



# The Kosovo Conditions and the Case for American Unilateral Recognition of Somaliland

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## INTRODUCTION

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Since the turn of the millennium, the United States has extended sovereign recognition to four countries—East Timor (2002), Montenegro (2006), Kosovo (2008), and South Sudan (2011). In three of these cases, Washington joined an international consensus to admit a sovereign member to the club of nations. Kosovo remains the exception. Fifteen years later, the fact that Kosovo is still only acknowledged by around half of the United Nations membership colors its American diplomatic recognition as uniquely maverick in retrospect.

Yet, Kosovo illustrates the rule rather than the exception of the strategic use of sovereign recognition. Despite common misconceptions that this power is constrained by the need for an international consensus or congressional endorsement, the executive branch retains the unfettered right to recognize foreign sovereignty to advance the American national interest. It is a storied but powerful tool within the president's foreign policy arsenal. Clear-eyed, even in the absence of international or congressional consensus, the George W. Bush administration's recognition of Kosovo establishes four guardrail criteria that guide the successful use of this power: the opportunity to tangibly advance the United States' interests, the existence of de facto territorial control by the aspirant state, the little chance of its peaceful reintegration, and the demonstrated feasibility of a local democratic regime. Rather than binding domestic or international legal principles, these "Kosovo conditions" clarify appropriate contexts for the deployment of this political power.

Formulizing these conditions, particularly amid a renewed era of international competition, begs the question of whether there are prudent opportunities to employ this powerful tool of American foreign policy. Somaliland—a prosperous and democratic self-declared country on the Horn of Africa—fits comfortably within the "Kosovo conditions" for American unilateral sovereign recognition. Although nominally shackled to the chronically unstable

Somalia, Somaliland has established control over its self-declared territory to foster a democratic system of government with universal suffrage. For more than thirty years, this aspirant state has refused to rejoin its war-ravaged neighbor and has rebuffed economic overtures from Beijing in preference of a close relationship with a fellow democratic state in search of recognition, Taiwan. Tracing the parallels between the Muslim-majority, aspirant states of Somaliland and Kosovo illustrates how, to advance the United States' interest in democracy, economic development, and the stability of global trade routes, there is a strong case for the American unilateral sovereign recognition of Somaliland.

## A PRESIDENT'S POWER

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Although the executive branch enjoys exclusive discretion to recognize foreign sovereignty, this constitutional authority has not precluded efforts by Congress to shape or usurp its use. The potential recognition of Kosovo, for example, provoked dueling legislative resolutions in support and opposition. In March 2007, Senator Joe Lieberman introduced a Senate resolution to "support independence for Kosovo."<sup>1</sup> Shortly thereafter, in April, Representative Eliot Engel introduced a similar resolution in the House.<sup>2</sup> In response, Representative Melissa Bean introduced a House resolution in opposition to an "imposed solution to the status of Kosovo" in May.<sup>3</sup> None of these resolutions reached the floor for a vote. More recently, in March 2022, Representative Scott Perry introduced an act such that "the President is authorized to recognize Somaliland . . . as a separate, independent country."<sup>4</sup>

While it is wholly within a legislator's right to encourage or discourage the executive branch, these efforts reflect and reinforce the belief that Congress can enable or withhold sovereign recognition. Yet, Justice Anthony Kennedy's majority opinion in the Supreme Court case of *Zivotofsky v. Kerry* in 2015 refutes this misconception.<sup>5</sup> The justice notes that the advice and consent of the Senate is needed for making treaties and appointing ambassadors and that even the construction of an embassy abroad requires the congressional appropriation of funds. However, on the matter of sovereign recognition, the nation must speak with one voice and "that voice must be the President's." The justice argues that because of the framers' constitutional dedication of diplomatic powers to the president,<sup>6</sup> past executives' exercise of this right, and the Supreme Court's earlier recognition thereof, there is little doubt that this power exclusively pertains to the president.

Justice Kennedy's relatively recent recognition of this power draws a clear line from the cautious framing of the president's constitutional powers and their exercise in the years following its ratification to the contemporary era. Article II of the Constitution vests the president with the exclusive right to receive foreign ambassadors, which, unlike the process of appointing American ambassadors, does not require the advice and consent of the Senate.<sup>7</sup> Bellia Jr. and Clark note that at the time of the framing, "sending and receiving ambassadors and making treaties were the traditional means by which nations recognized each other as independent sovereigns . . ."<sup>8</sup> A subsequent exercise of this power was George Washington's reception of Edmond-Charles Genêt as ambassador of the French Republic in 1793, effectively recognizing the revolutionary French regime and repudiating the monarchy. This

decision was made exclusively by Washington and his cabinet. Prakash and Ramsey summarize Genêt's reception: "Congress never dictated which countries or governments to recognize because it understood that the Constitution had shifted the recognition power from Congress to the President."<sup>9</sup>

The need for, or a long-held convention of, international consensus when exercising the power of diplomatic recognition is similarly a red herring. France, the Dutch Republic, and the Kingdom of Sweden all recognized American sovereignty before the United Kingdom eventually did through the Treaty of Paris in 1783.<sup>10</sup> And yet, the eventual diplomatic acquiescence of the former colonial ruler did not precipitate immediate recognition among the great powers of Europe. It was only twenty years later, in 1803, that the Russian Empire recognized the United States.<sup>11</sup>

A similar absence of consensus was evident in the varied recognition of the Soviet Union's occupation of the Baltic states. Consistent with the Welles Declaration of 1940, the United States refused *de jure* and *de facto* recognition of the Soviet forcible incorporation of Latvia, Lithuania, and Estonia until the collapse of the USSR. However, at varying times, Sweden, the Netherlands, Spain, and New Zealand all recognized Soviet sovereignty over the Baltic states.<sup>12</sup> More recently, Kosovo's declaration of independence has been recognized by most—but not all—members of the European Union. At the time of writing, Greece, Spain, Hungary, Romania, Slovakia, and Cyprus still withhold recognition of Kosovo's sovereignty. The position of foreign governments toward cases of potential statehood merits close examination, but international permission or consensus is not a prerequisite for the exercise of the president's constitutional power of recognition.

## THE KOSOVO CONDITIONS

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If the president's recognition powers lack congressional or international limitations, when should they be invoked? The profound economic and legal ramifications of sovereign recognition naturally imply that it should not be granted capriciously. However, refraining to consider when a president might unilaterally use this power risks overlooking a potentially effective foreign policy device.

The George W. Bush administration's recognition of Kosovo—in the absence of congressional or international consensus—provides an instructive blueprint for an executive's use of sovereign recognition in the contemporary era. Unlike the former Yugoslav republics that achieved their independence in the 1990s and which were all constituent republics within the Socialist Federal Republic of Yugoslavia, Kosovo had only previously enjoyed the status of an autonomous province within the Socialist Republic of Serbia.<sup>13</sup> Following a breakdown in negotiations to end the Kosovo war of 1998–99, and amid accusations of war crimes, a North Atlantic Treaty Organization (NATO) bombing campaign precipitated the withdrawal of Slobodan Milošević's regime from the territory. In its place, the United Nations was tasked with developing institutions of democratic self-rule and administration.

Less than ten years after the Yugoslav institutions in Kosovo had evaporated, the UN-facilitated Assembly of Kosovo adopted a declaration of independence on February 17, 2008. Conveyed by a letter from President Bush to his Kosovar counterpart, the United States formally recognized Kosovo sovereignty the following day and established diplomatic relations. The opportunity to advance the United States' interests, particularly by cultivating an American ally in the Balkans, was a primary objective of this recognition; President Bush wrote that "on this historic occasion, I note the deep and sincere bonds of friendship that unite our people. This friendship, cemented during Kosovo's darkest hours of tragedy, has grown stronger in the 9 years since war in Kosovo ended. . . . As in the past, the United States will be your partner and your friend."<sup>14</sup> The further rationales for the United States' recognition of Kosovar sovereignty were elaborated by then secretary of state Condoleezza Rice. In a press statement, Secretary Rice noted that "the unusual combination of factors found in the Kosovo situation—including the context of Yugoslavia's breakup, the history of ethnic cleansing and crimes against civilians in Kosovo, and the extended period of UN administration—are not found elsewhere and therefore make Kosovo a special case. Kosovo cannot be seen as a precedent for any other situation in the world today."<sup>15</sup> Together, these statements by President Bush and Secretary Rice thus elucidate the four conditions that precipitated the decision to recognize Kosovo.

## BEYOND KOSOVO

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These four conditions are framed in the context of Kosovo, yet, the recognition power is not exclusive to the Kosovo case. Secretary Rice's emphasis on "the unusual combination of factors" rather than an innate quality of the Kosovo case suggests that their appearance in an alternative context may merit sovereign recognition. Similarly, Rice's explanation of the Kosovo conditions clearly implies that they may guide the use of the recognition powers in other contexts in the future. Rice asserted that "Kosovo cannot be seen as a precedent for any other situation in the world *today*" (emphasis added). Indeed, the inclusion of the word "today" qualifies that the Kosovo conditions may be relevant for the use of the recognition powers in the future.

If the Kosovo case might establish guiding conditions for the use of the recognition powers, the factors elucidated by President Bush and Secretary Rice must be interpreted as conditions that are portable to other contexts. The first condition is the need to advance the United States' national interest. President Bush noted, "As Kosovo opens a new chapter in its history as an independent state, I look forward to the deepening and strengthening of our special friendship." Rather than perfunctory diplomatic platitudes, President Bush's letter reflects, and seeks to build upon, the United States' role in the NATO bombing campaign against Yugoslavia to end the ethnic cleansing of Albanians in Kosovo. The decision was thus not a random humanitarian gesture but, rather, an effort to advance the United States' interests by recommitting support to a friendly aspiring nation.

The second condition, as elucidated by Secretary Rice, is "the context of Yugoslavia's break up." Following Slovenia's and Croatia's declarations of independence in June 1991,

Yugoslavia progressively disintegrated.<sup>16</sup> In its place rose several governments that enjoyed independent administrative control over discrete territory along the lines of the classic Weberian state, in the shadow of any lingering authority claimed by the Yugoslav regime in Belgrade. In effect, the context of Yugoslavia's breakup resulted in the creation of de facto control over territory by an aspiring state. Importantly, territorial irredentism,<sup>17</sup> and disputes over the legal successor status of the erstwhile Yugoslav Socialist Republic,<sup>18</sup> persisted after the state's dissolution. While the new self-declared republics established their own state capacities, the context of Yugoslavia's breakup was rife with protracted de jure conflict. This second condition can thus be characterized as the attainment of de facto territorial control even when de jure control may be contested.

The third condition is "the history of ethnic cleansing and crimes against civilians in Kosovo." The overwhelming majority of war crime victims in Kosovo were Kosovar Albanians, typically at the hands of the Yugoslav state or its allied paramilitaries. Non-Albanian Kosovars, including ethnic minorities such as the Roma, were similarly subject to war crimes.<sup>19</sup> Members of the then premier fighting force for Kosovo's independence—the ethnically Albanian-led Kosovo Liberation Army—have also been implicated in war crimes against Serbs and other ethnicities.<sup>20</sup> The resulting extreme animosity associated with ethnically targeted war crimes made the peaceful reintegration of Kosovo into Serbia unfeasible. The third condition for recognition is thus not the incidence of ethnic cleansing or crimes against civilians per se, but, rather, a situation where peacefully relinquishing the would-be sovereign entity's de facto territorial control would be impossible.

The fourth condition is "the extended period of UN administration." The principle undergirding this condition is further clarified with reference to Secretary Rice's earlier discussion of Kosovo's history in a preceding paragraph: "A United Nations Security Council decision to suspend Belgrade's governance . . . place[d] Kosovo under interim UN administration. Since that time Kosovo has built its own democratic institutions separate from Belgrade's control." The second sentence thus illustrates that it was not the United Nations' presence that was the deciding factor but, rather, the creation of local and enduring democratic institutions. The UN's administration was a cause—the effect was the creation of local democratic institutions. Both the statements of President Bush and Secretary Rice endorsed the plan put forward by UN Special Envoy Martti Ahtisaari, which ultimately recommended the creation of a democratic, multi-ethnic, and independent Kosovo without UN supervision. Neither statement thus suggests that the United States' recognition should be contingent on international consensus at the UN or the continued presence of the UN. Focusing on the principle and substance rather than the case-specific details, the fourth condition is thus the demonstration of durable, democratic institutions within the aspiring state rather than the extended presence of an international actor.

## THE CASE OF SOMALILAND

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These four conditions—the US national interest, de facto territorial control, little chance of peaceful reintegration, and the demonstrated feasibility of a local democratic

regime—provide a guiding framework for US unilateral diplomatic recognition that is portable to other contexts. One context where such an “unusual combination of factors” occurs today—to use Secretary Rice’s words—is the self-proclaimed Republic of Somaliland. Having declared its independence from Somalia in 1991, Somaliland has enjoyed relative peace, stability, and democracy in the shadow of the mismanagement and chaos of Mogadishu’s rule. Despite local aspirations for Somaliland’s de facto independence to enjoy de jure status, the United States nonetheless formally considers the most successful democracy on the Horn of Africa as subject to Mogadishu’s authority. Rather than a deliberate endorsement of Mogadishu’s authority over a region it does not govern, the United States’ policy toward Somaliland to date largely appears to be the byproduct of privileging the status quo or deferring to the leadership of influential regional states. Yet, approaching the question of Somaliland’s recognition anew—particularly in light of the Kosovo conditions—demonstrates an overlooked opportunity to advance the American national interest in a manner consistent with the earlier unilateral use of the recognition powers.

The Kosovo conditions and their application to Somaliland also illustrate how the recognition powers can be strategically deployed despite regional political cultures that are inimical to local independence movements. From Catalonia in Spain to the Faroe Islands of Denmark, Europe is home to countless independence movements that lack the support of European states or the European Union.<sup>21</sup> Parallel movements on the African continent, like the Biafran independence movement in Nigeria or that of Ambazonia in Cameroon, have also largely lacked the endorsement of African states or the African Union.<sup>22</sup> Amid a regional political culture that endorses the status quo, to which the United States has largely acquiesced, the Kosovo conditions guide the use of the recognition powers to be consistent with both America’s democratic principles and the pragmatic need to only recognize states that can potentially function without the recognition of their regional neighbors—such as Kosovo and Somaliland—having established de facto territorial control.

## **CONDITION I: THE US NATIONAL INTEREST**

While the United States has a general interest in the support of democracy and development, as well as the prevention of crimes against civilians, the stability of Somaliland has a unique intersection with American interests. Along the African coast of the Gulf of Aden, Somaliland is situated near the Bab al-Mandab Strait and the entryway to the Red Sea and Suez Canal. Somaliland enjoys ready access to the African continent, the Arabian Peninsula, and one of the world’s most trafficked shipping routes. Indicative of its strategic location, the United States, China, France, and Japan all maintain permanent military bases in neighboring Djibouti. In addition to the human cost of unrest and political disintegration in Somaliland, the failure of the aspirant state’s largely stable regime risks developing into a staging ground for piracy or regional insurgency that could bedevil a global trade choke point.

Somaliland’s sovereignty furthermore sits within the United States’ interests due to the aspirant state’s willingness to engage with Taiwan. The Taiwan Relations Act of 1979 asserts that “it is the policy of the United States to preserve and promote extensive, close, and friendly commercial, cultural, and other relations” with Taiwan.<sup>23</sup> The act does not seek to monopolize

close relations with Taiwan; on the contrary, it explicitly articulates the United States' interest in Taiwan's peaceful engagement with the world: "Any effort to determine the future of Taiwan by other than peaceful means, including by boycotts or embargoes, [is] a threat to the peace and security of the Western Pacific area and of grave concern to the United States."<sup>24</sup> Yet, as recently as October 2022, People's Republic of China (PRC) President Xi Jinping asserted Beijing's right to militarily conquer Taiwan.<sup>25</sup> Most African states do not recognize Taiwan's sovereignty; while Eswatini recognizes Taiwan in lieu of the PRC, only Nigeria, South Africa, and Ivory Coast recognize the PRC while maintaining formal trade representatives in Taipei. Somaliland, despite immense pressure and lucrative enticements from Beijing to do otherwise, established bilateral relations with Taiwan in 2020, and the two countries have exchanged representatives.<sup>26</sup> It is thus in the United States' national interest to support international partners who also seek to advance the broad objectives of the Taiwan Relations Act.

Indicative of American interests in Somaliland's peace and stability, in recent years Congress has sought to assess and reorientate the US government's engagement with the self-declared country. The National Defense Authorization Act (NDAA) for fiscal year 2023, for example, instructs the secretary of state to submit an annual report that details American aid, security training, and official travel to Somaliland.<sup>27</sup> It similarly commissions a report that surveys further opportunities to engage with Somalia and Somaliland to further the United States' national security interests in the region. While the act explicitly notes that nothing in the law should be construed as recognizing Somaliland's independence, the author of the relevant section of the NDAA—Senate Foreign Relations Committee Ranking Member James Risch—subsequently characterized the law as an opportunity "to explore all possible mutually-beneficial relationships with stable and democratic partners, including Somaliland."<sup>28</sup> This desire to advance the national interest by developing relations with stable and democratic partners echoes President Bush's aforementioned rationale for recognizing a democratic and sovereign Kosovo.

Recognizing Somaliland's sovereignty would further advance this mutually beneficial relationship, particularly among private-sector actors. The African Growth and Opportunity Act (AGOA) provides a variety of trade benefits for African countries that advance market-based economies and the rule of law while inhibiting corruption and human rights abuses. Although Somaliland and its local businesses would likely be eligible for this access to the US market, Somalia is not yet a participant of the program. Because Somalia is also not a member of the World Trade Organization, Somaliland-based businesses face significant trade disadvantages relative to their peers in other stable and democratic African countries. Similarly, Somaliland passports are not recognized for travel to the United States. Without an American embassy or consulate in Somaliland, local business travelers are forced to apply for visas as Somali citizens at the US embassy in Nairobi, which has jurisdiction over applicants within Somalia and Somaliland. Recognition could curtail these costs—both immediately for Somaliland passport holders and longer term for Somaliland's trade potential.

With the benefit of a regional diplomatic strategy, recognizing Somaliland need not necessarily be a detriment to the United States' broader interests on the African continent. The United States should consult but not seek concurrence from the African Union on sovereign

recognition of Somaliland. The decision should be treated as strictly a bilateral diplomatic move. Still, despite the potential for short-term turbulence, especially with the regime in Mogadishu, liaising closely with Somaliland's neighbors and the African Union prior to any unilateral recognition of Somaliland would show respect and factor in regional concerns to protect the United States' long-term regional interests. The Somali government will vehemently oppose recognition; however, its national interests are served by remaining on good terms with the United States. In recent years, the United States has committed more than half a billion dollars annually in assistance to Mogadishu across both the Trump and Biden administrations. Similarly, the United States works closely with authorities in Mogadishu on counter-terror and security objectives. Unilateral recognition of Somaliland should be paired with a clear commitment to maintaining the United States' relationship with Mogadishu.

The African Union formally supports the integrity of its members' borders, but in practice, its track record is more nuanced and could serve as a rallying point to encourage other states to recognize Somaliland without fear of encouraging secessionist movements.<sup>29</sup> In 1980, the African Union's predecessor—the Organization of African Unity (OAU)—voted by simple majority to admit Western Sahara as a member despite Morocco's claim over the region.<sup>30</sup> The African Union also adopted the OAU's acceptance of former colonial territorial boundaries along which Somaliland initially achieved independence from Britain in 1960 with immediate sovereign recognition from thirty-five countries. The United Kingdom, France, and the Soviet Union all formally recognized the short-lived State of Somaliland. Five days after gaining its independence, the State of Somaliland voluntarily joined with the former Italian Somalia to form the Somali Republic, from which it subsequently reasserted its independence after the collapse of Siad Barre's regime in 1991. Coupled with the United States' diplomatic strategy, this history could serve as a rallying point for other African countries, as well as European partners, to concurrently recognize Somaliland's independence. Along the lines of Secretary Rice's statement on Kosovo, reiterating the unique nature of the Somaliland case—and the high threshold of the four Kosovo conditions—would further serve to allay concerns of separatism within the African context.

## **CONDITION II: DE FACTO TERRITORIAL CONTROL**

It was along the borders of the briefly independent State of Somaliland that, in May 1991, the leaders of the Somali National Movement (SNM) declared the independence of the Republic of Somaliland amid the ashes of Siad Barre's socialist republic. Since then, Somaliland authorities have established exclusive control over the majority of their claimed territory. Unlike Somalia, Somaliland has largely avoided the Al Shabaab insurgency and prolific interclan warfare that have bedeviled its southern neighbor. Nonetheless, Somaliland's territorial control is not seamless or without contest—much like that of Kosovo. While Somaliland's population is largely derived from the Isaaq clan, the eastern city of Las Anod is dominated by members of the Dhulbahante clan. Somaliland authorities in the capital, Hargeisa, claim the city due to its location within colonial and briefly independent Somaliland. Yet, the neighboring Somali region of Puntland asserts its right over the town and environs due to clan ties between its population and the Dhulbahante. These rivaling claims precipitated Puntland's capture of



the city in 2003, followed by Somaliland’s successful reestablishment of control in 2007 and, most recently, unrest throughout 2023.<sup>31</sup>

A loose parallel exists in Kosovo, where various Serb-majority enclaves exist within the otherwise Albanian-majority country. Much like Las Anod, which borders Puntland, the Serb-majority northernmost region of Kosovo has been a site of unrest since Kosovo’s declaration of independence. Violent protests erupted in North Kosovo in the wake of the declaration of independence in 2008, and clashes have periodically surfaced, including in 2023. Contiguous with Serbia, the municipalities of northern Kosovo maintained their own parallel institutions—such as a police force and judiciary—until an agreement was brokered in Brussels in 2013. While this agreement formally provided for Serb-majority regions of Kosovo to form a collective association replete with its own leadership and elected assembly, this has yet to materialize.

The experience of northern Kosovo illustrates the nature of de facto territorial control necessary to meet this condition for sovereign recognition. The rejection of the Kosovar declaration of independence in 2008 by Serb communities was foreseeable, precipitating an era of heterogeneous state capacity across Kosovo. This situation is echoed in Las Anod, with the desire of some local elders to rejoin Somalia. Yet, perfect should not be the enemy of good. Much like Kosovo in 2008, Somaliland after its own declaration of independence has largely enjoyed de facto territorial control for over thirty years. In this respect, it does not contribute to African state fragmentation.

### **CONDITION III: LITTLE CHANCE OF PEACEFUL REINTEGRATION**

Examining the prospects of Somaliland’s peaceful reintegration requires a consideration of why and how modern Somaliland came into being. While Siad Barre’s ideology of scientific socialism formally refuted clan affiliation,<sup>32</sup> Barre formed an alliance among the Marehan, Ogaden, and Dhulbahante to fill the senior posts of his military regime.<sup>33</sup> The marginalization of the Isaaq clan—who constitute the majority of the population in Somaliland—led to the creation of the SNM by Isaaq diaspora intellectuals in 1979 to oppose Barre. The SNM gradually established itself as the preeminent insurgent group in northwest Somalia. In response to the insurgency, in 1988 Barre launched a genocidal air campaign to raze cities in the Isaaq heartland. It is estimated that 200,000 people were killed in the genocide.<sup>34</sup> The destruction of the current capital of Somaliland, Hargeisa, earned it the moniker “the Dresden of Africa.” The result was the further fusing of the Isaaq and the SNM.<sup>35</sup>

While the SNM’s original goal was to reconstitute a representative regime in Mogadishu, the chaos that followed the downfall of the Barre regime made that objective infeasible. From the Isaaq stronghold of Bur’o, in May 1991 the SNM central committee embraced the popular sentiment of the time and—with the elders of the smaller neighboring clans—declared Somaliland independent.<sup>36</sup>

This intertwined history of the Isaaq genocide, the SNM, and the Somaliland state have eliminated any chance of peaceful reintegration for the foreseeable future. Clan affiliation has

sometimes become a too ready explanation for the dynamics of Somali politics. However, the legacy of the genocide at the hands of Barre's regime in Mogadishu remains a common theme in Somalilander nationalism. Reuniting Somaliland with Somalia would echo Barre's "Greater Somalia" irredentism; in 1977, Barre's forces invaded the neighboring Ethiopian region of Ogaden in support of local Somali separatists. The resettling of Ogaden refugees in what is now Somaliland was a contributing grievance among the Isaaq toward Barre. Reuniting Somaliland with Somalia, which hosts a non-Isaaq population roughly three times larger than Somaliland, under the guise of an irredentist vision of Somalia is thus unimaginable.

Much like the Isaaq under Barre's regime, the Albanian population of Kosovo was similarly victimized by Slobodan Milošević's efforts to retain control of Kosovo. According to a State Department report published months after the conclusion of the Kosovo war, Milošević's campaign of ethnic cleansing in Kosovo led to the death of approximately ten thousand Albanian Kosovars at the hands of Serbian forces.<sup>37</sup> Moreover, "over 1.5 million Kosovar Albanians—at least 90 percent of the estimated 1998 Kosovar Albanian population of Kosovo—were forcibly expelled from their homes." The legacy of these war crimes persists, and the prospect of suing Serbia for genocide at the International Court of Justice looms large in Kosovar politics.<sup>38</sup>

In both Kosovo and Somaliland, there remains a deep legacy of war crimes that were perpetrated by an autocrat in pursuit of controlling the distinct local populations. In both cases, there has since been little chance of peaceful reintegration.

#### **CONDITION IV: THE DEMONSTRATED FEASIBILITY OF A LOCAL DEMOCRATIC REGIME**

In stark contrast with the government in Mogadishu, Somaliland's political system is both markedly democratic and stable. A significant source of this stability can be attributed to infusion of traditional approaches to governance within democratic institutions. In the absence of obvious natural resources to exploit, the British colonization of Somaliland was extremely frugal. Conversely, the Italian colonization of Somalia proper was replete with a settler-plantation colony and profound efforts to redefine Somali society along Italian social and cultural lines.<sup>39</sup> While much of Somalia was subject to this upheaval, as well as debilitating interclan conflict, clan elders in Somaliland enjoyed comparatively greater authority upon the demise of the Barre regime.<sup>40</sup>

With the ability to forge a political settlement among themselves, clan elders in Somaliland orchestrated three indirect presidential elections in 1991, 1993, and 1997. A 2001 constitutional referendum inaugurated the advent of one-person, one-vote democracy under universal suffrage. Holding elections along these more inclusive terms proved difficult initially—especially in 2003—yet the conduct has increasingly improved, and one parliamentary and three presidential elections have since been held. By contrast, despite repeated efforts since Barre's demise, the regime in Mogadishu has yet to hold an election with universal suffrage.

In a neighborhood marked by the absence of democratic regimes, Somalilanders have built an enduring political system by fusing their democracy with local cultural features.<sup>41</sup> As in other contexts, precolonial institutions can provide a reliable foundation upon which contemporary social, political, and economic innovations can flourish.<sup>42</sup> Although Somaliland possesses a conventional, democratic legislature, the moderating influence of clan elders nonetheless persists; much like the United Kingdom's House of Lords, the upper chamber of the Somaliland legislature is reserved for clan elders. Moreover, per the 2001 constitution, Islam is the official state religion.<sup>43</sup> Yet, the constitution also safeguards the authority of the elected government by explicitly prohibiting seditious sermons in mosques.<sup>44</sup> The durable Somaliland political system thus leverages local social arrangements to help stabilize its democratic regime and similarly recognizes local religious interests while also safeguarding the state's democratic institutions. Somaliland clearly demonstrates the compatibility of Islam and democracy and can serve as a beacon for countries in North Africa and the Middle East.

Parallel to Somaliland's successful self-governance and as a likewise Muslim-majority polity, Kosovo enjoyed a protracted period of democratic self-rule in the years prior to the United States' recognition of its sovereignty. Following the conclusion of the Kosovo war, on June 10, 1999, the UN Security Council adopted resolution 1244, which established the United Nations Interim Administration Mission in Kosovo (UNMIK). UNMIK did not assume sovereignty of the Kosovo region, nor did it establish a formal pathway to independent statehood. Rather, it was charged with "the development of provisional institutions for democratic and autonomous self-government pending a political settlement, including the holding of elections . . . [and] transferring, as these institutions are established, its administrative responsibilities while overseeing and supporting the consolidation of Kosovo's local provisional institutions and other peacebuilding activities."<sup>45</sup> UNMIK oversaw a succession of governance councils and political bodies that eventually evolved into the Kosovar presidency, a unicameral legislature, and a prime minister's office and cabinet. Prior to Kosovo's declaration of independence in 2008, legislative elections were held in 2001,<sup>46</sup> 2004,<sup>47</sup> and 2007 that were each described as free and fair by international observers.<sup>48</sup>

Much like the Somalilanders, the Kosovar people have developed a durable democratic regime whose legal foundation reflects the predominant culture of the local context. Among a Muslim majority but largely secular population, Kosovo's post-independence constitution enshrines the state's secularism.<sup>49</sup> Yet, this secularism is not static. The education ministry's decision to ban religious attire in public schools more than a year after declaring independence,<sup>50</sup> for example, has been met with continued opposition from religiously conservative segments of the Kosovar population.<sup>51</sup> Moreover, recognizing the potential for the further evolution of Kosovar secularism, authors such as Hellenbrand argue that "Kosovo is not constitutionally bound by international case law, and thus it has greater autonomy to craft policy and law on matters of religion that are adapted to the particularities of the ethnic and religious communities within its borders."<sup>52</sup> The fluidity of the Kosovar interpretation of secularism is not a defect of a rigid system but, rather, an asset of a durable democratic regime that is capable of reflecting the changing interests of its citizens.

Over a period of eight years and with the help of UNMIK, Kosovo developed inclusive and representative political institutions, which have successfully endured for the fifteen years since independence. Similarly, by drawing from the stabilizing and moderating influence of clan elders, Somaliland has enjoyed universal suffrage in its parliamentary and presidential elections for more than twenty years. While challenges remain in both contexts—particularly concerning the political participation of ethnic Serbs in Kosovo and the status of Las Anod in Somaliland—durable democratic regimes have emerged in both cases.

## **THE CASE FOR AMERICAN UNILATERAL RECOGNITION OF SOMALILAND**

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The ability to recognize the sovereignty of a foreign nation is a powerful prerogative vested in the presidency. Without the need for consensus among nations or lawmakers in Congress, and despite its potentially profound economic implications, the recognition power nonetheless has been seldom used in the twenty-first century. If presidents have this foreign policy tool at their disposal, when should it be employed?

The United States' recognition of Kosovo in 2008 represents an instructive example. In the absence of congressional or international consensus, the George W. Bush administration exercised this unilateral power and, in the process, established four guiding conditions for its successful use—the opportunity to advance the United States' interests, the existence of de facto territorial control by the aspirant state, the little chance of peaceful reintegration, and the demonstrated feasibility of a local democratic regime.

The self-declared Republic of Somaliland on the Horn of Africa meets these four “Kosovo conditions.” Recognizing Somaliland would advance the United States' interests by supporting a fellow democratic regime, promoting stability near the Bab al-Mandab trade choke point, and facilitating economic growth—particularly as Somaliland deepens its relations with Taiwan. Enjoying de facto control over most of its claimed territory, with little chance of reintegration with its former state in the wake of war crimes and the decades-long demonstration of a democratic regime, the case of Somaliland clearly parallels that of Kosovo.

The relatively infrequent use of the recognition power should not preclude its deployment when the appropriate opportunity arises. Coupled with a diplomatic plan to protect the nation's broader regional interests, the United States should recognize Somaliland as the independent and sovereign nation that it is.

### **NOTES**

1. A Resolution Expressing the Sense of the Senate That the United States Should Support Independence for Kosovo, S. Res. 135, 110th Cong. (2007).
2. Expressing the Sense of the House of Representatives That the United States Should Support Independence for Kosovo, H.R. Res. 309, 110th Cong. (2007).

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