



Somaliland International Patriotic Action

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Open Forum Discussion Summary:

POLICY BRIEFING PAPER No.3/2023

Question of respect of Somalia's territorial integrity

1. Introduction:

SIPA's Open Forum held online discussion on 7th May, 2023, the discussion focused the question of the 'Legality of respect of *Somalia's territorial integrity*'. The discussion examined the legality of the claims of Somalia' from the point of perspectives of international law and in particular, from the existing international legal system.

The discussion took almost three hours a total time 175 minutes from 10:30pm to 01:35am morning of the local time. The discussion was commentated and coordinated by SIPA team. Total of 47 participants attended online discussion. Participants were amongst the others lawyers, practitioners of international law, legal researchers, security and policy analysts, politicians and other experts from different fields of public international law, international relations and diplomacy.

The online discussion was held under the rule of SIPA's Open Forum in a transparent and impartial manner. The discussion addressed authentic information rather than personal opinions.

2. Background:

The territory of Somalia was under the colony of Italy from 1894 up to 10 February 1947, shortly after the end of the second World War, the four power States signed Friendly Treaty with Italy in

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Edited by: SIPA Team

Paris, which Italy agreed to denounce all its rights and obligations of the territories under its possession in Africa before the commencement of the second World War.

These territories were Libya, Somalia and Eritrea, since then, Britain overtook the territory of Somalia and placed under Military Administration and later Britain returned on 1st April 1950 to Italy as the Administering Authority. In other word, Italy did not have sovereignty over the territory of Somalian nor entitled to grant recognition Somalia.

Namely resolutions of the Security Council continue *Reaffirming "its respect for the sovereignty, territorial integrity, political independence and unity of Somalia"*. Amongst the others, the most recent resolutions that the Security Council is reaffirming its respect "*for the sovereignty, territorial integrity, political independence and unity of Somalia*", are:- United Nations Security Council S/RES/2714 (2023) 2714 (2023) Adopted by the Security Council at its 9491st meeting, on 1 December 2023, p.1.; See United Nations Security Council S/RES/2607 (2021) Resolution 2607 (2021) Adopted by the Security Council at its 8905th meeting, on 15 November 2021, p.1.; See United Nations Security Council S/RES/2551 (2020) Resolution 2551 (2020) Adopted by the Security Council at its 8775th meeting, on 12 November 2020, p.1.; See United Nations Security Council S/RES/2093 (2013) Resolution 2093 (2013), Adopted by the Security Council at its 6929th meeting, on 6 March 2013, p.1.

Since then, Somalia's display and existence over the period before 1991 is assumed as lawful means in breach of duty not to consider as lawful means for any situation created by illegal means and use of force, which Somalia's display and existence over the period before 1991 is reflecting. All possible legal investigation has been made to examine the legality of "respect of Somalia's territorial integrity", the findings proved that Somalia has rejected the validity of territorial treaties concluded by the predecessor States. In addition, Somalia did not claim as successor State of any rights and obligations containing international multilateral treaties which the Secretary-General of the United Nations is responsible on the performance of depository functions.

3. The extinctions of Somaliland and Somalia

Transferred all rights and obligations of Somaliland and Somalia to the Somali Republic in accordance of paragraph 1 Article 4, of the Somali Republic Law No.5, which reads as follows:

*"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."*

In addition, to the extinctions of Somaliland and Somalia as of 1st July 1960, and all laws of Somaliland and Somalia were repealed in paragraph 1 of Article 9 of the Somali Republic Law No.5. The effective date of the extinctions of Somaliland and Somalia and repeals of laws of Somaliland and Somalia commenced retroactive from 1st July 1960.

3.1. Repeal of any law of Somaliland or Somalia:

The Somali Republic Law No.5 of 31st January 1961 has repealed in Article 9(1) of Act of Union any law of Somaliland and Somalia, “*Any provision of any law of Somaliland or Somalia, including the Somaliland Order Council (being the Constitution of Somaliland), which is inconsistent with the Constitution of the Somali Republic or this law is hereby repealed*”.

Repeals of in paragraph 1 of Article 9 of Law No.5 established authentic legal evidence showing that the two States of Somaliland and Somalia which their laws repealed have ceased to exist on 1st July 1960.

In accordance of the legal evidences in paragraph 1 of Article 4 and in paragraph 1 of Article 9 of the Somali Republic Law No.5 of 31st January 1961, are showing that the notion saying Somaliland has voluntarily united with Somalia on 1st July 1960 is baseless and contrary to the existing written legal evidence at domestic and international levels.

3.2. Legal interpretation of paragraph 1 of Article 4 of Law No.5

The Somali Republic Law No.5 of 31st January 1961 was registered with the Secretariat of the United Nations and the International Law Commission (ILC) have made official legal interpretation in paragraph 1 of Article 4 of Law No.5, to investigate the existence of the rights and obligations, which Somali Republic was the successor. In particular, “*the independent Governments of Somaliland and Somalia*”

“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.”

The Somali Republic was the successor of those rights and obligations that Somaliland accessed on 26 June 1960. Mr. Eugene Cotran 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.*”

The practices of Somalia, including Somalia’s false State representations in Article 7 (5), Article 49(5) and Article 72 of the provisional Constitution of Somalia 2012, which contains fake provisions and violations against the Government of the Republic of Somaliland. Somalia’s fake legislations such as the Law of Regions and Districts Administration of Somalia Law No.116, Law of Political Parties of Somalia 2016, Law of Federal Level Election of Somalia and many others which are claiming the 18 Administrative regions that existed in 1990 have forced Somaliland to break its silence and disclose the reality existing on Somalia.

4. Codification of two short-lived States:

The International Law Commission concluded the official codification of the status of Somaliland and Somalia as two short-lived States and officially published by 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".*

The decisions of the General Assembly of the United Nations representing the international community of States as whole have accepted and recognized the official legal status of Somaliland and Somalia as two short-lived States. The official records of the United Nations General Assembly established the two short-lived States of Somaliland and Somalia are among the others the following: -

See 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 *United Nations International Law Commission 2 May -7 July 1972* vol. II, pp.10-285.

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. See Yearbook of the International Law Commission, 1974, vol. II, Part One, United Nations Draft articles on Succession of States in respect of Treaties with commentaries 1974, pp.10-250.

The United Nations Legislative Series contains Somalia's Treaties: -

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. See United Nations Legislative Series, Materials on Succession of States in Respect of Matters Other Than Treaties, ST/LEG/SER.B/17, United Nations, New York, 1978, p.390.; See also Footnote 2 (Ibid) "British Treaty Series No. 44 (1960), Commander 1101. Came into force on 26 June 1960".

Finally, there is no treaty recorded and registered for Somalia in the Secretariat of the United Nations, which contains provision stipulating political independence that Somalia achieved on 1st July 1960.

5. Legality of Somalia's territorial integrity:

The Security Council resolutions continue to *Reaffirm "its respect for the territorial integrity of Somalia"*, while pre-existing independent State of Somaliland and its people knew that the territorial integrity is not applicable to the case of Somalia, but kept silence of diplomacy and avoided to disclose the reality existing on Somalia.

Somalia come into existence through unlawful and unequal derogation from the existing peremptory norm of general international law (*jus cogens*), which international community of States as whole accepted and recognized that 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 reference of the above legal evidences.

5.1. Somalia did not claim as successor State:

Somalia did not claim as successor State of any of those rights and obligations containing multilateral treaties, which the Secretary-General of the United Nations is responsible on the performance depository functions.

The resolutions of the Security Council that reaffirms respect of Somalia's territorial integrity will not create obligations in international law, See United Nations Security Council S/RES/2714 (2023) 2714 (2023) Adopted by the Security Council at its 9491st meeting, on 1 December 2023, p.1.; See United Nations Security Council S/RES/2607 (2021) Resolution 2607 (2021) Adopted by the Security Council at its 8905th meeting, on 15 November 2021, p.1.; See United Nations Security Council S/RES/2551 (2020) Resolution 2551 (2020) Adopted by the Security Council at its 8775th meeting, on 12 November 2020, p.1.; See United Nations Security Council S/RES/2093 (2013) Resolution 2093 (2013), Adopted by the Security Council at its 6929th meeting, on 6 March 2013, p.1. To the extent that these resolutions are conflicting with the existing peremptory norm of general international law (*jus cogens*).

Somalia's display and existence over the period before 1991 and later in August 2012 is situation involving breach against the Purposes and Principles of the United Nations, in particular, Purposes in Article 1 (1) and 1(2). Somalia is involving unlawful acquisition of a territory of other independent State and situation of irregular transfer of the territory of the independent State of Somaliland without consent of Somaliland which is breach against claims the Principles in Article 2(1) and in Article 2(4) of UN Charter.

5.2. Somalia rejected validity of territorial treaties

The work of the International Law Commission has determined that Somalia has rejected territorial treaties concluded by the predecessor States, which is the foundation of the legal framework of succession of State. The extent that Somalia has rejected the validity of territorial treaties on what base Somalia is entitled respect of territorial integrity.

5.3. Somalia did not ratify the Charter of OAU:

Somalia rejected in Article III (3) of the OAU Charter, it is true, merely proclaimed the principle of "respect for the sovereignty and territorial integrity of each State and for its inalienable right to independent existence". See Report of the Commission to the General Assembly, United Nations, Treaty Series, vol. 479, p.74.

Somalia rejected border resolution "All Member States pledge themselves to respect the borders existing on their achievement of national independence". See OAU document A.H.G./Res.16(I).

Somalia rejected A similar resolution was adopted by the Conference of Heads of State or Government of Non-Aligned Countries also held in Cairo later in the same year. This does not, of course, mean that boundary disputes have not arisen or may not arise between African States.

Somalia unlawfully filled reservation against in Article III (3) of the OAU Charter, which is serious breach against the Charter of OAU, which was not containing provision stipulating reservation.

Somalia's display and existence over the period before 1991 and later in August 1st 2012 constitute breach against the Somali Republic Law No. 5 of 31st January 1961, in Article 1 of Law No. 20 of 23 August 1963, Authorization to Ratify the Charter of Organization of African Unity, by the Somali Republic, the principal Member State of the OAU.

Somalia did not ratify the Charter of the Organization of African Unity. Somalia rejected in Article III (3) of the Charter of the OAU. In 1964 Somalia unlawfully filled reservation against in Article III (3) of the Charter of the OAU, which constitute breach against the Charter of OAU.

Somalia rejected Border resolution adopted in Cairo, Egypt on 21st July 1964.

Somalia did not ratify the Constitutive Act of the African Union in 2001, the status of Somalia was failed State, but the name of Somalia is included among the two-third signatories as Somalia ratified on 1st March 2001, which is breach against in Article 29 of the Constitutive Act 2000.

Somalia is involving violation against in Article 4 (b) of the Constitutive Act of the African Union. 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".*

Finally, the principle of territorial integrity is not applicable to Somalia to the extent that Somalia never inherited borders nor she is the successor of territorial treaties and for this reason Somalia is not entitled territorial integrity. Somalia's possession and control of the territory of Somaliland over the period before 1991 was by means of use of force, and situation involving illegal occupation which has no legal validity upon termination in 1991.

The extinctions of Somaliland and Somalia's existences as separate independent States on 1st July 1960 in accordance of paragraph 1 of Article 4 of the Somali Republic Law No. 5 of 31st January 1961, 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 of the Somali Republic Law No. 5 of 31st January 1961. According to commission's report paragraph (27) Article 4, paragraph 1, of the constituent instrument of the Somali Republic reads as follows:

"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 paragraph 1 of Article 4 of the Somali Republic Law No. 5 of 31st January 1961.; See Yearbook of International Law Commission, 1976, vol. II (1), document A/CN.4/292, Succession of States in respect of matters other than treaties, pp.27-101.

6. Conclusions:

International community of States as a whole have accepted and recognized that Somalia does not claim as successor State of any territory. In addition, Somalia has rejected the validity of territorial treaties concluded by the predecessor States. On the other hand, Somalia did not inherit boundary on 1st July 1960.

The official legal status of Somaliland and Somalia was two short-lived States as of 1st July 1960 in accordance of paragraph 1 of Article 4 of the Somali Republic Law No. 5 of 31st January 1961, 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*". Somaliland and Somalia returned to their *status quo* of the situation they were on 1st July 1960,

Somalia's claim on the territory of Somaliland is on the basis of those rights and obligations which Somalia acquired illegally possessed and controlled by means of use of force over the period before 1991. Since the defeat of Somalia's aggression and illegal occupation in the territory of Somaliland in 1991, any rights and obligations that Somalia has acquired in the territory of Somaliland will cease automatically upon Somalia's loss of the territory of Somaliland in 1991.

Somalia is involving breaches against the Charter of the United Nations, Article 102 (2) "*No party to any such treaty or international agreement which has not been registered in accordance with the provisions of paragraph 1 of this Article may invoke that treaty or agreement before any organ of the United Nations.*"

Those international organizations, as well regional and international financial institutions that are blindly trying the continuation of treaties that Somalia accessed unlawfully with which those facilitated are partially accountable on the consequences of Somalia's war crimes in the territory of Somaliland before 1991.

Nothing will construe in paragraph 1 of Article 1 and in paragraph 1 of Article 10 of the Constitution of Somaliland as rule of customary international law or as a form of evidence of Government legal opinion or provision of the Constitution to the extent that rule of customary international law will not come into existence for situation conflicting with the existing peremptory norm of general international law (*jus cogens*).

7. Recommendations:

7.1. The Government of Somaliland:

- The Government of Somaliland should prevent any relations with Somalia as there was no transfer of jurisdiction between Somaliland and Somalia.

- The Government of Somaliland should prove that Somalia has lost its possession and control of the territory of Somaliland in the eyes of the international community.
- The Government of Somaliland should create new juridical order including the enactment of Municipal Act.

7.2. The Government of Somalia:

- The Government of Somalia should immediately stop its false State representation against Somaliland in Article 7 (5), Article 49(5) and Article 72 of the provisional Constitution of Somalia 2012.
- The Government of Somalia should stop its pseudo law that contains fake provisions and violations against the Government of the Republic of Somaliland such as the Law of Regions and Districts Administration of Somalia Law No.116, Law of Political Parties of Somalia Lr.19, 2016.

7.3. The African Union:

- The African Union should know that Somalia is not a member of the 32 African States that founded the Organization of African Unity on 25 May, 1963.
- The African Union should know that Somalia did not ratify the Charter of OAU.
- The African Union should know that Somalia has filled unlawful reservation against in Article III (3) of the Charter of OAU.
- The African Union should know that Somalia did not ratify the African Union Constitutive Act 2000 and is engaging breach against in Article 4(b) of the Act.
- The African Union should know that Somalia's accession to membership in the Organization of African Unity was serious breach against instrument of ratification Law No.1 of 20 of 23 August 1963 Authorization to Ratify the Charter of the OAU by the Somali Republic.
- The African Union should immediately suspend AMISOM and ATMIS to the extent that these missions are instigating Somalia's threat against regional and international peace.

7.4. International Community:

- International community should stop Somalia's obligations created by resolutions.
- International community supporting AMISOM and ATMIS should know that their support is counterproductive to Somalia's peace process.
- International community should adhere the existing international legal system and international law.

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 them to manage issues affecting their status and position in the world. SIPA is focusing popularization of the existence of Somaliland and the fundamental rights of the people of Somaliland. Copyright ©SIPA 2024

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