

LEGAL RESEARCH WORKING PAPER 2/2020

Colonial Legal Framework of International Boundary Delimitation in Somalia 1885-1960

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**KASMAL FORUM
OCTOBER 2020**

ABSTRACT

It is now almost one hundred and thirty six years of inauguration of the Berlin East Africa Conference on 15th November 1884 through 26 February 1885. The event marked the beginning of modern state system in Africa which demanded for precise and characteristically artificial and often arbitrary territorial framework. By foregrounding these issues, this article examines and draws attention of the government of Somalia and her immediate neighbors to demarcate their borders through Joint Boundary Commission (JBC). The study therefore identified certain areas that can result to or prevent escalation of war and minimize border conflicts between Somalia and its neighbors. Thus, the study concluded by emphasizing the importance of demarcating boundaries since it is the defining feature of a state as mentioned in the 1933 Montevideo Convention on the rights and duties of states. The study is Doctrinal in nature whereby various primary and second sources have been critically observed. The study therefore, recommends that, Government of Somalia with her neighboring states should urgently demarcate their international boundaries and try to negotiate a bid to reach everlasting agreements. In case the demarcation negotiation process fails, then the disputants should decide to resort to any alternative resolution mechanisms of their choice in accordance with international law or decide to submit their case before the International Court of Justice (ICJ). The colonial treaties that delimited boundaries between states would eventually prevail on the basis of the principle of 'Uti Possidesi' which is a policy adopted by Organization of African Unity (OAU) now African Union (AU) when it expressed a maiden resolution thus: "boundaries should be maintained as they were at the independence of member-states".

Keywords: International Boundary, Colonial Treaties, Berlin Conference, Delimitation, Demarcation, Delineation, Somalia, Kenya, Djibouti, Ethiopia

1. Introduction

Somalia is located in a strategic position and commercial center on the Horn of Africa along southern approaches to Bab el Mandeb and route through Red Sea and Suez Canal within latitudes of 12°N and 5° S, and longitudes 40 ° E and 50° E. The Equator runs across Somalia at a place called Sanguni which is 28 miles north of Kismayo. Somalia shares land borders with three countries including Kenya on the South, Ethiopia on the North and West, Djibouti and the Gulf of Aden on the North while in the East and South it is bordered by the Indian Oceans (Osman, 2020).

Somalia's relationship with her neighbors has been predicted by a history of ill-defined and inappropriate limitations of boundaries of the sub-region of East-Africa by Colonial masters. The ease to cross these borders coupled with the lack of connectivity and an interconnected border policy between Somalia and the neighboring states often lead to frosty relations between them. In ensuring peace and security, these countries should resort to principle of peaceful settlement of border disputes and the commitment to delimit their boundaries rather than to resolve to use of force. International law forbids states from using force in their international relations (UN Charter, 1945)

2. Legacies of Imperial line drawing

Generally, the issue of border disputes in Africa dates back to the period of intense competition between European powers in the late 19th century for territorial influence in Africa. The process culminated in the Berlin Conference of 1884-85, at which the colonial masters concerned agreed upon their respective territorial claims and the rules of engagements going forward. The only possible exceptions were Ethiopia and Liberia. Ethiopia, an ancient African kingdom, was recognized as a sovereign and independent power by the colonial in the nineteenth century. Liberia enjoyed same recognition from the imperial powers because of its special relationship with the United States (Mutua, 1995). There was no divergence over the motives for the colonization of Africa; commentators agree on its economic basis.

The course of defining boundaries in East African region reflected the superimposition of physical and political limits on socioeconomic, cultural, and linguistic discontinuities. This process followed a sequence whereby boundaries were defined on maps, delimited by treaties, and demarcated on the ground by colonial powers (Khadiagala et al, 2010). There are about 17 major international boundaries in the Eastern African region stretching from Sudan to Tanzania most of which were products of series of colonial treaties and agreements. Among these treaties are the Anglo-Italian protocol of 1891 delimited British and Italian territories in East Africa; the British Somalia-Ethiopia boundary was delimited in 1894 (Khadiagala et al, 2010). Almost sixty years have passed since the departure of the colonial masters but up to now, boundary demarcation between Somalia and her neighboring states is not definitely resolved. Hence, this can lead to boundary conflicts and threatens peace and security in the sub-region.

a) Somalia-Djibouti Boundary

The Establishment of British Somaliland and France Somaliland Boundary

In February 1885, Britain declared a protectorate in northern Somalian coast from the south-west corner of the Gulf of Tadjoura to Ras Galwein, at 48° E longitude to which France responded by strengthening her position in the Gulf of Tadjoura currently known as Gulf of Tadjoura in Djibouti. Later on, the two colonial powers reached an agreement whereby British abandoned any claim of jurisdiction in the Gulf of Tadjoura (Mullah, 2009). British's interest in Somalia stemmed from her possession of Aden since 1839. At the same time, they sought to find a source of cheap food supplies for their garrison in Aden. However, the British Colonial powers were only interested in Somali-land's meat supply as a necessary ancillary to the garrisoning of Aden where they had 182 officers. This led to the establishment of British Somaliland in 1887 (Lewis, 2003).

The Federal Republic of Somalia shares common boundaries with Djibouti to the north which was delimited by an agreement between France and Britain on February 2-9, 1888. The Anglo-France Agreement of 1888 determined the alignment of the current Somalia-Djibouti boundary (Herstslet, 1967). The *Anglo-France Agreement* consists of seven articles: the First article provides that;-

The protectorates exercised, or to be exercised by France and Great Britain shall be separated by a straight line starting from a point on the coast situated opposite the wells of Hadou [at Loyada], and leading through the said wells to Abassouen; from Abassouen the line shall follow the caravan road as far as Bia-Kabouba, and From this latter point it shall follow the caravan route from Zeyla [Zeila] to Harrar [Harer] passing by Gildessa [Jaldesa]. It is expressly agreed that the use of the wells of Hadou shall be common to both parties.

The 1888 Anglo-France Agreement did not define the international Tri-borders point between Somalia-Djibouti and Ethiopia though, nine (9) years later, the Ethiopian-France Convention which was held on 20th March 1897, specified that the Ethiopia-France Somaliland boundary extended westwards from *Madaha Djalelo* (Yimer et al; 2020). Besides, an Anglo–Ethiopian treaty of May 14, 1897 realigned the western sector of the British Somaliland–Ethiopia boundary (as established initially by the Anglo– Italian protocol of May 5, 1894), but no mention was made of the location of a tri-point (Djibouti-Somalia Boundary, 1979). However, between 1931 and 1934, an Anglo–Ethiopian boundary commission demarcated the British Somaliland–Ethiopia boundary while the Tri-point Madaha Djalelo was decided from the context of the Anglo–French agreement of 1888, the Ethiopian–French Convention of 1897, and the Anglo–Ethiopian treaty of 1897 (Djibouti-Somalia Boundary, 1979).

In order to determine the alignment of the British Somaliland and French Somaliland boundaries it was necessary to establish the exact starting point of the boundary on the Gulf of Aden. According to the Anglo–French agreement of 1888, the boundary began opposite the ‘wells of Hadou.’ The so-called wells of Hadou could not be located, but shortly after the agreement of 1888, British and French Governments agreed that the northern point of the boundary was a short distance northeast of Loyada on the Gulf of Aden (Djibouti-Somalia Boundary, 1979).

b) Somalia-Ethiopia Boundaries

Land boundary between Somalia and Ethiopia is one of the most controversial areas of land territory in the history of diplomacy of the Horn of Africa as well as in the continent at large. The colonial powers drew a number of Maps as well as reaching agreements with the parties concerned. In order to adequately examine border dispute between Somalia and Ethiopia, one must analyze the Scramble of Africa especially in Somalia. By the mid-of the 19th Century, Somalia was rapidly drawn into the theatre of Colonial competition between British, France and Italy, as a result of which in 1897 the partition of Somali-land was virtually completed (Lewis, 2003).

The colonial division of northwestern territory of the Somaliland was asserted as the protectorate of the British Somaliland, while the area to the north of the British Somaliland was classified as the French Somaliland within the domination of France and the southern peninsula of the Somaliland was labeled as the Italian Somaliland (Yimer et al; 2020). The Berlin Conference of 1884-1885 was the main event that regulated European expansion in Africa, mainly to prevent armed conflict between competing colonial powers. Articles 34 and 35 of the General Act of the Berlin Conference mandated that if one of the colonial masters wanted to expand its territory in Africa, there had to be “*a notification addressed to the other signatory Powers of the present Act.*”

Beginning 1890, Italy declared officially the creation of the colony of Eritrea which created fear on the side of Ethiopia of further attempt by Italy to expand its territorial boundaries into Ethiopian Empire. Consequently, the Menelik (ruler) of Ethiopia first responded to the Italian presence in the region by suggesting alliance with the Italian colonial powers in order to safeguard his territorial administration. Thus, Ethiopia and Italy signed the Treaty of Wuchale on 1889, which consisted of twenty articles written in two languages, Amharic and Italian.

On 5 May 1894, Italy acting as the protector of Ethiopia and in accordance with its interpretation of the treaty of Wuchale reached an agreement with the United Kingdom establishing a boundary between Ethiopia and British Somaliland as follows:

“The boundary of the spheres of influence of Great Britain and of Italy in the regions of the Gulf of Aden shall be constituted by a line which, starting from Gildessa [Jeldesa] and running toward the 8th degree of north latitude, skirts the north-east frontier of the territories of the Girrhi, Bertiti, and Rer Ali Tribes, leaving to the right the villages of Gildessa, Darmi, Gig-giga [Jijiga], and Milmil.”

The Anglo-Ethiopian Treaty between British and Ethiopia was signed on 14 May 1897, in which the two countries made alterations to the limits of British Somaliland to deny most of the Haud grazing land to Ethiopia; An agreement which Ethiopia regarded as an important step towards legalizing its boundary line with the British Somaliland (Yimer et al; 2020) Delimitation of the British Somaliland and Ethiopian Boundary summed up as follows:

‘The Treaty between Britain and Ethiopia signed at Addis Ababa on the 14th May 1897 by the Emperor Menelek II and Her Majesty’s Envoy, and which was ratified in December last, the frontiers of the British Protectorate on the Somali Coast have been recognized as follows: Starting from the seashore opposite the well of Hadou, the boundary-line follows the caravan road by Abbasouen till Mount Somadou; from Mount Somadou to Mount Egu; from Mount Egu to Moga Medir; starting from Moga Medir it goes in a direct line to Eylinta Kaddo and Arran Arrhe on 44° up east of Greenwich and 9° north, and again in a direct line until 47° east and 8° north, thence along 8° north to 48° east, thence in a straight line to the inter-section of 9° north with 48° east, and thence along 49° east to the sea.’

Southern portion of Somali boundaries

In 1889, Italy colonized the southern part of the current Somalia which remained under his protection until 1941. Italy-Somaliland which is located on the eastern edge or the mountainous region which slopes eastwards and southwards of Indian Ocean which lies on the Southern side of the mountains stretching from Cape Guardafui beyond Harar in Abyssinia.

Italy marked out the boundary of Italian-Somaliland on the south between 1897 and 1908. However, Somalia does not recognize these treaties claiming that the 1897 treaty violated other treaties that were earlier signed in 1880s between the colonial rule and various Somali clans. Moreover, the 1897 treaties' definitions of boundary were so ambiguous and contradictory. The Italian-Somaliland boundary with Ethiopia had never been delimited satisfactorily in spite of two attempts to do so and still remain provisional administrative line up to dates.

The Addis Ababa treaty of 1896 specified that a boundary were negotiated between Ethiopia and Italy which led to the annexation of the Ogaden region of western Somaliland in 1897. On 24th June, 1897, Menelik of Ethiopia drew a line on a map to indicate the boundary acceptable to Ethiopia, a copy of which was submitted for approval to the Italian Government by Major Nerazzini. On September 3, 1897, Italian Government sent a telegram to Ethiopia accepting the proposed line. However, official texts of the delimitation were never exchanged as a result of which copies of the map cannot be found (Deniel, 2007)

Sometimes later, Ethiopia and Italy realized that there was the need to resolve territorial confrontations and recurring struggle in respect of that, a second agreement was reached on 16 May 1908 Convention between the two countries which established the new Ethiopia and Italian Somaliland boundary between Dolo and the Uebi Scebeli, while Western Somaliland of Ogaden region were declared to be part of Ethiopia.

During the Second World War II, United Kingdom took over these areas of land commonly known as Ogaden Region after defeating Italy in East Africa at the Battle of Gondar of Ethiopia in November 1941. Consequently, British Ogaden came under the British Military Administration (BMA) as well as the whole of Italian Somaliland which brought 90 percent of the Somalian territories under British colonial powers. In consideration of the Anglo-Ethiopian Protocol of 1948 between United Kingdom and Ethiopia, British returned the Ogaden to Ethiopia and left the 'Provisional Administrative Line' the way it was before as the international Frontier between Ethiopia and Italian-Somaliland.

Somalia got independence in 1960 when it did not inherit any international boundary with Ethiopia defined by the former colonial masters particularly Italy. In the same year 1960, the Somali National Assembly established an ad hoc commission with the specific task of peacefully finding a lasting solution to the border issues, but soon after the proclamation of independence on 1 July 1960, Somali government reaffirmed its stance not to accept the colonial boundaries defined by Italy before its independence (Morone, 2015). Based on the failure by Somalia and Ethiopian to officially define their borders on 27th May 2019, a provocative map image of Africa was leaked on the website of the Ministry of Foreign Affairs of Ethiopia which integrated the whole of the current state of Somalia with the exception of the self-declared state of Somaliland into the map of Ethiopia. Somalia had been completely deleted from the map of Africa. The two states have long been rivals and have fought border wars since 1964.

c) Somalia-Kenya Boundaries

Somalia and Kenya share land and maritime boundaries to the southwest. Currently there is a long-standing maritime dispute between the two states. Somalia instituted proceedings against Kenya before the International Court of Justice over the matter. In 2017 the court passed a preliminary judgment in Somalia's favor. However, the only portion of these borders that is relevant to our study is the segment of the land boundary between Somalia and Kenya. The land boundaries delimitation between Somalia and Kenya was created in a series of agreements and exchanges of notes and protocol between the United Kingdom and Italy.

The British Empire created the East Africa protectorate between 1884 and 1895 which led to the colonization of the present day Kenya in 1895 including the Northern Frontier District which was mainly inhabited by Somali indigenous extended the British Protectorate eastwards up to the Juba River. The border between the two colonies was such that the British East Africa protectorate comprised the whole of the present-day republic of Kenya and the Jubaland province which is a part of present day Somalia. River Juba marked the border between the British colony and the Italian colony (Njeri, 2015). The British colonial administered Jubaland province for 37 years, from 1887 to 1924.

The boundary between modern Somalia and Kenya initially served to delimit British and Italian spheres of influence in the area between the River Daua ‘Dawa’ and the Indian Ocean. In 1891, an Anglo-Italian treaty first set out a line of demarcation between the two colonial powers (Protocol between the British and Italian, 1891). Thirty-three years after the Anglo-Italian Treaty of 1891, the boundary between what by then had become territories of British’s Kenyan colony and Italian-Somali-land brought another new era of boundary delimitation through a secret treaty signed in London on 15th July 1924. The British colony ceded the Jubaland Province to Italians as reward for joining the allies in World War I. Article 1 of the 1924 Treaty defined the final segment of the land boundary in the south by means of a meridian of longitude running to the coast. In particular, it provided:

“[T] hence along that provincial boundary to a point due north of the point on the coast due west of the southernmost of the four islets in the immediate vicinity of Ras Kiambone; thence due southwards to such point on the coast. Ras Kiambone and the four islets above mentioned shall fall within the territory to be transferred to Italy”
(The Treaty Between Italy and the United Kingdom 15 July 1924).

Under article 2 of the 1924 Treaty which provided that “In the event of differences between the text and the map, the text will prevail”. Lord Salisbury, the three-time British Prime Minister who presided over a vast expansion of the British Empire in Africa, once noted the absurdity of the line drawing undertaken by colonial masters to accomplish the scramble for Africa. Colonial powers ceded, “mountains and rivers and lakes to each other, only hindered by the small impediment that we never knew exactly where the mountains and rivers and lakes were” (Rossi, 2019).

A year after the 1924 Treaty was signed United Kingdom and Italy adopted an amended description of the southernmost section of the new colonial boundary. However, diplomatic notes were exchanged between the two States on 16 and 26 June 1925. These notes recorded as;

“[H]aving regard to the fact that Ras Kiambone (Dick’s Head) and the four small islands, which are in its immediate vicinity, form part of the territory to be transferred to Italy, it is understood that, upon reaching the meridian east of Greenwich which leaves in Italian territory the well of El Beru (or such other meridian east of Greenwich as may be recommended by the Commissioners in accordance with paragraph 3 of Article 1 of the Treaty), the boundary shall follow such meridian southwards to the point of intersection of such meridian with the parallel of South Latitude 0°50’; thence proceeding in a south-easterly direction to a point situated about six kilometres north of the point of the coast due west of the southernmost of the four islets in the immediate vicinity of Ras Kiambone (Dick’s Head); thence due southwards to such point on the coast. The coast shall be defined as the line of mean sea level ordinary spring tides” (Treaty between Italy and Britain, 1924)

Between 1925 and 1927, the Jubaland Boundary Commission surveyed and demarcated the entire new boundary as a result of which the Jubaland Commission declared its decisions on the agreement signed by the heads of the British and Italian missions on 17 December (Agreement between Italy and Britain, 1927). The 1927 Agreement was formally adopted in an agreement between the British and Italian Governments on 22 November 1933 (Exchange of notes between Britain/Italy, 1934).

During the period of colonization, the Land boundary Terminus protocol between Somalia and Kenya left a vague land border and maritime line which replete with numerous conflicts between the two states. Even before and after gaining independence, Somalia never gave up its protest against the unjust transfer of its land and maritime to Kenya by Britain. Thus, both countries are still contesting based on various factors ranging from historical facts, international law as well nationalistic tendencies.

Challenges of Current Territorial Boundary Demarcation in Somalia

Prior to the creation of international borders in Africa, African societies were used to traditional borders set and defined based on different policies that determined the migration and movement of people and the practice of their various occupations. The natural features of African traditional boundaries were weak compared to the colonizers' boundaries which were marked with surveys and created on maps (Babatola, 2020).

Somalia did not demarcate its boundaries inherited from the ex-colonial powers due to the limitation and challenges caused by its internal factors such as civil wars. International borders are crucial factors of political independence and territorial integrity of every country, the identity and citizenship of its people as well as economic powers. The lack of delimitation and demarcation created porous borders making it not under control of any country as a result of which no one is in charge of securing these borders (Mi Yung Yoon, 2014).

Some of the challenges effecting the current territorial boundary includes as follows;-

1. Lack of Effective Central Government of Somalia

Since 1991, the lack of effective central government in Somalia led the country to be described as one of the most failed nations in the world. Somalia has been without stable a central government capable of controlling its territorial boundaries leaves alone the delineation of its land boundaries. Similarly, border security is a factor of border management. International borders are a security issue for all governments. States are recognized under international law by their capability to maintain their boundaries, secure their territories, and protect their citizens. The ability to secure national borders is one of the criteria used to classify states as strong, weak and failed. Some countries are more threatened by insecurities or mismanagement of other countries' borders than theirs.

Border security means different things: border control, border management, border monitoring, border protection while Border control is divided into two main categories: securing borderlines (activities along the boundary), and controlling ports (harbors, border posts and airports) of entry (Goddy et al; 2017). Threats of insecurities of borders are of great concern especially from neighboring states such as security issues relating to terrorism, crime, and uncontrolled migration and illicit trading. Currently this is the case on the Somali border with Kenya and Ethiopia. Where there is a risk of infiltration of al-Shabaab fighters into the neighboring countries.

2. Limited Resource

Largely Somalia depends on financial aids from foreign donors. As a country, the Federal Republic of Somalia is one of the top recipients of aid in the world worth over \$55 billion received since 1991 (Anoba, 2017). The surveying and mapping of the Somali boundaries was delayed because of lack of funds. For instance, the neighboring state of Kenya will spend more than Sh5.6 billion over the next five years to carry out survey, mapping and maintenance of its international boundaries. President Uhuru Kenyatta of Kenya reiterated that, “The challenges that the country is facing are ambiguous description of boundaries, inadequate funding for the survey, capacity building and the fact that Kenya cannot carry out surveys alone but must do so in liaison with her neighbors.”(Mutai, 2014)

3. Irredentism or Pan-Somalism

Gokcek (2011), defined irredentism conflicts as those that occur when an ethnic group inside a sovereign state attempts to unite with its kin living as a minority in a neighboring country or countries, by making claims on the adjacent territories where these same people are concentrated. Pan-Somalism or 'Great-Somalia' is a policy adopted in post-independence by the Republic of Somalia to unite Somali ethnic groups that had been divided into five colonial zones or by state borders. Somalia was the only Sub-Saharan country that rejected the colonial borders even after the OAU/AU declaration (Mohamed, 2006) to accept the imperfect borders drawn by the colonial powers. To reinforce commitment of unification, the independence constitution of Somalia provided that the republic of Somalia shall promote by legal and peaceful means, the union of Somalia territories (The constitution of Somalia, 1960).

Irredentism tendencies are one of the most controversial factors preventing Somalia to demarcate its territorial boundaries. The lack of clear definition in international boundaries between Somalia and its neighboring states has been one of the main reasons for territorial disputes and conflicts. Somalia does not recognize the all boundaries delimited by the colonial powers because of irredentism tendencies which still remain challenge to the demarcation of its boundaries. However, the issue of irredentism is still alive which was the reason why Somalia struggled to regain control of Ogaden region in Ethiopia 1977 largely inhabited by Somalis. This attempt was not successful and Somalia was defeated as a result of the intervention of Ethiopia's allies, the Soviet Union and Cuba that assisted Ethiopia to regain control over the said region.

On April 4th, 1988, after several preparatory meetings, Ethiopia and Somalia signed a joint communiqué that supposedly ended the Ogaden conflict. Almost 30years after the war between Somalia and Ethiopia over Ogaden region currently located in Ethiopia, the then president Hassan Shiekh Mohamud became the first sitting Somalia president to pay a visit to the disputed Ogaden in Ethiopia on 11th August 2016. Consequently, this visit led to mixed reactions among various Somali communities and also signified Somalia's commitment to admit that the disputed Ogaden region is now officially an Ethiopian territory. This proved that irredentism was defeated in that respect. Nonetheless, the irredentism is still an obstacle in Somalia's bid to demarcate its boundary.

4. Lack of National Boundary Commission

Although not yet officially demarcated, Somalia's boundaries were spelt out under Article 7 of the constitution of Somalia. The same Constitution also advocates for the establishment of Boundaries and Federation Commission with the sole aim of resolving Somalia's internal boundary disputes excluding the main and biggest disputes over international boundaries which should be resolved first. (Constitution of Somalia, 2012). Thus, the Constitution of Somalia is silent whether this Commission has the mandate to delimit international boundaries. Although, the Constitution sought to resolve internal boundary disputes than international boundaries yet, in the absence of clear demarcation of Somalia's international borders some of its neighbors are claiming parts of the country's territory. Hence, without clear physical demarcation of the boundaries, any discovery of valuable minerals in the border zones such as crude oil would most likely result into serious border clashes. While the demarcation of the borders is a costly venture, it is vital for safeguarding the territorial integrity of Somalia as a sovereign state.

5. Lack of Capacity Building

Currently, Somalia lacks sufficient trained personnel on border demarcation as well as contemporary border demarcation equipment which delay the boundary delimitation efforts. An international boundary should be referenced to internationally recognized systems and the WGS 84 system. The process of boundary making (delimitation, demarcation and delineation), normally starts by establishing a Joint Committee between states concerned. However, capacity building of border experts which is currently very low needs to be enhanced in order to achieve the desired goal and tackle border issues out of the political battle zone.

General International Law

International boundaries were defined by former colonial powers through a series of treaties with other colonial masters. In several occasions, Somali leaders publically stated that all boundaries which were drawn by colonial powers are considered as false boundaries. Somalia is governed by its constitution as supreme law of the land under article 7 paragraphs 3 it is stated that any international boundary dispute over the territory of the Federal Republic of Somalia shall be resolved in a peaceful and cooperative manner that is in accordance with the laws of the land and international law.

In *Botswana/Namibia Case*, contesting parties requested the ICJ to determine the dispute in accordance with Anglo – German Treaty of July 1890 and the rules and principles of international law. In response, the Court, however, declared that the meaning of principles of international law was not merely confined to interpretation of treaty wordings (Botswana/Namibia, 1999). Similarly, within the expression of Somalia's Constitution 'international law' to resolve border disputes include all doctrines, practice, treaties, customary laws and international law precedents as practiced in other sovereign countries.

It is generally accepted that the sources of international law are listed in the Article 38(1) of the Statute of the International Court of Justice, which provides that the Court shall apply: a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; b) international custom, as evidence of a general practice accepted as law; c) the general principles of law recognized by civilized nations; d) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law (Hugh, 2014).

In Africa, most border disputes are resolved in accordance with the colonial treaties and principles of international law. OAU's framework agreement also makes the same reference under the principle of *uti possidetis*. The meaning of Vienna Convention on Law of Treaties of 1969 sets forth rules governing validity and enforceability of treaties. As a rule, all written treaties are presumed valid and enforceable. The same Convention for instance, provides under Art. 102 of VCLT that all contemporary treaties shall be registered in the U.N. registry, however, it does not invalidate unregistered treaties as well.

Therefore, it is hard, if not impossible, to challenge the binding effect of old treaties. In *Eritrea/Yemen Case*, it was declared that boundary treaties confer title to the territory and “[...] establish an objective territorial regime valid *erga omnes*. (Malcom, 2007). As pointed out in *Libya/Chad Case*, also boundary treaties create a borderline that “[...] will continue even if the treaty in question itself ceases to apply. (Territorial dispute, Libya vs. Chad, 1994). In case of boundary conflict, boundary treaties are the most important evidences justifying an exact location of boundary.

The international law does not only apply to land boundary disputes but also maritime disputes. Since ‘land dominates the sea’ for instance, in the case of the maritime disputes between Somalia and Kenya which led to the filling of a case by Somalia against Kenya at the ICJ, the possible judgment to be passed by the said court must be based on the colonial treaties which are mostly downplayed by many countries dispute the fact that these treaties still prevail in any emerging contemporary land or maritime disputes. (Maritime dispute Somalia vs. Kenya, 2015)

Conclusion

Conclusively, there is no doubt that the challenges concerning delimitation and demarcation of Somalia's boundaries are daunting especially in view of the obvious gaps in resources, technical experts, and the political will required to engage neighboring countries in long term meaningful dialogue. Somali's land territorial boundaries have remained a major source of conflict and instability in the region largely because of their illusive nature and poor delimitation by the colonial masters. Hence, all nations in the region including Somalia should as a matter of urgency start negotiation and dialogue among themselves to resolve all existing land boundary disputes in order to meet the deadline set by the African Union Border Programme (AUBP) that all international boundary disputes should be resolved by 2022. The African Union Border Programme was created in 2007 which was entrusted to clearly defined internationally recognized and locally accepted state borders and are therefore considered to be an important basis for conflict prevention and promoting regional integration.

{ All errors are mine. The views exposed here are entirely my own and not official statements of the Kasmaal Forum in Uganda-Kampala. }

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