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## Somaliland International Patriotic Action

### Open Forum Discussion Summary:

#### POLICY BRIEFING PAPER No.4/2023

## The Extinctions of Somaliland and Somalia on 1<sup>st</sup> July 1960

### 1. Introduction:

SIPA's Open Forum held online discussion on 16/05/2023, the discussion focused the question of the 'The Extinctions of Somaliland and Somalia on 1st July 1960', which has never been disclosed in the international public domain. The discussion took at time 125 minutes from 10:30pm to 00:45am local time. The discussion was participated by professionals of different backgrounds with high calibers such as professors, lawyers, diplomats, researchers, writers, security and policy analysts/commentators and other experts in the fields of public policy, public international law, international relations and diplomacy.

The online discussion was held under rule of SIPA's Open Forum and investigated the extinctions of Somaliland and Somalia on 1<sup>st</sup> July 1960'. Participants contributed information on the extinctions of Somaliland and Somalia on 1<sup>st</sup> July 1960, the official codification concluded with the United Nations on the extinctions of Somaliland and Somalia. SIPA has made every possible effort to ensure accuracy of this information in an impartial manner.

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Edited by: SIPA Team

## 2. Background

Behest of the United Nations the provisional President of the Somali Republic created Consultative Commission for Integration comprising 11 members appointed on 11<sup>th</sup> October 1960 by the provisional president to overcome the differences of the two territories of Somaliland and Somalia.

The extinctions of Somaliland and Somalia's existences as separate independent States was established in accordance of paragraph 1 of Article 4 of the Somali Republic Law No. 5 of 31<sup>st</sup> January 1961, on the Succession of Rights and Obligations, which reads; *"All rights lawfully vested in or obligations lawfully incurred by the independent Governments of Somaliland and Somalia, or by any person on their behalf, shall be deemed to have been transferred to and accepted by the Somali Republic, upon the establishment of the union"*. (See Article 4(1) of Law No. 5).

Upon the extinctions of Somaliland and Somalia's existences as separate independent States on 1<sup>st</sup> July 1960, Somaliland and Somalia ceased to exist on 1<sup>st</sup> July 1960.

International community of States as a whole accepted and recognized the extinctions of Somaliland and Somalia's existences as separate independent States, *"Somaliland and Somalia, their separate existences as independent States were very short-lived and designed merely as steps towards the creation of a unitary Republic"*.

## 3. The extinction of Somaliland and Somalia

The extinction of Somaliland and Somalia's existences as separate independent States was established in accordance of paragraph 1 of Article 4 of the Somali Republic Law No. 5 of 31<sup>st</sup> January 1961, on the Succession of Rights and Obligations, which reads; *"All rights lawfully vested in or obligations lawfully incurred by the independent Governments of Somaliland and Somalia, or by any person on their behalf, shall be deemed to have been transferred to and accepted by the Somali Republic, upon the establishment of the union"*. (See Article 4(1) of Law No. 5).

## 4. Repeals of Somaliland or Somalia's legal framework

In order to overcome the difference between Somaliland or Somalia, the Consultative Commission for Integration decided to repeal any legal framework existing Somaliland and Somalia, which were inconsistent with the Constitution of the Somali Republic or this law No.5 of 31<sup>st</sup> January 1961.

Article 9. Repealed Inconsistent Legal Provisions, that repealed any legal framework existing in Somaliland and Somalia is established in paragraph 1 of Article 9 of Law No. 5, which provides, *"Any provision of law any law of Somaliland or Somalia, including the Somaliland Order in Council, 1960, (being the Constitution of Somaliland), which is inconsistent with the Constitution of the Somali Republic or this law are hereby repealed"*.

The repeals in paragraph 1 of Article 9 did not reserve any legal framework either one of Somaliland or Somalia on 1<sup>st</sup> July 1960.

Paragraph 2 of Article 9 of Law No.5 of 31<sup>st</sup> January 1961, repealed "*The provisions of the Union of Somaliland and Somalia (Law No. 1 of 1960) are hereby repealed, except for Article 11(4) thereof.*"<sup>1</sup>

In Article 11 (4) of Law No.1 of 27 June 1960, was dealing international treaties entered into force in the two territories of Somaliland and Somalia, which the Somali Republic becomes the successor of all rights and obligations of Somaliland and Somalia that are containing international agreements entered into force in the respective territories of Somaliland and Somalia.

## **5. Codification of the extinctions of Somaliland and Somalia**

The extinction of Somaliland and Somalia's existences as separate independent States was established in accordance of paragraph 1 of Article 4 of the Somali Republic Law No. 5 of 31<sup>st</sup> January 1961, was later codified by the International Law Commission and adopted by the General Assembly.

Since then, the later was extinction of Somaliland and Somalia which has been recognized and accepted by the international community as a whole of States, which is a norm which no derogation was permitted other than equal character of the same. The existing peremptory norm of general international law (*jus cogens*), is the decision of the international community which has superiority other international law is as follows:

*"Somaliland and Somalia, their separate existences as independent States were very short-lived and designed merely as steps towards the creation of a unitary Republic."*

See *United Nations Yearbook of the International Law Commission 1972, vol. II, Documents A/CN.4/SER.A/1972/Add. 1*, pp.9-34 & pp.10-250.; See Report of the International Law Commission on the work of its twenty-fourth session, 2 May -7 July 1972, Official Records of the General Assembly, Twenty-seventh session, Supplement No.10, document A/8710/Rev.1, Report of the Commission to the General Assembly, pp.10-285.

The extinctions of Somaliland and Somalia was commenced effective from 1<sup>st</sup> July 1960 in accordance of Article 10 of the Somali Republic Law No.5 of 31<sup>st</sup> January 1961.

The notion that says Somaliland and Somalia formed the Somali Republic on 1<sup>st</sup> July 1960 is contrary in paragraph 1 & 2 of Article 9 of the Somali Republic Law No.5 of 31<sup>st</sup> January 1961, which Somali Republic repealed any legal frameworks existing in Somaliland and Somalia which were inconsistent legal provisions.

In paragraph 1 of Article 9 of Law No. 5, provides, "*Any provision of law any law of Somaliland or Somalia, including the Somaliland Order in Council, 1960, (being the Constitution of Somaliland), which is inconsistent with the Constitution of the Somali Republic or this law are hereby repealed*". The repeals in paragraph 1 of Article 9 did not make any reservation of any legal framework to any of Somaliland and Somalia on 1<sup>st</sup> July 1960.

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<sup>1</sup> See Law No. 5 of 31 January 1961: Act of Union Somalilandlaw.com Archives; Somali Republic Law of 31 January 1961, No. 5 "Act of Union".

In paragraph 2 of Article 9 of Law No.5 of 31<sup>st</sup> January 1961, provides that, "*The provisions of the Union of Somaliland and Somalia (Law No. 1 of 1960) are hereby repealed, except for Article 11(4) thereof.*"<sup>2</sup> In Article 11 (4) of Law No.1 of 27 June 1960, the Somali Republic was the successor of all rights and obligations containing international treaties entered into force in the two territories of Somaliland and Somalia. The legal effect of Article 11 (4) of Law No.1 of 27 June 1960 is that the Somali Republic was the successor of those rights and obligations that the independent State of Somaliland accessed on 26 June 1960.

This is the result of the official legal interpretation in paragraph 1 of Article 4 of the Somali Republic Law No.5 of 31<sup>st</sup> January 1961, Mr. Eugene Cotran who received the original text of Mr. Paolo Contini<sup>3</sup> stated that; "*As there was never an independent Government of Somalia, the effect of Article 4 is to make the Somali Republic the successor of the Government of Somaliland only, with respect to the rights and obligations acquired by it during the 5 days prior to the union. This applies to rights and obligations arising from matters other than international agreements*". See Mr. Eugene Cotran, *The International and Comparative Law Quarterly* Vol. 12, No. 3 (Jul., 1963), p.1016; See Yearbook....1976, vol. II (1), document A/CN.4/292, Succession of States in respect of matters other than treaties, pp.27-101.

In conclusion Somaliland and Somalia which remained as two short-lived States on 1<sup>st</sup> July 1960 did not form the Somali Republic. Paragraph 1 of Article 1 of the Constitution of Somaliland is based such empty notion of personal opinion, which a legal obstacle to the fundamental principles of the Constitution of Somaliland.

## 6. Conclusions

The extinctions of Somaliland and Somalia's existences as separate independent States was accepted and recognized by the international community of States as a whole, the General Assembly of the United Nations. Therefore, Somalia's display and existence over the period before 1991 was unlawful derogation from the existing peremptory norm of general international law (*jus cogens*).

Somaliland and Somalia returned their *status quo* in 1991, and any dispute arising between Somaliland and Somalia is governed by the official legal document currently available at Secretary-General of the United Nations; "*Somaliland and Somalia, their separate existences as independent States were very short-lived and designed merely as steps towards the creation of a unitary Republic.*"

Security Council on the respect of Somalia's sovereignty and territorial integrity is incompatible to the situation of circumstances of changes emerged effective from the date which Somalia was liberated in the territory of Somaliland.

Finally, efforts of international community would need to reflect international legal system and the principles enriched in Art III (3) of the Charter of African Union and Art 2(4) of the Charter of United Nations. The current presumption of continuity is controversial by supporting an obligation without real substance, which the case of Somalia is reflecting.

## 7. Recommendations

### 7.1. The Government of Somaliland:

- The Government of Somaliland should manifest sovereignty existing over its territory of Somaliland on 26 June 1960.
- Manifest British Treaty Series No.44 (1960) Agreements and Exchange of Letters between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Somaliland in connexion with the attainment of independence by Somaliland. Hargeisa, June 26, 1960.
- The Government of Somaliland should engage and sustain its countermeasures against Somalia until Somalia ceases its violations.

### 7.2. The African Union:

- The African Union should immediately stop knowingly commissioning Somalia's wrongful act.
- The African Union should understand that on 1<sup>st</sup> March 2001 the status of Somalia was failed State not entitled to ratify the African Union Constitutive Act.
- The African Union should immediately expel Somalia from the membership of the African Union, as admission of non-sovereignty entity is breach against the Act.

### 7.3. International community:

- International community should understand the formation of so-called "the Federal Government of Somalia in August 1<sup>st</sup> 2012 is conflicting with the existing *jus cogens*.
- International community should understand the only modification of the two short-lived States of Somaliland and Somalia is equal character of the same.

#### About SIPA

The Somaliland International Patriotic Action (SIPA) is an independent, nonpartisan, nonprofit policy, democracy, human rights and development organizations established to strengthen the capacity of the people of Somaliland by injecting knowledge, technical and administrative support to enable to manage issues affecting their status and position in the world. SIPA Action is focusing popularization of the existence of Somaliland and the fundamental rights of the people of Somaliland. Copyright ©SIPA 2024

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