

TERRITORIAL INTEGRITY AND CONFLICT

This panel was convened at 12:00 p.m. on Friday, March 31, 2023, by its moderator, Steven Hill, of the International Institute for Justice and the Rule of Law, who introduced the panelists: Veronika Bílková of Charles University; Ingrid Brunk of Vanderbilt University Law School; Julian Ku of the Maurice A. Deane School of Law, Hofstra University; Rachel López of the Thomas R. Kline School of Law, Drexel University; and Joshua Joseph Niyo of the University of California, Los Angeles.

INTRODUCTORY REMARKS BY STEVEN HILL*

This panel explored the ongoing pressures on the international legal order and stability presented by self-determination, humanitarian, and other geopolitical disputes revolving around the territorial integrity principle, drawing lessons from different country and regional situations.

Panelists discussed issues including the basic contours of the principle of territorial integrity and its crucial role and function in the international legal order; threats and challenges to the norm; and the relationship between territorial integrity and other principles of international law such as human rights and self-determination.

The panel drew on experience from Central and Eastern European countries, China/Taiwan, Ethiopia, and Ukraine.

The panelists were: Veronika Bílková, Charles University; Ingrid Brunk, Vanderbilt University Law School; Julian Ku, Maurice A. Deane School of Law, Hofstra University; Rachel López, Thomas R. Kline School of Law, Drexel University; and Joshua Joseph Niyo, University of California, Los Angeles. The moderator was Steven Hill, International Institute for Justice and the Rule of Law.

Special thanks were extended to Yuval Shany, Hebrew University of Jerusalem, for his contributions in putting together the panel as a member of the Annual Meeting Committee.

TERRITORIAL INTEGRITY AND CONFLICTS: VIEW FROM AND ABOUT CENTRAL AND EASTERN EUROPE

*By Veronika Bílková***

For countries of Central and Eastern Europe, territorial integrity has always constituted one of the most cherished principles of international law. Both during the Cold War period and in the recent decades, these countries have actively worked to have this principle enshrined in important international instruments, such as the 1970 Friendly Relationship Declaration, the 1975 Helsinki

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Final Act, the 1990 Charter of Paris for a New Europe, or the 2016 Russia-China Joint Declaration on Promotion and Principles of International Law. They have included references to territorial integrity into their constitutions (e.g., Article 5 of the Constitution of the Republic of Poland, Article 2 of the Constitution of Ukraine, or Article 4 of the Constitution of the Russian Federation) and to their conceptual documents (foreign policy strategies, defense strategies, etc.), they have repeatedly invoked the principle in their declarations or statements (e.g., the Joint Statement of Presidents of Central and Eastern European NATO Member States on Russian Attempts to Illegally Annex Ukrainian territories, issued in 2022). It would thus seem that in Central and Eastern Europe, territorial integrity is a sacrosanct principle that is recognized and respected by all countries.

The practice, however, shows that the situation is much more complex. While praised on the general level, the principle of territorial integrity often gets contested in specific cases, both rhetorically and through concrete acts. There is hardly any other region in the world that would count so many instances of the promotion of secessionist movements in another country, of the support for *de facto* entities and, more recently, of attempts at unlawful annexation of a part of a foreign territory. While the region's biggest power, the Russian Federation, accounts for many of these instances, it is by far not the only state of Central and Eastern Europe keeping an eye on some of its neighbor's land and/or people, as shown by repeated clashes between Armenia and Azerbaijan, the still unsettled border disputes between certain countries of the former Yugoslavia or the ambitious policy of compatriots' support run by Hungary. Provided that most of the countries in the region have only gained or regained their independence and their current borders over the past thirty years, their clinging to the principle of territorial integrity and, at the same time, the contestation or undermining of this principle in particular instances, where it does not serve their (perceived) interests is not all that surprising. Nor is it exclusive for the countries of this region or characteristic, to the same extent, of all of them.

Yet, taking account of the intensity to which the tension between the recognition and the contestation of the principle manifests itself in the region, and especially in the approach of some countries, it is interesting to consider which strategies such countries use to overcome this tension and to justify what might otherwise seem a somewhat schizophrenic position. The analysis of conceptual documents and statements of the countries in the region suggests that there are three main strategies used in this context—the security strategy, the history strategy, and the special link (kin-group) strategy. The three strategies, which will be introduced in more detail below, differ by the main arguments on which they rely. Although these arguments are typically extra-legal, they determine the legal justifications that countries resort to when (if) they need to defend their actions, i.e., if these actions clash with the principle of territorial integrity or with some other principles of international law (the prohibition of the use of force, the prohibition of interference into internal affairs of a state, etc.).

The **security strategy** posits that states have certain legitimate security interests that need to be taken into account, and accommodated, by other states. Such interests limit the scope of action of the other states, especially those in the geographical proximity—they may require that these states refrain from acquiring certain weapons, do not become parts of certain military blocs, get a neutral status, or, even, accept that some parts of their territory serve as a buffer zone. If the legitimate security interests of certain states are not respected, then those states are entitled to use whatever means, including military intervention, regime change, or annexation of a part of foreign territory, to secure them on their own. In the legal discussion, this strategy typically relies on the concept of self-defense, either in its classical form or, more commonly, in the form of pre-emptive or preventive self-defense. Unsurprisingly, the security strategy is particularly popular among bigger and militarily stronger states, such as, in Central and Eastern Europe, the Russian Federation. Thus,

in its public speech announcing and at the same time justifying the so-called special military operation against Ukraine, on February 24, 2022, Russian President Vladimir Putin described Ukraine as a security threat to his country due to its (alleged) attempt to acquire weapons of mass destruction and its ambitions to join NATO. He explicitly indicated that “the choice of security methods should not pose a threat to other states, and Ukraine’s accession to NATO is a direct threat to Russia’s security.” In its letter sent to the UN Security Council on the same day, Russia, referring to Putin’s speech, invoked the right to self-defense under Article 51 of the UN Charter.

The *history strategy* appeals, as the title suggests, to history. It indicates that once upon a time, a certain piece of land belonged to one state and that this state has lost it as a result of some kind of historical injustice. This might have happened as part of an unfair peace treaty imposed on that state after its military defeat in an armed conflict or upon a unilateral decision of a more powerful state. Such injustice needs to be redressed, with the piece of land being restituted—by whatever means available—to its original territorial sovereign. This strategy does not translate automatically into any legal argument or, rather, it is sometimes posited that historical arrangements (historical claims) constitute such an argument in themselves. Thus, a state should possess certain territories simply because it possessed them some years, decades, or centuries ago. The uncertainty as to the existence of such a legal ground makes the strategy quite vulnerable, as do frequent territorial changes in most parts of the world, including Central and Eastern Europe. If a certain territory has changed hands repeatedly, whose historical claim to it is the strongest one? And what is the relationship between the historical state of affairs and the current situation of this territory? These questions remain unanswered which however does not prevent states, or at least certain states, from using the historical strategy. In Central and Eastern Europe, the strategy is resorted to both by large and powerful states, such as the Russian Federation (e.g., with respect to Crimea), as well as smaller countries having lost part of their territories in war (e.g., Hungary with respect to territories lost after the World War I), or through foreign military intervention (e.g., Serbia with respect to the former autonomous region of Kosovo lost after the NATO intervention in 1999).

The *special link strategy* builds on the existence of kin-minorities abroad. These are groups of people sharing the same ethnic origin, language, religion, or other similar features with the majority population of the kin-state. Kin-states frequently introduce preferential treatment for members of their kin-minorities abroad. In some instances, they argue that kin-minorities should be left free to decide whether they want to live in another country or should be, together with the region they inhabit, be (re)incorporated into the kin-state. This state, moreover, has a special responsibility to protect its kin-minorities, through whatever means might be appropriate, including the use of military force and the annexation of the territory. In the legal discussion, this strategy tends to rely on the right of people to self-determination (where kin-minority is supposed to constitute a people), the right to remedial secession, humanitarian intervention and the right to protect its kins or citizens abroad. Although the two groups of kins and citizens would seem separate and, even, disjunctive, the preferential treatment mentioned above, not uncommonly implying the conferral of citizenship on members of kin-minorities (passportization), blurs the line between them, which can then be exploited by kin-states. In Central and Eastern Europe, the special link strategy is again resorted mainly to by the Russian Federation, which has used it to justify, among other actions, its military intervention in Georgia in 2008, the annexation of Crimea and of four other Ukrainian regions in 2014 and 2022, and the full-scale attack on Ukraine in 2022. In the 2022 public speech quoted above, Putin explicitly stated that the goal of the military intervention in Ukraine was “to protect people who have been abused by genocide of the Kyiv regime for eight years.” Occasionally, the argument is invoked by other countries of the region, for instance Hungary, this time to justify much less intrusive measures (such as conferral of citizenship).

None of the three strategies provides a clear and uncontroversial legal title for any interference into territorial sovereignty of another state, let alone for the use of military force against it or unlawful annexation of a part of its territory. Although they may translate to legal arguments and these arguments may in specific circumstances be found convincing, the three strategies primarily operate on the political, moral, and emotional level, seeking to uphold legitimacy of the state's action rather than its legality. The extensive condemnation of Russia's war of aggression against Ukraine and of the unlawful annexation by Russia of Crimea and four other Ukrainian regions, which have been justified by the combination of all the three strategies, demonstrates that such efforts are not necessarily successful. It also shows that the schizophrenic position of certain states of Central and Eastern Europe, stressing the importance of the principle of territorial integrity on the one hand but disrespecting it, sometimes very blatantly, on the other, has not gone unnoticed.

TERRITORIAL INTEGRITY AND CONFLICT: ETHIOPIA AND THE QUESTION OF SELF-DETERMINATION

*By Joshua Joseph Niyo**

I. INTRODUCTION

In the mosaic of Africa's complex sociopolitical structure, Ethiopia stands unique, shaping its story of nationhood against the backdrop of the age-old debate on territorial integrity and the right to self-determination. Unlike many African nations that emerged from the clutches of colonization, Ethiopia's historical trajectory has been a continuous arc, broken briefly by Italian occupation. Yet, the very questions that have permeated discussions on Africa's nation-building, ethnicity, and post-colonial identity find resonance in Ethiopia's modern political milieu.

A. Ethiopia: A Different Decolonization Narrative

It is pivotal to note that Ethiopia, barring its brief occupation by Mussolini's Italy, was never truly colonized. Consequently, its experience diverges from the typical decolonization trajectory, allowing it a unique standpoint on self-determination. However, this does not insulate the nation from broader African challenges, especially those concerning ethnicity and nation-building. Thus, when addressing Ethiopia's situation, one must simultaneously address the broader African context, with Ethiopia serving as a microcosm for larger continental concerns.

B. Territorial Integrity and Statehood

The concept of territorial integrity, central to statehood, offers a unique challenge in resolving issues like the Ethiopian conundrum. Ethiopia's current challenges, while rooted in its unique historical and sociopolitical makeup, echo similar tensions across the continent, highlighting the intrinsic challenges that come with nationhood and statehood in Africa.

Regarding the discussion that follows, with a spotlight on Ethiopia, the assessment focuses simultaneously on Ethiopia, while zooming out with a general discussion of the African continent, especially on a number of issues for which there is indication that Ethiopia illustrates a larger area of difficulty on the continent. The discussion is structured around five major parts as indicated

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below: the recent Ethiopia-Tigray conflict and its bearing on the duo-question of territory and self-determination; the constitutional context in Ethiopia and the predisposition towards challenging territorial integrity through a seemingly generous concept of self-determination; the link between Ethiopia and broader issues of ethnicism/tribalism and the identity question in Africa; options for undertaking and sorting through the complexities around conflict and territorial integrity; and the conclusion, which addresses two critical paradigms in seeking to resolve the issue of territorial integrity, especially through the minimization of conflict.

II. OVERVIEW OF THE RECENT CONFLICT IN NORTHERN ETHIOPIA WITH THE TIGRAY PEOPLES' LIBERATION FRONT, TPLF

Since the early 1990s and for nearly three decades, the Tigray Peoples' Liberation Front (TPLF) held a significant sway over Ethiopia's military, political, and economic spheres. This dominance, coupled with widespread allegations of corruption and repression of political adversaries, brewed substantial dissatisfaction across the nation. This discontent culminated in massive protests that led to the decline of TPLF's influence and the rise of Dr. Abiy Ahmed as Ethiopia's prime minister in 2018. Upon assuming power, Prime Minister Ahmed underwent a transformative political restructuring. He disbanded the previously dominant Ethiopian People's Revolutionary Democratic Front (EPRDF) in December 2019, subsequently inaugurating a new political entity known as the Prosperity Party.

The TPLF vehemently resisted these changes. Not only did they decline to join the new party, but they also saw a substantial reduction in their influence as Prime Minister Ahmed dismissed numerous TPLF officials from key roles within the government, military, and intelligence sectors. This shift in power dynamics compelled senior TPLF figures to retreat to their stronghold in Northern Ethiopia—the Tigray region. Here, they vehemently opposed Prime Minister Ahmed's leadership, arguing that he was making a concerted effort to consolidate power at the expense of the nation's federalist structure.

Tensions further escalated when the TPLF rejected the National Electoral Board of Ethiopia's (NEBE) decision to delay the 2020 national election, citing the COVID-19 pandemic as the reason. Although this postponement was affirmed by the House of Federation, the constitutional interpretation body, the TPLF went against this directive and proceeded to conduct a regional election in September. In retaliation, the Federal government suspended financial aid to the Tigray region, a move the TPLF equated to a "declaration of war."

The situation reached a critical juncture when, on November 4, 2020, the TPLF launched an attack on the Ethiopian army's Northern Command. Labeling their actions as "pre-emptive strikes in self-defense," this aggression garnered an immediate military response from the Ethiopian National Defense Force (ENDF). Prime Minister Ahmed publicly announced that the TPLF had overstepped their boundaries. Framing their counteractions as a "law enforcement operation against a rogue clique," the federal government instituted a six-month state of emergency within the Tigray region.

Throughout these events, an underlying narrative persisted: the Tigray region's continued quest for autonomy. They perceived Prime Minister Ahmed's centralizing policies as direct threats to Tigray's inherent right to self-determination.

In November 2022, a peace agreement was signed between the warring parties. This peace arrangement has largely held. However, in noting the pivotal role of the peace negotiations, it is vital to emphasize the key principles set forth in the associated peace documents. Specifically, the reverence and commitment to uphold sovereignty and territorial integrity emerge as paramount principles, especially given the Tigray People's Liberation Front's assertion for independence

during the conflict. This stance mirrors the tenets presented in Articles 2, 7, and 8 of the Pretoria Agreement.

III. REVIEWING THE CONSTITUTIONAL CONTEXT IN ETHIOPIA (1994 CONSTITUTION)

Reviewing the Constitutional Context in Ethiopia, particularly the 1994 Constitution, it is essential to highlight Article 39:

Rights of Nations, Nationalities, and Peoples

1. Every Nation, Nationality and People in Ethiopia has an unconditional right to self-determination, including the right to secession.
2. Every Nation, Nationality and People in Ethiopia has the right to speak, to write and to develop its own language; to express, to develop and to promote its culture; and to preserve its history.
3. Every Nation, Nationality and People in Ethiopia has the right to a full measure of self-government which includes the right to establish institutions of government in the territory that it inhabits and to equitable representation in state and Federal governments.
4. The right to self-determination, including secession, of every Nation, Nationality and People shall come into effect:
 - (a) When a demand for secession has been approved by a two-thirds majority of the members of the legislative Council of the Nation, Nationality or People concerned;
 - (b) When the Federal Government has organized a referendum which must take place within three years from the time it received the concerned council's decision for secession;
 - (c) When the demand for secession is supported by a majority vote in the referendum;
 - (d) When the Federal Government will have transferred its powers to the Council of the Nation, Nationality or People who has voted to secede; and
 - (e) When the division of assets is effected in a manner prescribed by law.
5. A "Nation, Nationality or People" for the purpose of this Constitution, is a group of people who have or share a large measure of a common culture or similar customs, mutual intelligibility of language, belief in a common or related identities, a common psychological make-up, and who inhabit an identifiable predominantly contiguous territory.

This Article notably provides for the rights of nations, nationalities, and peoples to self-determination, which includes the right to secession. Interestingly, some political analysts perceive this provision as a strategy for implementing a "divide and rule" policy. A comparative analysis reveals similarities between the Ethiopian constitution's Article 39 and the 1974 Constitution of the Former Yugoslavia. Specifically, the introductory section of the Yugoslav constitution also emphasizes the rights of the nations within Yugoslavia to self-determination and secession.

A critical question arises from this comparison: Do these constitutional provisions align with international law, or do they surpass it? It appears that Article 39, by not specifying the factors to be considered in exercising the right to self-determination, adopts a stance that is arguably more progressive than the established international legal perspective. It is certainly clear, that this constitutional make-up pre-disposes Ethiopia to potential claims for secession from the different ethnic communities in the country. This could have serious implications for the territorial integrity of the state, especially when armed conflict ensues.

IV. AFRICA AND THE IDENTITY QUESTION

The subject of identity, particularly ethnic and tribal affiliations, has long been a point of contention in Africa. Ethiopia serves as a representative case, echoing the broader dilemmas of self-determination and territorial integrity faced by many post-independence African nations. The historical imprints of colonial rule further amplify these complexities in the other states on the continent.

Within Ethiopia, various internal territorial and identity conflicts have arisen among its “states.” A notable example is the contentious territory of Wolqaita. Activists assert that this agriculturally rich district was improperly annexed by the adjacent Tigray regional state, even though its populace predominantly identifies as Amhara. In response to these claims, a committee was instituted to advocate for Wolqaita’s reintegration to its perceived rightful jurisdiction.

Externally, Ethiopia’s territorial boundaries have also been a source of disputes, especially concerning Sudan. One significant region of contention is Al-Fashaga, a stretch of fertile land along their shared border.

Further complicating Ethiopia’s territorial landscape is the matter of Tigray’s potential secession, led by the Tigray People’s Liberation Front (TPLF). This issue resonates with historical parallels, specifically the lessons gleaned from Eritrea’s successful bid for independence from Ethiopia.

Ethno-divisions and ethno-cessation are very real challenges. The African continent grapples with intricate challenges surrounding ethnic identity and its relationship with territorial boundaries; Ethiopia, certainly, exemplifies these complexities. From internal territorial disputes like Wolqaita to external border tensions with neighboring countries such as Sudan, Ethiopia’s geopolitical dynamics underscore the broader continuing African struggle for true self-determination and territorial integrity. Tigray secession movement in Ethiopia echoes past separatist endeavors, most notably Eritrea’s departure, highlighting the recurring themes of identity and sovereignty in the region. This multifaceted narrative, intertwined with the legacies of colonialism, underscores the pressing need for inclusive dialogue and diplomacy to foster cohesion and stability, not just in Ethiopia, but in Africa—more broadly.

V. SORTING THROUGH THE COMPLEXITIES: RESOLVING THE DUO-QUESTION OF CONFLICT AND TERRITORIAL INTEGRITY IN ETHIOPIA

Sorting through the intricacies of conflict and territorial integrity in Ethiopia poses an immense challenge, especially given its constitutional backdrop, ongoing internal shifts, and broader regional difficulties in the realm of international law and relations.

A potential approach to address these complexities raises the question: Can the Article 39 framework from the Ethiopian Constitution be the key to safeguarding territorial integrity and reducing conflicts?

While Article 39 straightforwardly addresses this multifaceted question, offering a structured pathway for territories to part ways, it simultaneously hints at a method of maintaining territorial unity. This method involves non-aggressive strategies that recognize the rights of various ethnic groups and communities to self-determination within their ancestral lands, even if this might challenge Ethiopia’s continuity as a unified state. Interestingly, the Constitution’s recognition of the right to secession could potentially simplify the concept, paving the way for open and transparent discussions on territorial integrity. This could in turn bolster Ethiopia’s unity. Nonetheless, Article 39 possesses its fair share of advantages and pitfalls.

Moreover, considering the role of international stakeholders in addressing this issue is essential. Historically, the United Nations has played a significant part in addressing such dilemmas in Ethiopia and Africa at large.

However, the organization's recent handling of the TPLF matter has somewhat tainted its credibility within Ethiopia. Despite this, the United Nations remains a central figure in advocating for territorial respect and discouraging conflicts as a tool for territorial acquisition. All the while, it emphasizes the fundamental right to self-determination.

The African Union, on the other hand, has recently proven instrumental in mitigating the Tigray conflict and has stressed Ethiopia's territorial unity, resonating with the motto "African solutions to African problems." Given their close ties to the challenges, regional entities are bound to be of paramount importance, not just in the context of a single nation like Ethiopia, but in the overarching African narrative and its inherent challenges.

VI. CONCLUSIVE REMARKS

The challenge of maintaining territorial integrity while reducing conflict essentially hinges on two contrasting perspectives: the Top-Down approach, which prioritizes state authority and the preservation of sovereignty often at the expense of human rights, and the Bottom-Up approach, emphasizing self-determination and the rights of populations in shaping the territorial makeup of state entities.

It is vital to emphasize the socio-political issues, such as identity, ethnicity, tribal affiliations, and resource distribution, in these deliberations. These elements are not only the catalysts for conflict but also influence the territorial cohesion of Ethiopia and numerous African countries.