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Uti Possidetis, Self-determination and Conflicts in the Horn of Africa: The Case of Eritrea's Secession from and Border Conflict with Ethiopia

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Uti Possidetis, Self-determination and Conflicts in the Horn of Africa: The Case of Eritrea's Secession from and Border Conflict with Ethiopia

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Abstract

This research examines the relationship between the principle of *uti possidetis* and the right to self-determination within the African context. It looks at the interplay between the two in enhancing conflict and challenging peace and stability in Africa particularly in the Horn of Africa. The study is a desk research that uses Ethiopia and Eritrea as a case study to establish the interplay between self-determination and *uti possidetis* in informing Eritrea's secession from Ethiopia and the subsequent bloody border conflict between the two countries. The findings of the research highlighted that the principle of *uti possidetis* and the related commitment of states to territorial integrity has related paradoxically with people's right to self-determination to cause conflicts in Africa and in the Horn of Africa region. A critical analysis highlighted that *uti possidetis* challenges lead to conflicts and challenges achievement of peace through secession and border conflicts. The study concludes that demarcation of borders in peacetime coupled with good, representative and inclusive governments would go a long way in addressing the challenges that *uti possidetis* and self-determination pose to peace and security not only in the Horn of Africa but also in the whole of Africa.

Introduction

The end of the Second World War was followed by decolonization in Africa and attainment of statehood of several states in the continent. Africa became

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the continent with the highest number of states in the United Nations. Afraid of the political turmoil that might have ensued in the continent if African leaders were to engage in a process of determining borders, the Organization of the African Unity (OAU) resolved to uphold the borders inherited from the colonial administrations. This was informed by a principle of International Law known as *uti possidetis juris* (or simply *uti possidetis*) (Ratner, 1996). Thus, the inherited borders were transformed into international borders that defined territories of the various states. However, *uti possidetis* did not spare the continent from conflicts. Although inter-state border related violent conflicts were not common, identity-based conflicts in pursuit of secession have threatened peace in the continent.

The Horn of Africa has borne the brunt of these conflicts that depict a challenge to *uti possidetis* manifested in the assertion of the right to self-determination. It is only in the Horn of Africa that successful secessions in Africa have occurred. Another challenge to *uti possidetis* has been inter-state border conflicts and disputes occasioned by inherited colonial borders, resources and even external influence. The Horn of Africa presents the largest number of such conflicts in the continent. Although majority of the inter-state border conflicts are latent, they could serve as warning for the future. Furthermore, they strain the relationships between states and undermine the United Nation's purpose of maintaining peaceful and harmonious relations between states. This study focuses on the interplay between *uti possidetis* and self-determination in challenging peace and stability in Africa in general and the Horn of Africa in general.

It explores the doctrine of *uti possidetis* as a key principle governing territory as a major element of statehood in postcolonial Africa. It also looks at the interplay between *uti possidetis* with the related right of states to territorial integrity and people's right to self-determination in threatening peace and security in Africa in general and the Horn of Africa in particular. The paper discusses the self determination of Eritrea and the subsequent border conflict between Eritrea and Ethiopia as a good case to elaborate the challenges that the principle of *uti possidetis* has caused to peace and stability.

The paper seeks to answer the following questions:

- i. How did the principle of *uti possidetis* and the right to self-determination evolve in international law?
- ii. What is the relationship between the principle of *uti possidetis* and self-determination in Africa?
- iii. What role does the paradoxical relationship between *uti possidetis* and self-determination play in conflicts in Africa and the Horn of Africa?
- iv. To what extent did the principles of self-determination and *uti possidetis* inform Eritrea's independence from Ethiopia and the subsequent border conflict between the two states?

The conclusion of the paper is that border demarcation and management in peace time coupled with good, representative and inclusive governments would contribute to curb conflicts and contribute to peace and stability not only in the Horn of Africa but in the whole continent.

Uti Possidetis and the African Postcolonial States

Once it was evident that the organization of African politics would be informed the European nation-state, it was inevitable that the leaders would settle on retaining the boundaries as created by colonialists (Herbst, 2000:103). Demography, ethnography, and topography made it difficult for the founding fathers of the Organization of African Unity (OAU) to establish rational borders. On the other hand, returning to pre-colonial borders was also impossible since pre-colonial states were fluid and organized on territorial basis and would therefore not resonate with a world which was organized around territories defined by hard boundaries (Bhandari & Mueller, 2015:5). The leaders feared that the process of redrawing boundaries might result to wars and threaten the stability of the continent and newly independent states (Herbst, 2000:104).

In 1964 the OAU passed a resolution on border problems pledging member states to respect the frontiers existing on their achievement of national independence. The OAU Charter which was the constitutive instrument of the OAU provided in Article III paragraph 3 for the "Respect for the

sovereignty and territorial integrity of each state and for its inalienable right to independent existence (Herbst, 2000: 104). The states referred to by the UN Charter were thus the states as mapped by the Europeans during colonialism. As a result, African boundaries have remained almost unaltered since independence.

One of the most significant challenges of the frontiers inherited from the colonial administrations was that the borders were drawn by Europeans in the late 19th Century particularly in the 1885 Berlin Conference without local knowledge and interest in the political, social and regional peculiarities (Weber 2012:3, Kapil, 1966:660). They were drawn for the benefit of the colonialists to aid them in extracting resources and managing their colonial territories and were drawn on the basis of particular longitudes and latitudes (Hasani 2003:3). Therefore, the creation of states separated communities that belonged together thus prompting efforts for self-determination (Kapil 1966:661). It is important to note that self-determination is a right recognized in international law and provided for in the United Nations Charter.

The OAU Charter also provides for self-determination by recognizing “the inalienable right of all people to control their own destiny” (Herbst, 2000:106). At decolonization, the right to self-determination was easily applicable to the colonial states to free themselves from colonialism. After decolonization, the right to self-determination became perceived as unwelcome if it led to secession and thus undermined the principle of *uti possidetis* and territorial integrity. Self-determination in the African context was therefore considered applicable to those countries that were still colonies or were still under white minority control (Herbst 2000:107). It was on the same basis that the right to Eritrean self-determination was never recognized despite the existence of such an international agreement that required Ethiopia to grant Eritrea independence.

The efforts of African leaders to continue with the inherited state system and suppress the right to self-determination that challenged the status quo were also supported by strong powers at the international system. First, the Cold War period provided a favorable environment in which the superpowers

acted as patrons to African leaders whenever their boundaries faced internal or external challenge (Herbst, 2000:108). Ethnic rebellions were strongly thwarted with the help of the superpowers. The Biafra war in Nigeria (1967-1970) that called for the secession of Biafra from Nigeria was the first test of African leader's commitment to the respect for the colonial borders and the international support in the course. The war led to the massacre of tens of thousands of people and the employment of international mercenaries by both sides of the conflict. In spite of these the OAU in 1967 reaffirmed its respect for the sovereignty and territorial integrity of Nigeria and other African countries and further claimed that the civil war was an internal affair (Herbst, 2000: 107).

The International community's support for OAU's goal of boundary stability and to effectively prevent the application of the norm of self-determination to a group of people after their country's independence reflects clearly in the border dispute between Mali and Burkina Faso. The International Court of Justice emphasized the application of the principle of *uti possidetis* to Africa and declared that the principle applied generally further indicating that the logic of its application was connected with the phenomenon of independence wherever it occurred in order to protect the independence and stability of new states (Shaw, 2014:381). Thus the court decided that the practice of upholding the colonial borders must be respected in spite of its apparent conflict with the right to self-determination.

While the arbitrarily drawn borders may have minimized potential conflicts between the colonial powers, for Africans, it marked the origin of many present-day conflicts and insoluble problems in the African continent. The tension between the right of people to self-determination and the doctrine of *uti possidetis* and the related right of states to territorial integrity has claimed several lives in Africa (Mnyongani, 2008:463). Border claims ensued in different parts of Africa based on historical and ethnic claims. In West Africa for instance, Morocco laid territorial claims based on pre-colonial claims to areas under Malian, Algerian and Mauritanian jurisdiction while in the Horn of Africa, Ethiopia laid similar claims to lands in Eritrea and Somaliland that had been under Italian occupation (Kapil 1966:663). Somalia raised ethnic

concerns to claim areas in Kenya and Ethiopia leading to the Somalia-Ethiopia and Somalia-Kenya border disputes.

Conceptualizing Statehood

According to Murphy (2017:7) statehood designates the feature of an entity that exists in the international community that respects the Montevideo Criteria. The Montevideo convention signed in 1933 established the basic and widely accepted criteria for statehood and defined the state as an entity that consists of a defined territory, a permanent population, a government and the capacity to enter into relations with other states (Murphy 2017).

Although the Montevideo Convention sets the basic criteria, a contention occurs regarding whether statehood should be anchored on state recognition. There are two competing theories of state recognition in international law: the constitutive theory and the declaratory theory (Worster, 2010:2). The constitutive theory maintains that in addition to the basic criteria of statehood, a state is only a state when it is recognized as such by other states. Recognition is not static but is upon the discretion of the states. The declaratory theory on the other hand the declaratory theory lays emphasis on a state's assertion of sovereignty within the territory it exclusively controls to determine if it can access the international plane (Worster 2010:3). Statehood is based on fact, not by the discretion of other states (Wa Mutua, 1995:1124). The criteria established at the Montevideo Convention are informed by the declaratory theory.

This paper does not seek to focus on the competition between the theories with regard to recognition but rather focuses on their convergence on the importance of defined territory as one of the key elements of statehood and acknowledges borders as key factors establishing the defined territory. It further looks at the principle of *uti possidetis* with regard to borders in Africa and the challenge of the principle with changing dynamics in the international system. Border conflicts have become common place.

The Concept of Territory and its Significance to States

The essential importance of territory was very well succinctly summed up by Oppenheim who clearly stated that “a State without territory is not possible” (Oppenheim, 1955:451, cited in Knight, 1992:312). Shaw (2008:487) submits that territory is undoubtedly the most basic characteristic of a state and the most widely accepted and understood. Territory provides the basis upon which fundamental concepts of international law such as sovereignty and jurisdiction can be comprehended. The development of principles such as the principle of respect for the territorial integrity of states which protects territorial inviolability is indicative of the central role that territory plays in international law.

The territorial delineation of a state is expressed in its boundaries (Mnyongani, 2008:465). Thus as boundaries evidence the extent of State sovereignty and indicate the limits of the operation of domestic legal system (Shaw, 1997:77). Borders also describe identities, belonging and political affiliation. For that reason, borders also have a direct impact in determining the population of a state as another key element of statehood. In addition, borders also define the extent of a state's resources and also geopolitical advantages or disadvantages. For instance, in the maritime dispute between Kenya and Somalia, a case which is already in the ICJ, Kenya is fighting tooth and nail not to lose the case owing to the ramifications of losing the case which involve loss of resources and becoming sea locked which is geo-strategically disadvantageous.

Uti possidetis juris (uti possidetis) in International Law

Uti possidetis is a concept of international law that defines borders of newly independent states based on the previous administrative frontiers. It is a general principle of law that is closely related to the principle of the intangibility of inherited frontiers and it is destined to address boundary struggles on independence. The principle can be traced to the Roman private law which was used to settle property ownership in which more rights were given to the person in possession of the property (Hasani, 2003:429). The full expression of the principle then was *uti possidetis, ita possidetis*, meaning “as you possess, so may you possess” and the aim of its application

to promote and maintain order in the Roman Empire (Mnyongani, 2008:468).

It was during the dawn of decolonization when *uti possidetis* evolved to be a binding principle of international law protecting territorial borders of states. Malcolm Shaw (1997:76) submits that the principle of *ut possidetis* developed as an attempt to avert territorial disputes by fixing the territorial heritage of new states at independence and converting existing lines into internationally recognized borders. It is closely linked to the principle of stability of boundaries and it draws upon and also informs other principles of international law such as territorial integrity.

Uti possidetis as a principle of international law was first applied during the decolonization of Latin America at the beginning of the nineteenth century (Mnyongani, 2008:469; Hasani, 2003:2). It was used to mark an end to the concept of *terra nullius* (no man's land) by recognizing the decolonized Latin American states as the possessors of all territories that were presumably possessed by their colonial predecessors. This would prevent any renewal of European colonization on the basis that parts of the continent constituted *terrae nullius* and thus were open to acquisition of sovereignty by effective occupation by any state (Shaw, 1997:98). (Mnyongani 2008:469; Hasani, 2003:3). The principle also served to prevent conflict over borders.

From Latin America, *uti possidetis* moved to Africa. On independence, African states decided to respect the frontiers that had been left by the outgoing colonial administrations (Ahmed 2015:47). Thus, the borders that had been established during colonialism became the new international boundaries. Having just attained independence, African leaders were protective of their new gains and were thus keen preoccupied with the integrity of the sovereignty of the new states (Mnyongani, 2008:467). Afraid that the process of redrawing the maps along ethnic lines would destroy stability of the continent the leaders of the OAU invoked the principle of territorial integrity. This was captured in articles II and III of OAU Charter. Article II calls upon member states to protect their sovereignty, their territorial integrity and their independence, and Article III entails the

commitment of leaders to respect the borders existing on their achievement of national independence (OAU Charter 1963). The Constitutive Charter of the African Union reiterates the same principles. Article 3 (b) talks about protection of sovereignty, territorial integrity and independence while the commitment to *ut possidetis* is captured in Article 4(b) (Constitutive Act of the African Union, 2000).

Self-determination: An Elusive Collective Right in Africa

Self-determination is a concept that denotes the collective political right of people or nations to determine their destiny. Its historical path can be traced to the French Revolution and even further in history to the ancient Greece and Rome (Berketeab, 2012: 2). Shortly after the First World War, the Wilsonian doctrine popularized the notion of self-determination in an effort to push for self-determination of peoples in Eastern and central Europe from the Austro-Hungarian and Russian empires (Mnyongani, 2008:472). Following the end of the Second World War, the idea of self-determination was incorporated in Articles 1 and 55 of the UN Charter as the principle of “equal rights and self-determination of peoples (Kirgrīs, 1998:304). The Charter however did not define what self-determination was or who the peoples were.

Paradoxically, international law has always asserted the right to self-determination while at the same time affirming the territorial integrity of a sovereign state. Article 1(2) of the UN Charter for instance provides that members shall develop friendly relations based on the principles of equal rights and self-determination of peoples, while Article 2 (3) calls on member states to refrain in their international relations from the use of force against the territorial integrity or political independence of any state (UN Charter, 1945). The United Nations General Assembly in 1952 made recommendations that the United Nations shall uphold the principle of self-determination of all peoples and nations (Mnyongani, 2008:472). The principle is asserted further in the General Assembly's 1960 Declaration on the Granting of Independence to colonial countries and peoples (Kirgrīs, 1998:305). This was the same principle that was applied to push for decolonization in Africa. The African Charter on Human and People's

Rights provides for the right to self-determination. At the time, self-determination did not raise problems and even its contradiction with the principle of territorial integrity and *uti possidetis* did not raise an issue because they were all directed towards member states in their interaction with each other.

While African leaders invoked self-determination to fight for independence, they were very apprehensive of groups within independent states that asserted self-determination that would lead to eventual secession. The United Nations though the General Assembly implied that self-determination aimed at supporting colonial people to realize their inalienable right to self-determination ought not to be construed as authorizing or encouraging any action that would dismember or impair, totally or in part the territorial integrity or political unity of sovereign and independent states (Mnyongani, 2008:473). Thus based on these, self-determination that would lead to secession has strongly been thwarted in Africa.

As Mnyongani (2008:475) correctly puts it, Africa's independence was attained through the assertion of the right to self-determination and once this was accomplished, doors were shut to a "people" within a territorial state who wished to assert the same right because leaders wanted to maintain territorial unity. This presents a conflict between *ut possidetis* and the right to self-determination whose practical application has not only undermined the UN's purpose of maintaining friendly and harmonious relations among nations but has also led to the loss of human lives. Claims to self-determination that tended to lead to secession such as the cases of Katanga and Biafra have been very violently suppressed. Moreover, border disputes, although may not have led to full blown war between states have strained their relations. Border disputes have been further exacerbated by struggle for control of resources such as oil, minerals and other natural resources that come along with territory. The Horn of Africa displays this very well.

Territory, Self- determination and Border Disputes in the Horn of Africa.

The Horn of Africa is one region where *ut possidetis* and self-determination have played out very candidly. The only two successful secessions in Africa have taken place in Africa (Eritrea in 1993 and South Sudan in 2011). Furthermore, borders disputes and conflicts abound in the region. It is also in the Horn where a territorial dispute has led to a full blown inter-state war (Ethiopia and Eritrea).

All the states in the Horn of Africa are embroiled in border disputes. Some have involved violent confrontation threatening peace and stability in the region. Examples of these include the Eritrean-Ethiopian border war and the Sudan-South Sudan conflict over Abyei (Weber, 2012:3). Other borders are contested but not violently such as the Ethiopia-Somali border and the Kenya-Somali border. However, in spite of them not being contested they are very insecure particularly due to threat from terrorist groups. The Ilemi triangle is also another border area that is contested by South Sudan, Kenya and Ethiopia while Eritrea and Djibouti have also been engaged in border conflicts. Another more recent border dispute that has attracted a lot of international attention is the Kenya-Somali maritime dispute which is currently over which a court case is ongoing in the International Court of Justice (ICJ). In the greater Horn, Kenya and Uganda have yet to agree over Migingo Island in Lake Victoria. Some of these border disputes that strain relations and are likely to fuel interstate conflicts are due to growing discoveries or rumours of existence of natural resources on borders or in borderlands (Okumu, 2010:279). This is exacerbated by influence of powerful international actors interested in resources.

Majority of borders in the Horn of Africa are located in the peripheries, far from the capital cities. Just like the colonial governments, the post-colonial governments tend to ignore them and thus most of them are characterized by absence of state structures and services. They constitute what some scholars have referred to as “ungoverned spaces”. Such borders become safe havens for illegal trade and also rebel groups and militias (Weber 2012). Examples include the Al Shabaab at the Kenya-Somali border, cattle rustlers at the

Ilemi triangle and Karamoja cluster, and the Lord's Resistance Army at the border between South Sudan, Uganda and the Democratic Republic of Congo (Weber 2012:3).

Eritrea's Secession from and Border Conflict with Ethiopia

Eritrea's Self-determination and Secession

Bereketeab (2012:2) highlights two types of self-determination that are prevalent in the African continent. The first relates to cases of annexation and deferred decolonization which refers to entities created by colonialism and later instead of being decolonized, they were annexed by a neighboring state. Examples of these include Namibia, Eritrea and Western Sahara. The second type of self-determination relates to cases of secession which were not created by colonialism but were triggered by the end of colonialism. Examples of these are the unsuccessful secessions of Biafra in Nigeria and Katanga in the Democratic republic of Congo and the successful secession of South Sudan.

The idea of an Eritrean identity and later statehood can be traced back to 1869 when Italy established a colony that would aid its interests in the Red Sea region (Hoyle 1999:381). The borders that define Eritrean territory were delineated by the Ethiopian emperor and Italian government and Italians gave the territory the name "Eritrea". Following Italy's defeat in the Second World War in 1941, Eritrea was put under British administration until 1950 (Bereketeab, 2012). The ability of Eritrea to become and function as an independent state was doubted since it was a small province with a very small population of 3.5 million compared to Ethiopia's 55 million (Herbst, 2000:144). Following a United Nations General Assembly Resolution, Eritrea was federated to Ethiopia as an autonomous entity under the Ethiopian emperor (Abbay, 2001; Negash & Tronvoll, 2000:9, Hoyle 1999:381). Unwilling to eventually grant Eritrea independence, Ethiopia propagated the view that Eritrea was unable to form a state and further began to dismantle the federal provision in the union and finally ended the federation in 1962 leaving Eritrea to exist only as a simple province in the imperial state. Eritrea therefore existed as an unwilling adjunct of Ethiopia

(Hoyle, 1999:382). With no plans for Ethiopia to grant independence in sight, Eritrea felt compelled to launch an independence struggle in order to achieve their right to self-determination and delayed decolonization and in 1961, they formed the Eritrean People's Liberation Front (RPLF) to fight for this course (Bereketeab, 2012:2, Abbay 200:481). In 1961, they formed the Eritrean People's Liberation Front (EPLF).

In 1991, the EPLF teamed up with the Ethiopian People's Revolutionary Democratic Front (EPRDF), a coalition whose core component was the Tigrayan People's Liberation Front (TPLF), operating in the province of Tigray that borders Eritrea to overthrow a military junta led by Megistu Haile Mariam that had been in power since 1974 (Healy, 2008). It is important to note that the Tigreans of Ethiopia and the Tigrayans of Eritrea are to a great extent the same communities that are separated by the colonial border between the two countries. One of the key agreements of the alliance between EPLF and the EPRDF was the acceptance of Eritrea's independence. Therefore, after the defeat of the military junta in 1991, the EPLF moved into Asmara signaling the emergence of a de facto Eritrean state. In 1993, a UN-supervised referendum culminated the self-determination of Eritrea and its existence as a de jure state.

Eritrea's secession from Ethiopia was not condemned by the other states in the region. The OAU which had over the years strongly held on the doctrine of *uti possidetis* and territorial integrity did not raise objections to Eritrea's independence since Ethiopia had agreed to the separation (Healy, 2008:12). Indeed, it was Ethiopia that requested the United Nations to supervise the referendum which led to Eritrea's independence. Although some Ethiopians were opposed to the secession of Eritrea, the EPRDF's transitional government, led by Meles Zenawi argued that it was necessary in order to bring an end to the conflict that had bedeviled the country for 30 years (Healy 2008).

Ethiopia-Eritrea Border Conflict (1998-2000)

After a peaceful separation, Ethiopia and Eritrea were believed to have harmonious relations. The border conflict and the subsequent full blown war

between the two states came as a surprise to many. After Eritrea's secession from Ethiopia, the two countries maintained the colonial border that had existed during the period in which Eritrea had been under Italian and subsequently British administration. The border was delimited but not demarcated. The two countries had agreed to cooperate and even signed a Friendship and Cooperation Agreement which spelled out the measures for economic cooperation between which included the use of the Ethiopian Birr as the common currency and Ethiopia's access of Eritrea's ports since Ethiopia became land locked after Eritrea's independence (Negash & Tronvoll, 2000:35; Mesfin, 2012; Bereketiab, 2010:18).

The harmonious relationship did not last long since the two countries began having economic fallout. Eritrea's adoption of a separate currency, the Nafka in 1997, caused serious financial consequences which strained the interdependent relationship between the two countries. The undemarcated border between the two countries which initially had no effect on economic life became a real barrier to economic interaction and Ethiopia's free access to Eritrea's ports ceased leading Ethiopia to boycott the ports in favor of the Djibouti port (Healy, 2008:12). At the local level, disputes over jurisdiction between local authorities along the demarcated border were looming and the Ethiopian side had been launching incursions during security operations (Healy 2008:13). Eritrea's expression of suspicion over inaccuracy of the maps that indicated the border prompted the two countries to establish a boundary commission to demarcate the border but before the commission commenced its work, the border conflict erupted.

In May 1998, a border conflict erupted between the two countries to the surprise of many who had hailed the two countries' peaceful separation (Khadiagala, 1999:39). The mismanagement of a small border incident led to the escalation of the border dispute into war. On May 6 1998, Eritrean forces moved into the village of Badme that was administered by Ethiopia following a shoot out incident between Ethiopian local militia and Ethiopian border patrol forces (Healy 2008:13). Following this incident, Ethiopia declared war on Eritrea. What started small skirmishes escalated into a full blown war that attracted international actors determined to pursue peaceful

settlement of the dispute. Mediation efforts by the United States, Rwanda and the OAU bore little fruit. Badme, the disputed area is a small village which has little strategic interest but high emotional value. Fighting continued for two years and ended in 2000 when Ethiopian forces dislodged Eritrean forces from the positions they had held in Badme and even advanced further inside. The war cost more than 70,000 lives (Weber, 2012:3).

Immediately after the fighting ended, there were further negotiations which led to the signing of a Cessation of Hostilities in June 2000 and the Algiers Agreement in December 2000. The negotiations involved the OAU, the US, the UN and the EU. The Algiers agreement formally ended the war and provided for the deployment of UN peace keepers (United Nations Mission in Ethiopia and Eritrea - UNMEE). In addition, under the Algiers Agreement, a neutral Eritrea-Ethiopia Boundary Commission (EEBC) was established and mandated to delimit and demarcate the colonial treaty border based on the applicable colonial treaties of 1900, 1902, and 1908 and on applicable international law (Healy 2008:11). By signing the Algiers Agreement, Ethiopia and Eritrea agreed that the decision of the commission would be final and binding on them.

In April 2002, the Boundary Commission gave its verdict concerning the border. According to the interpretation of the commission, Badme, the disputed village, which had been under Ethiopia's administration actually belonged to Eritrea. While Eritrea was contented with the decision, Ethiopia contested and appealed arguing that the decision divided communities on each side of the border. Also from Ethiopia's perspective, the ruling required it to give up territory which previously had been under its administration and had been unlawfully seized by Eritrea and had just been won back in a very costly war (Healy 2008:13). Ethiopia's initial appeal to the Boundaries Commission was rejected on the basis that the decision of the commission was final and Ethiopia had agreed to be bound by it. Consequently, Ethiopia appealed to the United Nations Security Council to set up an alternative mechanism to demarcate the contested parts of the boundary in a just and legal manner (ibid). This appeal was also rejected and Ethiopia refused to comply with the boundary ruling and therefore the

Boundary Commission could not proceed with the demarcation phase of its mandate. Ethiopia remained in control of the areas that the EEBC' ruling placed on the Eritrean side of the border, notably, the symbolically important town of Badme (Lyons, 2009:167).

Ethiopia's refusal to comply with the border decision caused a diplomatic quagmire. First, Ethiopia and Eritrea cut their diplomatic and economic ties and a situation of no peace no war reigned. The UN also faced a challenge since the completion of the Boundary Commission's mandate was the prerequisite for the completion of the UNMEE. Eritrea looked up to the UN and the international community to compel Ethiopia to respect the Commission's decision. When this did not work, Eritrea decided to attract international attention by frustrating the functioning of the UNMEE. This resulted in tough threats of economic sanctions from the United Nations to Eritrea and a stern demand on Ethiopia to allow demarcation without further delay (Healy, 2008:15). The United States decided to intervene and initiated a meeting in 2006 with the witnesses of the Algiers Agreement EU, the African Union (AU) and the US, the Boundaries Commission and Ethiopia and Eritrea in order to facilitate demarcation. While both sides of the conflict attended the first two meetings in 2006, Eritrea refused to attend subsequent meetings citing suspicion of the US to be pro-Ethiopian and accusing the US of supporting Ethiopia's defiance of international law.

Eventually, the Boundaries Commission's mandate expired before the demarcation could be accomplished. The UNMEE also exited in 2008. Nevertheless, the boundary conflict was never completely resolved. Ethiopian and Eritrean troops remained face to face along their highly militarized border (Lyons, 1999:167). Although Ethiopia and Eritrea did not confront each other physically, their diplomatic and economic relations greatly deteriorated their war continued by proxy whereby they accused each other of supporting militia to destabilize each other's government. This further had effects on the stability of the entire Horn of Africa region. In a dramatic turn of events, in 2018, after twenty years of hostility between the two countries, a new regime came into power in Ethiopia and the new Prime Minister Abiy Ahmed declared that the Ethiopian government would honor

the Algiers Agreement and cede the Badme to Eritrea as per the verdict of the 2002 verdict of the Boundaries Commission. He further called for reconciliation and peace between the two countries. Eritrea reciprocated and this led to a rapprochement between the two countries which has thus been hailed by the whole world leading to Abiy Ahmed recently winning a Nobel peace prize.

Although the two countries have reconciled after twenty years of hostility, it is important to note the significance of colonial borders that define territories and the potential for conflict that can ensue from the sacrosanctity attached to these borders. The border issue between Ethiopia and Eritrea is not yet fully settled since demarcation did not take place. It would be prudent if the two countries would take the opportunity of their renewed relations to demarcate the border during peace time and thus avoid future disputes and conflicts.

***Uti possidetis* and Self-determination – A Paradox: Conflicts in the Horn of Africa**

Throughout its evolution, the principle of *uti possidetis* has predominantly been geared towards prevention of conflicts and disputes that may arise from distribution of territories. Since the borders drawn by colonialists did not pay attention to the communities in the borders, at independence, communities that are closely related and closely interacted found themselves separated by arbitrary international borders and thus belonging to different jurisdictions.

Moreover, the colonial legacy which artificially imposed European ideas of statehood onto a multitude of communal groups on the principle of divide and rule established states characterized by a disconnection between states and identity groups that formed the citizenry (Ramsbotham, Woodhouse & Miall, and 2016:117). As a result, in many postcolonial societies, the state was dominated by a single group or a group of a few communities that were unresponsive to the needs of other groups in the society. This strains the social fabric and eventually leads to fragmentation and protracted social conflict and further motivates societies to pursue self-determination. The conflict that led to the secession of South Sudan from Sudan and Eritrea from

Ethiopia are good cases in point. The secession of the two states entailed several years of guerilla warfare which confirms Mazrui's submission that "the taboo of officially sanctioned secession is guerrilla warfare" (Mazrui, 1993, cited in Mnyongani 2008:472). Ethiopia and Sudan violently suppressed the self-determination efforts from Eritrea and South-Sudan respectively in due to their right to territorial integrity. Resources could also have played a role here. For instance, Ethiopia feared that the secession of Eritrea would render it (Ethiopia) landlocked without access to Eritrean ports. The examples indicate that *ut possidetis* coupled with self-determination is a recipe for conflicts and instability in a country.

The bloody conflict that ensued from 1998 between Eritrea and Ethiopia over a border that had been defined during colonialism exemplifies the endemic border conflicts in the Horn of Africa as a challenge posed by the principle of *ut possidetis*. Since Badme, the territory of dispute between Ethiopia and Eritrea is just a mere rocky place with little resources, the territory is symbolic in that it represented Eritrea's assertion of sovereignty and defense of territorial integrity. The war was being fought between Addis Ababa and Asmara while the Tigrayans from both countries inhabiting Badme are naturally the same people and are interdependent. This depicts a scenario in the Horn of Africa where border disputes take place to satisfy interests of faraway governments or even external actors.

Conclusion

This paper has discussed the principle of *uti possidetis* and the right to self-determination as two mutually opposing concepts in international law. *Uti possidetis* in Africa is crucial since it defines territory, a very important element of statehood. In line with the principle, African leaders since independence have sought to jealously guard their territorial integrity of their territories defined by colonial borders. Standing sharply in challenge of the principle of *uti possidetis* is the right to self-determination particularly that which leads to secession since it aims at redefining colonial borders and violates a state's right to territorial integrity. Efforts of groups to pursue the right to self-determination in Africa have been strongly condemned and met with highly repressive means by states. Another challenge to the principle of

uti possidetis manifests itself through border disputes and conflicts which abound in Africa. The Horn of Africa is the region in which these two challenges to *uti possidetis*: self-determination and border conflicts have clearly been manifested. A very good case that depicts these two is the successful secession of Eritrea from Ethiopia and the subsequent border conflict between the two. Both processes have entailed huge costs in human lives and have affected the peace and stability of the entire region. While African leaders may not be blamed for adopting *ut possidetis*, the challenge they posed to the continent is that they made little efforts to demarcate the borders most of which were just arbitrary. Proper demarcation during peace time would go a long way in reducing the border conflicts. Moreover, proper representative and inclusive governance would also play a key role in endearing African states to their citizens and prevent motivation for populations to assert their right to self-determination.

References

- Abbay, A. (2001). "Not With Them, Not Without Them": The Staggering of Eritrea To Nationhood. *Rivista Trimestrale di Studi e documentazione dell'istituto Italiano per L'Africa e L'Oriente*, 56(4), 459-491.
- Ahmed, M. D. (2015). *Boundaries and Secession in Africa and International Law: Challenging Uti Possidetis*. Cambridge: Cambridge International Press.
- Bereketeab, R. (2012). Self-Determination and Secession: A 21st Century Challenge to the Post Colonial State in Africa. *The Nordic African Institute*. Policy Notes.
- Bereketeab, R. (2010). The Complex Roots of the Second Eritrea-Ethiopia War: Reexamining the Causes. *African Journal of International Affairs*, 13(1&2), 15-59.
- Bhandari, A & Mueller, L. (2015). Are the Harms of Artificial Statehood Reversible? Development of Outcomes along Shifting Niger-Burkina Faso Border.
- Charter of the United Nations and Statute of the International Court of Justice, 1945
- Constitutive Act of the African Union. 11th July, 2000, Lome, Togo.
- Dersso, S (2012). (2012). International Law and the Self-Determination of South Sudan. *Institute for security Studies (ISS)*, Paper No. 231.
- Hasani, E. (2003). *Uti Possidetis juris: From Rome to Kosovo*. *Fletcher Forum of World Affairs*, pp. 1-9.

Healy, S. (2008). *Lost Opportunities in the Horn of Africa: How Conflicts Connect and Peace Agreements Unravel*. London: Royal Institute of International Affairs (Chatham House).

Herbst, J. (2000). *States and Power in Africa: Comparative Lessons in Authority and Control*. New Jersey: Princeton University Press.

Hoyle, P.A. (1999). The Eritrean Identity: A Case Study. *North Carolina Journal of International Law and Commercial Regulation*, 24, (.2), pp. 381-416.

Kapil, Ravil, L. (1966). On the Conflict of Potential Boundaries in Africa. *World Politics*, 18 (4), pp. 656-673.

Khadiagala, G.M. (1999). Reflections on the Ethiopia-Eritrea Border Conflict. *The Fletcher Forum of World Affairs*, 23(2), 38-57.

Kirgris, F.L. (1998). The Degrees of Self Determination in the United Nations Era. *The American Journal of International Law*.

Knight, David, B. (1992). Statehood: A Politico-Geographic and Legal Perspective. *Geojournal*, 28, (3), pp. 311-318.

Lyons, T. (2009). The Ethiopia-Eritrea Conflict and the Search for Peace in the Horn of Africa. *Review of African Political Economy*, 36 (120), pp 167-180.

Mesfin, B. (2012). Ethiopia's Role and Foreign Policy in the Horn of Africa. *The International Journal of Ethiopian Studies*, 6(1), 87-113.

Mnyongani, F. D. (2008). Between a Rock and a Hard Place: the right to self-determination versus *uti possidetis* in Africa. *The Comparative and International Law Journal of Southern Africa*, 41, (3), pp. 463-479.

Murphy Anton, (2017). State Formation and Recognition in International Law. *Juridical Tribune*, 7, (1), pp. 6-14.

Negash, T. & Tronvoll, K. (2000). *Brothers at War: Making Sense of the Eritrean-Ethiopian War*. Oxford: James Currey.

OAU Charter, 25th May, 1963. Addis Ababa.

Okumu, W. (2010). Resources and Border Disputes in Eastern Africa. *Journal of Eastern African Studies*, 4, (2), pp. 279-297.

Ramsbotham, O. (2005). The Analysis of Protracted Social Conflict. *Review of International Studies*, 31, 109-126.

Ratner, S. R. (1996). Drawing a Better Line: UTI Possideis and the Borders of New States, 90 (4), 590 – 624.

Shaw, M. N. (1997). The Heritage of States: The Principle of *uti possidetis juris* today. *British Yearbook of International Law*, pp. 76-154.

Shaw, M. N. (2008). *International Law* (6th Ed.). Cambridge: Cambridge University Press.

Shaw, M. N. (2014). *International Law* (7th Ed.). Cambridge: Cambridge University Press.

Wa Mutua, M. (1995). Why Redraw the Map of Africa: A Moral and Legal Inquire. *Michigan Journal of International Law*, 16, (4), pp. 1113-1176.

Weber, A. (2012). Boundaries with Issues: Soft Border Management as a Solution? Berlin: Friedrich-Erbert Stiftung.

Worster, W. (2010). Sovereignty: Two Competing Theories of State Recognition.

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