

Note on the Union between UN Trust Territory of Somalia and British Somaliland Protectorate

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1.The Process that Resulted in the Union

Italian Somaliland, which was under the military occupation of the British since 1941-42, was placed under the UN Trust Territory in 1950. It was renamed the UN Trust Territory of Somalia . It was placed under Italian administration.

In December 1959, the General Assembly of the United Nations adopted a resolution that the UN Trust Territory of Somalia should become independent on July 1st 1960.

Meanwhile, British Somaliland was experiencing constitutional and political developments in 1959 - 1960. New constitution was promulgated in February 1960 . The New Constitution (The Somaliland Order in Council, 1960) provided for a Legislative Council with 3 official members and 33 elected members . It also provided for an Executive Council of 3 officials and 4 unofficial members all to be called Ministers.

Elections were held in February 1960, on a universal adult male suffrage. Somali National League (SNL) led by Mohamed Haji Ibrahim Egal obtained 20 seats out of the 33 seats of the Legislative Council. Their ally, United Somali Party, USP, of the non-Isaaq clans(Warsangeli, Dhulbahante, Samaron and Issa) obtained 12 seats. SNL and USP led the movement for the unification with the Trust Territory. SNL fought the elections with a manifesto that, among others, promised to "seek union with Somalia NOW ".

After the elections the Governor appointed four Ministers and one Assistant Minister. Two ministers were from SNL and the other two from USP. Mohamed Haji Ibrahim Egal (SNL, Isaaq, Habar Awal) was appointed as Minister of Local Government & Leader of Government Business. Ahmed Haji Dualeh (SNL, Isaaq, Habar Jaalo) was appointed as Minister of Natural Resources. Ali Garad Jama (USP, Dhulbahante) was appointed as Minister of Communication & Works. Haji Ibrahim Nur (USP, Gadabursi) was appointed Minister of Social Services.

The Legislative Council of British Somaliland met on 6th April, 1960, and with the unanimous support of all the elected members passed the following Resolution:

“ That it is the opinion of this house that practical steps should be taken ... for the immediate unification of the Protectorate and Somalia(UN Trusteeship)..that the date of independence and unification with Somalia must be 1st July,1960, the date when Somalia will attain its full freedom.”

As a result of this Resolution, at first, a conference was held at Mogadishu for the unification of the two territories. The delegations from the two territories of Somalia and British Somaliland met from 16th April to 23rd April 1960. They agreed that *“ the territories of Somalia and Somaliland shall be united on July 1st, 1960, according to the unanimous votes passed by the respective parliaments”*.

Similarly, a Conference was held in the Colonial Office, London, on 2nd May 1960. The Somaliland Ministerial Delegation led by the Minister of Local Government & Leader of Government Business, Mohamed Ibrahim Egal, confirmed their desire to achieve independence and unite with the Trust Territory of Somalia when the country became independent on 1st July,1960.

The British Secretary of State for The Colonies, Iain Macleod, referred to the Treaties that the British Government had signed with Warsangeli, Gadabursi, Issa, Habar Gerhejis, Habar Jaallo and Habar Awal. The Colonial Secretary asked for some form of proof that the elders and the authorities of the clans were in agreement with the demand for independence and union with the UN Trust Territory of Somalia.

The Council of Elders of British Somaliland Protectorate met on 24th May 1960, and endorsed the policy of independence and union with the Trust Territory of Somalia.

The Royal Proclamation Terminating Her Majesty’s Protection dated 23rd June 1960 begins with the words: *“Whereas the Territories in Africa known as the Somaliland Protectorate are under our protection.. And whereas by treaty sufferance We have power and jurisdiction in the Somaliland Protectorate, Our protection over the Territories shall cease, and all treaties and agreements between UK..and any of the Tribes of the Territories shall lapse”* on 26th June 1960.

No one is more knowledgeable or authoritative regarding the historical events of the Acts of Union than Dr. Paolo Contini, the chief legal adviser of the

United Nations. Dr Paolo Contini was seconded to the Somali Government during 1960-64. He was also the chairman of the Legal Integration Committee. Jama Mohamed Galib commenting on the issues of the Union quoted

Dr. Contini book "THE SOMALI REPUBLIC: AN EXPERIMENT IN LEGAL INTEGRATION" that:

- *"The decision to form a union was reached at a conference of Northern and Southern Somali Leaders held in Mogadiscio between April 16 and 22 1960.*
- *On June 27, the day after its independence, Somaliland's Legislative Assembly passed 'the Union of Somaliland and Somalia Law No.1 of 1960.'*
- *On June 30, the Legislative Assembly of the Trust Territory met. After prolonged debate, in the evening of June 30, the Assembly approved the Atto di Unione (Act of Union).*
- *At midnight of June 30, the Trusteeship Agreement ceased to be in force, and the President of the Legislative Assembly, acting in his capacity as provisional President of the Republic proclaimed the independence of the State of Somalia. During the same night he promulgated the Constitution, which came into force immediately.*
- *In the morning of July 1, the members of the Legislative Assemblies of Somaliland and Somalia met in a joint session as the first National Assembly. The President of the Assembly proclaimed the union and the members sealed it by standing ovation. As of that moment the Constitution was deemed to apply to both parts of the Somali Republic".*

As of 1st July 1960, the artificial colonial boundary between the two territories ceased to exist and any provisions that were inconsistent with it were deemed to be null and void.

The United Nations' General Assembly Resolution 1479 (September 1960) stated that it "*decides to admit the Republic of Somalia to membership in the United Nations*". Thus the Somali Republic gained international recognition and legitimacy as a subject of international law. All the previous states such as Trust Territory of Somalia and Somaliland that formed the Somali Republic no longer existed as of 1st July 1960.

Facts relating to the False Arguments of the Secessionists

The claim of the self-declared Somaliland that it ceded from Somalia (former Somali Republic/Somali Democratic Republic) is not valid in law or in fact. The

Central Committee of the SNM (Somali National Movement, an Isaaq military and political organization) illegally declared the independence of Somaliland on 18th May 1991, at the height of the civil war. Anthony Goldman of the African Service, BBC, reported on 20th May 1991, that *"the Central Committee of the SNM said it was proclaiming independence because this was the will of the people. Claiming a legal basis for the proclamation, the SNM asserted that the original unification of the two colonial territories of British and Italian Somaliland into a single Somalia in 1960 had been invalid, as it had never been agreed by a popular vote"*. Of course their assertion is baseless and the union was legal and had the support of the Somalis in the Protectorate as explained in the preceding paragraphs.

It is also claimed that Somaliland was a state as if that would invalidate the union. The State of Somaliland was a state in transition. It was only independent for six days between 26th June and 1st July 1960. The only law passed was The Union of Somaliland and Somalia Law of 27th June 1960. The State of Somaliland did not have the paraphernalia of a sovereign state such as head of state, council of ministers, flag, state emblem and national anthem. The Constitution in force was The Somaliland (Constitution) Order in Council 1960, which came in force in February 1960. There was no need to develop these paraphernalia for Somaliland since it was being dealt with by the Constitution of Somalia. For example, the flag of Somalia was raised when the British flag was lowered in Hargeisa on the night of 26th June 1960, to the delight of all Somalis. That became the flag of the independent Somali Republic. When the Somali Constitution was adopted by the First National Assembly of the two territories on 1st July 1960, all provisions in 'The Somaliland Order in Council' that was not compatible with the Somali Constitution lapsed.

The leaders of the Somaliland Protectorate initiated the process of unification with Somalia after the UN decided that the Trust Territory of Somalia would be independent on 1st July 1960. They asked for independence and union with Somalia on 1st July 1960, as outlined in previous paragraphs. The British Government facilitated the union with Somalia on 1st July 1960, after the elders and authorities of the clans supported the independence of the Protectorate and union with the Trust Territory.. Thus the objective of independence was conditional on union with the Trust Territory on 1st July 1960, which has been fulfilled.

The self-declared Somaliland claims that the former colonial boundary is consistent with OAU Charter regarding the sanctity of the boundaries inherited from the former colonial powers. The OAU rejected that assertion. The OAU Council of Ministers, meeting in its Fifty-fourth Ordinary Session in Abuja, from 27th May - 1st June 1991, adopted Resolution CM/Res.1340(LIV) , which read as follows:

1. *"Reaffirming the principles of sovereignty, territorial integrity, and independence of Member States as enshrined in Article 2, Paragraph C of the*

Charter, as well as the principle of intangible territorial integrity of the Somali Republic;

2. *REAFFIRMS the indivisibility and the territorial integrity of the Somali Republic;*
3. *“DETERMINES that any attempt to subvert the territorial integrity, unity, and the inviolability of the Somali Republic is incompatible with the OAU Charter and therefore is unacceptable, null and void;*
4. *CALLS UPON the Somali National Movement to rescind its decision of succession and work for the preservation of the unity and territorial integrity of the Somali Republic”.*

The UN Security Council, AU(OAU) and Arab League have all repeatedly reaffirmed their respect for the sovereignty, territorial integrity, political independence and unity of Somalia.

Secessionists claim that the Act of Union Law that was enacted on 31st January 1961 that gave legal effect to the Union was enacted retrospectively and that laws cannot be made effective in retrospect. There is nothing that prevents a sovereign state from passing laws that are considered to be in force with effect from specified past date or future one. However, there is no doubt that a full and lawful union has been accomplished by the elected representatives of Somaliland and Somalia.

Notwithstanding that, The Act of Union was enacted to give greater precision to items that were implied in the Union Laws, to harmonise the language of the acts and to cover items that were not covered by the Constitution or the Acts of the Union. For example, the National Assembly to be composed of the members of the former Assemblies of Somalia and Somaliland.

The claim that the legal instruments relating to the Union were not signed by the representatives of Somalia and Somaliland is incorrect. The Union of Somaliland and Somalia Law was adopted by the Legislative Council of Somaliland and assented to by the Ministers of the Executive Council instead of the Governor. The governor would have signed the Law on behalf of Her Majesty, the Queen, but her powers and jurisdiction over Somaliland became null and void on 26th June 1960.

The secessionists are trying to find spurious faults with the legal instruments of the Union. They are oblivious to the fact that British Somaliland was not established on legal foundation but mostly on expediency and sufferance as explained below:

- The British Government did not ratify the Agreements with Habar Awal, Habar Gerhajis, Habar Jaallo and Gadabursi clans but the Agreement with the Issa clan was ratified.

- The British did not conclude protection agreements with Gadabursi and Issa clans.
- The Habar Garhejis Agreements were signed at Aden by elders representing sections of Habar Yunis (Muse Arre, Ali Saeed and Saad Yunis) that inhabit the coastal areas. It is very doubtful that the Agreements legally bound the major clans such as Lidagale and Arap or the major subclans of Habar Yunis such as Hersi Osman, Muse Abdalle, Is-haaq and Muse Ismail. These clans and subclans did not conclude any agreement with the British Government.
- Similarly, the Agreements with Habar Jaallo were signed by elders representing sections that inhabit the coastal areas. These were Abdirahim, Yeeseef, Adan Madobe, Reer Dood and Sambur. The bulk of Muse Abokor and major subclans of Mohamed Abokor such as Ahmed Farah, Reer Daahir and Barre Abdulle (Sola Madow) did not have any agreement with the British.
- The Dhulbahante also did not conclude any agreement with the British.
- The Agreement with the Warsangeli differed from the other Agreements in many respects. The Warsangeli territory is referred to as “country” rather than “territory”. The Treaty was recognised as a friendship treaty as indicated in the preamble. It was the only treaty signed by the Garad of the clan representing the whole clan. Unlike other treaties or agreements it did not bind the treaty to the heirs and the successors of the signatories. When Sultan Mohamud Ali Shire tried to assert his independence, the officials in the Protectorate could not charge him with sedition or rebellion since he was a sovereign entity. The local laws were not applicable to him. So the British evoked the doctrine of “Act of State” that was outside the jurisdiction of the Protectorate. The Act of State is defined as an act or force exercised by the executive of a sovereign state against another state or foreign individual. The Secretary of State for the Colonies sanctioned his arrest and exile to Seychelles as a political prisoner so as to prevent his return to “Warsangeli country”. If he were successful, “it might have very grave political consequences.”
- The Proclamation makes it clear that “ *all functions, powers, rights, authority or jurisdiction.....exercisable by US (the Queen) ...in relation to the territories by treaty, grant, usage, sufferance or otherwise..*”

In conclusion, the clans, which were not party to the Treaties, became associated with British Somaliland by default or de facto. The new State of Somaliland could not have inherited their territories or the Warsangeli Country without their agreement. However these issues were resolved by the unification.