



The recognition of Somaliland

The legal case



"[I]t is undeniable that Somaliland does indeed qualify for statehood, and it is incumbent on the international community to recognise it... Any efforts to deny or delay would not only put the international community at risk of ignoring the most stable region in the Horn, it would impose untold hardship upon the people of Somaliland due to the denial of foreign assistance that recognition entails."

Legal opinion issued by the South African Department of Foreign Affairs (29 April 2003)

Somaliland fulfils all "the normative criteria of statehood as they have traditionally been applied in international law."

A Yannis, *State Collapse and the International System – Implosion of Government and the International Legal Order from the French Revolution in the Disintegration of Somalia*, (Geneva: IUHEI, 2000), p.129

"Somaliland has a very good case for legal recognition under the rules of the Organisation of African Unity and, more recently, under those of the African Union."

Michael Walls & Steve Kribbe, 'Beyond Polarity: Negotiating a Hybrid State in Somaliland', *African Spectrum* (Vol. 45, Issue. 1, 2010), pp. 31-56

Historical case

- **Somaliland's claim for independence is based primarily on historical title** – its separate colonial history, a brief period of independence in 1960, the fact that it voluntarily entered into its unhappy union with Somalia and the questionable legitimacy of the 1960 Act of Union.
- **Somaliland's independence restores the colonial borders of the former British Protectorate of Somaliland and therefore does not violate the principle of *uti possidetis*** – that former colonial borders should be maintained upon independence – which is enshrined in the Consultative Act of the African Union.
- **The separation of fused states into their former territories has precedents in Africa:**
 - Egypt and Syria were joined as the United Arab Republic (1958 - 1971).
 - Senegal and Mali were united as the Fédération du Mali (1959 - 1960).
 - Senegal and Gambia were merged in the SÉNÉGAMBIA Confederation (1982 - 1989).
 - Eritrea officially separated from Ethiopia in 1993.
- **Britain granted and recognised the independence of Somaliland in 1960.** On the basis that Somaliland voluntarily opted for unification with Somalia, Somaliland should also be allowed to opt out.
- **The validity of the 1960 Act of Union is highly questionable:**¹
 - 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 a referendum on the new Constitution of the Somali State, held in June 1961, a turnout of less than 17% in Somaliland, and an overwhelming rejection of the document by those that voted, demonstrates significant discontent with the union.

1. J. Drysdale, *Somaliland: The Anatomy of Secession*, (London: Haan Associates, 1991)



- **The unification of Somalia and Somaliland failed to meet domestic or international legal standards for treaty formation**, and the Act of Union falls short of the Vienna Convention's legal requirements for a valid international treaty.

Attributes of statehood

The main criteria for statehood remain those set by the 1933 Montevideo Convention, generally considered a norm of customary international law:

“The State as a person of international law should possess the following qualifications:

- (a). a permanent population;***
- (b). a defined territory;***
- (c). government; and***
- (d). capacity to enter into relations with the other states.”***

Somaliland unequivocally meets each of these established legal criteria.

a. A permanent population

- The Republic of Somaliland has a population of approximately 3.5 million. Its capital Hargeisa has a permanent estimated at 1.1 million.
- The nomadic nature of many of Somaliland's inhabitants, and the consequent flow of the population in and out of the territory, has no impact on the legal definition of permanent population.

b. A defined territory

- The British protectorate established clearly defined borders for Somaliland by treaties in the 19th century. These borders were confirmed upon Somaliland's declaration of independence in 1960.
- The contestation of the eastern border does not invalidate statehood.

c. Effective government

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

d. Capacity to enter into relations with other States

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