

SOMALILAND- A UNIQUE CASE OF STATEHOOD AND RECOGNITION

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ABSTRACT

The Republic of Somaliland, a self-declared region separate from Somalia, has a fragile democracy and ever since the political and governmental crackdown in Somalia in early 1990s, it has often been the subject of disputed statehood and international recognition. A 'failed' state involves a breakdown of the domestic rule of law generally triggered or accompanied by internal violence, amongst other reasons. However, the term "failed state" does not specifically carve out a succinctly defined situation and is rather a very broad label for a phenomenon which can be interpreted in many ways. Further in the international scenario, states gain statehood easily by fulfilling the Montevideo criteria, but they are not accorded recognition since the geopolitical interests of the western states and organizations overshadow the individual factual circumstances. This article aims to apply the concept and phenomena of criteria of statehood to the state of affairs at Somaliland and analyze the backdrop in which Somaliland is facing difficulty in obtaining recognition from other States. Struggling in keeping its statehood intact, the state is combating the threat of internal combustion, pirates, lack of funds and hesitance from the international community in giving it de jure recognition. The article concludes with reflections on the role of African Union in assisting Somaliland receive recognition, the integral relationship between theories of international recognition and Montevideo criterion and the future prospects for the state of Somaliland.

STATE OF SOMALILAND: INTRODUCTION AND HISTORY

The self-declared Republic of Somaliland in the horn of Africa announced its independence from the rest of Somalia in May 1991, and has been making all efforts to seek recognition from the international community since then.

The Somali Republic, formed after the Italian Somaliland and British Somaliland Protectorate united in 1960, is internationally tainted as the hub of misuse of power, chaos and pirates but not many know that it has three very distinct regions. The first region is Somalia which forms the southern half of the Mainland battling the pandemonium created by the warlords and

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pirates. Puntland, to the north of Somalia is an autonomous region which has a central government but is not seeking freedom or independence. The third region of Somaliland, which is relatively untroubled, has formed the subject of many vexed discussions in the international community.

The Republic of Somaliland did enjoy complete freedom for few days as an independent state in 1960 before the British and Italian Protectorate Somaliland decided to merge. Even after the lands united, over the span of years, the leaders in Somalia had a tough time trying to keep control of Somaliland. In 1988, a full-scale civil war broke out between the Mogadishu-based government and Somaliland rebels². In the year 1999 the government of Gen. Mohamed Siad Barre was ousted by a coalition of opposition groups leading to a state of complete anarchy in Somalia. Following a conference between the leaders of Somali National Movement and elders of the northern clans, Somaliland in a bid to re-assert its sovereignty unilaterally declared itself independent from the Mainland Somalia. Somaliland's withdrawal from the union and re-assertion of its sovereignty did not violate any international law and at that time even the UN Security Council saw no reason to interfere³.

This secession has never been internationally recognized and it was 10 years after the secession that the people of this autonomous state voted in a referendum on independence. The results of this referendum showed 97.9% of the population in favor of independence, thereby refuting the possibility of Somaliland reuniting with mainland Somalia. President Mohamed Egal of the region of Somaliland claimed that Somaliland was no longer just a collection of clans but a nation in its own right⁴. This referendum further reinstated the basic human right of the Somalilanders to seek self determination as contained in the Charters of the African Union and of the United Nations.

The only question that remains unanswered now is why a state which after having unilaterally achieved and enjoyed independence for twenty five years and having backed the same by way of a referendum, remains unrecognized by the international community despite having established a relatively stable and economical legal and political order.

² Marc Lacey, *The Signs Say Somaliland, but the World Says Somalia* , Hargeysa Journal, June 5,2006 ;Available at <http://www.nytimes.com/2006/06/05/world/africa/05somaliland.html>

³ Somaliland official website, available at <http://recognition.somalilandgov.com/history/>

⁴ *Somaliland: No way back*, 4 June, 2001; Available at <http://news.bbc.co.uk/2/hi/africa/1367554.stm>

STATEHOOD AND SOMALILAND:

Article 1 of The Montevideo Convention on Rights and Duties of States requires the states to possess a permanent population; a defined territory, government and the capacity to enter into relations with the other states in order to qualify as a person of international law.

The Arbitration Commission of the European Conference on Yugoslavia in Opinion 1 declared that “the state is commonly defined as a community which consists of a territory and a population subject to an organized political authority”. It was also noted that the form of internal political organization and constitutional provisions constituted “mere facts” although it was necessary to take them into account in order to determine the government’s sway over the population and the territory⁵.

The Republic of Somaliland unequivocally meets the first condition since it has a population of approximately 3.5 million with the capital city of Hargeisa having a permanent population estimated at 1.1 million⁶. It is however important to note that even this most basic requirement has been overlooked in the case of the Vatican which despite not having a permanent population is recognized by many as a state⁷. Secondly, even though Somaliland had its borders clearly defined by treaties in the 19th century, this requirement of succinctly defined territories has also been bent in the case of recognizing the states of Israel and Albania in 1913 which had unsettled borders. As far as the criterion of having a government is concerned, Somaliland has a central government which has been successful in exercising control over majority of its territory. It has held internationally recognised free and fair election, in 2003 and 2010, and has government institutions including a constitution, a national parliament, a democratically elected President and an independent judiciary⁸. Lastly, Somaliland despite not being formally recognized by foreign states has entered into informal and formal relationships with a number of other states, including the United Kingdom, Sweden, the United States, and Kenya, thereby establishing that it has the capacity to enter into relations with other states. Numerous delegations from the European Union are sent to Somaliland to discuss future cooperation and Ethiopia also has an established office and diplomatic Counsellor in Hargeisa. More so, the Somaliland government has handed out a number of oil licences to exploration groups like Genel Energy, an Anglo-Turkish firm, in

⁵ Malcom N.Shaw, *International Law*, pp 198, Cambridge University Press, 6th edition, 2008

⁶ Available at <http://recognition.somalilandgov.com/legal/>

⁷ Ryan Delaney, *De-recognition of States: A Different Approach to Failed States*, *Standford Journal of International Relations*, (2008)

⁸ *The legal case, Somaliland* ; Available at <http://recognition.somalilandgov.com/legal/>

recent years, and is about to sign the biggest business deal in its 22-year history⁹. With little that the country receives in the name of funds, it has also managed to build schools, hospitals, infrastructure and other modern institutions. There is enough evidence to support the stand that Somaliland has indeed made notable progress in building security, peace and constitutional democracy within its de facto borders.

RECOGNITION AND ITS EFFECTS:

Recognition in international law bestows a plethora of both responsibilities and rights to recognized states. More often than not, recognition is not merely applying the relevant legal matrix to a factual situation for sometimes a state might not want consequences of recognition to follow. For instance, USA for a long period of time did not recognize People's Republic of China despite knowing the obvious fact that effective control was exercised over this defined territory; it just did not want the legal consequences of recognition to come into effect. Amongst the two theories with regard to the nature of recognition, is the constitutive theory which stems the importance of recognition as an essential element for a new state to be a full fledged subject of international law. Whereas the declaratory theory which has a more pragmatic footing stipulates that a new state will be a subject of international law by its own efforts and will not have to depend on the will or recognition of the other states. If the declaratory theory was to be given effect to it shall indeed be correct to say that Somaliland is an independent state capable of enjoying the rights and duties bestowed by international law.

Somaliland is unrecognised by any state or international organisation, although a number of dealings and agreements with its government have taken place by foreign states. The issue of recognition of Somaliland is multifaceted; being not just a political or legal question it is also an existential issue. While most of the Somalis and western states see the Somali republic as a unified one the Somalilanders refer to unity only as part of their scarred yesterday. The claim of sovereignty of Somaliland and being recognised as an independent state capable of maintaining a democracy has now become a matter of identity. On account of its non recognition, the state of Somaliland has been unable to receive funds and monetary aids from other states and international organizations which have forced the entity to rely more heavily than other states on its internal revenue to boost development and provide for the needs of the people.

⁹ *Cant get no recognition*, The Economist, Jan 9th 2014; Available at <http://www.economist.com/blogs/baobab/2014/01/somaliland>

AFRICAN UNION AND THE INTERNATIONAL COMMUNITY

As is rightly said that recognition is highly political and is given in a number of cases for purely political reasons¹⁰, it is also important to note Somalia's bid in ensuring that this autonomous region of Somaliland does not receive recognition from the international community. While attempting to exercise control over its airspace, Somalia is not eager to lose the north as that would leave a very unstable Somalia unable to sustain itself in the wake of such crisis and violence. It also challenges the legality of Somaliland handing oil licences on the ground that such right vests with the federal government of Somalia. The root cause why the western governments are hesitating to grant recognition to Somaliland is nothing but inaction on part of the African Union (AU) to do the same. It is strange that most western countries have taken a position of placing such a great importance to the AU when it comes to Somaliland recognition¹¹. The African Union apprehends that acknowledging Somaliland might set up a precedent for other separatist bids and none of its member countries have shown any inclination towards granting it recognition. The current crisis in newly independent South Sudan makes this even more unlikely¹². Further there are also fears that recognition would lead to the fragmentation and disintegration of Somalia or other AU member states. This instability that might arise and continue in the region if Somaliland was allowed to succeed from Somaliland completely, concerns the AU.

As far as the stand of other nations is concerned, African Union's insistence on holding on and maintaining the borders has created hurdles for Somaliland to receive recognition and support from states like Ethiopia which would economically benefit greatly by the trade routes offered by Somaliland. While many European Countries are supportive of the sovereignty of Somaliland others are afraid that this may again be a precedent for their own separatist movements.

While it will not be incorrect to say that Somalia shows characteristics of a failed state since it has not had a functioning central government since 1991 when warlords overthrew a long-time dictator until Presidential elections were held in 2012, drawing a parallel in this context with Somaliland shall be absolutely wrong.

¹⁰ Malcom N. Shaw, *International Law*, pp 614, Cambridge University Press, 6th edition, 2008

¹¹ *Somaliland: New Foreign Policy towards African Union to Bring Recognition?*, July 15, 2015; Available at <http://unpo.org/article/18376>

¹² Supra note 8

MONTEVIDEO CRITERION AND THEORIES OF RECOGNITION

In International Law, the two most common schools for state creation are the constitutive and declaratory theories of creation of statehood. The constitutive theory was the standard nineteenth-century model of statehood, and the declaratory theory was developed in the twentieth century to address shortcomings of the constitutive theory¹³. The Constitutive Theory states that recognition of an entity as a state is not automatic. An entity becomes a state and exists in a legal sense only when it is recognized as such by other states. Whereas the Declarative Theory is the opposite of the constitutive theory in that it holds that recognition is almost irrelevant because states have little to no discretion in determining whether an entity constitutes a state. The status of statehood is based on fact, not on individual state discretion¹⁴.

Over a period of time, these theories have had various supporters and opponents but one cannot undermine the role of recognition at the least in providing strong evidential demonstration of satisfaction of the Montevideo criteria. The more profuse the scale of international recognition is with regard to a particular entity, the less will be demanded in terms of objective fulfilment of the criteria. Conversely the lack of international recognition shall focus greater attention upon evidence of actual adherence to the relevant criteria. For instance recently, Kosovo declared independence on 17 Feb 2008 with certain Serb-inhabited areas and in such situations lack of effective central control might be balanced by significant international recognition. Nevertheless, one cannot deny that effective control is required for statehood. Conversely however a complete breakdown of law and order in an independent state will not obviate statehood. Whatever the consequences in terms of possible humanitarian involvement, whether by the UN or otherwise, the collapse of governance within a state (failed state) has no necessary effect upon the status of such state as a state¹⁵. One cannot deny that the very definition of failed state is controversial and, with regard to international law, misleading.

As a legal prescription the terms of the Montevideo Convention appear to be either too vague or too rigid. They are too vague in the sense that to say that an entity claiming to be a State needs to be able to declare itself as having people, territory and a form of government is to

¹³ *Declaratory And Constitutive Theories Of State*, Available at <http://www.lawteacher.net/free-law-essays/constitutional-law/declaratory-and-constitutive-theories-of-state.php>

¹⁴ William Worster, *Sovereignty: two Competing Theories of State Recognition*, Universities of The Hague and Missouri-Kansas City (February 2010)

¹⁵ Malcom N. Shaw, *International Law*, pp 202, Cambridge University Press, 6th edition, 2008

say very little, and certainly does nothing to guide responses to claims by aspirant States such as Chechnya, Kosovo, Northern Cyprus, Palestine or Quebec¹⁶.

A solution to this abstractness of the definition is including quantitative measures of intensity, i.e. to say, instead of merely laying down existence of people, a territory and a form of control which describes itself as a government it must also be ensured that that these qualities are possessed in sufficient degree. The entity must be large and effective enough to warrant being regarded as both self sufficient and have the capacity to enter into relations with other states. Considering such parameters, it is indeed questionable as to why Somaliland hasn't yet been awarded with the recognition it deserves.

THE WAY FORWARD FOR SOMALILAND

In 2003, the South African Department of Foreign Affairs by way of a legal opinion stated that: "it is undeniable that Somaliland does indeed qualify for statehood, and it is incumbent on the international community to recognise it."¹⁷ It is without doubt that Somaliland has demonstrated rarest of rare things: self-generated post-conflict reconstruction resulting in harmony and good governance with no international intervention.

What the African Union fails to comprehend is that Somaliland is asserting its sovereignty within its colonial borders only, since it demands to restore centuries old British Somaliland Protectorate Border which existed until 1960. A fact finding mission report on Somaliland which AU released in 2005 stated that the AU ought to find a special method of dealing with this outstanding case. The inability of AU to devise this "special method" has indeed led the emerging state of Somaliland to remain unrecognized, despite having a functional democracy for over 10 years now, and being deprived of the legal effects of recognition. It has to be realized that Somaliland is a former colony that wishes to return to its colonial borders and not an ethnic minority seeking new ownership by way of cessation¹⁸. Also, the Consultative Act of African Union, adopted in 2000 at the Lome Summit and enforced in May 2001, encapsulates the principle of *uti possidetis*. This international law principle means that a territory remains with its possessor at the end of a conflict, unless otherwise provided for by treaty; thereby meaning that former colonial borders should be maintained upon

¹⁶Malcom D Evans , International Law, pp 217, 4th ed. (Oxford: Oxford University Press, 2003)

¹⁷ *The Recognition of Somaliland*; Available at :<http://recognition.somalilandgov.com/wp-content/uploads/2013/01/The-recognition-of-Somaliland-Growing-international-engagement-and-backing.pdf>

¹⁸ Charlotte Gleave Riemann & Sam Gregg-Wallace, *Somaliland: An "Oasis of Peace" to Somalia's Chaos*; Available at <http://atlismta.org/online-journals/0809-journal-intervention/somaliland/>

independence. This makes the claim of unilateral independence of Somaliland even more legitimate since Somaliland's independence will only restore the colonial borders of the former British Protectorate of Somaliland.

The African Union and UN should take immediate cognizance of the situation of Somaliland and instead of giving way to its geopolitical interests should see the bigger picture. While it cannot be said that recognition shall provide answers to all the problems in hand, it shall, at the least, garner higher efficiencies in aid delivery through national programmes, provide better prospects of security assistance and would be an example as to how African borders can also be a source of stability and enhanced state capacity.

A very strategic option with Somaliland is to call for an active approach where it formulates a very intensive and firm foreign policy incorporating a clear timetable with the AU to ensure a formal recognition to take place within a time period agreed by both parties. Holding another referendum supervised by world powers and international organizations thereby giving teeth to the right to self determination of people can also be an alternative to facilitate the recognition process.

Recognition of Somaliland shall have major repercussions on the emerging democracy by ensuring monetary aid from foreign states which would enable greater regional/national development, facilitate investment by providing investor security and exposure to international financing and build a successful free-market economy. It is imperative that the international community is able to engage and interact with a fully recognised government in order to bring stability and peace to this deeply disturbed part of the globe. The threat of continued violence, civil wars, or increasing terrorism in the mainland will continue to hamper Somaliland's progress as long as its future is held hostage to events in Somalia.