



## SIPA's Open Forum Discussion Summary:

### Policy Briefing Paper No. 8/2023

#### Presumption of Continuity of *Status Quo* of Somalia

##### 1. Introduction:

SIPA's Open Forum held online discussion on 19/05/2023, the discussion focused the question of the 'whether Presumption of Continuity of Status Quo is applicable to Somalia', that has been maintained international public domain by certain international organizations and entities. The discussion focused to examine Presumption of Continuity of Status Quo of Somalia and on the basis of the existing international legal system and international law. Discussion time was a total time of 150 minutes from 10:05pm to 00:40am local time.

Total of 53 participants from different backgrounds participated this discussion, amongst others, participants were lawyers, practitioners of international law, legal researchers, jurists, experts in the fields of public policy, public international law, security and policy analysts, human rights activist and others.

The online discussion was held under rule of SIPA's Open Forum in a neutral setting. Consultations and verifications were concluded to ensure correctness of information contributed in a transparency manner.

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Edited by: SIPA Team

## 2. Background

Concept of statehood and State's continuance are on the basis of the legal framework of State concerned and its legitimacy as a State in the eyes of the existing international legal system and international law, but not merely on the basis of resolutions and decisions of international organizations.

Similarly, State's continuance of its title over its territory is often presumed on the basis of the legitimacy that State has over a territory in question. Concept of presumption of continuity of statehood and State's title over its territory is then presumed in accordance of the existing international legal system and international law.

Presumption based on continuance of Somalia's statehood and its title over the territory of Somaliland is conflicting with the existing peremptory norm of general international law (*jus cogens*), which is defined "*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*".

In 2010, discussion was held at Chatham House and question regarding the legal status of Somaliland was asked Dr. Ralph Wilde, Reader in Laws, University College London, who is his response was later published by Chatham House "Summary of the International Law Discussion Group meeting held at Chatham House on 4 February 2010,p.5, Source:

[https://www.chathamhouse.org/sites/files/chathamhouse/field/field\\_document/Meeting%20Summary%20Recognition%20of%20States.pdf](https://www.chathamhouse.org/sites/files/chathamhouse/field/field_document/Meeting%20Summary%20Recognition%20of%20States.pdf), (Last accessed time 19/1/2016).

"In response to a question regarding the legal status of Somaliland, Dr. Wilde noted that "*the continued general international recognition of Somaliland as part of Somalia was based on the presumption of continuity.*" Dr. Wilde, the Reader in Laws, University College London, said: "*in general terms, the continuance of statehood and a state's title over its territory is presumed, whereas the creation of a new state and the loss of title over territory are to be proved*". See Dr. Ralph Wilde, Reader in Laws, University College London, Summary of the International Law Discussion Group meeting held at Chatham House on 4 February 2010, p.5, (Ibid) (Last accessed time 19/1/2016).

The view expressed by Dr. Ralph Wilde says "*the continued general international recognition of Somaliland as part of Somalia was based on the presumption of continuity,*" is reflecting from those decisions based on resolutions and other acts of international organizations performing own discretion from the outside of the existing international legal system and international law, with which obligations created by resolutions and decisions of international organizations regarding their recognition of Somaliland as part of Somalia will not create obligations under international law, to the extent that their recognition of Somaliland as part of Somalia and presumption of continuity of Somalia's internationally wrongful act are conflicting the existing peremptory norm of general international law (*jus cogens*).

Dr. Ralph Wilde also expressed his view and said, "*whereas the creation of a new state and the loss of title over territory are to be proved*", this view is true, because of the situation involving

none-succession of States entails continuity of the previous State, as foundation where presumption of continuity is to arise.

When we put a side, the untold reality existing on Somalia, this is what the practice that Somaliland has maintained over the period is reflecting, until Somaliland itself illustrates its position in the international public domain.

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.

### 4. Repeals 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. 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.

### **5. 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.

### **6. 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.

## **7. Recommendations:**

### **7.1. 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 Somaliland should manifest sovereignty existing over its territory on the basis of the 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, signed Hargeisa, June 26, 1960.

### **7.2. The Government of Somalia:**

- The Government of Somalia should accept the reality that Somalia cannot achieve peace and lawful means from unlawful and false State representation.
- 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, which the continuation of legacy of Siyad Barre is counterproductive Somalia's State-building.

- The Government of Somalia should understand that formation of so-called “the Federal Government of Somalia in August 1<sup>st</sup> 2012” is conflicting with the existing peremptory norm of general international law (*jus cogens*).
- 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.
- The Government of Somalia should accept that the continuation of legacy of Siyad Barre is counterproductive to Somalia’s peace-building and State-building.

### 7.3. International community:

- International community should accept that formation of so-called “the Federal Government of Somalia in August 1<sup>st</sup> 2012” is conflicting with the existing peremptory norm of general international law (*jus cogens*).
- International community should accept that Somalia has no legal competence to form a federal system which conflict with the existing international legal system.
- International community should understand that modification of the two short-lived States of Somaliland and Somalia only by a subsequent norm of general international law having the same character.
- 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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