

COLONIAL TREATIES IN THE CONTEXT OF THE CURRENT ETHIO-ERITREAN BORDER DISPUTE AND SETTLEMENT

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The sudden decision by the Ethiopia's regime to accept, after years of refusal, and to implement the outcome of the Algiers Treaty as arbitrated by the Hague Court without any preconditions, has inflamed the nation, sparking demonstration, and even violence, by those directly affected by the ruling party's abrupt action. The Hague Court's ruling has been declared "null and void" by many, not only well-meaning and patriotic Ethiopians but also, and most significantly, by respectable scholarly community, versed in colonial history. This article, which is a reproduction of a paper originally presented to the Fourteenth International Conference of Ethiopian Studies, held in Ethiopia's capital, Addis Ababa¹, looks from historical perspective at the colonial treaties and the charters of the Organization of the African Unity, twin elements underpinning the Hague's court ruling.

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The present boundary dispute between Ethiopia and Eritrea has brought into international limelight and academic debate the vexing issue of African colonial treaties and their relevance for settling the continent's border conflicts. The border may not be the underlying factor of the present conflict between Eritrea and Ethiopia, and yet it is used by them as the cause or excuse for it. It is a high time then that historical scholarship should stretch its hand and revisit these colonial treaties on boundaries and their relevance for settling the dispute between the two countries. Beyond its significance for the present negotiation and the debates that are taking place in both Ethiopia and Eritrea, the discussion will have a global import as it will be useful for our understanding of colonial treaties in Africa and the significance of the OAU's charter on the inviolability of the inherited colonial borders.

The recipes that the two warring states prescribe for the resolution of the conflict are essentially identical some semantic differences notwithstanding. Ethiopian government proposed that settlement should be based on both arbitration and negotiation. To an independent observer, this position seems to represent one of the most realistic responses to the challenge presented by the dispute with a promise of a lasting peace between the two nations. However, Ethiopia, like Eritrea, stresses also the importance of defunct "colonial treaties" as an additional element to overcome the impasse. Like Eritrea, it maintains that the dispute should be settled according to the bilateral treaties that the Ethiopian government and the surrounding European colonial powers, especially Italy, signed in the early part of 1900s. Justification for this position rests on appeal to the 1964 Cairo Charter of the Organization of the African Unity that affirms the

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sanctity of "colonial boundaries inherited at the time of independence," a position that this paper views as neither feasible nor practical. Most importantly, there is no basis, legal or historical, that supports the settlement of Ethio-Eritrean border conflict within the framework of either colonial treaties or OAU's famous boundary charter.

I. PROBLEMS WITH THE ITALO-ETHIOPIAN TREATIES

Whatever the reservations about comparisons between Africa and Europe and contrary to the widespread perception, it is reasonable to consider that in Africa, as in Europe, most political boundaries and related borderlands represent zones of distinct national histories and cultures, official languages, and contrasting economic systems. This is not surprising since most of the modern African boundaries in the first instance were the outcome of the European power politics. Not only were these boundaries drawn and, for a long time, managed on the respective metropolitan models, but the legal mechanisms that aided their establishment were exactly the same 'treaties', 'agreements', 'protocols', and 'notes', instruments used in the creation of the boundaries of European states. The view that boundary evolution in Europe is an entirely an indigenous process is as fictitious as the argument that maintains the artificiality of the boundaries of the modern African states. European national states are as much territorial as their colonial possessions in Africa and elsewhere. In drawing of boundaries in Africa, as much as in Europe, scant considerations to local realities were made, even though the rival powers possessed considerable knowledge of the areas in dispute in Europe and hardly any detailed information in Africa. So, in Africa as in Europe, the frontiers so created by the contesting powers did not respect ethnic limits or economic needs of the areas and, most often, they were imposed on unwilling subjects whose role was that of mere spectators in intense European rivalry that largely ignored their presence.

Even though it is a common assumption that the present African boundaries are the legacy of the Berlin Congress of 1884-1885, where it is claimed the European powers carved up the continent among themselves. The truth is the Congress, convened to ensure free trade in the basins and at the mouths of the Niger and Congo rivers, limit further British expansion and establish clear criteria for international recognition of European territorial claims, carefully refrained from setting any precise territorial boundaries. These were the result of unilateral declarations, and bilateral or multilateral agreements, with some of them based on agreements reached before the Conference. The most that one can say about the Berlin Conference is that it actually marked a significant stage in a process that was already underway and continued long afterwards, using its provisions whenever appropriate. Examining the specific instance of the Italo-Ethiopian boundary settlement will help dispel any lingering belief in the role that Berlin Congress played in the boundary setting and also provide useful insight on some of the problems created by colonial treaties in dealing with the Ethio-Eritrean conflict.

However, it should be noted that two important anomalies. Unlike most of the African states where the indigenous leaders took no part in colonial treaties that created the boundaries of modern African states, the Ethiopian rulers were major active players in the process through which boundaries were created. Unlike in most of Africa, where the Europeans followed as methods of partition of the borders either astronomical (44%) or mathematical lines (30%), Ethiopians in their treaties with the European powers relied largely on the traditional

geographical features, using mountains or rivers to demarcate their sovereignty.

The present Ethio-Eritrean conflict is rooted in the various treaties that in the last decades of the nineteenth century Ethiopian rulers, particularly Emperor Menelik II, concluded with Italy. Of these the following are the most critical.

A. The Treaty of 2 May 1889, known also as the Treaty of Wučalé, and its Annex of 1st October 1889. With this treaty, Ethiopia recognized as Italian properties or possessions its lands occupied by Italy in the northern and eastern frontiers of the country. The land in the north was named Eritrea, a term later extended to include also the port territory of Assab. However, the possessions neither have a unitary or uniform administration, nor were they under total Italian control. The eastern section, or Assab - a sea port separated from the north and interposed between the lands under Ethiopian administration and the French Somaliland or Djibouti - remained an autonomous region until 1908. On the other hand, until the 1935 Italo-Ethiopian War, Ethiopia maintained its sovereignty on the monastery of Dabre Bizen and over "all its lands and gult," an extensive piece of territory, located deep inside the Christian highlands and stretching to the Red Sea coast.

B. The Treaty of 26 October 1896 abolished the Wučalé Treaty, and laid down the ground for a new relationship which incontestably asserted not only Ethiopia's complete independence as a sovereign state but also, as we will see, its lordship over the lands that were occupied by Italy. In matters of borders, the two countries agreed to uphold the arrangements that existed prior the Battle of Adwa, the historical event that thwarted Italy's fledgling imperialist ambition and secured Ethiopia's existence as the only independent African state. However, until a proper demarcation was made, this treaty acknowledged that the three rivers - Mareb, Belessa, and Muna - would serve as provisional landmarks to separate the frontiers between Ethiopia and the Italian colony.

C. The Treaty of 10 July 1900 simply sanctioned the Treaty of October 26, 1896. To the three rivers are added others as a demarcation line. Interestingly, both treaties of 1896 and 1900 state clearly to whom ultimately did the lands under Italy's occupation - or Eritrea - belong and what their future disposition should be in case Italy decided to relinquish them. The treaty leaves no doubt that Ethiopia is the unquestionable owner of these lands. They are given to Italy by the goodwill of the Ethiopian ruler. Based on this fact, the treaty imposes on Italy the duty "*not to cede or sell to any other power the territory*" given to it by Menilek II. On her part, Italy by signing the treaty committed herself "to give them back to Ethiopia" in case she decided "*for any reason to relinquish them.*"

It is interesting to note that the notions of "ownership" and "restitution" that are used in this treaty have no comparable cases elsewhere. In fact, Menelik II had signed several treaties with other neighboring European colonial powers, including Italy, but he made no similar advances as to the ownership and the final arrangement of the lands under such treaties should the European powers decide to relinquish them. The treaties of 1896 and 1900, therefore, could be seen as interesting historical documents from where to draw a conclusion that the present land of Eritrea was Ethiopian territory and that the claim of Ethiopian colonialism by some Eritrean academics, which unfortunately had become fashionable even in several academic circles, lacks substance.

D. Two important Notes are annexed to the Treaty of 10 July 1900, both aiming to modify the western and the eastern frontiers between Italian colonies and Ethiopia: (i) Note of 15th May 1902, and (ii) Note of 16th May 1908. Under the present dispute both these Notes are referred by Eritrea as treaties of 1902 and 1908.

I). Note of 1902 attempts to revise the western boundary lines set by the Treaty of July 1900 by planning to grant to Italian occupied Eritrea the lands between Gash and Setit rivers, including all the land inhabited by the Kunama. However, this Note never went beyond the drawing board. Until the end of 1920, the territory was indisputably under Ethiopian sovereignty. Its annexation to Eritrea was the work of Corrado Zolli, the notorious Fascist Eritrean governor. Zolli, taking advantage of the political unrest in Ethiopia, grabbed this land by force in a typical fascist style, forcing the people and the Governor of Kunama into submission to Italy. In many ways, the 1998 dramatic twist of events that took place in this same area and led to the present conflict appears a clear re-enactment of Zolli's work. The border of this area, then, has never been demarcated by the experts of the two governments, as agreed by the Notes, and, as we will see in more details later, the annexation was vigorously contested by Ethiopia.

II). Note of 16th May 1908 plans to establish the eastern borderline between the Italian colony and Ethiopia at a distance of 60 kilometers from the coast. Yet the agreement between the two governments "*to undertake to fix the above-mentioned frontier-line on the spot by common accord and as soon as possible, adopting it to the nature and variation of the ground,*" was never implemented. Again it was Zolli who, at the end of the 1920s, cut off massive amounts of land from the Tigray region, and added it to Eritrea. As a result, the two separate Italian territories were connected with a land corridor that physically made the Italian colony of Eritrea a compact territorial unit for the first time.

Zolli's policy rested on the defunct 1885 Berlin Act that European colonial powers had devised as a useful instrument to carve-up the African continent. According to this Act, any territorial treaty with an African leader would give the European power claims of sovereignty which, however, can only be real if followed by effective occupation of the territory. Understandably, for Zolli the treaties of 1902 and 1908 met these criteria and the forcibly annexed territories fell within the lines agreed by these treaties. Yet he was well aware that the treaties were only good as a subject of discussion until the borders, agreed only on paper, were studied, demarcated by experts on the ground and ratified by the two signatory powers, Ethiopia and Italy. Otherwise, they were dead letters like, as we will see, the 1928 Treaty of Peace and Friendship between these two countries.

Zolli's behavior angered Ethiopia and made the position of the then Negus Teferi extremely untenable. Beguiled by Italy's cunning diplomacy, the Negus had just concluded with his cantankerous northern colonial neighbor a Twenty-year Treaty of Peace and Friendship. However, Italy's aim was the intensification of, what the Italian authorities called, the policy of *chloroformization* of the central power [keeping Ethiopian authorities sedate and insensitive to Italy's subversive maneuvers] and subversion of the periphery. Italians believed that this policy would assist them in the eventual disintegration of the Ethiopian empire, thus clearing the way for Italy's intervention and final conquest.

However, as the news of Zolli's action slowly spread, the verdict of the Ethiopian public and the ruling officials against *Negus* Teferi was short and shrift: "Here is the fruit of your friendship with Italy; you have sold out our land." The Tigrean officials, such as Ras Seyoum, whose land was grabbed and also bore the main brunt of Italy's imperial cupidity, were the most vociferous critics. Teferi seemed to have learnt his lesson. His initial enthusiasm for Italy's half-hearted attempt to construct Assab-Dessie highway, as the Treaty of Friendship stipulated, dissipated and the treaty remained a dead letter. He understood that the treaty did not actually aim to guarantee Ethiopia's national security against possible Italian aggression as he initially believed, but to trap the Empire into becoming an Italian protectorate by facilitating Italian commercial penetration deep into the country.

I dwelt considerably long on the Notes of the 1902 and 1908 largely to demonstrate that Ethiopia had never accepted the arrangement of boundaries that Italy forcibly annexed at the end of the 1920s, the high period of Fascist Italy's revived imperial ambition against Ethiopia.

Overwhelmed by other more pressing internal problems, most of them caused by Italy's policy of de-stabilization, Ethiopia launched strong protest. Of course, Zolli acted on the advice of his officials in Rome, but his move angered even the Italian Minister in Addis Ababa, who seemed unaware of the drastic shift in Italy's policy toward Ethiopia. Zolli was undisturbed by the Minister's scathing attack and Ethiopia's protest. His rigid pursuit of Italy's expansionist policy contracted only when the Irob - the people inhabiting the areas of present day Zalambesa and its environs -, showed strong resistance to his evenhanded advance and refused to give up their Ethiopian citizenship. They were left under Ethiopian administration. Otherwise, Zolli met little resistance in the rest of the two regions inhabited by the Kunama and Afar. Unlike the Irob, who are sedentary, the Kunama and Afar are trans-humans and pastoralists, and it usually takes considerable time until the effects of Zolli's work had an impact on them.

These lands, therefore, remained part of the Italian colony simply because Ethiopia, gripped by the pitfalls of Italy's policy of subversion that culminated in the 1935 Italo-Ethiopian War, lacked time and resources to deal with the issues. It has to be emphasized that Italy continuously evaded persistent Ethiopia's request to demarcate their common borders either with Eritrea or Somalia. This was a deliberate policy on the part of Italy. As the Italian authorities put it, boundary demarcation is not good for Italy because it "*will bind Italy's hands so that she could not act in the way she deems fit to carry out her final objective against the Ethiopian empire.*"

The outspoken purpose of all these treaties between Ethiopia and Italy was to promote "friendship" and "peace". With Italy's aggression of Ethiopia in 1935, the renewed friendship was irremediably broken and, after five years of Ethiopia's protracted guerrilla warfare, Italy was once again defeated. As a result, she lost not only the war but also all her colonial possessions in Africa and Europe in the same way the Germans lost their possessions in Africa and elsewhere after the First World War. Italy's treaties with Ethiopia became null and void. This had been the case also with the treaties that Italy concluded with other powers. In fact, at the end of the Second World War and with the 1947 Treaty, Italy was forced by the victorious powers to relinquish any claim over her former colonies that she lost as a result of her war against the allied forces. It is within Ethiopia's right to claim back the lands relinquished or forcibly taken by Italy, as the treaties stipulate.

If the present day Ethiopian rulers accept the territories annexed by Italy at the end of 1920 using sheer military force, they are simply rewarding those who use brute force to occupy one's land. It should be emphasized that the treaties of 1902 and 1908 under which Eritrea claims the disputed territories are essentially flawed. These territories belong indisputably to Ethiopia and until Italy, in its attempt to provoke another war with Ethiopia annexed them in 1929 by force, they were administered by Ethiopia.

E. What makes even more difficult the settlement of conflict between the two countries according to the colonial treaties is the fact the geographical map of Eritrea has constantly changed during and after those treaties as the following instances highlight:

1. Even under Italian rule, considerable part of Eritrea was under the sovereignty of Ethiopia. This includes the huge expanse of land under the control of Dabre Bizen and its dependencies [daughter monasteries] that were directly administered by the imperial Ethiopian government. If Eritrea insists that the border should be marked according to the above-mentioned colonial treaties, it is within Ethiopia's power to claim back these territories and those forcibly annexed by Zolli's in 1928 and 1929. In both ways, Eritrea is bound to lose substantial mass of its land. Moreover, the control of Dabre Bizen and its dependencies will give Ethiopia a safe gateway to the important port of Massawa. Understandably, this will have serious consequences for Eritrea as an independent state.

2. When Italy temporarily occupied Ethiopia, Eritrea, including Somalia, became a province of Ethiopia (1936-1941). According to Italy, "the inhabitants of those regions possess customs, traditions, religion and languages common to those of the peoples in the former empire of the *Negus* or Ethiopia." This arrangement was terminated only in 1941 by the British. It is beyond the purview of this paper, however, to explore why, and on what legal ground, did Britain dissolve "Italian East Africa," or why the United Nations took the responsibility to solve the problem created by Great Britain. We know, however, that the British original intent was to incorporate Eritrea with their colony of Sudan as was the case with Ogaden, which they thought to add to their Somaliland. The latter was soon abandoned after the plan backfired when its secret came into the open. Nor was she successful in her former strategy because after years of British occupation, Eritrea joined Ethiopia as a federation, and later as one of its provinces.

4. Under Ethiopia, Assab was administered as part of Ethiopia and over 80% of its population was indisputably Ethiopian.

Which map then can correctly be defined as constituting the boundary of Eritrea: the pre-1928, the territory prior Zolli's illegal and forceful annexation of lands that were under effective Ethiopian administration; or pre-1935, before Italy's aggression against Ethiopia; or the post-1941 or that of the 1960s?

None of these geographical arrangements present a perfect choice. If we accept, for example, the pre-1935 map, Eritrea should be forced to renounce the hinterlands to Massawa port and substantial areas of the highlands. Under the British, the Eritrean territorial status remained undecided. Yet it was only during this period that Ethiopia made no claims on its sovereign right

over the Massawa hinterland [Bizen and the lands of its daughter monasteries]. Eritrea was administered as a compact unit. However, if Britain had been successful in its strategy of incorporating Eritrea to Sudan, this could have been only possible by renouncing its claim to Assab and, even most significantly, the Christian highland, to Ethiopia.

Since Eritrea claims that Ethiopia is the last 'colonial' power of Eritrea, the demarcation based on post-1960 line would have caused little dispute to both Ethiopia and Eritrea, and it would have also fitted OAU's charter that demands that boundary left by the "last colonial power" should be respected. In this case, Eritrea will concede Assab to Ethiopia, the alleged last colonial power, and

Ethiopia would denounce any claim of its rights to any part of the Eritrean interior, such as Debra Bizen and its dependencies, and yet reserve its right to the lands annexed by Zolli. I am sure Eritrean government may not be happy with this outcome even if it seems to be the most satisfactory one.

II. THE CHARTER OF THE ORGANIZATION OF THE AFRICAN UNITY [OAU]

There are considerable obstacles that militate against any attempt to apply OAU boundary charter to the Ethio-Eritrean conflict. The paper will not attempt an exhaustive survey of these impediment but it will list the following one as the most obvious:

1. OAU member states and their respective boundaries are colonial creation. These countries did not exist before the intervention of the western powers. Therefore, it is in the best interest of the African states to maintain the colonial status quo. Otherwise, any attempt to redefine the boundaries of the OAU member states will engulf the entire continent in anarchy, chaos, and mutual destruction. As a result, most of the present states will be wiped out from the continent's map. The Ethiopian State, even though its boundaries were, to a certain degree, defined by agreement with European colonial powers, is not in any way a creation of the West but an indigenous development. Therefore, Ethiopia's existence as an independent sovereign nation - albeit with variable frontiers - extends back for millennia. It pre-existed not only European intervention in Africa but, most significantly, almost the statehood of all of the European states themselves, and it continues to exist to-date long after the demise of the European powers in Africa.

2. No African state that gave away a piece of its territory through a bilateral agreement to European powers survived as an independent state to claim back the territory once the Europeans were forced out. Each signatory African state was eventually defeated and became part of a greater administrative region that Europeans created by the amalgamation of contiguous lands, kingdoms or chiefdoms. The examples are Ashanti of Ghana, or Buganda of Uganda, or Zulu of South Africa. By the time of independence, the states that signed the treaties [original states] did not exist to reclaim their right of the original statehood because they were already absorbed in a larger political unit. Ethiopia avoided this situation by decisively and convincingly defeating the European power that attempted to subjugate or destroy its sovereignty in Adwa in 1896, and later in a protracted guerrilla warfare in 1941. Unlike these original African states, Ethiopia then exists as a sovereign nation to claim back that territory she gave away as, for example, the

Chinese have successfully done with their territories that were grabbed by the European powers.

However, Ethiopia's right to Eritrea is much more stronger than, for example, of the Chinese to Hong Kong or Macao. The treaties that Ethiopia entered clearly state that the present Eritrean territory is indisputably belonged to her.

3. Eritrea in no way befits the OAU definition of a colonial territory. As I mentioned above, Eritrea's geographical map had changed several times. Of course, Eritrea has considered Ethiopia as the last 'colonial power'. If this bizarre definition of colonialism is accepted, then Eritrea has to negotiate its territorial entity with Ethiopia within the framework of the OAU charter. Since Ethiopia administered Assab as an indisputable part of its territory, and Assab's population was almost exclusively Ethiopian, OAU's charter will do little justice to the Eritrean claim of this port and its hinterlands. In the same fashion, the colonial treaties will be of little help should Ethiopia advance its claim to Dabre Bizen and its dependencies on the basis of Italian colonial treaties of 1900s.

4. Any appeal to the OAU's charter will be detrimental, and certainly not helpful, to Eritrea. When after the Second World War, Italy attempted to get Eritrea back on the basis of its colonial treaties and its long history of occupation, its claim was dismissed outright and nobody took it seriously. However, when Eritrea became an "autonomous federated unit under the sovereignty of Ethiopia," the UN's decision partially satisfied Ethiopia's legitimate demands that were already in the treaties that saw the creation of Eritrea. Federation made Eritrea an integral part of the sovereign Ethiopian territory.

Eritrea's secession is a contentious issue and beyond the purview of this paper. And yet it has to be noted that with its secession and its present attempt to claim the disputed territory by sheer military force, Eritrea undermined the very fabric of the OAU's charters, which maintained the inviolability of Africa's member states' boundaries and peaceful settlement of all disputes. If Eritrea had succeeded in gaining OAU's support in its secession from Ethiopia, it needs to be grateful. Indeed, this was not bestowed to others whose case for secession appears far more overwhelming, such as Biafra or the Southern Sudanese or the most successful guerrilla movement of UNITA in Angola, or RENAMO in Mozambique, and WPFL in Liberia.

Eritrea's attempt to justify its independence and the thirty years' of struggle as a fight against Ethiopian colonial rule may be useful as a propaganda ploy but it will have no support whatsoever from any unbiased or neutral quarter. If the Eritrean rulers believe their statement, it is a high time that they need schooling in elementary textbook of colonial history, or read their own history during the Italian colonial occupation. But what is important here is to stress that any appeal that Eritrea places on the OAU's charter is in reality nothing more than a mere posturing. It will be interesting only as a useless ploy, but not as a wise strategy.

Concluding then, any appeal by both Eritrea and Ethiopia to the colonial treaties and the OAU charter, is of scant, if any, practical importance. At worst, it will offer nothing more than sound and furry, and at best merely a negotiating ploy. With its independence, Eritrea remained de jure with no internationally recognized boundary. The way it gained its independence makes it an anomaly to both OAU Charter and the colonial treaties. On one hand, these treaties had become

null and void with Italy's aggression of Ethiopia in 1935 in the same fashion that Wuchale treaty became dead with the Battle of Adwa. On the other hand, the time gap that exists between these treaties and the Eritrean independence is so vast, and the change in status that Eritrea underwent during this same period is so intricate as to make any appeal to colonial treaties and OAU charter of no use beyond political gimmickry. The most interesting paradox in this boundary saga is that the independent Eritrea is appealing to colonial treaties and OAU Charters, two documents that militate against its very existence, and Ethiopian rulers seem not to bother with it.