



وزارة الشؤون الخارجية والتعاون الدولي

Legal Case

Legal Case, Sustainability, and Contributions

Legal Case for Sovereignty

Somaliland claim of sovereignty and 23 years' practice of independence suffer from lack of proper information, pervasive misunderstanding, and anxiety of opening up a Pandora's Box. Considering objectively Somaliland's case for sovereignty and diplomatic recognition dispels these problems.

- Somaliland's claim for independence is based primarily on historical title:
 - As a British Protectorate, it had a colonial history different from that of the former Italian colony of Somalia;
 - It attained independence from Britain in 1960 before it voluntarily entered into the failed union with Somalia;
 - The universal referendum of the Somaliland citizens affirmed by an overwhelming majority (over 97%) Somaliland's decision to reclaim its independence.
- Britain granted and recognized the independence of Somaliland in 1960 before Somaliland opted as a sovereign nation for unification with Somalia—Somaliland like other countries (Egypt and Syria, Senegal and Mali, Senegal and Gambia for instance) should be allowed to opt out of the failed union
- Somaliland's independence restores the colonial borders of the former British Protectorate of Somaliland and therefore does not violate the OAU Charter or the Consultative Act of the African Union principle that former colonial borders should be maintained upon independence.
- The validity of the 1960 Act of Union was deeply flawed;
 - In June 1960, representatives from Somaliland and Somalia each signed different Acts of Union agreeing to different terms of unification,
 - The official Act of Union was passed retrospectively in January 1961 by the new National Assembly in which Somalia was overrepresented,
 - In the referendum of the new Constitution of the Somali State held in June 1961, the Somaliland population did not vote due to discontent with its intent, method, and management. Only less than 17% turned out and an overwhelming majority of them voted against the so-called Act of Union.
- The unification of Somaliland and Somalia failed to meet domestic or international legal standards for treaty formation; the Act of Union falls short of the Vienna Convention's legal requirements for a valid international treaty.
- Somaliland meets the criteria for statehood as set by the 1993 Montevideo Convention, generally considered a norm of customary international law:
 - **A permanent population¹**

¹ Somaliland has a population of approximately 3.5 million of nomadic, agrarian, and commercial sectors.

- **A defined territory²**
- **Effective Government³.**
- **Capacity to enter relations with other States⁴**
- The population of Somaliland suffered chronic inequity and injustice during the union with Somalia; opposition by discontented military officers to the union that started in 1961, less than a year after the union, gathered mass support in the 1970s and led to armed opposition in the 1980s.
- The indiscriminate bombardment of the military regime on population centers and the genocide that followed in 1988 resulted in the 18 May 1991 reclamation of independence and affirmation of the right for self-determination

Sustainability and Contribution to Peace

Granted that history and legal case alone do not confer sovereignty, Somaliland is sustainable economically, politically, and if necessary militarily. Somaliland has large oil, coal, and mineral deposits which thus far remain unexploited. While the international community deployed massive material and human resources on Somalia since 1991 with little success in bringing peace and political order, Somaliland has during this period restored peace, democratic self-governance, and thriving economy in its territory. It also contributes to regional and international wellbeing by:

- Living in peaceful co-existence with its neighbors and hosts a significant flow of economic or political refugees;
- Plays a critical role in regional security and provides a center of relative calm at one of the world's most troubled and threatened regions;
- Because of its democratic self-governance, its government enjoys legitimacy and peaceful transition of power;
- By national commitment and practice, it entrenches democracy in the Horn of Africa, offering inspiration and example for a region known for military tyranny and violence;
- Although non-recognition prevents other states and international organizations from providing necessary military assistance, Somaliland effectively controls with its navy and armed forces piracy, terrorism, people and arms trafficking, financial crimes, and other crimes,
- Its population and government takes seriously the principle of co-existence with others and carry out in spirit as well as letter with agreements they enter with other states, companies, and individuals,
- Somaliland's bottom-up and indigenous method of conflict resolution can offer a missing solution to Somalia's problems

Acknowledged Rights of Somaliland

² The Treaties in the late 19th century established the territory of Somaliland Protectorate, Britain granted independence in 1960 to the population of this territory, confirming its borders.

³ Somaliland has a central and legitimate government which exercises effective control over the majority of its territory. It has held internationally recognized free and fair elections, most recently in June 2010, and has effective government institutions including a constitution approved by a popular vote, a democratically elected President, national parliament, and an independent judiciary

⁴ Despite its unrecognized status, Somaliland has entered into informal and formal relationships with a number of other states, including Ethiopia, the United Kingdom, Denmark, Sweden, Kenya, and Djibouti. It also has achieved de facto recognition from a number of other nations in the world.

There is a growing body of expert opinion backing greater international recognition of Somaliland and changes to the status quo of non-recognition. For instance,

- In 2003, the South African Department of Foreign Affairs issued a legal opinion affirming “it is undeniable that Somaliland does indeed qualify for statehood, and it is incumbent on the international community to recognize it.”
- In 2005, the African Union fact-finding mission to Somaliland reported that Somaliland is a unique one which should be judged “from an objective historical viewpoint and a moral angle vis-à-vis the aspiration of the people.” The mission recommended that the African Union should “find a special method for dealing with Somaliland” and confirmed that Somaliland’s status was “not linked to the notion of opening a Pandora’s Box” in Africa
- In 2006, the International Crisis Group Report stated “The African Union’s challenge is to provide timely, neutral leadership in order to ensure a just, peaceful and enduring settlement [for Somaliland and Somalia] before confrontation and violence becomes the only option imaginable for both parties.” The International Crisis Group recommended that at least Somaliland should be given an AU Observer “interim status analogous to the observer status is has granted 31 non-African states or the status of the Palestinian Authority at the UN.
- In 2008, the African Union sent a follow-up fact-finding mission to Somaliland and found a similar widespread conviction among Somalilanders of their country’s “irreversible” independence and outright rejection of the notion of union with Somalia.” It added: “For Africa, Somaliland’s recognition should not threaten a ‘Pandora’s box’ of secessionist governance” and that “recognition [of Somaliland], far from being source of insecurity, can be a source of enhanced state capacity.

Cost of Continued Neglect

The people of Somaliland waited patiently for over 23 years for African countries and generally the international community to diplomatically recognize Somaliland as a sovereign state by history, legal grounds, and reciprocal interest. The people and their government shall continue to do all they can to attain their legitimate rights by peaceful means, as they have done for nearly a quarter of a century. But there is a national, regional, and international cost of continued neglect of Somaliland’s rights of self-determination and constructive role in the region. Diplomatic recognition allows Somaliland to:

- Obtain direct aid and loans to build on its successes; lack of diplomatic recognition leaves it starved of international assistance, cooperation, and investment
- Participate in the international forums as a legitimate member; lack of participation freezes it as a state with de fact but not de jure state
- Allows one successful model of African conflict resolution and democratic self-governance to thrive; denying recognition longer snuffs it in the bud;
- Contribute peace and co-existence in the region; continued non-recognition not only diminishes this contribution but also threatens the very existence of peaceful and democratic Somaliland.

Given these facts, can the people of Somaliland accept in equanimity the international community’s justice and goodwill?

- When the so-called Government of Somalia that does not control its capital city even with the help of foreign peacekeeping forces enjoys diplomatic recognition, giving its officials unlimited access to the benefits of recognition,

- While Somaliland that effectively controls its territory, successfully practices democracy, and contributes regional peace is kept diplomatically unrecognized and denied participation in the African Union and other organizations.

Lastly, is it not a tragic or laughable irony when:

- the President of Somalia—locked in his palace in Mogadishu, protected by foreign peacekeeping forces—claims to the world, with neither modesty nor shame, that he alone is the sovereign of Somaliland that on its own restored peace, controls its territory, and has governed itself democratically for over 23 years?

Still, since 2012 the Somaliland Government continues to engage in peaceful dialogue with Somalia's representatives to settle the question of sovereignty in the hope of turning a new chapter of co-existence, mutual respect, and collaboration.

- We shall see if Somalia's Government controlling only a sliver of its colonially defined territory has the will and wisdom to give up the wish to keep "hostage" the people of Somaliland. The wish finds support neither legally nor objectively but by the diplomatic recognition conferred to it yet denied to Somaliland.
- The Somaliland Government works patiently until the international community sorts out the *facts* of history and on the ground from the *fiction* conveniently exploited against its existence and interest.