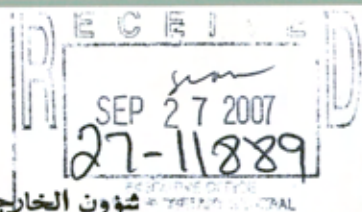




in Mission



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شؤون الخارجية

Minister of Foreign Affairs

ACTION Guehenno
COPY Pissoe

27 September 2007

Excellency,

(#27-11758)

It has come to Eritrea's attention that, by letter dated 22 September 2007, the Ethiopian Foreign Minister has indicated Ethiopia's intention to attempt to renounce the two Algiers Agreements by which the Eritrea-Ethiopia border war of 1998-2000 was put to an end.

Ethiopia circulated this letter immediately to the public and the media -- the audience for which it undoubtedly was primarily intended -- without communicating it to the Eritrean government first through appropriate diplomatic or legal channels. The substance of Ethiopia's letter and its timing underscore that it is intended simply as another effort to subvert the implementation of the final and binding Award of the Eritrea-Ethiopia Boundary Commission. As such, it is clearly unlawful under the Vienna Convention on the Law of Treaties and other principles of international law, as well as highly detrimental to regional peace and security.

Before addressing the substance of Ethiopia's public letter, let me emphasize, for the record, certain basic principles.

1. The sole legal forum for resolution of matters pertaining to the delimitation and demarcation provisions of the Algiers Agreement is the Eritrea-Ethiopia Boundary Commission situated at the Permanent Court of Arbitration in the Hague. This principle is enshrined in Articles 4.12 and 4.15 of the Algiers Peace Agreement. Neither Ethiopia's Foreign Minister, Eritrea's Foreign Minister, nor any other party has the legal authority to submit or to litigate these issues in any other forum.
2. Article 4.2 of the Algiers Agreement provides for a "final and binding" decision by the EEBC, without appeal and without any parallel mechanism to review, replace, or supplement its functions.

H.E. Ban Ki-moon
Secretary-General
United Nations
New York, NY, 10017



3. The UN Security Council has legal and security obligations to enforce the final and binding decisions of the EEBC.

The letter of Ethiopia's Foreign Minister must be understood within the spirit and framework of these fundamental points.

The Timing and Motivation of Ethiopia's Letter

Ethiopia's letter was deliberately timed to create the maximum disruption and to distract attention from its uncooperative position at the most recent EEBC meeting. What transpired at that meeting, held on 6-7 September in The Hague, was personally witnessed by the EEBC and is a matter for the Commission itself to report to the United Nations in accordance with its customary procedures. In writing and immediately releasing his letter, Ethiopia's Foreign Minister is self-evidently attempting to pre-empt the Commission's report.

Ethiopia's motivation in doing so is clear:

- i) Obviously dissatisfied with the conclusions reached by the Eritrea-Ethiopia Boundary Commission – and perhaps with those of the Eritrea-Ethiopia Claims Commission as well – Ethiopia hopes, by these means, either to force Eritrea to renegotiate the “final and binding” boundary Award of 13 April 2002, or to remain in perpetuity in occupation of all of the territory recognized in the Commission's Award as Eritrean.
- ii) Ethiopia further wishes to create a new forum or mechanism to substitute the EEBC and to set in motion a process of endless wrangling to sow confusion in the international public opinion.
- iii) Ethiopia wishes, ultimately, to undermine the legal and peaceful processes embedded in the Algiers Agreement.

Indeed, Ethiopia seems to be planning to use its unlawful attempt at renunciation of the Algiers Agreements as a precursor for initiation of renewed hostilities.

Ethiopia's Repeated Violations of the Algiers Agreements

Ethiopia has refused to cooperate with the Boundary Commission's lawful orders almost since the day that the Award was first announced in April 2002:

- In July 2002, Ethiopia began to move Ethiopians from the central highlands of Tigray into territory recognized as Eritrean only months earlier. After factual investigation and full legal consideration, the Commission ordered Ethiopia to remove such settlements, and this order was endorsed by Security Council

Resolution 1430 (14 August 2002). Ethiopia never complied with the order, and its unlawful settlements remain to this day.¹

- In January 2003, when the parties were asked to supply the Commission with technical comments, Ethiopia instead responded with 141 pages demanding that the boundary line be altered. According to the Boundary Commission, “[Ethiopia’s] comments amounted to an attempt to reopen the substance of the April Decision, notwithstanding Ethiopia’s repeated statements, made both before and since, of its acceptance of the Decision.”²
- Also in January 2003, Ethiopia halted the Commission’s demarcation work on the pretext that one of Eritrea’s two Field Liaison Officers was (supposedly) a spy. It offered no evidence for this manifestly implausible (and untrue) contention. In February 2003, Ethiopia then failed to appoint new Field Liaison Officers notwithstanding the Commission’s instructions to do so.³
- In August 2003, Ethiopia refused to provide a required plan explaining how it would maintain security in territory within its control during demarcation. Without a security plan, the Commission noted, its staff could not conduct demarcation fieldwork.⁴ Eritrea supplied such a plan immediately upon the Commission’s request.
- In September 2003, Ethiopia declined to submit required comments on a set of demarcation maps.⁵ It then halted demarcation with a letter to the Secretary-General in which it cited “the totally illegal, unjust and irresponsible decision of the Commission in Badme and parts of the Central Sector” and asked the Security Council to bypass the Boundary Commission and set up an “alternative

¹ Eritrea-Ethiopia Boundary Commission, *Sixteenth report on the work of the Commission* (24 February 2005), at paragraph 17. *Annexed to United Nations Security Council, Report of the Secretary-General on Ethiopia and Eritrea*, S/2005/142 (7 March 2005).

² Eritrea-Ethiopia Boundary Commission, *Eighth report on the work of the Commission* (21 February 2003), at paragraph 3. *Annexed to United Nations Security Council, Report of the Secretary-General on Ethiopia and Eritrea*, S/2003/257 (6 March 2003).

³ Eritrea-Ethiopia Boundary Commission, *Statement by the Commission* (27 November 2006), at paragraph 10. *Annexed to United Nations Security Council, Special report of the Secretary-General on Ethiopia and Eritrea*, S/2006/992 (15 December 2006).

⁴ Eritrea-Ethiopia Boundary Commission, *Statement by the Commission* (27 November 2006), at paragraph 10. *Annexed to United Nations Security Council, Special report of the Secretary-General on Ethiopia and Eritrea*, S/2006/992 (15 December 2006).

⁵ Eritrea-Ethiopia Boundary Commission, *Statement by the Commission* (27 November 2006), at paragraph 10. *Annexed to United Nations Security Council, Special report of the Secretary-General on Ethiopia and Eritrea*, S/2006/992 (15 December 2006).

mechanism.”⁶ In the same letter, it announced that the only boundary it would recognize was the southern boundary of the TSZ.⁷

- In September and October 2003, Ethiopia again refused to file the plans required for assurance of the security of demarcation personnel.⁸
- In November 2003, Ethiopia refused to allow any demarcation work to take place in the Central or Western Sectors unless demarcation was first completed in the Eastern Sector (where all territory was within Eritrean control).⁹ It refused to provide assurances, moreover, that once the Eastern Sector was demarcated, the EEBC would be allowed to proceed to demarcation elsewhere.
- At a Boundary Commission meeting in November 2003, Ethiopia asserted a supposed right not to cooperate with demarcation in accordance with the Commission’s instructions.¹⁰ The Commission noted that “[Ethiopia] is presenting its dissatisfaction with the boundary as substantively laid down in the delimitation decision in the form of procedural impediments to the demarcation process which it is not entitled to interpose.”¹¹
- From February 2004 to February 2005, Ethiopia failed to pay its share of the Boundary Commission’s expenses despite repeated requests.¹² The Algiers Agreement specifically states that the parties are obliged to support the Commission financially, in equal proportions.¹³

⁶ Eritrea-Ethiopia Boundary Commission, *Sixteenth report on the work of the Commission* (24 February 2005), at paragraph 25. *Annexed to United Nations Security Council, Report of the Secretary-General on Ethiopia and Eritrea*, S/2005/142 (7 March 2005).

⁷ Eritrea-Ethiopia Boundary Commission, *Statement by the Commission* (27 November 2006), at paragraph 10. *Annexed to United Nations Security Council, Special report of the Secretary-General on Ethiopia and Eritrea*, S/2006/992 (15 December 2006).

⁸ Eritrea-Ethiopia Boundary Commission, *Statement by the Commission* (27 November 2006), at paragraph 10. *Annexed to United Nations Security Council, Special report of the Secretary-General on Ethiopia and Eritrea*, S/2006/992 (15 December 2006).

⁹ Eritrea-Ethiopia Boundary Commission, *Statement by the Commission* (27 November 2006), at paragraph 10. *Annexed to United Nations Security Council, Special report of the Secretary-General on Ethiopia and Eritrea*, S/2006/992 (15 December 2006).

¹⁰ Eritrea-Ethiopia Boundary Commission, *Sixteenth report on the work of the Commission* (24 February 2005), at paragraph 26. *Annexed to United Nations Security Council, Report of the Secretary-General on Ethiopia and Eritrea*, S/2005/142 (7 March 2005).

¹¹ Eritrea-Ethiopia Boundary Commission, *Eleventh report on the work of the Commission* (1 December 2003), at paragraph 20. *Annexed to United Nations Security Council, Report of the Secretary-General on Ethiopia and Eritrea*, S/2003/1186 (19 December 2003).

¹² Eritrea-Ethiopia Boundary Commission, *Statement by the Commission* (27 November 2006), at paragraph 10. *Annexed to United Nations Security Council, Special report of the Secretary-General on Ethiopia and Eritrea*, S/2006/992 (15 December 2006).

¹³ Algiers Agreement (12 December 2000), at Article 4(17).

- In February 2005, Ethiopia refused to attend a meeting of the Boundary Commission because Eritrea would not agree to engage in “dialogue” that would lead to alterations in the delimitation Award.¹⁴
- In March 2006, both parties attended a meeting of the Boundary Commission. At the conclusion of the meeting, Ethiopia refused to allow the Commission to issue a public statement announcing that the parties were ready to resume demarcation.¹⁵
- In July and August 2006, Ethiopia again ignored the Commission’s requests for assurances regarding the security of personnel conducting demarcation fieldwork.¹⁶
- In September 2006, the Boundary Commission noted once more that Ethiopia was in arrears with respect to its financial obligations to the Commission.¹⁷
- In November 2006, the Commission concluded that it had no choice but to publish its official demarcation on paper. It announced that its written demarcation decision would become final in November 2007, absent further progress by the parties in the interim to allow reopening of the demarcation process.¹⁸
- On the same day in November 2006, the President of the Commission wrote a letter to the Ethiopian Foreign Minister responding to Ethiopia’s allegations about “appeasement”. President Lauterpacht emphasized that Ethiopia has been in violation of the Algiers Agreements almost since the day that the Boundary Award was announced.¹⁹

¹⁴ Eritrea-Ethiopia Boundary Commission, *Sixteenth report on the work of the Commission* (24 February 2005), at paragraph 3. *Annexed to United Nations Security Council, Report of the Secretary-General on Ethiopia and Eritrea*, S/2005/142 (7 March 2005).

¹⁵ Eritrea-Ethiopia Boundary Commission, *Hearing Transcript* (10 March 2006), at pages 51-60.

¹⁶ Eritrea-Ethiopia Boundary Commission, *Statement by the Commission* (27 November 2006), at paragraph 10. *Annexed to United Nations Security Council, Special report of the Secretary-General on Ethiopia and Eritrea*, S/2006/992 (15 December 2006).

¹⁷ Eritrea-Ethiopia Boundary Commission, *Twenty-first report on the work of the Commission* (8 September 2006), at paragraph 10. *Annexed to United Nations Security Council, Report of the Secretary-General on Ethiopia and Eritrea*, S/2006/749 (19 September 2006).

¹⁸ Eritrea-Ethiopia Boundary Commission, *Statement by the Commission* (27 November 2006). *Annexed to United Nations Security Council, Special report of the Secretary-General on Ethiopia and Eritrea*, S/2006/992 (15 December 2006).

¹⁹ As President Lauterpacht stated,

There is no basis for the suggestion that the Commission has been appeasing Eritrea. Nor can such a suggestion, however unfounded, obscure the fact that Ethiopia has itself been in breach of its obligations under the Algiers Agreement in several important respects. It is sufficient here to mention one serious one, namely, Ethiopia’s continued failure to comply with the Commission’s Order of 17 July 2002 requiring Ethiopia forthwith to arrange for the return to Ethiopian territory of those persons in Dembe Mengul who were moved from Ethiopia pursuant to an Ethiopian

- In early September 2007, the Commission held a meeting at which representatives of Ethiopia announced that Ethiopia would not cooperate with demarcation because of its assessment that Eritrea was in violation of various portions of the Algiers Agreements. Ethiopia said that Eritrea would have to satisfy a set of open-ended demands (including matters well outside the scope of the Algiers Agreements) before Ethiopia would even contemplate “discussions” about the modalities of boundary demarcation. At the close of the meeting, the Commission noted that Ethiopia still had not met its financial obligations dating back to May 2006.

Ethiopia’s Misplaced Reliance on the Vienna Convention

Ethiopia’s current efforts to avoid the implementation of the Boundary Commission’s Award purport to rely on the Vienna Convention on the Law of Treaties. But the Vienna Convention does not support Ethiopia’s effort to deny the Commission’s Award its legal force. Even if Ethiopia’s renunciation attempt were legally effective – which it is not – Article 70 of the Convention states that the boundary established under the Algiers Agreement remains binding on both parties.

Unless the treaty otherwise provides or the parties otherwise agree, the termination of a treaty under its provisions or in accordance with the present Convention:

...(b) does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination.²⁰

As the Convention also states, Ethiopia’s threatened unilateral denunciation of the Algiers Agreement is ineffective as regards all methods of settlement of disputes

resettlement programme since 13 April 2002 and to report to the Commission on the implementation of this order by 30 September 2002. Ethiopia has made no report to the Commission. A more detailed account of Ethiopia’s lack of cooperation and breaches of its obligations is set out in today’s Statement of the Commission.

Eritrea-Ethiopia Boundary Commission, *Letter from the President of the Commission to the Minister of Foreign Affairs of Ethiopia* (27 November 2006) (emphasis added). *Annexed to United Nations Security Council, Report of the Secretary-General on Ethiopia and Eritrea*, S/2007/33 (22 January 2007). See also Eritrea-Ethiopia Boundary Commission, *Twenty-second report on the work of the Commission* (21 December 2006), at paragraph 12 (emphasis added):

Finally, the Commission regrets that Ethiopia, despite repeated reminders since 21 May 2006, has still not paid the contribution to the work of the Commission presently due from it, as required by Article 4 (17) of the Algiers Agreement. The Commission has, therefore, been obliged to request access to the United Nations Trust Fund for Eritrea and Ethiopia in order to meet its commitments.

Annexed to United Nations Security Council, Report of the Secretary-General on Ethiopia and Eritrea, S/2007/33 (22 January 2007).

The Commission has also noted on many occasions that expeditious demarcation is itself a requirement of the Algiers Agreement.

²⁰ See Vienna Convention on the Law of Treaties (23 May 1969, entered into force 27 January 1980), at Article 70 (1) U.N.T.S. volume 1155, page 331. (emphasis added).

established under that Agreement.²¹ The Vienna Convention simply cannot be interpreted to permit the dissatisfied party in a boundary arbitration to renounce the result retroactively.

Ethiopia's Unlawful Refusal to Vacate Eritrean Territory

Ethiopia, notably, does not attempt to bring its novel effort to renounce the Algiers Agreement before the Boundary Commission, which would surely rule the Ethiopian argument out of order. The Commission (including two judges appointed by Ethiopia and a President chosen with Ethiopia's approval) has been unanimous in condemning Ethiopia's efforts to circumvent the Award. Ethiopia no doubt knows that no international court or tribunal would condone its refusal to remove its troops from Eritrean soil. It is a cardinal principle of international law that forcible occupation of the territory of another state is an act of aggression and Ethiopia's stationing of troops north of the recognized international boundary falls squarely within that category. Ethiopia obviously cannot first make demarcation physically impossible and then refuse to remove its troops because, through its own obstruction, the legally declared boundary has not been laid on the ground.

At the Commission's most recent meeting, Eritrea committed itself once again to cooperate with demarcation in all of the respects as to which the Commission had expressed concern. Eritrea's commitments were made both in writing (by letter sent in advance of the meeting) and verbally, in front of the Commission, the Commission's technical staff, and three representatives of UNMEE. Eritrea remains committed to the Algiers Agreements and seeks expeditious demarcation in accordance with its terms.

Eritrea asks merely that Ethiopia make the same commitment to support the demarcation in accordance with the Commission's lawful instructions. Ethiopia refused all of the Commission's requests for cooperation or reassurances, and spoke only in vague terms about how – if Eritrea did everything it demanded, no matter how unreasonable – it would then be willing to “discuss” the demarcation process. Ethiopia made clear that it had no intention of complying with the Commission's demarcation instructions.

The Object and Purpose of the Algiers Agreements

The Algiers Agreements were designed to put an end once and for all to the two States' conflicting claims to territory, and thus to leave the two States free to rebuild their relationship for the good of both their peoples. In the five and one half years since the Boundary Commission's delimitation decision, however, Ethiopia has repeatedly obstructed implementation of the decision and threatened to walk out on the process altogether if it was not given everything that it wanted. While tens of thousands of Eritreans indigenous to the Ethiopian-occupied regions wait in IDP camps for the chance

²¹ “Nothing in the foregoing paragraphs shall affect the rights or obligations of the parties under any provisions in force binding the parties with regard to the settlement of disputes.” Vienna Convention on the Law of Treaties (23 May 1969, *entered into force* 27 January 1980), at Article 65(4). U.N.T.S. volume 1155, page 331.

to peacefully enjoy the benefits of the "final and binding" Award, Ethiopia moves new settlers onto their land, attempting to make its illegal occupation of Eritrean territory permanent.

Eritrea sincerely hopes that the demarcation process can be restarted, in accordance with international law, and consistent with the final and binding delimitation Award of 13 April 2002. This is the central tenet of the Algiers Agreements, and the key to reinstating regional harmony.

In conclusion, Eritrea urges the UN Security Council to shoulder its legal, moral and security responsibilities and take appropriate action to enforce the decision of the EEBC to stem Ethiopia's reckless game. ||

Please accept, Excellency, the assurances of my highest consideration.

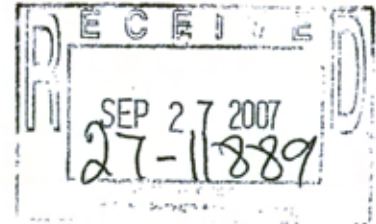
A handwritten signature in dark ink, appearing to be 'Osman Saleh', with a stylized flourish extending to the right.

Osman Saleh
Minister

Permanent Mission of Eritrea
to the United Nations



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البعثة الأوتيرة الدائمة لدى الأمم المتحدة



27 September 2007

Excellency,

I have the honour to forward a letter addressed to your Excellency from H.E. Mr. Osman Saleh, Eritrean Minister of Foreign Affairs, regarding the worrying signs of the peace process between Eritrea and Ethiopia.

Please accept, Excellency, the assurances of my highest consideration and I wish to indicate that a similar letter has been sent to the President of the United Nations Security Council.

Araya Desta
Ambassador, Permanent Representative

H.E. Ban Ki-moon
Secretary-General
United Nations
New York, NY 10017