



## SIPA's Open Forum Discussion Summary:

### Policy Briefing Paper No. 7/2023

#### There is No Union between Somaliland and Somalia

##### 1. Introduction:

SIPA's Open Forum held online discussion on 20/05/2023, the discussion focused debate on the question of union '*There is No Union between Somaliland and Somalia*', which has been sustained in the international public domains over the period that Somaliland has been under illegal occupation of Somalia. The discussion took total time of 120 minutes from 10:10pm to 00:10am and the discussion was attended and participated a total of 41 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 legality of the respect of Somalia's independence and territorial integrity'. Participants contributed the reality existing whether there is a Union between Somaliland and Somalia' and successfully ensured accuracy of information. Every effort has been made to ensure correctness of the information contributed by the participants.

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## 2. Background

The extinctions of Somaliland and Somalia's existences as separate independent States was established by law on 31<sup>st</sup> January 1961, in accordance of paragraph 1 of Article 4 of the Somali Republic Law No.5 of 31<sup>st</sup> January 1961. Somaliland and Somalia ceased to exist on 1<sup>st</sup> July 1960 and was superseded by the Somali Republic.

How Somalia come into existence was situation involving serious breach against the existing peremptory norm of general international law (*jus cogens*). Somalia's display and existence over the period before 1991 has no legal validity to the extent that Somalia's display and existence over the period before 1991 was conflicting with the existing peremptory norm of general international law (*jus cogens*).

Moreover, presumption of continuity of *status quo* is incompatible to any situation conflicting with the existing peremptory norm of general international law (*jus cogens*), which Somalia's display and existence over the period before 1991, Somalia's Transitional Government and so-called "the Federal Government of Somalia in August 1<sup>st</sup> 2012" are situations conflicting with the existing peremptory norm of general international law (*jus cogens*). No State shall recognize as lawful a situation created by a serious breach' of an obligation arising under a peremptory norm of general international law (*jus cogens*).

## 3. The extinctions of Somaliland and Somalia

The extinctions of Somaliland and Somalia's existences as separate independent States was established by law on 31<sup>st</sup> January 1961, in accordance of paragraph 1 of Article 4 of the Somali Republic Law No.5 of 31<sup>st</sup> January 1961, which provides the following: -

*"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 Somali Republic Law No.5 of 31 January 1961.

The extinctions of Somaliland and Somalia was made to have retroactive legal effect effective from 1<sup>st</sup> July 1960 in accordance of Article 10 (Title and Entry into Force), "*This law may be cited as the 'Act of Union' and shall be deemed to have come into operation on the 1st day of July, 1960*". However, the term of "Act of Union" is conflicting to paragraph 1 of Article 1, paragraph 1 & 2 of Article 4, in paragraph 1 & 2 of Article 9 and Article 10 of the Somali Republic Law No.5 of 31<sup>st</sup> January 1961. The extinctions of Somaliland and Somalia as two short-lived States.

### 3.1. Repeal of any law of Somaliland or Somalia

Upon the extinctions of Somaliland and Somalia's existences as separate independent States was established by law on 31<sup>st</sup> January 1961, the Somali Republic Law No.5 of 31<sup>st</sup> January 1961 has repealed any provision of any law of Somaliland or Somalia in paragraph 1 of Article 9 of Law No.5 of 31<sup>st</sup> January 1961, which stipulates, "*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.*" See Somali Republic Law No.5 of 31 January 1961.

### 3.2. Repeals of provisions of law of union

Notion that says entertains union of Somaliland and Somalia is conflicting in paragraph 2 of Article 9 of the Somali Republic Law No.5 that stipulates "*The provisions of the Union of Somaliland and Somalia (Law No.1 of 27 June 1960) are hereby repealed, except for Article 11(4) thereof.*" See Somali Republic Law No.5 of 31 January 1961. The repeals of the provisions of the Union of Somaliland and Somalia Law No.1 of 27 June 1960 on 1<sup>st</sup> July 1960 was reflecting the extinctions of Somaliland and Somalia's existences as separate independent States on 1<sup>st</sup> July 1960 by law on 31<sup>st</sup> January 1961, in accordance of Article 10 of this law.

### 3.3. Legal effect of paragraph 1 of Article 4:

The legal investigation of the Special Rapporteur of the International Law Commission confirmed that Somalia Treaty No.11, dated on 1<sup>st</sup> July 1960 does not contain any rights of the independence claimed by Somalia in paragraph 1 of Article 4 of the Somali Republic Law No.5 of 31<sup>st</sup> January 1961, "*the independent Governments of Somaliland and Somalia*". The Special Rapporteur of the Commission confirmed that there is no independent Government of Somalia; "*However, in as much as there was never an independent Government of Somalia, this article in effect makes the Somali Republic the successor of Somaliland only.*" See Yearbook....1976, vol. II (1), document A/CN.4/292, Succession of States in respect of matters other than treaties, pp.27-101.

Mr. Eugene Cotran who received the original text of Mr. Paolo Contini 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 Yearbook of the International Law Commission, 1972, vol. II, document A/CN.4/SER. A/1972 /Add. 1, p.32.; 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.

### 4. Codification of the extinctions of Somaliland and Somalia:

The codification of the extinctions of Somaliland and Somalia's existences as separate independent States on 1<sup>st</sup> July 1960 was concluded in the United Nations system which established an existing peremptory norm of general international law (*jus cogens*).

*"But 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 Report of the Commission to the General Assembly, pp.10-285.; See Yearbook ILC 1974, vol. II, Part One, A/CN.4/SER.A/1974/Add.I (Part 1), Report of the Commission to the General Assembly, p.80, pp.10-250.

The status of Somaliland and Somalia their separate existences as two short-lived States is a norm accepted and recognized by the international community of States as a whole a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character. Thus, Somalia's display and existence

over the period before 1991 was serious breach against the existing peremptory norm of general international law (*jus cogens*), which has no legal validity upon preclusion of Somalia's wrongful act in 1991.

Presumption that favors continuity of Somalia at later stage after 1991 including formation of so-called "the Federal Government of Somalia in August 1<sup>st</sup> 2012" are conflicting with the existing peremptory norm of general international law (*jus cogens*), to the extent that formation of so-called "the Federal Government of Somalia in August 1<sup>st</sup> 2012" is not in compliance with the allowed modification of a subsequent norm of general international law having the same character.

The codification of the extinctions of Somaliland and Somalia's existences as separate independent States on 1<sup>st</sup> July 1960, two short-lived States of Somaliland and Somalia, which established a norm accepted and recognized by the international community of States as a whole.

## 5. Conclusions

Somalia's display and existence over the period before 1991 was situation conflicting with the existing peremptory norm of general international law (*jus cogens*), *"a peremptory norm of general international law (jus cogens) is a norm accepted and recognized by the international community of States as a whole a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character"*.

Moreover, Somalia's possession and control of the territory of the State of Somaliland over the period before 1991 was by means of use of force, which Somalia was exercising its power over the territory of Somaliland without consent of the State concerned and its people.

Somalia's possession and control of the territory of the State of Somaliland over the period before 1991 was also situation involving irregular transfer of a territory of other independent State namely the State of Somaliland and situation of irregular transfer of a territory without consent of State concerned.

In the absence of principle of peaceful treaty concluded between two States transfer of jurisdiction and sovereignty from one State to another is unlawful in international law, and this is what Somalia's possession and control of the territory of the State of Somaliland was reflecting over the period before 1991.

Immediately upon the preclusion of Somalia's responsibility of internationally wrongful act from the territory of Somaliland in 1991. Termination of situation involving illegal occupation has no legal validity, no matter the length of time that Somalia has sustained its possession and control of the territory of the State of Somaliland by means of use of force over the period before 1991.

## 6. Recommendations:

### The Government of Somaliland:

- The Government of Somaliland should amend in paragraph 1 of Article 1 and paragraph 1 & 2 of Article 10 of the Constitution of Somaliland that contains a government legal opinion, which rule of customary international law will not come into existence to extent

that Somalia's display and existence over the period before 1991 or later is conflicting with the *jus cogens*.

- The Government of Somaliland should strengthen the legal framework of its State formation and State practice.

#### **The Government of Somalia:**

- The Government of Somalia should stop its claim of union and breach against in Article 102 of the UN Charter.
- The Government of Somalia should reform its unrealistic legal framework from the provisional constitution of 2012 and its laws that contains the 18 Administrative regions.

#### **United Nations:**

- United Nations should accept the extinctions of Somaliland and Somalia's existences as separate independent States on 1<sup>st</sup> July 1960, adopted by the General Assembly of the United Nations.
- United Nations should understand that the independent State of Somaliland is injured by the services of the United Nations.
- United Nations should understand that how Somalia come into existence was substitution of State and sovereignty.
- United Nations should immediately stop Somalia's claim of unity which has no treaty registered with the Secretariat of the United Nations.
- United Nations should understand that the Republic of Somalia was not a union as presented to the Security Council by UK, Italy and Tunisia on 5 July 1960.
- United Nations should understand that the admission of the Republic of Somalia was on the basis of British Treaty Series No. 44 (1960) without consent of the State of Somaliland.

#### **International community:**

- International community should limit their formation of so-called "the Federal Government of Somalia in August 1<sup>st</sup> 2012" to the Trust territory of Somalia only.
- International community should understand that the provisional constitution of Somalia in 2012 and Law of regions and districts of Somalian Lr.116 and other laws that contains the 18 Administrative regions are reversing Somalia's gains.

#### **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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