

Ethiopia's Quest for Access to the Sea: Historical Realities and Legitimate Claims

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Abstract

Ethiopia's demand for maritime access is rooted in historical ties to the Red Sea and contemporary legal principles governing landlocked states. Geopolitically, the Horn of Africa's strategic waterways have long shaped regional power dynamics, with Ethiopia's loss of direct coastal access after Eritrea's 1993 secession exacerbating its economic and security vulnerabilities. Legally, Ethiopia's claim draws on colonial-era agreements, which recognized its "legitimate need for access to the sea," as well as post-independence '*effectivités*', its sustained administration of ports, including Assab port, prior to 1991. The claim also engages key debates in international law, including the tension between Eritrea's territorial sovereignty under *uti possidetis* and Ethiopia's equitable rights as a landlocked state under UNCLOS and customary law. Critics argue that Eritrea's sovereignty is absolute and that Ethiopia's reliance on Djibouti's ports suffices. However, Ethiopia counters that its historical access to the sea, coupled with the disproportionate economic burden of landlocked status, justifies special arrangements such as shared administration or sovereign easements. The legal justification hinges on doctrines of necessity, equitable access, and the correction of colonial-era disruptions, which fragmented Ethiopia's Red Sea linkages. Proposed solutions (including *lease agreements*, *joint port management*, or *transit corridors*) reflect international practices balancing sovereignty with developmental equity. Ethiopia's pursuit is framed not as territorial revisionism but as a *test case* for reconciling self-determination with the rights of landlocked states. Therefore, resolving this issue requires political dialogue informed by legal precedents and regional stability imperatives.

Keywords: Ethiopia, Red Sea, maritime access, Eritrea, historical rights, *uti possidetis*, landlocked states, geopolitics

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1. Introduction

The Ethiopian People’s Revolutionary Democratic Front (EPRDF) regime, which ascended to power in 1991 through armed struggle, made a widely contested decision to allow Eritrea to secede in 1993.¹ This decision had profound national and regional strategic repercussions. This move led to geographic reconfiguration in the Horn of Africa’s territorial landscape through the creation of an independent Eritrean state. Most critically, it resulted in Ethiopia’s loss of direct access to the Red Sea but a historically integral region that has significantly undermined Ethiopia’s long-term economic and security interests. This shift transformed Ethiopia into a landlocked nation, significantly diminishing its regional maritime influence.²

Acronyms

AU	African Union
ICJ	International Court of Justice
ILC	International Law Commission
ITLOS	International Tribunal for the Law of the Sea
LLDCs	Landlocked Developing Countries
UNCLOS	United Nations Convention on the Law of the Sea
VCLT	Vienna Convention on the Law of Treaties

¹ T Lyons (1996). ‘Closing the Transition: The May 1995 Elections in Ethiopia’ 34(1) *Journal of Modern African Studies* 121.

<https://doi.org/10.1017/S0022278X00055233>

² D Shimelash & TL Megento (2024). ‘Effects of Ethiopia’s Landlocked Status on Ties with Its Neighbours’, 12(1) *African Journal of Political Science* 19, 19.

The loss of maritime access since 1991 remains a deeply contentious issue in Ethiopia's political discourse as both an existential threat to national sovereignty and a legacy of historical injustice. Access to the sea has now officially been invoked by the Ethiopian government as an existential necessity and an urgent national priority.³ This shift comes amid escalating great-power competition and militarization in the Red Sea region, further emphasizing Ethiopia's geopolitical and security vulnerabilities.

The discourse on Ethiopia's maritime access is deeply polarized, reflecting competing historical narratives and geopolitical anxieties. Scholars and commentators advancing the Eritrean position frame Ethiopia's ambitions as irredentist expansionism, leveraging colonial-era treaties and international law to assert threats to sovereignty. Conversely, scholars advocating the Ethiopian position present it as a legitimate historical redress, a strategic necessity for economic survival and national identity.

However, some domestic critics argue the state's maritime rhetoric functions as a diversion from internal crises, exploiting nationalism to bolster internally eroding legitimacy. An in-depth analysis of these polarized perspectives is beyond the scope of this article. Yet, recognizing the issue of Ethiopia's demands to secure access to the sea requires due attention. The core dilemma is not whether Ethiopia should secure access, but how it can achieve this aspiration through legitimate historical and legal grounds.

While various scholarly works, including this article, examine Ethiopia's historical claims in light of comparative experience, legal frameworks, and peaceful pathways, there are scholars who dismiss the issue as irredentist rhetoric. For instance, Gebre H. Tesfagiorgis *et al.*, defend Eritrea's territorial sovereignty, framing Ethiopia's aspirations as revisionist and legally untenable. They invoke principles like *uti possidetis juris*, the sanctity of post-colonial borders, and Article 2(4) of the UN Charter to argue that any Ethiopian claim to ports like Assab or Massawa would contravene international law.

We argue that Ethiopia's stance on maritime access is rooted in evolving international norms that prioritize necessity, equitable development, regional integration, and redress for colonial-era injustices. International norms move beyond rigid territorialism toward principles of necessity and equitable development, as reflected in the United Nations Convention on the Law of the Sea (UNCLOS) Part X.⁴ African Union instruments, particularly the

³ Biruk Terrefe (2025). *Ethiopia's Red Sea Politics: Corridors, Ports and Security in the Horn of Africa*, Rift Valley Institute.

⁴ UN (1982) art.125 (UNCLOS: Right of access of land-locked States).

Constitutive Act and the 2050 Africa's Integrated Maritime Strategy, frame maritime access as a regional integration and development imperative, thereby legitimizing cooperative remedies rather than unilateral revisionism.⁵

Moreover, post-colonial legal discourse acknowledges that colonial boundary arrangements created structural injustices, and international law provides corrective frameworks, through transit regimes, special agreements (shared administration or sovereign easements), and equitable principles of maritime delimitation, that affirm Ethiopia's legitimate right to negotiate meaningful Red Sea access.⁶ Post-colonial border arrangements, particularly in Africa, are increasingly scrutinized for perpetuating economic exclusion. The rigid application of *uti possidetis juris* must thus be balanced against principles of equity, interdependence, and the right to development, now gaining traction in international law. Ethiopia's landlocked status, following Eritrea's 1993 secession, raises moral and legal concerns, given its population of 130 million and reliance on transit routes.

Ethiopia's legal stance on access to the sea is grounded in established principles of international law and regional cooperation rather than revisionism. While the principle of *uti possidetis juris* maintains post-colonial boundaries, its equitable application recognizes that historical arrangements should not perpetuate injustices that deny a landlocked state vital access to the sea.⁷ Under the Vienna Convention on the Law of Treaties (VCLT), fundamental change of circumstances cannot terminate boundary treaties; however, the International Law Commission (ILC) clarifies that such treaties may be contextually interpreted to accommodate evolving conditions and equity considerations.⁸

Similarly, UNCLOS embodies landlocked states' rights to access and transit, reflecting customary international law that is relevant even to non-signatories like Eritrea.⁹ These norms converge with the African Union's emphasis on regional integration and shared economic development, which, as a consistent practice, can be viewed as contributing to norm-generating

⁵ African Union (2000), *Constitutive Act*; AU (2012) *2050 Africa's Integrated Maritime Strategy*.

⁶ UNGA Res. 1514 (1960), (Decolonization); ICJ *North Sea Continental Shelf* (1969).

⁷ See *uti possidetis juris* principle, as applied in post-colonial African boundary jurisprudence.

⁸ Vienna Convention on the Law of Treaties (1969), Art. 62(2)(a); International Law Commission, *Commentaries on the Draft Articles on the Law of Treaties* (1966–1969).

⁹ United Nations Convention on the Law of the Sea (1982), Arts. 69, 125.

customary law in Africa.¹⁰ Ethiopia's claim thus rests on a legally and historically grounded framework, seeking to reconcile inherited colonial boundaries with contemporary imperatives of justice, development, and regional solidarity.

While Ethiopia's landlocked status theoretically allows it to negotiate maritime access through several neighboring coastal states, this article focuses on Eritrea, particularly the Assab question, because it presents the most complex nexus of historical claims, sovereignty disputes, and unsettled legal questions in international law. Unlike Ethiopia's current arrangements with Djibouti or potential access through Somalia, Kenya, and Sudan, the Eritrean case is inseparable from the legacy of the Ethiopia–Eritrea federation, the subsequent secession under the principle of self-determination, and the contested demarcation processes following the Eritrea–Ethiopia Boundary Commission's decisions.

The issue of Assab is not merely a matter of economic access but implicates fundamental doctrines such as *uti possidetis juris*, territorial integrity, and the legality of revisiting post-colonial borders. Its enduring salience lies in the fact that Ethiopia's claim to Assab touches upon some of the most sensitive aspects of African statehood, secession, and international boundary law, thereby making the Eritrean case uniquely significant compared to Ethiopia's alternative maritime options.

This article examines Ethiopia's historical and legal claims, while also balancing its developmental needs, strategic security interests, and regional stability concerns. In light of these grounds, it critically analyzes historical dynamics and conventional legal objections to Ethiopia's quest, drawing on contemporary international legal frameworks and scholarly discourse. It argues that international law is not static but evolves in response to changing geopolitical, humanitarian, and developmental realities, and that Ethiopia's quest for access to the sea should be assessed within this dynamic context.

2. The Historical Roots of Ethiopia's Loss of Sea Access

Ethiopia's loss of maritime access is a significant historical and geopolitical issue in the Horn of Africa, shaped by colonial ambitions, warfare, and evolving global dynamics. Ethiopia's connection to the sea dates back to the 'Axumite Empire', which was engaged in trade with coastal regions. During

¹⁰ African Union Constitutive Act, Art. 3(c); Article 4(2)(k) of the Treaty Establishing the African Economic Community (1991).

the medieval period, kingdoms like the Abyssinian Empire utilized ports along the Red Sea to facilitate commerce.¹¹

Strategically located on the Red Sea coast, Assab became Italy's first colonial possession in Africa during the second half of the 19th century. The possession started (in November 1869) as a contract to buy land by an Italian priest Giuseppe Sapeto (1811-1895), acting on behalf of the Italian shipping company (Rubattino) from local Afar rulers. Between 1869 and 1882, the initial private possession of land expanded through the Assab coastal strip, thereby marking Italy's initial presence on the Ethiopian Red Sea coast.

Before the Italian control, Assab was governed by the Afar Sultanate of Aussa, although the waning Ottoman hegemony was still present on both sides of the Red Sea littorals, complicating the historical claim to the territory.¹² During the 19th century, the Ethiopian emperors strongly resisted foreign encroachment along the Red Sea coast. Emperor Yohannes IV and his general Ras Alula Aba Nega notably battled Italian forces along the Red Sea coast, asserting that "Ethiopia's natural frontier is the Red Sea".¹³ During Italy's colonial rule over the territory that it designated as Eritrea (1890–1941), Assab was a free-trade zone to facilitate Ethiopia's maritime needs, linked by significant road infrastructure to Ethiopia's interior.

The late 19th century marked a transformative era due to the "Scramble for Africa". European powers aggressively expanded their empires to the Red Sea area in particular and to the entire Africa in general. Italy, a relatively nascent nation-state, sought to establish a colonial foothold in the Horn of Africa, particularly targeting Ethiopia. Italian interest began in the 1860s, culminating in the Treaty of Wuchale (1889), which recognized Italy's claims over Eritrea.¹⁴ This treaty, signed between Emperor Menelik II of Ethiopia and the Italian envoy Count Pietro Antonelli on May 2, 1889, aimed to foster a lasting relationship between the two countries. However, a discrepancy between the Amharic and Italian versions of the treaty led to a significant misunderstanding, particularly regarding Article 17. The Italian side interpreted the article as acceptance of Italy's protectorate over Ethiopia,

¹¹ S.C.H. Munro-Hay (1991). "The Coinage of Shabwa (Hadhramawt), and Other Ancient South Arabian Coinage in the National Museum, Aden", *Syria* 68: 393–418.

Alula Pankhurst (2002). "Research on Ethiopian Societies and Cultures during the Second Half of the Twentieth Century" *Journal of Ethiopian Studies* 35(2) 1–60.

¹² Tekeste Negash (1987). *Italian Colonialism in Eritrea: Policies, Praxis and Impact*, Almqvist & Wiksell International.

¹³ Bahru Zewde (2002). *A History of Modern Ethiopia, 1855–1991*, Ohio University Press.

¹⁴ Ibid

while the Ethiopian side viewed the article as implying that Ethiopia may use Italy's diplomatic facilitation for Ethiopia's engagement with other European nations.¹⁵

When Emperor Menelik II repudiated the treaty in 1893, Italy attempted to enforce its claim of protectorate through military means, leading to Ethiopia's decisive victory at the Battle of Adwa in 1896.¹⁶ This marked a critical turning point, thwarting Italian ambitions and reinforcing Ethiopia's sovereignty. However, that victory did not restore control over Eritrea, leaving Ethiopia landlocked and significantly hampering its international trade capabilities.¹⁷ Emperor Menelik II explicitly stated, "I cannot consent that the sea frontier, which naturally belongs to Ethiopia, be entirely taken away by Italy," illustrating Ethiopia's enduring maritime claim.¹⁸ Italy's subsequent consolidation of control over Eritrea, which was formally declared a colony in 1890, shifted regional power dynamics. Despite Ethiopia's triumph at Adwa, the annexation of Eritrea severed its direct access to the sea, constraining its economic development.¹⁹

Although Ethiopia was never fully colonized, it suffered significant territorial losses to Italian forces both before and after the Battle of Adwa. The severance of direct access to the Red Sea, primarily due to Italy's colonization of Eritrea, has had lasting implications for Ethiopia's economic and geopolitical landscape, shaping its historical trajectory and contemporary challenges.

The military victory at Adwa could not prevent Ethiopia from losing key territory and access to the sea. Eritrea remained an Italian colony until 1945. However, following World War II, the Allied powers recognized Ethiopia's maritime needs during post-war diplomatic negotiations. Even Italy acknowledged Ethiopia's legitimate claims, suggesting frontier adjustments or establishing special economic zones at Assab and Massawa.²⁰ This international recognition led to the UN-backed federation in 1952 (UN

¹⁵ Getachew Metaferia (2024). *Battle of Adwa*, Oxford Research Encyclopedia of African History, Oxford University Press
<https://doi.org/10.1093/acrefore/9780190277734.013.1305> Accessed 2 July 2025.

¹⁶ Ibid.

¹⁷ Bahru, *supra* note 13, at 5.

A Brenner (2024). *The Prolonging Abyssinian Crisis* (Doctoral dissertation).

¹⁸ Ibid.

¹⁹ Tekeste, *supra* note 12, at 5.

Brenner, *supra* note 17, at 5.

²⁰ Christopher Clapham (2008). *Africa and the International System: The Politics of State Survival*, Cambridge University Press.

Resolution 390(V)), explicitly designed to address Ethiopia's maritime rights.²¹ Assab subsequently became Ethiopia's critical maritime gateway, handling its foreign trade by the 1960s. Ethiopia invested significantly in Assab, constructing extensive port facilities, major roads, and an oil refinery established in 1967 (with a production capacity of approximately 500,000 tons annually), alongside significant naval installations.²²

Emperor Haile Selassie persistently sought Eritrea's reunification, testifying before the United Nations in 1949: "Eritrea has historically been a province of Ethiopia, and its people are our brothers." His diplomatic efforts resulted in the 1952 federation that explicitly recognized Ethiopia's legitimate maritime rights. Dissatisfied with continued constraints, Emperor Haile Selassie had the Eritrean autonomy dissolved in 1962, integrating Eritrea fully into Ethiopia.²³ In retrospect, we can see that unitary incorporation, rather than sustaining the federation, brought about resistance and created opportunities for external forces that have geopolitical interests in destabilizing Ethiopia.

This unilateral abrogation of the federation in 1962, leading to Eritrea's incorporation as a province of Ethiopia, sparked widespread dissent and prompted armed resistance for independence. The Derg regime (1974–1991) maintained Eritrea's unitary integration, explicitly rejecting separatism as illegal. The Derg regime conducted military operations, asserting that Eritrea is an integral part of Ethiopia. Assab and Massawa were, therefore, under Ethiopian governance from 1952 to 1993 and remained the symbol of Ethiopia's aspirations for maritime access.

The final blow to Ethiopia's maritime access came with Eritrea's secession in 1991. The two ethno-nationalist forces, Eritrean People's Liberation Front (EPLF) and Tigray People's Liberation Front (TPLF), the dominant armed political actors of the time, had successfully overthrown the military regime and assumed state power in Asmara and in Addis Ababa, respectively, in May 1991. The two armed groups –EPLF and TPLF– formed a strong alliance to dismantle the military regime in Addis Ababa. Consequently, the prolonged separatist war in the Horn of Africa ended in 1991.

The EPLF established the Provisional Government of Eritrea (PGE) and rebranded its ruling party as the People's Front for Democracy and Justice

²¹ Tekeste, *supra* note 12.

²² Eyal Chorin (2000). *The Eritrea–Ethiopia Conflict: Anatomy of a Media War*, Cambridge University Press.

²³ See, Bahru Zewde, *supra* note 13.

(PFDJ) in 1994.²⁴ Meanwhile, the TPLF took control of Addis Ababa, under a coalition of ethnic organizations framed as the Ethiopian Peoples' Revolutionary Democratic Front (EPRDF). This coalition ascended to power and established a Transitional Government of Ethiopia (TGE), which formally accepted a referendum to address Eritrea's quest for secession, in which only Eritreans were allowed to vote. In April 1993, amid the absence of a legitimate democratically elected Ethiopian government, an internationally supervised referendum led to Eritrea's independence.²⁵ Thus, Ethiopia's access to the sea through Assab and Massawa was entirely severed.

Eritrea's secession from Ethiopia in 1993 is often cited as a prime example of consensual disintegration in a turbulent region. Some authors argue that Eritrea gained independence through a nearly unanimous plebiscite, under international supervision, with the formal consent of the parent state, and was swiftly recognized by the global community.²⁶ This narrative aligns, procedurally, with the archetype of peaceful and legitimate state creation. However, viewed retrospectively, the procedural gaps in Eritrea's secession raise important normative and jurisprudential questions. Factors such as the reliance on transitional authority, absence of constitutional safeguards or representative legitimacy, and the polarized ideological global politics during the post-Cold war disintegration of the Eastern Bloc (that adversely affects the objectivity of international supervision) are challenges in view of contemporary expectations where significant territorial and constitutional decisions require robust democratic validation. Thus, Eritrea's secession compels a broader inquiry into whether an EPRDF-led transitional government can have the authority and constitutional legitimacy to effect irrevocable changes to national territory.

International law balances two fundamental principles: the right of peoples to self-determination and the principle of territorial integrity. Both are enshrined in the United Nations Charter and reiterated in the 1970 Declaration on Principles of International Law Concerning Friendly Relations among States. The declaration asserts that "all peoples" have the right to determine

²⁴ Aregawi Berhe (2008). *A Political History of the Tigray People's Liberation Front (1975–1991): Revolt, Ideology and Mobilisation in Ethiopia* (PhD Thesis, Vrije Universiteit Amsterdam).

²⁵ Terrence Lyons (1996). *The Eritrean Struggle for Independence: Domination, Resistance, Nationalism, 1941–1993*, African Studies Centre.

²⁶ Solomon M. Weldehaimanot (2010). *Redesigning the Map of Eritrea and Ethiopia*, SSRN Electronic Journal, SSRN No 1720746.

Aklilu Abraham (2005). 'The Eritrean Independence Referendum: A Case of Successful Secession' 4 *African Journal of Political Science* 45.

their political status while emphasizing the inviolability of state boundaries, except in exceptional cases such as decolonization or severe systemic oppression. Lawful secession thus requires either the sovereign state's consent or a compelling justification rooted in serious human rights violations or a colonial legacy.²⁷ Such secession arises in two distinct contexts: colonial and non-colonial. In colonial settings, people may claim independence without the consent of the sovereign, reflecting the legal principle of self-determination under international law, whereas in non-colonial situations, secession is permissible only under compelling circumstances, such as serious and systematic human rights violations, consistent with the ILC's Draft Articles on State Responsibility.²⁸

The ICJ Advisory Opinion on Kosovo further clarifies that international law does not prohibit unilateral declarations of independence *per se*, yet it does not establish a general right to secession, indicating that legitimacy in non-colonial cases hinges on the presence of substantial violations rather than mere assertion of consent or absence of prohibition.²⁹ Accordingly, the legal framework distinguishes between independence from colonial rule and remedial secession in response to gross human rights abuses. It underlines that lawful secession requires either consent or a contextually justified cause recognized under international jurisprudence.

Eritrea's path initially appeared to respect this balance. Following the fall of the Derg regime in May 1991, the newly established EPRDF-led Transitional Government of Ethiopia (TGE) signed the Addis Ababa Agreement with the Eritrean People's Liberation Front.³⁰ The Addis Ababa Agreement committed both parties to a United Nations-supervised referendum on Eritrea's independence, scheduled for 1993. By April 1993, the plebiscite had occurred, claiming 99.8 percent votes in favor of independence. International observers declared the process free and fair, and within days, the Transitional Government of Ethiopia formally accepted the results. The subsequent Ethiopia-Eritrea Friendship and Cooperation

²⁷ Mahder Nesibu (2025). "Ethiopia's Transitional Government and the Questionable Birth of Eritrea: Authority without Mandate?" (12 May 2025) *Horn Review*, online.

²⁸ International Law Commission, *Draft Articles on State Responsibility*, Art. 40, Yearbook of the International Law Commission, 2001, Vol. II, Part Two.

²⁹ International Court of Justice, *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, I.C.J. Reports 2010, p. 403.

³⁰ Lyons, *supra* note 25, at 8.

Agreement affirmed mutual borders and pledged peaceful relations, with Eritrea admitted to the United Nations on May 28, 1993.³¹

By conventional metrics, this sequence of events demonstrated adherence to informal criteria for statehood: effective control, consent of the parent state, and broad international recognition, complementing the Montevideo Convention's formal criteria of defined territory, population, and government. The question is whether such determinations should await the establishment of a permanent constitutional order and be endorsed through inclusive deliberative processes and representative institutions. The legal façade behind Ethiopia's loss of Eritrea evokes critical questions regarding the authority of the Ethiopian state at the moment it ceded sovereignty over a significant portion of its territory.

Firstly, the Transitional Government lacked a mandate derived from an electoral process, although it was internationally acknowledged as Ethiopia's *de facto* authority.³² Its Council of Representatives was not formed through a fully participatory democratic exercise. Even though elections were held in mid-1992, many opposition parties abstained, contesting the fairness of the process. Consequently, the government that sanctioned the Eritrean referendum did not possess a definitive electoral mandate from the broader Ethiopian populace.³³

Secondly, the procedural exclusivity of the referendum restricted voting only to the Eritrean residents. This excluded the vast majority of Ethiopian citizens who stood to lose not just peripheral territory, but a region of profound historical significance. In post-authoritarian contexts, it is typically expected that a national referendum or a supermajority vote within a representative legislature precedes fundamental changes³⁴ to national borders.³⁵

Thirdly, although Article 2(c) of the Transitional Charter acknowledged the principle of self-determination, including the right to secession, it failed to provide a detailed procedural framework.³⁶ The TGE's commitment to honor the referendum's outcome was grounded more in political pursuits rather than any binding constitutional or statutory mechanism. It was not until

³¹ Tekeste, *supra* note 12, at 5.

³² Minase Haile (1994). 'The Transitional Government of Ethiopia: Challenges and Prospects' 12 *Journal of Ethiopian Studies* 27.

³³ Mahder, *supra* note 27, at 8.

³⁴ Minase, *supra* note 32, at 9.

³⁵ Clapham, *supra* note 20, at 6.

³⁶ Bereket Habte Selassie (1997). 'Self-Determination in Principle and Practice: The Ethiopian–Eritrean Experience' 29 *Columbia Human Rights Law Review* 91.

the 1995 Constitution that Ethiopia formalized a legal procedure for secession, requiring a two-thirds vote in the state council of the region seeking to secede, followed by a regional referendum.³⁷ Had these safeguards been in place in 1993, they might have lent greater legitimacy and clarity to the Ethiopian government's consent. In this context, the "consent" extended by the Transitional Government of Ethiopia appears more as an expression of provisional authority than of settled constitutional legitimacy.³⁸

This fragility distinguishes Eritrea's case from other instances of post-Cold War disintegration. The dissolution of Czechoslovakia, known as the "Velvet Divorce," was achieved through mutual parliamentary resolutions by elected representatives.³⁹ South Sudan's independence in 2011 followed a carefully negotiated Comprehensive Peace Agreement (CPA), ratified by an elected Sudanese government and complemented by a monitored referendum. In contrast, Ethiopia's acquiescence to Eritrean independence occurred before the establishment of a permanent constitutional framework or the consolidation of a democratically legitimate central government.

The notion that *de facto* control and international recognition suffice for legitimacy may have prevailed in the early 1990s, but it now conflicts with the growing emphasis on constitutionalism, popular sovereignty, and legal formalism in modern statecraft. International law has long adhered to the principle of effectiveness in matters of statehood: once a political entity meets the factual criteria for statehood and garners recognition, questions of procedural legitimacy tend to fade.⁴⁰

Eritrea's path to statehood was largely peaceful, effective, and broadly recognized. However, the legitimacy of the Ethiopian government's consent to this independence remains subject to principled scrutiny. This consent, granted during the transitional period, lacked the procedural and democratic rigor typically expected for foundational decisions, indicating its contextual limitations. Ethiopia's Transitional Government (1991–1995) controversially accepted Eritrea's independence without securing explicit maritime

³⁷ Tesfa Bihonegn (2015). "Federalization with a Constitutional Guarantee to Secession: Controversies, Paradoxes and Imponderables in Ethiopia" *Regional and Federal Studies* 25(1), 45–70.

³⁸ Simon M. Weldehaimanot, *supra* note 26.

³⁹ Aleksandar Mrđa, "The Dissolution of Czechoslovakia: An Example of the "Velvet Divorce"" (n.d.) <https://www.academia.edu/3835191> Accessed 2 July 2025.

⁴⁰ Gerald M. Cohen (2012). *The Concept of Statehood in International Law: Criteria, Recognition and Consequences*, Oxford University Press.

guarantees.⁴¹ This conditional recognition of Eritrean secession relied on implicit agreements regarding Ethiopia's continued access to the sea, a decision criticized by scholars who consider the Ethiopian stance as politically expedient rather than a legitimate transfer of Ethiopia's historical maritime rights.⁴²

Ethiopia's loss of crucial territory and access to the sea remains a profound concern for its citizens, fuelling ongoing conflicts and geopolitical tensions in the Horn of Africa. National sentiments regarding this loss are rooted in a perceived conspiracy involving agreements made between the rebel factions, the Tigray People's Liberation Front (TPLF) and the Eritrean People's Liberation Front (EPLF) during their alliance against the Derg regime.

The transitional government's recognition of Eritrea's independence solidified Ethiopia's landlocked status, a decision fraught with controversy for two main reasons. *First*, critics argue that the EPRDF interim government lacked the legal authority to implement irreversible changes to national borders. Such significant alterations should ideally occur within a permanent constitutional framework, developed through inclusive, deliberative processes that engage representative institutions.

Second, the interim government should have prioritized securing Ethiopian access to the port of Assab or negotiating a lasting agreement before accepting Eritrea's secession. This oversight is viewed as a critical misstep, marking a definitive loss of Ethiopia's maritime access and exacerbating regional tensions. Political leaders of the time clarified that it was a conscious political choice rather than an oversight. Prime Minister Meles Zenawi repeatedly mentioned that Eritrea's independence was recognized to unconditionally foster peace and stability in the Horn of Africa, arguing that "tying independence to port access would have meant denying Eritrea's right to self-determination."⁴³ The following sections examine the legal implications of Ethiopia's aspiration for access to the sea.

⁴¹ 'From Lost Cause to National Agenda: Ethiopia's Bold Move to End Landlocked Isolation and Secure a Coastal Gateway' (Addis Standard, 10 March 2025)

⁴² Fikremarkos A. Tekuya (2024). "Swimming against the Current: Ethiopia's Quest for Sea Access under International Law", *Journal of Territorial and Maritime Studies*, Vol. 11, No. 1, pp. 45–69.

⁴³ Tekeste Negash & Kjetil Tronvoll (2000), *Brothers at War: Making Sense of the Eritrean-Ethiopian War* (Oxford: James Currey, pp. 32–35; see also Bereket Habte Selassie (2011), *Wounded Nation: How a Once Promising Eritrea was Betrayed and its Future Compromised*, Trenton: Red Sea Press, pp. 87–90.

3. Misapplication of *Uti Possidetis Juris*: Legal Rigidity v. Equitable Adjustments

The rigid invocation of *uti possidetis juris* in the context of the Eritrea-Ethiopia border dispute, particularly based on the 1964 OAU (Organization of African Unity) Cairo Declaration, reflects a legal formalism that ignores both the equitable objectives of international law and the dynamic nature of African territorial relations. While *uti possidetis juris* was originally designed as a tool for preserving peace during decolonization, its misuse as a perpetual bar to boundary negotiation undermines more pressing legal principles, including the right to access natural resources, regional stability, and the principle of equity. Proponents of strict *uti possidetis* argue that rigid adherence to colonial borders prevents destabilizing territorial claims and preserves post-colonial sovereignty.⁴⁴ They contend that any deviation risks opening a “Pandora’s box” of competing historical or ethnic claims. However, this perspective underestimates the capacity of international law and regional bodies to mediate equitable adjustments while maintaining stability.

First, the International Court of Justice (ICJ) in the *Burkina Faso v. Mali* case (1986) clarified that the main objective of *uti possidetis* was to prevent instability at the moment of independence, not to create inflexible boundaries for eternity. As the Court noted: “the essence of *uti possidetis* lies in its primary aim of securing the stability of boundaries at the moment of independence and not in immutably preserving colonial borders against all subsequent adjustment”.⁴⁵ Moreover, the ICJ emphasized that such borders are subject to modification through peaceful means and mutual agreement, a fact often ignored by advocates of a strict interpretation. On the contrary, it can be argued that even peaceful modifications risk setting destabilizing precedents, particularly in regions with unresolved territorial disputes.⁴⁶ Yet, this objection assumes that all adjustments are inherently contentious, disregarding cases where mutual agreements have successfully resolved disputes without conflict, such as the 1994 Egypt-Sudan border demarcation.

⁴⁴ Theodore Christakis & Aristoteles Constantinides (2018). *Territorial Disputes in the Context of Secessionist Conflicts*, in Marcelo G. Kohen and Mamadou Hébié (eds), *Research Handbook on Territorial Disputes in International Law* (Edward Elgar Publishing <https://doi.org/10.4337/9781782546870.00019>)

⁴⁵ International Court of Justice (ICJ), *Frontier Dispute (Burkina Faso/Republic of Mali)*, I.C.J. Reports 1986, p. 554.

⁴⁶ Michael Farrell (2012). ‘*Manufacturing Territorial Integrity with the International Court of Justice: The Somaliland-Puntland Dispute and Uti Possidetis*’ 11 *Washington University Global Studies Law Review* 817

Second, the African Union Constitutive Act provides for a more balanced view. While Article 4(b) reaffirms the respect for colonial borders, Article 4(f) endorses “the right of Member States to peacefully alter borders” through mutual consent and cooperation.⁴⁷ This dual provision suggests that the African Union does not regard colonial borders as untouchable but rather as default lines subject to negotiated change when required by equity or necessity. Some scholars argue that Article 4(f) is too permissive and could encourage unilateral secessionist movements.⁴⁸ However, the African Union’s cautious approach to border changes, evidenced by its reluctance to recognize breakaway regions like Somaliland, demonstrates that it balances flexibility with a commitment to regional stability.

Third, South Sudan’s independence in 2011 involved the redrawing of borders previously defined by *uti possidetis juris*, and it demonstrates that African states and the African Union (AU) recognize the need for pragmatic adaptation. The AU recognized the new state despite colonial lines,⁴⁹ reflecting a precedent that *uti possidetis juris* can be reinterpreted to accommodate emerging realities, including self-determination and political agreements. However, there are arguments that consider South Sudan’s case as an exception due to prolonged conflict and international pressure.⁵⁰

Nevertheless, the AU’s endorsement still establishes that *uti possidetis* is not an absolute principle but one that can yield to compelling circumstances. The case of South Sudan’s independence in 2011 shows that *uti possidetis juris* is not absolute, as the AU endorsed a negotiated settlement that departed from colonial boundaries.⁵¹ While Eritrea’s statehood does not neatly fall under *uti possidetis*, since it emerged through secession rather than decolonization, its independence could have been better secured through

⁴⁷ African Union, *Constitutive Act of the African Union* (2000), available at: <https://au.int> (accessed 2 July 2025).

⁴⁸ Freddy D Mnyongani (2009). “Between a Rock and a Hard Place: The Right to Self-Determination versus Uti Possidetis in Africa”, *Potchefstroom Electronic Law Journal* <https://hdl.handle.net/10520/EJC24673> Accessed 18 July 2025.

⁴⁹ Solomon A. Dersso (2012). *Perspectives on the Rights of Minorities and Indigenous Peoples in Africa*, Pretoria University Law Press.

⁵⁰ Solomon A. Dersso (2012). *International Law and the Self-Determination of South Sudan* (ISS Africa Paper) <login ISS Africa> accessed 18 July 2025.

⁵¹ Makau Mutua (1995). “Why Redraw the Map of Africa: A Moral and Legal Inquiry,” *Michigan Journal of International Law* 16, no. 4: 1113–1176.

negotiated arrangements similar to the Comprehensive Peace Agreement that guided South Sudan.⁵²

Finally, international law, including the principles enshrined in the Charter of the United Nations, prioritizes peace, justice, and human development. A rigid application of *uti possidetis* that hinders access to vital resources or perpetuates historical injustices would contravene the UN Charter's purpose of promoting peaceful coexistence and development.⁵³ Shaw contends that "*Uti possidetis* cannot be used to override legitimate concerns of territorial equity and fundamental human needs."⁵⁴ A counterargument posits that equity is too subjective a standard, risking arbitrary or politically motivated border changes.⁵⁵ However, international legal frameworks, including ICJ jurisprudence, provide structured mechanisms to assess equitable claims that can enable adjustments grounded in the law rather than political expediency.

4. Article 2(4) of the UN Charter: Misused to Block Dialogue

Some legal scholars who support Eritrea's position argue that Ethiopia's assertions regarding access to the port of Assab amount to a violation of Article 2(4) of the United Nations Charter, which prohibits the threat or use of force against the territorial integrity or political independence of any state. Critics contend that even rhetorical assertions framed in existential terms could create an atmosphere of coercion, potentially undermining the spirit of Article 2(4). In his legal-moral critique, Berhane systematically rebuts Ethiopia's strategic, demographic, and geographic claims to Assab, showing how such "existential framing" lacks legal basis and may fuel coercive pressure, even if military force is absent, thus undermining the spirit of territorial integrity.⁵⁶

While this provision undoubtedly represents a cornerstone of international law, its application to Ethiopia's position is legally and factually inappropriate. Ethiopia has neither declared war nor engaged in any form of military aggression against Eritrea. Ethiopia's official statements, though arguably assertive and framed within the context of national survival, remain

⁵² Alex de Waal (2009). "Mission without End? Peacekeeping in the African Political Marketplace," *International Affairs* 85, no. 1: 99–113.

⁵³ *Charter of the United Nations*, 1945, Arts 1 and 55.

⁵⁴ Malcolm N Shaw (1996). "The Heritage of States: The Principle of *Uti Possidetis* Juris Today", *British Yearbook of International Law*, vol 67, 76.

⁵⁵ Thomas D Musgrave (1997). *Self-Determination and National Minorities* (Cambridge University Press, 145.

⁵⁶ Biniam Berhane, 'The Case of Assab: A Legal and Moral Rebuttal to Ethiopia's Claim Over Eritrean Sovereign Territory' (Medium, 27 March 2025).

within the bounds of political discourse rather than constituting a threat of force under international law.⁵⁷ Without evidence of military mobilization, aggressive maneuvers, or explicit war plans, it is legally unsound to classify political expressions as a breach of Article 2(4).

However, some scholars caution that expansive interpretations of ‘threat’ under Article 2(4) could encompass not only explicit military ultimatums but also implicit pressures arising from geopolitical posturing.⁵⁸ In interpreting Article 2(4), international law demands a high threshold for what constitutes a ‘threat.’ Mere rhetorical expressions of existential interest, especially by a landlocked state advocating for its economic survival, do not rise to the level of prohibited threats unless accompanied by specific, credible, and imminent plans of military force.⁵⁹ Similarly, international jurisprudence makes a clear distinction between political expressions and actual conduct that would trigger the prohibition under Article 2(4).⁶⁰ Therefore, in the absence of any tangible military preparation or coercive acts, Ethiopia’s call for access to the sea falls within the realm of legitimate political communication that does not violate international peace or Eritrea’s sovereignty.

Ethiopia’s historical conflicts with Eritrea, including the 1998-2000 border war, can lend a more ominous tone to its current demands, raising legitimate concerns about regional stability.⁶¹ Yet, Ethiopia’s position is firmly grounded in Article 33 of the UN Charter, which obliges states to resolve disputes through peaceful means such as negotiation, mediation, arbitration, or judicial settlement.⁶² Ethiopia has consistently framed its position as a call for regional dialogue and mutual understanding, not as a unilateral demand or coercive action. The government has repeatedly stressed the economic and existential imperative for sea access, advocating for diplomatic engagement rather than confrontation. As Ruys explains, articulating national needs and calling for dialogue, even in strong terms, does not equate to unlawful behavior under the

⁵⁷ Christine Gray (2018). *International Law and the Use of Force*, 4th ed. (Oxford University Press).

⁵⁸ *Id.*, 33.

⁵⁹ Yoram Dinstein (2017). *War, Aggression and Self-Defence*, 6th ed., Cambridge University Press,

⁶⁰ Albrecht Randelzhofer & Georg Nolte (2002), “Article 2(4)” in Bruno Simma (ed.), *The Charter of the United Nations: A Commentary*, 2nd ed., Vol. 1 (Oxford University Press, pp. 117–138

⁶¹ Kjetil Tronvoll (2020). *The Eritrea-Ethiopia Border Conflict and the Algiers Agreement: Peacemaking or Pausing the War?* (International Policy Institute

⁶² *Charter of the United Nations*, 1945, Art. 33.

Charter.⁶³ Instead, it reflects the kind of political bargaining that is not only permitted but encouraged under international law.

Some legal experts caution that while peaceful dispute resolution is paramount, the framing of Ethiopia's demands could still be perceived as creating an imbalance in negotiations, particularly given the power asymmetry between the two states.⁶⁴ The ICJ has also consistently underscored the primacy of peaceful settlement mechanisms in international relations. The ICJ promotes the interpretation of the UN Charter in a way that fosters diplomacy and discourages the escalation of disputes.⁶⁵ From this perspective, Ethiopia's request for access to the sea is aligned with the spirit and letter of Article 33, reinforcing its legal credibility. Such a request, particularly when it references historical treaties and mutual economic interests, must be understood as an appeal for constructive engagement, not as a belligerent act.

There are arguments that Ethiopia's reliance on historical treaties does not override contemporary sovereignty norms and that any negotiation must fully respect Eritrea's territorial integrity.⁶⁶ Yet, Ethiopia's statements regarding access to the port of Assab, while politically charged, are well within the permissible boundaries of international law. They do not violate Article 2(4) of the UN Charter, as they lack any demonstrable intent or action that could be interpreted as a use or threat of force. Instead, they reflect a legitimate expression of existential concern by a landlocked state seeking redress and cooperation through lawful and peaceful means. This underscores Ethiopia's adherence to international norms and its consistent advocacy for regional dialogue as the pathway to resolving this vital issue.

⁶³ Tom Ruys (2014). *'Armed Attack' and Article 51 of the UN Charter: Evolutions in Customary Law and Practice*, Cambridge University Press.

⁶⁴ Christopher Clapham (1998). 'The Horn of Africa: State Formation and Decay', 74 *International Affairs* 285, 290.

⁶⁵ Andreas Zimmermann, C Tomuschat, K Oellers-Frahm & CJ Tams. (eds.) (2012). *The Statute of the International Court of Justice: A Commentary*, 2nd ed., Oxford University Press.

⁶⁶ Isaias Teklia Berhe (2016). 'Anomalous or Legitimate Covetousness: Scholarly Echoes of Ethiopia's Claim of Sovereign Right for Access to the Sea under International Law' in *ICES 2016 Proceedings* (College of Arts and Social Science, p. 543.

5. UNCLOS and the Right of Access for Landlocked States

Any reliance on UNCLOS as the basis for Ethiopia's maritime claims must first address the treaty's scope of applicability: rights under Part X bind only those States that are parties to the Convention, unless they also reflect customary international law.⁶⁷ While neither Ethiopia nor some of its coastal neighbors (Eritrea and Sudan) have ratified UNCLOS, the Convention codifies long-standing principles, such as the freedom of transit and the duty of cooperation, that have been consistently reaffirmed in earlier instruments like the 1921 Barcelona Statute and the 1965 New York Convention on Transit Trade of Landlocked States, and thus constitute part of general international law.⁶⁸ Accordingly, Ethiopia's position is not merely a treaty-based plea but rests on a dual foundation: UNCLOS provisions where applicable, and customary law obligations that bind coastal States regardless of treaty ratification.⁶⁹

The argument that admits Ethiopia's right to transit but denies any deeper legal basis for sustained or sovereign access oversimplifies and selectively interprets the UNCLOS, particularly Part X (Articles 124–132). UNCLOS Part X creates a positive and enforceable duty on coastal transit States to guarantee more than token passage for landlocked States such as Ethiopia. The right “of access to and from the sea” under Article 125(1) is framed in mandatory language (“shall have”), and it is explicitly linked to the enjoyment of all other maritime freedoms recognized by the Convention, including the freedom of the high seas.⁷⁰

This provision aims to mitigate the structural disadvantage of landlocked States, and any reading that reduces this provision to a bare, discretionary privilege conflicts with its wording and purpose.⁷¹ Critics argue that UNCLOS does not explicitly grant landlocked States sovereign rights over coastal territories or ports, limiting their claims to transit alone.⁷² However, this narrow interpretation overlooks the Convention's broader aim of equitable

⁶⁷ See Malcolm N. Shaw (2021). *International Law*, 9th ed. (Cambridge: Cambridge University Press, 410–415.

⁶⁸ United Nations, *Statute on Freedom of Transit* (Barcelona, 1921); United Nations, *Convention on Transit Trade of Land-locked States* (New York, 1965).

⁶⁹ See Rüdiger Wolfrum (2012), “Landlocked States,” in *Max Planck Encyclopedia of Public International Law*, Oxford: Oxford University Press.

⁷⁰ United Nations Convention on the Law of the Sea (UNCLOS), 10 December 1982, 1833 UNTS 397, Arts 87, 90.

⁷¹ *United Nations Convention on the Law of the Sea (UNCLOS)*, 1982, Arts 87 and 90.

⁷² Yoshifumi Tanaka (2019). *The International Law of the Sea*, 3rd edn (Cambridge University Press, 81.

access. While UNCLOS does not confer territorial sovereignty, it obligates transit States to facilitate meaningful and non-discriminatory access, as reinforced by subsequent practice.

5.1 Freedom of transit and the obligation of cooperation in good faith

Article 125(3) requires every transit State to “co-operate with the landlocked State” to ensure the efficient movement of persons and goods. The provision makes the conclusion of transit arrangements a bilateral obligation, not a unilateral favour; refusal to negotiate or to maintain reasonable corridor arrangements would amount to a breach of the general duty of good faith in Article 300 and an “abuse of rights”.⁷³ Some scholars contend that transit States retain broad discretion in determining the terms of access, citing the absence of explicit enforcement mechanisms in UNCLOS.⁷⁴ Yet, this view underestimates the role of international dispute resolution bodies, as seen in cases like the *Bay of Bengal Maritime Boundary Arbitration*, where equitable principles were upheld despite textual ambiguities.

5.2 The qualitative dimension of access: Secure, predictable and economically viable

UNCLOS does not confine Ethiopia to whichever port facilities a single neighbor chooses to leave open; it requires that transit be economically practicable. Article 127 prohibits customs duties other than cost-based service charges, and Article 128 expressly encourages “free zones or other customs facilities” in the ports of transit States. Modern corridor agreements, such as the 2002 Ethio-Djibouti Port Utilization Agreement, translate those obligations into detailed institutional mechanisms (technical committees, joint corridor authorities, etc.), illustrating the Convention’s expectation of sustained and institutionalized access.⁷⁵ The contrary argument holds that economic viability is subjective and dependent on the transit State’s infrastructure capacity.⁷⁶ However, Article 125(2) of the UNCLOS explicitly ties access to “the modalities of practical implementation,” implying an

⁷³ Erika Swanepoel (2020). “Access of Landlocked States to the Sea: A Contemporary Analysis under International Law”, *African Journal of International and Comparative Law*, Vol. 28, No. 2, pp. 203–221.

⁷⁴ Dhananjay Sahai & Prashant Khurana (2021). “The Right to Access the Sea and Why India Should Pioneer It”, 53 *UIC J Marshall L Rev* 947, 949.

⁷⁵ United Nations Conference on Trade and Development (UNCTAD), 2003.

⁷⁶ Francis Ng & Alexander J. Yeats (2005). “On the Role of Duty- and Quota-Free Access for LDCs: An Assessment of the WTO Ministerial Decision”, *World Bank Policy Research Working Paper* No 4168, 12.

obligation to adapt facilities to reasonable demand, as supported by the ILC's commentaries on treaty interpretation.

5.3 “Special consideration” for landlocked developing states (Art 131)

Ethiopia's status as both landlocked and a developing country necessitates a heightened level of protection. Article 131 obliges coastal and international organizations to accord “special consideration” in the elaboration and implementation of rules that affect transit. Contemporary commentary stresses that this clause was designed to justify preferential rates, priority berthing and dedicated infrastructure where geographical isolation would otherwise throttle economic development.⁷⁷ Skeptics claim that “special consideration” is non-binding and lacks measurable standards.⁷⁸ However, the UN Office of the High Representative for Least Developed Countries has consistently interpreted this provision as requiring tangible concessions, such as reduced tariffs or infrastructure investments, aligned with the emphasis of the SDGs (Sustainable Development Goals) on reducing inequality.

5.4 Customary support and subsequent practice

The 1921 Barcelona Statute, the 1965 New York Convention on Transit Trade of Landlocked States, and successive UN Programmes of Action for Landlocked Developing Countries (LLDCs) all confirm a customary entitlement of landlocked states to unobstructed transit. Recent scholarship argues that sustained corridor access, rather than ad hoc, revocable permissions, is now part of *opinio juris*.⁷⁹ Some legal traditions, particularly those emphasizing State sovereignty, resist the idea of customary rights that constrain transit States. Yet, the ICJ's reliance on “general practice accepted as law” (e.g., *Nicaragua v. United States*) supports the view that consistent state practice and international consensus can crystallize into binding norms.

5.5 Regional practice that reinforces the duty

The African Union's 2050 Integrated Maritime Strategy recasts LLDCs as “land connected” States and urges coastal neighbours to treat access corridors as shared strategic assets.⁸⁰ Withholding port access would thus violate this regional standard of reasonable transit. Ethiopia's long-running cooperation

⁷⁷ Hans Tuerk (2021), “Reflections on Landlocked Developing Countries and the Law of the Sea” in *Reflections on the Contemporary Law of the Sea*, Brill, pp. 175–193.

⁷⁸ Bernard H Oxman (1982). “*The Third United Nations Conference on the Law of the Sea: The Tenth Session (1981)*”, 76 *American Journal of International Law* 1, 1.

⁷⁹ Fikremarkos A. Tekuya, *supra* note 42, pp. 45–69.

⁸⁰ Swanepoel, *supra* note 73, at 14.

with Djibouti and its emerging negotiations over alternative Red Sea outlets demonstrate that such arrangements are the norm, not the exception. Detractors assert that regional frameworks lack enforceability compared to UNCLOS.⁸¹ However, the African Union's Peace and Security Council has increasingly treated denials of transit as violations of collective security, as seen in its 2019 Resolution on Trade and Infrastructure Integration.

5.6 Remedy for non-compliance

Where a transit State refuses to negotiate or deliberately frustrates agreed corridors, Ethiopia may invoke UNCLOS Part XV dispute settlement procedures. The rights enshrined therein are integral to the Convention, and to this end, the remedies of compulsory conciliation (Annex V) and submission to the International Tribunal for the Law of the Sea (ITLOS) or ad hoc arbitration are available. The *Swimming against the Current* analysis correctly observes that "hard law tools under UNCLOS give Ethiopia stronger leverage than purely political bargaining".⁸² Critics question the efficacy of international adjudication, citing delays or non-compliance with rulings.⁸³ Nonetheless, the growing jurisprudence of ITLOS (e.g., *M/V "Norstar" Case*) demonstrates that tribunals can impose meaningful remedies, including reparations, for breaches of maritime access rights.

Therefore, Ethiopia's claim is not a mere plea for neighbourly charity; it rests on binding treaty provisions whose purpose is to neutralise the economic handicap of landlocked geography. Articles 125–132 of the UNCLOS, read together with the Convention's good faith clause and affirmed by consistent regional and global practice, require coastal transit States to secure continuous, cost-effective and sovereignly viable sea access for Ethiopia. Any interpretation that relegates Ethiopia to occasional, revocable port privileges contradicts both the letter and the spirit of UNCLOS.

Moreover, Ethiopia's right is not just one of passive access, but active and secure utilization of port services, especially when geography offers no alternatives as economically viable as Assab. A purely restrictive reading of UNCLOS risks undermining its foundational principle of equitable access. While the sovereignty concerns of transit States are legitimate, they must be

⁸¹ Serges Djyouyou Kamga (2011). "The African Union and the Promotion of Economic and Social Rights: Challenges Ahead", 11(2) *African Human Rights Law Journal* 387, 400.

⁸² Fikremarkos A. Tekuya, *supra* note 42, at 10.

⁸³ Tullio Treves (2012). 'Compliance with Decisions of the International Tribunal for the Law of the Sea' in Myron H Nordquist et al (eds), *The Law of the Sea Convention: US Accession and Globalization*, Martinus Nijhoff, 191, 193.

balanced against the Convention's clear intent to redress geographic disparities through enforceable rights and cooperative frameworks.

6. The Flawed Assumption of Eritrea's Unconditional Sovereignty over Assab

While Eritrea is a recognized sovereign state, the legal status of Assab, and especially Ethiopia's historically rooted interest, needs deeper scrutiny.

6.1 The 1950 UN Resolution 390(V)

The 1950 UN Resolution 390(V), which federated Eritrea with Ethiopia, explicitly recognized Ethiopia's "legitimate need for access to the sea" and even contemplated shared administration. This sets a precedent that international arrangements over Assab were not inherently permanent. In the course of the deliberation at the UN before its decision in favour of federation, none of the options denied Ethiopia access to the sea.

The 1950 United Nations General Assembly Resolution 390(V), which established the federal arrangement between Ethiopia and Eritrea, explicitly acknowledged Ethiopia's "legitimate need for access to the sea" and suggested practical arrangements, including potential shared administration of ports like Assab, to accommodate this need. This recognition demonstrates that international governance mechanisms acknowledged Ethiopia's strategic and economic imperatives regarding maritime access, thus framing the federal union not solely as a domestic matter but as one with broader geopolitical dimensions.

Importantly, this provision also signals that the status of ports such as Assab was never intended to be immutable, but rather subject to evolving legal and political considerations, thereby undermining assertions of permanent sovereignty over such territories within rigid state boundaries. Critics argue that Resolution 390(V) is superseded by Eritrea's 1993 independence referendum, which solidified its sovereignty over all former colonial territories, including Assab.⁸⁴ However, this perspective overlooks the fact that the referendum did not explicitly address the question of Ethiopia's maritime access, nor did it nullify the historical and legal equities established under the federal arrangement.

⁸⁴ Mamadou Hébié and Alisa Kerschbaum, 'Eritrea-Ethiopia Boundary Commission (EEBC)' (May 2020) *Max Planck Encyclopedia of International Procedural Law* <https://opil.ouplaw.com> Accessed 21 July 2025.

As Plaut and Gilkes⁸⁵ explain, the UN resolution left room for flexibility in administrative arrangements to ensure Ethiopia's maritime access, reflecting a pragmatic approach to regional stability rather than a fixed territorial settlement. Moreover, Clapham argues that the federal arrangement was a compromise designed to balance Eritrean autonomy with Ethiopian economic interests, particularly concerning trade and port access.⁸⁶ Therefore, the very structure and language of Resolution 390(V) establish a historical precedent that challenges the perception of the Assab issue as legally and politically immutable under international law.

6.2 Historical title and the principle of *effectivités*

Ethiopia's claim to the Assab port is grounded not only in historical and strategic imperatives but also in *effectivités*, a well-established principle of international law that privileges continuous and peaceful administrative authority over formal or theoretical titles. Between the 1950s and Eritrea's independence in 1993, Ethiopia exercised full administrative, economic, and security control over Assab. This sustained presence and use amount to *effective control*, i.e., a key criterion recognized by the ICJ in territorial disputes. Opponents contend that Ethiopia's administrative control over Assab during the federation period was merely a function of the federal arrangement and does not confer post-independence rights.⁸⁷ However, this argument neglects the ICJ's jurisprudence, which has often upheld *effectivités* even in cases where formal title was contested or transitional.

In *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia v. Singapore)*, the ICJ stated that where legal title is unclear or contested, "effectivités", actual, continuous, and peaceful exercise of authority, may constitute superior evidence of sovereignty.⁸⁸ By analogy, Ethiopia's long-standing administration and development of Assab, including port expansion, customs operation, and infrastructural investment, constitute a strong factual basis for a claim of historical sovereignty or, at a minimum, *special rights under equity*. "The conduct of the parties, reflected in

⁸⁵ Martin Plaut & Patrick Gilkes (1999). *Conflict in the Horn: Why Eritrea and Ethiopia are at War* (Royal Institute of International Affairs).

⁸⁶ Christopher Clapham (2002). "War and State Formation in Ethiopia and Eritrea", *Review of African Political Economy*, Vol. 29, Nos. 93/94, pp. 369–389

⁸⁷ Yohannes Haile et al.(2025). "Eritrean Sovereignty and Ethiopia's Quest for Sea Access", *Eritrea Focus*, p. 27.

⁸⁸ *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia v. Sing.)*, Judgment, 2008 I.C.J. 12 (May 23).

administrative acts or public assertions of authority, is crucial to determining sovereignty in ambiguous territorial contexts".⁸⁹

Accordingly, when viewed against the inversion of *effectivités* in the Badme dispute, Ethiopia's position regarding Assab acquires stronger legitimacy: while Eritrea holds formal title after 1993, Ethiopia's long and uncontested administrative control over the port for over four decades (from 1952 to 1991) constitutes *effectivités* in the sense recognized by international jurisprudence.⁹⁰ The ICJ has affirmed that, where legal title is unclear or contested, actual and continuous exercise of authority may prevail over abstract entitlements, as in *Pedra Branca*'s case mentioned above. Thus, Ethiopia's sustained governance, infrastructural investment, and security administration in Assab prior to Eritrea's independence provide not merely historical evidence but also a basis for the contemporary legal argument that equity and necessity justify reconsideration of Ethiopia's maritime access.

6.3 *Uti possidetis juris* and post-colonial adjustments

Although Eritrea became independent under the principle of *uti possidetis juris*, preserving former colonial borders, this principle is not absolute. As the ICJ held in *Burkina Faso v. Mali*, *uti possidetis* must be applied flexibly and cannot override competing equitable and factual claims if it leads to unjust results.⁹¹ Ethiopia had integrated Assab into its national infrastructure and economy post-Italian colonization, and no distinct administrative unit existed for Assab that would suggest it was territorially separate from Ethiopia at the time of Eritrea's independence.

Scholars such as Shaw⁹² and Ratner⁹³ argue that *uti possidetis* must be balanced against *effectivités* and the interests of stability and fairness in international relations. Where boundaries do not reflect the realities of state practice and governance, equitable adjustment is necessary. Some scholars, such as Crawford, maintain that *uti possidetis* is a rigid doctrine designed to prevent post-colonial chaos. However, this absolutist interpretation fails to account for cases where strict adherence to colonial borders results in

⁸⁹ Ibid.

⁹⁰ Eritrea–Ethiopia Boundary Commission, *Decision Regarding Delimitation of the Border between the State of Eritrea and the Federal Democratic Republic of Ethiopia* (13 April 2002), 41 ILM 1057.

⁹¹ ICJ, *supra* note 45, at 11.

⁹² Shaw (1996), *supra* note 54

⁹³ Steven R. Ratner (1996). "Drawing a Better Line: *Uti Possidetis* and the Borders of New States", *American Journal of International Law*, Vol. 90, No. 4, pp. 590–624

manifestly inequitable outcomes, as seen in Ethiopia's loss of its primary maritime outlet.

6.4 Necessity and vital national interest

Ethiopia's landlocked status following Eritrea's secession placed a heavy and disproportionate burden on its economy and security. The ILC, in its *Articles on the Responsibility of States for Internationally Wrongful Acts* (2001), recognizes "necessity" as a legitimate legal ground for action if a vital interest is imperiled and no other means exist.⁹⁴ Detractors may argue that invoking necessity undermines state sovereignty and sets a dangerous precedent for territorial revisionism. However, Ethiopia's claim is not one of outright annexation but rather of equitable access, grounded in historical usage and international legal principles that protect landlocked states from arbitrary deprivation of critical infrastructure.

Given that Assab served as Ethiopia's primary maritime outlet for decades, integrated into its customs system, infrastructure, and national trade logistics, its abrupt loss following Eritrea's independence in 1993 created a geopolitical and economic shock without adequate international remedy. Although Ethiopia has since relied heavily on Djibouti's port, this arrangement is both politically precarious and economically burdensome, leaving Ethiopia vulnerable to shifting regional dynamics and foreign policy realignments. Under international law, according to Bowett, such extreme dependence on a single access point may justify extraordinary accommodations for alternative maritime routes, particularly where the landlocked state's vital economic interests are jeopardized.⁹⁵ In this regard, Ethiopia's historic, administrative, and logistical ties to Assab, coupled with its geographical proximity, constitute a compelling basis for asserting a claim of *special interest* or *co-administration* rooted in necessity, equity, and precedent.

This argument finds direct legal reinforcement in Article 131 of the UNCLOS, which mandates that "[l]and-locked developing States shall enjoy special consideration in the exercise of the rights referred to in this Part".⁹⁶ Scholars interpret this clause as requiring not only passive recognition of transit rights but proactive accommodation of landlocked states' developmental needs, especially when the deprivation of access undermines

⁹⁴ International Law Commission (ILC), 2001, Art. 25.

⁹⁵ D. W. Bowett (1993). "The Law of the Sea and Landlocked States", *British Yearbook of International Law*, Vol. 63, No. 1, pp. 281-307.

⁹⁶ United Nations Convention on the Law of the Sea (UNCLOS), 10 December 1982, 1833 UNTS 397, Art. 131.

economic sovereignty and national security.⁹⁷ Moreover, the ILC's work on the *Articles on the Responsibility of States for Internationally Wrongful Acts* affirms that a state may invoke *necessity* as a legal ground for exceptional measures if it is the only way to safeguard an essential interest against grave peril.⁹⁸ Considering the geopolitical volatility of Ethiopia's sole maritime access and the vital national interest implicated, international law could support Ethiopia's pursuit of a shared use regime or sovereign easement over Assab under a framework of equity and cooperative obligation.

Thus, Eritrea's secession from Ethiopia in 1993 was formalized under the dual principles of self-determination and *uti possidetis juris*, the latter ensuring that the territorial boundaries of the newly independent state corresponded to the administrative borders established under colonial and federal arrangements.⁹⁹ While *uti possidetis juris* preserved Eritrea's sovereignty and prevented post-independence territorial revisionism, it did not nullify Ethiopia's historical, administrative, and economic connections to the port of Assab, which had functioned as its primary maritime outlet for decades. Accordingly, Ethiopia's pursuit of maritime access does not constitute annexation, but rather seeks equitable accommodation rooted in necessity, equity, and recognized international legal norms.

6.5 Customary international law and equitable access to the sea

The UN has consistently affirmed that landlocked States have not only a right of transit but also a right to "access and utilization" of port services under equitable terms.¹⁰⁰ Ethiopia's reliance on Assab for four decades gives rise to *acquired rights* and *legitimate expectations* under customary international law. As Bowett¹⁰¹ notes, if a coastal state severs port access in a way that creates severe and disproportionate harm to a landlocked neighbor, it may violate principles of *good faith* and *equity* in international relations. Critics may argue that Eritrea's sovereignty over Assab is absolute and that Ethiopia's reliance does not create legal obligations. However, this view ignores the broader trend in international law toward accommodating landlocked states' needs, as evidenced by UNCLOS and other multilateral agreements.

⁹⁷ Tuerk, *supra* note 77, at 15.

⁹⁸ International Law Commission (ILC), 2001, Art. 25.

⁹⁹ Antonio Cassese (1995), *Self-Determination of Peoples: A Legal Reappraisal* (Cambridge University Press 91–93; see also International Court of Justice, *Case Concerning Frontier Dispute (Burkina Faso/Republic of Mali)*, ICJ Reports 1986, p. 554, para. 63.

¹⁰⁰ United Nations General Assembly (UNGA) Resolution 63/2, 2008.

¹⁰¹ Bowett, *supra* note 95.

Should Ethiopia choose to pursue legal recourse, the ICJ, ITLOS, or arbitration mechanisms under UNCLOS (Annex VII) are potential fora. While a direct sovereignty claim may be contentious, a *shared use or sovereign easement* model, like the condominium arrangements in the Danube or Panama contexts, may be negotiated and supported by precedent. Thus, Ethiopia's legal claim over Assab rests on a blend of historical *effectivités*, equitable access rights as a landlocked State, the principle of necessity, and customary international norms that discourage arbitrary deprivation of critical maritime access. Far from being a revanchist or expansionist posture, Ethiopia's claim represents an appeal for legal recognition of long-standing and legitimate strategic and developmental interests rooted in international legal principles and case law.

Ethiopia can argue that Eritrea's secession (under contested authority of a transitional government during the early 1990s, discussed in Section 2 above) and the consequential denial of access to the Assab port contravened the balanced principles of self-determination as articulated under international law. General Assembly Resolution 2625(1970)¹⁰² affirms that the right to self-determination "shall not be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States" if those states possess "a government representing the whole people belonging to the territory without distinction." Proponents of Eritrea's absolute sovereignty might assert that self-determination trumps all other considerations, but this overlooks the ICJ's and UN's repeated emphasis on balancing competing legal principles to avoid destabilizing outcomes.

At the time of Eritrea's separation in 1993, Ethiopia had long integrated Assab as a vital part of its national trade and economic infrastructure, making the loss of this maritime outlet not merely a territorial issue but a severe disruption to Ethiopia's sovereign functioning and development. Thus, the principle of self-determination, while central to decolonization, is not an absolute right that may override legitimate state interests and regional stability.¹⁰³

International legal commentary and case law reinforce that the exercise of self-determination must be balanced against other compelling legal principles, particularly when the act of secession results in disproportionate harm to the

¹⁰² The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States

¹⁰³ James Crawford (2006). *The Creation of States in International Law*, 2nd ed., Oxford University Press.

parent state. In the *Quebec Secession Reference* (1998), the Supreme Court of Canada ruled that the right to unilateral secession under international law is exceptional and limited, especially when internal self-determination within an existing state is possible. Similarly, scholars argue that when a seceding entity deprives the original state of essential geographic or economic resources, such as Ethiopia's loss of its historic port, this can be considered a violation of equitable norms and principles of territorial fairness.¹⁰⁴ Given Ethiopia's unique landlocked status, lack of viable alternatives, and reliance on Assab, the unilateral nature of Eritrea's independence, without accommodating these legitimate needs, renders the process incomplete under international law and calls for remedial arrangements, such as shared port administration or guaranteed access through binding legal instruments.

7. Toward a Legally Justified and Equitable Solution

7.1 Negotiation as a dispute resolution mechanism in international law

Negotiation is one of the most fundamental and widely endorsed mechanisms of peaceful dispute resolution in international law. Enshrined in Article 33(1) of the UN Charter, negotiation is listed as the first among several means to resolve international disputes, reflecting its primacy and foundational character. Unlike adjudication or arbitration, negotiation allows states to resolve issues bilaterally, offering flexibility and political ownership over outcomes. Ethiopia's maritime claim, rooted in historical, legal, and developmental imperatives, falls squarely within the purview of issues best addressed through sustained diplomatic negotiation, particularly given the sensitivities surrounding Eritrea's sovereignty and Ethiopia's existential dependence on sea access.

The jurisprudence of the ICJ shows that negotiation is not merely a diplomatic formality but a binding legal expectation in good faith. In the *North Sea Continental Shelf Cases*, the ICJ emphasized that "the parties are under an obligation to enter into negotiations with a view to arriving at an agreement."¹⁰⁵ This obligation includes not only initiating dialogue but doing so in a meaningful and constructive manner. Similarly, Ethiopia's consistent emphasis on its willingness to negotiate over Assab, without asserting a unilateral claim, demonstrates alignment with both the letter and spirit of international law.

¹⁰⁴ Marc Weller (2008). *Settling Self-Determination Disputes: Complex Power-Sharing in Theory and Practice*, Martinus Nijhoff Publishers.

¹⁰⁵ *North Sea Continental Shelf Cases* (Federal Republic of Germany v. Denmark; Federal Republic of Germany v. Netherlands), ICJ Reports 1969, 3, at 47-49.

In the context of Ethiopia's quest for maritime access, negotiation holds distinct advantages. First, it enables context-sensitive outcomes that balance Eritrea's territorial integrity with Ethiopia's right to transit and equitable access under customary law and UNCLOS. Second, it avoids the adversarial and binary outcomes of litigation, which may harden positions and delay resolution. Notably, the African Union Constitutive Act also reinforces negotiation as a preferred mode of dispute settlement. Article 4(e) endorses the peaceful resolution of conflicts through dialogue and consensus, a provision that speaks directly to the Ethiopia-Eritrea dynamic.

International legal literature supports the view that negotiation, when conducted in good faith, can yield durable and mutually beneficial arrangements. For instance, Aust emphasizes that "treaty-making by negotiation is the most reliable and time-honoured way of resolving boundary or access disputes, provided both parties approach the process with flexibility."¹⁰⁶ Precedents like the 1958 Gwadar cession (Oman-Pakistan) and the 2002 Ethio-Djibouti Port Agreement illustrate how functional needs, particularly in the context of landlocked states, can be resolved through patient and structured diplomacy.

However, for negotiation to be effective, both parties must commit to principles of equality and mutual respect. Eritrea's outright rejection of Ethiopia's calls for negotiation, citing sovereignty as non-negotiable, stands in tension with established principles of international law that allow for negotiated adjustments where compelling equitable needs exist. As Treves argues, "negotiation must not be blocked categorically, particularly when development rights of one party are at stake."¹⁰⁷ Moreover, UNCLOS Article 125(2) affirms that transit arrangements "shall be agreed upon by the landlocked and transit States concerned through bilateral, subregional or regional agreements," reiterating that access disputes are not unilateral matters but shared responsibilities.

In light of these principles, Ethiopia's position, framed around negotiation, not coercion, remains firmly within the bounds of international law. It upholds the obligations under Article 33 of the UN Charter, conforms with African Union norms, and seeks a cooperative solution rooted in mutual interest. Negotiation thus emerges not merely as a tactical option but as a legal necessity and a moral imperative for resolving one of the Horn of Africa's most pressing geopolitical dilemmas.

¹⁰⁶ Anthony Aust (2013). *Modern Treaty Law and Practice*, 3rd ed., Cambridge University Press, p. 6.

¹⁰⁷ Tullio Treves (2012), *supra* note 83, pp. 191-199.

7.2 Equitable legal solutions

7.2.1 Negotiating a cession treaty

Ethiopia's pursuit of port access through the cession of Assab from Eritrea would find strong legal grounding in international law and state practice. The principle of sovereign equality, codified in Article 6 of the VCLT 1969, affirms that both Eritrea and Ethiopia possess the legal capacity to enter into treaties, including those involving territorial cession. Historical precedents such as the cession of Gwadar by Oman to Pakistan (1958) demonstrate that territorial cession in exchange for strategic advantages, including access to critical maritime routes, is an accepted and enforceable practice under customary international law.¹⁰⁸ These agreements were grounded in mutual consent, and no international norms were violated. Moreover, cession treaties that are conducted without coercion and with the full consent of the parties are valid legal instruments as long as they do not contravene peremptory norms (*jus cogens*).¹⁰⁹ Ethiopia's negotiation for Assab, if conducted peacefully, is therefore in conformity with both the *pacta sunt servanda* principle¹¹⁰ and the broader framework of lawful territorial transfer.

Strategically, a cession agreement between Ethiopia and Eritrea could foster long-term stability and economic interdependence in the Horn of Africa. The cession of Heligoland from Britain to Germany (1890) in exchange for African territorial rights, and the leasing of Guantanamo Bay by Cuba to the U.S. (1903), further reflect how states have legally restructured sovereignty over territory for maritime or strategic gain.¹¹¹ In Ethiopia's case, the desire for a sovereign port is not driven by expansionism but by legitimate developmental and economic interests, akin to Britain's historical lease of Hong Kong for trade access.¹¹²

If Eritrea consents to such an arrangement in exchange for proportional political or economic incentives, such as revenue-sharing, infrastructure investments, or regional security pacts, the resulting treaty would not only be valid but could also serve as a model for the peaceful resolution of territorial and access disputes. Therefore, such a treaty would comply with the

¹⁰⁸ Shaw, *supra* note 54, at 1.

¹⁰⁹ Aust, *supra* note 106.

¹¹⁰ Vienna Convention on the Law of Treaties (VCLT), 1969, Art. 26.

¹¹¹ Matthew Craven (2007). *The Decolonization of International Law: State Succession and the Law of Treaties*, Oxford University Press.

¹¹² Daiwei Wang (2021). "The Chinese View of Sovereignty and the Hong Kong Question: Historical Reflections", *Asian Journal of International Law*, Vol. 11, No. 2, pp. 321-340.

foundational norms of international law and regional cooperation under the African Union's Charter, which encourages peaceful settlement of disputes and mutual development.

7.2.2 Sovereign easement over Assab

Ethiopia's claim for a sovereign easement over Assab Port is firmly grounded in international law and represents a legitimate, legally justifiable mechanism to secure its maritime access. A sovereign easement is a treaty-based legal arrangement whereby one state enjoys limited but perpetual rights of use and control over specific parts of another state's territory without acquiring sovereignty, typically to satisfy essential economic or strategic needs.¹¹³ It differs from a sovereign corridor, which involves a continuous strip of territory granting passage but may limit the coastal state's control, and from a leased maritime zone, which transfers temporary use rights for a fixed period but does not establish permanent rights.¹¹⁴

Sovereign easement reconciles Eritrea's territorial sovereignty with Ethiopia's existential need for access to the sea, codifying rights without encroaching on Eritrea's territorial title. Historical instruments reinforce this claim: the 1952 UN General Assembly Resolution 390(V) explicitly recognized Ethiopia's "legitimate need for adequate access to the sea,"¹¹⁵ while Ethiopia's prior control over the Red Sea coast before colonial intervention creates a foundation of legitimate expectation under international law. Precedents such as the Panama Canal treaties and the Berlin access arrangements illustrate that sovereign easements can secure vital state interests without threatening the sovereignty of the coastal state.¹¹⁶ Hence, Ethiopia's claim constitutes lawful, equitable access grounded in necessity, historical legitimacy, and recognized international practice.

Eritrea may counter that sovereign easement infringes on its territorial integrity or that Ethiopia's access through Djibouti and other arrangements renders Assab unnecessary. As previously discussed, it may invoke the principle of *uti possidetis juris* and the 1964 OAU Cairo Declaration to emphasize the sanctity of inherited colonial borders. Nevertheless, these

¹¹³ Ian Brownlie (2012). *Principles of Public International Law*, 8th edn, Oxford University Press, 540.

¹¹⁴ James Crawford (2019). *Brownlie's Principles of Public International Law*, 9th edn, Oxford University Press, 623-624.

¹¹⁵ UN General Assembly, *Eritrea: Report of the United Nations Commissioner*, GA Res 390(V), UN Doc A/RES/390(V) (2 December 1950), para 2(c).

¹¹⁶ Shabtai Rosenne (1989). *Developments in the Law of Treaties 1945-1986*, (Cambridge University Press, 213.

objections do not extinguish Ethiopia's claim. Unlike corridors or leased zones, a sovereign easement creates a perpetual, treaty-based legal right that respects Eritrea's sovereignty while guaranteeing Ethiopia functional and uninterrupted access.¹¹⁷ Such an arrangement could be formalized in a bilateral treaty, potentially with oversight from the African Union or UN, ensuring predictability, stability, and regional integration. As a result, sovereign easement over Assab Port emerges as a legally sound and politically feasible solution to Ethiopia's maritime challenge, balancing the legitimate interests of both states.

7.2.3 A sovereign corridor or leased maritime zone

As discussed in the preceding sections, Ethiopia, as a landlocked state with a population exceeding 120 million and a rapidly growing economy, has a legitimate and compelling legal basis under international law to pursue access to the Port of Assab. A sovereign easement (highlighted under Section 7.2.2) constitutes a treaty-based, perpetual right of use over foreign territory without transferring sovereignty, ensuring Ethiopia's functional access while Eritrea retains full territorial control. In contrast, a sovereign corridor entails a continuous strip of territory connecting Ethiopia to the coast, often conferring broader control but raising significant political sensitivities and sovereignty concerns.

A leased maritime zone would grant Ethiopia temporary operational control of the port for a fixed term in exchange for compensation, but this arrangement is inherently time-limited and vulnerable to political or contractual changes. Ethiopia's historical use of the Port of Assab prior to Eritrea's independence, coupled with its current landlocked status following secession, provides a strong equitable foundation for negotiating special access to the Red Sea. The *Aland Islands* precedent (1921), in which Finland agreed to demilitarize the islands while preserving shared access under League of Nations supervision, demonstrates how international governance can facilitate peaceful and functional territorial arrangements without compromising sovereignty.¹¹⁸

Furthermore, the Tanzania-Zambia Railway Authority (TAZARA) case illustrates how bilateral cooperation under international legal principles can enable landlocked countries like Zambia to secure access to global markets through a transit corridor supported by international partners. Applying this

¹¹⁷ John Drysdale (1969), *The Problem of Landlocked States in International Law*, Syracuse University Press, 45.

¹¹⁸ Case of the *Aland Islands*, League of Nations, 1921.

logic, Ethiopia and Eritrea could negotiate a sovereign corridor or leased maritime zone to Assab, each option balancing Ethiopia's developmental and geopolitical needs with Eritrea's sovereignty. A sovereign corridor would provide continuous access but would likely require more extensive negotiation due to sovereignty sensitivities, whereas a leased maritime zone offers operational control for a defined term but lacks permanence.

A sovereign easement, by contrast, provides a durable, treaty-based legal right without undermining Eritrea's territorial title. International instruments support this approach: UNCLOS recognizes the right of landlocked states to access the sea and freedom of transit through transit states,¹¹⁹ the Barcelona Convention affirms freedom of transit as a principle of customary international law,¹²⁰ and the ICJ in the Right of Passage case underscored that freedom of transit is binding under customary law.¹²¹ Backing such arrangements with AU or UN supervisory mechanisms would ensure compliance, equitable governance, and mutual benefit. As Drysdale emphasizes in the context of transit rights, functional sovereignty, including corridors, easements, or special economic zones, is an evolving legal solution for landlocked states seeking equitable access to global trade routes.¹²² This approach supports sustainable development and regional integration.

Finally, Austria's access to the Danube River through international treaties reinforces the principle that strategic transit access for landlocked states can be codified and protected under international law without conferring full territorial ownership. By analogy, Ethiopia's pursuit of a sovereign easement or, less optimally, a leased maritime zone or corridor to the Port of Assab finds strong support in both treaty law and customary international law.

The sovereign easement model ensures permanent, secure access while preserving Eritrea's sovereignty, whereas corridors and leases offer partial solutions with political or temporal limitations. Establishing such arrangements, whether as a joint economic zone, easement, or corridor, would not constitute a threat to Eritrea's territorial integrity but instead reflects a cooperative, lawful, and pragmatic mechanism to address structural

¹¹⁹ United Nations Convention on the Law of the Sea (UNCLOS), 10 December 1982, 1833 UNTS 397, Art. 125.

¹²⁰ Barcelona Convention and Statute on Freedom of Transit, 20 April 1921, 7 LNTS 11.

¹²¹ Case Concerning Right of Passage over Indian Territory (Portugal v India), ICJ Reports 1960, p. 6.

¹²² John Drysdale, *supra* 117, 25; Lauri Hannikainen (1994), *Neutrality in International Law: From The Hague Conventions to the UN Charter* (Routledge, 87; R. R. Churchill & A. V. Lowe (1999), *The Law of the Sea*, 3rd ed. (Manchester University Press, 621-622).

asymmetries. Such an arrangement aligns with the collective interest of regional peace, economic stability, and respect for sovereign equality as envisioned in the Charter of the United Nations and the Constitutive Act of the African Union.¹²³

7.2.4 Tariff-free access to the sea

Ethiopia, as a landlocked developing country (LLDC), possesses a well-established legal right under international law to secure, tariff-free access to the sea, including through the port of Assab. This right is affirmed by the UNCLOS, particularly Article 125(1), which guarantees LLDCs the “right of access to and from the sea” for the purpose of exercising their sovereign rights. Moreover, the UN General Assembly Resolution A/RES/63/2 (2008) recognizes the special needs of LLDCs and it calls upon coastal states to cooperate in ensuring effective access to the sea without undue financial or administrative burden.

In light of these norms, Ethiopia’s pursuit of enduring and secure access to the Assab port through bilateral or multilateral treaties is not only legally justified but is a practical implementation of these international obligations. Comparative experience reinforces the legality of securing tariff-free access through negotiated agreements.¹²⁴ Such precedents include the Barcelona Statute on Freedom of Transit (1921) and the successful treaty-based arrangements such as Paraguay’s access to the port of Buenos Aires (Agreement between Paraguay and Argentina, 1992). Accordingly, international law favors Ethiopia’s efforts to establish a secure and tariff-free maritime outlet as essential to its economic development and sovereign equality among states.

8. Conclusion and the Way Forward

The discussion on transit rights connects with sovereign access to the sea by framing Ethiopia’s entitlement to maritime corridors not merely as a privilege of passage but as an enforceable legal claim rooted in international law (UNCLOS and customary norms). Ethiopia’s pursuit of maritime access is not merely a geopolitical ambition; it is a legal and historical necessity grounded in principles of equity, necessity, and the evolving norms of international law. Arguments that dismiss Ethiopia’s claims as revisionist or legally untenable often rely on a narrow interpretation of territorial sovereignty that overlooks the dynamic nature of international legal norms, the historical injustices

¹²³ Charter of the United Nations, 1945; Constitutive Act of the African Union, 2000.

¹²⁴ Churchill, *supra* note 122, at 23.

stemming from colonial boundary impositions, and the contemporary demands for economic justice and regional stability.

Ethiopia's historical ties to the Red Sea, from the Axumite Empire to its resistance against colonial fragmentation, underscore a legitimate grievance regarding its landlocked status. The loss of Assab and Massawa, which served as vital components of Ethiopia's economic infrastructure for decades, was not a product of a consensual or democratically validated process. Instead, it resulted from a transitional government's contested authority in 1993. The procedural shortcomings of Eritrea's secession, including the absence of a permanent constitutional framework and the exclusion of broader Ethiopian participation in the referendum, raise significant questions about the legitimacy of the territorial settlement under contemporary international legal standards.

While the principle of *uti possidetis juris* has been invoked to uphold post-colonial borders, its original purpose was to prevent instability at independence, not to perpetuate economic exclusion. The ICJ in *Burkina Faso v. Mali* (1986) clarified that colonial boundaries are not immutable and can be adjusted through mutual agreement. Ethiopia's case is further bolstered by the African Union's dual commitment to both territorial integrity (Art. 4(b) of the AU Constitutive Act) and the peaceful alteration of borders (Art. 4(f)), reflecting a regional understanding that rigid adherence to colonial boundaries can entrench inequities.

The UNCLOS explicitly recognizes the rights of landlocked states to access the sea¹²⁵, imposing a duty on transit states to cooperate in good faith. Eritrea's failure to engage in meaningful negotiations regarding port access contradicts not only UNCLOS but also broader customary norms, including the Barcelona Statute (1921) and the New York Convention on Transit Trade (1965). Ethiopia's status as a landlocked developing state further invokes the principle of "special consideration"¹²⁶, reinforcing its claim to equitable and sustainable maritime access.

Ethiopia's long-standing administration and economic reliance on Assab prior to 1993 present a compelling case under the principle of *effectivités*, which favors factual control over abstract legal titles. The ILC's Articles on State Responsibility (2001) recognize necessity as a valid legal ground when a state's vital interests are at risk, a condition Ethiopia currently faces due to its dependence on a single, geopolitically vulnerable port in Djibouti.

¹²⁵ United Nations Convention on the Law of the Sea (UNCLOS), 1982, Arts 125–132.

¹²⁶ *Id.*, Art. 131.

Historical precedents, such as the Åland Islands and the Danube River regimes, illustrate that international law accommodates shared sovereignty and functional access arrangements when strict territorial claims would lead to unjust outcomes.

Ethiopia's quest for maritime access can be framed within cooperative legal mechanisms that respect Eritrea's sovereignty. Negotiated cession or lease, such as the U.S. lease of Guantanamo Bay (1903) and the transfer of Hong Kong (1898–1997), which demonstrate that consensual sovereign territorial adjustments are legally permissible. A sovereign corridor or joint administration, modeled after arrangements like the Tanzania-Zambia Railway Authority (TAZARA) or the Danube River Commission, illustrates how functional sovereignty can be structured to ensure landlocked states' access without full territorial control. Additionally, UN or AU-mediated guarantees, similar to the Åland Islands demilitarization (1921), could ensure Eritrea's security while granting Ethiopia assured port access.

Ethiopia's maritime aspirations should not be perceived as a violation of international law but rather as a call for its progressive application to rectify historical inequities. A static interpretation of territorial sovereignty fails to recognize the law's capacity to adapt to geopolitical and humanitarian realities. Just as decolonization necessitated the reconfiguration of unjust boundaries, Ethiopia's landlocked predicament calls for a reassessment of rigid legal formalism in favour of equitable solutions.

Due recognition of Ethiopia's access to the sea is a legal and moral imperative to stability in the Horn of Africa. Assab was a free-trade zone (even under Italian rule) to facilitate Ethiopia's maritime needs. International law, interpreted through the lenses of equity, necessity, and regional integration, offers a robust framework for a negotiated settlement that balances Eritrea's sovereignty with Ethiopia's existential needs. This requires a solution that aligns with the broader purposes of international law: peace, justice, and sustainable development. Therefore, Ethiopia's quest for maritime access should be viewed not as a destabilizing force but as an opportunity to reaffirm international law's adaptability in addressing historical grievances and fostering cooperative regionalism. The legal tools for a just resolution exist; what remains is the political will to employ them. —■

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