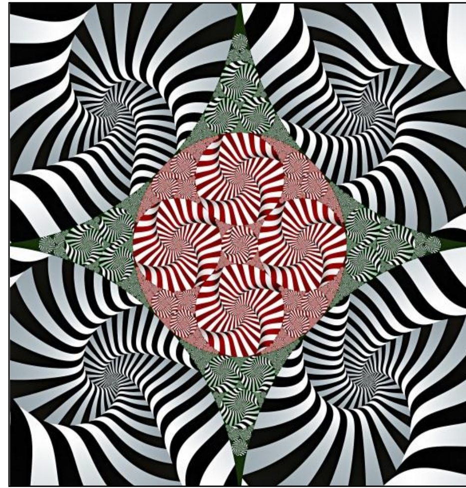
"Ethiopia & Eritrea: Healing Past Wounds and Building Strong People-to-People Relationships"

Paper submitted for The Third Annual Ethiopian and Eritrean Friendship Conference,
[March 26, 2011 in San Jose, California]

Disillusionment of International Law and National Strangulations[1]

By Tecola W. Hagos



No part of this Article/Paper may be reproduced, published, or posted in blogs or websites of any kind in any form by any means without proper authorization in writing by the Author. **Copyright © Tecola W. Hagos, March 26, 2011.**

Cover Art: Benoit Mandelbrot Fractal Art Contest 2007, *Apologies to Escher*,
by Bill Beath, 2007.

[1] This short paper is extracted, in the main, from a book manuscript that will be published soon and will be available to the public.

Disillusionment of International Law and National Strangulations[2]

By Tecola W. Hagos

"Blessed are the peacemakers; for they shall be called the children of God."

Matthew 5:9

Part I. In General

I. Introduction

Bringing peace or brokering peace during a state of conflict is a noble and ethical deed. I applaud the efforts of the courageous individuals involved in the organization of this Conference. In particular, I appreciate greatly Dr. Worku Negash and Ato Tewelde Stephanos and the many individual Members and supporters of Ethiopian & Eritrean Friendship Forum (EEFF). I appreciate and thank sincerely Prof Daniel Kendie[3] and Prof Tesfatsion Medhanie,[4] two distinguished scholars and dedicated educators, for their great effort—for several years now—in promoting peace and close relationship of brothers at war. I would like also to remember here and express my deep appreciation of Prof Tekeste Negash[5] whose views on the issue of Ethiopia-Eritrea unity and future is profound and a lot closer to what I believe in, and such trend of ideas is the main theme-stream of this paper. Tekeste Negash is a visionary with great moral strength and personal integrity. There are very many other heroic Ethiopians that should be on any list of great Ethiopians. This type of effort for peace, unity, and harmony among people is not an easy task, for the enemies of peace and unity come in different forms and sizes from the very Governments of Ethiopia and Eritrea, as well as from governments of neighboring countries.

I quoted the Apostle St.Matthew above for brevity and not for originality, for very many religious people around the world do pay similar great homage to individuals who are peacemakers. I do not want to be misunderstood on that point as if I am suggesting that only Christians are peacemakers, and I ought to be read that I am giving due credit to all involved in peace making. My short paper here is aimed to interject in the conference

---

[2] **Paper submitted for The Third Annual Ethiopian and Eritrean Friendship Conference, [March 26, 2011 in San Jose, California]. This short paper is extracted, in the main, from a book manuscript that will be published soon and will be available to the public.**

[3] See Daniel Kendie, *THE FIVE DIMENSIONS OF THE ERITREAN CONFLICT 1941 – 2004: DECIPHERING THE GEO-POLITICAL PUZZLE*, United States of America: Signature Book Printing, 2005. - ዳንኤል ክንዴ “የኢትዮጵያና ኤርትራ ፌዴሬሽን አስፈላጊነት” EEFF 1st Conference, March 15, 2009.

[4] See Tesfatsion Medhanie, *ERITREA AND NEIGHBOURS IN THE "NEW WORLD ORDER": GEOPOLITICS, DEMOCRACY AND "ISLAMIC FUNDAMENTALISM,"* Bremen African studies, 1997.
- Tesfatsion Medhanie, *TOWARDS CONFEDERATION IN THE HORN OF AFRICA: FOCUS ON ETHIOPIA AND ERITREA,* Cuvillier Verlag Gottingen, 2009.

[5] See Tekeste Negash, *ITALIAN COLONIALISM IN ERITREA, 1882-1941: POLICIES, PRAXIS AND IMPACT,* Uppsala University 1987.
- Tekeste Negash, *ERITREA AND ETHIOPIA: THE FEDERAL EXPERIENCE*, Transaction Publishers: New Brunswick NJ, 1997.

some ideas that may not have been fully entertained in the past two Conferences. And such ideas should be taken into account for a successful and holistic resolution of the many serious problems facing the people of Ethiopia and Eritrea. We should also focus on the territorial integrity of Ethiopia as a whole and stop bickering about administrative internal demarcations, which can be rearranged in configurations that would take into account history, demography, administrative ease et cetera. We have to consider our effort in context of a much larger area and population with far deeper problems facing the entire Horn region and our Arab neighboring nations.

I have focused my biting criticism against Saudi Arabia, Egypt, Syria, Iraq and Libya in particular for some time now. In general, religion was the main reason for such generational hostility of Arab nations and people toward Ethiopia. On the Ethiopian side, the treatment of Arabs and Moslems was fair and accommodating allowing Arabs living in Ethiopia (before they became wealthy and most left Ethiopia) unimaginable freedom of religion and social integration—a practice of magnanimity unheard of in the Arab World. In our past history, the Ottoman Turks, the Egyptians, the Mahdists each had mounted great effort to destroy Ethiopia using religion as their mobilization force against Ethiopia's legitimate existence as a Sovereign nation. In the 16th Century the Ottoman Turks in the person of a local collaborator, Gragn Mohamed, almost succeeded in the total destruction of Ethiopia. Most of the ancestors of Ethiopian Moslems in the highlands were forcefully converted from Christianity to Islam during Gragn's period.

2. Thesis and Issues: International Law and Domestic *Politicks*,

At the 2009 Annual Ethiopian and Eritrean Friendship Conference, the two distinguished scholars, Daniel Kendie and Tesfatsion Medhanie, presented two formal models of political/economic structures in order to bring the People of Ethiopia and Eritrea close to each other and help them solve existing hostilities. Daniel Kendie represented the "Federation" model, and Tesfatsion Medhanie represented the "Confederation" model. Both scholars have presented their well thought-out ideas as transitory leading to a more intimate relationship between the two communities, in time. I will not directly discuss the views of my distinguished colleagues, but present a sort of prolegomena bringing up issues that had further strained our lives in both Ethiopia and Eritrea. The "Models" in themselves may not be a problem. The problem that would surly ensue is an existential one when either model is implemented. The degree of sophistication and the willingness to control primordial instinctual aggressive behavior by the people of both communities is negligible. The tendency of people in the region is to widen such social and political crack and decompose any form of normalizing process.

If past experience of the relationship that existed between the EPLF and the EPRDF soon after Mengistu's Government was overrun and dismantled is an indicator, it is not hard to imagine how the Eritrean Government in the setup of either "federation" or "confederation" would end up repeating its past actions of 1991 to 1997 of acquiring the wealth of Ethiopia through illegal means, such as buying produces in local currency and exporting them in hard currency, or get involved in currency speculation and money laundering, forgery, misappropriation of Ethiopian Government property, and driving out Ethiopians from their homes in Eritrea and taking their property et cetera. Even more

insidious is the possibility of its citizens who would be engaged in business in Ethiopia would become a special class of people protected by their Government taking advantage of a supra-corporate entity taking over the major businesses from the local people. In other words, whether the Ethiopia-Eritrea relationship is based on “federation” or “confederation” (even worse), it will lead into far more serious genocidal conflict.

The dichotomy of *international law* from *national law* is proper in the sense that international law is all about politics where the decisions of international forums (courts, commissions, and tribunals) are highly colored by political considerations and power politics. For example, if we look into the decisions and advisory opinions of the International Court of Justice (ICJ) cases, including those decided by the Permanent Court of International Justice (PCIJ),[6] numbering a little over two hundred cases, the overwhelming majority of the decisions are highly influenced by the politics of the time and the political outlook of the individual Judges. I have studied most of the cases decided by the two successive International Courts and also numerous arbitration decisions of The Hague Arbitration Tribunals. I admire the skill and sophistication with which the many Judges and Arbitrators expressed their decisions. However, I could not overlook the fact that some of the Judges and Arbitrators dwell too often on sophistry and undermine rigorous critical hermeneutics. They may fail in cases where great vision is needed. There is much to be done especially in the area of international boundary conflicts. The situation especially in arbitration tribunals is in great mess, for every other case decided by such forums points in contradictory directions.

I question the wisdom of the separation of “Eritrea” from Ethiopia and the independence referendum of 1993, et cetera under such covers of legality. I believe the whole exercise was more of a surreal event that should not be taken at face value and as legally binding process. The entire processes, including the Algiers Agreement of 2000 and the decisions of the Arbitration Commission, must be considered simply as an illusionist’s constructs based on false history and international deceit, corruption and distortion of international law principles, norms, and practices. I do not acknowledge the independence of “Eritrea” either as moral or legal act. I think of it as a surrogate occupation of my land by hostile historic enemies of my Ethiopian (Black) original land and territory and the alienation of my kin and civilization. This may sound like hypocrisy, since I am often accused of being sympathetic to “Eritreans,” in giving them sanctuary, for example. But that is due to the fact that I consider them as Ethiopians and that we ought to welcome those coming home.

Part II. Mistake of Fact

1. A Reminder of Real History and Real Politick

Not withstanding the fantasy fable entered as history for “Eritrea” in the *NEW WORLD ENCYCLOPEDIA* (www.newworldencyclopedia.org) and several other revisionist-history of tall-tells, the genuine history of Ethiopia found in tax record, endowment of

---

[6] *ICJ Reports*: From 22 May 1947 to 13 March 2011, 150 cases were entered in the General List (27 Advisory, 123 contentious cases). Between 1922 and 1940 the PCIJ dealt with 29 contentious cases between States, and also delivered 27 advisory opinions for a total of 56 cases. Thus both International Courts have handled over 200 cases since 1922.

land grant to the great Monasteries, Chronicles of Ethiopian Emperors written contemporaneous with real events et cetera tell us that, except for a sixty years hiatus when the area that is now designated as "Eritrea" was occupied by Italy by force, most of the same area has always been part of Ethiopia. As an example of the authenticity and fact based history of Hamassien as an intimate part of the Ethiopian Empire, consider the fact that the 17th Century Ethiopian Emperor Eyassu the Great, in September of 1684 married in a Church ceremony Wolete Tsion the daughter of Habte Eyessus of Deq Asgede clan of Hamassien.[7] Hamassien was the designation for the whole of the highland region that had always been part of the maritime domain of Ethiopia. What is tragic is the fact of the current Government of Issayas Afeworki's childish attempt to rewrite history as if "Eritrea" was never part of Ethiopia, while exaggerating the fact that at one point the tiny Port of Massawa, was the colony of Ottoman Turkey! There was also an attempt by Britain to incorporate the northwest part of Ethiopia (Barka) with Sudan to extend its cotton plantation once it lost its Southern Colonies in the United States. However, except for sporadic maraudering by Bejas and other tribes, the area has always been part of the Ethiopian territory. The stone inscription of Ezana clearly establishes the antiquity of Ethiopian territories.[8] How could anyone glorify the fact of being a colony in the past at one short period and forgo one's own great history as part of Ethiopia?

If the Eritrean independence movement had been a popular movement, it would not have taken thirty years of "struggle' to achieve the goal of independence. Mind you the founder of the Eritrean Liberation Army, Hamid Idris Awate, was an Italian Colonial *Askari* born in 1910 at Gerset, near Omhajer, a member of the Tigre ethnic group, but some designate him as a Nara. There is no doubt that his root is Nilotic (Sudanese). He was trained in 1935 by Italian colonial military and fought against Ethiopia as an Italian *Askari* during the Italian occupation of parts of Ethiopia. With six other Moslems from related ethnic groups, Awate is one of the first founding members of a rebellion that finally developed by way of the ELF into the EPLF. For most of its life the Liberation Movement was a few thousands strong even at its pick, which consisted of a handful of disaffected individuals from Gash\Setit and Barka (Nara) and from the Red Sea Coastal area Moslem ethnic groups of Ben-Amir and the Rashaida (squatters from the Hejaz sneaking in by home-made boats since 1850s). There is some plan by Issayas Afeworki's Government to settle the Rashaida somewhere on the eastern coastal region further up from Massawa. There they would flourish on Ethiopian territory, and along with the Ben-Amir they would form the future local *Janjaweed.*

The de-Ethiopianization of Eritrea is all the work of former ELF Members and their remnants now in control of the Eritrean Government, who are mostly descendants of immigrants from the Sudan and supporters of the Mahdists, Isma'il Pasha, and Tewfik Pasha who repeatedly tried to occupy Gondar in the 19th Century. A clear example of such process of Islamization and turning Eritrea as an extension of the Arab World is the recent purging of mostly Christian high level leaders and commanders of the EPLF who were thrown into jail or forced to flee their homes. Those who flee Eritrea due to

---

[7] Getachew Haile, *BAHRA HASSAB*, Avon MN, 2000, p. 258.
[8] S. C. Munro-Hay, *AKSUM: AN AFRICAN CIVILIZATION OF LATE ANTIQUITY,* Edinburgh: University Press, 1991.

intolerable conditions are mostly Christian Eritreans; they are the ones fleeing their homeland that perish at sea and in detention camps of brutal Arab governments. Those who are digging in and staying in Eritrea displacing the Christian Eritreans and spreading their hold are the Jebertti, the Ben-Amir and the Rashaida Arabs. In a few years the highlanders would become a rarity; either they would have migrated to Ethiopia and the West, and the few remaining would have been marginalized to such an extent that they would have no politically significant voice.

In a previous arbitration decision by the Eritrea-Yemen Arbitration Tribunal it was noted the fact that Ethiopia's historic rights were not offered as part of the supporting claims on behalf of "Eritrea" against Yemen's claims of Islands that were part of Ethiopia for all historic time. The Arbitration Tribunal wrote with a degree of puzzlement the following:

> "Eritrea makes no argument for sovereignty based on ancient title, in spite of the undeniable antiquity of Ethiopia. Rather, Eritrea in part asserts an historic consolidation of title on the part of Italy during the inter-war period that resulted in a title to the Islands that became effectively transferred to Ethiopia as a result of the territorial dispositions after the defeat of Italy in the Second World War."[9]

The Ethiopian Government did not file any brief as interlocutor or interested party as it ought to do in that case as a matter of its legal obligation as the Government of a Sovereign People and Country. It is this type of polarized perspective that both the current Leaders of Eritrea and Ethiopia formatted, as part of their misinterpretation and revision of Ethiopian history, the ridiculous assertion claiming Ethiopian history to be only a Century old. One must not discount the fact that there were great war heroes from Hamassein, Akale Guzai, Serei et cetera who bleed for Ethiopia's independence believing in their Ethiopian identity and fighting against the Italian occupation. My discussion of the Italian Wars of aggression against the Sovereign and truly ancient Ethiopia is not meant to open old wounds, but to remind us that our Ethiopian history is a complex one and should never have been left to amateurs, and the propagandist "intellectuals" minted by either the ELF and/or the EPLF.

After the murder of General Aman Andom by Mengistu, the fight for liberation escalated dramatically, in the 1980s in the aftermath of the Red Terror carried out by Mengistu. Ethiopia was dealt a devastating blow by Mengistu and his Derg. The independence of Eritrea is the direct consequence of Mengistu coming into power and causing such havoc on the population of Ethiopia and Eritrea. The strengthening and popular support by the local population of the TPLF and EPLF movements was a reaction to the brutality unleashed on a population that had suffered many inequities under the new Military regime of Mengistu. Mengistu's rudimentary education and social background must have also added to the strong disaffection felt by the Liberation movements.

2. Premature Peace Accord and the Arbitration Farce

[9] *Eritrea v. Yemen Arbitration Decision, Award, First Stage, Par: 115-117 (1998).*

It is an understatement to say that the Ethiopian interest was not represented properly by the Government of Meles Zenawi both in the signing of the Algiers Agreement and at the Arbitration Commission. Historical documentation of the superior rights of Ethiopia's sovereignty and claims of long standing territorial control were not properly presented to the Commission. Tax records, Chronicles of Ethiopia's fabulous Emperors, records of travelers such as that of Alvarez, demographic studies et cetera were suppressed and were not submitted to the Commission. In fact, the documents submitted to the Commission were specifically meant to support the short term historical snippets that of Eritrea's claims without providing the contextual historical proof that could have countered any such claim by Eritrea.

The Commission, in a rare moment of honesty, pointed out that puzzling situation wondering that the submissions by Ethiopia tend to support the claims of Eritrea. In fact, at one point, the Commission pointed out that the Ethiopian Government has on its own without any challenge or claim from Eritrea conceded a chunk of Ethiopian territory that the Commission claims had no choice but to add that territory to the claims of Eritrea.

> "The words used by Ethiopia were that 'Fort Cadorna, Monoxeito, Guna Guna and Tserona' were 'mostly . . . undisputed Eritrean places.' While Monoxeito and Guna Guna are on the Eritrean side of the Treaty line as determined by the Commission, the Commission finds that, on the basis of the evidence before it, Tserona and Fort Cadorna are not. As to Tserona, the Commission cannot fail to give effect to Ethiopia's statement, made formally in a written pleading submitted to the Commission. It is an admission of which the Commission must take full account. It is necessary, therefore, to adjust the Treaty line so as to ensure that it is placed in Eritrean territory."[10]

This is just one curious lip-service statement where the Boundary Commission quipped that they will respect the rejection by Ethiopia of an admission by Eritrea that a certain village belongs to Ethiopia, since they have no choice in the matter. Again making a mistake of the scope of international law principles dealing with mistakes of facts and the legal regime that takes care of such situations—admission or rejection by the parties *per se* does not bind a commission or a tribunal to adopt such admission or rejection.

The problem with the Commission is far deeper than one instance of laps of judgment that I cited above. The Commission also made serious additional mistake of fact on reading an evidentiary Map. Most importantly it did not read or use proper caution and standard of examination of maps that it based its entire decision on. It is telling to read the overall convoluted reasoning of the Commission in a statement that has significant argumentation and yet failed to lead to an established set of principles of international law principles and norms. Although no precedent is sited, the decision of the Commission would have been consistent with the admonishments of the highly acclaimed experts on boundary demarcations, had it followed through its own critical thinking as stated in its 13 April 2002 decision, Chapter 4 paragraph 4.8:

---

[10] *Eritrea-Ethiopia Boundary Commission, Decision on Delimitation of the Border between Eritrea and Ethiopia, April 13, 2002,* page *50. (hereafter Ethiopia v. Eritrea Arbitration Decision (2002).*

> "The 1900 Treaty described the boundary in economical language, referring only to three river names, 'Mareb-Belesa-Muna.' As a delimitation which could form the basis for a demarcation of the boundary on the ground, it fell short of a desirably detailed description, particularly in the light of the uncertain knowledge at the time concerning the topography of the area and the names to be given to geographical features."[11]

It is unfathomable how the Commission proceeded to enter a decision in the case, after making such critical statement on the uncertain situation of using maps. The Commission did not conduct any investigation to ascertain whether local conditions at Bademe, Irob, Zala Ambesa et cetera reflect what is being submitted as evidence by a single Map that has lines drawn on it which was admitted into evidence essentially from the Eritrean Government obtained from the Italian Government archives. Had the Commission used the guidance provided by the *Island of Palmas case*,[12] there would have been no decision against the interest of Ethiopia. The authoritative works on reading maps and in the delimitation and demarcation of borders of cartographers such as those of S. B. Jones et cetera would have illuminated the problems for a clear resolution.[13]

There are at least fifteen important international boundary dispute cases with highly relevant decisions on the use of maps that would have provided the fundamentals for the disposition of the question of unreliability of maps in deciding on contentious claims of sovereignty by parties to a border dispute. No rigorous examination of such cases was attempted by the Boundary Commission. The Boundary Commission cited one case on the issue of using maps for delimitation: *Case concerning the Frontier Dispute (Burkina Faso* v. *Mali), ICJ Reports 1986 at 582*.[14] The Commission has cited in its decision, in both Chapter 3 and 4, cases that were decided by the ICJ. The serious problem for such attempted precedential authority is the fact that the cases cited by the Commission are tangential to the main issue the Commission is dealing with. The Commission has cited precisely eight cases for its "Task of the Commission and the Applicable Law."[15] It is incredulous that this most complex of border disputes is dependant on seven cases as authorities, and none of them on point or dispositive. The Commission simply rushed to decide the controversy in a political frenzy of the moment and as a result ended up making ridicules mistakes of legal principles (law) and mistakes of facts.

Part III. Mistake of Law

1. **International Law: Norms and Practices**

---

[11] *Ethiopia v. Eritrea Arbitration Decision (2002), p 33.*

[12] See *Island of Palmas case (Netherlands, USA) 4 April 1928, REPORTS OF INTERNATIONAL ARBITRAL AWARDS*, VOL II pp. 829-871. [hereafter *Island of Palmas case (Netherlands, USA), 1928*]

[13] Jones S.B. (1945) *BOUNDARY MAKING A HANDBOOK FOR STATESMEN, TREATY EDITORS AND BOUNDARY COMMISSIONERS*, Washington D.C. Carnegie Endowment For International Peace.

[14] *Case concerning the Frontier Dispute (Burkina Faso* v. *Mali), ICJ Reports 1986, p. 582.*

[15] *Ethiopia v. Eritrea Arbitration Decision (2002 p 21-30.* I have not included the *Ethiopia-Eritrea Claims case* in this paper. However, I do note here that it has problems of jurisdiction but not of corruption.

There seems to be some confusion as to how the Commission was created and by whom, and the power and scope of the Boundary Commission. It seems the Commissioners themselves have added to the confusion due to their posturing and the Chairman's inflated ego trying to cast himself and the Commission as if they were a United Nations created Commission. First and foremost the Boundary Commission is an arbitration tribunal created by the Parties i.e., the Governments of Ethiopia and Eritrea. Neither the United Nations General Assembly nor its Security Council passed any resolutions creating the Boundary Commission. There should be no doubt that the Boundary Commission is a legal creature created by the Governments of Ethiopia and Eritrea by an agreement signed by the two Parties in Algiers in 2000.[16] The role played by the United Nations is simply that of depositor, or observer or facilitator. It is absolutely clearly stated by a joint statement of Secretary General Kofi Annan of the United Nations and Secretary General Amara Essy of the Organization of African Unity that the Boundary Commission is not a creation of the United Nations. "Six months later, they signed a comprehensive peace agreement, also in Algiers, providing, among other things, for a permanent cessation of hostilities and the establishment of an independent commission to decide the border question."[17]

When I read the delimitation decision of the Boundary Commission, of 13 April 2002, I wondered why the Commissioners reached so many wrong conclusions and kept insisting on implementing such corrupted decision. The Boundary Commission's decision is full of errors and is highly subjective and politicized. All one needs to do is read the *Island of Palmas case* to see how an objective highly learned arbitrator labored in interpreting the significant treaties and maps in order to distinguish between the opposing claims of Sovereignty.[18] The Arbitrator in the *Island of Palmas case* laid out also the principles and norms of international law relevant in disposing contentious claims of Sovereign rights. He devoted a considerable degree of attention on the issue of using treaties and maps to establish the rights of the Parties. He investigated the situation both before and after the crucial treaty date. The general principle on the activity/scope of an international tribunal is succinctly elucidated by an established publicist of international law. "The Court's responsibilities in the maintenance of peace and security under the Charter are not general. They are strictly limited to the exercise of its judicial functions in cases over which it has jurisdiction."[19]

There are at list fifteen important international boundary dispute cases with highly relevant decisions on the use of maps that would have provided the fundamentals for the disposition of the question of unreliability of maps in deciding on contentious claims of

[16] The Algiers Agreement of 12 December 2000, Article 4

[17] Kofi Annan and Amara Essy, "*Securing a Lasting Peace Between Ethiopia and Eritrea."*

[18] *Island of Palmas case (Netherlands, USA) 4 April 1928,* VOL II pp. 829-871. I am aware of the fact that a number of international law publicists have raised questions on the decision of the *Island of Palmas Case* on the issue of the extension of the "intertemporality principle" in as far as its application to the question of the right of the Spanish crown to claim ownership (sovereignty) by mere discovery of the Island in question. However, the discussion is not on the validity or applicability of the principle of intertemporality but on how factual interpretation fits the principle in a particular situation.

[19] Christine Gray, "The Use and Abuse of the International Court of Justice: Cases concerning the Use of Force after Nicaragua*," EJIL* (2003), Vol. 14 No. 5, 867–905, 891

sovereignty by parties to a border dispute. No rigorous examination of such cases was attempted by the Boundary Commission. The Boundary Commission cited one case on the issue of using maps for delimitation.[20] The Commission has cited in both Chapters 3 and 4 cases decided by the ICJ. The Commission has cited precisely eight cases for its "Task of the Commission and the Applicable Law."[21] This most complex border dispute is dependant on seven cases as authorities, and none of them on point. The Commission simply rushed to decide the controversy in a political frenzy of the moment and as a result ended up making ridicules mistakes of legal principles (law) and of facts. There never was any legitimate demarcation of any sort where Ethiopia and Italy were represented on a team to demark the border between the Italian colony of Eritrean and Ethiopia—none took place during the colonial period or later.

Instead of explaining how the actual demarcation following delimitation will be accommodating of the reality on the ground that communities, towns and villages will not be divide by necessity of legal interpretation of treaty based provisions through equitable interpretation of the treaty *infra legem*, the Commission declined that process outright opting for the literal reading of the provision and the narrow view of respecting the limit on any use of "*ex aequo et bono*" norm. The use of equitable interpretation of treaties *infra legem* is not a violation of the "*ex aequo et bono*" safeguard in Article 4(2) of the 2000 Algiers Agreement. Such legal distinctions was fully stated as the central theme and analysis of equity in international law cases, in fact, in the very case the Commission cited to augment its use of a Map that was flawed and should have been disallowed as evidence. The more important principle that was overlooked by the Commission is the fact that the ICJ, although similarly barred as the Commission from deciding the case *ex aequo et bono;* nevertheless, correctly decided a case by using equity *infra legem.*[22]

The Commission, no matter how it perceived itself, was just an "arbitration tribunal" serving at the pleasure of the two Parties, Ethiopia and Eritrea. I have clearly established that fact above in this subsection. The Boundary Commission was not a national court nor an international court nor a Commission of the United Nations—period. Thus, there was no need for the Commission to enter a decision if the Parties to the dispute were not cooperative. Its "virtual demarcation" on areal map is *ultra virus* act and illegal that could be even prosecuted in the local Courts of Ethiopia as a crime against the economic and national security of Ethiopia. Here is a clear case of overreaching and abuse of mandate by the Commission. The Commission should have refused to implement unjust treaties whose origin is illegal such as colonialism revived to benefit one party in a fraudulent collusion of the parties camouflaged or hidden from the public; the Boundary Commission should have exercised its right independently to invoke the interpretation of treaties in *preato legem*.[23]

---

[20] *Case concerning the Frontier Dispute (Burkina Faso* v. *Mali), ICJ Reports 1986 at 582*.

[21] *Eritrea-Ethiopia Boundary Commission, Decision on Delimitation of the Border between Eritrea and Ethiopia,, April 13, 2002, para 3.1-3.37, p. 21-30.*

[22] *Case Concerning the Frontier Dispute (Burkina Faso* v. *Mali), ICJ Reports 1986 at 582, para 27-28*

[23] Judge Schücking forcefully stated in his dissent stating thus: "The Court would never, for instance, apply a convention the terms of which were contrary to public morality. But, in my view, a tribunal finds itself in the same position if a convention adduced by the parties is in reality null and void, owing to a flaw in its origin. The attitude of the tribunal should, in my opinion, be governed in such case by consideration of

The Press Release of 12 September 2007 by the Secretariat of the Commission stated, "The Commission also reminded the Parties that the determination of the boundary points listed in its 27 November 2006 Statement followed consideration of the views of the Parties and was in accordance with the Delimitation Decision of 13 April 2002." This is one of several examples of abuse of mandate and the Commission acting as a Court forcing its decision on the Parties that constituted it—this is a clear situation for a *non liquet* withdrawal of the Boundary Commission from deciding the case. Even the single case cited by the Commission was not dispositive or even relevant to the controversy. The Commission put it in its lame statement as "A comparable, though not identical, situation arose in the *Argentina-Chile Frontier Case* (1966) (38 *International Law Reports* 10), where aerial photography was used to identify points on the boundary."[24] The fact is that citing the *Argentina-Chile Frontier Case* is a straw-man argument by the Commission because there is no precedent to the "virtual demarcation" that the Commission has imposed on Ethiopia and Eritrea under the circumstances where the parties in arbitration are not cooperative. Unlike the Ethiopia-Eritrea border demarcation problem, the *Argentina-Chile Frontier Case* dealt with a situation where both Parties had agreed to the identification of demarcation on an areal Map to reestablish boundary points on prior demarked border.

2. **The Principles of Peremptory Norms: *Jus Cogens and Erga Omne***

Jus Cogens as a principle of peremptory norm in international law is a well established norm often invoked by the ICJ and well recognized and published by publicists of international law.[25] The ICJ in a number of cases had affirmed the existence of such principles that includes the principle of *Erga Omne*.[26] The issue here is to what extent the principle of *Jus Cogens* would be extended to cover the progressive development of international law in cases of border disputes and conflicts. It seems that these peremptory norms started out with concerns with fundamental human rights. The earliest convincing, at least controversial article on the subject of such principles or norms was that of the 1937 law article of Alfred von Verdross, "Forbidden Treaties in International Law."[27]

The Algiers Agreement[28] at its time of signing preemptively obligated Ethiopia under defunct, long dead, and supplanted international instruments, with dubious validity even at the time of their signing or presentations in 1900, 1902 and 1908, to cede millions of acres of land and coastal territorial waters and islands dispossessing its own citizens or

---

international public policy, even when jurisdiction is conferred on the court by virtue of a Special agreement." *Oscar Chinn Case, 1934 P.C.I.J. (ser. A/B) No. 63, at 149-50 (Dec. 12) (Schücking, J. dissenting).*

[24] *Argentina-Chile Frontier Case* (1966) (38 *International Law Reports* 10)

[25] In the decision of the French-Mexican Claims Commission in the 1928 *Pablo Nájera Case* [see Patrick Dumberry, *STATE SUCCESSION TO INTERNATIONAL RESPONSIBILITY*, Martinus Nijhoff Publishers, pp367-69 (2007); and then by Judge Schücking of the Permanent Court of International Justice in the 1934 *Oscar Chinn Case (1934) P.C.I.J., Series A/B, No. 63, 134-36, 146-50.*

[26] *Barcelona Traction, Light and Power Co. Ltd. (Belg. v. Spain), 1970 I.C.J. 3, 32 (Feb. 5).*

[27] Alfred von Verdross, "Forbidden Treaties in International Law," *31 AM. J. INT'L L. 571 (1937).*

[28] The Algiers Agreement of 2000

driving them of their ancestral homes, acts that would violate all fundamental principles of human rights incorporated in the Universal Declaration of Human Rights, the Charter of the United Nations and numerous General Assembly Resolutions. Such violations are violations that are covered by the J*us Cogens* principle.[29]

The Algiers Agreement did not settle anything as would peace treaties, it merely revived long defunct or abrogated or invalidated "colonial treaties" to benefit Eritrea to the disadvantage of Ethiopia. On that ground alone, the Algiers Agreement should be thrown to the dust bin of history, for it is the shameful revival of "colonial treaties" of a century ago. It is provided in the Algiers Agreement: *"Article 4:* 2. The parties agree that a neutral Boundary Commission composed of five members shall be established with a mandate to delimit and demarcate the colonial treaty border based on pertinent colonial treaties (1900, 1902 and 1908) and applicable international law."

The Algiers Agreement in Article 3 requires the setting up of an investigative body to establish the instigator of the war between Ethiopia and Eritrea; however, that crucial point was never carried out. The finding would have been the first step in bringing solution to the problem, but it never was put in place, thus rendering everything else done by the Commission(s) questionable and voidable/invalid. This argument has support also by scholars of public international law.[30] On both substantive and technical grounds, failing to carry out or execute a provision that is crucial in upholding the *conditio sine qua non*, the very essence, of a treaty is ground for the invalidation of a treaty in customary international law.[31]

3. <u>The Principle of Good Faith</u>

I hear/read often people asserting that "peace treaties" and "boundary treaties" are sacrosanct and that it is not possible to reverse once a peace treaty or boundary treaty is entered between state parties.[32] Is it possible to abrogate or invalidate the signing of the Algiers Agreement? What about *de novo* negotiations without preconditions? In fact, the first hurdle for any treaty or agreement between states must overcome the challenge or question of good faith. "Good faith is a fundamental principle of international law, without which all international law would collapse," Judge Mohammed Bedjaoui of the

---

[29] *German Settlers in Poland*, *(Advisory Opinion) 10 September 1923, PCIJ Series B, No. 6, at 36*; *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda), Jurisdiction and Admissibility, Judgment, ICJ Reports 2006, p. 6.*

[30] William Hall, *A TREATISE ON INTERNATIONAL LAW* 382-83 (8th ed. 1924) (asserting that "fundamental principles of international law" may "invalidate, or at least render voidable," conflicting international agreements).

[31] Meron, Theodor, "The Authority to Make Treaties in the Late Middle Ages," *89 AM. J. INT'L L. 1 1995).*

[32] Gbenga Oduntan, "The Demarcation of Straddling Villages in Accordance with the International Court of Justice Jurisprudence: The Cameroon–Nigeria Experience." See also *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria: Equatorial Guinea intervening), Judgment, ICJ Reports 2002, p. 303.*

ICJ declared emphatically.[33] The imperative of "good faith" in any international agreement is obvious. The literature on the subject is extensive and nearly every international law publicist and jurist had written to that fact over the centuries. Where there is an absence of good faith in any agreement or treaty, the goal sought after by the parties will be impossible to achieve for there is no common goal, which intern is a ground for invalidation of agreements or treaties. [34]

There are several indicators that such challenge to a treaty is serious matter that goes to the very heart of the applicability and opposability of a treaty to a particular party to a dispute. It involves the most ancient principle of International agreements and relations: *pacta sunt servanda*. "The only limits to *pacta sunt servanda* doctrine are the peremptory norms of general international law, called *jus cogens* (compelling law). The legal principle *clausula rebus sic stantibus*, part of customary international law, also allows for treaty obligations to be unfulfilled due to a compelling change in circumstances." [35] The United Nations Vienna Convention on the Law of Treaties of 1969 is significant in my analysis of good faith and arms length negotiated agreement. We may start by considering Article 31 on "good faith" in cases of the interpretation of treaties. We must also consider the counter doctrine or the opposite principle to *pacta sunt servanda* that jointly makes much sense in international law. The *clausula rebus sic stantibus* is as much a part of international law.[36] As far back as 1937 Verdross argued based on his understanding of hitherto existing international customary law and principles and norms that there are forbidden treaties or terms in treaties that do not satisfy "*ethical minimum* recognized by all the states of the international community."[37]

Prime Minister Meles Zenawi and President Issayas Afeworki are leaders of liberation fronts who had a long standing understanding/agreement while they were in the bush, i.e., before they took over the Government of Ethiopia in 1991. The independence of Eritrea was achieved through collusion and complacency of the leadership of the EPRDF and through force; neither method is legitimate under international law and practices. Thus, any agreement entered by the two leaders or their agents at that time in the bush and subsequent to that time is invalid with no legal consequences on Ethiopia and Ethiopians. One of the senior officials of the TPLF, Sebhat Nega, in his belligerent interview of May 28, 2007, confirmed the collusion that existed between the leaders of the present Governments of Ethiopia and that of Eritrea.

---

[33] "Good Faith, International Law and the Elimination of Nuclear Weapons: The Once and Future Contributions of the International Court of Justice," 15-20 (1 May 2008) Translated from the French by Linda Asher and Peter Weiss. [http://www.lcnp.org/disarmament/2008May01eventBedjaoui.pdf.]

[34] Anthony D'Amato. "Good Faith" *ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW*, 1992, pp599-601, 1234-1236; Michel Virally, "Review Essay: Good Faith in Public International Law," *77 AM. J. INT'L L.*, No. 1 (Jan., 1983), pp. 130-134; *North Sea Continental Shelf* cases, *ICJ Reports* 1969.

[35] *WEST'S ENCYCLOPEDIA OF AMERICAN LAW*, published by Thomson Gale.

[36] The doctrine of *clausula rebus sic stantibus* is clarified in the *Fisheries Jurisdiction Case* (*United Kingdom v. Iceland*, 1973). See also Kelsen, Hans. *THE LAW OF THE UNITED NATIONS. A CRITICAL ANALYSIS OF ITS FUNDAMENTAL PROBLEMS*. New York: Frederick A. Praeger, 1964. Reprinted 2000 by *THE LAWBOOK EXCHANGE,* 128-129.

[37] Alfred von Verdross, "Forbidden Treaties in International Law," 31 *AM. J. INT'L L.* 571 (1937).

Part IV. Misreading of cases and inadequate legal base

1. The Concept of "Opposability"

The Commission did not consider "opposability" [38] objection, a progressive concept in international customary law or case based international principle. Irrespective of the particular point of contention in cases involving states in disputes, it is possible to invoke the opposability of certain allegations or pleadings based on some norms or principles of domestic or international origination or treaties in conflict to general principles of international law or norms or treaties. However, in the case in dispute of Ethiopia and Eritrea the opposability is to be based on other than the issues of *Jus Cogens,* such as legitimacy of the establishment of the Boundary Commission, the legitimacy of the revival of long dead colonial treaties in order to serve the interest of only one party to a dispute, inadequate representation, corruption, lack of arms length dealings with the alleged" opposing Parties et cetera. The ICJ used for the first time the concept of "opposability" in the *Fisheries Case* between Norway and England.[39] In the *North Sea Continental Shelf Case*s, the ICJ held, "Whether it has since acquired a broader basis remains to be seen: qua conventional rule however, as has already been concluded, it is not opposable to the Federal Republic."[40]

The use of "opposability" has one very attractive feature that all can appreciate; it limits the scope of the decision to the case under consideration without affecting or challenging the wider scope of the foundational international principle or norm. For example, the Algiers Agreement could be opposable to Ethiopia without affecting the *pacta sunt servanda* attributes of treaties or agreements as a general international law principle. For example, in a different case Shinya Murase seems to suggest similar idea. [41] Defects in procedural and substantive legal misinterpretation and misapplication could be opposable, without affecting the underlying principles and norms of international law. There seems to be incompetence of the Ethiopian Government representatives or there is deliberate act of the Ethiopian Government to undermine its own case. The Pleadings and Legal Briefs and evidentiary documents presented by the Governments of Ethiopia and Eritrea are not available to the public—hence an additional serious defect of the procedure of the Commission.

2. Fallacy of *argumentum a fortiori*

It is obvious that the Commission was wrong in its use of "virtual demarcation" in the demarcation of the border between Ethiopia and Eritrea. Such action was beyond the scope of its mandate. The Commission acknowledged the fact that both Ethiopia and Eritrea declined to attend the Commission's "invitation" to attend a meeting of the Commission to consider

---

[38]J. G. Starke, Q.C., "The Concept of Opposability in International Law," *AUSTRALIAN YEAR BOOK OF INTERNATIONAL LAW*, 4, 1968.

[39] *Fisheries case, Judgment of December 18th, I95I, ICJ Reports 1951, p 116 .*

[40]*North Sea Continental Shelf Case*s, *ICJ Reports 1969, Judgment, p 3 at p. 41.*

[41] Shinya Murase, "The Relationship between the United Nations Charter and General International Law regarding Non-Use of Force: The Case of NATO's Air Campaign in the Kosovo Crisis of 1999," Presentations, Sophia University Faculty of Law, Tokyo, 2005. http://www.lcil.cam.ac.uk/Media/lectures/doc/Murase.doc.

"further procedures to be followed in connection with the demarcation" of the border. That refusal of the parties should have ended the work of the Commission as an arbitration body. However, once again the Commission imposed itself beyond its mandate without any specific authorization from the parties to demarcate the border between Ethiopia and Eritrea on its own on areal map. The Commission cited as authority the *Beagle Channel case*, and in a footnote stated that "The present case is not one involving the total non-cooperation of one Party, but rather the non-cooperation of both Parties, though in differing ways and degrees. Thus, the observation of the *Beagle Channel* tribunal applies *a fortiori*."[42] The Commission totally misapplied the concept of "*a fortiori*" in that the exact opposite outcome would have been the case, if the Commission had applied the concept it tried to use from the *Beagle Channel case* correctly *a fortiori.*

A fortiori as a contextual concept for its correct application is dependant on unique facts to a particular case. The form of argument identified in full as *argumentum a fortiori* means in Latin that an argument with even stronger reason. "In the art of rhetoric *i.e.*, speaking or writing for the acknowledged primary purpose of persuasion, the *a fortiori* argument draws on the speaker's and/or listener's existing confidence in a proposition to argue for a second proposition that is implicit in the first, 'weaker' (less controversial and more likely to be true) than the first proposition, and therefore deserving of even more confidence than the speaker and/or listener places in the first proposition."[43] The fallacy is obvious, as an example, if one takes some poison in very small amount curing certain disease, but treating the disease with more poison will result in death. Accordingly, if one party in an arbitration did not participate, some measure against that belligerent party may be appropriate; however, the exact opposite is the effect where both parties to an arbitration decline to participate in an arbitration process they setup, for the consequence of nonparticipation by both parties is the negation of the arbitration process itself. A short survey of cases decided by both American and English Courts using the *a fortiori* argument confirms my assessment of the error of the Commission.

Part V. Incompetence of Commissioners

1.The disqualification of Lauterpacht and the Boundary Commission

We should understand the role of arbitrators is distinct with more latitude from that of ICJ judges. However, this does not mean that we have to throw out all professional ethical standards when it comes to arbitrators. By the nature of their appointment or election, arbitrators do have certain preferences in supporting the position of the party that appointed or elected them. It may be argued that their preference to the party that appointed them may not disqualify them from being arbitrators. However, when it comes to the president or chairman elected by the arbitrators themselves pursuant to the arbitration agreed upon procedure, I believe both standards of "independence" and "highest moral reputation" standards are applicable to arbitrators who are thus elected by the other arbitrators to be presidents of particular commissions or tribunals. The Commission President, Sir Elihu Lauterpacht, had displayed an unusually blatant

---

[42] *Beagle Channel case*, *52 INTERNATIONAL LAW REPORTS*

[43] Hans V. Hansen, Robert C. Pinto, *FALLACIES: CLASSICAL AND CONTEMPORARY READINGS*, Penn State University Press, 1995. See also Avi Sion, "Judaic Logic," 1995, http://www.thelogician.net.

disregard of both the "high moral" and "independence" standards expected of a chairman of an arbitration commission or tribunal, and should be disqualified.

It is obvious that the United States was not an impartial neutral body. The United States had stained the arbitration process with its uncouth act of retaining as its lawyer Lauterpacht in its case with Mexico, a case cited herein that was decided by the ICJ.[44] Even worse, Lauterpacht was the Counsel for Pakistan in its case against India in 1999 and argued in front of the ICJ.[45] As we all know, Pakistan has been the arch enemy of Ethiopia, providing moral and financial support to EPLF and ELF. It was the most vociferous and antagonistic state in the United Nations against Ethiopia in the 1950s.

No degree of disclosure by Lauterpacht of his fiduciary relationships with the United States, or the Pakistani Government or the Israeli Government or anybody else would remedy the "conflict of interest" that is inherent in such relationships. Lauterpacht thereby stained also the impartiality of those Members with whom he had prior relationships as Members of arbitration tribunals or commissions. The one ideal condition would have been for an international arbitration to be carried out by choosing from the pool of experts who are already the members of the Permanent Court of Arbitration already designated by their respective governments that are signatories of the 1899 or 1907 Treaties (Conventions).[46]

With the adoption of the UNCITRAL rules the pool of arbitrators was expanded to include ad hoc arbitrators who are not designated by any member nations. This process seems to have opened the door for corruption and conflict of interest problems. One must not lose sight of the initial reasons why in 1899 the arbitration forum was needed.[47] It was envisioned that seasoned statesmen and international law jurists would help stabilize the world through their wisdom by arbitrating conflicting claims by states. It was never meant a career promoting and money making scheme for lawyers, such as the Members of the Commission.

3. Third Party Funding as Corruption

The fact of setting a "Trust Fund" out of which the expense of the tribunals and commissions and the compensation for the members of such tribunals and commissions is paid has introduced into the process of arbitration elements of corruption that goes contrary to the desired independence of such forums. The problem is compounded by the fact of the involvement of the United Nations Security Council in receiving reports as a matter of course, presumably pursuant to its United States Charter responsibilities, wherein political consideration rather than law and principles play major roles in the

---

[44] *Avena and Other Mexican Nationals (Mexico v. United States), Judgment, ICJ Reports 2004, p. 12*.
[45] *Areal Incident of 10 August 1999 (Pakistan v. India), ICJ Reports 2000, p. 12.*
[46] *1907 Convention for the Pacific Settlement of International Disputes*: Article 44 and Article 45
[47] Preamble, 1899 Convention (1) for the Pacific Settlement of International Disputes (Hague 1) (29 July 1899) entry into force: 4 September 1900.

decision making process of arbitration. Such new structure has further polarized and distorted the independence of the tribunals or commissions. [48]

Thus, the Government of Ethiopia has every right to void all agreements, including the Algiers Agreement, and to reject the entire decision of the Commission. Ethiopia cannot be obligated to accept a decision by a Commission that is corrupted where some members of the Commission have compromised their duty to exercise "independence" and "high moral" standards. It is not important to show that all and every member of the Commission is involved in such conflict of interest. As long as one can show at least one member is involved in such conflict of interest, the entire proceeding and all decisions thereof, which flowed from such process, are tainted, thus void and invalid. Furthermore, Ethiopia should demand the disqualification of the President of the Commission, Elihu Lauterpacht, for conflict of interest and corruption.

Part VI. Land Locking of Ethiopia and Alienation of Ethiopian Citizens

1. Afar Coastal Territories

It is a truism to say that leaders of governments change, but the nation and its people persist longer than the lives of individual leaders and governments. Ethiopia's venerable Journalist Eskinder Nega writing about the way Abyie, the oil rich region, was stolen from the legitimate owners, the people of South Sudan, legally with the arbitration decision setup by the old colonial masters, surmised what could be a perfect example of our current political bottle neck created due to be having been rendered illegally landlocked. Eskinder wrote succinctly what is illustrative of our debacle/affair as follows:

> "And so what European colonizers had disastrously lumped together as the modern nation of Sudan oblivious to history, psychology and sentiment was cleverly given leeway to succumb to local will; albeit generous concessions to the stronger party. With the secession of Eritrea, the colonial status-quo was re-established four decades after being reversed by local forces when Eritrea was reintegrated, with the blessing of the UN, with the historical hinterland, Ethiopia."[49]

The worst colonial legacy is the bottlenecking of independent states by strips of coastal land that was earlier alienated from such nations during the colonial scramble. Through the cover of creating such "independent" straw-nations from tiny coastal colonial territories a form of neocolonialism is put in place.

When I state in writing and in oral discourse that the entire Afar coastal territory, which includes the port of Massawa and Assab, and the Afar people are part of Ethiopia, it is

---

[48] RESOLUTION 1177 (1998): Adopted by the Security Council at its 3895th meeting, on 26 June 1998 . 8. Requests the Secretary-General to provide technical support to the parties to assist in the eventual delimitation and demarcation of the common border between Ethiopia and Eritrea and, for this purpose, establishes a Trust Fund and urges all Member States to contribute to it.

[49] Eskinder Nega, "The South Sudan and Eritrean precedents," *IDN-Indepth News,* March 4, 2011.

not for the sake of having access to the Red Sea. The issue of Sovereignty (ownership) is often confused with the idea of the "rights of access" to the Red Sea. The issue should always be on Sovereignty and ownership, for "the right of access" is dependant on the moment to moment whims of the granting state. It is particularly an unreliable "right" in an African setting where the development of state responsibility is arrested and where irresponsible *ad bellum* is the order of the day. My assertion is based on several international law principles and norms, such as solid historically based superior right of Ethiopia, the right of contiguity, the effective continuous display of state authority, the national security interest of a sovereign state, and above all the rights of Ethiopian citizens to live in their primordial homes without any foreign interference against their rights as citizens of a sovereign Ethiopia.

The Boundary Commission did not specifically cite the principle of *uti possidetis* in its decision. This is also one other evidence that indicates that the decision of the Boundary Commission to have been predetermined. The development of such international legal principle must be understood in its contextual use first in several Latin American cases. It was primarily used to settle disputed territorial boundaries and possessions between newly independent states in South America in order to counter possible resurrected Conquistador's claims of *res nullius*. The concept developed forked solution one dealing with the test based on historic rights (Sovereign) and the second dealing with effective control (possession). At any rate, the principle of *uti possidetis* in its evolved form through the decisions of the ICJ as indicated below favors Ethiopia if it has claimed properly the Afar Coastal territories as its legitimate historic territory.[50] The concept of "effectivites" that the ICJ introduced in order to fine tune the *uti possidetis* principle would recognize that Ethiopia is the parent nation that has exercised such control on the area and also the fact that the disputed area with its population is the natural extension of its territory and demography. The majority of Afars are found within the larger region within Ethiopia. Thus, there is no reason or principle of international law that would divide a people in order to award some territory to a newly created entity.

In the *Qatar v. Bahrain* (2001) case Judge S.O. Kooijmans, in his individual concurring opinion, introduced the principle of "superior claim" a principle that should have played a central role dealing with issues involving such an ancient state of Ethiopia. Had the Boundary Commission considered properly the principle of "superior claim" it would have found out that Ethiopia had far superior claim that is more significant than any claim based on colonial treaty, and would have disqualified itself (Commission) for lack of capacity. [51]

2. **<u>Badema and Irob Area</u>**

Here is the most heart wrenching effect of the border conflict that was started by the Eritrean Government, and the decision of the Boundary Commission would only exasperate an already inhumane situation. Forcing the Afar, Kunama, the Bilen, the Irob

---

[50] *Frontier Dispute (Benin/Niger), Judgment, ICJ Reports 2005, p. 90.*

[51] *Maritime Delimitation and Territorial Questions between Qatar and Bahrain, Merits, Judgment, ICJ Reports 2001, p. 40, Para 77.*

people or the town and village people of Bademe, or that of Zala Ambesa et cetera against their wishes, into losing their historic land and citizenship goes against the principles enshrined in the Charter of the United Nations, numerous Resolutions by the General Assembly of the United Nations, and Resolutions of regional organizations such as the AU. There is no way one can abrogate such *Jus Cogens* rights of fundamental norms and principles of international law by a bilateral treaty or by a decision of an arbitration Commission, or arbitration tribunals or the ICJ.[52]

I respect the views of Theodor Meron not only because he is an accomplished international law jurist of the highest order but also of his great integrity. After all, he advised the Israeli Government, as a young legal advisor to that Government, against settlement of Israelis on occupied territories—a point of view that was not popular within the officials of the Israeli Government of the time. It is ironic that the people of Irob, whose great contribution to the unity and integrity of Ethiopia is exemplary, are now threatened by the decision of a corrupted Boundary Commission. The people of Irob are quintessential Ethiopians in every facet of their heroic lives. It is absolutely unacceptable by anyone, international law or not, to try to alienate a people whose history is cemented by their blood fighting countless battles to preserve their Ethiopian identity and history for thousands of years. The Boundary Commission divided Irob into two and awarded the northern part to Eritrea, which puts the entire process of arbitration into question.

The consequence of such hasty and ill-advised and corrupt decision of the Commission would violate the fundamental rights of the people of Irob. Who would dare in the guise of international border arbitration reallocate territory to a newly formed entity overriding history, demography, and norms of international law and principles? The absurdity of the decision of the Commission is best described in a short article by Alema Tesfaye who is native to the disputed area, wherein he narrated to us the too human dimensions:

> “Today the Irob people find themselves in a very dangerous condition and it will be worse if the rather hasty “cut-and paste type” of The Hague Border Commission’s Ruling (April 2002), that partitioned Irob territory into Eritrea and Ethiopia, is rigidly implemented, without modification. In its desperate search for the none existing River Muna, the Commission has irrationally renamed valleys such as Midiriba and Barbare-Gade only to impose new identity on the Irob minority (despite their strong objections), dislocate their households and expose them to Eritrean Government reprisals, a government whose occupation they bitterly fought in the 1998-2000 war. The Hague ultimately benefited neither the peoples of Eritrea nor of Ethiopia nor the goals of the UN’s four year-old costly peacekeeping mission. It is not a matter of sheer territory; it is all about people’s destiny and their fundamental human rights to life, protection and security.”[53]

---

[52]Theodor Meron, *THE HUMANIZATION OF INTERNATIONAL LAW*, Hague Academy of International Law Monographs, 3, 2006; *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda), Jurisdiction and Admissibility, Judgment ICJ Reports 2006, p. 6.*

[53] Alema Tesfaye, “Ethio-Eritrean border debacle and the Irob condition,” www.IROBMABLO.org

The absurdity of the Boundary Commission decision is clearly illustrated by the rejection of that decision by the people of Irob that are in the designated area to be handed over to Eritrea. The sum total of the Commission's decision adds up to giving a tract of land to Eritrea and dispossessing the people who have lived on that piece of land for all of recorded history. Thus, it is obvious that the Commission has erred in its decision and in its interpretation of the norms of international law.

3. The Border with Sudan

To date, there had not been any publication by the current Ethiopian Government of Meles Zenawi of the substance of the negotiation or draft agreement with Sudan on the Western borders of Ethiopia. We hear Meles Zenawi stating in interviews that his Government is not giving away any Ethiopian Territory to Sudan, but at the same time he is deciding what constituted Ethiopian territory. This is a circular and devious argument meant to undermine the historic fact of Ethiopian controlled border lands he had decided to cede to Sudan by labeling over sixty thousand square kilometers of Ethiopian territory with thousands of towns and villages and homes of millions of Ethiopian citizens not Ethiopian territory. It is not up to Meles Zenawi or anyone else to decide the extent of Ethiopia's territory. Ethiopian Territorial expanses are determined and set already by its history, by its demography, by its possessions and control, by valid international treaties, and above all by its Sovereign People.

Meles Zenawi is responsible for the situation of Ethiopia's border territories being compromised and given away. This is claimed by supporters as a necessary bitter pill one must swallow in order to appease the anti-Ethiopia conspiracy orchestrated by Arabs. More than such external agents the real enemies of Ethiopia were the two leaders of the guerrilla movements who succeeded to destroy an unpopular and brutal government of Mengistu Hailemariam and his associates and proceeded to dismantle a great nation that is equally the heritage of Eritreans as well. Mengistu Hailemariam was another reason for the bitter fight staged by the guerrilla fighters, because of his background and his bloody ascendance to power (in itself). Mengistu's crime against individual Ethiopians, in absolute numbers of victims, was far worse than that of either guerrilla leaders; however, he had not compromised the sovereignty and territorial integrity of Ethiopia as much as Meles Zenawi did.

Meles Zenawi is now ceding our land to Sudan as he did with our land to create Eritrea, to another artificially carved entity out of Ethiopia. Even if Ethiopia is said to be occupying land that belongs to some such non-existing entity that is claimed as part of the current Sudan, the international norm or principle applicable to the situation is not the one used in our modern time, but the one that existed over a hundred years ago contemporary to the occupation of the land by Ethiopia. The principle of *intertemporality* is fully applicable here and that principle of international law would fully support or recognize the sovereign right of Ethiopia over the territory it now occupies. "[T]hat a juridical fact must be appreciated in the light of the law contemporary with it, and not of

the law in force at the time when a dispute in regard to it arises or falls to be settled."[54] At any rate, the principle of *uti possidetis* supports Ethiopia.

VII. Conclusion: Our Future

The main reason for all the controversy surrounding the decisions of the Boundary Commissions has to do with immature and rushed process of adjudicating a controversy that had its origin in hundreds of years of history and rivalry. Temporary peace would have been maintained without the rush to settle the controversy in a legal forum. The Framework Agreement of 1999 and Agreement on Cessation of Hostilities of 2000, even with their limitations did provide such breathing space. The creation of the Boundary Commission was a serious failure of statesmanship. I insist that the use of arbitration process in itself is suspect *ab initio* because of the secretive nature of the process, *and* I strongly object to the use of arbitration tribunals or commissions in cases of border conflicts. In the case of the Governments of Ethiopia and Eritrea, the choice of arbitration seems to have been adopted solely to hid material facts from the Ethiopian public.

There can be no valid international agreement or treaty or decision by the ICJ or by an arbitration commission that would jeopardize the national security and vital interest of Ethiopia. There are several instances where national governments rejected fully or partially the decisions of ICJ affecting their national interests, although the noncompliance on boundary or frontier dispute is less than ten percent of such total decisions of the ICJ. Among several articles and books written the general opinion seems that non-compliance in frontier dispute cases seems to be the case where some vital national interest is at stake, such as vital national resource, the alienation of citizens.[55] Ethiopia has every right to keep claiming its lost territory of Eritrea in whole and certainly the Afar Coastal territory and the Red Sea territorial water and the islands thereof. Neither "federation" nor "confederation" will bring about lasting peace and prosperity to the people of Ethiopia and Eritrea. The only marriage that could work between the diverse tribes and ethnic groups that shared what common history has forged and molded into one people is a unitary state modeled in the name and identity of the historic Ethiopia. Now, in imaging a Unitary Ethiopia, Ethiopian Moslems as much as Christian Ethiopians have a stake in the survival of Ethiopia; they must take the challenge very seriously. The relationship between people, especial in matters that would end up having long term effects on the life of a nation, is a sacred matter.

The Arabs are not our destiny; they have been unable to bring about democratic governance, even with all that wealth, among themselves. So far as a group, they represent the worst social and political structure in the World. Why would anyone want

---

[54]*Island of Palmas case (Netherlands, USA) 4 1928*, 485. See also *The Minquiers and Ecrelzos case, Judgment of November 17th, 1953* : *ICJ Reports 1953, p. 47. 13-14*. See also "*Legal Status of Eastern Greenland Case" P.C.I.J (1933)*; R.Y. Jennings, *THE ACQUISITION OF TERRITORY IN INTERNATIONAL LAW*, New York, NY: Oceana Publications, 1963.

[55] See Sara Mitchell and Paul Hensel, "International Institutions and Compliance with Agreements," 2007 *AMERICAN JOURNAL OF POLITICAL SCIENCE,* Vol. 51, No. 4, October 2007, pp. 721–737.

to be under their sway and dominance? Ethiopia must be united with all its historic parts and develop its great human and natural resources to benefit all of its children. I am not suggesting here that only a certain kind of people produce horrible national leaders, but that history places us at a disadvantage where we are caught in downturn spiral of incredibly difficult economic, social, and political problems. We need to seek our salvation through our own devices, as we are doing now through individual communication and building solid close relationships in our common survival goals.

I conclude this paper by reminding us all that dictators throughout the World are similar in more ways than I can count. No matter how they start out claiming noble goals as liberators from alleged ethnic dominance (Meles Zenawi), or as liberators from alleged colonialism (Issayas Afeworki), or as liberators from alleged class oppression (Mengistu Hailemariam) et cetera, they all end up becoming the exact copies of each other. They all are power hungry, violent, narcissistic, fearful, vengeful, and corrupt. They claim to know everything; their attempted monopolistic hold on ideas is the most frightening aspect of such leaders. And they end up hurting and killing their own people. Woe to us all if we fail to bring about profound change and unity in spite of such leaders! History ought to be our guide, and it need not put us in a straightjacket. We should be able to fashion our own future after our ideal of a responsive, democratic, and humane nation.

Tecola Worq Hagos,
Washington DC
March 26, 2011

No part of this Article/Paper may be reproduced, published, or posted in blogs or websites of any kind in any form by any means without proper authorization in writing by the Author. Copyright © Tecola W. Hagos, March 26, 2011.

Ethiomedia.com – March 27, 2011
Seattle, Washington