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Legal Basis for Unilateral Secession of Somaliland from Somalia

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This article explores the legal basis for Somaliland's unilateral secession from Somalia and whether it violates Somalia's territorial integrity under international law. The article provides a brief history of Somaliland's original independence and its subsequent union with Somalia. Following the collapse of the Somali government, Somaliland declared its secession from Somalia in 1991, while the southern region plunged into anarchy. The article examines the criteria for state recognition, with Somaliland fulfilling three of the four requirements. The article delves into the principles of self-determination, sovereignty, and territorial integrity under international law. Although the right to self-determination is fundamental, some experts argue that it does not apply to unilateral secession, as it is in conflict with territorial integrity. Conversely, others argue that self-determination promotes decolonisation and allows individuals to take part in local decision-making, including secession. The article also discusses the role of the International Court of Justice (ICJ), which considers customary law, and the principle of territorial integrity, which only prohibits foreign interference. Besides, this article provides an overview of the concept of recognition in relation to unilateral secession. It discusses the two main perspectives on recognition, constitutive and declaratory. The article examines several cases of state formation, including Eritrea, South Sudan, Czechoslovakia, and the Soviet Union, and emphasises the importance of mutual consent in the creation of new states. In conclusion, the article provides an overview of the legal basis for Somaliland's unilateral secession and the principles of self-determination, sovereignty, and territorial integrity. It examines the criteria for state recognition and the role of the ICJ, human rights advocates, and the Security Council in interventions. Ultimately, the recognition of a new state depends on political will, which can have a significant impact on the decision-making process.

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INTRODUCTION

The right of people to self-determination is a fundamental value in the international community, as was agreed upon. This is shown in General Assembly Resolution 1514, which was adopted in 1960 and allowed colonial countries to proclaim their independence, as well as all peoples have the right to self-determination (*General Assembly Resolution*, 1960). However, sovereignty and territorial integrity are also fundamental values on an international level and in such subjects, it appears to be in conflict with the self-determination principle, particularly unilateral secession.

There is a current trend in which several territories are attempting to gain independence from their parent nations, including Taiwan, the West Sahara, and Somaliland. This article focuses on whether Somaliland's self-proclaimed independence is valid under international law and if it violates Somalia's territorial integrity.

Since 1991 Somaliland has operated as a de facto independent state with its own government, security forces, and legal system. However, it lacks international recognition, which is the fourth criterion for statehood (Beyene & Beyene, 2019). As well as, Somaliland has made significant progress in building a functioning state with a democratic government, a stable economy, and a relatively peaceful society. However, its lack of recognition has prevented it from engaging in international trade and securing foreign aid, which has hindered its development (Prunier, 1998).

In this context, this article explores the legal basis for Somaliland's unilateral secession from Somalia and whether it violates Somalia's territorial integrity under international law. It examines the criteria for state recognition, the principles of self-determination, sovereignty, and territorial integrity, and the role of the International Court of Justice, human rights advocates, and the Security Council in interventions. The article also considers the role of political will in the recognition of a new state and the implications of Somaliland's status for international law.

An Overview of Somaliland's History

British Somaliland's independence was on May 26, 1960. the influence of the widespread idea or aspiration of a "Greater Somalia" among the Somali people led British Somaliland to unite with Italian Somaliland on June 1, 1960, resulting in the establishment of the Republic of Somalia. Prior to Siyad Bare's military takeover in 1969, Somalia was controlled by a series of democratic and civil governments. Following the repressive policies of the military regime, the Somali diaspora and exiled politicians established anti-government organisations, especially after the 1977 war. The Somali National Movement (SNM) was one such organisation, which was founded in London in 1981. Eventually, the SNM gained control of the former British Somaliland (Prunier, 1998).

Several months after the overthrow of Siyad Barre's regime by various belligerent groups, including the USC, SNM, and other rebels and factions,

Somaliland declared its secession from southern Somalia in May 1991. In contrast, southern Somalia descended into a period of anarchy, with different clans fighting for control over resources. Major cities like Mogadishu were divided and subject to ongoing conflict. Despite the fact that the SNM leaders fought for nine months over clan disputes, they finally settled on an agreement in September 1992 and did not witness the same bloodshed as their southern counterparts. According to Farah and Lewis (1997), the bottom-up approach that Somaliland adopted for conflict resolution was crucial for the settlement of Somaliland after the regime collapsed. (Farah & Lewis, 1997)

In accordance with the Montevideo Conventions state is required to have four elements to recognise (Convención de Montevideo, 1933). However, Somaliland achieves three of the four requirements for statehood—population, territory, and government—but not the fourth—the capacity to enter into contracts.

Away from the legal aspects, proponents of the secession of Somaliland argue that Somaliland has historical considerations for becoming a state. It was a former British protectorate, whereas southern Somalia was colonised by Italy, as well as security differences between it and south Somalia. The secession advocates proclaim – particularly Somaliland politicians - that the instability and chaos in south Somalia is an indicator of the legality of secession of Somaliland.

SECESSION VERSUS TERRITORIAL INTEGRITY

The term “secession” refers to the process of separating a country and becoming independent; however, this definition appears modern and originated in the 16th century. Previously, the term “secession” referred to withdrawing from the parliament or breaking away demonstration (Ward, 2017). In the past, several new nations have appeared on the global stage through unilateral declarations of independence or secession.

However, it is important to note that such attempts to secede unilaterally have sometimes resulted in civil conflicts, as was witnessed in the United States when southern states attempted to secede from the Union due to the abolition of slavery (Morse, 1887). Whereas the foundation of state sovereignty and territorial integrity dates back to the Peace of Westphalia in 1648, which marked the beginning of a novel legal framework for European nations. The end of the thirty years war with the peace of Westphalia is commonly considered the starting point of the contemporary international system, with each state possessing exclusive authority within its own geographical boundaries (Krasner, 1995). This principle was upheld for over three centuries, with only a few rare exceptions, initially in Europe and later across the world (Makinda, 1996).

Since Westphalia, a number of international treatments and customary laws emphasised the significance of taking territorial integrity into account among states. For instance, the UN Charter – Article 2 highlighted the importance of upholding territorial integrity for all states, literally stating:

“All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations” (UN, 2020)

This clause prohibits the violation or interference in the territorial or internal affairs of other states, including their domestic politics. As a result, proponents of absolute sovereignty and territorial integrity maintain that recognising a self-proclaimed state is unconstitutional and contravenes Article 2 of the UN Charter.

Following the end of World War II, the idea of state sovereignty has been interpreted in two ways: internal and external. The internal aspect denotes that the government of a state holds ultimate authority over its people, resources, and all other entities within its borders. The external aspect,

known as “juridical” sovereignty, asserts that every state’s territorial integrity is sacrosanct, and thus, the government has independence from external control (Makinda, 1996).

According to supporters of humanitarian intervention, sovereignty can be breached. The proponents of this idea regard the sovereignty of the people as more sacred than that of the state. They believe that the violation of the people’s rights can justify the infringement of state sovereignty (Orakhelashvili, 2022). Advocates for humanitarian interventions assert that the Security Council has the authority to intervene in the territorial integrity of any nation if there are ongoing human rights violations and the state in question fails to take action to address them. This has been exemplified in cases such as East Timor and Kosovo. However, the Security Council has also faced criticism for not intervening sooner in cases such as the Rwandan genocide, for which it was held responsible.

Kofi Annan stated:

“Just we have learnt that the world cannot stand aside when gross and systematic violations of human rights are taking place, we have also learnt that, if it is to enjoy the sustained support of the world’s people, the intervention must be based on legitimate and universal principle... The genocide in Rwanda showed us how terrible the consequences of inaction can be in the face of mass murder...”
(Anan, 1999)

The concept of self-determination refers to a people’s ability to decide their own destiny, this right can arise from different circumstances, such as being under colonial rule or experiencing discrimination based on religious or ethnic identity (Makinda, 1996). Although this principle or right was written in bold words, historically, it has not always been followed. The situation of the Palestinian people and the Kurds provide examples of this. However, it seems the right to self-determination embraces the right to secession; it is

nonsense to exclude the right to “secession” if we consider the right of the people (Burchill, 1971).

Let us explore different viewpoints and analyse the opinions of legal scholars regarding the apparent conflict between territorial integrity and unilateral secession.

A group of legal experts – including Van Den Driest – believe that the right to self-determination was only intended to promote decolonisation; they argue that self-determination now used to refer to taking part in local decision-making and government rather than allowing each group to secede. They believe, beyond the context of colonialism, the right to self-determination is restricted by the principle of maintaining the territorial integrity of states (Vidmar, 2012).

This theory mostly relies on the Quebec case as evidence; Jurists from Canadian Supreme Court studied this subject in 1998 and concluded that the principle of self-determination does not apply in the current stage of post colonials; thus, Quebec does not have a right to self-determination (Van Den Driest, 2015). In this theory, only majorities and existing states are honoured; minorities are not taken into account.

While another group of scholars including Locke, endorsed the right to self-determination for individuals who were either colonised or have elected governments. They contend that the principle of self-determination is not at odds with the principle of territorial integrity since the latter only prohibits foreign interference. Moreover, Locke supports popular sovereignty instead of absolute sovereignty, he believes rebels have a right to secede through negotiation or amendment of the constitution leading to separation. Whereas Hobbes has preservation on secession because he advocates absolute sovereignty of the states (Ward, 2017).

Foremost, the International Court of Justice (ICJ) determined in a 2010 advisory opinion on Kosovo’s unilateral declaration of secession that it was not in

violation of international law (*Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, 2012). The court based its decision on customary law, which does not prohibit independence declarations. As well as ICJ made an interpretation of the principle of territorial integrity, which only forbids interference by third-party states and does not apply to internal individuals or organisations. However, Summers supports self-determination, but he requires criteria before people can declare self-determination, for instance: existence as a minority group, lack of representation, and the state violates their human rights (Summers, 2019).

In addition to these two polar, there exists a third group, a group of scholars including – Thomas M. Franck, who promote the legal neutral theory. According to this theory, unilateral declarations of independence or secession are neither authorised nor prohibited by international law (Van Den Driest, 2015). In addition, international law does not forbid the eradication of belligerent or secessionist groups, as seen in the example of the American Civil War (Orakhelashvili, 2022).

Nevertheless, international law order foreign states to consider the principle of non-intervention. In other words, each state chooses a policy of neutrality and non-intervention unless it decides to provide assistance to the mother state rather than secessionists or insurgents (*Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, 2012).

However, Somaliland's unilateral declaration of independence may be legitimate under international law, in accordance with the International Court of Justice's interpretation of the principle of territorial integrity, which holds that the principle only applies to interventions by foreign governments or entities. On the other side, Somaliland secession may be considered a violation of the sovereignty of Somalia state; thus, the right of self-determination is one of the most mysterious subjects in international issues.

Thus, the legal basis for Somaliland's unilateral secession from Somalia remains a contentious issue.

Can A Unilateral Secession Result in Recognition?

Historically, there are two main perspectives on the concept of recognition: constitutive and declaratory. The constitutive theory asserts that recognition is essential for the existence of a state, whereas the declaratory theory believes that a state can exist even without being recognised; proponents of this theory take Taiwan, for example. However, nowadays, the declaratory theory has gained more widespread acceptance among scholars and writers (Vidmar, 2012). On the other hand, Orakhelashvili believes there are several legitimate means of establishing a new state, such as agreed-upon secession, state dissolution, and state unification. However, he does not consider unilateral secession to be a valid method of creating a new state (Orakhelashvili, 2022).

During the end of the colonialism era that followed the establishment of the United Nations, many former colonies gained independence and transitioned to self-rule without the approval of their parent state. In contrast, during the postcolonial era, all states that seceded did so through consensual agreements. For instance, the cases of Eritrea and South Sudan were acknowledged with the agreement of their parent states; South Sudan gained independence precisely six years after the signing of the Comprehensive Peace Agreement (CPA) in Naivasha, Kenya. The CPA was a peace deal between the Sudanese People's Liberation Movement (SPLM) and the government of Sudan (GOS), which included a clause granting the Southern Sudanese citizens the privilege to decide whether to remain part of Sudan or secede after the initial six-year period by voting (Abusharaf, 2013). While Eritrea attained independence with the approval of the Ethiopian central government after an UN-monitored referendum in which an overwhelming majority voted in favour of independence.

Similarly, the formation of states after the dissolution of Yugoslavia, Czechoslovakia, and the Soviet Union was achieved through mutual consent. According to Vidmar, even in the case of East Timor, which may seem complex due to the involvement of the UN, it was not a unilateral secession as East Timor became a new state with the consent of Indonesia (Vidmar, 2012).

Last but not least, the political will has a big role to play in the decision of recognition of a new state; take the case of Catalonia as an example. The European Union initially stayed out of the situation but eventually started supporting the Spanish government instead of remaining neutral (Holesch & Jordana, 2021).

CONCLUSION

In recent years, the question of Somaliland's unilateral secession from Somalia has become an increasingly important issue in international law. Somaliland, a former British protectorate, gained independence in 1960 and later joined with Somalia in a union that lasted until 1991 when Somalia descended into anarchy. Since then, Somaliland has operated as a de facto independent state with its own government, security forces, and legal system.

The question of Somaliland's status as an independent state has been a contentious issue under international law. Somaliland has fulfilled three of the four criteria for statehood, including a defined territory, a permanent population, and a functioning government. However, it lacks international recognition, which is the fourth criterion for statehood. The question of recognition is often complicated by political considerations, particularly in situations where recognition could set a precedent for other secessionist movements.

The principle of self-determination is fundamental under international law, but it is not an absolute right. The right to self-determination must be balanced against the principle of territorial integrity, which prohibits the use of force to change the

borders of existing states. Some legal experts argue that the right to self-determination does not apply to unilateral secession, as it is in conflict with territorial integrity. Others argue that self-determination promotes decolonisation and allows individuals to take part in local decision-making, including secession.

The International Court of Justice (ICJ) has considered the issue of secession in several cases, but its decisions have been inconsistent. The ICJ has recognised the principle of territorial integrity, which only prohibits foreign interference, but it has also recognised the right to self-determination in cases where it is supported by law and practice. Rights advocates have also played a significant role in the debate over Somaliland's status. The Security Council has sometimes intervened to protect human rights in cases such as East Timor and Kosovo, but its inaction in cases such as the Rwandan genocide has been criticised.

In conclusion, the question of Somaliland's status as an independent state remains a complex issue under international law. While Somaliland has fulfilled many of the criteria for statehood, its unilateral secession from Somalia remains a contentious issue. The resolution of this dispute requires a careful balancing of competing legal and political interests, including the principles of self-determination, territorial integrity, and the role of human rights advocates and the Security Council. Ultimately, the recognition of Somaliland as an independent state depends on political will, which can have a significant impact on the decision-making process.

REFERENCES

- Abusharaf, R. M. (2013). Seeds of secession. *Transition: An international review*, (110), 73- 89. <https://doi.org/10.2979/TRANSITION.110.73>
- Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*. (2012). International Law

- Reports. <https://doi.org/10.1017/cbo9781139129022.001>
- Anan, K. (1999). *Two concepts of sovereignty*. The Economist. <http://www.economist.com/node/324795>
- Beyene, T. S., & Beyene, T. S. (2019). Declaration of Statehood by Somaliland and the Effects of Non-Recognition under International Law. *Beijing Law Review*, 10(1), 196–211. <https://doi.org/10.4236/BLR.2019.101012>
- Burchill, R. (1971). Self-Determination. *American Journal of International Law*, 65(3), 459–475. <https://doi.org/10.2307/2198970>
- Convención de Montevideo. (1933). *Montevideo Convention on the Rights and Duties of States - The Faculty of Law*. The Faculty of Law. <https://www.jus.uio.no/english/services/library/treaties/01/1-02/rights-duties-states.xml>
- Farah, A. Y., & Lewis, I. M. (1997). *Making peace in Somaliland*. Cahiers d'Etudes Africaines. <https://doi.org/10.3406/cea.1997.3518>
- General Assembly Resolution. (1960). https://www.google.com/search?q=general+assembly+resolution+1514&rlz=1C1GCEJ_enSO1047SO1047&oq=General+Assembly+Resolution+1514&aqs=chrome.0.35i39i650j69i64j0i512j0i22i30.1003j0j7&sourceid=chrome&ie=UTF-8
- Holesch, A., & Jordana, J. (2021). The politics of unilateral secession in the European Union: the case of Catalonia. <https://doi.org/10.1080/21622671.2021.1886979>, 1–20. <https://doi.org/10.1080/21622671.2021.1886979>
- JAMES J. SUMMERS. (2019). *The Right of Self-Determination in International Law*. Studies in International Minority and Group Rights. https://doi.org/10.1163/9789004405455_002
- Krasner, S. D. (1995). Compromising Westphalia. *International Security*, 20(3), 115. <https://doi.org/10.2307/2539141>
- Makinda, S. M. (1996). *Sovereignty and international security: Challenges for the United Nations*. Global Governance. <https://doi.org/10.1163/19426720-002-02-90000002>
- Morse, A. D. (1887). The Cause of Secession. *Political Science Quarterly*, 2(3), 470. <https://doi.org/10.2307/2139185>
- Orakhelashvili, A. (2022). Akehurst's Modern Introduction to International Law. *Akehurst's Modern Introduction to International Law*. <https://doi.org/10.4324/9781003162117/AKEHURST-MODERN-INTRODUCTION-INTERNATIONAL-LAW-ALEXANDER-ORAKHELASHVILI>
- Prunier, G. (1998). *Somaliland Goes It Alone*. Current History. <https://doi.org/10.1525/curh.1998.97.619.225>
- UN. (2020). *UN Charter | United Nations*. Un.Org. <https://www.un.org/en/about-us/un-charter>
- Van Den Driest, S. F. (2015). *From Kosovo to Crimea and Beyond: On Territorial Integrity, Unilateral Secession and Legal Neutrality in International Law*. International Journal on Minority and Group Rights. <https://doi.org/10.1163/15718115-02204002>
- Vidmar, J. (2012). *Explaining the legal effects of recognition*. International and Comparative Law Quarterly. <https://doi.org/10.1017/S0020589312000164>
- Ward, L. (2017). *Thomas Hobbes and John Locke on a liberal right of secession*. Political Research Quarterly. <https://doi.org/10.1177/1065912917717818>