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Secessionist Conflicts and New States

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Behind the simplistic stereotypes portraying African guerrilla conflicts in terms of greedy warlords and bloodthirsty bush rebels, there is in fact a highly strategic landscape in which guerrilla movements play a multiplicity of complex roles. One of the objects of this volume is to continue the work of Christopher Clapham (1998a) by identifying the functions that these conflicts play, both destructive and creative. For as often as guerrilla movements are tearing down someone else's authority, they are also seeking paths to stability and looking for ways to achieve their goals in an unstable environment. To this end, rebel leaders are anxious to gain the support of regional or international authorities in order to shore up their position against their rivals.

This chapter focuses on those African guerrilla groups that have secessionist aims, and the particular importance that international relationships bear on whether or not they achieve their goal of sovereignty. It addresses a basic question that is encountered in multiple areas of related scholarship on new and fragile states, international law and sovereignty, and entrenched guerrilla warfare: What range of options do secessionist groups have to attain sovereignty?

Two options are widely agreed on: a group may force its home state to recognize its sovereignty, triggering the recognition of other states; or a group may make a case to the international community that its claim to sovereignty fulfills the requirements of international law, appealing to the world to recognize their right over that of another group. The latter rarely happens because of the conservatism of international law and its roots in the consensus of existing members, each having pledged to uphold the territorial integrity of the others. Under such a system, new states have little

chance of making it on to the map. Many commentaries therefore see international law as the most obvious and obstinate impediment to African guerrilla groups seeking secession (Jackson and Rosberg 1982; Jackson 2007; Herbst 1996). I will argue, however, that international law may actually be the surest path to statehood, *even for those groups that do not legally merit sovereignty.*

How is this possible? I will show that sovereignty is not a prize won only by those who meet the correct legal standards; it is also available to groups who successfully find an alternate path, winning statehood via "legal conductors." These are legal processes, such as peace mediations or UN trusteeships, which bring secessionist groups close to the heart of the international authorities that uphold international law. In this view, international law is more electric than static, which means that finding a path to the center—a conductor—is vital. These processes are easily overlooked and underappreciated, invisible because the letter of the law is so very visible by comparison. But if they remain hidden, our understanding of secessionist conflicts, their motives and their resolution, is hampered.

South Sudan's separation from Sudan in 2011 is the most critical case highlighting the power of legal conductors and the way that these processes can influence the outcome of separatist conflicts. But before we assess the meaning of South Sudan's story, it is necessary to orient ourselves with a brief summary of secessionism and the workings of international law on the continent.

African Secessionist Conflicts

Pierre Englebert's observation in 2007 that sub-Saharan Africa has a surprisingly low number of secessionist conflicts still holds true today. Though the region has many characteristics that would favor secessionism (e.g., young states, diverse communities, and poor governance), it has relatively few conflicts that are secessionist in nature. Counterintuitively, there continue to be higher levels of secessionist conflict in nearly all other regions, aside from the long-time outlier of Latin America (Englebert 2009: 17).

Englebert accounts for this by pointing out that the legal and historical precedents surrounding the creation of new states in sub-Saharan Africa create a very small chance for groups to attain sovereignty, arguably even smaller than in other parts of the world. Thus, the rewards of preexisting sovereignty are very high, and higher still due to the relative weakness of local political institutions and markets. In such a situation, power, wealth, and security are more likely to be found in the state than anywhere else.

This means that most groups are better off trying to capture their state rather than make a new one.

Accordingly, nearly every path that African secessionist groups have taken has met with disappointment. In Oromo, Biafra, Barotseland, Casamance, and Somaliland, to name only a few territories hosting major separatist movements, secessionists have up until this point sought sovereignty in vain. They have found, like many others, that the protection of the territorial integrity of existing states is an international norm that is rarely broken.

Indeed, only a couple of exceptions to this mutual respect for existing borders have occurred in sub-Saharan Africa: the support of a few neighboring states for Biafra's failed resistance against Nigeria in the early 1960s and the only truly successful case of full secession prior to 2011, Eritrea's independence from Ethiopia in 1993 (an important exception addressed below). Potentially, the continued sympathy of the Organization for African Unity (OAU) for Western Sahara's claim to sovereignty from Morocco could also be included, though a strong case can be made that Western Sahara's claim does not require the alteration of colonial-era borders. Besides these few cracks in the wall, and the unusual case of South Sudan's separation from Sudan in 2011, which is the subject of this chapter, the barriers to secession have been too high for most to surmount.

The sources of these barriers are well known, embedded in the story of Africa's decolonization and its subsequent entry into the modern system of nation-states. They are also enshrined in international law through UN General Resolution 1514 (1960). The key principles can be restated here briefly: Decolonization began with the assertion that there must be self-determination for all peoples, but the former colonizers sought to circumscribe the exercise of self-determination and prevent its potentially limitless exploitation by also insisting on the territorial integrity of the newly formed states. Thus, Resolution 1514 admonished that "[a]ny attempt aimed at the partial or total disruption of the national unity and territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations." The document goes on to carefully and conservatively define the "peoples" who have the right to self-determination: not "historical or ethnic 'nations' but rather ex-colonial jurisdictions" as they existed at the time of decolonization—*uti possidetis* (Metelits 2004: 79).

Thus, the principle of self-determination and the commitment to territorial integrity according to colonial jurisdiction predetermined the number and borders of the new states in sub-Saharan Africa.[1] Long after decolonization ended, both the UN and the OAU, as well as its successor, the African Union (AU), faithfully supported this formula for statehood in

Africa, with very few exceptions.[2] This legal foundation and its political application worked to make separatism a rare animal, and to make the desired fruit of separatism (i.e., new states) rarer still: the political map of Africa has remained nearly unchanged since the 1960s.

Described in this light, sovereignty seems to be a prize that only those groups that fulfill the correct historical-legal requirements can attain—as if there is a doorway to statehood that only the right-shaped secessionist movements can squeeze through. Indeed it seems that many rebel groups and the scholars who study them perceive access to sovereignty in just this way. If it can be shown that the separatist group's territory fulfills the requirement of being an independent colony at the time of independence, or a federal unit of a failed federation, it has proven itself to be the required size to jump through the legal doorway to sovereignty. Accordingly, Somaliland trumpets its several days of existence as an independent colony in 1960 as the key to its future statehood; Western Sahara invokes its distinct history under Spain; and other groups like Casamance and Kabinda have sought to show that treaties of "special status" between themselves and their colonizers should merit sovereignty as well.[3] Each is seeking to fulfill the correct legal criteria to fit through the door and receive recognition as an independent state, but with little success.

In contrast to this account of secessionism, I propose a fresh analogy for gaining statehood that more accurately describes the reality facing separatists: Accessing sovereignty is more about finding the right road than fitting through the right door. In other words, if secessionist movements can access what I call *legal conductors*, processes that connect separatists to the organs of international law, this can be more important than fulfilling legal precedents.

I argue that there are several of these legal conductors that can lead to sovereignty for separatists groups: (1) decolonization, (2) internationally backed peace processes and domestic agreements, (3) UN administration of a territory, and (4) the rulings of international courts. These are roads—not precedents or criteria—that are in the hands of the major states who act as the makers and guarantors of international law. These processes are potential paths to sovereignty that secessionist groups can try to exploit, whether or not traditional historical-legal standards for statehood are met. In this view, international law is less about the letter of the law itself and more about access to the major states and international institutions whose consensus upholds the law. This is of great strategic importance for African secessionist groups, as it better clarifies their chances of attaining their goal of statehood and reveals new paths for getting there.

The potency of legal conductors can be seen in the successful secession of South Sudan in 2011 from Sudan. The Sudan People's Liberation

Army (SPLA) gained recognition for South Sudan through a legalizing process—in this case, a peace process—which its international relationships made possible.

Explaining South Sudan

The Sudan has had a long history of civil unrest, stretching back even prior to its independence. It was a prime hunting ground for slaves destined for the East, and a prize sought by the Egyptians who hoped to control the course of the Nile. Through their interest in Egypt, the British entered Sudan and administered it by relying heavily on local authorities, largely containing the laws and customs of the Arabic Muslim north and black African south within their respective regions. After the British left in 1956, the politics of independent Sudan were dominated by a tight circle of elite families in the capital at Khartoum. They were Arab by culture and descent, and chronically too weak to end the many guerrilla insurgencies in the peripheral parts of the state inhabited mostly by black Africans. Thus, nearly continuous strife plagued Africa's largest state for some forty years.

From 1983 to 2005, Sudan sunk into civil war for a second time. Khartoum sought to reshape the federal system in order to strip the South of its autonomy and implement sharia law. Dozens of southern guerrilla groups took up the fight, but one in particular, the SPLA, became a well-organized threat to the stability of the regime. In the early 2000s, the SPLA entered into a peace process with Khartoum that was internationally backed by Norway, Great Britain, and the United States. The successful negotiation of the SPLA for a referendum on independence for South Sudan in 2005, and the widespread international recognition of the new state by the international community that followed its independence in 2011, came as something of a shock to those familiar with Sudan, or more broadly, with the history of secessionism in Africa as a whole. Sudan had successfully thwarted such secessionist attempts in the past, and had managed to treat even promises for greater autonomy for its peripheral regions with extreme levity. In addition, the SPLA could not make the case that South Sudan deserved sovereignty according to UN General Resolution 1514 because it had never been an independent colony. The case seemed to clearly violate hitherto-cherished international and regional norms.

Scholars and politicians were left scratching their heads: What had happened, and what would happen next? African leaders braced themselves for the possibility of the coming of a new wave of African states. The *Sudan Tribune* (2010) reported that Idriss Déby, the president of Chad, worried aloud, "We all have a North and a South." Yet six years after South

Sudan's entry into statehood, it is clear that its example did not shake the continent in the way that some hoped for and others feared. No spike in secessionist conflict has yet been observed, and no new states have formed. The sameness that we find in the wake of South Sudan's independence prompts several important questions: Is South Sudan's case a mere aberration, as many observers have claimed? If so, how did it escape the constraints that other groups are operating under? Does its experience have little meaning for the rest of the continent?

Several rival explanations have been put forward to account for the puzzle of South Sudan's existence. Some privilege the role of international law but claim that South Sudan is evidence that international law is evolving along new lines; others see South Sudan as proof that the agendas and muscle of major powers make states, while international law sits mildly on the sidelines. Alternately, I argue that South Sudan's sovereignty was the result of access to, and skillful exploitation of, internationally sanctioned legal conductors.

Does International Law Make States?

Claire Metelits predicted in 2004 that the SPLA would "not achieve [its] statebuilding objective because of the effects of international norms" (Metelits 2004: 36). Without any independent colonial past to invoke, Metelits believed the SPLA had no chance.[4] In this view, if states are born only within the confines of international law, we should not expect any new states in Africa once decolonization has run its course. How then was South Sudan's existence and widespread recognition explained by such scholars after 2011?

Some reasoned that South Sudan's independence meant that international law was changing in favor of secessionist movements, especially for groups who had endured great suffering under their home regime. A. J. Christopher wrote that "[t]he secession of South Sudan marks a significant milestone in the political evolution of the African continent." He posited that the old legal precedents may be evolving to include a "just cause" or a "right to protect" provision which recognizes that a certain level of duration, depth, or type of oppression might abrogate a state's sovereignty and justify the recognition of the persecuted group (Christopher 2011: 125). (See also Dersso 2012 and McNamee 2012.) The former president of (unrecognized) Somaliland, Ahmed Mohamed Silanyo, also perceived this case as a turning point, stating that "[i]f the international community accepts South Sudan's independence . . . it would mean that the principle that African borders should remain where they were at the time of independence would change" (*Economist* 2011). Hence, international law still de-

termined who is in and who is out of the club of sovereign statehood, but South Sudan signaled that the dictates of that law were changing.

Other scholars emphasize *domestic* law to explain such cases (Borgen 2007 and Sterio 2010). Here, Sudan's *consent* to the South's request for a referendum on sovereignty as part of their overall peace deal is critical, and proved to be a more important legal precedent than former colonial status. Both of these lines of reasoning are tied together, accounting for the emergence of South Sudan while still respecting the critical role of legal precedent.

This emphasis on the law is not at all unfounded, as Africa's colonizers chose to create independent states in the region through legal means and channels. Decolonization was, in one sense, a sweeping legal transaction of sovereignty from colonizers to colonized (Jackson and Rosberg 1982). To weigh the merits of this interpretation, within which law is the key guardian of statehood, we should consider the cases of Eritrea and Somaliland.

Eritrea's Independence. Prior to South Sudan, Eritrea's break from Ethiopia in 1993 was the only case of a unilateral secession on the African continent since decolonization. The conflict leading up to Eritrea's break was complex. The Eritrean People's Liberation Front (EPLF) was one of many rebel groups fighting against the Ethiopian regime (and sometimes also against rival insurgencies), but by the late 1980s it emerged as the most influential. Eritrea's EPLF had at least one advantage that South Sudan's SPLA did not: from 1890 to 1947 Eritrea had been an independent colony under Italian rule. In 1952 it had entered into a federation with Ethiopia, but a decade later the agreement had been broken by the Ethiopian regime, which soon took all final powers of governance upon itself. Thus, the EPLF could claim on two fronts that Eritrea fit the correct legal requirements for sovereignty: it had both a history of independent colonial status; and it was a federal unit of a failed federation (though Ethiopia contested that claim).

From the 1970s, the EPLF had leaned into these qualifications, aiming at the old colonial borders of Italian Eritrea as the rightful borders of the new state that they hoped to create (Christopher 2011). In light of all this, Eritrea's sovereignty could be understood as the result of the tail-end of decolonization, with Eritrea realizing its historical right after a detour of failed federation with Ethiopia. But in practice, the historical record is a bit messier. Even though Eritrea could make a persuasive legal argument for its sovereignty, it did not achieve that result until the EPLF was actually strong enough to capture the Ethiopian capital of Addis Ababa in 1991. The weak and fractured Ethiopian regime was in no position to withhold

their consent, and there was pressure from interested third parties, including the United States, for the fighting to stop.

Somaliland's Failed Secession. Another instructive case is that of Somaliland, the northernmost portion of Somalia that has been self-governed for the past twenty-six years. It has yet to be recognized by the international community as an independent state, even though it can make what most judge to be a credible claim to sovereignty under international law. Peter Roethke argues that Somaliland's distinct colonial status, and its subsequent five days of independence in June of 1960, are as great a claim to sovereignty as existing African states can boast (2011). Somalilanders agree, making the case that their right to sovereignty on these grounds is at least equal to that of Eritrea, and greater than that of South Sudan. Yet, much to their frustration, Somaliland continues to go unrecognized.

Not only does Somaliland's lack of recognition hint that there is more to secession than the dictates of international law, but also even the successful case of Eritrean sovereignty reveals that fulfilling legal precedents is not enough to automatically achieve statehood. In general, legal arguments have the potential to carry us dangerously far away from political context. In response to this weakness, the other common interpretation by scholars of the SPLA's success in creating South Sudan turned away from the law and toward classic might-makes-right explanations.

Does Power Make States?

Alexis Arieff writes that "in practice, recognition in Africa, as elsewhere, has flowed from geo-strategic considerations rather than legal reasoning" (Arieff 2008). In Arieff's view, South Sudan's existence, and new states in general, is the result of political muscle, which is exercised above and outside of international law and practice when interests dictate. In this scenario, South Sudan's SPLM was lucky to be caught on the right side of the post-9/11 antiterrorism foreign policy agenda of the United States, and Sudan had the misfortune of being lumped in with terrorist circles and Islamic extremism. Mashood Issaka, a senior political officer for the African Union High Level Implementation Panel for South Sudan and Sudan, presents the strengths of this view. In the past, the African Union has been portrayed as the protector and enforcer of the territorial integrity of its members—so why did it allow Sudan's borders to be broken? In my interview with him in 2013, Isaaka responded: "Who is the African Union to decide against this?" Only as strong as its member states, the African Union was reacting to the pressure of other actors (the United States in particular) rather than acting as an almighty gatekeeper of legal precedent.

From this perspective, state-making is largely the byproduct of power politics at the highest level, or at least, it is a messy field of play in which legal precedents exist, but are often trampled upon.

Is this explanation true in the case of South Sudan? It is reported that a prominent Sudanese involved in the secessionist movement watched the 9/11 attacks on television and remarked, "If we are ever going to reach a solution, we will find it in the smoke that is coming out of this building" (Johnson 2011: 18). Indeed, nine years later, just before the 2010 referendum on sovereignty for the South was to be held, leading Southern politician Salva Kiir—wearing his iconic cowboy hat gifted to him by George W. Bush—spoke to the people of South Sudan, reminding them to thank "the American people and friends worldwide," because "it is the pressures from far away that also contributed" to the successful conclusion of the peace deal with Khartoum.[5] Indeed, a popular reflection on the importance of realpolitik in this story can be seen in the average South Sudanese's love for a US president: I was told on multiple occasions on my 2013 trip to South Sudan that there was nowhere in the world where George W. Bush was more popular.

Did power politics, and in particular US muscle, bring South Sudan into existence? Certainly, there is no doubt that the United States was critical to the eventual success of South Sudan. Hilde F. Johnson, who spearheaded the formation of the peace process for Sudan hosted by Great Britain, Norway, and the United States, wrote, "We knew that no peace effort on Sudan would have any chance of succeeding without the Americans' close involvement." The United States was key because, given its status, and particularly its power over the sanctions resting on Khartoum, it "had the broadest and most powerful set of carrots and sticks" to employ (Johnson 2011: 27). Finally, with the election of George W. Bush and the 9/11 attacks, US involvement in Sudan intensified, and its weight mattered greatly in forcing Sudan to the negotiation table. Especially for scholars coming out of the field of international relations, South Sudan was no mystery. The lesson was clear, it seemed: legal precedents do not dictate practice because great powers do.

This explanation became increasingly attractive and convenient as time passed and South Sudan's experience seemed to have little impact on the fate of other groups in sub-Saharan Africa. If international law had become more favorable toward African secessions, why had nothing changed for Somaliland or Darfur? South Sudan seemed to be better described as the odd man out, an accidental side effect of a global political game.

Intriguingly, then, though the might of the United States may have made South Sudan possible, the evidence shows that an independent South Sudan was *not* the initial or primary goal of the US State Department. US special

envoy to Sudan, Jack Danforth, for example, did not at first see self-determination for the South as a sound or desirable option. This is evident in official reports, where Danforth wrote that though self-determination carried to the point of secession "is supported by many Sudanese, . . . secession would be strongly resisted by the Government of Sudan, and would be exceedingly difficult to achieve. A more feasible option, and, I think, preferable view of self-determination would ensure the right of the people of southern Sudan to live under a government that respects their religion and culture" (Danforth 2002). Danforth's note was representative of the tone of US involvement throughout the peace process. When a draft version of the peace process protocol that included the possibility of independence for the South was ready to go before the two parties in 2001, it was the US observer, Jeff Millington, who was frantically making phone calls back to the White House and the State Department to see if the United States would support the draft. It seems that the United States had taken for granted that Sudan would never make such a concession. In the end, there wasn't time for a written clearance: Millington gave the proposal the United States's blessing after receiving oral clearance from the State Department. Even after 2002, US assistant secretary of state for Africa, Walter Kansteiner, "reiterated the State Department's position that only autonomy, not independence, was on offer" for the South (Johnson 2007). The historical record shows that though sympathy for the South was high, sovereignty for the South snuck up on the Americans.

So, though US muscle was important to South Sudan's independence, it would be an unhelpful simplification to say that the United States set out to "make" South Sudan. And though South Sudan seems to be a renegade in the face of international law, in a world where legal instruments are increasingly powerful determinants of state life, it would also be a mistake to throw out the role of the law altogether. Can these competing explanations be reconciled?

The Merit and Limitations of Law and Might Arguments

Both of these explanations have obvious merit, which creates a unique difficulty: their very strengths do not sit well together. The paradoxical explanatory value of these two schools creates a puzzling and problematic view of sovereignty in sub-Saharan Africa: Why is it that at one moment legal precedents are such significant barriers to statehood and in the next moment the interests of great states seem to sweep the law aside? Can these constraints be so powerful and so flimsy all at once?

These explanations fail to account for the full meaning of South Sudan's experience, and in fact obscure its most important lesson. Its inde-

pendence does not signal a change in international law regarding secession, nor is it wholly the result of the political interests of great states acting outside of the law. Rather, South Sudan's secession points to the importance of *legal conductors*—that is, the *processes* that provide the rare opportunity for seizing and extending sovereignty. South Sudan's legal conductor—a peace process guaranteed by great powers—was the critical vehicle for obtaining international legitimation. This process was successfully exploited by the SPLM to achieve sovereignty despite the fact that South Sudan did not fulfill the classic criteria for sovereignty, and it did so even though the United States, its most powerful ally, was not actively pursuing an independent South.

So where do we find the power of a legal conductor? The critical function of all such processes is that they carry the weight of international law and the sanction of the great powers who uphold the law, but they are also strangely independent from both of these sources. Thus, a legal process is not tied to the letter of the law or to the explicit will of the major powers that make it credible. The importance of the involvement of the United States and the international community in this story is not that these states leapt over the law, but that they brought a legalizing process within reach of the SPLA. This paradox helps explain many of the inconsistencies that plague the record of secessionist movements, all of which were highlighted anew through the strange case of South Sudan.

This also sheds light on Somaliland's predicament: though its legal claim to statehood and its track record of stability both arguably exceed the legal claims and the state capacity of South Sudan, the missing piece thus far for Somaliland is that it lacks access to the legalizing processes of the international community. Eritrea, which declared its independence the same year as Somaliland, marched on Addis Ababa as a means to secure both a military and a legal victory; it wrenched the domestic consent of Ethiopia out of its crumbling government's hands. The SPLM's long insurgency against Sudan, with pressure from outside actors, also forced Sudan to enter into a peace process that held within it the possibility of sovereignty. But Somaliland has not marched on Mogadishu, and it refuses to enter into peace talks with the rest of Somalia because it demands that its statehood must first be recognized. Unwittingly, Somaliland may be relying too much on its impressive legal case for sovereignty and not enough on the importance of legal processes. It has yet to find its lightning rod.

Indeed, accessing a legal conductor was a bit of good fortune for South Sudan that will not be easy for other secessionist groups to replicate. A strange constellation of factors and personalities drew US attention to Sudan's civil war, culminating in a major commitment to its peace talks. South Sudan's cause was uniquely amenable to US sympathies: its

long history involving slavery and oppression, the mistreatment of Christians by Muslims and Africans by Arabs, and its engagement in a civil war that sought democracy and religious freedom against sharia law. Though these touch points hardly painted the full picture of the actual conflict or people involved, they reflected fragments of reality well enough and powerfully enough for many Americans and the George W. Bush administration to rally to the cause. John Garang, the US-educated and very charismatic leader of the SPLA, was a master communicator and an easy partner for the United States to work with. On the other hand, the United States had been the key sponsor of sanctions against Khartoum for over a decade, and Omar al-Bashir not only freely heaped abuse on the West to shore up his own position, he also of course had ties to extremist groups. Rarely did the immediate interests of the United States and its moral compass align with such seemingly perfect overlap. The 2002 Sudan Peace Act, a relief bill offering US$100 million to areas of the South that were in crisis, was supported by a broad swath of the US Congress, from the Congressional Black Caucus to Evangelical Christians (Johnson 2011: 25). As seen above, support for the South was not explicitly linked to sovereignty for the South, but this support was enough to bring the SPLA leadership into contact with a potential road to sovereignty—a peace process guaranteed by the international community—an opportunity that was skillfully taken advantage of.

The remainder of this chapter will explore the concept of a legal conductor, the forms that it may take, and the implications that this observation has for other separatist groups and separatist conflicts.

Types of Legal Conductors and Their Accessibility

If legal processes, activated by powerful states, are a critical part of accessing sovereignty in the modern state system, what are the different forms that these processes might take? What determines what kinds of processes are available? And what is the likelihood of being able to walk through any one of these gates?

Recent cases suggest that at least four such processes exist: decolonization, international administration, the rulings of international courts, and, most importantly for South Sudan, domestic agreements.

Decolonization

Historically, this particular process, by which Africa's colonizers released their control over their territories and created states in their place, was an

extremely potent legal conductor. It produced statehood on a scale not equaled before or since. However, the conditions of decolonization are not easily transferable, since the international political relationship of colonization has now all but disappeared from the world stage. Though there are some stragglers that may still be able to make such a claim (mostly small islands and micronations) very few groups are left today that could potentially access decolonization as a vehicle to attain sovereignty.

This helps to explain why Somaliland has thus far trumpeted its former colonial status in vain. Decolonization was available and successfully accessed by the region in 1960 when it briefly claimed its independence, but Somaliland cannot retap into that process now that it has left behind its active colonial relation to Great Britain.[6] Therefore, it can only invoke decolonization as a *precedent* but not as a *process*, and, as shown above, precedents by themselves are not enough. In other words, a colonial past is not as important as the process of decolonization itself, which requires an active international relationship between the colonizer and the colony.

International Administration

Though decolonization came with a historical expiration date, as we have seen, similar conditions have been recreated on the rare occasions when a region is internationally administered by the UN. The sample size for this road is very small: only Kosovo and East Timor have experienced full "transitional" or "interim" administration by the UN within the past several decades.[7]

UN administration "internationalizes" the final status of a territory in a way akin to decolonization. The de facto status of the territory and the immediate power over the region both change. However, though international administration seems capable of superseding the sovereignty of the parent state, it does not make it disappear entirely. A conflict over the domestic jurisdiction of an already recognized state is nearly inevitable under such circumstances, which is a problem that decolonization did not encounter in the same way.

Outcomes of international administration, then, can be more controversial than decolonization, examined above, or domestic agreements, which we shall turn to shortly. It is also hard to predict when this conductor may be accessed, since the bar to "meriting" international administration seems extremely high in terms of human suffering and also capriciously dependent on the quickly shifting international political context and interests of great powers.

Occasionally, however, the stars do align—as with Kosovo in 1999 and in the case of East Timor in 2002.[8] So we might ask: Should African

secessionist groups consider clamoring for UN administration? Though such a course would be unpredictable and unlikely, it has been a fruitful path to sovereignty in the recent past.

Rulings of International Courts

Settlements by the International Court of Justice (ICJ), the world court of the UN, may be a potential conductor as well. Born in the aftermath of World War II at the behest of the Allied powers, its main function is to settle disputes between states and prosecute war crimes. Thus far, however, its role in those civil conflicts concerning secession has been limited for several reasons.

First, its rulings are difficult for secessionist groups to attain, because only recognized states and the UN can bring cases before the ICJ (Charter of the United Nations, 2014). Though the ICJ usually only arbitrates cases between states, still, its decisions have an effect on nonstate actors, and states can appeal on behalf of nonstate actors. However, there are few precedents for this. Thus, Somaliland has been unsuccessful in securing an ICJ ruling to settle its border disputes with neighboring Puntland because neither one has sovereign status (Farrell 2012: 817). Similarly, even when full-fledged states bring forward questions of sovereignty, the ICJ has managed to duck the issue. Western Sahara has sought to use a 1975 ICJ ruling that eliminated rival claims to sovereignty over the region in order to secure its statehood, but without a stronger endorsement of its own claim and the power to enforce it, the process has stalled indefinitely (Cahvez-Fregoso and Živković 2012).

At this point in history, the ICJ lags behind the parent state and major international powers in its de facto power over territories, and though it has been increasingly active in other areas, it has chosen to avoid judgment on substantial questions regarding recognition. Unless a fundamental shift in power and will occurs, it is unlikely to be an often-used gate for sovereignty-creation in the future.

Domestic Agreements: South Sudan's Process

The final and most important legal conductor is the domestic agreement, which was the key factor in South Sudan's independence. Domestic agreements include any agreement where the parent state grants a secessionist group a piece of its own sovereignty. This is the most straightforward legal conductor, because it occurs primarily at the level of domestic law and politics rather than at the international level (Borgen 2007: 485). However, though their presence is not required, major powers on occasion may

choose to become heavily involved in shaping the outcome of these domestic processes.

There is considerable variation within this category: If the parent state is willing, such agreements can be achieved entirely through political means.[9] But if the parent state is reluctant, such agreements can be reached as part of a political settlement to end violent conflict within the state (i.e., a peace process). For instance, as discussed above, Eritrean rebels only obtained the consent of their parent state of Ethiopia to secede by achieving a military victory and seizing control of the capital. The circumstances surrounding Eritrea's statehood were immensely complex—a multifaceted civil war, the collapse of Ethiopia's central government, and the influence of outside powers all played a part. But the process by which sovereignty was transferred was still in the end the result of a domestic agreement.

South Sudan's Comprehensive Peace Agreement of 2005 also falls into this category of legal conductors because it was a direct negotiation with Sudan. But there is no magic in a peace process of this kind if it is not credible. South Sudan's second civil war is often referred to as "Africa's longest civil war," but it is important to remember that its peace process was also possibly "the longest running peace process." Until the early 2000s when Norway, Great Britain, and the United States became the key hosts of the talks, these processes yielded little. With the support of these great powers, Sudan's peace process became a viable legal conductor for sovereignty, and the leadership of the SPLA saw and seized that possibility with great acuity.

Domestic agreements such as peace processes are the most promising potential conductors in that any group can attempt to access them, through either political channels or armed insurrection. In practice, of course, the inequality in power between the parent state and most secessionist groups still makes the likelihood of obtaining sovereignty very slim. However, when influential third parties become involved in a domestic peace process, there is the possibility that their additional leverage may be used in favor of the secessionist group, as in South Sudan.

Conclusion

The case of South Sudan is an excellent reminder that though legal criteria and historical precedents are powerful, and may be particularly powerful in sub-Saharan Africa, they are not merely static barriers that can never be overcome, nor are they automatic keys to statehood. International law is more malleable than it at first seems, and it also requires activation. Its power is real, but it can be more effectively harnessed through gaining ac-

cess to a legal process than through building a legal case. Legal conductors are thus of critical importance for all secessionist groups, and I would argue that such processes are the turning points for unlikely cases of sovereignty, such as the case of Kosovo.

However, in sub-Saharan Africa, where the legal barriers to statehood seem to be more powerful than elsewhere, and yet the capacity of many states is very low and intrastate conflict is often high, legal conductors may be even more useful than in other parts of the world.

In conclusion, South Sudan was "exceptional" in that it did not clearly create a new precedent nor did it destroy old ones. It did not, therefore, unleash any major domino effect in the region. But its exceptionalism *did not* mean that South Sudan's creation occurred outside of the bounds of the law. Rather, South Sudan was unusual in that it was able to access the legitimizing power of international law in a way that few other secessionist groups have been able to do. The presence of a legal conductor, animated and influenced by key members of the UN Security Council, was the key access point for South Sudan.

So how does this help us understand African guerrilla conflicts that are secessionist in nature, and the many goals behind guerrilla violence? Citing South Sudan as evidence of a new precedent that is more favorable toward secession is unlikely to help other African secessionist groups, but following South Sudan's example in seeking out legal conductors may increase the chances for groups in Africa and elsewhere to obtain statehood.

For Somaliland, applying this lesson may mean entering into an internationally sponsored peace process with Mogadishu if a sympathetic and influential backer such as Great Britain could be persuaded to be an integral part of it. For Western Sahara, a more powerful channel than the ICJ ruling may need to be found; perhaps pleas for UN administration of the region would bring the force of international law to the area even though the letter of the law has proven stagnant.

Recognizing the existence of legal conductors and their sovereignty-creating potential could be good news for separatists—and for those concerned with securing peace in regions long troubled by separatist violence. Ultimately, this widens the range of possibilities for resolving deeply entrenched secessionist conflicts.

We should remember, though, that South Sudan's path to statehood also has some less hopeful implications. In order to bring to the table those who have control of the legal processes by which statehood can be attained, a horrendous humanitarian crisis was needed. Without such a lengthy civil conflict and high casualty count—two million dead in the second civil war alone—South Sudan would have been unlikely to gain the international response it needed. The cost of accessing legal conductors

may sometimes be unbearably high. Indeed, the SPLA was operating under a perverse incentive: its access to international actors depended on the *continuance* of those terrible conditions that had first aroused international sympathy. And even dire domestic conditions may not have been enough without a nudge from geopolitics.

Yet South Sudan does exist, and even though its brief time as an independent state has been plagued with in-fighting and corruption, its sovereignty has stuck. This must all be taken into account if we are to understand the contours of the strategic landscape within which African secessionist movements will make their choices in the future.

Notes

1. "Past existence as a colony is indeed the unique principle guiding contemporary recognition as a sovereign entity in Africa" (Englebert 2009: 61).

2. Boots have been on the ground as well: France has intervened on several occasions to protect Chad's territorial integrity (and French interests); international forces turned against Katanga secessionists in the Congo; and the British supplied Nigeria with arms to help regain control over Biafra. Yet, even here we find hints that the principle of territorial integrity, if powerful, is not wholly inviolable: Englebert notes that in the early 1960s the Ivory Coast, Gabon, Tanzania, and Zambia all recognized Biafra, despite the OAU Charter (Engelbert 2009).

3. Indeed, Somaliland has mastered the precedent-based argument: the legal case for Somaliland's independence is even laid out crisply on the government's home website, which highlights in particular Somaliland's period of independence at the time of decolonization, though it lasted less than a week. In a departure from the tone and organization of other parts of the website, "the Legal Case" section reads like a carefully constructed lawyer's brief and, incidentally, is accompanied by a photo of revered-looking old books. The terms *title, precedents,* and the Latin phrases of jurisprudence are used, and the Vienna Convention, the Montevideo Convention, and the Consultative Act of African Union are all invoked alongside UN resolutions. Here, Somaliland is making its case through the medium of international law before the court of the world.

4. "What facilitated the success of the EPLF [Eritrean People's Liberation Front], and will, in turn, act as a barrier for the SPLA? The answer lies in the international norm of prior statehood. Specifically, UN Resolution 1514 of 1960" (Metelits 2004: 78–79.)

5. The Comprehensive Peace Agreement of 2005, which contained a provision that would allow the South to have a referendum on separation and independence after six years of unity with Sudan.

6. A challenge to this view might be the case of the short-lived Mali Federation, which joined two former French colonies, but only lasted for two months in 1960. After the dissolution, each former colony was recognized as sovereign: Mali and Senegal. However, the breakup between Mali and Senegal was mutual, and it was recognized by both parties. Somaliland, by contrast, has yet to receive the recognition of Mogadishu.

7. Many states, however, have been affected to a lesser degree by different kinds of support, observation, and peace missions led by the UN, which often include administrative elements as well. Ralph Wilde sees many precedents leading up to the full-

fledged administration that we find in Kosovo and East Timor, from the UN's role in Bosnia-Herzegovina and Croatia in the 1990s all the way back to the administration of Berlin after World War II. He argues persuasively that this is not a new development in international life, and that this is a process that can also occur in degrees (Wilde 2010).

8. It could also be argued that East Timor is one of the very last instances of decolonization—as its status has been in question according to the UN since 1975 when Indonesia invaded it. In that case, the process of decolonization and that of international administration were both at work. In contrast, the intervention of a single state is not likely to garner the kind of support and widespread recognition needed for statehood. Such interventions do not sufficiently internationalize the problem or utilize established legalizing channels, thus such interference looks far more like old-fashioned conquest than it does like international consensus expressed through international law. Russia tested these waters in March of 2014 when it unilaterally acted to secure the Crimea, organized a referendum on reintegration into Russia, and finally annexed the territory. Though Putin has charged that international outcry against the annexation has been hypocritical and cites Kosovo as a precedent for the action (whose sovereignty, ironically, Russia has yet to recognize), only five states have formally supported the transfer of sovereignty to date.

9. Scotland's unrealized opportunity for sovereignty in 2014 is a perfect example of the latter, as the Scottish Referendum Act of 2013 was wholly the result of a domestic political process (Sterio 2010: 143). The domestic law of some federated states may even contain specific provisions for such a process latent within their constitutions.