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Examining the Sustainability of Ethiopia's Embryonic Territorial Claim on the Ilemi Triangle

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Abstract:

This article puts into context the emergent territorial ambition by Ethiopia on parts of the Ilemi Triangle. It generally argues that a country's claim in a territorial dispute depends on the strengths and weaknesses associated with its claim. The success of a country's claim in a territorial dispute is thus, dependent on the inherent strengths in terms of the extent to which it demonstrates the existence of conditions that confers title to territory. The proposition is relevant to Ethiopia's burgeoning claim on the Ilemi Triangle. Based on the above thesis, this article argues that Ethiopia's claim on Ilemi Triangle is anchored on weak grounds. In addition, this article views the existence of recognized boundaries with Kenya and South Sudan as putting into abeyance Ethiopia's claim in the Ilemi Triangle. The article maintains that the issue at stake between Kenya, Ethiopia and South Sudan boundaries is one of delimitation and demarcation of the tri-junction border. The weakness of Ethiopia's territorial claim on Ilemi Triangle notwithstanding, its continuation is set to compound its resolution. This article is arranged into several themes. The article begins with a thesis on the nexus between territorial disputes and claims as well as the conceptual issues of territorial and boundary disputes. It then explores Ethiopia's historical and emergent claims on the Ilemi Triangle. The issue of the tri-junction border and its nexus with the Ilemi Triangle border dispute is extensively explored and so are the inherent weaknesses of Ethiopia's territorial claim. Lastly, the article highlights some of the implications of Ethiopia's emergent claim on the resolution of the disputed territory. In terms of methodology, this study relied mainly on desk research entailing analysis of secondary data inherent published works of various scholars.

Keywords: Territorial disputes, basis of claim, justifications

1. Introduction

The ownership of territory is important as sovereignty over the same defines the state. Disputes over territory pose direct challenge to sovereignty of countries and are likely to persist as long as territory and boundaries are contested. States involved in territorial and borders define their claims by appealing to various justifications. Territorial claims in themselves are important issues of peace and security as they challenge territorial status quo. The way countries anchor their claims in territorial disputes based on various justifications is important. In all, states appeal to treaties, geography, economy, culture and history to advance their territorial claims. States also appeal to effective occupation, Uti Possidetis and ideology to justify their territorial claims. The success or failure of a state's claim to a disputed territory is thus, dependent on the strengths or weaknesses of the claims.

1.1. Boundary and Territorial Disputes

Differences between territorial and boundary are important in understanding associated and underlying disputes and their resolution. The determination of conflicting territorial claims and boundary disputes are issues that are at the core of national sovereignty (Prescott & Triggs 2008 & Triggs 2006). The determination that sovereignty lies in one state as opposed to another has implication on the location of a boundary and the attribution of sovereignty. The nexus between territory and boundaries explains the theoretical and empirical significance of the latter and vice versa. Boundaries are a major source of international conflict (Chan, 2004). Prescott's (2015) proposition of the existence of strong nexus between territorial disputes and problematic inter-state relations capture the significance of boundaries and territory. Sumner (2004) observes that a well-defined boundary is important for the functioning of a modern state. This is notwithstanding the fact that international law does not necessarily requires that boundaries of a state to be delimited and defined. The absence of a delimited boundary or the existence of poorly delimited boundaries does not prevent the existence of a state or invalidate title or sovereignty. In other words, a principal title to territory may be defined even before territorial boundaries are precisely established. This thesis is central to the distinction between territorial and boundary disputes and their resolution. In the Frontier Case (1986) between Burkina Faso and the Republic of Mali, the International Court of Justice (ICJ) saw no fundamental distinction between a boundary or delimitation dispute and that relating to attribution of territory (Sharma, 1997).

Some scholars, however, hold contrary or divergent opinions. Dispute over the location of boundary is different from the question of ownership of title to territory (Prescott & Triggs 2008). Territorial disputes relate to contestation over borderland, while a boundary dispute arises due to differences over the interpretation of delimitation or description of the boundary (Prescott, 2015 & Prescott & Triggs, 2008). The fact that the problems and policies of the two disputes are manifestly similar should not blur or distort the distinction (Sharma, 1997). For Sharma (1997) while both boundary and territorial disputes belong to the realm of sovereignty and involve comparable sets of claims and counter-claims, they are distinct. Boundary disputes arise due to contestation over the line separating territorial domains, while territorial disputes occur when one state seeks to supersede or eliminate another state in relation to a certain territory. Prescott (1978) distinguishes between boundary and territorial disputes by looking at what each involves. Accordingly, while territorial disputes have at stake some quality of borderland, boundary disputes are positional in nature and relate to the actual location of boundary. Boundary disputes are about where the line is supposed to be drawn (Allot, 1979 & Prescott, 1978).

Drawing from the boundary-territory debate, one would ask a theoretical question as to whether the resolution of boundary disputes by way of delimitation and demarcation would result in some form of territorial changes or adjustments. Sharma (1997) views this as probable. Further, extensive analysis of territorial changes between 1816 to 1996 by Tir, Schafer, Diehl, & Goertz (1998) reveals many territorial changes consequent upon boundary delimitations and demarcations. The 1970 delimitation of the Kenya-Ethiopia boundary resulted in the some territorial transfers between the two countries. The Qadaduma wells, for instance, were transferred from Kenya to Ethiopia (Nordquist, 2001). Thus, both territorial and boundary disputes could result in territorial changes of some sort and could end up changing the position of the boundary between countries in a dispute (Prescott, 2015). This notwithstanding, the stability of boundaries and territory remains crucial given their nexus with peace and security. Stable territorial borders are crucial to the existence of a stable international territorial order. This highlights the importance of norms and principles that promote the continuity and saliency of boundaries and territorial regimes (Antunes, 2000). There exists direct nexus between territorial stability and territorial changes (Yewdall, 1963 & Antunes 2000). While territorial changes may be inevitable, they could destabilize the existing international territorial order. This is evident in the ruling of the Permanent Court of Arbitration in 1909 in the Grisbadarna Case Norway and Sweden. The court held that where a state of things actually exists and have existed for a very long time, only little changes were permissible (Lalonde, 2002). In other words, de facto situations that have remained stable must not be disturbed (Antunes, 2000). Ensuring stability of boundaries and territory, is thus a cardinal aim of international law.

1.2. Ethiopia's Claims on the Ilemi Triangle

The dispute over the Ilemi Triangle is generally considered as a territorial dispute between Kenya and South Sudan and previously, South Sudan (Rake, 2004; Collins, 2005; Xao, 2007). This has been the dominant narrative on the long-standing dispute over the Ilemi Triangle, a territory sandwiched by South Sudan, Kenya, and Ethiopia. The other prevailing narrative views the Ilemi Triangle border dispute as involving Kenya, South Sudan, Ethiopia and to some extent, Uganda. Uganda's claim on the Ilemi Triangle is however far-fetched as its tri-junction border with Kenya and South Sudan is both delimited and demarcated. However, the narrative that the Ilemi Triangle border dispute is a multilateral dispute involving Kenya, South Sudan and Ethiopia has gained traction in recent years (Johannes, Zulu, & Kalipeni, 2015). Kenya and South Sudan stake their claims over the Ilemi Triangle on the basis of various justifications. Ethiopia has not openly declared any territorial claim on the Ilemi Triangle. The country never repudiated the 1972 boundary agreement it signed with Sudan in which it renounced its territorial claim on the latter's territory including the Ilemi Triangle. Ethiopia is however thought to harbour undeclared territorial ambitions as demonstrated by its recent actions and pronouncements on the disputed territory.

Ethiopia's territorial claims on the Ilemi Triangle can be viewed in the historical context manifested in the intense competition with Britain for the control of northern and northwestern Kenya (territory that included the Ilemi area) during the scramble for Africa and the present implied claims. In the former case, Ethiopia demonstrated manifest interest in the territory that included the Ilemi Triangle during the making of its boundaries with what is today Kenya and South Sudan. The boundaries of Kenya, Ethiopia and South Sudan are products of various delimitation and demarcation processes undertaken in early 20th century by Great Britain and Ethiopia (Kapil, 1966; Mburu, 2003 & Okumu, 2014). The outstanding feature in the determination of the Kenya-Ethiopia and Ethiopia-South Sudan boundaries is the pivotal role played by Ethiopia. The boundaries were the resultant consequence of the competing territorial ambitions of Ethiopia and Great Britain during the last decade of the 19th century. These territorial ambitions had fundamental influence in the delimitations and demarcations of the boundaries of the three countries in the first decade of the 20th century. Just as Great Britain was consolidating its spheres of influence in East Africa in the late 1890s, Ethiopia was in the midst of a grand project to extend its territory southwards and eastwards (Imperato, 1998 & Johnson, 1986). A clash between the two imperial powers was inevitable as both had their sights on the same territory in what is today's northern and northwestern Kenya.

In 1891 Emperor Menelik II of Ethiopia, in a circular to European powers, defined what he considered as Ethiopia's historical limits which included parts of northern Kenya and southern Sudan (Keefer, 1973). Ethiopia's southwards expansion in the last decade of the 19th century coincided with the European scramble for Africa that followed the Berlin Conference (Förster, Mommsen & Robinson 1988 & Herbst 2009). The expansion could either have been a mere coincidence or active response to European colonial partition of Africa (Thompson 1995 & Griffiths 1986). The former proposition appears to hold as even before the European scramble for Africa, Ethiopia had embarked on

territorial expansionism in a territorial aggrandizement that was destined to have long lasting effects on the boundaries of its neighbours. (Thompson, 1995 & Griffiths, 1986). The territory in northern Kenya that Ethiopia regarded as part of its historic sphere of influence was claimed by Britain (Marcus, 1966). The proposal by Emperor Menelik II in 1891 of a southern boundary that placed the entire Lake Turkana within Ethiopia's sphere of influence provoked Britain into action (Waithaka & Maluki, 2016 & Oba, 2013). Britain regarded northern Kenya as part of its territorial possession based on the treaties with Germany and Italy in 1890 and 1891 respectively (Marsden, 1968). During the same period, Ethiopia laid claims to Turkana and Karamoja regions, which as in the case of northern Kenya, Britain regarded as part of its protectorate (Oba, 1993). Britain determined to ward-off Ethiopia's territorial ambition, was compelled to delimit and demarcate the northern frontiers of its East African possessions (Collins, 2006 & Oba 2013). The move by Britain to delimit and demarcate the boundaries of its East Africa sphere of influence with Ethiopia in the beginning of 20th Century was thus, designed to ward-off territorial ambitions of the later and other European colonial powers. The Ilemi area of which the Ilemi Triangle was part of was part of the territories that were in Ethiopia's territorial calculus. Thus, the delimitation of the boundaries between Ethiopia, Kenya and South Sudan need to be viewed within the context of competing territorial ambitions of Britain and Ethiopia. This represents Ethiopia's initial interest on the Ilemi Triangle during the scramble for Africa.

Ethiopia in the recent past appears to be pursuing policies that indicate renewed but covert territorial ambitions on the Ilemi Triangle. This is notwithstanding the fact that Ethiopia's interest in the Ilemi Triangle dispute has never been territorial but rather the delimitation and demarcation of the tri-junction border with Kenya and South Sudan. The recent activities of Ethiopia in the Ilemi Triangle manifest territorial ambitions. Ethiopia has systematically encroached on eastern Ilemi Triangle and has deliberately and unwittingly been encouraging the settlement of its Dessanech and Nyangatom population in the disputed territory. Ethiopia has also demanded for inclusion in the on-going Kenya-South Sudan boundary negotiations. The actions and activities of Ethiopia in the Ilemi Triangle reflect amounts to acts of sovereignty that constitute implied territorial claim. Ethiopia's activities in Ilemi Triangle amount to what Sumner (2004) views as acts of jurisdiction that constitute territorial claims. The acts and conduct of Ethiopia manifest territorial intentions and amount to what Sumner (2004) views as acts of jurisdiction. The activities of Ethiopia in eastern Ilemi Triangle could also be seen in the context of what Kohene & Hébié (2017) regards as symbolic acts and conduct that manifest states' intentions to claim territory. This is applicable in territorial disputes where states' acts and conduct are manifest. This appears to be the case with Ethiopia's nascent activities in the Ilemi Triangle.

The conduct of the Ethiopia manifested in its acts is lending credence to the burgeoning view that the country harbours territorial ambitions in the Ilemi Triangle. In pushing for its inclusion in the boundary negotiations between Kenya and South Sudan, Ethiopia insists its interests are at stake. The demand by Ethiopia to be enjoined in what ideally is a bilateral boundary issue between Kenya and South Sudan is rather intriguing as the country has hitherto made no territorial claim on the Ilemi Triangle, which is the subject of the bilateral boundary negotiations between Kenya and South Sudan. The 1970 boundary treaty between Kenya and Ethiopia and the 1972 Exchange of Notes between Ethiopia and Sudan that delimited the Kenya-Ethiopia and Ethiopia-Sudan boundaries respectively, provided for the joint delimitation of the tri-junction border by the three countries. The two treaties were unambiguous on the joint delimitation of the tri-junction boundary of what is today, the Kenya-Ethiopia-South Sudan tri-junction border. The treaties did not in any explicit way address the question of sovereignty of the Ilemi Triangle. It is however apparent that in accepting the Gwynne Line as the boundary with Sudan in 1972 agreement, Ethiopia automatically renounced its territorial claim in the Ilemi Triangle.

The current boundary negotiations between Kenya and South Sudan are over the delimitation and demarcation of their disputed boundary. The Kenya-South Sudan negotiations have nothing to do with the demarcation of a tri-junction boundary with Ethiopia. The delimitation and demarcation of the tri-junction boundary would no doubt entail separate negotiations. However, if the delimitation and demarcation of the tri-junction boundary was to be brought into the on-going Kenya-South Sudan boundary negotiations, then Ethiopia would be enjoined at a later stage of the negotiations. The two treaties in fact link the determination of the tri-junction border point to the completion of the Kenya-South Sudan boundary demarcation. Thus, the demand by Ethiopia for its inclusion in the current negotiations between Kenya and South Sudan contradicts the spirit and letter of the two treaties. Ethiopia's demand is indicative of a shift in its position, which in essence transforms the Ilemi Triangle border dispute from a bilateral territorial dispute to a trilateral dispute.

1.3. The Problem of Kenya-Ethiopia-South Sudan Tri-Junction Border

The outstanding issue with the Kenya-Ethiopia-South Sudan tri-junction boundary relates to delimitation and demarcation as opposed to territory. This problem is synonymous with most of Africa's boundaries. Most of estimated 80,000km Africa's boundaries are neither delimited nor demarcated (Griffiths, 1995). Even where the boundaries are delimited, they have not been demarcated, or demarcations are not completed. This problem is characteristic of many of Africa's boundary disputes. The observation by Griffiths (1994) that while Africa's boundaries may be delimited on maps, they may not be demarcated on the ground, captures the problematic nature of the continent's boundaries. There also exists a gap between delimitation and demarcation in some boundary cases (Okumu, 2010). The dispute surrounding the Kenya-Ethiopia-South Sudan tri-junction border manifests most of the problems associated with Africa's boundaries. The problem with the Kenya-Ethiopia-South Sudan tri-junction boundary is one arising attributed to incomplete delimitation and demarcation.

The problem of the tri-junction border of Kenya, Ethiopia and South Sudan is linked to the failure of the various treaties that delimited the Kenya-Ethiopia, Ethiopia-South Sudan and Kenya-South Sudan boundaries to demarcate its precise location. The 1902 Uganda Order in Council and the 1914 Uganda Order in Council both of which delimited the present-day Kenya-South Sudan boundary left the tri-junction border with Ethiopia for future delimitation and demarcation (Mburu, 2003). Likewise, many boundary demarcations that were undertaken on the Kenya-South Sudan boundary after the transfer of Uganda's Rudolf Province to Kenya failed to address the issue of the tri-junction boundary. The same is the case with the various colonial and post colonial boundary delimitations between Kenya and Ethiopia and Ethiopia and Sudan. They failed to delimit the tri-junction boundary border of the three countries (Marcus, 1963 & Feyissa, 2010). Their failure was unintentional as these boundary agreements were bilateral in nature and the business of the delimitation and demarcation of the tri-junction boundary was to be a trilateral undertaking involving the three countries. The resultant consequence is that Kenya-Ethiopia-South Sudan tri-junction border remains problematic (Magaga & Ogola, 2012).

The problem of the Kenya-Ethiopia and South Sudan tri-junction border is as a result of incomplete delimitation and demarcation. The problem is intricately linked to the failure of the various demarcations of the boundaries between the three countries. Three boundary delimitations are important in understanding the complexity of the Kenya-Ethiopia-South Sudan tri-junction border problem. These are the Kenya-Ethiopia, Ethiopia-South Sudan and Kenya-South Sudan boundaries. The tri-junction border problem has its roots in the making of three boundaries. The boundaries between Kenya, Ethiopia, and South Sudan were delimited and demarcated between 1902 and 1909 (Collins, 2005). On the other hand, what is today the boundary(s) between Kenya and South Sudan were demarcated between 1902 and 1950 (Tungo, 2008, Collins, 2005 & Mburu, 2003). The demarcations have had enduring effects on the boundaries of Kenya, Ethiopia and South Sudan and the associated disputes.

The undelimited and undemarcated tri-junction border is the legacy of the various colonial and post colonial delimitation and demarcations of the boundaries between the three countries. In particular, post independence delimitations did little to resolve the issue but instead, perpetuated the problem. Further, the post independence delimitations of the boundaries between the three countries made no fundamental deviations from the initial delimitations and lines of demarcation. In fact, all the subsequent delimitations and demarcations of the boundaries of Kenya, Ethiopia and South Sudan were more of confirmations of the initial delimitations and demarcations with only minor adjustments. Given the bilateral nature of the post independence boundary treaties between Kenya, Ethiopia and South Sudan, they did not tackle the issue of their tri-junction border. The following sections show how the various boundary demarcations between Ethiopia, Kenya and South Sudan and the contributed to the current problem surrounding the tri-junction border of the three countries.

1.3.1. Ethiopia- Kenya Boundary

The demarcation of Kenya-Ethiopia boundary is crucial in understanding the Ilemi Triangle border dispute and the unresolved question of the tri-junction border. The latter is even important as it is one of the entry points of Ethiopia's nascent claim to parts of Ilemi Triangle. The boundary between Kenya and Ethiopia was delimited and demarcated by the 1970 boundary treaty between the two countries (Brownlie & Burns 1979). The treaty, validated previous delimitations and demarcations by Britain and Ethiopia, in particular the Anglo-Ethiopian Agreement of 1907 and Exchange of Notes between Britain and Ethiopia of 1946. The 1907 agreement had delimited the boundary of British East Africa (Kenya) and Ethiopia as part of a wider delimitation of the boundaries between Ethiopia and British possessions of Kenya, Sudan and Uganda. The 1970 bilateral boundary treaty between Ethiopia and Kenya and the Anglo-Ethiopian Agreement of 1907 have important significance on the un-delimited Kenya, Ethiopia and South Sudan tri-junction border and the Ilemi Triangle. The Anglo-Ethiopian Agreement of 1907 gives what amounts to a firm description of the boundary section between Ethiopia and Sudan (now South Sudan) from 6°N and 35° E to the tri-junction point (International Boundaries Research Unit, 2008; Nur 1971 & Brownlie & Burns, 1979). Even so, its definition of the tri-junction border is imprecise. The treaty left room for speculation and confusion as to the location of the tri-junction border. The treaty identified the Kenya-Ethiopia-Sudan tri-junction border as a point at the Sanderson Gulf (Nur, 1971). The Exchange of Notes between Kenya and Ethiopia of 1947 perpetuated the confusion about the location of the tri-junction border point. It identified the location of the tri-junction border of the three countries as lying in the vicinity of the northern shores of Lake Turkana.

The Kenya-Ethiopia boundary treaty of 1970 did not delimit the tri-junction border with Sudan. The question of the tri-junction boundary was outside the scope of the treaty. Its main object was to address potential areas of dispute on the Kenya-Ethiopia boundary, especially the status of Qadaduma and Godoma wells (Nordquist, 2001). Notwithstanding its specific mandate, the 1970 treaty made important reference to the Kenya, Ethiopia and Sudan (South Sudan) tri-junction boundary within the context of the delimitation and demarcation of the Kenya-Ethiopia boundary. The treaty described the western end of the Ethiopia-Kenya boundary as just to the northwest of the shore of Lake Turkana (International Boundaries Research Unit, 2008). The reference to the tri-junction border with Sudan (South Sudan) as the western end adds to the raging confusion. The western end in the 1970 is the point where Kenya-Ethiopia boundary is presumed to meet Kenya-South Sudan and Ethiopia-South Sudan boundaries (Shelley, 2013). Perhaps, the most explicit reference of the tri-junction point in the Kenya-Ethiopia boundary treaty is in relation to the provision of joint delimitation and demarcation with Sudan.

1.3.2. Ethiopia-South Sudan Boundary

The Ethiopia-South Sudan Boundary is central to the the unresolved issue of the tri-junction border. Two particular sections of the Ethiopia-Sudan (South Sudan) boundary have direct link with the contestation over the tri-junction border. The first is the demarcation from Setit River to 6° N, 35° E, which was part of the 1606 Km Ethiopia-Sudan boundary. This section of the boundary was delimited by the Anglo-Ethiopian treaty of 1902 (Marcus, 1963 & Feyissa, 2010). The boundary was subsequently demarcated in 1903 (International Boundaries Research Unit, 2008). Emperor Menelik II acceded to this boundary as part of a grand strategy to secure the support of the British for his hidden territorial ambitions on the Ilemi Triangle and Lake Turkana (Collins, 2005). The second is the section from 6° N, 35° E to the undefined tri-junction border with Kenya. This section of the Ethiopia-Sudan (South Sudan) boundary has direct connection with the Ilemi Triangle and the undefined tri-junction boundary. This section of the Ethiopia-Sudan (South Sudan) boundary was delimited by the Anglo-Ethiopian Agreement of 1907 and demarcated between 1908 and 1909 (International Boundaries Research Unit, 2008; Tungo, 2008 & Collins, 2005). The boundary was delimited as part of Ethiopia-British East Africa boundary and was initially conceived as a territorial limit between Ethiopia and British East Africa (Nur, 1971).

Ethiopia for the most part rejected the 1909 boundary on the basis that it did not participate in the demarcation (Nur, 1971). Ethiopia's rejection notwithstanding, the 1909 boundary also known as the Gywnn Line, remained the de facto international boundary between Ethiopia and British East Africa (Kenya) until the transfer from Uganda of the territory to the north of Lake Turkana to Sudan in 1914 (Nur, 1971 & International Boundaries Research Unit, 2008). Following the territorial transfer, this section of the boundary became part of the Ethiopia-Sudan, currently, South Sudan boundary. Ethiopia accepted the Gywnn Line as the boundary with Sudan, following the signing of a bilateral agreement between the two countries in 1972. The 1972 Ethio-Sudan agreement, like Kenya-Ethiopia boundary treaty, provided for the joint delimitation and determination with Kenya of the tri-junction boundary (Taha 1976).

1.3.3. Kenya-South Sudan Boundary

The Kenya-South Sudan boundary also has direct link with the unresolved Kenya, Ethiopia and South Sudan tri-junction border as well as the Ilemi Triangle. The boundary between Kenya and South Sudan is a consequence of various boundary demarcations and adjustments undertaken between 1902 and 1950. The legitimacy of some of the boundary demarcations are contested (Johnson, 2010; Khadiagala, 2010 & Mburu, 2003). The dispute between Kenya and South Sudan over the Ilemi Triangle draws from the various adjustments made on the boundary between the two countries between 1902 and 1950 (Mburu, 2003 & Collins, 2005). The location of Kenya-Ethiopia-South Sudan tri-junction border point when viewed from the context of Kenya-South Sudan boundary making depends on which of the several demarcations one takes as the boundary between Kenya and South Sudan. The 1914 Uganda Line, which some regard as the de jure international boundary between Kenya and Sudan locates the tri-junction border of Kenya, Ethiopia and South Sudan at a point in the Sanderson Gulf in the northern shores of Lake Turkana (Collins, 2003 & Tungo, 2008). The Red Line demarcation of 1931 did not make any adjustments to the tri-junction border. The Blue Line and the Patrol Line of Sudan Defence Force pushes the tri-junction of the three countries further north from Lake Turkana and thus introduces new issues of contestation.

1.4. Evaluating Ethiopia's Territorial Claim in Ilemi Triangle

It was observed earlier in this article that Ethiopia's position on the Ilemi Triangle has shifted. While Ethiopia may not have officially laid a claim on the Ilemi Triangle or parts of it, some of its acts and conduct were observed to be indicative of territorial ambition. The territorial ambition of Ethiopia on Ilemi Triangle is not inconsistent with the aims and objects of state. Acquisition of territory manifested in the establishment of sovereignty over a given territory or territorial aggrandizement are some of the ultimate goals and objectives of states (Sumner, 2004 & Kohene & Hébié (2017). Given a chance, any state would do everything within its powers to extend its territory and Ethiopia is not an exception. There is already precedent in the case of Ethiopia. Immediately after the Second World War, Ethiopia laid claim to the former Italian colonial possessions in East Africa. Ethiopia laid claim to Somalia and Eritrea insisting the territories were part of its historical spheres of influence and territories (Touval 1999).

States seek to establish sovereignty over particular territory using different justifications some of which are implied acts of expression of claim to territory. States acquire or seek through certain acts and conduct, a particular territorial status or particular rights rather than territory perse. How states pursue, stake and validate their claims to a given territory become an issue of theoretical significance when examining territorial and boundary disputes. The modes by which states acquire or claim title to territory, thus, becomes important. The existence or lack of title to territory depends on the existence of certain facts (Yewdall, 1963:4). Title is the vestive facts that the law recognizes as creating rights. More often, the notion of title is concurrently employed to denote the source of right and proof of the same (Burkina Faso v. Republic of Mali, 1986). The acts or facts that constitute the establishment of a right over territory are thus of critical importance. The purpose of international law is the delimitation of sovereign power within territorial basis. This underlies the precept that no state may lawfully attempt to exercise its sovereignty over the territory of another (Yewdall, 1963).

The question that comes forth in relation to the foregoing is whether Ethiopia can sustain its nascent or embryonic claim on the Ilemi Triangle. Ethiopia renounced territorial claim to any part of Sudanese territory including the Ilemi Triangle following the 1972 Exchange of Notes with Sudan in 1972 (Tungo, 2008). Ethiopia by the provisions of the 1972 Ethio-Sudan agreement also committed itself to the joint delimitation and demarcation of its tri-junction boundary

with Kenya and Sudan. The notion of joint delimitation of the Kenya-Ethiopia and Sudan tri-junction border was also encapsulated in the 1970 boundary treaty between Kenya and Ethiopia. Ethiopia until now has upheld the two boundary treaties it signed with both Kenya and Sudan in 1970 and 1972 as it has also not renounced them. This means that Ethiopia remains bound by the provisions of the treaties including those relating to the delimitation and demarcation of the tri-junction border boundary as well as the agreed boundary.

States' claim to a particular territory can either be grounded on legal and political bases. The distinction between the two claims is important but more often legal issues cut across claims based on politics. When it comes to claims based on politics, the argument is that while a legal title for the exercise of territorial sovereignty may be vested in another state, there could be reasonable grounds why the legal position ought to be changed in favour of a claimant state. In international law, a state is obliged to show that its title to territory is better than that of the state in dispute (McHugo, 1998). Contextualizing the various legal and political claims on Ethiopia's claim on the Ilemi Triangle would no doubt be interesting. The underlying issue is the extent to which Ethiopia can sustain its claim on the Ilemi Triangle from legal and politico-diplomatic lenses. There are various grounds or justifications that states apply to advance their territorial claims. The doctrine of effective occupation is one such criteria for establishing territorial claim (Gilbert, 2016). The facts relied upon to establish effective occupation must not only be peaceful and continuous, but need to be acts explicable only on the basis of the exercise of sovereign power (Evatt 1970 & Masahiro 1996). Ethiopia's appeal to the doctrine of effective occupation in its emerging claim in the Ilemi Triangle would be a difficult expedition.

Ethiopia no doubt has at various times harboured territorial ambitions on the Ilemi Triangle (Oba, 2013, Collins, 2005 & Tungo, 2008). The ambitions notwithstanding, Ethiopia has never occupied the Ilemi Triangle (Collins, 2005) Ethiopia is ill constrained to demonstrate evidence of possessions or corpus and intention to occupy or animus in relation to Ilemi Triangle. Corpus and animus are key criteria when it comes to the determination of effective occupation. In fact, Ethiopia for the most part regarded the Ilemi Triangle as a source of slaves and ivory (Collins, 1981-82). Furthermore, any reference by Ethiopia to effective occupation on its claim on Ilemi Triangle is likely to be undermined by the fact that the territory has for the most part never being a terra nullius. The territory has been under Kenya's control and its status is contested by South Sudan and previously, by Sudan (Khadiagala, 2010; Collins, 2005; Rake, 2004 & Mburu, 2003). Resident population is important in the advocacy of effective occupation thesis (Evatt,1970). Ethiopia cannot give a serious reference to its resident and permanent population in the Ilemi Triangle. Some Ethiopian pastoralist groups particularly the Nyangatom and the Dessanech have been grazing their livestock in eastern Ilemi Triangle on temporary migration during the dry season (Amutabi, 2010; Khadiagala, 2010 & Mburu, 2003). But this may not sufficient as evidence of resident population, which is important in effective occupation. Most of the inhabitants of the Ilemi Triangle are non-Ethiopians. More than 90% of the inhabitants of Ilemi triangle are Turkana who consider themselves Kenyans (Eulenberger, 2013).

Historical and cultural claims are mutually reinforcing factors in the determination of title in a disputed territory. Historical arguments are some of the justifications that states put forth in advancing their territorial claims (Murphy, 1990). Effective occupation or administration is one of the principal legal claims and bases of international law. Historical claims based on priority and duration is however, the most emotional justifications in territorial claims (Burghardt 1973). Historical claims create underlying entitlement to territory regardless of whether a state has actual or constructive territory at the time of the claim. The rise in the significance of historical arguments has come in the face of decline in the importance of claims based on ethnic, strategic, and economic considerations (Murphy, 1990) Cultural claims based on the ties of a group of people to one another and to the land reinforce historical claims (Burghardt 1973). The stronger the cultural importance of a territory to a state's community the stronger the historical claim.

The strength of Ethiopia's historical and cultural claim to the Ilemi Triangle is however, an issue of contestation. In late the 19th and early the 20th centuries, Ethiopia laid claims to northern Kenya including the Ilemi Triangle citing historical justifications (Waithaka & Maluki, 2016; Oba, 2013 Collins, 2005 & Markakis, 2004). The question is whether these claims amount to historical claims and the extent to which Ethiopia can use the same to advance its territorial claim on the Ilemi Triangle. Ethiopia may have harboured claims on south eastern Sudan including the Ilemi Triangle but ambitions do not necessarily amount to historical claims. Whichever the case, it is difficult for Ethiopia to demonstrate the historical connection with the Ilemi Triangle. In the first place, the establishment of Ethiopia's sovereignty over its current south western territory coincided with European colonization in Eastern Africa (Imperato, 1998; Thompson, 1995; Griffiths 1986 & Keefer, 1973). Ethiopia's appeal to historical justifications is therefore, weak and fraught with challenges. It was observed above that cultural justifications are crucial in territorial claims as they augment historical claims. The majority of the inhabitants of Ilemi Triangle are Turkana and Toposa who are members broader teker ethno-linguistic and cultural group (Yntiso, 2017; Carr, 2017 & Eulenberger, 2013). These ethnic groups have no common origin, historical bonds, ethno-linguistic ties or belief system with their six Ethiopian neighbours that include the Murle, Mursi and the Dassenech (Yntiso, 2014).

Treaties entered by a state in relation to territory or boundary are crucial in the determination of territorial or boundary disputes. Among the justifications of territorial claims, treaty justification is the most legal (Pan 2009: 41) A title to territory can be derived from treaties resulting from various outcomes such as peace, cession or delimitation. In the case of the Ilemi Triangle, reference to various boundary treaties is important. Ethiopia's claim to the Ilemi Triangle has its origin in its initial rejection of the 1909 demarcation of its section of the boundary with Sudan from the 6° N 35° to the tri-junction border point with Kenya or the Gwynn Line (Johnson, 2010 & Wubneh, 2015). This boundary was demarcated on the basis of the 1907 Anglo-Ethiopian Agreement. The demarcation placed the entire Ilemi Triangle outside Ethiopia's sphere of influence.

In relation to the colonial era boundary treaties delimiting Ethiopia's boundaries with Kenya and Sudan and by implication South Sudan, it is important to note that subsequent post independence treaties abrogated all of them including the 1907 agreement. In the case of Kenya-Ethiopia boundary, the 1970 treaty between the Empire of Ethiopia and the Republic of Kenya abrogated both the 1907 Anglo-Ethiopia agreement and the 1947 Anglo-Ethiopian Exchange of Notes. Likewise, in the case of Ethiopia-Sudan/South Sudan boundary, the 1972 Exchange of Notes between Sudan and Ethiopia abrogated the 1907 Anglo-Ethiopian treaty that demarcated the Gywnn Line. Ethiopia renounced all claims in the Ilemi Triangle following its acceptance of the demarcations south of Setit River based on the 1902 and 1907 treaties (Brownlie & Burns 1979:884). The two agreements did not mention territory in relation to the determination of the tri-junction border but rather boundary demarcation.

Ethiopia as earlier observed has never repudiated the two treaties or demonstrated that subsequent situations have undermined the factual and legal obligations of the same. Ethiopia has neither showed any indication of withdrawing from the treaties nor demonstrated fundamental change in circumstances or *rebus sic standibus* to warrant non-adherence. As MacGibbon (1958) observes, where a state has without coercion or due influence decided to conform to certain conditions, the same state is estopped from recanting the same. The same applies to Ethiopia in relation to boundary treaties with Kenya and South Sudan. Ethiopia is estopped from repudiating the boundary treaties with Kenya and Sudan (South Sudan) and instead is required to uphold them in good faith. The maxim of *pacta sunt servanda* requires states to abide and keep agreements in what reinforces the principle of estoppel. The two principles prevent states from repudiating the boundary treaties and agreements it has signed. This is the case with Ethiopia in relation to boundary treaties it signed with Kenya and Sudan.

The conduct or acts undertaken by states in relation to disputed territory are important in examining territorial claims. The conduct of states including unilateral acts can confer title to territory as they have the effect of transferring sovereignty of a territory from one state to the other. Effectivities and acquiescence are important manifestations of acts and conduct of states in relation to territorial claims (Kohen & Hébié, 2017). In the beginning of this article, it was observed that the recent acts of Ethiopia in relation to the Ilemi Triangle are indicative of territorial ambitions. The application of the rule of effectivities in the determination of territorial claims depends on several factors, more importantly, the status of a legal title. While Effectivities may not create title in many situations, they may constitute title, evidence of existence of a title and more importantly, may not displace title (Kohen & Hébié 2017). Acquiescence as a tacit conduct of a state can occasion abandonment of sovereignty or transfer of the same to another state (Chan, 2004). Drawing from the foregoing thesis, the question is how to contextualize Ethiopia's conduct and acts in relation to the Ilemi Triangle and the reactions of Kenya and South Sudan. Where the act or conduct of a state corresponds to title, effectivities only reinforces the legal exercise of title. In relations to Ethiopia's activities in eastern Ilemi Triangle, contextualizing effectivities would pose some challenges. Ethiopia has no legal title to the Ilemi Triangle for which effectivities can be used to support and hence weakens its appeal to the effectivities. The conduct or acts of Ethiopia in Ilemi Triangle constitute what amounts to illegal acts as they are a violation of state territorial integrity. In situations where acts and conducts of states are in violations of the important norm of territorial integrity, effectivities are deemed not to apply. Distinction between boundary and territorial disputes is crucial in understanding related disputes (Ajala, 1983 & Brownlie & Burns, 1979). The distinction is relevant to the issue of Ethiopia-Kenya-South Sudan tri-junction border. The question is whether the tri-junction issue is a boundary or territorial dispute. The distinction underlies the contrasting positions of Kenya and South Sudan, on the one hand, and Ethiopia, on the other. The former views the outstanding issue of their tri-junction border with Ethiopia as one over boundary. Ethiopia, on its part, views the issue as a territorial dispute. The contrasting positions have implications on the way the three countries perceive the settlement of their tri-junction border. Ethiopia conceives the resolution of the tri-junction border as going beyond delimitation and demarcation to include cessation and transfer of territory. The contrasting positions held by Kenya, South Sudan and Ethiopia are reminiscent to the positions of Chad and Libya in the dispute over the Aouzou Strip (Libyan Arab Jamahiriya V. Chad 1994). Libya considered the dispute as involving attribution of territory while Chad viewed it as a dispute over the location of the boundary (Antunes, 2000 & Naldi, 1995). Ethiopia appears intend on transforming what is ideally a boundary issue relating to the delimitation and demarcation of the tri-junction boundary into a territorial dispute.

1.5. Implications of Ethiopia's Claim on Ilemi Triangle

Ethiopia's territorial claim on the Ilemi Triangle is bound to have implications on the longstanding dispute between Kenya and South Sudan. The implications of Ethiopia's claim on the Ilemi Triangle is at the moment not expressly manifest and is only about supposition. But drawing from similar disputes or the general field of conflict resolution, the potential implications of Ethiopia claim on the settlement of the dispute over the Ilemi Triangle is real. The question which must always be of concern relates to what happens when a third party enters into the realm of a bilateral dispute. The nature and character of the dispute is no doubt bound to change. States are always to be driven by national interests (Morgenthau, 2006). This applies to a state's claim to territory or entry into dispute. This proposition applies to territorial claims and Ethiopia's territorial claim on Ilemi Triangle is not an exception.

From a theoretical perspective, Ethiopia's claim on the Ilemi Triangle has the potential effect of changing the nature and character of the dispute from bilateral to multilateral dispute. The entry of new actors into any dispute arena whether territorial or otherwise introduces a new set of interests which more often than not have direct implications on the dispute in question. It has been observed that territorial disputes alongside boundary disputes are some of the most problematic disputes (Wiegand, 2011; Newman, 1999 & , 1990). The observation elsewhere in this article about the centrality of conflicting territorial claims and boundaries disputes on national sovereignty partly captures the sensitivity

of the same (Prescott & Triggs 2008; Triggs 2006). Ethiopia's territorial claim on Ilemi Triangle does not only change the configuration of the dispute from being a bilateral to a multilateral one but it introduces additional issues and interests. Ethiopia's territorial interests in the Ilemi Triangle are in direct conflict with Kenya's de facto control and South Sudan's claim.

2. Conclusion

Countries appeal to legal and political principles and arguments to advance their territorial claims in case of territorial dispute with other states. The mere appeal to these arguments and principles is however, not sufficient to advance territorial claims. The strengths and weaknesses of territorial claims depend on the facts that support a country's arguments in support of territorial claim. The success or failure of a country's territorial claim is in theory and practice dependent on the strength of the facts. This proposition is as applicable to Ethiopia's claim on the Ilemi Triangle as it would be for any other country embroiled in a territorial dispute. Drawing from the foregoing, this study concludes that Ethiopia's claim on the Ilemi Triangle is anchored on weak foundation. Viewed from various grounds or justifications to title to territory key among them; effective occupation, historical and cultural dispositions, effectivities, treaty and acts and conduct of states, Ethiopia's claim to Ilemi Triangle exposes glaring weaknesses. The weakness notwithstanding, Ethiopia's claim on the Ilemi Triangle present challenges to the settlement of long running dispute between Kenya and South Sudan as it introduces new dynamics. The fact that the Kenya-Ethiopia-South Sudan tri-junction border is undelimited and undemarcated remains an important issue.

3. References

- i. See ICJ Judgment on the North Sea Continental Shelf Cases of 20th February 1969. ICJ Reports 1969.
- ii. Yewdall, Jennings R., 1963. Acquisition of Territory in International Law. Manchester: Manchester University Press.
- iii. Both territorial disputes and positional disputes seek to achieve change in the position of the boundaries
- iv. Ilemi Triangle is under Kenya's de facto control but claimed by South Sudan and Ethiopia. The size of Ilemi Triangle varies but many scholars estimate the area as between 10,320 and 14,000Km²
- v. See the Exchange of Notes between Ethiopia and the Sudan settling the boundary dispute, July 18, 1972, Addis Ababa, Ethiopia.
- vi. Delimitation refers to the determination of a boundary in a treaty while demarcation involves actual establishment of the boundary line on the ground. See Cukwurah. A.O (1967), The Settlement of Boundary Disputes in International Law, Manchester University Press, Manchester, p.27
- vii. Ethiopia's African colonization of Africa
- viii. As part of a strategy to advance his territorial ambitions on Northern Kenya, Menelik II went to the extent of naming Lake Rudolf as the Samburu Sea. See Collins, R. O. (2005). Civil Wars and Revolution in Sudan: Essays on the Sudan, Southern Sudan, and Darfur, 1962-2004. Tsehai Publishers and Distributors: Hollywood.
- ix. The post Berlin Conference (1884-5) saw European colonial powers signing bilateral treaties defining their spheres of influence. The Anglo-German and Anglo-Italian agreements were part of these treaties.
- x. These are actions of states that create rights of sovereignty through symbolic acts. See Wagner Henry R (1938), Creation of Rights of Sovereignty through Symbolic Acts, Pacific Historical Review, Vol.7 No 4, pp 297-326.
- xi. These are actions of states that create rights of sovereignty through symbolic acts. See Wagner Henry R (1938), Creation of Rights of Sovereignty through Symbolic Acts, Pacific Historical Review, Vol.7 No 4, pp 297-326.
- xii. See Treaty Between the Empire of Ethiopia and the Republic of Kenya, June 9, 1970, Addis Ababa, Ethiopia
- xiii. See The Exchange of Notes between Ethiopia and the Sudan, July 18, 1972.
- xiv. See Treaty Between the Empire of Ethiopia and the Republic of Kenya, June 9, 1970
- xv. See Agreement between Great Britain and Ethiopia Relative to the Frontiers between British East Africa, Uganda and Ethiopia, signed in December 6, 1907, Addis Ababa, Ethiopia.
- xvi. The Anglo-Ethiopian Agreement of 1907 identified the Kenya-Ethiopia-Sudan tri-junction point as a point in the Sanderson Gulf in the northern shores of Lake Turkana.
- xvii. Shelley F M (2013). Nations Shapes: The Story Behind the World's Borders, Santa Barbara, ABC-CLIO, LLC p 366 identifies the tri-point as located at the edge of Lake Turkana
- xviii. See Exchange of Notes constituting an Agreement between the Government of the United Kingdom of Great Britain and Northern Highland and the Government of Ethiopia amending the description of the Kenya-Ethiopia Boundary, September 26, 1947, Addis Ababa, Ethiopia.
- xix. The Ethiopia-Kenya Treaty is regarded as one of the most comprehensive boundary agreements even concluded in post independent Africa.
- xx. The Eritrea-Sudan boundary which before 1993 was part of the Ethiopia-Sudan boundary was delimited by Anglo-Italian treaties. Before Eritrea's secession, the length of Ethiopia-Sudan boundary from Ras Kassar to Lake Turkana was about 2020 km.
- xxi. This treaty was signed on 27th June 1902 between Empire of Ethiopia and Britain and it defined the boundary between Ethiopia and Sudan.
- xxii. The line of demarcation is known as the Gwynn Line, after the lead surveyor, Major C.W. Gwynn of the British Royal Engineers, who was acting on behalf of British East Africa.
- xxiii. See The Exchange of Notes between Ethiopia and the Sudan, July 18, 1972

- xxiv. Karamoja Cluster is an ethno-geographic designation of several linguistically-related ethnic groups residing in Northeastern Uganda, Northwestern Kenya, Southwestern Ethiopia, and Southeastern South Sudan.
- xxv. Until the 1974, Ethiopia was governed by hereditary monarch, the Emperor. Until then, Ethiopia was known as the Empire of Ethiopia
- xxvi. While boundary and territorial disputes do sometimes overlap, they are not synonymous. Ajala A (1983), 'The Nature of African Boundaries' African Spectrum, Vol.18, No.2 pp 177-189 gives an incisive definition of a boundary as an alignment or line described in words in a treaty, or shown on a map/chart or marked on the ground by physical indicators. Also see Brownlie, I., & Burns, I. R. (1979). African Boundaries: A Legal and Diplomatic Encyclopedia. London: C.Hurst & Company p:3
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