

# From Treaty to MOUs: Analysis of the Eventuality of the 2018 Ethiopia-Eritrea Peace Agreement

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## Abstract

This paper analyses the 2018 Ethiopia-Eritrea Peace Agreement, whether it is a memorandum of understanding (MOU) or a treaty, highlighting factors leading to the conflict and the peace agreement. It also highlights the previous peace accords and why even after the Agreements, the tensions remain/ed high. Most Peace Agreements are either MOU or Treaty. MOUs are non-legally binding, while treaties are legally binding. Unfortunately, there is no consensus on what constitutes a treaty or memorandum of understanding. However, the 1969 Vienna Convention on the Law of Treaties guides on treaties formulation. This paper deployed in-depth desk review research, text analysis and interpretation, and official documents. In its theoretical and methodological approach, the paper adopted an interdisciplinary approach to understanding the eventuality of the 2018 Peace Agreement. In its analysis and findings, the paper found out that the 2018 Peace Agreement was an MOU. It also found out that the conflict is not only political and religious but also emotional, cognitive, and behavioral. The failure of arbitration and the Algiers Agreement, which were legally binding, prompted the parties to enter into the 2018 non-legally binding Peace Agreement. The previous dispute resolution mechanisms lacked a provision on enforcement mechanism and consequences of the breach, while the 2018 Peace Agreement specifies this provision. The prior Agreements also lacked political goodwill to implement the Commission's Boundary Report. However, the 2018 Peace Agreement sets the enforcement mechanism. The paper, thus, concludes that MOUs, which are primarily for political and economic interests, unlike treaties which are for legal claims, have high chances of success for settling conflict and restoring peace. Due to the recent nature of the 2018 Peace Agreement, there is limited to no research on its progress, a potential area for future research.

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## Keywords

Conflict, Peace Agreement, Ethiopia, Eritrea, Treaty, MOU, Vienna Convention

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## 1. Introduction

Unlike other African countries with an almost similar history of colonization, Ethiopia's case is slightly different. In [Watkins's \(2021\)](#) words, Ethiopia is a nation with an intriguing, fragile, and complex history. Ethiopia consists of over ten different ethnic groups, with its major ethnic groups (Amhara, Oromo, Tigrayan, and southern groups) occupying the government positions ([Lashitew, 2019](#)). Ethiopia has experienced periods of negative conflicts which are both religious and political in nature ([Watkins, 2021](#)). Ethiopia is the largest and most populated country in the Horn of Africa. With the 1993 secession of Eritrea, its former province along the Red Sea, Ethiopia, became landlocked ([Crummey, 2020](#)). The southern areas of what is now Ethiopia were conquered in the late 19<sup>th</sup> century by Emperor Menelik II, who created the new capital of Addis Ababa. Following this conquest, the empire absorbed the non-Habesha people (Oromo), making distinctions between the north and south of people and institutions ([Watkins, 2021](#)).

On the other hand, Eritrea seceded from Ethiopia in 1993, preceded by increased years of war and tensions. Its secession meant blockage of Ethiopia's gain from import and export of goods and services and dominance of the region (Eritrea was the avenue by which Ethiopia imported and exported goods and services). Eritrea comprises different ethnic groups, just like Ethiopia. Despite shared similarities, both countries have experienced recurring periods of conflict between them, which have displaced, killed, and maimed their populations. Efforts have been made to settle these conflicts through peace agreements, agreements to be discussed below. These agreements are memorandum of understanding and treaties and provide a sense of why the conflict recurs.

The paper deploys in-depth desk review, text analysis and interpretation, and official documents. In its theoretical and methodological approach, the paper adopts an interdisciplinary approach. The article outlines the conflict's causal factors, the previous peace accords, and the 2018 Peace Agreement (whether it is an MOU or treaty). The paper comprises five sections: Introduction, Ethiopia-Eritrea Conflict, Peace Agreements before 2018, 2018 Peace Agreement, and Conclusion.

## 2. Ethiopia-Eritrea Conflict

Different scholars assign different meanings to a conflict. Some refer to it as a behavior, action, or attitude. For instance, [Wallerstein \(2011: p. 15\)](#) defines conflict as a "social situation in which a minimum of two actors (parties) strive to

acquire at the same moment in time an available set of scarce resources”, underlining the terms strive and scarce. He notes that strive refers to the parties doing something, however minimal to acquire the resource. Thus, strive includes anything, war being its highest form. He further states that the notion of “available resources” should be interpreted broadly to include non-material/non-economic resources. Accordingly, the term “resources” cover all kinds of positions that are of interest to an actor. So, it can, among other things, include territory, the position of power, acceptance of responsibility for destructive actions, psychological needs like retribution, and different intangible values (Tesfay, 2013: p. 164). Conflict can, therefore, be attributed to all its elements, that is, behavior, action, and attitude but should be dependent on the context. At a close look into the Ethiopia-Eritrea conflict, aspects of territory, psychological needs (collective identity for Eritreans), and power positions are feasible. In Fox’s article, conflict is illustrated through Johan Galtung’s three-dimensional model with attitude, behavior, and contradiction at its vertices, elements apparent in the Ethiopia-Eritrea conflict.

Ethiopia and Eritrea possess intriguing commonalities which “inform the historical and cultural similarities of the peoples of both countries”, though both countries hold contrary views on politics (Tesfay, 2013: pp. 168-169). For decades, severe conflicts have marred these governments leading to mass displacements, drought, loss of lives, and continued tensions. Of importance to note is the 1998-2000 border war indicated as the most protracted and tense conflicts. The war is acknowledged to have derogated from the principles of human rights and humanitarian law (Tesfay, 2013: p. 167). This conflict can be explained by decisions made earlier on by different actors. In 1950, the UN resolved for an autonomous Eritrea, though still under Ethiopian sovereignty, a move that the Eritreans resistantly received. Opposed to a federal system, in 1962, Eritreans voted for a unitary structure that threatened Haile Selassie’s rule. In the words of Tesfay (2013: p. 170), “this resulted in a liberation struggle by several Eritrean groups, which led to 30 years of civil war according to many Eritreans”. Under international law, liberation movements are among the new international legal subjects. They involve “organized groups fighting on behalf of a whole people against colonial powers, racial regimes, and alien domination” (Cassese, 2005: p. 140). Eritreans believed they had a right to mount a liberation war.

With the increased devastation of war in both countries, Eritrea gained a *de jure* independence following an UN-sponsored referendum in 1993. The “parties in power in both countries, the Tigray People’s Liberation Front-TPLF now subsumed into the Ethiopian People’s Revolutionary Democratic Front-EPRDF, and the Eritrean People’s Liberation Front-EPLF, now renamed People’s Front for Democracy and Justice-PFDJ, were guerilla organizations fighting in close cooperation for nearly 17 years. As guerilla movements, their significant power base was the same ethnic group, Tigray/Tigrinya, found in both countries. After the two organizations came to power, the party that was in power in Ethiopia facilitated and endorsed Eritrea’s independence” (Tesfay, 2013: p. 170). Tesfay

(2013: p. 172) further points out that the conflict between these countries emanates from ideological, military, and national questions. His research also concludes that the war has emotional, cognitive, and behavioral dimensions (Tesfay, 2013: p. 171). In his paper, he concludes that arbitration, which the parties agreed on as the sole mechanism of conflict resolution based on traditional legal standards, is ineffective for a war permeated by emotions and adverse perceptions. Yet, both these countries opted for binding arbitration.

Tesfay (2013: pp. 198-199) also points out that the arbitration decision neither analyzed the causes of the conflict nor the arbitration's role in resolving it.

In a research conducted by Bereketiab (2013: p. 50), the Ethiopia-Eritrea conflict causal factors include identity, state formation, history, mythologies, claims, and counterclaims of separate identities and concomitant sovereignty, and liberation era unresolved points of difference between the liberation movements. The paper argues that to understand and solve the conflict, Eritrea's independence must be factored in. For instance, "Ethiopia holds that Eritrea is part of its territory, a glory that cannot be extinguished in the eyes of Ethiopians and a setback to its development agenda" (Bereketiab, 2013: p. 50). The "Greater Tigray ambition also associates Eritrean independence with Tigray's survival, whatever the form it may assume". Eritrea, on the other hand, holds itself as an independent state worth recognition as per the UN definition and has attempted to block Ethiopia's dominance over its territory and "actively involved in its process of deconstruction and reconstruction", which Ethiopians view as a disrespect (Bereketiab, 2013: p. 51). The paper also cites international reluctance to intervene as also a causal factor to the conflict (Bereketiab, 2013). The paper recommends a dialogue and implementation of the Eritrea-Ethiopia Boundary Commission report to settle the dispute.

In summary, both Tesfay and Bereketiab's research highlight vital causal factors of the conflict. Both recommend an increased need to tackle the conflict's root causes before rushing to any dispute resolution mechanism. In Tesfay's paper, arbitration proved ineffective in settling the war due to both parties' unwillingness to implement the Eritrea-Ethiopia Boundary Commission resolutions manifesting the importance of States' consent to any agreement. Also, although arbitration is legally binding, it is dependent on the contracting parties' resources, which strained both parties. The attitude from both parties of superiority contributed to the failure of arbitration and dialogue as a mechanism. The failure of arbitration led to the peace agreements discussed below.

### **3. Peace Agreements before 2018**

Peace treaties have existed since the El Amarna period (Leguey-Feilleux, 2009: p. 24). Ancient kingdoms would fight for water rights, boundaries, and trade relations, which occasioned mediation and arbitration. To negotiate for positive relations, Kingdoms such as Sumerian would send messengers on foreign missions for the exchange of letters and gifts and to more critical envoys for the negotia-

tion of international agreements (with oaths before deities and formalization by sacrifices and ritual ceremonies) (Leguey-Feilleux, 2009: p. 25). During the Ancient China era, numerous treaties concluded were to reaffirm friendships, create alliances, or bring wars to an end (Leguey-Feilleux, 2009: p. 32). One vastly significant contribution to diplomatic practice was Roman pride in good faith, notably marked in the treaty's conclusion. These international agreements were highly valued and carefully negotiated and recorded (Leguey-Feilleux, 2009: p. 34). Rome made extensive use of the accords and alliance treaties to extend its influence, particularly in the early consolidation of its power. By 264 BCE, more than 150 separate treaties had been concluded, often inducing neighboring communities to become allies, some of whom eventually demonstrated impressive royalty (Leguey-Feilleux, 2009: p. 34).

Peace agreements are usually used in the concept of war/conflict to settle a dispute. A peace agreement may follow the three stages of negotiations: prenegotiation and around the table negotiations (formula and detail stages) (Berridge, 2002: p. 53). Arnault (2006: p. 1) points out that a good agreement leads to “durable peace”. The primary motive for promoting peace negotiations is that military alternatives for ending the war appear infeasible or undesirable. The main *raison d'être*—and often most tangible outcome—of such negotiated settlements is to put an end to a pattern of murders, torture, disappearances, and other human rights violations (Arnault, 2006: p. 19).

Ethiopia and Eritrea signed the first Agreement in 1993, an *Agreement of Friendship and Cooperation*. Other Agreements followed decade after decade. In their study, the Ethiopia-Eritrea conflict is not only associated with Badme's border but also political and economic issues (Aremu and Buhari, 2018: p. 13). On the one hand, Ethiopia called for dialogue, while on the other, Eritrea opposed and instead called for sanctions against Ethiopia, which the UN General Assembly rejected. Though the two nations tried to find peace, they could not bring peace over the border area. Four-point peace proposals were developed demanding the withdrawal of Eritrean forces from Badme and their redeployment to positions. They were held before May 1998 and the civilian administration's reconstitution (Aremu and Buhari, 2018: p. 127). In November 1998, the Organization of African Unity (OAU) Framework of the Agreement (adopted in Algeria) presented four-point peace proposals and called both parties to commit to a peaceful resolution of the conflict. It also provided for the deployment of smaller observer missions around Badme and the investigation of the armed conflict's origins. Also, both parties were to agree to the swift and binding delimitation of the border based on the colonial treaties and applicable international law and called on the delimitation of the entire border area (Aremu and Buhari, 2018: p. 127).

Two other documents followed the OAU Framework Agreement: the modalities for implementation and the technical arrangements. These documents were produced after Eritrea accepted the OAU Framework Agreement to implement

the principle in the Framework Agreement. When Eritrea accepted the Framework Agreement, Ethiopia began to defy the OAU peace efforts. Ethiopia labeled the technical arrangements to implement the Agreement unacceptable and delivered a list of questions demanding clarification. Ethiopia understood Eritrea's acceptance of the OAU Framework Agreement as a strategy to buy time, reorganize its army, and launch counterattacks on Badme (Aremu and Buhari, 2018: p. 128).

Failure of the OAU Framework Agreement and continued hostilities led to another *Agreement on Cessation of Hostilities*, signed on June 18, 2000, which ended the border discord between Ethiopia and Eritrea in December 2000 (Aremu and Buhari, 2018: p. 128).

The Agreement's significance was in deploying peacekeeping forces and creating a 25 kilometers buffer zone inside Eritrea's territory. The Agreement called on Ethiopia to withdraw its troop from the positions it occupied after February 2008, not under the Ethiopian administration. Eritrea agreed to settle its forces 25 kilometers away from Ethiopian settlements. The treaty also envisaged the formation of a military coordination commission to facilitate the settlement of a peacekeeping mission to monitor the Agreement's implementation.

Following these outlined conditions, at the Algeria Peace Agreement, in December 2000, the two parties signed a Comprehensive Peace Agreement under the Government of Algeria's auspices, as the Chairman of OAU (Aremu and Buhari, 2018: p. 129).

Due to the political importance attached to some Agreements, witnesses are usually permitted in Agreements' conclusions (Aust, 2007: p. 106). During the signing of the Algiers Agreement, the UN, EU, and US representatives acted as witnesses (Aremu and Buhari, 2018: p. 128). Their role involved creating a suitable environment for both parties, establishing common understanding between the parties, a symbolic recognition of the importance of the Agreement, and help deter the parties from the breach of the Agreement.

Consent of both parties is crucial under treaty law and implementation of the Agreements. As Aust (2007: p. 94) puts it, "to consent to be bound is the most significant, positive act which a state can take concerning any treaty". Though the Algiers Agreement foresaw the delimitation decision to be final and binding, it lacked provisions that made the decision binding. The Agreement uses the treaty language such as "shall" meaning it is a treaty; however, it fails to mention any diplomatic consequences or the punitive measures against the party defying the decision, viewed as a measure of flexibility and convenience provided to States. The criteria that could enforce compliance to the Border Commission's final decision is also not offered (The Algiers Agreement, 2000). Astoundingly, the Agreement provides that the parties authorize the Secretary-General of the OAU to register the Agreement with the United Nations Secretariat per Article 102 (1) of the United Nations Charter. This qualifies it as a treaty and, therefore, legally binding (p: 6).

Due to the lack of any Agreement's breach consequences, the parties can breach the Agreement at any time. Eritrea breached the Agreement a few years after the signature. For over seven years (2000-2008), the United Nations Mission in Ethiopia and Eritrea (UNMEE) has actively served as a buffer separating hundreds of thousands of soldiers settled along the border. However, the UNMEE's role of separating the two countries' armies was curtailed by the cutting of logistic supplies to the peacekeeping force by Eritrea. With the standing of the virtual demarcation of the border as of January 2008, Eritrea announced that it would not accommodate UNMEE focused on its territories anymore (Aremu and Buhari, 2018: p. 129). Despite the Secretary General's request to urgently address the logistic supplies, Eritrea continued to deny UNMEE diesel and food supply. As a result, the UN was forced to pull out UNMEE forces from Eritrea and relocate them to Ethiopia as of February 2008 (Aremu and Buhari, 2018: p. 129).

In summary, the Algiers Agreement's binding nature, which would have been expected to settle the conflict, did not. Why did parties opt for a binding Agreement when arbitration had already failed? With continued hostilities, the parties opted for another Agreement discussed below. Why did the parties opt for another Agreement? Was, is it an MOU that is non-legally binding or a treaty that is binding?

#### 4. Analysis of the 2018 Peace Agreement

The 2018 Peace Agreement was reached after the Algiers Agreement failed to bring peace as initially envisioned. The Agreement entitled *The Ethiopia-Eritrea Agreement on Peace, Friendship, and Comprehensive Cooperation Between the Federal Democratic Republic of Ethiopia and the State of Eritrea* is a two-page document made at Jeddah, Kingdom of Saudi Arabia, on September 16, 2018, in two original copies in Amharic, Tigrinya, Arabic and English languages. The Agreement provides that in case of discrepancy in interpretation, the English version shall prevail. The provision of language in Agreements is crucial, mainly where some words are ambiguous in native languages.

The 2018 Peace Agreement uses both Treaty and MOU language. An MOU is a non-legally binding agreement between States, while a Treaty is "an agreement governed by international law" (Aust, 2007: p. 33). According to *The Vienna Convention on the Law of Treaties (1969)* Article 1 (a), aside from international law governance, "a treaty is an international agreement concluded between States in written form embodied in a single instrument or two or more related instruments and whatever its particular designation". However, the Convention does not provide an MOU's definition. In this paper, therefore, the definition of an MOU is derived from Aust's book, a well-recognized scholar in Treaty and International law. Under the *Treaty Section of the Office of Legal Affairs (2006)* UN's Treaty Handbook, a memorandum of understanding is often used to denote a less legal international instrument than a typical treaty or international



Agreement. It often sets out operational arrangements under a framework international agreement. It is also used for the regulation of technical or detailed matters.

The MOUs usually use the terms such as “will” while treaties use the words such as “shall” though other documents may mix both; thus, essential to analyze the content keenly. Standard practice has been using such terms “shall”, “agree”, “undertake”, “rights”, “obligations”, and “enter to force”, for treaties. For MOUs, such terms as “coming into operation”, “come into effect”, “arrangement” is used. Though the Asmara Agreement mixes both treaty and MOU terms, by and large, it uses MOU terminologies. It uses more of the term “will” and avoids words such as “agree” or “undertake” commonly found in treaties. This concludes that the Agreement is an MOU.

Why did Ethiopia and Eritrea opt for an MOU? States tend to prefer MOUs over treaties due to their flexibility and non-legal binding nature (Aust, 2007). MOUs also regulate technical and detailed matters. It takes political goodwill to implement MOUs, unlike treaties which take legal measures. The Asmara Agreement (the Peace Agreement is referred to as since Asmara was the place for adoption) provides details on mutual understanding areas. It states, “the war between the Federal Democratic Republic of Ethiopia and the State of Eritrea has ended and the two parties agree to cooperate in several areas going forward”. The Agreement also states that both countries would respect each other’s independence, sovereignty, and territorial integrity and implement the Eritrea-Ethiopia Boundary Commission decision. This provision was lacking in previous Agreements and/or was not explicitly stated. The specific mention of the need to settle independence enmity is a step toward settling the decades of conflict; however, it will take political goodwill to implement.

Noticeably, the Agreement has no specific mention on governance, power-sharing, human rights and equality, justice sector reform, transitional justice, UN, or other international signatories. However, Article 7 of the Agreement does have specific mention of the enforcement mechanism—“the two countries will establish a High-Level Joint Committee and Sub-Committees as required, to guide and oversee the implementation of this agreement”. The enforcement mechanism was lacking in the previous Peace Agreement, thus a step further with the Asmara Agreement in settling the conflict. Though MOUs are non-legally binding, the enforcement mechanism’s provision shows both parties’ willingness to work out and resolve the dispute.

Though MOUs tend to be confidential, the Asmara Agreement can be found on different websites. Due to its recent nature, there is limited to no research found on the Agreement.

In terms of termination, according to Aust (2007: p. 33), agreements are meant to be breached, broken, and even terminated. This, however, needs to be included in the Agreement (for MOUs, it is not compulsory while for treaties is). The fact that an MOU has no legal consequences puts MOUs at a disadvantage in that either party can terminate it at any given time without prior notice (Aust,



2007: p. 46). The 2018 Peace Agreement does not provide details in case either party breaches or terminates the Agreement.

## 5. Conclusion

This paper analyzed the 2018 Peace Ethiopia-Eritrea Peace Agreement, whether it was an MOU or treaty, why previous Agreements failed, causal factors of the conflict, and why both parties signed the 2018 Peace Agreement. Most Peace Agreements are either MOU or Treaty. MOUs are non-legally binding, while treaties are legally binding. Unfortunately, there is no consensus on what constitutes a treaty or a memorandum of understanding. However, the 1969 Vienna Convention on the Law of Treaties guides on treaties formulation, which previous Peace Agreements used. Unfortunately, they did not settle the conflict. In its analysis and findings, the paper found out that the 2018 Peace Agreement was an MOU and not a treaty. It also found out that the conflict is not only political and religious but also emotional, cognitive, and behavioral. The failure of arbitration and the Algiers Agreement, which were legally binding, prompted the parties to sign the 2018 non-legally binding Peace Agreement. It is also apparent that the previous dispute resolution mechanisms lacked provisions on enforcement of the resolutions and consequences in the event of a breach. The 2018 Peace Agreement specifies the enforcement provision. Besides, the prior Agreements lacked political goodwill provisions on the implementation of the Commission's Boundary Report. However, the 2018 Peace Agreement did set out this provision. The paper, thus, concludes that MOUs, which are primarily for political and economic interests, unlike treaties which are for legal claims, have high chances of success in settling conflict and restoring peace. The success of this agreement would serve as a model for other states which have experienced periods of animosity and civil wars. Due to the recent nature of the 2018 Peace Agreement, there is limited to no research on its progress, a potential area for future research.

## Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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