

# **A short briefing paper: Does Somaliland have a legal ground for seeking international recognition?**

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A Yes or No answer to this question depends on the establishment of a number of historical and legal facts. In this discussion, I will base my discourse on Somaliland's legal existence prior to its independence on 26 June 1960, the short-lived Somaliland State (died as 4 days old), the notion of Greater Somalia and the events which precipitated it, the merger of Somaliland and Somalia in 1960 and the legality of the union. I shall weigh Somaliland's claim to Statehood against the requirements for Statehood as stipulated in International laws. A necessary prerequisite is also public support. I will discuss whether popular support for Somaliland's quest for recognition exists in the public.

## **Historical background:**

Very little is known about Somaliland's<sup>1</sup> history before the arrival of the European colonial powers in the 19<sup>th</sup> century. According to the Encyclopedia Britannica, Somaliland was a powerful Arab Sultanate in the middle ages. These scanty records fall short of elaborating the nature of this so-called Arab Sultanate. Whether the Arabness pertains to Arab rulers or simply an Arabic population is not clear. Many of Somaliland's contemporary clans trace their paternal ancestors to Arabs, so the existing oral traditions seem to lend some authenticity to the history in this book and elsewhere. The Britannica tells us that this powerful Sultanate was broken up by foreign forces in the 17<sup>th</sup> century. Old records show that the Othman Empire and the Egyptians, in their respective periods of influence, settled along the shores of Somaliland. Both had left their mark in places like Berbera, Bulahar and Zaila. The Somaliland coast came under British influence in the early 19<sup>th</sup> century but formal control was not acquired until it was taken from Egypt in 1884. Somaliland briefly fell under Italian control during World War II.

Like the rest of Africa, the entire Somali peninsula had been partitioned during the European **Scramble for Africa** between 1887 and 1908. The British, who were forced out of Somaliland by the Italians during the early years of World War II, came back in the early 1940s and defeated the Italians both in Somaliland and in Ethiopia. Following this victory over the Italians, the British occupied almost all Somali-inhabited areas from the Southern shores of the Gulf of Aden to the Kenyan border. The British installed a military administration (governors) and civil affairs officers administering the districts throughout the whole vast area. During this period, Somaliland British Protectorate, but not Djibouti, was part of the triumvirate of districts including the *Ogaden* province of Ethiopia and Italian Somalia (Italian Somaliland) and all were under one administration.

## **The concept of Greater Somalia:**

The common British administration in the area had a positive effect on trade, economy,

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<sup>1</sup> Somaliland British Protectorate

travel and lead to some kind of cultural and political awakening for the Somalis in this administration. By circulating a common currency and harmonizing tariffs, trade boomed and travel between the districts became easier. This atmosphere is believed to have given birth to the idea of a viable Greater Somalia State. Somali clerics<sup>2</sup> and laymen in all parts of the triumvirate took up the idea and predecessors of the political Parties<sup>3</sup> incorporated the notion into their emotional programs and campaigns. Another development which is believed to have encouraged the idea of Greater Somalia came from the British Administrators on the ground. As colonial records show, the British civil Administration officers advised their superiors on what was termed to be **an obvious need for the Somali provinces to be administered by a central authority with a common policy**. This opinion was shared by most Somali political organizations in this administration.

Britain's Foreign Secretary at the time, **Ernest Bevin**, liked the idea so much that he publicly proposed that **British Somaliland, Italian Somaliland, and the adjacent part of Ethiopia**, if Ethiopia agreed, **to be lumped together as a trust territory**. This proposal was strongly opposed by the United States and Russia which accused Britain of "Empire building". The influence of the United States and Russia as well as other European rivals of Britain is believed to have been behind the United Nations decision to discard the idea of "Somali-occupied territories of the peninsula to become a United Nations Trusteeship Territory".

One morning in 1955, the people of The British Protectorate (Somaliland) woke up to a very bad news. In 1954 the Anglo-Ethiopian Agreement was concluded under which one-third of the territory of Somaliland was ceded to Ethiopia. When the agreement was announced in the country in January 1955, the Somali people took the news very badly. Demonstrations were organized throughout the territory, and elite nationalist parties gained public following and support that they had hitherto lacked.

The idea of a Greater Somalia which has been simmering in the region suddenly gained momentum in Somaliland. Somaliland's political parties challenged the legality of the transfer. A move to contest the "transfer of land" at the International Court of Justice under Article 96 of the United Nations Charter was refuted by the United Nations. This disappointment, taken together with the emotional impact of the transfer, drove Somaliland to increase the intensity of demands for early independence and the right of the *Ogaden* people to join a Greater Somalia.

This, they thought, would ensure the recovery of the ceded territory. No colonial issue had a more stunning impact on the minds of the Somaliland people and no sacrifice was too great to recover these lands. As Somaliland hastened on towards sovereignty, *Greater Somalia* had become the war-cry of the people and the number one ideology for the political parties. *Greater Somalia* was believed to be the sweetest revenge to be exacted on the British and the Ethiopian King.

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<sup>2</sup> Progressive religious leaders in the North and South

<sup>3</sup> E.g. The Somali Youth Club which later became Somali Youth League (SYL)

While the original idea of Greater Somalia was confined to the triumvirate<sup>4</sup>, British Somaliland extended the concept to include French Somaliland (now the Republic of Djibouti) and NFD – Northern Frontier District. The latter is Kenya’s Somali-inhabited Northern Province. The Somali flag, sky-blue with a five-pointed white star, is an ideogram of this concept – Greater Somalia housing all five<sup>5</sup> Somali Colonies under one flag.

These circumstances, and specifically the transfer of *Somali land* to Ethiopia, fueled the concept of *Greater Somalia* and are believed to have ushered in Somaliland’s “quick-fix” voluntary merger with Somalia in 1960<sup>6</sup>. For the people of British Somaliland, the union with Italian Somalia was supposed to pave the way for the realization of Greater Somalia, encompassing all 5 colonies, which meant to be a means which justified the end.

**The State of Somaliland:** life before death:



The State of Somaliland received its independence from Great Britain on 26 June 1960, by Royal Proclamation of Her Majesty Queen Elizabeth II. In accordance with United Nations

<sup>4</sup> British Somaliland, The Ogaden Region and Italian Somaliland

<sup>5</sup> 1)British Somaliland, 2)Italian Somaliland, 3)French Somaliland, 4)The Ogaden region of Ethiopia and 5) NFD

<sup>6</sup> On 1st. July 1960, 4 days after its independence on 26 June 1960

procedures pertaining to decolonization, the documents establishing the transfer of sovereignty were deposited with the United Nations. The new State of Somaliland was immediately recognized<sup>7</sup> by other UN member states, including the five permanent members of the Security Council.

On July 1 st., 1960, Somaliland and Somalia declared their union as the **Somali Republic**. The merger was intended to pave the way for unification of all the Somali territories<sup>8</sup> under a single flag.

### **Was the union legal?**

Despite some common heritage<sup>9</sup>, the two countries were different in more ways than one. Being under different colonial administrations for a long time, the difference between Somaliland and Somalia was most obvious institutionally. Nearly all political and State instruments, including legal, administrative language, education and Government-organization arrangements were different.

There has been little trade, travel or cultural contact between the two countries in the past. In 1960, less than one percent of Somaliland's trade was with Somalia and few Somalilanders had ever seen Mogadishu, the capital of the new Republic. The opposite was also true for the Somalis in the South. Except for the *Bandos*<sup>10</sup>, few Southerners had ever seen the cities of Somaliland.

Before the arrival of the European colonizers, the Somali-inhabited territories in the peninsula were undemarcated. Except for coastal areas, the Somali areas were dominated by free-ranging pastoralists with no sense of limitation by international boundaries. Scanty historical records show isolated local political arrangements throughout the peninsula. There is the mention of Somaliland to have been a powerful Sultanate at some stage in ancient times. There are also similar records of advanced local civilizations in Mogadishu, Hoby, Merca, Herer and in other Somali areas. Against this historical backdrop, there is no record of Somaliland and Somalia to have been a unified political entity ever in the history. So legally, and in the context of the terms of the hasty merger, Somaliland and Somalia went into union as two separate countries.

Support for the union was much stronger in Somaliland. In fact, Somaliland has been the main drive-engine of the *Great Somalia* concept over the years since the beginning of the independence movements in the nineteen-forties. As mentioned elsewhere in this paper, the unification with Somalia was mainly seen as a steppingstone to the realization of *Greater Somalia* and thus the recovery of the Haud and Reserve Area which the British ceded to Ethiopia.

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<sup>7</sup> Among others Egypt, Ghana, Libya and Israel

<sup>8</sup> Somaliland, Somalia, French Somaliland, the Northern Frontier District (NFD) of Kenya and the "Ogaden" region of Ethiopia

<sup>9</sup> Different Somali Language versions but understand each other

<sup>10</sup> These were very unpopular Southern-Somalia soldiers which the Italians brought to Somaliland during their brief occupation of Somaliland in the late nineteen thirties.

One day after independence, 27<sup>th</sup>. June 1960, the Somaliland legislature (Parliament) passed a law which was intended to lay the foundation for the legal political union of the two countries. This was *the Union of Somaliland and Somalia Law*. The authorized representative from Somalia who was supposed to sign the document declined to do so. Thus the *Law* remained without force in the south. Meanwhile, the legislature of Somalia approved on 1<sup>st</sup>. July 1960 a significantly different document entitled *Atto di Unione* (Act of Union). While the *Union of Somaliland and Somalia Law* was borne out of consultations with Somalia during the immediate years prior to independence, *Atto di Unione* (Act of Union) was conceived without the knowledge of Somaliland. The document was disgracefully in disfavour to Somaliland, and distantly removed from the reality of the Union, so it was never signed in Somaliland. The new Somali Republic was thus declared with no legal basis in place. No valid *Act of Union* has been enacted

An attempt to remedy this fundamental legal limbo was made on 31 January 1961. The new National Assembly<sup>11</sup> repealed the *Somaliland and Somalia Union Law* and introduced a new **Act of Union**, to come into force retroactively from 1<sup>st</sup>. July 1960. However, the act of repealing was not effective in Somaliland since the Mogadishu-based National Assembly did not yet have jurisdiction in the State of Somaliland. Together with Italian Lawyers, the Southern dominated Assembly and Government proposed in June 1961 a so-called Unitary Constitution, to be ratified in a referendum. A “Yes” vote<sup>12</sup> in both parts of the Republic could have provided a more solid legal basis for the union. But this did not happen.

The political leaders in Somaliland, especially Somali National League (SNL), with the majority of MPs in the National Assembly, campaigned against the proposed *unitary constitution*. Only 100 000 ballots were cast in Somaliland and over 63% voted **NO**. Nevertheless, the verdict of the Referendum was frog marched though by 1.7 million affirmative votes in Somalia. The total number of ballots cast in Somalia<sup>13</sup> was approximately three times the estimated number of eligible voters, indicating serious irregularities. Somaliland's "No" vote was overwhelmed by a flood of fraudulent ballots in the South. A number equal to the total of all cast votes in the North (Somaliland) was reported to have voted “Yes” in **Adan Yabal**, a remote village in the South with no more than one thousand residents. Thereafter, the term *Adan Yabalaysi* became synonymous with *gross exaggeration*.

The result of the constitutional referendum failed to resolve the New Republic's<sup>14</sup> statutory Law. The last blow to the illusion of the Union took place in March 1963. A group of Somaliland military officers<sup>15</sup> was brought before a Mogadishu Supreme Court on Charges of treason. The British Judge<sup>16</sup> who was presiding over the case dismissed the charges on the ground that there was no Act of Union between Somaliland and Somalia: The accused were

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<sup>11</sup> Somaliland had only 33 MPs in the Assembly.

<sup>12</sup> The white and black boxes

<sup>13</sup> Former Italian Somalia, excluding Somaliland.

<sup>14</sup> Republic of Somalia, being made up of ex Somaliland Protectorate and former Italian Somaliland.

<sup>15</sup> A group of young Somaliland officers attempted a military coup d'état on 9<sup>th</sup>. December 1961

<sup>16</sup> Judge Hazelwood

all discharged since the Mogadishu court had no jurisdiction in the country where the offence was allegedly committed.

### **Declaration of Independence on 18 May 1991:**

After a long armed struggle (refer to SNM's campaigns against Siyad Barre's regime 1982 – 1991), the Conference of Burao declared the dissolution of the 1960 Union and the restoration of Somaliland as a sovereign state. Since the declaration of independence and the reinstatement of the Somaliland State in 1991, Somaliland has worked ceaselessly to demonstrate to the World Compliance with basic requirements for Statehood in International Law which include, but not limited to:

- A permanent population
- A defined territory
- A stable system of Government
- Capacity to enter into relations with Sovereign States

### Territory and population

Somaliland comprises the territory, boundaries and people of the former British Somaliland Protectorate, defined and delimited by the provisions of the following international treaties:

- The Anglo-French Treaty of 1888
- The Anglo-Italian Protocol of 1894
- The Anglo-Ethiopian Treaty of 1897

Somaliland borders are in fact better established in International Law than those of Somalia, whose border with Ethiopia remains an undefined and undemarcated provisional boundary.

### System of Government

Somaliland's Constitution of 2001<sup>17</sup> defines the political system as being based on peace, co-operation, democracy and plurality of political parties. Specifically, the Constitution stipulates a presidential executive branch, a bicameral parliament and an independent Judiciary. The Constitution further stipulates that political representation is to be determined through regular, free and fair elections. Since 1991, Somaliland has successfully carried out the following peaceful and fair elections:

1993: Presidential election which put H.E. Mohamed Ibrahim Egal to power

1996: Reelection of H.E. Egal for a second term

2001: Referendum on the Constitution, 97% endorsed with Yes Vote

2003: Local government election and Presidential election which put H.E. Dahir Rayaale Kahin to office

2010: Presidential election which put the incumbent, H.E. Ahmed Mohamed Mohamoud, to office

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<sup>17</sup> Endorsed by a popular referendum

### Relations with other states

The Republic of Somaliland maintains representation in various foreign countries and is signatory to a variety of bilateral and multilateral agreements. In accordance with the Constitution, which requires the government "to endeavour to replace the long standing hostility between countries in the Horn of Africa with better understanding and closer relations", Somaliland has signed agreements of co-operation with the neighbouring states of Ethiopia and Djibouti, and intends to do so with Somalia as soon as a representative government is established in the country.

Somaliland has entered into bilateral agreements on specific issues with several European governments and the Government of Ethiopia. The Government is also party to a number of multilateral agreements involving the specialized agencies of the United Nations system. Somaliland had also entered into contracts with a large number of International corporations.

### Conformity with the Charter of the African Union

Somaliland's declaration of independence is predicated upon the territory of its prior existence as a recognized, independent state, and is therefore consistent with the Constitutive Act of the African Union (Article 4.b.), which affirms the Union's "respect of borders existing upon achievement of independence. Somaliland's borders upon achievement of independence were those of the British Somaliland Protectorate, not the Somali Democratic Republic. Somaliland's independent status therefore represents the dissolution of a voluntary union between sovereign states, not an act of secession. The precursor to the African Union, the Organization of African Unity (OAU), consistently permitted states to retrieve their sovereignty following unsuccessful unions. Examples are Egypt, Gambia and Senegal which all have been party to voluntary political mergers that they have subsequently revoked. Somaliland's demand for recognition is therefore consistent with both the letter of the AU Charter and the spirit in which it has traditionally been applied.

### Public support for independence

Somaliland's quest for independence is also consistent with the right to **self-determination as is stipulated in the Charters of the AU and the United Nations**. This right was freely and democratically expressed on 31 May 2001 by the people of Somaliland, who voted overwhelmingly in favour of a new Constitution that affirmed Somaliland's Sovereignty and Independence

### **Summary:**

In the foregoing discussion, I mean to have shown beyond doubt, enough ground to believe that Somaliland and Somalia have historically been two different countries. The difference was most obvious institutionally, given their different political cultures which they inherited from their respective colonial masters.

The grand idea of Greater Somalia was borne out historical circumstances outside the control of the Somalis in the peninsula. For Somaliland, the idea was to unite all five Somali colonies, and not only Italian Somalia. Kenya, upon its independence in 1963, retained NFD as part of Kenya. The French Somaliland (later the Affar and Issa territory) received its independence in 1976 and became the Republic of Djibouti. Ethiopia formally proclaimed the Ogaden Region as Ethiopia's Region 5. With these developments, the **Greater Somalia** illusion, which in 1960 was the sole argument for the merger, was finally laid to rest.

The 1960 independence for both parts was followed by a hasty union that never enjoyed a legal basis. NO ACT OF UNION. The arrangement of the merger was in gross disfavor to Somaliland. The military regime of Siyad Barre was responsible for a genocidal war<sup>18</sup> with the Somaliland people which left hundreds of thousands dead and even more displaced internally and internationally. The SNM fighters eventually defeated Barre's brutal regime. In a conference in Burao, in 1991, the dissolution of the 1960 was declared. This, in effect, reinstated Somaliland to its sovereign state in 26 June 1960.

By establishing compliance with International requirements for Statehood, Somaliland's stance on its right to independent statehood stands on a solid ground. The demand for sovereignty is in conformity both the AU and United Nations charters. The constitutional referendum of 2001, which was overwhelmingly approved, fulfills the clauses which pertain to the right of self-determination, which the international community must respect.

In sum, there is sufficient argument in favour of answering the QUESTION OF THIS BRIEFING, affirmatively. Yes, Somaliland has a very solid legal ground for seeking and demanding International recognition. The author of these notes believes that the international community is making a grave mistake by ignoring the reality on the ground of the Horn of Africa. Granting Somaliland its hard-won and rightful place among the nations of the United Nations, would positively contribute to peaceful settlements and permanent political solutions for the peoples of the Horn, both Somalis as well as their neighbours.

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- 5) LAW OF UNION BETWEEN SOMALILAND AND SOMALIA: Law No: 1 of 1960 - Passed by the Independent State of Somaliland Legislative on 27 JUNE 1960. Source: see 4 above.
- 6) Various archives on the internet

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<sup>18</sup> For lack of space and time, this dark history of Somaliland is not included in this paper. Please refer to the bibliography. Material on this is also widely available on the internet.