

The Red Sea Dilemma: Implications of the ICJ Decision in Bolivia v. Chile for Ethiopia's Claim to Assab

Abebew Sisay Alemnow¹

¹ Federal Public Prosecutor at the FDRE Ministry of Justice, Email: abebawsisaylaw@gmail.com

*Author Correspondence email: abebawsisaylaw@gmail.com

Abstract

International law considers maritime access to be a fundamental requirement for all countries which do not have direct access to the ocean. This research assesses how the International Court of Justice decision in *Obligation to Negotiate Access to the Pacific Ocean* (Bolivia v. Chile) affects Ethiopia's attempt to secure Red Sea access through the Assab port. The 1993 Eritrean independence declaration resulted in Ethiopia losing its coastal territory which created major economic and geopolitical obstacles for the country. Some scholars argue that the ICJ's rejection of Bolivia's claim against Chile weakens similar claims by landlocked states seeking maritime access. The objective of this study is to assess whether the legal reasoning in *Bolivia v. Chile* affects Ethiopia's claim to Assab. The research study uses doctrinal legal research to examine international legal principles and applicable treaties and judicial rulings. The findings indicate that the ICJ judgment does not necessarily undermine Ethiopia's claim because the historical and legal circumstances surrounding Ethiopia differ significantly from those of Bolivia. The study concludes that Ethiopia's pursuit of access to the Red Sea remains legally arguable and recommends peaceful negotiation and regional cooperation as viable pathways for resolving the dispute.

Keywords: cultural Ethiopia, Red Sea, Sovereign, ICJ, Bolivia, International Law

1. Introduction

The presence of European colonial powers in the Horn of Africa in the 16th century complicated Ethiopia's presence over the coastal area of the Red Sea.¹ More importantly, the secession of Eritrea in 1991 left Ethiopia landlocked. This historical moment compelled Ethiopia to rely on the port of Djibouti.² Being landlocked is a handicap for Ethiopia's economic development; hence, Ethiopia incurred billions of dollars for the purpose of port lease. Ethiopia adopted a draft foreign policy document in 2019 that recognizes Ethiopia's legitimate right over the Red Sea.³ To realise its ambition, Ethiopia signed a maritime accord with internationally unrecognized Somaliland in exchange for recognition.⁴ Somalia rejected the agreement, contending that it violates its sovereignty and territorial integrity. As a result, the agreement creates diplomatic strife between Ethiopia and Somalia.⁵ The two states revitalised their diplomatic relationship by signing the Ankara Declaration, facilitated by Turkish President Recep Tayyip Erdoğan, on 11 December 2024.⁶ Ethiopia perceived access to the sea as a strategic national interest for its economic and military security.⁷ Resultantly, Ethiopia is making an ongoing effort to revitalize here presence in the Red Sea and asserts its legitimate and historical rights of ownership over Assab.⁸

The Pacific War and subsequent bilateral agreements signed between Bolivia and Chile to end the war deprived Bolivia of its historical right over the Pacific Ocean. To revitalise its historical right over the Pacific Ocean, Bolivia engaged in several diplomatic dialogues with Chile for decades. However, diplomatic negotiation and bilateral agreements do not ensure Bolivia's ambition to have sovereign access in the Pacific Ocean. Resultantly, Bolivia instituted a proceeding against Chile before the International Court of Justice that claims sovereign access over the Pacific Ocean

*The Author holds LLB from Debre Tabor University in 2023. Currently working as Federal Public Prosecutor at the FDRE Ministry of Justice. He can be reached at abebawsisaylaw@gmail.com. Cellphone [+251988524371](tel:+251988524371)

¹ Biruk Paulos & Temesgen Thomas Halabo, 'Ethiopia's Quest for Access to the Sea: Historical Realities and Legitimate Claims' (2025) 19(2) Mizan Law Review 347

² Sebhatu Alemu Ambaye, 'An analysis of the import trade logistics service through the Ethio-Djibouti corridor: Djibouti corridor' (MS Thesis, World Maritime University 2005)

³ Shimellis Hailu, Hussein Jemma & Yonas Ashine, 'Ethiopia's Quest for Sea Access: Strategic Imperatives, Responses and Geopolitical Repercussions' (2025) 12(2) Ethiopian Renaissance Journals of Social Sciences and the Humanities 113

⁴ Wendimagegn Solomon Sele, 'Access to the Sea and the Legality of Ethiopia's MOU with Somaliland in light of International Law' (MA, Ethiopian Civil Service University 2025) 3

⁵ Ibid

⁶ Gedifew Sewenet Yigzaw, 'Balancing National Priorities: Ethiopia's Ankara Declaration and Its Implications for Diplomatic Success A Commentary' (2024) 6(1) Pan African Journal of Governance and Development 193

⁷ Haimanot Tsegaye, 'The Red Sea Security Dynamics and Its Implication on Ethiopia's National Security' (MA Thesis, Addis Abeba University 2024)

⁸ Gizachew Asrat & Gashaw Ayferam Endaylalu, 'Ethiopia's Quest for Sovereign Sea Access: Historical and Geopolitical Contexts' (2025) 17(1) Journal of Middle Eastern Studies 150

in 2013.⁹ Bolivia invoked diplomatic negotiations and promises of Chilean governmental authorities to negotiate with it as base for its legitimate sovereign right in the Pacific Ocean. Chile rejected Bolivia's claim by contend that diplomatic negotiations and subsequent agreements between the two states do not manifest the true intention of Chile to grant sovereign access for Bolivia in the Pacific Ocean.¹⁰ Instead, Chile contends that it has expressed its commitment alone to negotiate with Bolivia on its quest to access the sea.

The ICJ ruled that bilateral agreements and negotiations between two states do not create a binding international obligation on Chile to grant sovereign sea access to Bolivia.¹¹ Accordingly, some legal experts argued that the ruling of the ICJ is an insurmountable legal challenge for Ethiopia's contemporary quest to access the Red Sea. However, this paper argues that the ruling of the ICJ cannot be a legal hurdle for Ethiopia's ongoing claims of ownership over Assab. Hence, firstly, the rulings of international courts have no precedent effect, but instead which creates binding obligation on the disputant parties alone. Secondly, legal arguments invoked by Ethiopia and Bolivia to legitimise their quest to access the sea are automatically different. Hence, the study investigates how the International Court of Justice's decision about Bolivia's Obligation to Negotiate Access to the Pacific Ocean case affects Ethiopia's claim to access the Red Sea through Assab port. The study examines whether the *Bolivia v. Chile* court principles and reasoning about sovereign sea access can support Ethiopia's Assab claim. The study examines how international law, historical treaties, and the United Nations Convention on the Law of the Sea determine the rights and claims of landlocked nations.

2. Method

This research employs a qualitative research design specifically integrating doctrinal and comparative legal research methodologies to analyze Ethiopia's claims of ownership over Asaab in light of the ruling of the ICJ. The doctrinal component involves a critical examination of international legal instruments as primary sources, focusing on the 1969 Vienna Convention on the Law of Treaties and the 2000 Algiers Agreement. Additionally, the study evaluates the 1991 Transitional Charter of Ethiopia and the 1995 FDRE Constitution to assess the domestic legal framework governing sovereignty and treaty ratification. Central to this analysis is the critical scrutiny of international principles that have reached customary status, including *uti possidetis juris*, the historical title doctrine and the principle of acquiescence.

⁹ Christopher R. Rossi, 'A Case Ill Suited for Judgment: Constructing 'A Sovereign Access to the Sea' in the Atacama Desert' (2017) 48(2) University of Miami Inter-American Law Review 28

¹⁰ Julian G. Ku, 'Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile): Preliminary Objection (I.C.J.)' (2026) 55(1) International Legal Materials 74

¹¹ Ibid

Alongside the doctrinal approach, the research utilizes a comparative judicial analysis to evaluate the jurisprudence of the ICJ. Specifically, the paper critically scrutinises the ruling in *Bolivia v. Chile* to determine its applicability to Ethiopia's contemporary claims of ownership over the Assab. By contrasting the legal and historical arguments invoked by Ethiopia and Bolivia, such as the validity of colonial treaties and the mandate of transitional governments to recognize Eritrean statehood, the article finds that the Bolivia precedent does not constitute a legal setback to Ethiopia's pursuit of sovereign maritime access.

3. Analysis or Discussion

3.1. Bolivia's Legal Argument Presented to the International Court of Justice

Like Ethiopia, Bolivia is an artificially created landlocked country. Bolivia had a coastline on the Pacific Ocean at the time it gained its independence from Spain in 1825. Chile officially waged war against Bolivia and Peru in 1879.¹² The annexation of the coastal territories of the Pacific Ocean by Chile during the Pacific War in 1879 deprived Bolivia of sovereign access to the Pacific Ocean. Chile repeatedly expressed its willingness to negotiate with Bolivia on its quest to access the Pacific Ocean.¹³ However, Chile failed to seat for meaningful negotiations that entitled Bolivia a sovereign access in the Pacific Ocean. Consequently, on 17 February 2011 Bolivia the President of Bolivia, Evo Morales Ayma, sent a diplomatic ultimatum to negotiate with it on its quest to access the sea.¹⁴ In June 2011, Chile's Foreign Minister, Alfredo Moreno, emphasised that Chile is not in a position to grant Bolivia sovereign access to the Pacific Ocean.¹⁵ Consequently, Bolivia institute proceeding against Chile before the International Court of Justice in 2013. Bolivia's legal arguments presented before the court are mainly based on the following justifications;

Chilean authorities repeatedly expressed Chile's commitment and willingness to negotiate with Bolivia for its quest for access to the sea. Accordingly, Bolivia contends that unilateral statements and declarations made by the Chilean governmental authorities create a binding international obligation to negotiate with it.¹⁶ Bolivia attempted to consolidate this argument by citing the Legal Status of

¹² Ibid

¹³ Eleonora Colitti, 'The Atacama Dispute: The legal proceedings between Chile and Bolivia regarding the resources present in the area' (MA, Luiss University 2019)

¹⁴ Obligation to Negotiate Access to the Pacific Ocean (*Bolivia v Chile*) (Application Instituting Proceedings) 24 April 2013, Plurinational State of Bolivia (Ministry of Foreign Affairs) accessed from <<https://www.cedib.org/wp-content/uploads/2013/04/138010230-Demanda-de-Bolivia-ante-La-Haya.pdf>>

¹⁵ Christopher R. Rossi, 'A Case Ill Suited for Judgment: Constructing A Sovereign Access to the Sea' in the Atacama Desert' (2017) 48 (2) University of Miami Inter-American Law Review 28

¹⁶ Amid Bennaim, 'The International Court of Justice Will Not Force Chile and Bolivia to Negotiate Bolivian Sovereign Access to the Pacific Ocean' *Inter American Law Review* <<https://inter-american-law->

Eastern Greenland case and the Nuclear Tests cases.¹⁷ In these cases, the Permanent Court of Justice and the International Court of Justice held that unilateral statements can create international rights and obligations for the state, respectively.

Chile contended that unilateral declarations regarding intent to enter negotiations are insufficient to establish a binding legal obligation under international law. Accordingly, Chile contends that unilateral statements by Chilean governmental authorities are merely expressions of willingness to negotiate with Bolivia under the umbrella of good neighbourliness, holding that unilateral statements can create international rights and obligations rather than binding commitments to secure sovereign access to the Pacific Ocean.¹⁸ The ICJ rejected Bolivia's argument by stating that unilateral statements create binding international obligations on international actors only when such a statement is made with the intention to bind; however, unilateral acts made by Chilean authorities do not manifest a clear intention of Chile to negotiate with Bolivia.¹⁹

Following the termination of bilateral negotiations between the two states, Bolivia appealed to the Organization of American States (OAS) in 1978 to pursue its quest for sea access.²⁰ The Organization of American States passed 11 resolutions on the dispute, which recommends Bolivia and Chile negotiate their dispute over the Pacific Ocean.²¹ Accordingly, Bolivia cited these resolutions as a binding international legal document and contends that Chile is under a legal obligation to negotiate with it for its quest to have sovereign access in the Pacific Ocean.²² Chile disregarded the argument by contending that resolutions passed by the OAS are mere recommendations and are incapable of creating a binding obligation on Chile.²³ Besides this, Chile contend that the resolutions in question are silent regarding any prior obligation on the part of Chile to negotiate maritime access with Bolivia.²⁴ The ICJ ruled that resolutions passed by the OAS do not manifest Chile's obligation to negotiate with Bolivia for its quest over the Pacific Ocean, and both

review.law.miami.edu/international-court-justice-force-chile-bolivia-negotiate-bolivian-sovereign-access-pacific-ocean/> accessed on 21 2025

¹⁷ Obligation to Negotiate Access to the Pacific Ocean (Bolivia v Chile) (Memorial of the Government of the Plurinational State of Bolivia) 17 April 2014 [Hear in after the Memorial of Bolivia]

¹⁸ Obligation to Negotiate Access to the Pacific Ocean (Bolivia v Chile) (Counter-Memorial of Chile) 13 July 2016 [Hear in after the Memorial of Chile]

¹⁹ Judgment of the ICJ

²⁰ Josue R. Garcia, 'Does Rivalry alone Preclude Bolivian Natural Gas sales to Chile? an Explanation for Bolivia's Lack of Cooperation with Chile in the Natural Gas Sector' (Ma, Naval Post Graduate School 2018)

²¹ UNGA 'Letter dated 16 October 2012 from the Permanent Representative of the Plurinational State of Bolivia to the United Nations addressed to the President of the General Assembly' (18 October 2012) UN Doc A/67/527

²² The Memorial of Bolivia

²³ The Memorial of Chile

²⁴ The Memorial of Chile

parties recognized that resolutions of the OAS are incompetent to create a binding international obligation.

Article 2, paragraph 3 of the United Nations Charter requires the member states to resolve their dispute in peaceful means. Similarly, Article 3 of the OAS contains the same stipulation. Accordingly, Bolivia contends that the legal obligation of Chile to negotiate with it is also derived from the general principle of international law and the UN Charter.²⁵ The ICJ disregarded Bolivia's argument by ruling that although states are encouraged to settle their dispute through peaceful means, these provisions do not impose an obligation on Chile to give sovereign access to Bolivia.²⁶

Bolivia invokes several bilateral agreements in its memorial, which were signed with Chile several times over its maritime ambition in the Pacific Ocean.²⁷ The 1920 Acta Protocolizada was a record of a meeting between the Foreign Ministers of Bolivia and Chile.²⁸ During this meeting, the Chilean Foreign Minister expressed Chile's willingness to negotiate a grant of sovereign access to the Pacific Ocean for Bolivia. Bolivia utilized this document to buttress its claims before the ICJ. However, the Court ruled that the language used by Chile merely demonstrated a political willingness to negotiate under the framework of good neighbourliness, rather than a binding legal obligation.²⁹

Bolivia further asserted that the 1950 bilateral exchange of notes established a formal agreement with the force of international law. In this view, the correspondence created a specific duty for Chile to grant Bolivia a sovereign corridor to the sea.³⁰ Chile contend 'that the exchange of notes does not demonstrate the parties' intention to enter into a binding international agreement.³¹ The 1975 Charaña Declaration, signed by the heads of state of Bolivia and Chile, formalised a commitment to ongoing multilevel dialogue. The agreement sought to identify mutually beneficial solutions for the critical issues impacting both nations, specifically focusing on the shared aspirations of their respective citizens.³² Accordingly, Bolivia contends that as long as Chile manifests its intention to negotiate with Bolivia, the declaration has created a binding legal obligation on the two states.³³ Chile disregarded the compulsoriness of the declaration by contending that the declaration is a mere expression of Chile's willingness to negotiate with Bolivia and consequently does not create a binding obligation on it.³⁴

²⁵ The Memorial of Bolivia

²⁶ Judgment of the ICJ

²⁷ The Memorial of Bolivia

²⁸ The Memorial of Bolivia

²⁹ Judgment of the ICJ

³⁰ The Memorial of Bolivia

³¹ The Memorial of Chile

³² Judgment of The ICJ

³³ The Memorial of Bolivia

³⁴ The Memorial of Chile

The Algarve Declaration (2000) was signed by the Foreign Ministers of Bolivia and Chile in Portugal to continue dialogue without exclusions.³⁵ Bolivia construed the phrase dialogue without exclusions in the way that Chile has an obligation to negotiate with Bolivia to give sovereign access in the Pacific Ocean.³⁶ Chile contends that there is no word in the declaration that can clearly create a binding obligation to negotiate with Bolivia for its aspiration in the Pacific Ocean. The ICJ ruled that the Algarve Declaration solely manifests the party's inclination to enter into negotiation and cannot create a binding obligation on Chile to negotiate with Bolivia.³⁷

Acquiescence is an internationally recognised principle of international law rooted in the principle of good faith. Acquiescence is a principle of international law in which obligation is derived from the state's silence on the matter they are reasonably expected to protest. Bolivia contends that Chile's inclination to negotiate with it for decades without denying its obligation creates a binding obligation to grant sovereign access in the Pacific Ocean. Chile contends that Bolivia has failed to demonstrate how the silence of Chile can create a binding obligation to deliver sovereign access in the Pacific Ocean by the principle of acquiescence.³⁸ The ICJ decided that Chile's willingness to negotiate with Bolivia does not amount to the acceptance of Bolivia's aspiration over the Pacific Ocean; instead, it demonstrates Chile's commitment to solving the dispute through dialogue.³⁹

Bolivia invoked the principle of legitimate expectation to consolidate its argument before the ICJ, which is a foundational principle in international investment law.⁴⁰ Bolivia contended that Chile created a legitimate expectation that Bolivia's sovereign access to the Pacific Ocean would be restored through repeated negotiations.⁴¹ On the contrary, Chile argued that there is no generally accepted international law and principle which imposes an obligation on states to fulfil certain rights which were expected by other states; accordingly, Chile is not obliged to fulfil the aspiration of Bolivia over the Pacific Ocean, which is expected from repeated negotiation and diplomatic exchanges between the two states.⁴² The ICJ ruled that the principle of legitimate expectation is not recognized as a source of international law and disregarded Bolivia's argument.⁴³

³⁵ Judgment of the ICJ

³⁶ The Memorial of Bolivia

³⁷ Judgment of The ICJ

³⁸ Judgment of the ICJ

³⁹ Judgment of the ICJ

⁴⁰ Halil Rahman Basaran, 'The Protection of Legitimate Expectations in International Law' (2024) 25 San Diego International Law Journal 77

⁴¹ The Memorial of Bolivia

⁴² The Memorial of Chile

⁴³ Jarrod Hepburn, 'International Court of Justice finds no principle of legitimate expectations in general international law' *Investment Treaty Arbitration* <<https://www.iareporter.com/articles/international-court-of-justice-finds-no-principle-of-legitimate-expectations-in-general-international-law/>> accessed on 31 December 2025

Hence, Bolivia invoked numerous bilateral agreements and negotiations conducted between to states as a source of its claim over the Pacific Ocean. Chile contends that negotiations and diplomatic exchanges made between the two states for decades merely demonstrate Chile's willingness to negotiate with Bolivia. The ICJ concluded that Chile had not undertaken a legal obligation to negotiate sovereign access for Bolivia. The ICJ did, however, encourage both nations to continue dialogue in a spirit of good neighbourliness to address Bolivia's landlocked situation.

3.2. The Historical and Legal Basis of Ethiopia's Claim to the Port of Assab

Ethiopia's contemporary quest to access the sea is mainly centred on historical injustices, erroneous application of the principle of *uti possidatis juris* and the incompetence of the transitional government to recognize Eritrea as an independent sovereign state.⁴⁴ Historical documents demonstrate that Eritrea was a territorial part of Ethiopia. The Italy colonization of Eritrea deprived Ethiopia's sovereign right over Eritrea. Following the defeat of the Axis Powers in the Second World War, Italy abandoned its colonial right over Eritrea at the Paris Conference in 1947. Resultantly, Eritrea was federated with Ethiopia on 11 September 1952. However, on 14 November 1962, Ethi-Eritrea federation was unilaterally dissolved by Emperor Haile Selassie.⁴⁵ The unilateral dissolution of the federation compelled Eritreans to struggle for their independence. Unconditional support of the Ethiopian People's Revolutionary Democratic Front (EPRDF) made Eritrea a de facto independent sovereign state in 1991 until it was internationally recognized in 1993.

Eritrean external self-determination deprived Ethiopia's coastlines in the Red Sea and left it landlocked.⁴⁶ Due to the strategic significance of the Red Sea, all regimes of Ethiopia have attempted to preserve Ethiopia's historical sovereign right in the Red Sea.⁴⁷ Reversely, EPRDF considered sea access as a simple commodity and unconditionally recognized Eritrea as an independent sovereign state without claiming Ethiopia's legitimate and historical right over Assab. Ethiopia and Eritrea signed a Friendship and Cooperation Agreement in 1993, which entitled Ethiopia to use the ports of Assab and Massawa.⁴⁸ The outbreak of border war in 1998 between the two states terminated the agreement and forced Ethiopia to use the port of

⁴⁴ Abebew Sisay Alemnow, 'Legal Analysis of Ethiopia's quest to access the sea under the Framework of International Law' (2025) 4(1) East African Journal of Law Policy and Globalization

⁴⁵ 'Ethiopia and Eritrea: A Shared History Distorted by Political Agendas' *The Reporter* (Addis Abeba, 5 April 2025) <<https://www.thereporterethiopia.com/44494/>> accessed on 31 December 2025

⁴⁶ Blen Mamo, 'Ethiopia's Residual Rights to Negotiate Sovereign Sea Access with Eritrea: Colonial Legacies, Legal Continuity, and the Case of Assab' *Horn Review* (Addis Abeba, 3 December 2025) <<https://hornreview.org/2025/12/03/ethiopias-residual-rights-to-negotiate-sovereign-sea-access-with-eritrea/>> accessed on 8 January 2026

⁴⁷ Awet Halefom, 'The Geopolitics of the Red Sea and Ethiopia's Foreign Policy Options: Tracing Policy Responses across the Successive Regimes (1930s-2018)' (MA Thesis, Ethiopian Civil Service University 2022)

⁴⁸ Frehiwot Asres Amete, 'The Ethio-Eritrea Rapprochement Since 2018 and Ethiopia's Quest for Access to the Red Sea' (Ma Thesis, Addis Abeba University 2023)

Djibouti, which is currently used as a major outlet for importation and exportation of trade.

On 23 October 2023, Ethiopian Prime Minister Abiy Ahmed Ali made an erratic speech that claimed Ethiopia's legitimate and historical right to access the Red Sea. In doing so, Ethiopia signed a maritime accord with Somaliland in exchange for recognition. Ethiopia renounced its ambition to recognise Somaliland in the Ankara Declaration.⁴⁹ After its abandonment, Ethiopia invoked its sovereign right over Assab. The Ethiopian Prime Minister repeatedly invokes diplomatic negotiation with Eritrea for Ethiopia's quest for Assab.⁵⁰ The stubborn foreign policy of Isais Afewrki repudiated Ethiopia's diplomatic call.⁵¹ Ethiopia's ongoing claim of ownership over Assab is substantiated by the forthcoming historical realities and the principles of international law.

3.3. The Incompetency of the Transitional Government to Recognise Eritrean Statehood

The EPRDF overthrew the Derg regime in 1991. EPRDF established the Transitional Government of Ethiopia immediately after seizing power.⁵² Recognition of Eritrea as an independent, sovereign state during the National Conference on Peace and Reconciliation held in Addis Ababa in July 1991 creates contestation among Ethiopian scholars and EPRDF representatives.⁵³ Astoundingly, the Transitional Government of Ethiopia officially recognises Eritrea as a sovereign state. Recognition of Eritrea as an independent sovereign state violates the very nature of the transitional government and the Transitional Charter of Ethiopia. The transitional government is temporarily established as a caretaker government, and its power is limited to running provisional governmental activities until constitutional government is established.⁵⁴ In this sense, the Transitional Government cannot decide on matters which are politically sensitive and require the consent of the people.

⁴⁹ Gedifew Sewenet Yigzaw, 'Balancing National Priorities: Ethiopia's Ankara Declaration and Its Implications for Diplomatic Success A Commentary' (2024) 6(1) Pan African Journal of Governance and Development 193

⁵⁰ Zelalem Tamir, 'What If Ethiopia Claimed Assab Legally' *The Reporter* (Addis Abeba, 3 January 2026) accessed from <https://www.thereporterethiopia.com/48428/> accessed on 24, February 2026

⁵¹ Amanuel Tadesse, 'Eritrea's Totalitarian Order and the "Isaias Doctrine": A Strategic Case for its Collapse' *Horn Review* (Addis Abeba, 20 November 2025) accessed on <https://hornreview.org/2025/11/20/eritreas-totalitarian-order-and-the-isaias-doctrine-a-strategic-case-for-its-collapse/> > accessed on 24, February 2026

⁵² Mahdur Nesibu, Ethiopia's Transitional Government and the Questionable Birth of Eritrea: Authority without Mandate? *Horn Review* (Addis Abeba, 12 May 2025) <<https://hornreview.org/2025/05/12/ethiopias-transitional-government-and-the-questionable-birth-of-eritrea-authority-without-mandate/>> accessed on 23 December 2025

⁵³ Frehiwot Asres Amete, 'The Ethio-Eritrea Rapprochement Since 2018 and Ethiopia's Quest for Access to the Red Sea' (MA Thesis, Addis Abeba University 2023)

⁵⁴ Sami Saeed, Options to Form a Transitional Government In Wartime in Sudan (2024) International Institute for Democracy and Electoral Assistance 23

The EPRDF adopted a Transitional Charter it serves as a constitution.⁵⁵ The Transitional Charter mandated the Transitional Government to engage in international relations in consideration of Ethiopia's sovereignty and the interests of the people.⁵⁶ Many Ethiopians condemned the arrangement of Eritrea as a sovereign state by the Transitional Government of Ethiopia. Beside this, recognizing Eritrea as independent sovereign states is against the sovereignty and territorial integrity of Ethiopia. As embedded in Article 18 of the Transitional Charter laws and decisions contrary with the Charter are null and void.⁵⁷ Therefore, the recognition of Eritrea by the Transitional government is not valid and legal. Some may contend that Ethiopia cannot invoke its domestic law (Transitional charter) as a defence for its international obligation. However, as enshrined in Article 46 of the Vienna Convention on the Law of Treaties, states may invoke domestic law to avoid international liability only if the violation of internal law concerns a rule of fundamental importance regarding the competence to conclude treaties, and if that violation was objectively evident to any state acting in good faith.

The jurisdictional incompetence of the Transitional Government of Ethiopia to unilaterally redraw Ethiopia's international boundaries was apparent to any state negotiating in good faith.⁵⁸ It was a matter of public record that the Transitional Government of Ethiopia was established with a circumscribed mandate, intended solely to administer the state until a constitutional government with plenary powers could be inaugurated. Furthermore, any actions taken by the TGE that contravened the Transitional Charter, which functioned as the *lex superior* of the period, constitute a manifest violation of internal laws of fundamental importance. Under the framework of international law, specifically referencing the principles found in Article 46 of the Vienna Convention on the Law of Treaties, Ethiopia may arguably invoke these constitutional limitations as a defense. This provides a legal basis to challenge the legitimacy of prior territorial arrangements and bolster its ongoing claims regarding the port of Assab.

In summary, the 1991 Transitional Government of Ethiopia lacked the requisite constitutional mandate to unilaterally alter or redraw Ethiopia's international boundaries.⁵⁹ The exercise of external self-determination must not occur in a manner that unlawfully jeopardises the sovereignty or territorial integrity of the

⁵⁵ Hashim Towfik, 'Transition to Federalism: The Ethiopian Experience' (2010, Forum of Federations the Global Network on Federalism) 6

⁵⁶ Transitional Period Charter of Ethiopia, Proclamation No. 1/1991, FED. NEGARIT GAZETA 1st Year No.1 Addis Abeba, July 22, 1991 art, 3

⁵⁷ Ibid art, 18

⁵⁸ Prime Media, 'Interview with Major General Teshome Gemechu regarding Ethiopia's Quest for Sea Access' <<https://www.youtube.com/watch?v=MVEKNr1KCsA>> accessed on 22, February 2026

⁵⁹ Brehanu Borji Ayalew, 'Historical Continuity and Colonial Disruptions in the Northern Red Sea: A Comprehensive Analysis of Ethiopia's Sovereignty and the Evolving Status of the Port of Assab from Pre-Colonial to Post-Colonial Periods' 2025 accessed from <<https://orcid.org/0009-0003-5501-2762>>

parent state. In this instance, it is argued that Eritrea's pursuit of self-determination was executed in a manner that fundamentally compromised Ethiopia's sovereign interests. Crucially, at the time of these transitions, Assab was designated as an autonomous province of Ethiopia, distinct from the administrative jurisdiction of Eritrea. Therefore, the secession of Eritrea, insofar as it encompassed Assab, constituted an overreach that ignored the established internal administrative borders and the overarching principle of territorial integrity.

The ruling of the ICJ supports the above argument. The principles established in the ICJ's Namibia Advisory Opinion affirm that once a legal mandate is terminated or exceeded, the subsequent acts of the administering authority are legally void. Since the Transitional Government of Ethiopia operated under a strictly circumscribed mandate to manage interim affairs, any attempt to permanently alienate sovereign territory, such as the severance of Assab, constituted an *ultra vires* act.⁶⁰ Consequently, under the Namibia precedent, such acts possess no legal standing, and third-party states (including Eritrea) were under an obligation to recognize the illegality of these territorial arrangements.

Dr Dereje argues that the unilateral statements made by former Ethiopian Prime Minister Meles Zenawi regarding Assab created a binding international obligation for Ethiopia to recognize the port as sovereign Eritrean territory.⁶¹ However, this paper contends that such statements do not constitute a definitive legal waiver and cannot deprive Ethiopia of its ongoing claims. Primarily, Prime Minister Meles did not unequivocally abandon Ethiopia's rights; rather, he framed the issue conditionally. He explicitly stated that Ethiopia would invoke its claims if and when international law provided a viable mechanism to do so. By anchoring the claim to the evolution of international legal standards, the Prime Minister maintained a legal doorway for future assertions of ownership.

Furthermore, in subsequent speeches, Prime Minister Meles clarified that the government had decided to defer the question of Assab until the regional political climate became more favorable. He noted, "Until the situation in Eritrea becomes more favourable to us, we have decided to leave this question for the future; we are not saying we will not request to use the Assab port in the future by using international law."⁶² This speech signalled that his stance was a strategic pause rather than a permanent renunciation. This indicates that the statements addressed

⁶⁰ 'Ethiopia's Transitional Government and the Questionable Birth of Eritrea: Authority Without Mandate' Horn Review (Addis Abeba, 12 May 2025) accessed from <<https://hornreview.org/2025/05/12/ethiopias-transitional-government-and-the-questionable-birth-of-eritrea-authority-without-mandate/>> accessed on 25 February 2026

⁶¹ Borkena, 'No way to make Assab part of Ethiopia,' says a legal scholar' accessed from <<https://borkena.com/2019/06/01/no-way-to-make-assab-part-of-ethiopia-says-a-legal-scholar/>> accessed on 8 February 2026

⁶² Horn Africa Insight, Djibouti's Silent Power: Ethiopia's Future Depends on This accessed from <<https://www.youtube.com/watch?v=5ta1CUod99Q>> accessed on 18 February 2026

only a temporary suspension of Ethiopia's historical rights until circumstances became propitious for a formal challenge. Consequently, these unilateral remarks lack the "clear and specific" intent required under international law to permanently extinguish a state's territorial claims or its pursuit of sovereign access to the sea.

3.4. Erroneous Application of the Principle of *Uti possiditatis juris* in Boundary Delimitation

In the Algiers Agreement, it ends two years border war between Ethiopia and Eritrea ended, two states agreed to delimit the boundary dispute based on the principle of *uti possiditatis juris* in the context of colonization.⁶³ The principle of *uti possidetis juris* was originally designed to resolve territorial disputes among states emerging from decolonization. However, its applicability is not confined strictly to the colonial context; it is equally applicable in the contexts of self-determination, secession, and the dissolution of states. Historical documents demonstrate that Assab was the province of Ethiopia when the Dergue regime redrawn administrative boundaries in 1980.⁶⁴ Similarly, Eritrea was one of the autonomous provinces during that time.⁶⁵

The *uti possiditatis juris* in the context of colonization is applicable to settle disputes between two states which remained under colonization.⁶⁶ The Algiers Agreement and the Eritrea-Ethiopia Boundary Commission applied the principle of *uti possidetis juris* within a colonial framework.⁶⁷ This application was predicated on the non-existent historical premise that the border was a colonial boundary between two sovereign entities.⁶⁸ However, no historical documentation exists to categorize Eritrea as a colony of Ethiopia. Consequently, there is no legal basis for applying the colonial iteration of this principle to resolve the Ethio-Eritrean boundary dispute. Instead, this principle should be applied within the context of state succession and self-determination. Under this framework, the administrative boundaries existing at the time of secession, specifically the 1980 administrative division that recognized Assab as an autonomous region distinct from Eritrea,

⁶³ Elias N. Stebek, 'River Maiteb's Location in the Ethio-Eritrean Western Border: Critical Reflections' (2009) 3(1) Mizan Law Review 149

⁶⁴ Dereje Zeleke Mekonen, The Ethio-Eritrean Boundary Dispute: Anomalies and Imperatives for Peaceful Relations (2019) 3 International Law Series 47:

⁶⁵ Minasse Haile, 'The Legality of Secessions: The Case of Eritrea' (1994) 8(2) Emory International Law Review 479

⁶⁶ Wondimagegn Tadesse Goshu, 'Ethiopia-Eritrea Claims for Loss, Damage or Injury and the Claims Commission: Lessons for Future Bilateral Relations' (2019) 3 International Law Series 7

⁶⁷ Yakob Hailemariam, 'አሰብ የማንናት? የኢትዮጵያ የባህር በር ጥያቄ (ታሪክ አሳታሚ፣ 2010) (Who Does Assab Belong To: Ethiopia's Quest for Access to the Sea)' (Tarik Publishers, 2010) [Hear in after Yacob Hailemariam]

⁶⁸ Ibid

should have been preserved.⁶⁹ Therefore, Ethiopia's ongoing claim over Assab is substantiated by international law and the proper application of *uti possidetis*.

3.5. Contesting the Binding Effect of the 2000 Algiers Agreement under the FDRE Constitutional Framework

During the period of Eritrean independence, there was no constitutionally established Ethiopian government with the mandate to decide on matters directly affecting Ethiopia's sovereignty and territorial integrity.⁷⁰ The Transitional Government of Ethiopia's unconditional support for Eritrea's establishment as a sovereign state was a violation of international law.⁷¹ The statehood of Eritrea was significantly facilitated by the unconditional support of the TPLF. Ethiopia and Eritrea maintained a brief period of diplomatic rapprochement until the outbreak of the 1998 border war. This conflict concluded with the 2000 Algiers Agreement, wherein both states consented to resolve their boundary dispute based on colonial-era treaties between Italy and Ethiopia, and the principle of *uti possidetis juris*.⁷² While some scholars contend that the Algiers Agreement constitutes an insurmountable legal bar that estops Ethiopia from asserting ownership over Assab, this paper argues otherwise. Specifically, it posits that the Algiers Agreement is undermined by the reliance on colonial treaties that had already lost their legal efficacy at the time of the agreement's signing. Furthermore, the erroneous application of *uti possidetis juris* and the subsequent material breaches of the Algiers Agreement serve to re-legitimise Ethiopia's persistent sovereign claims over the Port of Assab.

In 1952, Ethiopia formally declared the nullification of all colonial treaties previously concluded with Italy.⁷³ This position is supported by the fact that Italy had already abrogated the boundary treaties of 1900, 1902, and 1906 through its 1935 invasion and subsequent unlawful occupation of Ethiopia, which fundamentally violated the territorial integrity those agreements, were meant to define.⁷⁴ Moreover, under the 1947 Paris Peace Treaty, Italy expressly renounced

⁶⁹ 'The Legacy of Colonial Borders: The Ethiopia-Eritrea Conflict and the Struggle for Assab' Horn Review (Addis Abeba, 12 March 2025) <https://hornreview.org/2025/03/12/the-legacy-of-colonial-borders-the-ethiopia-eritrea-conflict-and-the-struggle-for-assab/> accessed on 26 February 2026

⁷⁰ 'Authority Without Mandate' The Reporter (Addis Abeba, 24 January 2026) accessed on <<https://www.thereporterethiopia.com/48720/>> accessed on 26 January 2026

⁷¹ Yacob Hailemariam

⁷² International Crisis Group, Ethiopia and Eritrea: War or Peace? (Africa Report N°68, 24 September 2003)

⁷³ Blen Mamo, 'The Algiers Agreement: Eritrea's Breaches Nullify Its Own Defense' Horn Review (Addis Abeba, 14 December 2025) accessed from <https://hornreview.org/2025/12/14/the-algiers-agreement-eritreas-breaches-nullify-its-own-defense/> accessed on 24, February 2026

⁷⁴ Reyot, ከዶ/ር ያዕቆብ ኃይለማሪያም ጋር የተደረገ ቃለ ምልልስ (Interview with Dr. Yacob Hailemariam on Assab) accessed from <<https://www.youtube.com/watch?v=yHpF1pVALeg>> accessed on 24 February 2026

and cancelled all colonial agreements with various states, including Ethiopia.⁷⁵ Consequently, the Algiers Agreement was predicated upon colonial treaties that had already been repudiated and rendered legally extinct by the original signatories.⁷⁶ Since the foundational documents utilized for delimitation were invalid, it is argued that the Algiers Agreement lacks a binding legal effect on the current territorial status between Ethiopia and Eritrea.

The Dissolution of the UNMEE as a material breach of the Algiers Agreement: a critical factor in the legal collapse of the Algiers Agreement is the material breach committed by the State of Eritrea.⁷⁷ Under Article 60 of the Vienna Convention on the Law of Treaties, a material breach by one party entitles the other to invoke that breach as a ground for terminating or suspending the operation of the treaty. In 2008, the UN Security Council was forced to terminate the United Nations Mission in Ethiopia and Eritrea because of Eritrea's persistent restrictions on fuel, food, and movement. Since the Algiers Agreement mandated the maintenance of the Temporary Security Zone as a prerequisite for peace and demarcation, the forced expulsion of the UN mission constitutes a repudiation of the treaty's core security framework.⁷⁸ Consequently, Ethiopia can argue that the agreement has been rendered legally unenforceable through Eritrea's own obstructive conduct.

While some argue that the settlement of the Ethio-Eritrean boundary dispute by the Eritrea-Ethiopia Boundary Commission precludes any further territorial assertions, Ethiopia's claim over Assab remains legally unextinguished.⁷⁹ The findings of the Eritrea-Ethiopia Boundary Commission lack the requisite subject-matter jurisdiction to function as a definitive legal bar to Ethiopia's sovereign claim over the Port of Assab.⁸⁰ While the 1998-2000 conflict was ignited by a specific territorial flashpoint in Badme, it did not entail a comprehensive legal adjudication of Ethiopia's primordial historical title to its Red Sea littoral. Accordingly, the Eritrea-Ethiopia Boundary Commission does not address the broader historical, equitable, and economic rights of the Ethiopian state to a sovereign maritime outlet. Since the ownership of Assab was never a formally litigated matter of dispute nor submitted for arbitration, the Commission's final ruling is legally silent regarding the port's

⁷⁵ Federico Tenca Montini, 'The Burning Border: comparative study of the problem of Trieste and other territorial issues confronted by Italy after defeat in the Second World War' (2019) 51(2) *Journal of the Institute of Croatian History* 233

⁷⁶ Jacob Hailemariam

⁷⁷ Amanuel Tadesse, 'From Promise to Material Breach: 25 Years of Eritrea's Defiance of the Algiers Agreement' *Horn Review* (Addis Abeba, 17 December 2025) accessed from <<https://hornreview.org/2025/12/17/from-promise-to-material-breach-25-years-of-eritreas-defiance-of-the-algiers-agreement/>> accessed on 26, February 2026

⁷⁸ Robera Regassa, *Ethio-Eritrean Relations: Problems and Prospects in the Aftermath of Algiers Peace Agreement* (MA Thesis, Addis Abeba University 2011)

⁷⁹ Dejen Yemane, 'After Fumbling Assab, Meles Did Right by Nile' *Addis Fortune* (Addis Abeba, 21 March 2020)

⁸⁰ *Ibid*

historical status.⁸¹ Under the principles of international jurisprudence, a right that has not been specifically adjudicated cannot be deemed extinguished.

In *Nauru v Australia*, the ICJ ruled that there is no settled time limit under international law for a state to bring a claim.⁸² A delayed claim is only barred if the state has expressly consented to waive its rights or has acted in a way that implies a waiver.⁸³ Consequently, since Ethiopia has not expressly waived its historical claims of ownership over Assab, those rights cannot be deemed extinguished by the mere passage of time.⁸⁴ Consequently, Ethiopia's claim remains a latent sovereign entitlement that was neither surrendered by the constitutional will of the Ethiopian people nor resolved through international litigation.⁸⁵ It stands as an unresolved vestige of sovereignty, persisting independently of the demarcated colonial boundary.

As stated under Article 9(4) of the 1995 Constitution of the Federal Democratic Republic of Ethiopia (FDRE), international agreements signed by Ethiopia become part of the domestic law only after they are ratified by Parliament.⁸⁶ In the case of the Algiers Agreement, the Federal Parliament provided political authorization to the executive organ to sign the document, but full ratification did not follow. Furthermore, Article 4 of the Algiers Agreement stipulates that the agreement enters into force immediately upon the signatures of both states. Both Ethiopia and Eritrea signed the agreement on December 12, 2000. Accordingly, some may contend that the agreement is binding and that Ethiopia continues to be bound by its terms. However, the FDRE Constitution envisages that international treaties and agreements become integral parts of Ethiopian law only upon ratification.⁸⁷ Consequently, there is a clear contradiction between the FDRE Constitution and the Algiers Agreement regarding its entry into force.

Determining the status of international agreements in relation to the FDRE Constitution is critical. As stated under Article 9(1), which establishes constitutional supremacy and Article 9(2), any law or customary practice contrary to the

⁸¹ Margarethe Stevens, 'The Eritrea-Ethiopia Boundary Commission: A Case Study in the Adjudication of Territorial Disputes' (2003) 18(3) ICSID Review 601

⁸² Certain Phosphate Lands in Nauru (*Nauru v Australia*) (Exceptions préliminaires de l'Australie ; exposé écrit de Nauru) [1992] ICJ Pleadings, vol II, 15

⁸³ Ibid

⁸⁴ Gizachew Asrat & Gashaw Ayferam Endaylalu, 'Ethiopia's Quest for Sovereign Sea Access: Historical and Geopolitical Contexts' (2025) 17(1) Journal of Middle Eastern Studies 149

⁸⁵ Shimellis Hailu, Hussein Jemma & Yonas Ashine, 'Ethiopia's Quest for Sea Access: Strategic Imperatives, Responses and Geopolitical Repercussions' (2025) 12(2) Ethiopian Renaissance Journals of Social Sciences and the Humanities 113

⁸⁶ The 1995 Constitution of Federal Democratic Republic of Ethiopia art. 9(4); Abebew Sisay Alemnow, 'Legal Effect of Unpublished International Law in Federal Negarit Gazette Under the Ethiopian Legal System' (2025) 2(1) Chokie Journal of Law 55

⁸⁷ Abebew Sisay Alemnow, 'Legal effect of Unpublished International Law of the Federal Negarit Gazette under the Ethiopian Legal System' (2025) 2(1) Chokie Journal of Law 55

Constitution is null and void.⁸⁸ Therefore, it is argued that because the Algiers Agreement did not undergo the constitutionally mandated ratification process, it lacks a binding legal effect within the Ethiopian domestic framework. Beside this, According to Article 86 of the FDRE Constitution, the government must conduct international relations based on Ethiopia's sovereignty and national interests.⁸⁹ Since the Constitution manifests Ethiopian sovereignty, that sovereignty resides in the Nations, Nationalities, and Peoples of Ethiopia, who drafted the document.⁹⁰

3.6. The Inapplicability of Bolivia v. Chile to Ethiopia's Sovereign Claim to Assab

Bolivia invoked historical diplomatic negotiations and political discussions as a binding international legal instrument. The concentration of Bolivia on non-binding diplomatic exchanges and resolutions debilitates its argument presented to the court. The Court dismissed Bolivia's arguments, holding that diplomatic dialogue only ascends to the level of a binding obligation if there is demonstrable intent from the states involved. In this instance, the Court concluded that the history of negotiations between Chile and Bolivia failed to manifest an objective intention by Chile to commit to a legally binding outcome.⁹¹

Bolivia failed to invoke the way that deprives its coastline on the Pacific Ocean as a legal argument before the ICJ.⁹² Negotiations conducted for decades between Bolivia and Chile were mere promises to engage in dialogue; there is no diplomatic exchange that truly promised to grant sovereign access over the Pacific Ocean.⁹³ This paper views that this is why Bolivia failed to win the proceedings before the ICJ. Furthermore, Bolivia failed to invoke Article 125 of the United Nations Convention on the Law of the Sea (UNCLOS) to legitimise its ambitions in the Pacific or to bolster its arguments before the ICJ.⁹⁴ Alongside customary international law, the rights and obligations of both coastal and landlocked states are explicitly codified under the 1982 Convention.⁹⁵ While Article 125 establishes that landlocked states possess the right of access to and from the sea and freedom of transit, the specific modalities

⁸⁸ FDRE Constitution art, 9

⁸⁹ FDRE Constitution art, 86

⁹⁰ Meakdelawit Taye, 'Glocalization as a Challenge to the Legitimacy of Secession Right in the FDRE Constitution: The case of Addis Ababa and Bahirdar' (LLM Thesis, Addis Abeba University 2012)

⁹¹ Rodríguez-Peralta A, 'The Obligation to Negotiate in International Law: The Case of Bolivia v. Chile' (LLM Thesis, University of Oslo 2019).

⁹² Stephen Allen, 'The Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile): Sovereignty, History and Maritime Access' (2019) 18(2) Chinese Journal of International Law 351

⁹³ Andrés Guzmán Escobari, 'Bolivia's Reasonably Strong ICJ Case against Chile' *Opinio Juris*, <https://opiniojuris.org/2014/03/21/bolivias-reasonably-strong-icj-case-chile/> accessed on 26 February 2026

⁹⁴ Vera Shikhelman, 'The Chilean-Bolivian Maritime Dispute: The International Court of Justice between Law and Politics' (2019) 52(1) Israel Law Review 103

⁹⁵ A.A Adedeji, 'An Appraisal of the Right of Access to the Sea Accorded to Landlocked States under the 1982 Third United Nations Convention on the Law of the Sea' 2007 1(1) Jimma University Law Journal 133

through which these rights are exercised remain a subject of significant debate within international legal scholarship.⁹⁶

Some legal scholars argue that the Convention imposes an obligation on coastal states to facilitate the exercise of rights enshrined therein. Conversely, others contend that landlocked states can only enjoy these rights upon reaching specific agreements with coastal states. This paper argues that Article 125 of the UNCLOS should be interpreted in conformity with Article 2, which suggests that states cannot invoke sovereignty for the performance of obligations imposed by the Convention.⁹⁷ Furthermore, these provisions should be interpreted in light of the specific legal and historical contexts through which a state became landlocked.

This study contends that if Bolivia had invoked this line of interpretation, focusing its argument on the invalidity of the 1904 Treaty signed under pressure from a victorious Chile, it might have succeeded in its legal suit.⁹⁸ In the contemporary Ethiopian context, Article 125 of the Convention should be construed in consideration of the political developments between the EPLF and TPLF. Specifically, interpreting the Convention identically for states that are naturally landlocked and those that are artificially landlocked through political manoeuvrings, such as Ethiopia, contradicts the principles of fairness and equity, which have attained the status of customary international law.⁹⁹

Although Bolivia is an artificially created landlocked country that once possessed hundreds of kilometres of coastline along the Pacific Ocean, it has failed to invoke the historical title doctrine to consolidate the legitimacy of its quest for maritime access. However, Ethiopia invoking this doctrine as the main argument to legitimise its quest for Assab, Eritrea in general, and Assab in particular, were integral parts of Ethiopia until 1991.¹⁰⁰ The historical title doctrine entitles states to claim sovereign rights over territories where they have exercised continuous and effective control for a prolonged period of time. To assert rights based on this doctrine, states should exercise persistent sovereignty over the claimed areas. By recognizing Eritrean

⁹⁶ Kishor Uprety, *The Transit Regime for Landlocked States: International Law and Development Perspectives* (The World Bank 2006) 45

⁹⁷ 'United Nations Convention on the Law of the Sea' (opened for signature 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3, art. 2

⁹⁸ A. Rodríguez-Peralta, 'The Obligation to Negotiate in International Law: A Critical Analysis of the *Bolivia v. Chile* Judgment' (PhD Thesis, University of Salamanca 2021)

⁹⁹ Abebew Sisay Alemnow, 'Ethiopia's Quest to Access the Sea: International Law Perspective' (2026) 3(1) *East African Journal of Law, Policy and Globalization* (Forthcoming)

¹⁰⁰ *Historical Injustice: The Unjust Seizure Of Assab Port And Ethiopia's Right To Reclaim Its Maritime Access* Assab Forum (9 March 2026) <<https://www.assabforum.net/economic-impact-of-being-landlocked/>> accessed on 1 January 2026

sovereignty in 1991, Ethiopia's Transitional Government effectively surrendered the nation's sovereign claim to the Port of Assab.¹⁰¹

In the Algiers Agreement Ethiopia and Eritrea agreed to delimit and demarcate boundary disputes among them based on the principle *uti possidetis* and colonial treaties. Accordingly, some contend that Ethiopia's recognition of Eritrea with its colonially defined territory interrupted Ethiopia's sovereignty over Assab and consequently obviates Ethiopia from invoking this doctrine to legitimize its quest for access to the sea. However, Ethiopia was deprived of its sovereign rights over Assab due to the political conspiracy between the Tigray People's Liberation Front (TPLF) and the Eritrean People's Liberation Front (EPLF). The EPRDF deliberately and irresponsibly ignored Ethiopia's legitimate historical rights over Assab without a mandate or the consent of the Ethiopian people. Therefore, Ethiopia can invoke the historical title doctrine to consolidate its legitimate claim over Assab.¹⁰²

Regarding the interpretation of the principles of acquiescence and estoppel by the ICJ, some argue that Ethiopia's thirty-year silence concerning Eritrean statehood and its own historical claims to the Red Sea constitutes a legal hurdle to its current pursuit of ownership over Assab.¹⁰³ However, for twenty-seven of those years, Ethiopia was governed by the EPRDF, a regime that dismissed the quest for Assab as a violation of international law. Because this administration irresponsibly recognised Eritrea's external self-determination and unilaterally surrendered Assab, the Ethiopian state under that specific leadership could not have been reasonably expected to protest the very statehood it facilitated. Consequently, these legal principles and the specific findings of the ICJ in other contexts should not serve as an insurmountable barrier to Ethiopia's contemporary ambitions, as the prior silence did not reflect the enduring will or the historical rights of the Ethiopian people.

Bolivia and Chile signed the 1904 Treaty of Peace and Friendship to settle their border dispute. In this agreement, Bolivia voluntarily relinquished hundreds of kilometres of coastline along the Pacific Ocean to Chile. In return, Bolivia was granted only the right of commercial transit, allowing it to import and export goods without paying Chilean taxes.¹⁰⁴ Chile also agreed to build the Arica-La Paz railway

¹⁰¹ Sophonias A Kassa, 'The Sea We Lost Together: Ethiopia, Eritrea, and the Struggle Over the Port of Assab' (Zehabesha, 2 November 2025) <<https://zehabesha.com/the-sea-we-lost-together/>> accessed 26 February 2026

¹⁰² Fasil Amdetsehay, 'The Port of Assab and Ethiopia's Right of Access to the Sea: A Legal Analysis' (2024) 15(1) Ethiopian Journal of Legal Education 112

¹⁰³ Tesfalidet Belay, 'Ethiopia, Eritrea, and the Red Sea: Why "Residual Sovereignty" Over Assab Is a Legal Dead End' <<https://asenatv.com/ethiopia-eritrea-and-the-red-sea-why-residual-sovereignty-over-assab-is-a-legal-dead-end/>> accessed 26 February 2026

¹⁰⁴ Nasser Haidar 'A Century-Old Dispute: Chile & Bolivia' The Organization for World Peace (14 October 2018)

to facilitate Bolivia's trade transactions.¹⁰⁵ Both nations ratified the agreement in 1905. Bolivian historians and legal experts argue that the agreement was signed under duress or undue influence from Chile, asserting that it should not have a binding effect under the framework of international law.¹⁰⁶ However, Bolivia failed to successfully contest the legality of the treaty in its memorial submitted to the ICJ. Instead of challenging the treaty's validity, Bolivia's legal strategy focused on an obligation to negotiate.

In its memorial, Chile argued that the 1904 Treaty recognizes Bolivia's entitlement to unrestricted commercial passage across Chilean soil and Pacific harbors; it notably remained silent on the matter of granting Bolivia sovereign territorial access to the ocean.¹⁰⁷ Conversely, in its memorial, Bolivia did not invoke its historical presence or challenge the legal validity of the treaties signed with Chile. Instead, Bolivia relied on diplomatic exchanges and unilateral statements made by Chilean authorities to consolidate its argument before the ICJ. In this sense, Bolivia has accepted the 1904 treaties, which entitled the right of transit alone without having sovereign rights over the coastal area of the Pacific Ocean. Therefore, in its memorial, Bolivia failed to request that the ICJ consider its quest in consideration of the historical phenomena that make it landlocked.

Conversely, Ethiopia ignored colonial treaties resumed by the Algiers agreement that deprived its legitimate right over the coastal area of the Red Sea.¹⁰⁸ Ethiopia's ongoing quest to access the sea was engrossed in the incompetence of transitional governments to recognize the Eritreans independence and the absence of a binding international legal document that deprived Ethiopia's legitimate and historical right on the Red Sea.¹⁰⁹ Besides this, the boundary commission established by the Algiers Agreement ruled its finding based on an erroneous application of the principle of *uti possiditis juris* within the context of colonisation. Ethiopia contend that so long as Assab was the autonomous province of Ethiopia, the Ethio-Eritrea boundary dispute should be delimited and demarcated based on internal administrative boundaries drawn in the 1980 proclamation.¹¹⁰ Therefore, unlike Bolivia, Ethiopia has condemned historical occasions and the Algiers Agreement that denied Ethiopia's presence in the coastal area of the Red Sea.

¹⁰⁵ Aparajita Gangopadhyay, 'From Land Wars to Gas Wars: Chile-Bolivia Relations and Globalization' (2014) 70(2) *Indian Quarterly a Journal of International Affairs* 140

¹⁰⁶ Yabsira Yesiwas, 'Severed from the Sea: The Parallel Histories of Bolivia and Ethiopia' *Horn Review* (Addis Abeba, 5 November 2025)

¹⁰⁷ The Memorial of Chile

¹⁰⁸ Addis Daily, 'Ethiopian PM Abiy Ahmed on Red Sea Access and Eritrea' accessed from <https://www.youtube.com/watch?v=-ciAeBwRx1g> accessed on 1 March 2026

¹⁰⁹ Horn Global Media, 'Ethiopia's Red Sea Debate: Abiy Ahmed's Bold Parliamentary Speech' accessed from https://www.youtube.com/watch?v=uE4_5fWNF2s accessed on 2 March 2026

¹¹⁰ Yacob Hailemariam

Decisions rendered by international courts do not have the same binding legal effect as decisions rendered by the cassation benches within a domestic legal system. Therefore, the doctrine of *stare decisis* is not recognized in international law as a principle. The decision of the international court remains binding only on the parties involved in the dispute. Similarly, decisions of the ICJ are binding only on the parties which were involved in the dispute. Therefore, the decision of the ICJ in the case between Bolivia v. Chile cannot be cited as a binding legal hurdle of Ethiopia's ongoing quest to access the Red Sea in general and claims of ownership over Assab in particular.

In conclusion, as long as the legal arguments presented by Bolivia to the ICJ differ from those invoked by Ethiopia in its quest for maritime access, the ICJ's findings regarding Bolivia cannot serve as a legal hurdle for Ethiopia's contemporary ambition in the Red Sea. Ethiopia centered its argument the recognition of Eritrean self-determination by the Transitional Government of Ethiopia constituted a violation of international law.¹¹¹ Furthermore, by contesting the legal validity of the Algiers Agreement, Ethiopia contends that there is no binding international legal instrument that precludes it from invoking its legitimate and historical title over the Red Sea. In contrast, Bolivia's case rested on the claim that repeated negotiations between the two states created a binding obligation to grant access to the Pacific Ocean.

4. Conclusion

The ruling of the ICJ in Bolivia v. Chile is mostly perceived as a legal challenge for landlocked states to enjoy rights entitled under the United Nations Convention on the Law of the Sea. However, this paper demonstrates that such a shadow does not extend to Ethiopia's contemporary claims over the Red Sea, specifically regarding the Port of Assab. The distinction lies in the fundamental nature of the legal arguments invoked. Bolivia's argument presented to the ICJ was built upon the "obligation to negotiate" derived from diplomatic conduct and the principle of legitimate expectations. Consequently, the court ruled that the bilateral agreement and diplomatic exchanges do not manifest Chile's intention to grant sovereign access to Bolivia.

In contrast, Ethiopia's ongoing claim to access the sea is not derived in a failed promise to negotiate, instead it emanated from the validity of the historical and legal instruments that makes it landlocked. Ethiopia condemned the competency of the Transitional Government of 1991 and invoked the erroneous application of *uti possidetis juris* in the Algiers Agreement as a legitimate source for its ongoing claim. While Bolivia accepted the 1904 Treaty and sought to bypass it through subsequent

¹¹¹ Gebre Hiwot Tesfai, 'The Ethiopia-Eritrea Border Conflict: A Legal and Historical Perspective' (2025) 12(1) Horn of Africa Bulletin 22

diplomatic behavior, Ethiopia is actively contesting the foundational legality of the instruments that defined its current borders. Therefore, the ICJ's rejection of Bolivia's claim to have a sovereign access over the Pacific Ocean does not obviate Ethiopia's from asserting its legitimate and historical right of ownership over Assab. The path to the Red Sea for Ethiopia remains a matter of territorial and sovereign right rather than a mere request for negotiation.