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Critical Evaluation of the Colonial vs Secession Argument on the Eritrean Armed Struggle for Self-determination: A Response to International Publicists

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Abstract

Although the nature of the Eritrean armed struggle has been a subject of heated argument, recent works indicate renowned publicists subscribing to the secessionist corner. This paper attempts to produce critical evaluation of the '*colonial vs secession*' argument on the Eritrean struggle for self-determination. Applying analytical qualitative methodology, this research juxtaposes historical and contemporary material facts with pertinent international instruments and finds: 1) three stages where the argument has been fought: pre-colonial, colonial and post-colonial. 2) each argument, colonial and secession, is not homogenous, 3) Ethiopia's claim of Eritrea was a phenomenon born only in the second half of 1940s, and 4) Eritrean struggle was a colonial rather than a secession. Thus, concludes, recent subscriptions of international publicists to the secession side are not well grounded.

Keywords: *Self-determination, secession, colonial, Eritrea, Ethiopia, UN, AU*

1. Introduction

Toward the end of 1940s, a question was raised on what to do with the former Italian colonies in the Horn of Africa, namely Libya, Somalia and Eritrea. While the people of Somalia and Libya were granted independence due to conflicting interests of big powers and the Eritrean case was suspended for some years (Tesfay, 2007). But, finally in 1950, the UNGA resolution 390-A (V) decided Eritrea to be federated with Ethiopia.

However, the federal arrangement was abrogated by Ethiopia when it forcefully annexed Eritrea in 1962 (Cervenka, 1977). In response, Eritreans tried to report to the UN, hoping that it will step-in to safeguard the federal laws. The UN, however, remained silent (Yohannes, 1987).The people of Eritrea decided to fight arms wise. Once again, the question refreshed, albeit changed, itself; whether the Eritrean armed struggle for self-determination was 'colonial or secession' and was argued for over 50 years.

The researcher revisits this debate primarily because its apparent muted status is misleading. Analyzing the right of self-determination, Dixon labels Eritrea as an example of secessionist in a non-federal context (2013). In this regard, Dixon is not alone. Having made some discussion of the Eritrean case, Mansell (2006, p. 103) emphasized, "What this example demonstrates is that where a territory is physically able to insist upon its demands for secession, the *de facto* position will gain recognition". Such apparently simple post-independence subscription to an otherwise fiercely debatable issue is likely to have critical legal and political ramifications. This is because their works are, though not laws by themselves, one of the possible sources in identifying what the law is, per the International Court of Justice, Art. 38 (1d). In this connection, Horowitz (1997, p. 450) stated, "International law has always been much influenced by academic writing

2. Objectives

This paper has general and specific objectives. The general objectives are meant to serve as a background to the specific objectives and include:

a) assessing the historical relation between Eritrea and Ethiopia, and testing its relevance and applicability to the argument;
b) critically reviewing the material facts during federation and its abrogation.

The specific objectives aim to address the major research question of the thesis and are summarized as follows:

a) To scrutinize the conflicting 'colonial vs secessionist' argument on the Eritrean question for self-determination.
b) To bring the recent secessionist subscriptions by international publicists to the attention of professionals and readers.
c) To contribute to the peaceful coexistence of the two states.
d) To play a role in resolving similar issues prevailing in other countries from around the world.

3. Methodology Research Methodology

The very qualitative nature of the documents invites qualitative research methodology. This is because qualitative research has the advantage of making analyses of documents like books, newspapers and magazines (Bernanrd, 2013). Two sources of data are used, i.e. primary and secondary. Primary data include interview, treaties, UN Charter and resolutions of General Assembly (hereinafter GA) whereas secondary data are literary works available in journals and books.

4. Literature Review

The tendency of human beings to decide by themselves must have been there since the beginning of organized human society (An-Naim, 1988). The legal manifestation of self-determination is, however, recent phenomenon (ibid.). The genealogy of the right of self-determination goes way back to the French and American revolutions of the second half of the 19th century (Nawaz, 1965). Nevertheless, it is worth noting that some also trace it all the way back to the Athenian Democracy (Manssell, 2011). As a democratic value, the attributes of self-determination refer to the need of the consent of the people, impossibility to cede or annex or conduct business in any territory without due regard to the needs of the people (Cassese, 2005).

However, the credit of championship goes to the Charter of the UN where the right of self-determination, though only as principle (emphasis added), was put down in a written instrument of international law. It was one of the major rights, post WWII, conferred to all deserving nations. Pointing to this, Cassese (2005, p. 61) says, "By promoting the formation of international entities based on the free wishes of the populations concerned, self-determination delivered a lethal blow to multi-national empires. By the same token, it sounded the death knell for colonial rule". Moreover, Cassese appreciates R. Lansing (US Secretary of State) for rightly stating the dynamite nature of the right of self-determination (ibid).

There seems to have existed five major stages of self-determination; each clearly marking a new phase[1]. Nevertheless, attempts toward exercising this right, as truly transpired, have not been smooth and straightforward. In this connection, having appreciated the importance attached to the right of self-determination by member states of the UN, Freeman (1999, p. 355) says, "Yet few, if any, principles of international law are so uncertain in meaning and so controversial in character". According to An-Naim (1988, p. 28), in his discussion of self-determination and Organization of African Unity (hereinafter OAU),

[1] The first is the French and the American revolutions, both refer to the birth of the right. This was the stage where absolute Monarchy (Louis 16)/under Napoleon Bonaparte was popularly objected and overthrown in the case of France, and a foreign colonial rule was challenged in the case of the American Revolution. The second stage refers to the indomitable efforts of Woodrow Wilson right after WWI. Wilson went up and down, but was unable to make it part of the Covenant of the League of Nations. Probably this was due to the United State of America's (hereinafter USA) option to remain outside the League of Nations (hereinafter LN). Third Stage, of course, was its inclusion in the UN Charter, Art. 1(2) and Art. 55. This stage marked its universality. Here the researcher is not without doubt: if the right of self-determination, per the UN Charter, 1945, was only a principle, why and how was that possible for many colonies' to demand self-determination to which they were granted? That is, if a right is different from a principle then how was this possible? This sounds as if, in the context of self-determination, right and principle were/are the same. Or maybe it is because colonialism was condemned that colonies were awarded the right of self-determination. Fourth, self-determination was made to be part of the two conventions of 1966 (Civil and Political, and Social, Economic and Cultural). This marked the stage where self-determination was made to dress a legal right for the first time in its history. The fifth one was initiated when the Communist block perished right at the beginning of the 1990. This stage is best known for the special and detailed criteria advanced by European countries specially members of the European Union (hereinafter EU) as a condition for recognizing the newly born states as sovereigns (Mansell, 2006).

"... whereas external self-determination in the sense of liberation from traditional colonialism has been firmly established and largely achieved, internal self-determination within existing nation states and against 'local' colonialism remains problematic, especially in the African context". This seems to hint on cases such as the Eritrean one - 'local colonialism'. Probably, it might was for this reason once Freeman (1999) concluded in equating the right of self-determination with the right to be free of colonial/European powers, if at all, he adds, very little more than that.

The development of the legal right to self-determination is based on the UN Charter (Quane, 1998, p. 539), more specifically, Articles 1(2) and 55 of the Charter. While Article 1(2) states, "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples,…to strengthen universal peace." Article 55 states, "With a view to the creation of conditions of stability and wellbeing which are necessary for peaceful and friendly relations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:…" (ibid).

Besides, the fact that the Charter failed to define self-determination led to massive confusion and uncertainties. That is, controversies on the meaning and application of the right of self-determination have been so deep and consequential. This led scholars to search the meaning thereof elsewhere. One possible source to which professionals, usually, turn is the *travaux preparatories*. However, Nawaz (1965) confirms that self-determination was not even mentioned in the *travaux preparatoires* of the UN Charter but in the San-Francisco conference of the Big Four; United Kingdom, China, United State of America and Soviet Union, and he accredits the Soviet Union for the inclusion of the concept of self-determination. Similarly, Whelan (1992, p. 27) seems to affirm this when he explicitly said, "There has been considerable dispute about what precisely is meant in these provisions by 'self-determination of peoples'. Consultation of the *travaux preparatoires* does not resolve the issue". Therefore, it seems safe to conclude that although the USA, through Wilson, had made much efforts, it was the Soviet Union, through Molotov, that effected its inclusion in an international instrument. Besides, the concept of self-determination, like other political and legal concepts, has been unsettled and disputable; casting shadow and doubt both in theory and practice. Several reasons, in addition to the absence of clear and authoritative definition as to the meaning, might have led to such unfavorable outcome. *Inter alia*, conflicting interests deeply rooted in ideological differences and the downsides of the right itself are some of the underpinning reasons. In sum, all these led to uncertainties, prolonged war, never ending deserved and undeserved disputes, and many times complete denial of deserved rights. Cases such as the Kurdish in Iraq and Turkey, Quebec in Canada, and the worst of all the case of Palestinians are but few illustrations demonstrating mixed colors of such experiences. Thus, the right of self-determination, contrary to what was anticipated has subjected humanity to much pain and suffering as well.

Furthermore, as is already indicated above, it should be noted that there are some important terms, *inter alia*, nation and people which occupy central position in connection to the interpretation and application of the right of self-determination. Unfortunately, however, they too are sources of controversies and disputes. Primarily because international relations are between states, the concept of 'nation' refers to states so does 'people' (Quane, 1998). Additionally, pointing to the preamble of the UN Charter, he reaffirmed that 'people' refers to states (ibid.). Furthermore, he tries to assess them, nation and peoples, in the context of Art. 73 of Chapter XI (Non-Self-Governing Territories (hereinafter NSGTs)) and Art. 76 of Chapter XII (International Trusteeship System (hereinafter ITS)) of the Charter. And he concluded that the meaning of the term 'peoples' in Chapter XI and XII of the UN Charter refers to the people inhabiting the NSGT and Trust Territories (ibid.). He gives an affirmative answer to the question whether a similar meaning could be attached in relation to Articles 1(2) and 55. But he tried to qualify it saying, "The difficulty with this interpretation is that in 1945 the inhabitants of these territories did not have rights under international law" (ibid.). Whelan (1992, pp. 27-28) also raises the issue and states that 'peoples' could be interpreted in various ways including the right to secession and quotes the stance of Columbian delegate on the issue at the San Francisco conference: "If [self-determination] means self-government, the right of a country to provide its own government, yes, we would certainly like it to be included; but if it were to be interpreted, on the other hand, as connoting a withdrawal or secession, then we should regard that as tantamount to international anarchy and we should not desire that it be included in the Charter". But this was nothing more than an opinion of the Columbian delegate. As such, it cannot be used as an authority or

dependable reference to conclude that this is how the pertinent Charter should be read, understood and practiced. Having said so, nonetheless, there is no doubt that it casts light on what the intention of the makers of the Charter was and hints on how it should be interpreted. Although Whelan mentions that in a report made following the San Francisco conference, it was explicitly stated that it does not harbor the right of secession. He adds, "Buchheit concludes that 'an attempt to include a right of secession in the Charter' meaning of the phrase 'self-determination' cannot be conclusively supported or denied by reference to these *travaux preparatoires*" (ibid.). But, utter rejection of a draft favoring secession by the Commission of Human Rights in 1952 makes it crystal clear that it was not the intention of the drafters of the UN Charter to include and permit for secession on the ground of self-determination (ibid.). On the other hand, the concept of self-determination has never been given the title and weight of a legal right, be it in the 1940s and 50s. Instead, it remained as a principle. This was the case until the birth of the two Covenants of the 1966. "A legal right to self-determination was finally incorporated as Article 1 of the 1966 Covenants on Economic, Social and Cultural Rights, and Civil and Political Rights" (p. 29). To indicate the scope of this right he further adds, "But while the text and *travaux* support the view that the Covenants embody universal principles, the Afro-Asian states managed effectively to limit their scope to the colonial situation…" (p. 30). Right from the beginning of the 1960s, other imperative resolutions were passed by the General Assembly. These were Resolutions 1514 and 1541. While the first calls for immediate decolonization, the second elaborates it (Cassese, 2005). Quane (1998) referring to the first resolution said, "The Resolution affirms that "All peoples have the right to self-determination." It sounds that the right applies universally but this is unlikely. The General Assembly interpreted a similar phrase in an earlier resolution as applying only to the inhabitants of NSGT and Trust Territories" (p. 548). He himself reached to the same conclusion (ibid.). For this reason, it is advisable to consider the Eritrean facts along with the appropriate 'principle of self-determination' which was later elevated to 'right to self-determination'.

It is imperative to examine what exactly the UN Charter c

7. Colonial

Writing on African borders, Touval (1967) said:

An aversion to the international borders drawn by the colonial powers, if not their complete rejection, has been a consistent theme of the anti-colonial nationalism in Africa. The borders are blamed for the disappearance of a unity which supposedly existed in Africa in precolonial times; they are regarded as arbitrarily imposed, artificial barriers separating people of the same stock, and they are said to have Balkanized Africa. The borders are considered to be one of the humiliating legacies of colonialism which, according to this view, independent Africa ought to abolish. (p. 102)

However, Touval shows that such thinking was not materialized when he affirmed:

But with the emergence of colonies to independent statehood, the widespread rejection of the borders has gradually given way to their almost unanimous acceptance by the governments of the new states. The new doctrine, according to which existing borders should be accepted, was formally and explicitly proclaimed by the Organization of African Unity in 1964. (ibid.)

In his essay on the Eritrean question, Serapiao (1987) has put it, "Indeed, to deny the existence of a group of people and its territoriality based on what colonialists did against Africans, in terms of division of territory, is contrary to the present reality of African political systems" (p. 4). This illustrates that even though the present sovereign African states were borne by rejecting the colonial titles and dominations and the legacies therefrom, they can make their statehood claims based on colonial borders. Therefore, due attention should be committed to weigh the substance of both colonial and secession argument. From the 16th century, all the way up to the first half of the 20th century, Eritrea and Eritreans, in part or in whole, were invaded by and subjected to different colonial forces. While most of them were Europeans (Turkey and Italy), some were Africans (Egypt and Fungi of Sudan). On the other hand, once Ahmed Gran[7] had invaded and defeated Christian Abyssinians in 1530, for the following 300 years they hardly had a united and strong Ethiopia (Warren H. W., 1976). Further, "The Christian nobility survived for seven years as a hunted band until a Portuguese army of 400 men arrived in 1541, led by Christoforo di Gama, son of Vasco di Gama" (ibid., p. 40). Throughout this period much of Eritrea remained under the Turkish/Egyptian directly or indirectly influence, through the Naibs,

Italy took Eritrea as its colony in 1885 (Abraham, 1935). The Ethio-Eritrean border was established by an international treaty. By their very nature, treaties are done consciously by the highest authorities of the contracting parties. One of the most respected principles of international law for which treaties are known is the principle of *pacta sunt servanda*[8]. The treaty by which the Ethio-Eritrean border was demarcated is known as the Wichale Treaty[9]. The 1900 Treaty, Central Sector (Italy and Ethiopia), the 1902 Treaty, modifying that of the 1900, Western Sector (Britain (Sudan), Italy (Eritrea) and Ethiopia), and finally the 1908 Treaty, Eastern Sector, (Italy and Ethiopia) are the treaties which effectively and lawfully set a boundary between Eritrea and Ethiopia (White, 2002). That is, this treaty has established Ethiopia, for the first time in its history, as a state with a defined territory. No authority/scholar could convincingly claim of the existence of a state called Ethiopia before the 1908 Treaty. Endorsing this inter-state colonial border, OAU issued resolution in 1964 authorizing colonial borders as the guiding and governing borders between African states. By doing so, though it has its own demerits, the Union has successfully avoided potentially catastrophic wars between African Nations. Consequently, any legitimate claim of statehood could only be made within the domain of colonial legacy.

Pointing to the legal effect of Article III of the Wichale Treaty, Rubenson (1964) said, "Article III was in a sense the legal birth certificate of the Italian colony of Eritrea, because it defined for the first time in treaty form a boundary line between Ethiopia and a coastal area under foreign sovereignty" (p. 243). Although the treaty known as the Anglo-Ethiopian Treaty, entered into in 1902, was primarily made to

[7] He was a Muslim from an area called Harar, Ethiopia.

[8] According to Balckslaw Dictionary,9th edition, *pacta sunt servanda* (Latin word) means ' agreements must be kept'. And adds, 'the rule that agreements and stipulations, esp. those contained in treaties must be observed.

[9] This treaty, signed between Abyssinia (modern Ethiopia) and Italy, is spelled either as Wichale (Amharic or Ethiopian version) or Uccille (Italian version). In this research the writer, mainly for consistency purpose, opted to use the Ethiopian version i.e. Wichale.

establish the border between Ethiopia and the Sudan of Great Britain, it also made some alterations to the border between Eritrea and Ethiopia and also Eritrea and the Sudan (Ullendorff, 1967). Alterations by themselves are, however, not an issue here. Instead, what is interesting of them is their recognition of a pre-existing border which they have tried to modify, Wichale Treaty.

The battle of Adwa too has a lot to tell. Ethiopians defeated Italians at Adwa but they did not chase them out of Eritrea probably because they might have thought it was not their land (Aymut, 2017). Some literary works produced by high ranking Ethiopian officials indicate that even Ethiopians themselves were considering the present day of Eritrea as a neighboring land rather than as part of their Ethiopia. Abraham (1935) stated, "Then in the 'eighties of the last century, the Italians occupied the coast land around us" (p. 374). Written in 1935, undoubtedly, this makes it clear that Ethiopia and Eritrea were distinct entities. More importantly, such implication definitely refers to the pre-Wichale Treaty status quo. As can be read from the spirit of the statement, it shows that Abraham is referring to the pre-Wichale Treaty of the 'coast land around them (Ethiopia)'. It was easy for him to say 'Italians took our land' had it been part of their land and if at all they were presuming so. To that effect, he labelled it saying 'coast land around us'. Automatically, it does not take much to conclude that the area which Italy occupied, modern day Eritrea, was not considered as part of Ethiopia even by top Ethiopian authorities[10]. According to the same source, Ethiopia was a kind of local colonial power. "…while Somaliland is for them a useful source of supply of slaves, of which they can never have enough" (ibid.)[11].

Thus, the treaty was not an agreement by which Ethiopia gave its territory, in this case Eritrea, to Italy. Instead, it was a treaty to demarcate a border between the two entities, 'Eritrea' and 'Ethiopia'. Furthermore, both Eritrea and Ethiopia were not fully independent countries/entities while Eritrea was completely under Italian colony, probably the worst colonial system - Fascism, Ethiopia, Villari argues, was under Italian protectorate (Abraham, 1935). Plus, the fact that British Military Administration, following WWII, maintained this boundary shows that it was an international one.

The bottom line is that the period under discussion (colonial) has made it clear that two entities, Ethiopia (independent) and Eritrea (colony) were created by an international treaty. Though such treaty was made between a European colonial power and Ethiopia as an entity, yet un-sovereign [at least technically speaking in the sense that territorially it was not defined – a must met element for the purpose of sovereign statehood], its legitimacy is beyond doubt. First, it was done by consented upon Treaty. It should be noted that the element of consent in the making of treaties might constitute a central role in validating a treaty. However, its capacity to invalidate a treaty, in case it is not given, is a phenomenon of post Viennna Convention, 1969. Second, and more importantly, it set a boundary between entities which have never existed as one - any time in their history. Impliedly, it is justifiable to conclude that for the colonial argument this is a good point to start [emphasis added]. On the other hand, for the secessionist, the researcher believes, it could hardly be a ground to make convincing point. This is because for an issue of secession to arise, the existence of a single sovereign state must be established first. Finally, in a very critical, if not dismissive, book review done by Ellingson (1985), Pool's analysis of pre-colonial Eritrea was appreciated: "In it, he gives convincing evidence that Eritrea was never an integral part of an Ethiopian state before federation and that the histories of the two have been separate and distinct" (p. 74). This seems to summarize the whole discussion. Thus, the treaty has marked not only the birth of Eritrea but also the birth of Ethiopia itself. Therefore, any attempt of justifying Ethiopian statehood prior to this treaty could hardly be substantiated in any way materially relevant.

8. The Eritrean Case at the UN

"In 1941, a British expeditionary force defeated the Italians in Eritrea and Ethiopia" (Cervenka, 1977, p. 39). As Papstein (1997) points out, "If there was a legal ambiguity about self-determination in 1941, this disappeared in 1945 with the United Nations Charter" (p. 519). Referring to the three former Italian colonies (Eritrea, Somalia and Libya), Haile (1987) says that "The debate of their future began in August 1945 at the Potsdam (Berlin) Conference of Truman, Churchil and Stalin" (p. 10). Unable to reach

[10] Abraham was Secretary of the Imperial Ethiopian Legation.
[11] This is in the part of the paper written by Villari.

into consensus, they decided to transfer the issue to the meeting of the four victorious powers' Council of Foreign Ministers. Accordingly, it was debated in the Council's London Conference, Sep. 1945, and the Paris Peace Conference, 29 July – 15 October 1946 (ibid.). Of all, nevertheless, Haile concludes, the Eritrean case bore no fruit (ibid.). It was agreed to set a Four-Powers Commission to investigate and find out the wishes of the people. Furthermore, if the commission fails to do so within the time limit, then the case was to be handed over to the GA, the decision of which would be binding – including to the four big powers.

Expectation of Eritreans was that "… a return to autonomy which the country had enjoyed prior to the Italian occupation either as an independent state, as advocated by the Moslem League of Eritrea founded at Keren in 1946, or in union with Ethiopia as demanded by the Unionist Party founded in 1941" (Cervenka, 1977, p. 39). Apart from its central and straight message, a close reading of the above quote indicates that pre-Italian Eritrea existed independently of Ethiopia. According to Longrigg, British administrator "…: Eritrea was to be dismembered: the western lowland Moslem part was to be given to Sudan, the highland Christian part with its Red Sea ports was to be internationalized (to make sure it would remain in the British sphere of influence)" (ibid.). This plan lays at a stark contradiction with the true wishes of Eritreans. As such, it completely disregards the Charter of the UN on Trusteeship which the UK had to observe as a trustor. Great Britain's plan was not welcomed by her Allied friends (Haile, 1987).

Toward the end of 1947, the Four Powers[12] setup a commission – Commission of Investigation, to find out the wishes of the inhabitants (Cumming, 1953)[13]. Nevertheless, "They approached the issue neither from the point of view of the interests of the inhabitants nor in light of the principles which they agreed when entering the United Nations" (Haile, 1987, p. 10). Although Cumming says, four of them agreed that the people were not ready for self-government and the country lucks economic viability[14], unable to reach into common solution within the time limit allotted to the commission, the case, per Article 23 of the Peace Treaty with Italy, was referred to the UNGA to make final and binding resolution ((Cumming, 1953). The First Committee of the GA came up with the so-called Bevin-Sforza Pan.[15] This was submitted to the UNGA for consideration despite the fact that it was met with very determined rejection from the Independence Bloc[16] (Haile, 1987). Due to strong opposition from the Arab-Asian and Soviet Blocs, it was aborted (ibid.).

Having resolved the issues of Libya and Somalia,[17] 20 September 1949, the GA prescribed further inquiry[18] (Haile, 1987). This lead to three different proposals: Burma and South Africa to federate Eritrea with Ethiopia, Norway - unconditional reunion of Eritrea and Ethiopia save the Western part of Eritrea, Pakistan and Guatemala - UN Trusteeship followed by independence (ibid.). Such kind and amount of division between five countries on single issue of the Eritrean people manifests subjectivity of each member. This seems to have displaced and replaced the true wishes of the Eritrean people which the Commission had to address in line with its mission and the grand UN Charter for self-determination. Such conflicting views and suggestions gave the GA difficult time to come up with a new, single and practical resolution. "There followed several months of intensive negotiations behind the scenes and, finally, on 17th November, 1950, the plan for federation was submitted jointly to the Assembly by 14 nations" (Cumming, 1953, p. 129). Cumming's "behind the Scene" is worth paying an emphasis. Nobody knows what went

[12] United State of America, Great Britain, France and Soviet Union.

[13] Duncan Cameron Cumming was a British citizen who served as Chief Secretary of British Administration in Eritrea from 1941 - 1950, and Chief Administrator from 1951-1952.

[14] Whether an economic factor could be employed as a prerequisite for the establishment of a new state is questionable. Undoubtedly, economic factor is not one of the constituent elements for state-hood. Haile's point seems to target this. The fact that Cumming affirms that there were about 70,000 Italians in Eritrea in 1941 casts doubt about the so called economic in viability. Italians would not have re-settled their citizens in Eritrea had Eritrea had inherent economic incapacity.

[15] This plan was engineered and named after the Foreign ministers of Britain, Ernest Bevin, and Italy, Count Sforza.

[16] Independence Bloc was one of the political parties in Eritrea advocating for independence.

[17] The GA granted independence to Libya in January 1952 and independence to Somalia after ten-year Trusteeship under Italy.

[18] The Commission of inquiry consists of Burma, Pakistan, South Africa, Guatemala and Norway.

behind the scene: ascertaining the true wishes of the Eritrean people or reconciling the divergent and conflicting views/proposals of the five representatives? The GA adopted a resolution on 2 December, 1950. Cumming may not have ascertained what exactly went in the hidden scene but he courageously discloses what the outcome of that negotiation was when he says, "A notable feature of this solution, was that it did not reflect the wishes expressed by any of the political parties in Eritrea" (ibid.). Similarly, Haile says that the Commission's recommendation was put aside by the GA and replaced by the Fourteen Powers' draft resolution under the sponsorship of the United State (1987). "Finally, in 1950, the United States proposed a compromise: Eritrea federated to Ethiopia, but autonomous in its internal affairs" (Warren H. W., 1976, p. 45).

The Stance of the Eritrean people seems to have been clear from the very beginning. "Ibrahim Sultan Ali, head of the Independence Block, took the floor before the General Assembly and expressed the dismay of the Eritrean people that the United Nation was preparing to impose a government structure on Eritrea without giving the people a chance to express their opinion on the matter" (Haile, 1987, p. 11). Soviet Union utterly rejected this Fourteen Powers' plan and presented her own: advocating complete independence (ibid.). Pakistani representative, Zafrulla, as quoted in Haile's essay, put it "…. To deny the people of Eritrea their elementary right for independence would be to sow the seeds of discord and create a threat in that sensitive area of the Middle East"(ibid.). And this, Haile concludes, transpired to be 'prophetic', unfortunately (ibid.).

All other proposals were rejected, and the UK and US sponsored federation with Ethiopia was adopted in Resolution 390 A (V), December 2, 1950. UK; "A notable feature of this solution, for which the United Kingdom delegation did much to win acceptance, was that it did not reflect the wishes expressed by any of the political parties in Eritrea." (Cumming 1953, p. 129). USA; "Years passed. No solution satisfying the interests of Great Powers could be found. Finally, in 1950, the United States proposed a compromise: Eritrea federated to Ethiopia, …." (Warren 1976, p. 45). This was not only a perfect disregard of or negligence on the UN Charter on self-determination by member states but by the UN (GA) itself (in the sense it was unable to insulate itself from the interest of big powers in keeping with its noble Charter). Ultimately, this led some academicians to solidly conclude, "One should not forget the fact that the so called "federal" arrangement was imposed by the big powers and was not a genuine" (Negash, 2017).

The researcher, based on the above discussion, fully appreciates that the Eritrean case was mistreated by Great Britain and the UN from the beginning to the end. Eritreans were either for independence or union with Ethiopia but they found themselves federated. Nevertheless, because it was made by the Security Council, through GA, its legality seems unappealable. The federal arrangement was the umbilical cord between the two entities. Then the question is what happens when this umbilical cord is removed (illegally and forcefully) by either party.

9. Federation and Its Abrogation

Eritrea as an autonomous unit was given the authority to have its own local legislative, executive and judicial powers; whereas defense, foreign affairs, currency and finance, foreign and inter-state commerce, external and inter-state communications were under the jurisdiction of the Federal Government (Cumming, 1953). Hence, it was a federal than a unitary system. And resolution 390 A (V) was expected to serve as the constitutional/legal basis for the federal arrangement. Cumming had much confidence on Ethiopian government for the success of the UN resolution and thereby to the federal arrangement (ibid.). But he was not without concern, "Eritrea will now inherit many of Ethiopia's own problems…" (p. 31).

Finally, Cervenka (1977) asserts that:

After a series of measures such as the appropriation by Ethiopia of Eritrea's share in the customs revenue, suppression of labor unions and of the freedom of the press, removal of the Eritrean flag, changing the name of the Eritrean government into "Eritrean Administration", all of which were violations of both the Eritrean constitution and the UN resolution, the Emperor on 14 November 1962 through the Chief Executive in Eritrea (Afafa Woldemichael, the Emperor's hand-picked appointee) declared the Federation null and void. Eritrea was annexed to Ethiopia as its 14th province. (p. 40)

Cervenka says that Ethiopia went un condemned and unpunished due to its close relations with the USA, she had already signed an agreement with Ethiopia in 1953 to establish a military station at Kagnew,

in Asmara - the capital, and Ethiopia was able to mute African states through the prestige Haileslassie had enjoyed in African Union (ibid.). In a nut shell, "The democratic principle which lay at the foundation of the Eritrean government – a principle which could not be constitutionally amended – was thus subverted extra-constitutionally" (Eritrea and the Right of Self-determination, 1982, p. 40). On the balance, this indicates that Ethiopian government had made all forms of violations to the extent of tempting the very continuity of Eritrean identity.

The question is, what has the UN done to safeguard its own resolution thereby to maintain peace in the region? The UN chose not to utter a word. "One of the interpretations of United Nations silence on the issue is that the world body was preoccupied with more sensational political crises" (Serapiao, 1987, p. 6). Similarly, Killion (1986) wrote, "Furthermore, the UN steadfastly refused to reopen the Eritrean case, even after unilateral annexation by Ethiopia in 1962" (p. 83). Any attempt toward forcing and subjugating a given people or nation, be it from overseas s or neighboring countries, is by definition colonialism. Reviewing the book authored by Habteselassie Abdelaziz (1991) concludes that because the problem was created at the UN it had to be resolved there. However, the UN seems to have chosen not to by failing to take its responsibility. This may lead us to comment either the UN was happy with the federal abrogation or there was the involvement of mighty powers, principally, the USA, as is already explicitly stated by many authors to let Ethiopian illegitimate action, minimum, remained unquestioned.

Then what is the proper reading of UN silence? The issue seems to be complex. Although it is not warranted to jump in to conclusion, considering its global role and mission in one hand, and as the sole engineer and author of the federal system on the other hand failure to respond sounds explicit negligence.

Created on May 25, 1963 OAU[19] has decided to honor the territorial integrity of its sovereign members as they were in 1963 (Tseggai, 1976). Nevertheless, OAU too was reluctant to intervene in the Erirean case for two principal reasons. First, members were fearful of potential secessions for self-determination in their respective countries. Second, Emperor Haile Selassie has 'annexed' Eritrea one year ahead of the inauguration of OAU - a failed strategy which already was attempted by Portuguese, with respect to its former colony, right before the birth of the UN (Eritrea and the Right to Self-determination , 1982) and (Keller, 1991). OAU's silence seems to have legitimized Ethiopia's occupation of Eritrea which, for Keller, was a form of traditional colonial status (ibid.). Reviewing the book written by Iyob, Keller (1996) explicitly states the criticisms advanced by the author against the UN and OAU. Here, one point merits clarification. The case of Eritrea seems to be special in the sense that it had clear and longtime colonial history followed by federal relationship with Ethiopia. Hence, African leader's (alternatively OAU), fair stance (action) on the Eritrean case could have hardly created a bad precedence which they feared of plaguing their respective countries. One hard rule for precedence is that similar facts lead to similar results. Thus, given the uniqueness of Eritrean case, it would not have created the consequences which African statesmen had feared of.

Scholastic literatures on the Eritrean case tell us that great powers have intervened to assist Ethiopian successive governments with a view of crushing Eritrean movements. Their help, obviously, was much of military. This was part of their cold war rivalry and fight. When Ethiopia annexed Eritrea USA voiced no objection (Warren H. W., 1976). He adds, "…the U.S. supports the Ethiopian military government by sending munitions to prolong the war. It is certain that Eritreans will neither forget nor forgive" (p. 53).The USSR too has offered massive military support to Ethiopian government. "It provided weapons worth $38 million to Ethiopia in 1977" (Ahmar, 1984, p. 57). This kind of action by the USA and USSR (and others also like Cuba and East German) contradicts many international instruments, *inter alia*, the UN Charter on maintaining international peace and other conventions on human rights.

Thus, if the outside powers have chosen to remain silent when Ethiopia abolished the federal system on the belief that it was Ethiopia's internal affairs then why did they choose to intervene militarily to assist Ethiopian army. This sheds light on why they ignored the true wishes of the Eritrean people in the first time, 1940s.

Forceful and unilateral abrogation of the federal laws, in an attempt of establishing a unitary system, could hardly take the two parties forward, unitary. This is against the very basic principle of

[19] Organization of African Unity re-named itself as African Union since July 9, 2002.

municipal and international law. "…Eritrea cannot be deemed to secede from Ethiopia as long as no legally recognized or legitimate union in the name of federation did exist" (Teklia, 2017). Legally speaking, it is unheard of to create a legal right by an illegal act. "It is only in the realm of 'might is right' that an illegal act gives birth to a legal right" (Mellakh, 2017). Thus, an illegal removal of the federal laws could not take the parties away from their federal relationship. But, once the UN had appeared to have affirmed the dismissal of the federal laws by its mere silence, then it is possible to argue that the parties are once again back to their pre-federal status. Thus, there is neither the entity to secede from nor the entity to secede: phenomena that favor the colonial argument.

10. Post-colonial

Eritrea, 1991, liberated, militarily, itself from Ethiopia, and many expected that it would be the master key for a stable and peaceful Horn of Africa (Pateman, 1991). When Eritrea, as a normal procedure for independence, planned to conduct referendum, the UN also made preparations to monitor the process. "The United Nations Observer Mission to verify the Referendum in Eritrea (UNOVER) was established on 16 December 1992. It deployed observers in all districts of Eritrea and covered most of the 1,014 polling stations" (Eritrea: Birth of a Nation, 1993, p. 112). In May1993, Eritrea joined the UN as a new sovereign state.

Up on independence, like all other African boundaries, Eritrea's colonial border was invoked and legitimized. This seems to perfectly strengthen the colonial argument. A great deal of Ethiopian intellectuals in exile, opposing Eritrean independence, declared that "…for 4,000 years Eritrea and Ethiopia have been identical in their historical development, identical in the defense of the Ethiopian and Eritrean region" (Pateman, 1991, p. 44). This indicates that the secessionist argument was kept in post-independent Eritrea. Probably, it was the presence of such kind of sentiments that lead the two countries once again in to war, 1998. Through the Algeries Comprehensive Peace Agreement, 2000, a truce was signed and boundary commission was setup:

"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, 102 and 1908) and applicable international law. The Commission shall not have the power to make decisions *ex aequo et bono*." (Plaut, 2005-2006, p. 179) Undoubtedly, this cements the colonial argument beyond any reasonable doubt.

11. Conclusion

Based on the review of previous works done on the subject, the researcher finds three principal layers around which the colonial vs secession debate has been argued. These are pre-colonial, colonial, and post-colonial[20]. Once inside, the researcher further finds, both colonial and secession lack homogeneity. Comparatively speaking, the level of such internal divergence is deeper within the secessionist side than with their colonial counter parts. The debate has been both on material facts and applicable laws.

It is notable that much of the customers of the secessionist argument try to advance their argument based on a 'pre-colonial grounds'. Nevertheless, relevant historical facts on the issue testify that each, 'Eritrea' and 'Ethiopia', were highly divided, let alone to have existed as a single unit. Besides, the secessionist side seems to presume that the state of Ethiopia has existed for thousands of years. Nevertheless, considering the history of modern sovereign state, Wesphalia Treaty (1648), this is not tenable.

Throughout the colonial period, too, (1557 – 1941), Eritrea constantly stayed under successive European powers. By contrast, during this period, Ethiopia was an independent Empire. Ethiopia is often cited as a symbol of a country which remained immune to European colonialism. Suffice to say that their respective stories, colonial (Eritrea) vs independent (Ethiopia), speak louder than words. In this connection, the principal source of contention is the issue of the effect of colonial legacy. Irrespective of their arbitrary

[20] Post-colonial time refers to the transitional period (1941 – 1952) and Ethiopian colonial period. For the sake of objectivity, in that it is the main question around which the whole debate runs, that the 'post-federal period' is employed.

nature, African borders are colonial borders. African states have endorsed this through their OAU. Moreover, the question of consent in an international treaty was immaterial until before the Vienna Convention of the 1969 where this element of consent was added in order to qualify a treaty as binding between the parties. Therefore, secessionist's attempt of invalidating the Witchale treaty does not help. The implication and consequence of colonialism is that an international legal border was drawn between two entities, Ethiopia and Eritrea. While the colonial side had produced much work indicating the unfair treatment of Eritrea and Eritreans under the UN system which finally culminated by federating Eritrea with Ethiopia, the secessionist side gives much focus to the end result, i.e. federation than to the process that lead to it. Much of the literary works which the researcher has thoroughly examined indicate that the case of Eritrea was not met with due treatment under the UN system. In this regard, the researcher concludes, by virtue of their colonial history and their wishes for independence, Eritreans had to be granted independence.

Resolution 390 A (V) and the federal laws drawn therefrom were openly and forcefully dismissed by the Ethiopian Emperor in an attempt to annex Eritrea. The illegality of such act against the laws made by the Security Council, through the GA (Resolution 390 A (V)), is beyond any reasonable doubt. And, per this research, no attempt was made by the UN to curb Ethiopia's violation of international law even when Eritreans notified the UN. At this critical juncture in time, legally speaking, as Habtesilassie has rightly argued, it cannot be said there remains any legal relationship between Eritrea and Ethiopia. This is primarily because the only legal instrument, federal arrangement, which previously had linked Eritrea and Ethiopia was no more in place. Then, any forceful or coercivemilitary or otherwise, attempt to dominate and rule Eritreans by Ethiopian government would be nothing less than colonial act. To the extent that it was an illegal act, Eritreans deemed to have the right to defend themselves from colonial occupation. Thus, the proper characterization of the Eritrean armed struggle for independence was one of colonial than secession. This is because for a secession to occur; first, the existence of legally one sovereign state must be established; second, an attempt by any group or movement to secede in order to create an independent sovereign state. The secessionist cannot establish these two elements. Thus, the researcher submits, the Eritrean armed struggle was a struggle against colonialism. In effect, recent subscriptions of some international publicists to the secessionist side, given the legal weight of their work, may unnecessarily/wrongly feed in to the agenda of some political dissidents in the region thereby lead to destabilization.

12. Recommendation

Based on the examinations made and the conclusion reached therefrom, it does not take much to feel the bias manifested by most of the essayists on the colonial vs secession argument. This is, probably, because they were produced while active war was going on between Eritrean armed struggle and Ethiopia. Much of them are deeply charged, if not overwhelmed, with propaganda tones. Thus, the researcher recommends that readers should use a very critical lens of their own rather than consume them indiscriminately. More specifically, considering the legal weight entrusted to their literary works, per Art. 38 (1) (d), this recommendation is geared to international publicists to re-consider their subscriptions to the secessionist line lest the legal authority vested /entrusted on/to them be compromised.

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