

Excellency,

I have the honour to inform you that the Federal Democratic Republic of Ethiopia has decided to notify the State of Eritrea of its material breaches of the Algiers Agreements and of Ethiopia's entitlement to invoke the breaches as grounds for considering its legal and peaceful options, including terminating the Agreements or suspending their operation in whole or in part.<sup>1</sup>

#### **Eritrea's Actions That Give Rise to Its Material Breach**

1. For a considerable time, Eritrea has flagrantly violated fundamental provisions of the Algiers Agreements<sup>2</sup> essential to the accomplishment of the object and purpose of those Agreements despite repeated objections by Ethiopia and in open defiance of the Security Council.<sup>3</sup> These include violations primarily of Article 1.1 and Article 1.2 of the December 2000 Agreement, which provide:

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<sup>1</sup> See Article 60 of the Vienna Convention on the Law of Treaties, which is generally considered the codification of existing customary international law on the subject. Namibia (S. W. Africa) (Advisory Opinion), ICJ Reports (1971), 16 at 47.

<sup>2</sup> The Cessation of Hostilities Agreement of 18 June 2000 ("Cessation of Hostilities Agreement") and the Agreement between the Government of the Federal Democratic Republic of Ethiopia and the State of Eritrea of 12 December 2000 ("December 2000 Agreement") are referred to collectively herein as the "Algiers Agreements."

<sup>3</sup> See, e.g., UNSC Resolution 1640, 23 November 2005, S/RES/1680 (2005); UNSC Resolution 1670, 13 April 2006, S/RES/1670 (2006); UNSC Resolution 1681, 31 May 2006, S/RES/1681 (2006); UNSC Resolution 1710, 29 September 2006,

1. The parties shall permanently terminate military hostilities between themselves. Each party shall refrain from the threat or use of force against the other.
  2. The parties shall respect and fully implement the provisions of the Agreement on the Cessation of Hostilities.
2. With respect to the Cessation of Hostilities Agreement, referred to in Article 1.2 above, key provisions violated by Eritrea include the commitment to stated “principles” set forth on page 2 of the Agreement and numbered paragraphs 1, 3, 12, 13, and 14, which obligate the parties to keep their respective forces from entering the 25-kilometer Temporary Security Zone (“TSZ”), created by Ethiopia’s voluntary withdrawal from that area, in order to maintain a zone of separation between the forces<sup>4</sup> and to provide the UN peacekeeping mission (“UNMEE”) full freedom of movement and operation, and to respect and protect UNMEE’s members, in order to enable UNMEE to monitor the TSZ and ensure the observance of the security commitments agreed by the two parties.
  3. Eritrea’s violations of these fundamental provisions are no secret, but have been publicly and repeatedly reported by the UN Secretary General to the Security Council, as well as by members of the international community.<sup>5</sup>

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S/RES/1710 (2006); UNSC Resolution 1741, 30 January 2007 S/RES/1741 (2007); and UNSC Resolution 1767, 30 July 2007, S/RES/1767 (2007).

<sup>4</sup> As evidence of the fundamental nature of this provision to accomplishing the object and purpose of the Algiers Agreements, the parties agreed that the integrity of the TSZ would be guaranteed not only by a UN peacekeeping force, but also through the agreement that violations of the TSZ would warrant Chapter VII measures under the UN Charter. *See* Cessation of Hostilities Agreement at para. 14.

<sup>5</sup> *See, e.g.*, Progress Report of the Secretary-General on Ethiopia and Eritrea, S/2007/250, 30 April 2007 at paras. 2-3, 7-9; Progress Report of the Secretary-General on Ethiopia and Eritrea, S/2007/33, 22 January 2007 at paras. 2-3, 8-9; S/2006/992, 19 December 2006, at paras. 2-12; Progress Report of the Secretary-General on Ethiopia and Eritrea, S/2006/749, 19 September 2006 at paras. 4-6; Progress Report of the Secretary-General on Ethiopia and Eritrea, S/2006/140, 6 March 2006 at paras. 4-6; Progress Report of the

4. For example, the latest Progress report of the Secretary General on Ethiopia and Eritrea of 18 July 2007 states:

I am deeply concerned by the continuing serious violations of the temporary security zone. I urge Eritrea to withdraw its troops and heavy military equipment from the temporary security zone in order to restore the integrity of the zone, in compliance with the Algiers agreements. I also call on Eritrea immediately to lift all restrictions it has imposed on UNMEE, which was deployed at the request of both countries. Those restrictions have seriously impaired the Mission's ability to implement its monitoring mandate.<sup>6</sup>

5. The Secretary General's report cites specific facts:

. . . Eritrean Defense forces were observed actively constructing new defenses in the zone . . . Eritrean Defense forces have effectively occupied large swaths of the zone, with military personnel numbering in the thousands . . . early in July, UNMEE monitored up to 1,000 Eritrean military personnel with personal weapons, including rocket grenade launchers, moving within the temporary security zone . . .<sup>7</sup>

6. The Secretary General's report also demonstrates severe interference with UNMEE's most routine monitoring activity. For example:

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Secretary-General on Ethiopia and Eritrea, S/2006/1, 3 January 2006 at paras. 2-3, 8-12, 18-20.

<sup>6</sup> Progress Report of the Secretary-General on Ethiopia and Eritrea, S/2007/440, 18 July 2007, para. 41.

<sup>7</sup> *Id.* at paras. 2-3.

. . . on 6 May 2007 local militia threatened to shoot UNMEE sentries . . . on 18 May 2007, the local police detained an UNMEE patrol near Mendefera in the Temporary Security Zone for eight hours. In other incidents, on 26 April and five May, Eritrean Defense Forces personnel stopped UNMEE patrols from carrying out their tasks by firing warning shots in the air, while on 3 June 2007 a militia commander stopped another patrol at gunpoint.<sup>8</sup>

7. These reports by the Secretary General, in fact, understate the problem with respect to the violation of the TSZ by Eritrea. The reality is that Eritrea has almost fully occupied the TSZ. The separation of troops, which is the reason for the establishment of the TSZ, is no longer operational. The number of EDF troops in the TSZ is much bigger than is suggested in the quotation above, with a number of EDF there now exceeding 30, 000.
8. Not only is Eritrea in violation of its treaty obligations in regard to the TSZ and UNMEE, Eritrea is in violation of Article 1.2 of the December 2000 Agreement by engaging in other illegal activities threatening and using force against Ethiopia. On 17 July 2007 the UN Security Council received a report from its monitoring group on Somalia that “huge quantities of arms have been provided . . . by and through Eritrea.” These included “surface to air missiles, suicide belts, and explosives with timers and detonators.”<sup>9</sup>
9. Terrorist groups are being sent to operate inside Ethiopia, trained and armed by Eritrea. The US Assistant Secretary of State for African Affairs has made public that Eritrea's actions have become so egregious that the US government is

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<sup>8</sup> *Id.* at paras. 12-13.

<sup>9</sup> Letter dated 17 July 2007 from the Chairman of the Security Council Committee established pursuant to resolution 751 (1992) concerning Somalia addressed to the President of the Security Council, S/2007/436, p. 3.

currently considering designating Eritrea a state sponsor of terrorism.<sup>10</sup> The US Assistant Secretary pointed as evidence to Eritrea's recent hosting of Somalia's Sheik Hassan Dahir Aweys in Asmara, who is listed by the U.S. and by the UN Security Council as a designated terrorist and who has repeatedly threatened to and has attacked Ethiopia.<sup>11</sup>

10. In addition, Eritrea has continued its ongoing threats of force with respect to disputes over the boundary with Ethiopia. As recently as 1 September 2007, Eritrea's state media reported that the President of Eritrea has threatened Ethiopia to "implement a border ruling or risk sparking a 'new crisis.'"<sup>12</sup> Eritrea has made such public threats against Ethiopia repeatedly in violation of the Algiers Agreements and the UN charter.<sup>13</sup>
11. These are only some of the most recent examples of Eritrea's fundamental violations of the Algiers Agreements. These violations have been long-standing, have become increasingly serious and flagrant, and violate central provisions of the Algiers Agreements essential to the accomplishment of their object and purpose.

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<sup>10</sup> See U.S. State Department, *Briefing on U.S.-Eritrea Relations*, 17 August 2007, available at <http://www.state.gov/p/af/rls/spbr/2007/91231.htm>.

<sup>11</sup> See *Eritrea Needs To Stop Alleged Support of Terrorists, Says U.S. Official*, Int'l Herald Tribune, 9 September 2007.

<sup>12</sup> See "Eritrea Warns Ethiopia about Border Feud," Agence France Presse, 1 September 2007.

<sup>13</sup> For example, in a 21 September 2005 address to the UN General Assembly, Eritrea's Minister threatened to use force against Ethiopia to resolve its border dispute: "Eritrea and Ethiopia may soon be dragged into a new phase of armed conflict . . . If the United Nations fails to reverse the occupation, it will be as equally responsible as Ethiopia is for any renewed armed conflict and its consequences . . . I wish to categorically inform the Assembly that Eritrea is determined, and has the right, to defend and preserve its territorial integrity by any means possible." Statement by His Excellency Mr. Berhane Abrehe, Minister of Finance of the State of Eritrea, at the General Debate of the 60<sup>th</sup> Session of the United Nations General Assembly, 21 September 2005, available at <http://www.un.org/webcast/ga/60/statements/eri050921eng.pdf>.

### **The Object and Purpose of the Algiers Agreements**

12. The clear object and purpose of the Algiers Agreements, which were entered into to conclude a two-year war, is the permanent establishment of stability, security and peaceful relations between the two parties to be sustained through their mutual renunciation of the threat or use of force and their agreement to resolve all disputes between them through peaceful and legal means, rather than by the resort to the use of force as a means of imposing solutions to disputes.
13. The object and purpose of the Agreements is clearly stated in Article 1 of the December 2000 Agreement, quoted above, and in the stated “principles” of the Cessation of Hostility Agreement, which include the commitment to resolve “the present crisis and any other dispute between them through peaceful and legal means” and reject “the use of force as a means of imposing solutions to disputes.”<sup>14</sup>
14. At the time of the conclusion of the Algiers Agreements the situation remained tense. Ethiopian distrust of Eritrea was unavoidable in view of Eritrea’s surprise initiation of the war just two years earlier.<sup>15</sup> Nevertheless, Ethiopia agreed to withdraw its forces from Eritrea, but this was conditioned upon establishment of

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<sup>14</sup> Cessation of Hostilities Agreement at p. 2.

<sup>15</sup> The Eritrea Ethiopia Claims Commission, established under the Algiers Agreements and seated in The Hague, unanimously ruled as a result of its careful deliberations and consideration of the evidence that Eritrea is liable for starting the war in 1998 by illegally invading and occupying undefended areas in Ethiopia, without provocation, and in direct violation of Article 2 (4) of the UN Charter. *See* Eritrea Ethiopia Claims Commission’s Partial Award, *Jus Ad Bellum* Ethiopia's Claims 1-8 (19 December 2005). For example, paragraph 16 of the Partial Award provides:

“[T]he Commission holds that Eritrea violated Article 2, paragraph 4, of the Charter of the United Nations by resorting to armed force to attack and occupy Badme, then under peaceful administration by Ethiopia, as well as other territory in the Tahtay Adiabo and Laelay Adiabo Weredas of Ethiopia, in an attack that began on May 12, 1998, and is liable to compensate Ethiopia, for the damages caused by that violation of international law.”

- the TSZ and its maintenance by United Nations forces. The guarantee by the United Nations Security Council of a security zone, as set forth in the Cessation of Hostilities Agreement, was fundamental, therefore, as a check on Eritrean behavior during the time that would be required for the parties to reestablish peace and security and normal relations, including delimitation and demarcation of their boundary.
15. In interpreting the language of the Algiers Agreements and the intent of the parties it is reasonable to conclude that all of the provisions of the Algiers Agreements comprise a balanced and integrated whole designed to support the overarching object and purpose of permanent establishment of stability, security and peaceful relations between the parties. Ethiopia, which at the time the Algiers Agreements were concluded had military control on the ground, would certainly not have agreed to the other provisions of the Algiers Agreements in the absence of a strong commitment by Eritrea, made in good faith, to maintain fully the integrity of the TSZ and UNMEE's operations, and to permanently reject the use of force and resolve all disputes through peaceful means.
  16. Indeed, it is self-evident that the object and purpose of the Algiers Agreements cannot be achieved without full compliance with these fundamental provisions of these Agreements that Eritrea has flagrantly breached. Lasting security, peace and stability are impossible so long as Eritrea threatens Ethiopia with its military preparing for war, treats UNMEE as a hostage, and supports terrorist activities against Ethiopia.
  17. Because of Eritrea's material breaches of the fundamental provisions essential for the achievement of the object and purpose of the Algiers Agreements, and in particular its abrogation of the Agreement of Cessation of Hostilities, Ethiopia is fully justified to conclude that Eritrea has demolished the Algiers Agreements. Repeated appeals by the Security Council and endless protests by Ethiopia have failed to ensure Eritrea's compliance with the provisions of the Agreements. Under these circumstances, Ethiopia has been compelled to notify Eritrea about

its decision to consider all legal and peaceful options available to it to ensure that its rightful interests are protected and the ultimate object and purpose of the Algiers Agreements would be promoted, if Eritrea fails to return to compliance with the Agreements without any further delay.

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

**Seyoum Mesfin**  
**Minister**

**H.E. Osman Saleh,**  
**Minister of Foreign Affairs,**  
**The State of Eritrea,**  
**Asmara, Eritrea**