self-determination is only a moral and political principle. There is an almost irresistable school of thought dominant among jurists of modern times, which holds that the principle is used by politicians to weild power. This, as we shall see is an attempt at temporarising the problem and dismissing it as though its merits do not go beyond political overtones. This is erroneous because the problem lies not in its legality, but in its applicability to practical problems.

I have chosen the Ogaden Somalis as a case study for several deliberate reasons. To begin with there is inadequate literature on the Ogaden self-determination as most writers have dismissed the principle as being only political. It is a region which caused alot of international speculation during the Ogaden War (1977 - 1978), and no literature has been written concerning that event. Also, I found this a most dolectable study because of the Somalia claims lodged against Ethiopia to the effect that the Ogaden Somalis are living under "alien" subjugation

and should therefore be allowed to recede and join up with Somalia. It is very interesting the way ethnicity can blind a people to all practical problems attached to the issue. I chose the Ogaden Somalis because of their nomadic way of life which though is being gradually discouraged is still very evident. It is this way of life that has been a hindrance to providing a viable solution to the problem of the Somalis. It is also an interesting area to study because if self-determination for the Ogaden Somalis will be achieved resulting into secession, then it will trigger off other claims in the Thorn of Africa including the already explosive shifta situation in Kenya. It could be an example of how political ambitions of one State can upset the stability of other sovereign States. To crown it all, Ethiopia and Somalia are neighbouring States to my own Country Kenya and the problems experienced in the Northern Frontier District of Kenya is a spillover from the Ogaden region and this is very interesting because I have watched the instability caused by shifta activities in the NFD, with growing concern.

As indicated earlier, what prompted me to study this principle is the fact that deliberations in this field have shown far less concern with problems of the legal implications of the principle both in practice and effect. The range of study has not normally been beyond dispute. I feel strongly that at the San Francisco drafting of the UN Charter (1945) the inclusion of the principle of self-determination was in order to cater for colonial situations. An expression of this right would definitely result

into Sovereign independence. The term "peoples" and "nations" used in the charter later proved to be cumbersome because situations arose in independent States which justified an interpretation that people within an independent State can rightly exercise the right to self-determination. I intend to show that it was for this reason that the General Assembly of the U.N. suddenly produced numerous resolutions touching on the question of self-determination. A closer examination of these resolutions shows that there is an inherent conflict between the territorial integrity of States and self-determination of a minority "people" in the Sovereign State. I hope that my deliberations will prove very enlightening to the reader as my sources are varied and numerous.

In the first chapter I have given the problem of the Ogaden Somalis its rightful historical context with a view to expressing its political implications for us today. I have examined the treaties concluded by the colonial powers with the chiefs of both Somaliland and Ethiopia. I hope to show by this that these treaties, in the nature of all colonial treaties, were voidable and should have been contested before the end of the colonial era; they have no relevance to the independence situations. In the second chapter I will trace the history of the principle of self-determination through the French and American revolutions. to the present times. It is in this chapter that a wealth of knowledge will be derived because the reader will find that the argument as to whether or not the principle has achieved the status of legal principle will be considered in detail. Juristic opinions

and judicial decisions will all be considered. The United Nations practice will also find a voice with a view to establishing the effect of the General Assembly resolutions.

In the third chapter I shall concern myself with the issue of territorial integrity and sovereign independence of States, gauging these against the principle of self-determination I shall proceed to determine whether the latter principle is a principle of *jus cogens*. This chapter is important because if it is established that self-determination is *jus cogens* then it will overide all provisions to the contrary as any other peremptory norm of international law would. In the concluding chapter the question whether or not the Ogaden Somalis have made out a good case of self-determination capable of International Recognition will be considered. Throughout the work there will be an overtone, that cannot be ignored, to the effect that self-determination is a principle that jurists prefer to brush aside as merely a political principle which does not merit much consideration . This exposition is meant to challenge the International Community as to the effectiveness of their political organs in the settlement of internationall disputes.

CHAPTER ONE

ORIGIN OF BOUNDARY DISPUTES

There is virtually universal agreement that the principle of self-determination applies to dependent peoples and colonies. However the colonial powers have been at pains to show that the principle is also relevant to independent peoples who may have been deprived of a Government of their choice. Oftentimes this has been realised in coup d'etat which in recent times have been a distinctive feature in third world countries.[1]

The application of the principle of self-determination to peoples in independent States raises more controversial and difficult problems. Difference in race, language or religion may be used in support of the claim to self-determination as is the case with the Somali people.[2] Understandably States are sensitive to suggestions that their peoples are entitled to self-determination, as they fear this would result in disintegration. The exercise of this right need not necessarily result into a coup d'etat or secession, it may also be expressed through association, merger or local autonomy, as long as the choice reflects the wishes of the people.

It is a common feature of criticisms about the practicability of the right of the peoples to self-determination to stress the lack of a competent organ in the international community to determine which peoples are entitled to such a right. Sir Nor W. Fennings put this criticisms:

> "Nearly fourty years ago a professor of Political Science who was also President of United States, President Wilson, enunciated a doctrine which was ridiculous but which was widely accepted as a sensible proposition, the doctrine of self-determination. On the surface it seemed reasonable : Let the people decide. It was in fact ridiculous because the people cannot decide until somebody decides who the people are".3

At the time, President Wilson had the league of Nations in mind as is envisaged in Article 22 of the Covenant on mandates. In Article III of the First Draft by Wilson read as follows:

> "The contracting powers unite in guaranteeing to each other political independence and territorial integrity, but it is understood between them that such territorial re-adjustments, if any, as may in the future become necessary by reason of changes in present social conditions and aspiration or present social and political relationships pursuant to the principle of self-determination, and also such territorial re-adjustments as may in the judgement of three-fourths of the Delegates be demanded by the welfare and manifest interest of the peoples concerned, may be effected, if agreeable to those peoples,and that territorial changes may in equity involve material compensation. The contracting powers accept without reservation the principle that the peace of the World is superior in importance to every direction of political jurisdiction or boundary".4

The League of Nations did not live up to the ideas expressed by Wilson. The United Nations has likewise been unable to effectively carry out its functions and resolutions of the General Assembly and the security councils find expression only in the books and have had no binding effect on the states engaging in armed-conflict of the expression of the principle of self-determination.

It is intended in this first chapter to examine the question of the Somalis in the Horn of Africa with a view to establishing the legal basis of their claims. To do this I have found it inevitable to consider the historical background of the Somali/Ethiopia dispute and to examine the attempts that have been made to resolve this dispute. I will also gloss on the Northern Frontier District problem between the said Somalis and the Kenya Government. The foregoing is intended to determine whether the Ogaden Somalis have a right to self-determination; whether they are capable of conclusive choice of option and whether infact they have a right meriting international recognition.[5]

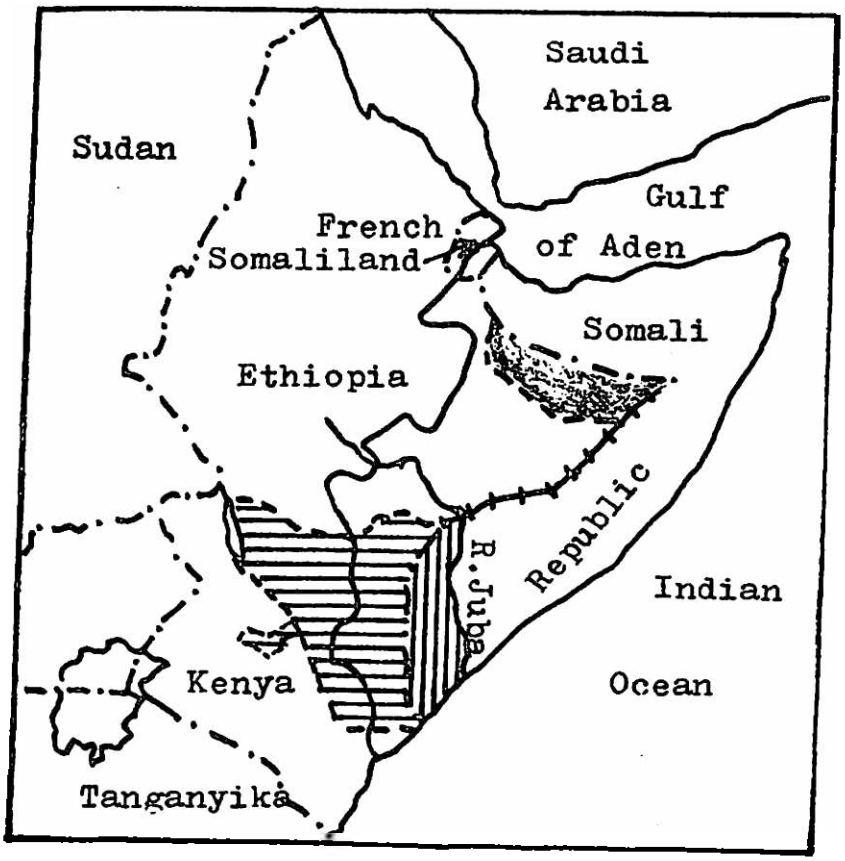
THE ETHIOPIA-SOMALILAND FRONTIER DISPUTE

The case of the Somali people is similar to that of many other peoples in Africa split up between several different states by the arbitrary drawing of boundaries by the Colonial powers. Many African States fear that if the claims of such peoples were to be satisfied the disintegration of existing political entities and the formation of new ones would ensue. Aware of this threatening possibility the existing African States have realised they need to protect their vested interests in existing borders crystallised in the O.A.U. resolution adopted in 1964 at the Cairo Summit by which the member States pledged: "To respect the borders existing on their achievement of national independence."[6] There was quite a change in policy from the previous line adopted in 1958 by the All Africa Peoples Conference in Accra denouncing the "artificial Frontie drawn by imperialist powers to divide the peoples of Africa,

particularly those which are across ethnic groups and divide people of the same stock". It seems as if there are two opposing resolutions in existence and from the outset the questions the new leaders of independent states had to grapple with were not easy. It is understandably undesirable to have fixed boundaries dividing a people who share same culture, religion and language. In 1964 this resolution of the O.A.U heads of States was defeated by the negative vote of Somalia Republic.

The Republic of Somalia has contended that the policy of easing boundaries is one contrary to the principle of the self-determination of the peoples. Somalia, claims the ramification of the Somalis as they are homogenious people and contrary to most other African States, it has no fear that other internal groups would resort to similar claims, and dismember the Somali republic as it stands today.[7] To champion these claim therefore Somalia has resorted to arms in order to obtain the revision of borders.

Presently the Somali people are divided between the Somali Republic, Kenya N.F.D., Ethiopia-Ogaden and Dgibouti. The Somali Republic itself is a compound of former British Somaliland and the Trust territory of Somali administered by Italy. Shortly after the independence of the two territories in 1960, they joined to form the Republic of Somalia. This was clearly a step towards the hoped for Somali integretation into a single political unit.



The Horn of Africa

International boundaries

Provisional administrative line established by British Military Administration, 1950.

Approximate limit of territory inhabited by Somalis.

Haud and Reserved Area, returned to Ethiopia, 1955.

Former Northern Frontier District seeking secession from Kenya.

Part of Jubaland ceded by Britain to Italy, 1925.

From J. Drysdale, The Somali Dispute (1964)

The above map illustrates the frontiers of Somaliland adequately for the reader.[8]

SOMALI NATIONALISM

The Somali nation, though having a common culture, language and religion, has never come under a central authority. Before the colonial partition, the important unit was the clan and the clan segment in which all males played a prominent role. They exhibited a fierce individualism that laid them open to partitioning by the colonial powers.

In 1884 - 1886 they entered into treaties to alienate Somaliland to non other than the British Government. These agreements of protection gave the British access to the regions occupied by the Somali people. These agreements further provided for the freedom of shipping for the British. The agreements were in standard form and it would be interesting to examine them for their legal content..

> Article 1: "The Hbr Gerhajis do hereby declare that they are pledged and bound never to cede, sell, mortgage or otherwise give for occupation the territory presently inhabited by them or being under their control"."9

In further agreements signed in 1866 the tribes were brought under the British rule and to be in the agracious favour and protection of the British. Clearly the tribes consented to limitations upon their independence but they did not surrender it altogether. It was not clear what the practical scope of these agreements entailed as the tribes had no boundaries to determine content. It can however be glimpsed from the seasonal migrations of these nomadic people who spread out as the need arose.

Ethiopia taking advantage of the unrest caused by the Anglo-Egyptian confrontation in Sudan made accelerated claims to what was the British Somaliland. The Anglo-Ethiopian treaty which was concluded during these unsettled times demarcated the boundary between Ethiopia and British Somaliland, and was unnaturally favourable to Ethiopia, as it conceded to it grazing lands frequented by Somali nomads. The treaty however secured for the Somalis the right to graze and use the wells. It also provided that the Somalis in Ethiopia should be well treated.[10]

This agreement turned out to be rather unfortunate in the way that the Somalis were never consulted and neither were they represented. Only an exchange of notes annexed to the 1897 Treaty purported to transfer the territories, even so, the British were obliged to negotiate with Ethiopia from a military disadvantage. In accordance with Article 2 of the 1897 Treaty.

> "The Frontiers of the British protectorate on the Somali coast recognised by Emperor Menelik shall be determined subsequently by an exchange of notes ... These notes shall be annexed to the present Treaty of which they will form an integral part, so soon as they have received the approval of the High contracting parties...."[11]

The frontiers were to remain intact.. In 1954 the British minister for colonial affairs commented:

> "It was recognised that this line had the unsatisfactory effect of cutting across the traditional grazing areas of the Somali tribes and the letters were accordingly annexed to the Treaty providing that the tribes on either sides of the frontier were free to cross that frontier for the purpose of grazing."

It was however clear that the tribes so grazing would not be subject to that jurisdiction. This kind of reasoning was unforgivable because every sovereign has a right to subject an enemy to the municipal jurisdiction in the event of trespass. The Treaty of 1897 speaks of haste and inadequate consideration because it does seem as though the nomadic movement of the people was to be abnormally restricted.

The Haud region and the reserved areas were given to Ethiopia together with the Ogaden region (see map illustration).

Between 1897 and 1935, following the Italian invasion of Abyssinia, Somali tribes i migrating into Ethiopia were effectively protected by the presence of the British representatives. It is not clear whether this meant the Somalis would only be protected as long as the British remained, or whether the Ethiopian Administration was under a duty to protect them. If the Ethiopians violated the rights would not the British denounce the Treaty and assert control in the Haud, Ogaden and reserved areas?[13] In 1954 after the world war two the Ethiopians laid claim to these same areas which the British had temporarily taken over during the war and they were given. This in essence should have settled the Somali claim, yet this in effect is the starting point of effective protest by the Somalis, against foreign domination and their assertion to the right to self-determination. By the November 1954 agreement, the British returned the lands to the Ethiopians thereby admitting that these lands belonged to Ethiopia, recalling the Anglo-Ethiopian Treaty 1897. The 1954 agreement reinstated that the 1942-1944 agreements, under which Ethiopia placed

the Haud and reserved areas under the British protection, did not remove the said lands from the Ethiopian territory. In 1935 following the implementation of the 1934 agreement, there was alot of friction between the new Ethiopian officials and the Somali tribes whose grazing grounds lay within these lands.

The legal status of the 1897 Treaty was debated in the British parliament in February 1955.[14] The questions debated centred upon whether the provisions of the 1897 Treaty were consistent with previous agreements with Somalia to protect them and their territories "under their authority and jurisdiction". If they were not consistent were they legally binding? It is important to note that unless the 1897 Treaty provisions were found to be inconsistent with the earlier agreements, the question of legally does not arise; but if for some peculiar reason they are found to be binding irrespective of earlier agreements then the question of inconsistency will be irrelevant. Although the Colonial secretary agrees that the 1897 Treaty was inconsistent its legal effects must remain:

> "I have also been asked whether there was not a case for a reference to the international court, because of the alleged conflict, between the Treaty 1897 and the agreement previously signed with Somali leaders .... In a matter of this sort the court would be bound to base its decision on the Treaty of 1897 which, as an international instrument leaves no doubt as to where sovereignty lies"...

In the same debate in the House of Commons the minister stated that the 1897 Treaty was legally binding as an international instrument[15] whereas the earlier agreements with the Chiefs of the

Somalis were not. The question therefore of inconsistency does not arise, as in the subsequent treaties the British had acquiesced and had never mentioned their earlier agreements. It would seem as though these standard form agreements with the Somalis were held impotent with effect from 1897. Whereas the 1897 treaty was implicit and its effect was to delimit and define boundaries, the agreements were vague, and imprecise. This calls for an examination of the 1884 - 1886 agreements by which:

> "The tribal elders voluntarily placed themselves under the British protection ... They sought it then for the maintenance of their independence, the presentation of order and other good and sufficient reasons".

There seems to have been no transfer of territory from the Somalis to the British and therefore the British had no right to transfer by treaty that which did not belong to them. The tribes had purported to alienate their land to non other but the British and any purported transfer was invalid and illegal. It would seem ideal to argue that these lands protected were transferable.

The 1942 and 1944 agreements did not in effect remove these lands from the Ethiopian territory. It was a temporary agreement concluded for the regulation of their mutual relations. Article 7 of the 1944 agreement provides:

"In order as an ally to contribute to the effective protection of the war, and without prejudice to their underlying sovereignty, the Imperial Ethiopian Government hereby agree that for the duration of this Agreement, the territories designated as the Reserved Area and the Ogaden, as set forth in the attached Schedule shall be under British Military Administration".

Since 1944 the British Government tried to negotiate the return of Somali territory to their jurisdiction, but Ethiopia was rigid. So the 1954 Agreement effectively returned the lands to Ethiopia. They however tried to secure rights for the tribes of Somali to graze and water their animals. This was a gross failure on the part of the British, who had already lost effective bargaining ground and were sending an apology to the Somalis. It is interesting to note Article 2 and 5 of the 1954 Agreement to the effect that the grazing rights of the Somalis had been secured in perpetuity.[19] The British Government stated that no British territory was being transferred to Ethiopia in the 1954 Agreement, the 1944 Agreement had been made without prejudice to the Ethiopian Sovereignty and could be terminated on three months notice by either side. The Ethiopian Government agreed to allow the Somalis their grazing rights "as far as practicable". The British Government in 1954 reaffirmed the 1897 Agreement as a binding one and her majesty does not repudiate international agreements. The questions as to why the Somali were not consulted remained unanswered. Article 1(2) of the U.N. Charter states the purpose of the U.N. as:

> "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of the peoples".

This is also the subject of Article 55 of the U.N. Charter. This Somali/Ethiopia disputes is a question of international recognition whose history is characterised by unfairness and colonial irresponsibility. The questions reviewed before the court[17] were whether the Somali tribes being themselves "primitive" and "nomadic" had capacity in International Law to be considered legal persons. If before 1886 they possessed this capacity, did they lose it by virtue of the agreements of 1884-1886? These questions need not arise if regard is to be had to the spirit of the 1886 Agreement by which the Somalis in no uncertain terms declared that they had not surrendered their sovereignty to the British. By placing themselves under British protection did the Somalis lose their will, to the British who were free to convert the protectorate status to the territory? Were the Somalis legal persons in International Law? If not, then how could they enter a binding treaty with a sovereign power being themselves without sovereignty.[18] This seems to have been a matter of legalistic and political convenience because the British colonial rule was characterised by such covering patchwork which did not have any binding effect save that bestowed upon it by the British Colonists.

Since 1955 there has been alot of controversy as to the legal status of the Ethiopians who are in occupation of Somali territory. At independence in 1960, Somalia declared in its

constitution that it would strive to retrive the lost lands from its neighbours. In 1960 June questions on the agreements arose again after the unsatisfactory way in which the U.N. handled the matter. Ethiopia declared it would be ready to recognise the grazing rights of the Somali if Somalia respected the 1897 frontier confirmed in 1954. In the times, it was reported that the Ethiopian Emperor considered the rights to have been conditional upon Somalia's agreement to enter new transactions concerning the same. It was further stated that in his opinion the grazing rights do not "ipso facto" survive the emergence of an independent Somalia. Somalia has b vehemently denied the validity of the 1897 treaty and has vowed to expand and create a greater Somalia. The question still remains - to what extent are the Somalis and Ethiopians bound vis a vis one another by the terms of the 1897 and 1954 treaties? Neither party agrees that the treaties impose obligations for the benefit of each other. If the terms of the 1897 treaty have to continue it should be under a fresh agreement express or implied between the two parties and not because Ethiopia as successor to Somaliland is deemed to be the successor to Britain with regard to the rights and obligations which Britain had assumed under these treaties. The rules of state succession would hardly apply where either of the parties denies the continuance of any of these rights inforce. The legal position of the two states depends on the nature of the rights and duties they take on by virtue of the treaties. A rule of International Law states that no party stranger to the treaty can derive rights and obligations to it, unless by a fresh agreement

the two parties ratify the treaty vis a vis each other.[20]

In the event of Succession it is not true that the new sovereign takes over all the rights of the former, most of these rights do not pass.[21] Rights and duties deriving from treaties between predecessor and third state do not as a rule survive the successor, unless they possess "a real nature or quality"title,poor use of territory, delimitation of frontiers, rights of transit, these have a local or territorial quality and they endow them with a degree of permanence; these unlike rights in personam. Rights in rem in respect of that territory attach to that territory.

The Somalis and Ethiopians can repudiate their agreement of 1897 only by agreement; unless:

(i) the provisions of the grazing rights and frontier demarcation established real rights attached to the territory and will remain binding despite the change in the sovereign;

(ii) Rights are binding on the contracting parties if they are in personam - so neither s Somalia nor Ethiopia are bound by the frontier or grazing rights;

(iii) The provisions of border demarcation and those of grazing rights differ, the former being in rem and the latter in personam.[22]

The question to be considered here is what is the nature of the agreements entered into in 1897 and 1954. If the agreements gave rights to the Somali nomads to graze and water their animals, this depended on the boundary delimitation. Conversely the boundary delimitation depended on the rights of the Somali herdsmen to graze. If these twofold agreement is to stand, then it envisaged both rights and obligations which are a corellary and a complement of the boundary settlement. All are therefore rights in rem as they "touch and concern" the land, the use and the title thereof. It is clear that in 1954 when Britain was negotiating for the rights of the Somalis it had a view to permanence though this is of course a very shallow view. The boundary was to be binding in perpetuity. Article 2 of the 1954 Treaty stipulates:

> "The rights of the tribes coming respectively for Ethiopia and the Somaliland Protectorate to cross the frontier for the purpose of grazing, as originally set out in the Anglo-Ethiopian Treaty 1897 and the letters annexed thereto, is reaffirmed by the two contracting parties who shall take steps to ensure that as far as possible tribal grazing rights in the area shall be protected."22

There does not seem to be any intention whatsoever to turn the grazing rights into rights in rem. How can Article 5 be so reconciled with Article 2? It provided that the grazing rights shall not be terminated before 15 years and then with six months notice by either party at the same time.

"The termination of this agreement shall not affect the grazing rights referred to in Article 2".

This sounds ambiguous and it tells of the lack of consideration in matters so delicate as these. If the British intended that after 15 years the Boundary agreement would be null and void what effect would that have on Ethiopia? It can be hardly forgivable that the British did imagine that the Boundary curved out would remain undisturbed and that nomadic existence would still continue. What if there is mineral discovery or an establishment of a town thereby calling for permanent settlement? It is not enough that Britain handed over the territories to Ethiopia knowing them to belong to Somalis, as an influential member of the U.N. Britain is under a legal duty, by virtue of the earlier agreements with the Somalis, to return the territory to the Somalis.

Recent history shows that the Somalis in the Ogaden region are unsettled. They are unruly and do not succumb to the Ethiopian rule. The increased population of the Somalis during the grazing months has complicated matters and it has been difficult to tell which Somali is Ethiopian and armed combat has been the result, with the Somali herdsmen receiving heavy losses.[24]

On the Kenyan frontier the shifta movement has been the result of the dissatisfaction among the N.F.D. Somalis whose one passion is to be united with their brothers in the Somalia Republic. The desire to secede from Kenya and from Somalia was expressed during the constitutional talks for Kenya's independence.

In 1964 the O.A.U. Summit accepted existing boundaries as a basis for African Unity. The resolution:

(1) Solemnly reaffirms strict respect by all Member States of the organization for the principles laid down in Para.3 of Art. 111 of the Charter of the O.A.U. (respect for the territorial integrity and the independent existence of States)

(2) Solemnly declares that all Member States pledge themselves to respect the borders existing on their achievement of national independence.26

African States have developed a sensitivity to threats affecting their territorial integrity even though the boundaries have been colonially defined and have little regard to ethnic affiliations. Inviolability of boundaries however defective, has become an important principle of inter-African relations in spite of earlier hopes that there would be adjustments after independence. The declaration of the Senegalese foreign minister speaks the minds of many African States:

(1) No consideration of a historic, geographic or ethnic order can permit an African State to claim sovereignty over another African State or territory;

(2) The frontiers established between the different African territories at the time of colonization are recognized as valid and have been consolidated. When an African territory accedes to independence, its new sovereignty extends to the totality of the territory which had been delimited as such by the colonial power.

(3) The only principle which can decide the destiny of a people is that of self-determination. A territory can merge with another, or federate itself with with it if the majority of its

> population so decides, following the rules and the procedures which it has fixed for itself.27

The foregoing gives no indication of the right to self-determination implying armed struggle or aggression. Boundaries are to be accepted as they stand and if every disatisfied people are allowed to seceede then the whole of the African continent would see a reformation. As it is, this is not possible. The right to self-determination should be measured upon the territorial integrity of States.

Somali Nationalism is clearly pitched against territorial integrity of the other States i.e. Kenya and Ethiopia. Kenya argues that the principle of self-determination is not applicable to independent peoples. This view is of course erroneous as the claims arising today are largely from independent peoples a section of which are disatisfied. Many times the exercise of the right to self-determination results in independence but it may also take the form of association, merger, or social autonomy which accords with the wishes of the people. If the preponderande of opinion in the N.F.D. and the Ogaden seeks union with the Somali Republic there is no legal weapon for the attainment of that right however politically desirable it may be for a greater Somalia. The U.N. Charter Article 2(3) requires that disputes must be settled by peaceful means. Sometimes it seems as though the Somalia Republic causes these interuptions in the peaceful administration of these parts for its greater ambition for a greater Somalia.

People in NFD don't have the rights. Ass to note

The right to self-determination is accorded to a people only if they are deprived of fundamental rights and freedoms to the extent that life in the territory of which they are a part becomes intolerable. The Somalis have not made out their case in this respect. They are a people distinct from the rest of Kenya and Ethiopia, they have religions, cultural and language, affirmity to the Somali in Somalia Republic. Does this therefore entitle them to a revision of the boundary and the right to secession? — yes

The war[28] in the Horn of Africa in 1977-1978 was very revealing as to the true intentions of the Somalis. It was a war of "aggression" which Somali waged against Ethiopia to try and retrive the Ogaden region. Barre's efforts to create a Greater Somalia failed drastically when the Western powers threatened to withdraw their economic aid. Somalia is infested with drought for three quarters of the year and it depends largely on economic aid. As a precondition for the continuance of the aid Barre was forced to renounce claims in the Ogaden and the N.F.D. of Kenya. These areas are volcanic and the 1977-1978 confrontation was by far the most devastating. Yet Somalia will not give up. During the O.A.U. talks in 1981, Barre signed a communique declaring that he would not wage war against his neighbours and that he would agree to a peaceful settlement. To date nothing has been done, and as the State of uncertainty continues war in the N.F.D. and the Ogaden can break out any time. In this chapter I have tried to discuss the historical background to the Somalia dispute, highlighting the British participation in the early stages of the dispute to date.

Geographically or politically? Be precise, man!

The question that remains unanswered is are the Somalis entitled to self-determination and what form should this take? It would be fatal to consider the question settled as per the 1897 and 1954 treaties, as they were concluded by an incompetent authority who did not have the interests of the colonised people at heart. The situation as it stands does not call for the revision of the treaties as such, it goes beyond this. It is true that the N.F.D. belongs rightly to Kenya and the Ogaden belongs without question to Ethiopia, but the people in these regions are disatisfied with the municipal authorities they live under. Should their claims be overuled and disregarded or should something be done about it? Why has the U.N. been ineffective in the solution of this problem. How about the O.A.U?

In the next chapter I intend to delimit the frontiers of self-determination keeping in mind the Somali peoples.

CHAPTER TWO

The principle of self-determination has been for a long time in the domain of controversy. It deals with the complex questions of sovereignty of States and peoples. It is my intention in this Chapter to examine the legal content of the principle with a view to establishing its place in International Law. For a proper appreciation of the dispute in the Ogaden region of Ethiopia, I have found it necessary to place the principle within history in order to give it backbone; then I shall delve deeper into the juristic opinions and how they have gradually changed to accommodate the principle as a right in International Law. It shall also suffice to show the principle as a fundamental human right. At the close of the chapter judicial decisions will be considered

I SELF-DETERMINATION IN HISTORICAL PERSPECTIVE[1]

The history of self-determination is bound up with the doctrine of popular sovereignty proclaimed by the French revolution: Government should be based on the will of the people, not on the will of the monarch and dissatisfied people ought to organise themselves under a Government of their choice. This meant that the territorial element in a political unit lost its feudal character in favour of the personal element : people would not any more be appurtenance of the land.

In the context of the French revolution, self-determination becomes a democratic ideal valid for all peoples. From the very beginning the principle of self-determination took on the character of a threat to the beginning of established order trying to substitute it for one with more equality. Conversely self-determination also entailed the principle of peaceful change, that territorial transfers between sovereigns should not be carried out without the consent of the people affected. The idea of plebiscite grew to even disproportionately including annexation of foreign territory.

The French[2] philosophers had a hand in influencing the Commoners to rise up against the monarchy. Notably Montesquieu who, inspired by Locke's hatred of arbitrary rule, wrote "The spirit of the Laws" in which he advocated for the desirability of separation of powers of Government in order to prevent dictatorship. Rousseau, also influenced by Locke denounced inequalities in society a proposed theory of social contract ; since no man has natural authority over other men and since might never makes rights it follows that agreements are the basis of all legitimate authority among men".

After the Napoleonic wars, the Congress of Vienna refused to reshape the map of Europe as proposed by the representative people and it was not until 1848 that the next historical evolution of the principle of self-determination occured. The principle as a correllary to democrasy implied that the people had a right to choose and this not only applied to them French, but to all nations. Germany and Italy emerged as a result of plebiscite and S. Wambaugh describes the sitiation as follows:

> "The method of popular consultations adopted as their own by Prussia and the Germanic confederation as the solution to the Schleswig question; adopted by the congress of Paris in 1856, it grew rapidly in prestige and by 1959 had enlisted the almost undeviating adherence of three of the four leading statesmen of the time - Cavour, Russell, and Napoleon - and the etemporary support of Bismark ....., endorsed, though unsuccessfully, by the Chief powers at the conference of London as the only solution to the Schleswig question; followed by Britain in her recession of the Ionian Islands to Greece, inserted in the treaty of Prague between Austria and Prussia by 1886 the method of appeal to a vote of the inhabitants, either by plebiscite or by representative assemblies especially elected, bode fair to establish itself as acystem amounting to law".[3]

The use of plebiscite to resolve territorial disputes was gaining in support. This process was effectively stopped by Prussian annexations and it was not until the world war I, that self-determination showed its head again. This war fought between empires used self-determination as its strategy.[4] The British empire more heterogeneous was first threatened by these claims and Germany used this to advantage.

The Russian revolution affirmed the principle of self-determination, as the right of the people to choose a government of their choice.[5] In further consideration the American revolution as an outstanding example of self-determination, it is important to focus attention on Jeffersonianism to resolve certain conflicting tendencies. That it was not enough to give voice to the will of the majority, the wishes of a given minority must not be ignored. Though the will of the majority is in all cases to prevail, that will to be right must be reasonable, that the minority possesses their equal rights, which equal law must protect...."[6]

When the U.S.A. entered the war in 197, President Wilson had made his stand clear on the issue of self-determination. "We believe these fundamental things. First that every people has a right to choose the sovereignty under which they shall live". He also declared before the Senate in 1919:

> "If the desire for self-determination of any people in the world is likely to affect the peace of the world or the good understanding between nations, it becomes the business of the League, it becomes the right of any member of the League to call attention to it, it becomes the function of the League to bring the whole process of the opinion of the world to bear upon that very matter."9

In his 14 point programme to a joint sitting of congress Wilson had enunciated in seven of them the issue of self-determination. It existed a right of all people to exist under conditions of Governments of their own choice.

Even Russia during the war period had solemnly declared for the minorities:

(1) The equality and sovereignty of Russia's nationalities;

(2) The right of Russia's nationalities to free self-determination up to receding and the organisation of an independent State.

The peace conference of 1919 paid greater respect to the principle of self-determination than had any other conference to end a war. It gave the territories that had been dominated by their stronger neighbours the fullest opportunity to determining their political future. Independence was unduly emphasised.

According to Cobban[9] what the conference achieved was national-determination rather than self-determination. States at the brink of freedom started regretfully oppressing other races therein but their own. It is seen not as a legal right, but a political principle adopted to appease the Allies and the associated powers. Austria expressed a wish to Join Germany and was denied, later Hilter took upon himself the task of uniting the Germans in the second world war. Three million Germans were made citizens of Czechoslavakia despite their wish to remain Germans. Japan was left in occupation of Korea despite the express wish of the Koreans. Hungary was dismembered despite the express wish of the people. As Brown, L.J. put it:

> "The peace conference failed to define the right of self-determination, or to provide rules for its practical application ... The dominant motives of the peace conference would seem to have been : First, to gratify faithful allies; Secondly to show severity to the conquered foe, and thirdly to establish a new balance of power".10

In fact part of the grievances that led to the second world war, without in any way justifying aggression, could be traced to the discontents of German minorities in other States. In so far as the treaties sought to protect the political, cultural a religious and economic developments of specific groups, they promoted their right to self-determination within the States of which they formed an integral part. The mandate system was an acknowledgement of the colonised peoples right to self-determination which they were unable to exercise as they were considered m immature.

Surprisingly, the principle failed to gain expression in the League Covengnt. Article 3 of the Wilson's Draft to the Covenant reads

"The contracting parties unite in guaranteeing to each other political independence and territorial integrity, but it is understood between them that such territorial adjustments, if any, as may in future become necessary by reason of changes in present racial and political relationships pursuant to the principle of self-determination, and also such territorial adjustments as may in the judgment of three fourths of the Delegate be demanded by the welfare and manifest interest of the people concerned, may be effected if agreable to those peoples, and that territorial changes may in equity involve material compensation. The contracting powers accept without reservation the principle that the peace of the world is superior in importance to every question of political jurisdiction or boundary". [111]

The President Wilson's draft contained the principle but the final draft did not. The U.S.A. failed to ratify the covenant making the promulgation of the principle weaker. The chance to clear some of the doubts concerning its nature and legal content was thereby lost. The position after the peace conference was curiously paradoxical. It was in the cases where full recognition of self-determination was denied that a partial recognition of the principle was developed. This involved the use of techniques like plebiscites, minority regimes and mandates which served to defined the the principle in clear terms than before. One begins to see the emergence of positive duties correlative to a true right of self-determination.

Between 1920 - 1945 there is no evidence that self-determination has gained as a legal right. States took this time to recover from the depression and then participated in another imperialist war.

We have seen how self-determination with its revolutionary character poses a threat to established order and, since it can be considered as a form of self-assertion against any kind of domination, its content is as varied as ways of domination are varied. Due to these circumstances, self-determination has been considered as a political rather than a legal concept. Anarchy has often resulted where the subjects of the right are hard to define[12] - "peoples" and "nations" are as vague and as wide as can be open to imagination.

However violence need not ensue if the states involved in the strife are prepared to recognise the principle. A claim to self-determination is an attempt at setting a dispute without arms.[13] Bowett argues that the case against the vagueness of the principle existed only before the establishment of the U.N. and as will be seen later in this chapter the U.N. has given the principle a definate and limited meaning.

It is true that self-determination had no legal standing until fairly recently. Up to the second world war the application of the principle lacked clarity and sufficient consistency. Today it would be difficult to deny the existence of the right to self-determination in the face of the U.N. practise. It is within the charter of the U.N. and its crystallisation as a right that I now proceed to consider.

II THE U.N. CHARTER AND SELF-DETERMINATION AS A FUNDAMENTAL HUMAN RIGHT

In this section we shall be concerned with establishing whether self-determination as a principle of International Law is a fundamental right or not. The former case of which will justify the multiplicity of claims in International relations.[14]

At SanFFanscisco, it was decided by the great powers to adopt the principle of self-determination of the people as a cardinal principle of the Charter. The Russian delegate who recommended the ammeadment emphasised that the principle was of utmost relevance to peoples in colonial territories and mandates. The official summary of the proceedings of the technical committee reveals the controversy engendered by the phrase from its insertion:

> "Concerning the principle of self-determination, itwwas strongly emphasised that this principle corresponded closely to the will and desires of peoples everywhere and should be clearly enunciated in the chapter; on the otherside, it was stated that the principle conformed to the purposes of the Chater only insofar as it implied the right of self-government of the peoples and not the right of secession".15

According to the above formulation it can be seen that the principle of equal rights and self-determination are component parts of the same norm. It is further deduced that the respect of this norm is the basis for the development of friendly relations among nations. It expressly stated that the right does not include the right to secession. This has caused lots of controversy among jurists because it suggests that the right

extends only to dependent peoples and not independent peoples dissatisfied with the government not of their choice. The problem encountered here is the ascertainment of whether at the ogtset of what was visiolised (visualized) was internal or external self-determination.[16] In the U.N. Charter, the principle of self-determination is contained in Article 1(2) and Article 55 respectively thus: Article 1(2):

> "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples and to take other appropriate measures to strengthen universal peace".

Article 55:

> "With a view to the creation of conditions of stability and well-being which are necessary to peaceful and friendly relations among nations based on the principle of equal rights and self-determination of peoples ..."[17]

The principle of equal rights and self-determination are mentioned in the same breath, almost as an afterthought. At the initiative of the Afro-Asia group of states the possibilities of ensuring the right of the people of self-determination were considered. The other countires feared to debate on this issue in the Charter saying that this would be left to the committee dealing with the covenants on Human rights and economic, social and cultural rights. Though a resolution to this effect was adopted, opposition to the inclusion of the right in the Charter persisted. It was even alleged that such inclusion sought to ammend and expand the scope of the Charter unnecessarily. They failed to define "peoples",

"nations" and "self-determination", all of which are complex as they infringe upon rights and duties of states. Untold fearswere expressed at the excesses of the exercise of this principle leading to anarchy and recession.

It was not until 1966 that the two covenants were approved by the assembly. Article 1 of both reads:

> #All peoples have the right of self-determination by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 1(3):

> The state parties to the covenant, including those having responsibility for the administration of non-self-governing territories, shall promote the realisation of the right to self-determination, and shall respect the right, in conformity with the provisions of the Charter of the United Nations.18

Self-determination has been severally discussed as an aspect of human rights by the General Assembly. In Soviet Union intervention in Hungary to support a communist regime against the popular vote the Assembly decided that the Soviet Union was violating the fundamental freedoms of the people.

In 1965 the Assembly further, in the Declaration on the Inadmissibility of Intervention in Domestic Affairs and Protection of their Independence and Sovereignty, affirmed:

> "All states shall respect the right of self-determination and independence of peoples and nations, to be freely exercised without any foreign pressure, and with absolute respect for human rights and fundamental freedoms. Consequently all states shall contribute to the complete elimination of racial discrimination and colonialism in all its forms and manifestations."19

There is no doubt at all that the principle of self-determination had by 1966 been crystallised into a legal right. The fact that in the above quotation the "right to self-determination and independence" exist side by side indicates that the General Assembly contemplated self-determination for peoples even within independent entities. As if to clear further doubt in Resolution 2106(XX) of 12th December 1965, the Assembly adopted the International Convention on the Elimination of All Forms of Racial Discrimination, and this provides:

> "State parties shall, when the circumstances so warrant, take in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms."

Although the principle of self-determination is not expressly mentioned here the above declarations indirectly emphasise the principle of self-determination in relation to human rights. The charter like the constitution of any country declares only in broad outline what the law is. It is left to the General Assembly as the legislater to give flesh to the skeleton of the Charter.

Clearly, the General Assembly reso,utions speak of the principle as a legal right giving rise to rights and obligations recognisable in International law. The question that poses considerable debate is whether infact the General Assembly has the right or the power to interprete the Charter. The Charter provides for the General Assembly powers to make recommendations according to Article 13. The General Assembly is an organ of the Charter and it derives its existence from the Charter, how can it interprete the provisions of the Charter?[20] A Belgian Amendment to confer on the General Assembly powers of interpretationwas defeated. If the General Assembly can make recommendations only, which are infact not binding does this advance the cause of self-determination any further than does the Charter? It seems as though to engage in such rhetoric is to confuse issues. The issue here is not whether the General Assembly can interprete the provisions of the Charter, but whether the General Assembly resolutions concerning the issue of the right to self-determination can have any binding effect. If the Charte did nto make provisions for its own interpretation international law would have a chance to develop.

Even as a constitution sets out in declaration its cardinal principles, it provides for an organ of its own interpretation. In the Kenyan constitution for example sec.3 of the constitution states that the constitution of Kenya is the Supreme law of the land and any other law is null and void to the extent of that inconsistency. In s.47 it provides for its own ammendment, whereas in s.60-68 it provides that the courts have the power of interpretation. In the same way the U.N. Charter can be interpreted by the General Assembly, S.C. and the I.C.J.

In general the U.N. has treated self-determination as an essential aspect of human rights which all states should observe in relation to both dependent and independent peoples. We have traced the close connection between self-determination and human rights in order to show that it is essentially a fundamental right sui generis. collective in character and belonging to the group rather than the individual. However there is a growing and inevitable recognition of the rights of individuals in international law. This has stood against the international law principle that States and not individuals are subjects of International law. The first article of the covenants states "All peoples ..." this gives weight to the fact that the principle is the basis of all human rights. Most governments have hesitated to ratify these covenants and have prepared to adopt them and incorporated them into their constitutions with so many exceptions as to render the rights non-existent.[21]

Lack of clarity over the issue of intepretation of Article 1(2) and Article 55 respectively has led to varied opinions concerning the principle of self-determination. It will be extremely unfortunate if we omitted a discussion of juristic opinions and why they differ. I shall close the chapter by a consideration of judicial decisions that have grappled with the issue of interpretation. Unless the chaff of uncertainty is cleared the question of interpretation will remain a mockery to the institutions of the United Nations and the political organs.

> "Although procedures for the realisation of the right came to be incorporated in international law though such institutions as the mandate, system, the right of self-determination is not itself a legal concept. It has not been developed as a general principle of international law with a defination describing the criteria and standards for its application."[25]

This kind of reasoning is repulsive because the Charter established the I.C.J. which organ was empowered to determine claims of self-determination. Also before the general assembly was laid a resolution to incorporate self-determination in the Charter and the 2 covenants on Civil and Political rights.

Rejecting the view that self-determination is a right in International law, Leo Gross says that there is nowhere in the Charter that the right of self-determination in the legal sense has been established:

> Subsequent practice as an element of intepprotation does not support the proposition that the principle of self-determination is to be interpreted as a right or that the human rights provisions have come to be interpreted as rights with corresponding obligations either generally or specifically with respect to the right to self-determination".26

He says that practice has been based on a sense of obligation! If as the charter stated equal rights and self-determination are parts of the same norm, then the argument of Gross cannot be tenable in the face of general practice. It is true that not every country has ratified the two covenants on fundamental rightes - unfortunate though this may seem - this does not divest the rights of their legal status in international law. Rights and duties are

the very concern of international law. If Lee Green argument is to be condoned than what we are saying in essense is that international law is dead - this serious allegation is open to debate which is not of our concern here.

A discussion on contrary views would be incomplete if the views of Emerson, a leading jurist are omitted. He considers that the question of self-determination hinges on content. He says the principle introduces potentially explosive postulate which are incompatible with the maintenance of stable and organised society. His earlier writings in 1960 and 1964 respectively deny the existence of such a right. Thus in 1960 he says:

> "The right of self-determination has yet found no stable place in the international legal structure nor has it been accepted by States as a policy to be applied consistently and across the boarder. Indeed I would suggest that it is essentially miscast in the role of a legal right which can be made as an operative part of either domestic or international system".

And in 1964 he stresses:

> "What emerges beyond dispute is that all people do not have the right to self-determination. They have never had it, and they will never have it. The changing content of natural law in the era of decolonisation has brought no change in the basic proposition".27

This is a very forciful arguement which warrants a lot of consideration. By suggesting that the principle has been miscast in the form of a rights and that the right has never existed even for colonial peoples. Emerson is treading on very delicate issues. It means, according to him that general assembly resolutions on

the questions before them are erroneous; that the South African Government is justified in being in occupation of Namibia despite the General Assembly resolutions to the contrary. It in fact means that colonialism is justifiable and that the cardinal provisions of the Charter to the contrary are a sham. His views can only be viewed as misguided because the war of self-determination in Africa has precipitated independence to nearly all African States. Does the lack of specificity make the principle any the less non-exist as a legal right? If a legal right is one which can be invokedd in international law, and reasonably obtain redress if the case is proved, does the fact that the standard of proof in most international disputes is extraordinarily high nevertheless divest a right of its effect. I cannot hesistate to denounce these views of Emerson as lacking in substance. When later in an article[28], he takes the problem from the point of view of actual content he says that the vexed question here is who the people are and how the right should be determined. He does not apologise for his earlier views though he clearly shows a progressive change in views. This will be better dealt with in the delimitation of the right.

On the other side, Roselyn Higgins[29], revieving the U.N. practice is more cautious. She points out that it is inescapable;

> "That self-determination has developed into an international legal right and is not an essentially domestic matter. The extent and scope of the right is still open to some debate".

This admission is echoed by Elihu Landterpalcht who maintans that international customary law acknowledges the principle of self-determination as:

> "The meeting point of customary law and democratic principle ... indeed, it is the area of self-determination that so far as the development of human rights in the international sphere, as governed by customary law has made its greatest progress".30

In his artiele Lanterpatcht promulgates the idea that self-determination is an aspect of human rights. He is the greatest proponement of the idea that self-determination as a human right is expressly provided for in the charter.

Even as early as 1930, P.M. Brown in an examination of central Europe admitted that the principle of self-ddetermination existed as a fundamental principle for the sake of international peace and order. Even though as yet the principle had not been favoured in any international instrument and had not received any concrete definition he recognised it as the basis upon which freedom, prosperity and happiness are founded. The theory of common consent rather than coercion had found favour during this time.[31] In 1950, Ross acknowledged the principle, although in his view it was impossible to define the group to which this right belonged. However Kolowica[32]:

> "Found little reason to doubt that the principle of self-determination is recognised by the Charter as a principle of international law, all the more since it is combined with equal rights of the people, and the principle of equal rights of states and nations certainly is a principle of international law affirmed as such in many multilateral treaties and the writings of publicists."

Levin wrote on the development of the Charter concept of this principle and maintained that the principle has gained so much throughout the ages that it is a cardinal right "The principle ... expressing the law conciousness of the masses, has became a primary international legal principle"[33] The socialist writers have proved more bound in pronouncing the principle as a right than have other Western writers. Opinions in the non-aligned states favour the principle as having legal content - thus Nawas[34] calls it one of the modern principles of international law. Of import is also the view of Starke that there is a general wider recognition of the principle of self-determination which should be given legal effect by the transfer of powers to the dependent territories.[35] To crown it all Ian Brownlie in his treatise states unequivocally that:the

> "The present position is that self-determination is a legal principle and the U.N. organs do not permit Art.2 para.7, to impede discussion and decision when the principle is in issue."[36]

He further says, as we have earlier seen, that since 1945 development in the U.N. and the influence of the Afro-Asian and communist opinion have changed the views of the Western jurists whose majority opinion was that the principle had no legal content as it is an ill-defined concept of policy and morality.

As seen in this section therefore the western jurists have been slow in acknowledging the principle as a right until recently when dominant international opinion acknowledged the right. A right remains so even if its precise content is undefined in a

primary document. The fact that the specific provisions of self-determination were not included in the Charter does not in any way impair its legal effect. It is the basis upon which friendly relations are to be based (Art.1(2) and Art.55 of U.N. Charter) and it has found its place beside these other fundamental human rights. It was important to ascertain the juristic opinion concerning the right because it would otherwise be untenable discussing the various judicial decisions.

B - JUDICIAL DECISIONS

The questions the courts have had to resolve have been the interpretation of the Charter provisions and to expand on the scope of the right. To whom does this right apply and with what effects. Before delving into judicial decisions concerning the right, I find it useful to have in mind the effectiveness of resolutions of the international court of justice. They do not have a binding effect of the disputing parties, they are what they are - opinions. Roselyn Higgins in 1970 said:[37]

> "What is required is an examination of whether resolutions with similar content repeated through time, voted for by overwhelming majorities, giving rise to general "opinio juris" have created the norm in question".

THE AALAND ISLANDS CASE[38]

This was a dispute between Sweden and Finland as to whether the Aalanders who were under Finnish jurisdiction could opt to join Sweden in the exercise of the right to self-determination (Finland had obtained independence from Russia on the recognition of that right). Sweden demanded that the people should decide the

issue in a plebscite which Finland rejected as an interference in matter within its domestic jurisdiction. On motion by the United Kingdon the case came before the Council of the League under the terms of Article II of the covenant.[39] The Council of the League of Nations appointed a commission of jurists to report on this matter. They found:

> "The right of disposing of national territory is essentially an attribute of the sovereignty of every state .... a dispute between two states concerning such a question under normal conditions .... bears upon a question which international law leaves entirely to the domestic jurisdiction of one of the states concerned."[40]

The commission further found that where territorial soveregnty over a given area is uncertain, due to the fact that the state is undergoing transformation or dissolution, then the legal position will remain unclear until such development is complete. This poses difficulties because it would be difficult to ascertain which one state has prior claim over the disputed territory. A later commission affirmed the right of sovereignty of Finland over the Aaland Island - the right was incontestable:

> "To concede to minorities, either of language or religion, or to any fraction of a population the right of withdrawing from a community to which they belong because it is their wish or their good pleasure. Would be to destroy order and stability within states and to inaugurate anarchy in the international life, it would be to hold a theory incompatible with the idea of the state as a territorial and political unity."

The commision does not deny that self-determination could apply in the formation of a state as in the case of Finland's independnece from Rusia; what they deny is that this is the case in the Aalands.

The question here seems to be whether a manifest and continued abuse of sovereign power to the detriment of a section of the population of a state could give rise to an international dispute In such instances of course the international community should step in to stop these abuses. However Finland denied that the Aalanders had been oppressed under their rule neither could there be proof that they would be oppressed in the future. The commission found again that:

> "The separation of a minority from the state of which it forms a part and its incorporation in another state can only be considered as an altogether exceptional solution, a last resort when the state lacks either the will or the power to enact and apply just and effective guarantees."44

The committee further recommended certain guarantees that Finland had grant to the Aaland Islands. It was only after Finland failed to grant them that the other solution would be resorted to. The holding of a plebiscite and the consequent separation of Aalands from Finland would be upheld. Is this perhaps the solution for the Ogaden Somalis. This will be considered thoroughly in the next chapter. It is seen however that although as early as 1920, the principle of self-determination was recognised, it was applied as an exception and not the rule.

> "The recognition of the principle in a certain number of treaties cannot be considered as sufficient to put it upon the same footing as a positive rule of the law of nations ... Positive International Law does not recognise the right of national groups as a rule to separate themselves from the state which they form part by the simple expression of a wish, any more than it recognises the right of other states to claim such a separation".42

This would be an abuse against sovereignty and so the matter was left to the domestic jurisdiction of Finland. This also puts forth the question of supremacy between the Art.1(2) and 2(4) of the U.N. Charter, certain abuses of sovereign power directed against a minority should be laid open to international debate otherwise there would be no justification for recognising revolutions as a transition from "defacto" to dejure"[43], such matters cannot remain within the domestic jurisdiction of states.

Another landmark[44] decision worthy of consideration is in the case of South West Africa. The International Court of Justice at the Hague regarded the terms of Art.2 of the Mandate Agreement reviewed the previous decisions on Namibia and restated the International Law on Mandates. The Mandate Agreement disclosed a legal obligation inspite of the political nature of the duty to promote to the utmost the material and moral well-being and the social progress of the inhabitants of the territory. Judge Ammoun asserted in a separate opinion:

> "In law the legitimacy of the peoples' struggle cannot be in any doubt, for it follows from the right of self-determination inherent in human nature, as confirmed by Article 51 of the U.N. Charter ..... the struggle of the Namibia people thus takes its place within theframework of International Law, not least because the struggle of peoples has been one if not indeed the primary factor in the formation of the customary rule whereby the right of the peoples to self-determination is recognised."[45]

After dealing with the exigencies of the Namibia situation he later concluded that the right of self-determination is an inherent right and even before being written in the Charter it

had been won in a bitter struggle and written painfully with the blood of the peoples in the finally awarded conscience of humanity. Even the Pakistan representatives categorically stated that any derogation from the right should not be tolerated as it is a norm of the nature of jus cogens.

The question remains, if the right has been recognised in International decisions by the I.C.J. and expert opinion why does it not fetch the expected results. Like in the clear case of Namibia and South Africa? Does it make south Africa's occupation anymore legal if Namibia's war of self-determination is severally frustrated. It has been argued that the Court finds it difficult to implement the right to self-determination as it is imprecise. The principle is in fact no more vague than for instance that of domestic jurisdiction or sovereignty. If the courts role is to evolve a world community ruled by world law why should it shy away from considering disputes arising from the exercise or denial of self-determination? I find the opinion of Judge Ammoun quite irresistable when he says at p.63:

> "If this right is still not recognised as a judicial norm in the practice of a few states or the writings of certain even rarer theoreticians, the attitude of the former is explained by their concern for their traditional interests and that of the latter by a kind of extreme respect for certain long entrenched postulates of classical international law. Law is a living deed, not a brilliant honours list of past writers whose work of course compels respect, but who cannot, except for a few great minds, be thought to have had such a vision of the future that they could always see beyond their own times ..."[46]

I agree with this observation and hasten to add that it is not the fact that the principle has not achieved the status of jus cogens that is nagging, but the fact that the states, signatories to the U.N. Charter have in practise rendered the decisions of the I.C.J. impotent by contrary practice. It cannot be but otherwise concluded at the end of this chapter that according to the U.N. Charter Art.1(2) and 55 respectively; Juristic opinions and judicial decisions all agree in the final analysis that the right does exist.

In the following chapter an attempt is made to delimit the fronteirs of self-determination. In this chapter also will be considered the questions of the "peoples" and the "nations" entitled to claim the right thereto. In a separate section the practise of states will be appraised with a view to establishing whether there is any viable solution to the Ogaden dispute.

CHAPTER THREE

SELF-DETERMINATION IN RELATION TO OTHER CHARTER PRINCIPLES

It should come as no surprise to discover that in its general pronouncements the General Assembly has in no way given any real guidance for the reconciliation of conflicting principles. It has simply restated the problems while incidentally furnishing ammunition for states to continue the debate with regard to specific cases. In the Ogaden dispute, the problem has been the reconciliation of the Somali republic claims to the Ogaden area pitched against the territorial integrity of the Ethiopian republic. In their g quest for a greater Somalia, the Somalis have recklessly waged war against Ethiopia with the object of reclaiming the Ogaden region, which they consider to be part of the greater Somalia. This war spread throughout the Horn of Africa, disrupting the peace and stability of such other regions as the Northern Frontier District of Kenya. The Frontier of countries neighbouring Somalia are in a constant state of emergency in their preservation of their sovereignty. In the present chapter attention will be directed to the problem of the conflict inherent in a rigid recognition of the principle of self-determination. Of significance will be the question , whether, according to the United Nations practice certain Charter principles take precedence over the others considered equally important; and whether the multiplicity of General Assembly resolutions clarify the issues involved in the exercise of these rights.

It remains true today that Wilson's 14-point draft proposal, two edged in itself does not advance the quest for peace, through the international settlement of disputes, but points out the fact that the right of self-determination, carries with it the duty of States to refrain from interference in the internal matters of other States and the political independence of other states. The claim to self-determination or territorial integrity of a rival "self", cannot be ignored in theory even though States have conveniently gone round it in practise.

In Conflict with the principle of self-determination are other Charter principles equally sacred. These are the principles of sovereign equality in Article 2(1):

> "The organisation is based on the principle of the sovereign equality of all its members".

The principle of non-intervention in Article 2(7) in matters essentially within the domestic jurisdiction of any State; In Article 2(4) the territorial integrity of States is hailed against the use of force:

> "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations".

It would be interesting to note the manner in which these principles are reconciled in the General Assembly resolutions. The prescription of the use of force against the territorial integrity of States and the right to self-determination has in recent times become so troublesome and vexed an issue as to warrant a lengthy discussion.[1]

These are two contending claims in the Ogaden region. That the Somalis therein are entitled to their right to self-determination, by virtue of which right they should determine their political future; and the right of the Ethiopian Republic for self-preservation against all efforts to disrupt its political independence and territorial integrity. The questions to grapple with becomes the actual interpretation of the Articles of the Charter. What mischief was being allayed by such provisions which in themselves are stoic but produce such violent reaction on the international scene?

Beginning with the famous Declaration on Colonialism Resolution (1514)[2], countless resolutions have restated the "territorial integrity" versus "self-determination" problem. This resolution provides the basis for all arguments designed to set above the claim to self-determination, the rival claim to territorial integrity. Para.6 states:

> "Any attempt arrived at the partial or total disruption of the national unity and the territorial integrity of a country is incompartiable with the purposes and principles of the Charter of the United Nations."

and in Para.7 of the same resolution:

> "All States shall observe faithfully and strictly the provisions of the Charter of United Nations, the Universal Declaration on Human Rights and the Present Declaration on the basis of equality, non-inteference in the internal affairs of all States and the respect for the sovereign rights of all peoples and their territorial integrity".

The reference in paragraph 6 to "attempts" at the disruption of the territorial integrity and the fact that paragraph 7 speaks of the territorial integrity of "peoples" and cited in the promulgation of the view that the future attempts and not past claims would be protected. It is not of course clear whose sovereignty was being protected. If past territorial claims were being quashed, did this then mean that former injustices should be carried on by newly independent and emergent States even where it is obvious that injustice is being done ? If claims to territory illegally obtained by the colonial powers cannot be intertained merely because of the fear of the work involved in the redrawing of the world map are left non-protected by this resolution then it becomes difficult to visualise the situation contemplated. Nearly all territorial claims find their roots in the colonial situation and unless they are settled from history they remain a menace to the newly independent State.

Claims to the Ogaden region by Somalia is found in the treaties signed by the Somali people with the British colonial Government in the 1860s. In issue is the 1897 treaty which officially gave Ethiopia sovereignty over the Ogaden region, irregardless of the fact that these regions had been part of the then Somali-land. What would become of the controversial Western Sahara[3] case if only situations like these Katanga and Biafra were being contemplated? It is clear from the practice of States that Biafra and Katanga do not provide a threat to peace because these claims were curbed in time and were purely borne of the ambition of certain disgruntled elements in the sovereign States.[4] The actual questions arise from claims of historical origins to which no permanent solution has as yet been found. It does not therefore

seem justifiable from the paras.6 and 7 to conclude that a time limit on the territorial claims should be imposed.

Paras.6 and 7, conflict with the preceding paragraphs to the extent that they state a case for territorial integrity just after admitting in para.2 that the "peoples" had an inherent right to self-determination. It is not easy to find a sound Charter basis for the opening paragraphs of this resolution: that it was necessary to bring "to a speedy and unconditional end to colonialism in all its forms and manifestations", that "the subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations, and is an impediment to the promotion of world peace and co-operation" (para.1) and that:

> "All people have a right to self-determination, by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development". (para.2)

This paragraph has formed the corner-stone to the justification of claims to self-determination. Yet there is little else to recommend it as this resoltion is not soundly based on Charter principles.

In so far as para.1 is concerned there is no indication in the Charter that a speedy end to colonialism was envisaged.

In fact Articles 73 and 76 respectively, emphasis in respect to trust and non-self governing territories that there was to be a gradual and progressive development towards increased self-government taking into account the particular circumstances of each territory. Independence is deemed to be a desirable and not necessarily an ultimate objective of the colonial administration. There was no violation of the Charter nor of human rights by the continuations ofcolonial rule perse unless that rule was abused through exploitation and disruption of international peace and security.[5]

Further inadequacies in this resolution lie in the declaration that "all peoples" have the right to self-determination. The Charter does not mention anywhere any "right" of self-determination of "all peoples", and in any case, "all peoples" can never have the right especially if this is seen as synonymous to the right to independence.

The Declaratory language sounds mandatory and it seems to give the Assembly the power to ammend the Charter without going through the necessary procedure of ammendment contained in the Charter.[6] This was clearly the beginning of a revolutionary process within the United Nations and it is seen also as an attempt to revise the Charter in a binding manner!

Within a day of Resolution 1514 another resolution more solidly grounded on the Charter principles was adopted in mid-December 1960. Resolution 1541 (XV) of 15th December 1960. This

dwelt heavily on Article 73(e) of the United Nations Charter, and represented the beginning of an evolutionary process within the United Nations designed to spell out the factors which should guide the United Nations and member states in determining whether a State had reached a stage for self-government. This could be reached by emergence as a sovereign independent State, free association with an independent State or integration with an independent State.

Whereas independence was easier to deal with the free association and integration options were harder to deal with. According to principle VII, free association

> "should be the result of a free and voluntary choice by the peoples of the territory concerned expressed through informed and democratic processes".

The individuality and the cultural characteristics of the territory and its people should be respected.[7] Also the people should have the freedom to modify their status by democratic and constitutional means - therefore rendering the decision for free association temporary and reversible. The decision to integrate is not subject to revisions and should only come when the people are mature politically and should be based on:

> "The freely expressed wishes of the territory's people acting with full knowledge of the change in their status, their wishes having been expressed through informed and democratic processes, impartially conducted and based on universal adult suffrage". (Principle VIII).

This resolution will be dealt with more extensively in the concluding chapter as it entails the solutions open to the Ogaden

Somalis in a quest for a viable solution to their problem. From a legal standing however, it can be seen clearly that Resolution 1541 (XV) is more solidly founded than Resolution 1514(XV). The latter is essentially propagandist and has been criticised as being essentially volatile and politically explosive.[8]

Since 1960 however nothing has been done to advance the course of self-determination as justifications for the preservation of territorial integrity have presented themselves. Even in the United Nations itself opinion differs on the actual postulations of this right to self-determination. The proponements of this view are largely countries of the third world backed by the Soviet Union and certain Eastern European Countries. Needless to say, the United States and Western European Countries hold the contrary view. The United States' Intervention in Vietman, Southern Korea and Guatemala are actions condemned by the Soviet Union, so is the latter's intervention in Hungary and Czechoslovakia justified on grounds of preservation of sovereignty and territorial integrity of the ailing State. There is a body of theory that insists that there is a new law of the United Nations on self-determination.[9] This law is said to consist of explicit and implicit assumptions regarding the status, scope and application of the "right" to self-determination and the competence of the U.N. General Assembly to implement such a right. Yet the specific identity of claimants whose territorial integrity is pitted against whose "right" to self-determination remains a critical problem.

However in the Declaration on Friendly Relations, resolution 2625 (XXV) of 24th October 1970, negated one type of territorial integrity claims, i.e. that which a state administering a "colony" might wish to press

might wish to present with respect to that dependency:

> "The territory of a colony or other non-self-governing territory has, under the Charter, a status separate and distinct from the territory of the State administering it, and such separate and distinct status under the Charter shall exist until the people of the colony or non-self-governing territory have exercised their right of self-determination in accordance with the Charter, and particularly its purposes and principles".

In the foregoing paragraph, independence is deemed to be an expression of the right of self-determination. This is not the issue here. The Ogaden Somalis live in a territory that is independent and the provision for non-colonial situations clearly states that a state has the right to the preservation of its territory, thus:

> "Nothing in the foregoing paragraph shall be construed as authorising or encouraging any action which would dismember or impair, totally or in part, the territorial integrity, or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour".

The above paragraphs reek of inconsistency. The underlined contains the age-old Wilsonian two-edged provisions and does nothing to alleviate our problem. In the Somalia situation, the people feel that they are discriminated against on grounds of culture and religion and would like to be allowed to join their

brothers in Somalia, they find that their interests are not represented; they feel that they are being denied their fundamental rights and freedoms and that they are entitled to self-determination. Yet Ethiopia's territorial sovereignty is being reinstated. Does this mean that secession is not recognised as an expression of the right to self-determination? It becomes therefore increasingly difficult to reconcile the principle of the sovereign equality of States, which implies the inviolability of territorial integrity and political independence of a State, with the principle on the other hand, of self-determination. So far the resolutions in the General Assembly do not give any guidelinees as to when the right to self determination justifies secession and when not. Except in cases of decolonising, rare as they may be, the principle of self-determination seems to have been quite overtaken by that of territorial integrity

In the same category of restating rather than resolving the disputes arising from contending claims to self-determination, falls also the consensus definition of Aggression (A general Assembly Resolution 3314 (XXXIX) of 14th December 1974).[11] In the preamble to this resolution of the General Assembly simply reaffirms "the duty of States not to use armed force to deprive peoples of their right to self-determination, freedom and independence or to disrupt territorial integrity". These assertions are highly ambigous - territorial integrity is an attribute of State sovereignty rather than of "peoples" struggling for self-determination which may in fact have no territorial foundation. In a Art.1 of this resolution, the General Assembly reaffirms State sovereignty.

> "Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State or in any other manner inconsistent with the Charter of the United Nations ..."

This resolution does not advance in any way a solution to the problem of self-determination versus territorial integrity. Whereas in the preamble of resolution 3314(XXIX) the duty of States to refrain from the use of armed force that deprives the people of their right to self-determination, the States are also, in the same breath under a duty to preserve the territorial integrity of other States. There is here no attempt at solving the age-old problem of who are the people entitled to the right to self-determination and who are entitled to territorial integrity. It is at least clear that only sovereign States are entitled to self-preservation and not a people who are in themselves indefinate. Coupled with the fact that paragraphs 6 and 7 of resolution 1514(XV) as already seen, envisage claims of post independent times, it seems very difficult to decide which people are thus entitled. The General Assembly shys away from the actual problem and congratulates itself on its restatements after long sessions of sitting.

Even the Assembly's resolution on the importance of universal realisation of the right of peoples to self-determination of 1971 is content with restatements; States "any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a State established in accordance with the right of self-determination of its peoples is incompartible with the purposses and principles of the Charter."[12] This seems to carry the meaning

that a peoples, right to self-determination is exercised fully with independence. This paragraph intended probably to bar any continuing right of self-determination to minorities within the new States. This also begs the question whether the existing State was "established in accordance with the right to self-determination" - whether independence is the only expression of the right to self-determination. What is here meant by "peoples"?

When in 1970, the General Assembly characteristically deals with the issue of this conflict in Charter principles in a resolution on Friendly Relations, the principle of self-determination and sovereign equality are delusively thrown together in this manner:

> "Convinced that the principle of equal rights and self-determination of peoples constitutes a significant contribution to contemporary international law and that its effective application is of paramount importance for the promotion of friendly relations among States, based on respect for the principle of sovereign equality".

In a further elaboration of the principle of sovereign equality, the concept is said to embrace inter alia, territorial integrity "the duty to respect the personality of States" and the right of a State "freely to choose and develop its political, social, economic and cultural systems" thereby envisaging full internal self-determination. Contained therein is the principle of non-intervention which is of no more assistance to the issue.

> "No State or group of States has the right to intervene, directly or indirectly for any reason whatever, in the internal or external affairs of any other State, consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law".

While prescribing intervention in the affairs of a "state the declaration seems to extend the "non-intervention" principle to the affairs of "peoples" as well, this has the effect of actually opening the door to the very intervention in the matter of the State against which the principle purports to admonish. If a minority in a given State, like in Ethiopia, the Somalis in the Ogaden are entitled to their national identity and the Ethiopian Republic is entitled to non-interference, then this leaves unclear the cardinal question as to whose rights will precede over the other. It is not possible for the two conflicting claims to co-exist, they are mutually exclusive. Somalia's armed confrontation with Ethiopia in the 1977-1978 Ogaden War, was with the object of enhancing the Ogaden Somalis right to self-determination, at the same time, amounting to intervention in the internal affairs of Ethiopia. As already seen in Chapter One, this dispute has historical origin in treaties signed with the British Colonial Government.

It is beyond dispute that the Ogaden region, the N.F.D. of Kenya, the present day Djibouti and other areas in the Horn of Africa were formerly Somaliland. There was evidence that the Somali

chiefs gave over their land to the British Government for protection in 1866 and that in1897, the British Colonial Government gave to Ethiopia by treaty the Ogaden area.[1] The 1897 treaty has been disputed, but in 1954 it was reinstated and has since belonged to Ethiopia.[13] In the context of the General Assembly resolutions, there would be no question as to whose territory the Ogaden is. Yet there has been no stability in the Horn of Africa because the Somali people are dissatisfied with their present political units.

The impression gathered from the multiplicity of Assembly declarations and pronouncements impotent in their ineffectiveness is that the Assembly sits out of an obligation that gives the States motive to actually review the problems they face and to find a viable solution for them. The package of principles inherently conflicting is presented without any indication of how a desirable balance might be struck between them. It does seem clear however, that self-determination is not viewed as an overriding "right" for all "selves" in all cases, but as a right relative which may have to give way to the principles of territorial integrity non-intervention and sovereign equality. In the next section I intend to deal with the question whether these Charter principles have gained the Status of jus cogens if at all and whether this is so in practise. If Self-determination has gained the status of jus cogens why do states selfishly guard against the exercise of this right if territorial integrity is jus cogens Why are there still claims of self-determination which can be justified? If both of these are jus cogens which takes precedence over the other and why? If both are not then why are they contained in the Charter and why do they exist side by side?

SELF-DETERMINATION AS JUS COGENS?

It is a universally acknowledged principle of international law that a customary international law principle which has acquired the status of *jus cogens* overrides all provisions of any treaty to the contrary.[14] As seen in chapter two, the question as to whether self-determination achieved the status of a right from a merely political and moral principle was given lengthy discussion, at the end of which it was rightly concluded that it was indeed a right but as to whether it has achieved the status of *jus cogens* remained unanswered. Having considered the conflict of principles in the Charter, it now becomes necessary to consider the problem of *jus cogens* with a view to determining which should take precedence, legally over the other and whether this is in fact done in practice.

There is a wealth of opinion from third world countries stating that self-determination is not only *jus* but has actually attained the status of *jus cogens*. As already seen in the preceding chapter many eminent international lawyers have continued to deny that self-determination is a legal right, some considering that it has not yet evolved as such a right while others maintain that it is inherently incapable of ever attaining it.[15] It is important to advance the discussion beyond mere assertions and look at the various facets of the problem. With regard to the general pronouncements on self-determination adopted by the General Assembly, it is necessary to examine more closely the legal status of those pronouncements for their substantive content and the significance of the consensus by which they were adopted. Also to be considered will be the resolution of the Assembly directed

to specific states and the weight they have, both legally and morally. The question to be answered at this crucial time is whether the cummulation of assembly resolutions, both general and specific alter the legal content of the original resolution.

In the Namibian cases and the Western Sahara case,[15(a)] what weight can be attached to the pronouncements contained therein on self-determination? Can the assertion that "Self-determination" constitutes part of jus cogens find legal justification? Since the Declaration on Colonialism of 1960 (resolution 1514) there has emerged as part of other resolutions grappling with the issue of the legality of self-determination. Needless to say, many of these resolutions were adopted with numerous negative votes and abstentions especially from the West. In fact if the veto previleged of the five founder members of the Security Council was extended to the General Assembly it would have been a foregone conclusion that none of the present resolutions would have been adopted. Lack of consensus shows the unpopularity of the resolutions adopted and this could mean the objectors have genuine reasons, themselves not political. For third world countries, however, in whose interests the principle of self-determination was promulgated, consider that these declarations are binding on themselves and on the other members of the United Nations.

It is conceded that the General Assembly was not endowed by the Charter with any general competence to bind member States, except in relation to very specific issues, nor does the Assembly have the power to interpret the Charter authoritatively. At San Francisco the problem of Charter interpretation was extensively discussed, it was agreed that each organ of the U.N. could

interpret portions of the Charter only and if there was any problem it would be resolved by the International Court of Justice.[16] It was also agreed that any interpretation by an organ is not generally accepted it is rendered without binding force. While assembly declarations may go a long way in the creation of custom the real test seems to be that of subsequent state practice. Though a declaration may be considered to impart on behalf of the organ adopting it, a strong expectation that members of the international community will abide by it, it is not enough. The two stage process involved therein is that treaties on the same subject are concluded to show that a declaration alone is <u>not</u> considered binding.[17] The affirmation of the right to self-determination is today embodied in the Human Rights Covenants, international treaties in like those identical to those appearing in the declaration on colonialism. If a large number of states ratifying either or both of the covenants the case for the "right" of self-determination achieving the status of <u>jus cogens</u> may be strengthened.

If self-determination is deemed to be a right, the further question to establish is whether it is capable of definition. The issue as to whether there is a difference between the affirmation of the existence of a right in spite of its indeterminate contents or the denial of the right because of its indeterminate contents, remains in the realm of controversy. Of course this issue may be of a great importance politically as it becomes open to manipulation and misuse. It becomes somewhat of a puzzle why the General Assembly "declarations" are ignored largely by the U.N. members causing international instability. It is true that there are factions within the Assembly and on most controversial issues

there is a marked trend of difference between the Eastern and Western Bolck of States. In the age-old case of Namibia, South Africa has violated the territorial integrity of that State and has persistently refused and/or neglected to heed the resolutions of the General Assembly asking them to leave the territory. Judge Leuterpacht in a separate opinion said, though the State are not bound to observe the resolutions of the General Assembly they were nevertheless required to consider them in good faith. He said in connection with States administering Trust territories:

> "An administering State may not be acting illegally by declining to act upon a recommendation or series of recommendations on the same subject. But in doing so it acts at its peril when a point is reached when the cumulative effect of the persistent disregard of the articulate opinion of the organisation is such as to foster the conviction that State in question has become guilty of disloyalty to the principle of purposes of the Chater. Thus an administering State which consistently sets itself above the solemnly and repeatedly expressed judgment of the organisation, in particular in proportion as that judgement approximates to unanimity, may find that it has overstepped the imperceptible line between impropriety and illegality, between discretion and arbitrariness and the abuse of that right and that it has exposed itself to consequences legitimately following as a legal sanction".[18]

Many cases have followed since this decision in 1955 but SouthAfrica despite sanctions recommended against her and the boycotts by many countries has persisted in unjustly administering Namibia. The people of Namibia have been denied the free exercise of their right to self-determination, even though they have made a good case.[19] In 1971 before the international court of justice the Namibian case was brought for review, the legal consequences for the continued presence of South Africa in Namibia notwithstanding Security Council Resolution

276 (1970). The Court then considered the legal effect of the Security Council Resolution 264 (1969) which called on South Africa to withdraw its administration from the territory forthwith; Resolution 269 (1969) which set the deadline for withdrawal as 4th October 1969; Resolution 276 (1970) which declared that the continued presence of South Africa in Namibia was illegal and that its defiant attitude undermines the authority of the United Nations. The court further held that the security council had acted within its primary responsibility of maintaining peace and security under article 24 of the Charter and that member States were under Article 25 bound to accept and carry out its decisions. South Africa violated the territorial integrity of the S. West African territory which had been given to it as a trust territory. An exercise of the right of self-determination should have rightly led Namibia gradually to independence and self-government. In view of this the court said all member States of the United Nations were obliged to recognise the invalidity and illegality of South Africa's continued presence and refrain from lending assistance to its occupation of Namibia. The court held:

> "All States should bear in mind that the inf[illegible]ned entity is a people which must look to the international community for assistance in its progress towards the goal for which the sacred trust was instituted".20

The 1971 opinion of the court confirm our views on the present international law on the subject of territories. Colonial peoples have an inherent right to independence and sovereignty forcibly denied them remains their imprescriptible right. Colonialism, maintained and prolonged by the use of force is a violation of

of human rights and calls for adequate means of eradication. Present international law recognises the legitimacy of the struggle of colonised people to free themselves and the international community is called upon to give them necessary support.

Needless to say, in the General Assembly resolution 1514 (XV) of 1960, the granting of independence to colonial peoples it was reaffirmed the right of colonial peoples to self-determination and the right to territorial integrity of States. Though South Africa claims that Namibia is part of its territory and that it, (South Africa) is entitled on Namibia's behalf to preserve its sovereignty and territorial integrity. However, in the Declaration on Friendly Relations (Resolution 2625 (XXV) of 24th October 1970) one kind of territorial integrity claims is negated emphatically - that which a State administering a "colony" might wish to present with respect to that dependency.

> "The territory of a colony or other non-self-governing territory has, under the Charter a status separate and distinct from the territory of the State administering it, and such separate and distinct status under the charter shall exist until the people of the colony or non-self-governing territory have exercised their right of self-determination in accordance with the Charter and particularly its purposes and principles".

South Africa, in the case of Namibia cannot claim any territiral integrity and in this case therefore the right of self-determination cannot be denied. The gross violation of the right of a people to self-determination, particularly by a United Nations member, attracts the whole international community to impose sanctions under the Charter for a breach of peace or threat thereof. The debate, whether or not colonial peoples are entitled to self-

determination is closed. But the question remains whether the right however much hailed is of the status of *jus cogens*.

Is "law" established on the basis of what states declare to be good for certain selective others or is it derived from what States practice, constantly and uniformly? This question is important because to begin with, determining situations that permit the exercise of the right to self-determination involve the practice of States. The expression of the right also is an aspect of State practise. Declarations, as we have seen are far from binding so that there is a clear difference between what States declare they will do, and what they actually do. The history of self-determination consists of States claiming for themselves what they would deny others and as observed in the previous chapters, this has not changed since the establishment of the United Nations which succeeded the League of Nations.

No State has accepted the right of all people to self-determination. Only the States which acknowledged the "colonial" nature of their rule may arguably have conceded the right of self-determination as applicable against themselves, although even in these cases, they apparently accepted decolonization as a matter of expediency rather than legal obligations.[21] The asserted consensus of the international community lacks credibility because the majority of the members of the United Nations deny national self-determination to their ethnic, religious, cultural and political minorities. No State expressly denies the right to self-determination, though this does not establish the right as *jus cogens*.

Several passages from the Namibia cases were cited in the Western Sahara case which was before the world court to determine whether a case for self-determination existed or not A need for a referendum to be held had been expressed by both Morocco and Mauritania for the people of Western Sahara to exercise their right to self-determinagtion. The court did not deliberate on claims of self-determination resulting in reversion of sovereignty as these lie within the area of international controversy.[22] In the Western Sahara case, the court seemed to be in agreement that the U.N. law on the issue concerned itself not with self-determination, but on decolonisation.

It should be noted here that the Court's advisory opinions do not in any event bind member States, and that their adoption or acceptance by the Assembly does not transform their essential nature. Is it true as Gros Espiel puts "today no one can challenge the fact that the principle of self-determination necessarily possesses the character of ius cogens"?[23] Gros Espiell seems to overlook the fact that self-determination as "jus" has lain in the realm of controversy even in recent times. The discussion in this chapter and in the previous chapter should throw some light on the legal status of this principle. Admittedly it exists as a right recognised by all peoples but does it exist as a preremptory norm of international law? The draft Law of Treaties, Article 37 read:

> "A preremptory norm of general international law from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character".

And in the Final Draft[24] as Art. 53. the provision on jus cogens says:

> "For the purposes of the present convention a preremptory norm of international law is a norm accepted and recognised by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character".

This means that a principle of jus cogens overrides provisions of all treaties to the contrary. This will invariably concern of the subject of the next chapter; whether the treaty signed between Ethiopia and Britain in 1897 giving over the Ogaden region and other areas will remain valid in the face of a proremptory norm of international law it if be thus proven.

Furthermore, the idea of jus cogens, rooted in Natural law has not been universally acknowledged. In point of fact, the Vienna Convention used the expression jus cogens wholly in a negative sense and provided no substantive definition of the term. The International Law commission far from unanimity gave certain examples which may be considered as prohibited treaties i.e. those permitting unlawful use of force, slave trade, piracy and the crime of genocide, self-determination was mentioned "among other possible examples". This slight reference is far from justifying the assertion by Gros Espiell, that self-determination is jus cogens.

It would be a logically meaningless proposition because granting self-determination to one people invariably entails denying it to a rival "self". There are also inherent dangers in such an assertion, as in all absolutist theories, that of ignoring

the relativity of rights and their inevitable clash with other equally valid rights. It would seem more reasonable to speculate an accommodation of rights rather than absolute recognition of one right as against another.

As seen in the earlier part of the Chapter, the Wilsonian dilemma has continued to preoccupy the International community. The General Assembly resolution recognise the existence of both self-determination and territorial integrity. The very fact that in every situation there is a twosided question of whether the territorial integrity of the State precedes the self-determination of a minority people, shows that these rights are relative and are accorded the same importance on the international scene. Neither self-determination nor the principle of non-interference constitute matters of jus cogens. They are rights that should be weighed against each other in every case. In the following chapter, it will be shown how these rights can be accommodated and a solution for the Ogaden Somalis will be advanced.

CHAPTER FOUR

CONCLUSION

SELF-DETERMINATION FOR THE OGADEN SOMALIS?

In this chapter I intend to examine the meaning of the word "peoples" and using the study of the cases of Biafra and Pakistani, show whether the Somalis of the Ogaden have a good case for self-determination. I shall also recommend a solution for their problem in view of all considerations.

Perhaps the most problematic aspect of self-determination is its application to practical problems. The question is - who consitutes the "self" and what are they supposed to determine? At the time that the concept of self-determination was gaining currency the world was faced with the issue of liquidating the classical colonial system. If one argues that a "peoples" represent a cohesive linguistic ethnic group then the concept of self-determination can open many vistas of political action with far-reaching consequences. Applied without discernment the principle of self-determination leads to anarchy; one jurist Eagleton[1] has called it wildtalk that breeds civil wars. We must not shut our eyes to the fact that self-determination, like in the case of the Malaysian federation can be an instrument for intergration and unification, which, of course must be based upon the freely expressed wishes and desires of the people claiming the interest or right in question.[2]

Evidently the whole issue boils down to the fact that the realistic question is not whether a "people" is qualified for and deserves the right to determine its own destiny, but whether it has

the political strength, which may well mean the military force to validate their claim.[3] Emerson on making the above assertion insists that in the face of an even stronger adherence to the principle of territorial integrity, the room left for self-determination is decolonisation.

Resolution 2625(XXV)[4] of 24th October 1970 of the General Assembly sets out:

> "By virtue of the principle of equal rights and self-determination of the peoples enshrined in the Charter of the U.N., all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and evey state has the duty to respect this right in accordance with the provisions of the Charter."

Concomitantly it urged all the States to promote self-determination of "peoples". As has been seen in the last chapter, General Assembly resolutions have been rendered ineffective because their terms are vague and are subject to a wide range of interpretation. If "peoples" here is taken to mean a minority in a State, then it does not seem possible than these people would exercise their right without external aid. This resolution on Friendly Relations among States has a big proviso which has the effect of invalidating all self-determination claims. Thus:

> "Nothing in the foregoing paragraphs shall be construed as authorising or encouraging any action which would dismember or impair totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour".

A superficial study of the above two paragraphs would seem to suggest that the principle of self-determination is circumscribed by the principle of territorial integrity of political unity of sovereign States. However a careful study indicates that the principle of self-determination is limited by territoriality only when States ensure conditions leading to the economic, social and cultural development of all peoples living in a State. In situations where these conditions are not fulfilled, the proviso mentioned above does not qualify the operation of the principle of self-determination. When States fail to ensure equal rights of all peoples in a State, they cannot maintain that the principle of self-determination of peoples is qualified by the principle of territoriality.

Applying the above argument in 1971, Nawaz[5] argued that the Bengali people had been subject to domination and exploitation by the West Pakistanis. Consequently the principle of self-determination applied to the people of Bangladesh, little wonder then that the Bengali people invoked the principle in their declaration of independence. In our view, we think that by virtue of its geographical position and the politics of decolonisation of the Indian sub-continent Bangladesh is a case sui generis and it cannot be said to be analogous to the Ogaden crisis. Looking at Bangladesh the International commission of jurists discussed what is meant by a "people" and concluded that, even if it satisfied certain physical conditions, "a people begins to exist only when it becomes conscious of its own identity and exerts its will to

exist". As to who is the self it is argued that in the first period the test of "self" was ethnic origins, of the people deemed to be constituting nations or nationalities defined by culture and language. The Ogaden Somalis bear an almost distinctive resemblance to the Somalis in the Somali Republic. They have the same cultural background, the same religion and language, their only difference is in the State to whom they bear allegiance. In the second phase, however, ethnic identity is irrelevant, only a political entity in the guise of a colonial territory has the right to claim self-determination. The criterion of "self" then is a political unit as reflected by a majority political party in that unit.

Since the classical colonial situation has nearly been exhausted and it is only problematic "small States" that are seeking the right, groups within the independent States have tried to manipulate the principle of self-determination to justify changes. The colonialists in Africa broke up ethnic peoples whom they did not recognise as constituting states or "nations". The Cairo[6] declaration of the O.A.U. indicated that the African States all agreed to respect the borders carved out by the colonialists. The practice of States today indicates that they all recognise that a nation is a political rather than an ethnic unit. It is true that the U.N. recognises the right of a colonised people to exercise the right to self-determination (Chapters XI and XII of the U.N. Charter and Art.2 of Resolution 1514 (XV). Self-determination is seen as part of the fundamental human rights and Art.1 of Resolution 1514 (XV) declares inter alia;

> "The subection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is ani impediment to the promotion of World peace and co-operation".

The key words here are "the subjection of people to alien subjugation, domination and exploitation..."

It would appear from the reasons given that the Western Liberation Fronts assertion of self-determination is invalid today as Ethiopia is an independent sovereign state and ethnicity is no longer support for claiming the right.[7] There is no evidence to suggest that the people of Ogaden have been "subjected to alien subjugation domination and exploitation". The only reason given for claiming self-determination is ethnicity which fails in international law today. As seen already in Resolution 2625 (XXV) of 24th October 1970, the proviso does not allow the exercise of the right unless human rights are being violated. In order to allow such a claim it would be necessary to establish that a given "people" are so being dominated and exploited that the matter is removed from the realm of domestic jurisdiction to international concern. Under no other circumstances should the territorial integrity of an independent sovereign state be sacrificed.

Perhaps the Western Liberation Front had a claim against the colonial administering power Britain, which signed a treaty with Ethiopia to hand over these parts. Even so, the validity of the Front's claims would remain questionable. It is an open secret that colonial administration catered only for colonial interests;

the treaty of 1897 that officially handed over the Ogaden region to Ethiopia, was confirmed in 1954 by Britain, as seen in Chapter one, the treaty remains valid and incontestable. Colonial administration is characterised by treaties which sought to dismember ethnic groups after the policy of divide and rule.[8]

There are some other tests that an entity must pass before qualifying for self-determination. May-be at this point the question of Biafran self-determination should be briefly considered.[9] The question is, why did Lagos, crush the attempts of the Biafrans in the exercise of their right to self-determination aand why were the people of Biafra condemned both by the O.A.U and the U.N. Organisation? Had Biafra succeeded, it would have been hardly worthwhile arguing that it ought not to have succeeded, just as it is hardly worthwhile to maintain now that it ought not to have been crushed. A State is entitled to preserve its territorial integrity by the use of reasonable force. Secession is generally frowned upon especially in Africa, whose modern States contain different national groups. When in 1967 the people of Biafra decided to dissociate themselves from the rest of Nigeria, they were threatening the sovereignty of Nigeria. Lieutenant Colonel Gowon declared a State of emergency and commenced a war of unification which was successfully completed in January 1970 when the rump of Biafra leadership surrendered.[10] The Eastern Nigerian people were of distinct ethnic quality, they spoke a dominant Ibo language, were of the same religion and culture. Yet the territoriality of the whole of Nigeria was hailed internationally against the self-determination of the Biafras. In essence this shows that other realistic considerations are paramount before a

declaration of self-determination leading to secession is allowed.

No State will accept the principle that at their own choosing some segment of its own people will be free to secede either to become independent (Biafra) or to join a neighbour (Somalia). The United Nations attitude, so far as the question of secession is concerned is unequivocal. It does not seem likely, that as an organisation, the United Nations will ever recognise the secession of a part of its member States. The transition from colonial status to independence is not regarded as secession, what article 73e of the U.N. Charter, echoed in Resolution 1541 (XV), envisaged was with regard to dependent territories. In principle VI of this resolution there is a provision for free association with an independent State and merger (integration) with an independent State. Clearly, the above was not intended to be operative in a situation in which part of a sovereign State is claiming the right to self-determination. In the case of the Ogaden region therefore, the question goes much deeper than mere ethnicity..

The territorial approach has long been the most important determinant by the international community in establishing whether or not a people are entitled to their "internal" self-determination. As has been already seen in chapter two the distinction between "external" and "internal" self-determination exists only in theory. In practice, the question is whether the problem arising is worthy of consideration by the international community. Territory is the framework of independence and security in the political order and has become, in the legal order the point of departure in setting

most questions that concern international relations. From the facts, the Somalis are seeking independence from Ethiopia, exercising alien rule over them. In the Fisheries Case[11] (Great Britain v. United States) of 1970 the Permanent Court of Arbitration observed:

> ...."One of the essential elements of sovereignty is that it is to be exercised .... within the territorial limits and that failing proof to the contrary the territory is contaminous with the sovereignty...."

It is therefore important that we determine the Fronts claim to territoriality. Under Italy and Ethiopia the Ogaden was not administered as a separate entity. It has been recognised by Britain in 1954 as an integral part of Ethiopia, and both the U.N. and O.A.U. admitted Ethiopia to their separate memberships on that understanding. The Western Liberation Front therefore fails to establish the test of regional autonomy.

An interesting parallel is provided by the Somalis of the Northern Fronteir District of Kenya who gained independence as part and parcel of Kenya. A Kenyan jurist Okoth-Ogendo argues,[12] from this that the Somalis had a case against the British Government but do not have any right against the Kenya Government. In the N.F.D. case, they had regional autonomy under the first Kenya Majimbo constitution. Thus the British who enacted the constitution as part of an order in council had discharged their obligations to the international community by thus allowing the people of N.F.D. to determine their own development. It is argued in some circles that Kenya by declaring a unitary constitution reviewed the issue of self-determination of the Somalis. However Kenya had been

accepted as a member of the U.N. as a single sovereign State, just as Ethiopia had been following Rosalyn Higgin's[13] view that self-determination is the right of a majority in a political unit, then the Kenya State was justified in declaring a unitary constitution for it was the majority government that delcared it. Ethiopia is a unitary State and it is explicit from the Ogaden war (1977-1978) that she is resisting the Western Liberation Front backed by Somalia, in furtherance of her right of self-determination as the right of a majority in a numerical sense.

Ethiopia on becoming a member of the U.N. acquired certain rights. The first of these is that she is protected from intervention by other States in her internal matters (Art.1) Secondly, her boundaries are protected both under Resolution 1514(XV) which in Article 6 warns that any attempt at partial or total disruption of the national unity and the territorial integrity of a country is incompartible with the purposes and the principles of the Charter of the United Nations. In Article 2 of the U.N. Charter it says, all States that are members of the U.N. (Ethiopia and Somalia among them) have sovereign equality, and paragraph 4 thereof provides:

> "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations".

The purposes of the U.N. are the promotion of world peace and to ensure that States respect the principle of equality of nations and their right to self-determination. Our argument so far has indicated that Ethiopia is a nation and a sovereign one at that,

In fighting to quell the Ogaden war she is exercising her right to territorial integrity and self-preservation.

Under International law, embodied in the U.N. Charter and the practice of States, and the O.A.U Charter, it would appear that Somalia, is in breach of international obligation. Further, once a State becomes a member of the U.N., that organisation assumes the duty to protect her sovereignty and territorial integrity. The O,A.U too will protect this particular feature of its member States.[14]

We have established in Chapter three that neither self-determination nor territorial integrity are jus cogens. they often are at pari. In the Ogaden situation the Ethiopian right to territorial integrity stands against the rival claim of the Somalis to the self-determination of the Ogadenians. The solution to this is not to rule out one against another, but to consider the practical situation. Somalia which has undertaken to follow and observe the principles of the O.A.U and the U.N. is in breach in so far as she is intervening in the internal affairs of Ethiopia. Somalia has a duty to respect Ethiopia's sovereignty and the best she can do that is legal in international law is to help Ethiopia quell the uprising or secession in the Ogaden which from a strictly legal point of view is not an assertion of the right of self-determination.

We have seen that self-determination, in international law today has gained legal character. It is a right that goes together with the granting of independence to colonial peoples. An ethnic group today unless it suffers brutality from the State

Government, cannot legitimately seek self-determination. Even if there was such violation, the international community would intervene to restore peace, by either condemning the State or placing sanctions upon it. Hailing self-determination is an extreme measure that the International community has found difficult to acknowledge. It is illegal for a State, a member of the O.A.U. and the U.N., to support a movement that violates the territorial integrity of another. Emerson points out that self-determination presents some explosive situations - it is for this reason that it cannot be granted to a secessionist movement as the Western Liberation Front. Support for such a movement is strictly illegal in international law.

A representative of the Ogaden region at the Ethiopia Embassy, who begged to remain anonymous condemned the Western Liberation Movement as being "an activist and sensationalist group which does not have the support of the Ogaden Somalis..." WORTH! Popular opinion here seemed to be that the people are tired of the constant instability they are living in. The ultimate issue is not whether a people live with their brothers who speak the same language and have the same religion and culture, but whether they are satisfied with the government under which they live. It is true that ethnically the Ogaden Somalis belong with the Somalis in the Republic of Somalia; but so also do the N.F.D. Somalis. Disintegration of sovereign countries based on ethnicity sounds very naive and can have detrimental effects.

It is an open secret that in instigating the Ogaden war (1977-1978) the Somali, leader Bare was laying political strategies. Having become unpopular he thought to restore his popularity with people he should advance the country's ambition to unite all the Somalis. In the five-star flag is expressed the cardinal wish to unite all the Somali people. No State can impose obligations on another sovereign State emanating from its own constitutional provision. Lewis[15] writing on Somali nationhood says nation mean:

> "A single people possessing a high degree of culture homogeneity and with a strong sense of identity irrespective of whether this is combined with stable political integration".

In my opinion, this description is not relevant to the Ogaden crisis because, as we have seen earlier what determines a case for self-determination is not ethnicity but whether the people are aware that they belong to one political unit.

Ogaden is a province adequately represented in government and the people should be given a chance to develop feelings of national loyalty for Ethiopia. Needless to say the region is quite under-developed because the people are unstable. When the 1897 treaty was concluded the most important provision for people here was grazing rights since the people were dominantly nomadic. When this treaty was confirmed in 1954 the issue of grazing rights was still very important. Today there has been infusion of settled life and the nomadic way of life is being gradually dropped. It is the hope of the Ethiopian government that with a more settled life, the Ogaden people will identify more with the rest of Ethiopia and

will not feel they are under "alien" rule. I think that the solution for Ethiopia is to speed up ddevelopment in the Ogaden region and to try to assimilate the people with the rest of the country. Secession should not be allowed here because it will not solve the problem. It will be against the territorial integrity of Ethiopia and a group of agitators should not be allowed to dictate terms to a sovereign State. If secession here were allowed then numerous claims in the neighbouring countries would arise. Shifta activity in the N.F.D. of Kenya would increase and the Masai on Mt. Kilimanjaro would either secede into Tanzania from Kenya or declare themselves independent.

The boundaries which were carved out by the colonial powers however unsatisfactory should remain untouched as this would trigger off other potential claims which are being held in check for the sake of political independence and sovereignty of States. A subdivision of States into smaller ethnic entities is obviously undesirable and any such attempts should be crushed and condemned by the international community. I cannot help but conclude that the principle of self-determination finds its proper place in independence of dependent States and may rightly have no relevance to independent sovereign States.

You are a fool!

How many times have Europe changed boundaries? How many countries disappeared in the change? How many new ones were born?

Bismarck by Uniting Germany have reshaped and change the Geography of Europe The same should be done in Africa.

Earlier Africans rejected the Need to change boundaries and free themselves from the greed of BLACK COLONIALISM The BETTER.

FOOTNOTES

CHAPTER ONE:

1. "Coup d'etats in Africa", Kwame Nkrumah Ch.3.

2. Drysdale J.G.S., "The Somali Dispute", London (1964) Ch.1.

3. Jennings, I.W.; "The Approach to Self-determination" (1956) Pg. 55-56. Emphasis added.

4. D.H. Miller.; The Drafting of the V Covenant. Vol.II (1928) Pg. 12-13.

5. H.W.O. Okoth Ogendo.; "The Frontiers of Self-determination delimited" (Thesis), See the Introduction.

6. C.E. Cannington.; "Frontiers in Africa" Pg. 203, footnotes2.

7. Panter-Brick, S.K.; The right to self-determination, Its Application to Nigeria. 44 International Affairs (UK) 1968.

8. Map of Somaliland adapted from Pg.205 Sureda "The evolution of the right to self-determination".

9. Brown, L.J.; "The Ethiopian -Somali Frontier Dispute" I.C.I.Q (1956) Pg.245. See also State papers. Vol.76 Pg. 106. (Stress mine).

10. Umozurike, U.O.; "Self-determination in International Law" Pg.227.

11. Brownlie, I.; "Principles of International Law "Oxford (1966).

12. The British Secretary of State infact regretted the conclusion of the 1897 Treaty, "But like much that has happened before, it is impossible to undo it". (23 February 1955). Hansard Parl. Debate, Fifth Series, Vol.539, (1954-1955) Col.1258.

13. See Further I.M. Lewis, "Developments in the Somali Dispute" 66 African Affairs, No.263 (April 1967), Pg.104-112.

14. Supra note 12.

15. Supra note 9 note on the Vienna Convention on the Law of Treaties. Treaty Series 1860-1900.

16. Supra Note 9, Pg. 259-250.

17. Supra note, 12.

18. Walter Rodney, "How Europe underdeveloped Africa" Ch.1.

19. Juries 27th June 1960, Pg.10 Col.3.

20. Oppenheim, L.F.: "International Law" London (1963) See Chapter on Treaties. Pg.72-83.

21. The Right of Passage Case (Merits) 1960 I.C.L. Pg.6. See also Padmas Island Case (1928) reported in L.C. Green Pg.439.

22. Supra note 9.

23. Supra note 9 emphasis added.

24. Supra note 10. p.228.

25. Supra note 5.

26. Legum, C.; "Pan Africanism, A Short Political Guide". (New York) 1962. Pg.229-233.

27. Omozurihe Pg.234.

28. Weekly Review 1977 October - 1978 June Ogaden War featured.

CHAPTER TWO:

1. Wambaugh, S.: "A monograph on Plebiscite" (1920) Pg.1033 at Pg.10. See also "Plebiscite since the World War" (1933)(Washington).

2. Omozurihe, U.O.: "Self-determination in International Law" pg.9 footnotes 22-24.

3. Wambaugh, S.: "A monograph of Plebiscite" pg. 10.

4. Murray, G.: "Self-determination of Nationalities" 1 Journal of British Institute of International Affairs (1922) pg.8.

5. Can, E.H.; 1969, Vol.1 pg.292 - 383. "The Bolsheviek Revolution" (1917-1923).

6. Nye and Morpugo."A history of the United States of America." Hammondsworth & Co. (1955), in which the speech delivered by Jefferson in Washington D.C. is quoted. 4 March 1801.

7. Baker and Dodd eds. "The Public papers of Woodrpd Wilson: War and Peace" Vol. 1 & 2 See Vol.2 (1927) at Pg.244.

8. Omozurihe, footnote 42.

9. Cobban A. "National Self-determination" (London) 1945. pg.54.

10. Brown, L.J.: 14 A.J.I.L. (1920) Pg.237.

11. Sureda. "The evolution of the principle of Self-determination p.g26.

12. Jennings, I.W.: "Approach to Self-Government (1956) 55-56.

13. Bowett, D.W.: "Self-determination & Political Rights in the Developing Countries", P.A.S.I.L. (1966) pg.130.

14. Higgins, R.: "The Development of International Law Through the Political Organs of the U.N." (1963) p.1-10.

15. Documents: Summary report of tthe Committee 1/1 Doc.1/1/1 of 16 May 1945, 6 U.N.C.I.O. Docs.Pg.296.

16. Ringera, A. LLM Dissertation see Ch.2 discussion. Self-determination and the use of force in Namibia.

17. U.N. Charter Article 1(2) & Art.55 respectively, emphasis mine.

18. Resolution 2200 of 16th December 1966 (I.L.M.)

19. Resolution 2131(XX) of 12th December 1965, emphasis added.

20. Supra, Ringera note 16.

21. Ch.5 Kenya Constitution (1979).

22. Schwantzenberger, G. A Manual of International Law (London) 1967. Pg.74.

23. Green, 1966, Report of 47th Conference of I.L.A. pg.58.

24. Green, L.C. 65 A.J.I.L. (1971) pg.40, 46. "Self-determination and the Settlement of the Arab - Israel Conflict".

25. Rivlin, quoted in Okoth-Ogendo, "Delimination of the Frontiers of Self-determination" Ch.2

26. Gross Leo, "The Right to Self-determination in International Law" see the "New States in the Modern World" edited by Martin Kilson: see also 65 A.J.I.L. Emerson's article.

27. Emerson, R.: "From Empire to Nation" (1960) pg.309.

28. Infra, 1965, A.J.I.L. 1971.

29. Higgins: see note 14. pg.90-106 at 103.

30. Lanterpacht E.: "Some Concept of Human Rights" 11 Harvard Law Journal (1965) pg.270-271. (1965).

31. Brown, P.M.: "Self-determination in Central Europe" 14 A.J.I.I (1920) at 235.

32. Korowicz, M.: "Introduction to International Law" (Hague 1959) pg.285. Ross' views are ignored upon; see Ross, A. "The Constitution of the United Nations" (1950) pg.135.

33. Levin, D.B.: "The principle of self-determination of Nations in International Law" Soviet Y.B.I.L. (1962).

34. Nawaz, M.R.: "The meaning and Range of the Principle of Self-determination" Duke University L.J. (1965).

35. Starke, J.B.: "An Introduction to International Law" (1967) Pg.116.

36. Brownlie, I.: "Principles of International Law 2nd ed. (1973) Oxford Pg.577.

37. Higgins, R.: "The U.N. & Law Making: The Political Organs". 64 A.J.I.L. (Sept.1970) Pg.103-105.

38. The Aaland Islands case (1920) a discussion in 33 A.J.I.L. (1939) Pg.465 - 487. by N.J. Padfield.

39. See note 7, President Wilson's declaration.

Where are the Bastard! Other footnotes ??

CHAPTER THREE:

1. Ference, B.B.: "Refining International Aggression" Ch.1.

2. G.A. Res. 1514(XV) 14th December, 1960.: "Declaration on the Granting of Independence to Colonial Countries and Peoples".

3. The Western Sahara Advisory Opinion I.C.J. Reports 1975. pp.122-123. see footnote 143 Michla Pomerance: "Self-determination in Law and Practice" pg.94.

4. Umozurike O.U., pg.266-269.

5. Wright, Q.: "The Gao incident" A.J.I.L. Vol.56 (1962) pg.626 see the last point.

6. U.N. Charter Art.108 and 109 Ch.XVIII Charter Amendments provisions.

7. G.A. Res.1541 (XV) December 15th 1960.

8. Emerson, R.: "Self-determination revisited in the era of decolonisation" occasional papers in International Affairs No.9. Harvard University, Centre of International Affairs, December 1964) pg.27.

9. 1977 and 1978 Gros Espiell reports on Implementation of U.N. Resolutions relating to the Right of Peoples under Colonial and Alien Domination to Self-determination. U.N.C. on Human Rights, 1977-1978.

10. Drysdale: "The Somali Dispute" Ch.3.

11. G.A. Res.3314 (XXXIX) 14th December, 1974: Defination of Aggression.

12. G.A. Res.2787 (XXVI) 6th December, 1971.

13. Brown, D.L.J.: "Recent Developments in the Ethiopia-Somaliland Frontier Dispute", I.C.L.Q. 10 (1961) Pg.167-178.

14. Ver dross; "Jus Dispositivum and Jus Cogens in Internaional Law 60 A.J.I.L. Pg.59. See Omozurihe pg.187 note 45.

15. See note 328, Michla Permerance.

16. Separate Opinion of Judge Spender, in Certain espenses of the U.N.: Advisory Opinion 20th July 1962, I.C.J. Reports 1962 pg.187-197.

17. Oppenheim; "International Law" see note on Declarations.

18. South West Africa - Voting Procedure, Advisory Opinion of 7th June, 1955. I.C.J. Reports, 1955 Pg.118-119..

19. The Relevance of the World Court decision on Namibia 1971, to the Principle of Self-determination. See Omozurihe, pg.295ff.

20. Ibid., I.C.J. Reports, pg.56.

21. Emerson, R.: Article A.J.I.L. Vol.65 (1971) pg.462.

22. Western Sahara Advisory Opinion, I.C.J. Reports pg.30-31 para.51, 55; pg.30-37.

23. Gros Esphiell (1977) reports para.63 pg.17. 1978 reports pg.32-33 para.71 vol.1.

24. See note 12, Michla Permerance.

CHAPTER FOUR

1. Eagleton, quoted from Unozurihe pg.289.

2. The Malaysian case see Sureda, Chapter on claims to self-determination.

3. Emerson, R. 1971 6 A.J.I.L. Pg.468.

4. G.A. Res.2625(XXV) 24th October, 1970: Declaration on Friendly Relations.

5. Nawaz, M.K.: "The Meaning and Range of Selfedetermination" 1956 Duke University L.J. Pg.82 ff.

6. Cairo O.A.U. Conference 1964 A.H.G./Res.16(1): Declaration of the intangibility of the Colonial borders. Solemnly declares that all member States pledge themselves to respect the borders existing on their achievements of national independence.

7. Weekly Review, the Ogaden War (1977-1978).

8. Rodney, W., "How Europe underdeveloped Africa" Ch.1.

9. "Was Biafra ever a State in International Law" Emerson's comment in 65 A.J.I.L. Pg.462 ff.

10. See G.A.Res.1514(XV).

11. Fisheries Jurisdiction case P.C.I.J. Reports (1929).

12. Okoth-Ogendo, "Delimitation...." Ch.4 conclusions.

13. Higgins, R. "The Development of ..."pg.103.

14. "The O.A.U. and its Charter" pg.90-95, Zdenek Cervenka (London) (1968)

15. Lewis: "Integration in the Somali Republic" Harelwood (Ed) Africa Integration & Disintegration (O.U.P.) 1967 pg.251.

B I B L I O G R A P H Y

BOOKS:

1. BRIELY, "Law of United Nations".
2. BROWNLIE, I., "Principles of International Law" 1973.
3. CARRINGTON, "Frontiers in Africa".
4. COBBAN, A., "National Self-determination".
5. DRYSDALE, "The Somali Dispute".
6. EMERSON, "From Empire to Nation" (1960)
7. FRERENCE, B., "Defining International Aggression".
8. JENNINGS, "The Approach to Self-determination (1956)".
9. KOROWICZ, M., "Introduction to International Law" (1959)
10. MICHLA PONERANCE, "Self-determination in Law and Practice" (1982).
11. UMOZURIKE, O.U., "Self-determination in International Law" (1972)
12. OPPENHEIM, "International Law" (1962)
13. RODNEY, "How Europe Underdeveloped Africa".
14. ROSELYNE HIGGINS, "The Development of International Law Through the Political Organs of the U.N.
15. SCHWARTENBERGER, "A Manual of International Law" (1967)
16. STARKE, "An Introduction to International Law"
17. SUBRATA, R.C., "The Status and Norms of Self-determination in Contemporary International Law."
18. SUREDA, "The Evolution of the Right of Self-determination".
19. VERDROSS, "Jus Positivum & Jus Cogens in International Law".

ARTICLES:

1. BOWETT, D.W., "Self-determination & Political Rights in the Developing Countries". P.A.S.I.L. (1966).

2. BROWN, D.I.J., "The Ethiopia-Somali Frontier Dispute" I.C.L.Q. (1956) Pg.245, "Recent Developments in the Ethiopia-Somali Dispute" (1971) 10 I.C.L.Q. 167-178.

3. BROWN, P.M., "Self-determination in Central Europe" 14 A.J.I.L. (1920)

4. EMERSON, R., "Self-determination" 65 A.J.I.L. 462

5. GREEN, L.C., "Self-determination and the Settlement of the Arab-Israel conflict", 65 A.J.I.L.(1971)

6. HIGGINS, R., "The U.N. and Land Making, "The Political Organ, 64 A.J.I.L. (1970).

7. LANTERPATCHF, E., "Some Concepts of Human Rights" 11 Harvard Law Journal (1965).

8. LEVIN, D.B., "The Principle of Self-determination of Nations in International Law". Soviet Y.B.I.L. (1962)

9. LEWIS, I.M., 66 African Affairs, No.253 (April 1967) Developments in the Somali Dispute".

10. NADA, 66 A.J.I.L. (1972) 321. "Self-determination in International Law".

11. NAWAZ, M.K., "The Meaning and Range of the Principle of Self-determination". Duke University L.J. (1965).

12. PADFIELD, N.J., "The Aaland Islands case 33 A.J.I.L. (1939) 465-487.

13. WRIGHT, Q., "The Goa incident" 56 A.J.I.L. (1962) 626.

APPENDIXES

A. GENERAL ASSEMBLY RESOLUTION 1514(XV), 14 DECEMBER 1960.

DECLARATION OF THE GRANTING OF INDEPENDENCE TO COLONIAL COUNTRIES AND PEOPLES

The General Assembly,

Mindful of the determination proclaimed by the peoples of the world in the Charter of the United Nations to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small and to promote social progess and better standards of life in larger freedom,

Conscious of the need for the creation of conditions of stability and well-being and peaceful and friendly relations based on respect for the principles of equal rights and self-determination of all peoples, and of universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

Recognising the passionate yearning for freedom in all dependent peoples and the decisive role of such peoples in the attainment of their independence,

Aware of the increasing conflicts resulting from the denial of or impediments in the way of the freedom of such peoples, which constitute a serious threat to world peace,

Considering the important role of the United Nations in assisting the movement for independence in Trust and Non-Self-Governing Territories,

Recognising that the peoples of the world ardently desire the end of colonialism in all its manifestations,

Convinced that the continued existence of colonialism prevents the development of international economic co-operation, impedes the social, cultural and economic development of dependent peoples and militates against the United Nations ideal of universal peace,

Affirming that peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law,

Believing that the process of liberation is irresistible and irreversible and that, in order to avoid serious crises, an end must be put to colonialism and all practices of segregation and discrimination associated therewith,

Welcoming the emergence in recent years of a large number of dependent territories into freedom and independence, and recognising the increasingly powerful trends towards freedom in such territories which have not yet attained independence,

Convinced that all peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity for their national territory,

Solemnly proclaims the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations;

And to this end

Declares that:

1. The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation.

2. All peoples have the right to self-determination by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

3. Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.

4. All armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence, and the integrity of their national territory shall be respected.

5. Immediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom.

6. Any attempt aimed at the partial or total disruption of the national unity and the territorial inegrity of a country is incompatible with the purposes and principles of Charter of the United Nations.

7. All States shall observe faithfully and strictly the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights and the present Declaration on the basis of equality, non-interference in the internal affairs of all States, and respect for the sovereign rights of all peoples and their territorial integrity.

B. GENERAL ASSEMBLY RESOLUTION 1541 (XV), 15 DECEMBER 1960

PRINCIPLES WHICH SHOULD GUIDE MEMBERS IN DETERMING WHETHER OR NOT AN OBLIGATION EXISTS TO TRANSMIT THE INFORMATION CALLED FOR UNDER ARTICLE 73e OF THE CHARTER: ANNEX

Principle I

The authors of the Charter of the United Nations had in mind that Chapter XI should be applicable to territories which were then known to be of the colonial type. An obligation exists to transmit information under Article 73e of the Charter in respect of such territories whose peoples have not yet attained a full measure of self-government.

Principle II

Chapter XI of the Charter embodies the concept of Non-Self-Governing Territories in a dynamic State of evolution and progress towards a "full measure of self-government". As soon as a territory and its peoples attain a full measure of self-government, the obligation ceases. Until this comes about, the obligation to transmit information under Article 73e continues.

Principle III

Obligation to transmit information under Article 73e of the Charter constitutes an international obligation and should be carried out with due regard to the fulfilment of international law.

Principle IV

Prima facie there is an obligation to transmit information in respect of a territory which is geographically separate and is distinct ethnically and/or culturally from the country administering it.

Principle V

Once it has been established that such a prima facie case of geographical and ethnical or cultural distinctness of a territory exists, other elements may then be brought into consideration. These additional elements may be, inter alia, of an administrative, political, juridical, economic or historical nature. If they affect the relationship between the metropolitan State and the territory concerned in a manner which arbitrarily places the latter in a position or status of subordination, they support the presumption that there is an obligation to transmit information under Article 73e of the Charter.

Principle VI

A Non-Self-Governing Territory can be said to have reached a full measure of self-government by:

(a) Emergence as a sovereign independent State;

(b) Free association with an independent State; or

(c) Intergretion with an independent State.

Principle VII

(a)

Free association should be the result of a free and voluntary choice by the peoples of the territory concerned expressed through informed and democratic processes. It should be one which respects the individuality and the cultural characteristics of the territory and its peoples, and retains for the peoples of the territory which is associated with an independent State the freedom to modify the status of that territory through the expression of their will by democratic means and through constitutional processes.

(b) The associated territory should have the right to determine its internal constitution without outside interference, in accordance with due constitutional processes and the freely expressed wishes of the peoples. This does not preclude consultations as appropriate or necessary under the terms of the free association agreed upon.

Principle VIII

Integration with an independent State should be on the basis of complete equality between the peoples of the erstwhile Non-Self-Governing Territory and those of the independent Country with which it is e integrated. The peoples of both territories should have equal status and rights of citizenship and equal guarantees of fundamental rights and freedoms without any distinction or discrimination; both should have equal rights and opportunities for representation and effective participation at all levels in the executive, legislative and

judicial organs of government.

Principle IX

Integration should have come about in the following circumstances:

(a) The integrating territory should have attained an advanced stage of self-government with free political institutions, so that its peoples would have the capacity to make a responsible choice through informed and democratic processes;

(b) The ingreation should be the result of the freely expressed wishes of the territory's peoples acting with full knowledge of the change in their [illegible] status, their wishes having been expressed through informed and democratic processes, impartially conducted and based on universal adult suffrage. The United Nations could, when it deems it necessary, supervise these processes.

Principle X

The transmission of information in respect of Non-Self-Governing Territories under Article 73e of the Charter is subject to such limitation as security and constitutional considerations may require. This means that the extent of the information may be limited in certain circumstances, but the limitation in Article 73e cannot relieve a Member State of the obligations of Chapter XI. The "limitation" can relate only to the quantum of information of economic, social and educational nature to be transmitted.

Principle XI

The only constitutional considerations to which Article 73e of the Charter refers are those arising from constitutional relations of the territory with the Administering Member. They refer to a situation in which the constitution of the territory gives it self-government in economic, social and educational matters through freely elected institutions. Nevertheless, the responsibility for transmitting information under Article 73e continues, unless these constitutional relations preclude the Government or parliament of the Administering Member from receiving statistical and other information of a technical nature relating to economic, social and educational conditions in the territory.

Principle XII

Security considerations have not been invoked in the past. Only in very exceptional circumstances can information on economic, social and educational conditions have any security aspect. In other circumstances, therefore, there should be no necessity to limit the transmission of information on security grounds.

C DECLARATION ON PRINCIPLES OF INTERNATIONAL LAW CONCERNING FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES IN ACCORDANCE WITH THE CHARTER OF THE UNITED NATIONS. GENERAL ASSEMBLY RESOLUTION 2625 (XXV), 24 OCTOBER 1970: ANNEX

The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations

.....

Every State has the duty to refrain from any forcible action which deprives peoples referred to in the elaboration of the principle of equal rights and self-determination of their right to self-determination and freedom and independence.

Every State has the duty to refrain from organising or encouraging the organisation of irregular forces or armed band, including mercenaries, for incursion into the territory of another State.

Every State has the duty to refrain from organising instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organised activities within its territory directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force.

.....

The principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter.

No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic, and cultural elements, are in violation of international law.

No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind. Also no State shall organise, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another State.

The use of force to deprive peoples of their national identity constitutes a violation of their inalienable rights and of the principle of non-intervention.

Every State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State.

Nothing in the foregoing paragraphs shall be construed as affecting the relevant provisions of the Charter relating to the maintenance of international peace and security.

The principle of equal rights and self-determination of peoples

By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.

Every State has the duty to promote, through joint and separate action, realisation of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle in order:

(a) To promote friendly relations and co-operation among States; and

(b) To bring a speedy a end to colonialism, having due regard to the freely expressed will of the peoples concerned;

and bearing in mind that subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle, as well as a denial of fundamental human rights, and is contrary to the Charter.

Every State has the duty to promote through joint and separate action universal respect for and observance of human rights and fundamental freedoms in accordance with the Charter.

The establishment of a sovereign and independent State, the free association or intergration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the rights of self-determination by that people.

Every State has the duty to refrain from any forcible action which deprives peoples referred to above in the elaboration of the present principle of their right to self-determination

and freedom and independence. In their actions against, and resistance to, such forcible action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter.

The territory of a colony or other Non-Self-Governing Territory has, under the Charter, a status separate and distinct from the territory of the State administering it; and such separate and distinct status under the Charter shall exist until the people of the colony or Non-Self-Governing Territory have exercised their right of self-determination in accordance with the Charter, and particularly its purposes and principles.

Nothing in the foregoing paragraphs shall be construed as authorising or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.

Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or colony.

The principle of sovereign equality of States

All States enjoy sovereign equality. They have equal rights and duties and are equal members of the international community, notwithstanding differences of an economic, social, political or other nature.

In particular, sovereign equality includes the following elements:

(a) States are juridically equal;

(b) Each State enjoys the rights inherent in full sovereignt

(c) Each State has the duty to respect the personality of other States;

(d) The territorial integrity and political independence of the State are inviolable;

(e) Each State has the right freely to choose and develop its political, social, economic and cultural systems;

(f) Each State has the duty to comply fully and in good faith with its international obligations and to live in peace with other States.

D DEFINITION OF AGGRESSION, GENERAL ASSEMBLY RESOLUTION 3314 (XXIX), 14 DECEMBER 1974 : ANNEX

Article 1

Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition.

Explanatory Note: In this Definition the term "State".

(a) Is used without prejudice to questions of recognition or to whether a State is a member of the United Nations.

(b) Includes the concept of a "group of States" where appropriate.

Article 2

The first use of armed force by a State in contravention of the Charter shall constitute prima facie evidence of an act of aggression although the Security Council may, in conformity with the Charter, conclude that a determination that an act of aggression has been committed would not be justified in the light of other relevant circumstances, including the fact that the acts concerned or their consequences are not of sufficient gravity.

Article 3

Any of the following acts, regardless of a declaration of war, shall, subject to and in accordance with the provisions of article 2, qualify as an act of aggression:

(a) The invasion or attach by the armed forces of a State of the territory or another State, or any military occupation, however temporary, resulting from such invasion or attach, or any annexation by the use of force of the territory of another State or part thereof;

(b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;

(c) The blockade of the ports or coasts of a State by the armed forces of another States;

(d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets or another State;

(e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement ;

(f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;

(g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein;.

Article 4

The acts enumerated above are not exhaustive and the Security Council may determine that other acts constitute agression under the provisions of the Charter.

Article 5

1. No consideration of whatever nature, whether political economic, military or otherwise, may serve as a justification for aggression.

2. A war of aggression is a crime against international peace. Aggression gives rise to international responsibility.

3. No territorial acquisition or special advantage resulting from aggression is or shall be recognised as lawful.

Article 6

Nothing in this Definition shall be construed as in any way enlarging or diminishing the scope of the Charter, including its provisions concerning cases in which the use of force is lawful.

Article 7

Nothing in this Definition, and in particular Article 3, could in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, particularly peoples under colonial and racist regimes or other forms of alien domination; nor the right of these peoples to struggle to that end and to seek and receive support, in accordance with the principles of the Charter and in conformity with the above-mentioned Declaration.

Article 8

In their interpretation and application the above provisions are interrelated and each provisions should be constued in the context of the other provisions.