Open Protest Letter to the Parliament of European Union: Land Locking of Ethiopia and interfering in the Internal Affairs of Ethiopia is unacceptable!

By Tecola W. Hagos

PART ONE

I. Introduction

The European Union Parliament has issued its very lengthy, badly thought out, and badly written drooling Resolution on matters that involve Ethiopia's sovereignty, territorial integrity, and vital interests. Defying well established norms of international law and practice of non-interference in the internal affairs of a fellow Member of the United Nations, the Members of the European Union Parliament representing their respective Countries, which are also Members of the United Nations, are dictating down how the Ethiopian Government ought to conduct its domestic internal state acts as well as its international relations. [I am fully aware of the fact that that non-interference is not an absolute barrier, but minimizes the intrusion of foreign states on pretentious causes from getting involved in undermining the sovereignty and independence of states. There are several legitimate grounds under international law for interference, where there is an ongoing genocide or crime against humanity, for example, interference not only is allowed but also expected as an international duty—*erga omnes*.] I shall address only the international controversy of landlocking of Ethiopia through fraudulent schemes and illegal arbitration commission procedures that the European Union Parliament is trying to impose on Ethiopia. But as a reminder to all, I have included in this introduction a glimpse of the savagery and brutality of Europeans for most of the period of human civilization to date.

Member countries of the European Union are working hard day and night to create a united Europe. To a great extent, they have succeeded in establishing a common market, a common currency, a Parliament, a Judicial structure et cetera. It is absolutely amazing to me that such countries turn around and are trying to dismantle and divide up a far more historically united Ethiopia into several mini states that individually will not be able to defend their respective natural resources or economies. The effort to landlock Ethiopia in order to make it dependant on an artificially created new state of "Eritrea" that has no prospects for independent existence delaminated from Ethiopia is the greatest tragedy that will fester as an open wound unless Ethiopia reincorporate the whole of Eritrea or regain its historical and demographical extension of Ethiopia known as the Afar Coastal territories.

Ethiopia is being blackmailed and is being besieged to agree to illegally revived colonial "treaties" in order to maintain some precarious access to international sea-lanes, which access would be whimsical continuously subjected to threat of withdrawal of such access on the whims and caprices of the "Eritrean" government. Shamefully, the European Parliament is acting as surrogate promoting the narrow interests of Italy, the economic interest of Egypt, and the religious interest of Arabs by cornering Ethiopia into a situation where it will lose its identity and territorial integrity. A portion of the Red Sea and several islands are Ethiopian; the Afar Coastal territory is Ethiopian. Period!

This recent European Union Parliament Resolution challenges and encroaches on the sovereignty of Ethiopia. It attempts to dictate its own ideas on the Ethiopian Government and on every facet of Ethiopia's vital interest both domestic and international. It is a great hypocrisy for Europeans in the context of the Resolution passed by the European Union Parliament this last Week trying to teach us Ethiopians about human rights. How soon we forget that only fifty years ago these same European countries were the colonial masters over most of the World, whereby they dehumanized billons of human beings for centuries, looting our wealth, raping our maidens, and trampling all over our human rights.

It is these same European countries that committed the most heinous crimes against human beings in the history of the World. They have committed genocide and crimes against humanity on monumental scale. They have murdered, tortured, destroyed no less than one hundred million people in the last one century alone in Africa, America (North, Central, and South), Asia, and in Europe itself. Shame on all Europeans and in particular Britain, France, Germany, Italy, Portugal, and Spain for the atrocities they committed as the most vicious colonial powers, who boasted at one time that the Sun does not set in their colonial empire. Those same European nations were the butchers of Aztecs, Incas, and millions more through out Africa. And on religious ground, they tortured and burned hundreds of thousands and drove millions of Berbers and Jews out of their homes. In case of Germany as recently as half a century ago, it murdered millions in the Holocaust in concentration camps and gas chambers. And in the case of France, it butchered Berbers and Arabs in millions. The British have their arms blood soaked up to their armpits all over the World. And the representatives of those same countries have now the temerity to pass a Resolution admonishing Ethiopians, and blaming us for trying to survive in a world they have screwed up to begin with.

Lest you forget, let me remind everyone that Ethiopia is the land of the Gods for the ancient Greeks, a sanctuary and crucible for Christianity, a safe-heaven for Moslems in time of their greatest needs, and a trousseau of humanity and its intimate morality. Do the Anna Gomezes of the World understand what they are doing is hurting the long term interest of the People of Ethiopia and the state of Ethiopia? Do opposition politicians understand that any Ethiopian that collaborates with a foreign government or the official of such foreign government where the State of Ethiopia is targeted for some form of sanction, censor, or criticism is committing a serious crime of treason punishable under the Ethiopian Penal Code? Just because Ethiopian opposition politicians have problems with Meles Zenawi, they should not jump in and become instruments of foreign powers whose goal is to destroy Ethiopia. What such Ethiopian opposition politicians fail to understand is that Meles Zenawi is not "Ethiopia." He is also to a great extent a creation of the West that includes European Governments. Now, we see European Union Parliamentarians are writing silly Resolutions against Ethiopia and being lobbied by esoteric and deviant Ethiopian politicians, some of whom should have been prosecuted for crimes they committed during the Red Terror era of Mengistu Hailemariam and afterward.

Moreover, the European Union Parliament has issued a misdirected generalized Resolution against Ethiopia. If the European Union Parliamentarians are not happy with their respective national governments close relationship with the Government of Meles Zenawi, the Parliamentarians should be addressing their own Governments and not direct their venomous attack against a Sovereign and independent state of Ethiopia or its Government. The European Union Parliamentarians should be circumspect in their official duties when it comes to other Sovereign states such as Ethiopia. I have studied the types of resolutions European Union Parliamentarians have issued so far, there is no other "Resolution" that has the depth and scope of interference and disrespect of another sovereign states as the Resolution they just issued against the State of Ethiopia.

The hypocrisy of the Members of the European Union Parliament is beyond anything I have seen, for where their voice matters the most, they are dead silent: Israel has been bombing indiscriminately Palestinians in Gaza for the last two weeks where over a thousand mostly children were killed and tens of thousands wounded and driven out of their homes. And yet we have not heard a word from the "enlightened" European Union Parliament, for they are busy beating on a poor and defenseless country—Ethiopia. How about Egypt's dictatorship? Or South Africa's unequal and unjust distribution of national wealth where the Apartheid era looters are still holding to their ill begotten wealth? How about the "Citizens" of those same countries controlling the wealth of African countries exploiting Africa's mineral resources such as gold, oil, diamond, uranium et cetera? What have European Countries done to pay back and remedy all the suffering they have caused people in their former colonies, which they are still controlling through their Commonwealth and such schemes? Shame on all European Union Parliamentarians!

Whether it is human rights violation or economic development failure within Ethiopia, it is our internal problem and does not require international condemnation by any foreign nation or organization. Westerners should see the beam in their own eyes first, before they point at the specks of dust in Ethiopia's eyes. Sending a letter of protest to the Ethiopian Government on the illegal imprisonment of Judge Birtukan Mideksa would have been a proper channel for the European Union Parliament to express its dissatisfaction of such action that violate international norms. A Resolution with a hundred and one items, from the mundane to the exotic, raising every imaginable issue dealing with the internal and international life of Ethiopia is totally beyond the purview of the European Union Parliament. What hypocrisy.

The most outrageous statements is to be found in the European Union Parliament's insistence in its Resolution's Preamble section "B" and in Article 1 trying to enforce an illegally constituted and factually corrupt Boundary Commission's decision on Ethiopia there by land locking a nation of eighty million people arbitrarily cutting off Ethiopia's Afar Coastal territory on the basis of some long defunct colonial period "international agreements" or "instruments" whose validity was questionable even at the time of the alleged signature over a Century ago. All such international instruments from the colonial era had been revoked, invalidated, voided as late as by the 1947 Paris Treaty.

There never was a nation called Eritrea, the first time it was mentioned even as a colonial local administrative entity was in 1890. The name "Eritrea" is a non-indigenous word no where recorded in Ethiopia's long history that identified the area by local indigenous names. It is a colonial administration internal designation by Italy in its consolidation of the internal organization of Ethiopian territories occupied by force by Italy as a colonial power. It was purely a bureaucratic designation with no international import. Italy's internal designation of its occupation is not a subject of international laws and norms. Only sovereign nations are subjects of international law and practices. Thus, all derivated rights from "colonial masters" are not on par with Sovereign States rights under international law and practices. It does not in any manner affect the territorial sovereignty of Ethiopia to all the area that was later taken by force and remained under colonial control at the time of the end of the Second World War. Here below is the European Parliament audacious statement: "Calls on the government of Ethiopia to formally endorse the Boundary Commission's virtual demarcation."

> "B. whereas Ethiopia and Eritrea ended their war by signing the internationally brokered 'Algiers Agreements' providing for a UN peace-keeping operation mission (UNMEE) and the setting-up of the Ethiopia-Eritrea Boundary Commission (EEBC), but there are still differences between the two sides regarding the implementation of the agreements and of the decision of the Boundary Commission; whereas the UNMEE had to be ended on 31 July 2008 as Eritrea no longer supported the presence of the mission."
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> "1. Calls on the government of Ethiopia to formally endorse the Boundary Commission's virtual demarcation between Eritrea and Ethiopia as final and binding; calls on the Eritrean government to agree to a dialogue with Ethiopia, to address the process of disengagement of troops from the border and physical demarcation in accordance with the Border Commission's decision, as well as the normalisation of relations between the two countries, including reopening the border for trade; calls on the international community and the EU to put pressure on both sides to overcome the current impasse."

The European Union Parliament is acting as a court, prosecutor, and enforcer. There is a lot more at stake for Ethiopia's long term interest and survival, than the vitriolic accusations of human rights abuse that was the crutch used to get to this point of open challenge to the sovereignty and territorial integrity of Ethiopia. Very many shadowy international subversive figures, including aged and young opposition Ethiopian politicians played treasonous roles in opening the door for such arrogant pronouncement by foreign hostile states threatening the very existence of Ethiopia. Those Ethiopian opposition politicians who have worked supporting the anti-Ethiopian forces to wage such blatant attack will pay a steep price for their blind ambition for power. With such record "of sleeping with the enemy," when Meles Zenawi is removed from office, there will be a time of reckoning. Ethiopia was illegally deprived of its Coastal Afar territories and Territorial waters. No avalanche of Resolutions against Ethiopia by anybody will change that illegal fact. Whether it means we have to go to war or settle through peaceful means, Ethiopia will have its Afar Coastal territories and its territorial waters on the Red Sea.

II. The Invalidity and Illegality of the Algiers Agreement of 2000 and the Arbitration Commission's decisions

The following fourteen important points both legal and strategic are my reasons for voiding and invalidating both the Algiers Agreement of 2000 and the Arbitration Commission's decisions:

1. The Government of Meles Zenawi in 1993 was neither a legitimate nor representative government of Ethiopia, and thus cannot bind Ethiopia to any international treaty or agreement nor encumbers future generations of Ethiopians with any international obligations. The independence of Eritrea was achieved through complacency of the leadership of the EPRDF that is still in power and through force, and neither method is legitimate under international law and practices. Thus, any agreement entered by the two leaders or their agents at that time and subsequent to that time is invalid and void with no legal consequences on Ethiopia and Ethiopians.

2. Prime Minister Meles Zenawi (Ethiopia) and President Isaias Afeworki (Eritrea) are leaders of liberation fronts who had a long standing understanding/agreement while they were in the bush, i.e., before they took over the Government of Ethiopia in 1991. The independence of Eritrea was a result of such prior agreed upon scheme that was agreed upon during the years the two leaders and their organizations launched a guerrilla war against the legitimate governments of Ethiopia. The same bush-agreement was later used as the basis of the Algiers Agreement. There was no disclosure to the Ethiopian people of such prior understanding or agreement. Thus, there has never been at-arms-length negotiated agreement at Algiers. The Algiers Agreement is a result of collusion between former guerilla leaders thus fraudulent. It does not bind Ethiopia and Ethiopians to any obligation. The Vienna Convention on the Law of Treaties (1969) provides clear guidelines to dispose the legal question raised herein.

3. The Algiers Agreement resurrected long defunct, dead, terminated, invalidated treaty and annex (1900, 1902) and questionable international legal instrument (1908) from a hundred years ago. There is no precedent in the history of international bilateral or multilateral treaties where such long defunct, dead, terminated, invalidated treaties to have ever been resurrected to a new life for the sole purpose to benefit one party to a dispute. Thus, the validity of the Algiers Agreement is a highly prejudicial and bad precedent that should be rejected outright.

4. The Ethiopia-Eritrea Boundary Arbitration Commission did not specifically cite the principle of *uti possidetis* in its decision. It is understandable that the Commission did not cite that principle since the Commission is using "treaties" as the authority for the disposition of contending claims. However, its use of the international instruments in order to establish legal rights amounts to the same thing. At any rate, the principle of *uti possidetis* in its evolved form through two decisions of the ICJ favors Ethiopia if it has claimed properly the Afar Coastal territories as its legitimate historic territory. The concept of "effectivites" the ICJ introduced in order to fine tune the *uti possidetis* principle would recognize that Ethiopia is the parent nation that has exercised such control on the area and is also the natural extension of its territory and demography. The

majority of Afars are to be found within the larger region within Ethiopia. Thus, there is no reason or principle of international law that would deliberatively dived a people into such discreet areas with diminished human and political rights for the sole purpose of advantaging a newly constructed state from colonial legacy landlocking the independent state from whose territory such new state is being carved. It is also against international law to give recognition to a belligerent group as an independent state.

5. In the *Qatar v. Bahrain* (2001) case Judge S.O. Kooijmans in his individual concurring opinion introduced the principle of "superior claim" a principle that should have played a central role dealing with issues involving such an ancient state of Ethiopia. Had the Arbitration Commission considered properly the principle of "superior claim" it would have found out that Ethiopia had far superior claim that is more significant than any claim based on colonial treaty, and would have disqualified itself (Commission) for lack of capacity. Judge S.O. Kooijmans wrote, "Much more appropriate for the present case seems to be the Permanent Court's finding in the *Eastern Greenland* case that "it is impossible to read the records of the decisions in cases on territorial sovereignty without observing that in many cases the tribunal has been satisfied with very little in the way of the actual exercise of sovereign rights, *provided that the other State could not make out a superior claim*" (*P.C.I.J. Reports, Series A/B, No. 53*, p. 46; emphasis added). The correct conclusion in my opinion is that one can be 'satisfied with very little in the way of the actual exercise of sovereign rights' by Bahrain, since the other State, Qatar, 'could not make out a superior claim.'" [See the *Decision Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain),* 16 March, 2001,]

6. Special difference and accommodation should have been accorded the State of Ethiopia in its dispute with the new state of "Eritrea." The wrong approach of the Border Commission has been to treat the exercise of state and sovereign power of an independent state like Ethiopia on equal footing with that of a colonial (Italy) or trust (British) administration, practices that are being succeeded to by the government of "Eritrea." The ICJ in a recent case has made it absolutely clear that such approach is wrong. "The Chamber observes that the concept of the intention and will to act as sovereign, as mentioned in the *Legal Status of Eastern Greenland (Denmark* v. *Norway)* case (*1933, P.C.I.J., Series A/B, No. 53*, pp. 45-46), is a concept of international law and cannot be transplanted purely and simply to colonial law. The Chamber's sole task in applying the principle of *uti possidetis juris* is to ascertain whether it was the colony of Dahomey or that of Niger which effectively exercised authority over the areas which the Parties now claim as sovereign States." See (Niger v. Benin) In other words, all other sovereign attributes of the independent state of Ethiopia dealing with a colonial or trust administration has to be seen in favor of Ethiopia for Ethiopia has the superior claim to any of the claims based on colonial matrix. [*Frontier Dispute (Benin v. Niger),* 12 July 2005.]

7. The Algiers Agreement preemptively benefits one party and negates the rights of the second party without the benefit of negotiation or presentations because it is based on the Colonial treaties and annex that favored the colonial power ambition and does not reflect the reality on the ground. It is absolutely clear, even to a child; the only party benefiting

from the resurrection of long dead and defunct treaties is done with a single beneficiary in mind--the interest and claims of "Eritrea," as a successor nation to Italy's colonial administration, and Isaias Afeworki. Such succession itself is questionable, and the approach of preemptively awarding all the benefits derived from a treaty against a second party is against public policy and against long established international law and practices.

8. The Algiers Agreement authorized a subordinate organ, the Boundary Commission, with power and authority that far exceeds its own: violations of the principle of *Jus Cogens*. The Algiers Agreement would steam-role over individual rights of Ethiopians who would be forced under that agreement to leave their ancestral homes or adopt new Citizenship that will turn them into minority groups disfranchised and at the mercy of the newly dominant group in the new state arrangement of "Eritrea."

9. The Boundary Commission established under the Algiers Agreement is invalid since it is based on an illegal and invalid agreement, the Algiers Agreement.

10. The Boundary Commission decision shows inconsistency in its treatment of issues it claims to be within its discretion where it claims it was not deciding *ex aequo et bono*. The technical assistance provided by the United Nations on the determination of sites from maps is unscientific, confused, and irresponsible to be of any use in any demarcation or delimitation of a boundary between "Eritrea" and Ethiopia.

11. The Boundary Commission based all of its decision without ever visiting a single area under dispute. It is unrealistic and unjust to decide a very important and complex problem in dispute without considering the unreliability of hearsay and basing a decision on the basis of old maps and statements by individual's self serving dairies or travel logs, individuals who were not familiar with local languages, understanding of villagization, nomadic life of pasturing and watering traditions et cetera.

12. The Boundary Commission was unduly influenced by the international political structure of the United Nations Security Council. The replacement of the bipolar power structure of the Cold War era has given way to a single-power dictation of international relations by the United States. Ethiopia as a weak nation is treated as a dispensable pawn on a political chessboard. Ethiopians should reject such degradation and being subjected to decisions by political expediency rather than principles of law. The Chairman of the Boundary Commission, Elihu Lauterpacht should have been disqualified for breach of professional ethics (conflict of interest) long before 2007 due to the fact of his being Counsel on Record for the United States Government. The Commission as whole is also discredited by the fact of the overbearing direct influence or appearance of influence of the United States Government and the Secretary of the United Nations on the work of the Commission. [See Section III below on the disqualification of Lauterpacht and the Commissions for corruption and incompetence.]

13. Ultimately, the United Nations Charter entrusts to the Security Council the power and duty to deal with any situation that may plunge any region or the world into armed conflicts in several Articles. [See Articles 24, 33-34, 39-44, (52-54)]. Land locking

Ethiopia under circumstances perceived by millions of Ethiopians as an injustice is not going to be a peaceful situation at all. Sooner than later, the region will be immersed in wars and conflicts and unimaginable suffering. Already in the 1999-2000 war between Ethiopia and Eritrea due to border and other frictions had resulted in the death of no less than a hundred thousand soldiers, with enormous economic setback to both Ethiopia and Eritrea. In light of such injustice and the destabilization of the region, the Security Council is duty bound to throw out the decision of the Border Arbitration Commission's decision of 2002, and replace it with its own decision by returning Ethiopian Afar Coastal territories back to Ethiopian Sovereignty. This would solve largely the looming disaster in the area if things were left the way they are at this moment.

14. The best possible breakthrough would be for Ethiopia and Eritrea to go back to the drawing board and form a unitary single state. On the Eritrean side, the future is not that bright with the growing Islamic fundamentalism engulfing the region, and the Muslim population in Eritrea having grown by some estimation close to seventy percent of the total population of Eritrea. Considering the natural growth for political autonomy and the desire to be part of the long delayed membership in the Arab league, and with a rich and powerful Sudan salivating to incorporate all of Barka/Bogos and part of Kunama and the Ben Amirs, I do not see much of peaceful prospect for Eritrea. The only country in the region that has a far better record of centuries of tolerance and peaceful coexistence between Christians and Moslems than any other country in the region is Ethiopia. Thus, it is in the best interest of all to maintain the independence, territorial integrity, and sovereignty of Ethiopia. [Ideas condensed from my article "Ethiopia – Eritrea Border Dispute: challenging the opposition," December 30, 2005.]
[www.tecolahagos.com/border_dispute.htm]

III. The Disqualification of Lauterpacht and the Boundary Commission

1. The Chairman of the Boundary Commission, Elihu Lauterpacht should have been disqualified for breach of professional ethics (conflict of interest) long before 2007. As a result, the decision of the Boundary Commission is tainted and must be declared null and void. In brief the reason for disqualification is very clear. The Chairman of the Commission was retained as a lawyer by the United States in its case against Mexico in the case of *Avena and Other Mexican Nationals (Mexico v. United States of America)* ICJ Reports 2004. The United States is an interested party in the arbitration outcome. The Clinton Administration involved its top diplomat, Anthony Lake, to broker the Algiers Agreement of 2000. The resurrection of the defunct "colonial" period defective international instruments was purely aimed to help Eritrea. And the United States Government during the Clinton Administration is responsible for that form of fraudulent and vicious action against the long term interest of the people of Ethiopia.

At one point, the then First Lady, Mrs. Hillary Clinton, visited Eritrea without even giving lip-service stopover at Ethiopia's Bole Airport. In Asmara she was showered with gifts. The Clinton Administration was a major player in insuring the "independence" of Eritrea. It was open knowledge that the Clinton Administration favored and had repeatedly expressed its interest in solving the border dispute. It was also the prime mover in setting up the Security Council involvement in the case. During all this period

and later at the same time when Lauterpacht was working as Chairman of the Commission he was also being paid by the United States Government as its Counsel on record in the case of *Avena and Other Mexican Nationals (Mexico v. United States of America)* ICJ Reports 2004. If this is not a conflict of interest of the worst kind, show me what is? And Article 23 of the 1899 basic document that created the Permanent Court of Arbitration [Convention for the Pacific Settlement of International Dispute] holds that "each Signatory Power shall select four persons...of known competency in questions of international law, of the highest moral reputation, and disposed to accept the duties of Arbitrators."]

2. In the years following the independence of "Eritrea," Ethiopia has been subjected to tremendous military life-threatening attacks and pressure not only from the Eritrean side but also from the Somalia Jihadists, and Sudan. On the Djibouti side it was the most outrageous economic extortionist port fees is imposed by the new owners of the port service, by none other than Ethiopia's historic nemeses, Arabs from Dubai. Being circled by historic enemies, what must Ethiopia do? This is a question of national survival, and it is the most serious question facing all conscience Ethiopians.

3. The Boundary Commission, in its last act of arrogance and total disregard to its constitutive principles, had created its own power and a right to decide on its own outside of its mandate because the parties refused to cooperate with it. The Commission came up what it called "virtual demarcation." Here is a blatant abuse of power by the Commission, for it is authorized no where in the arbitration agreement or the Algiers agreement, or the general Hague Arbitration provisions dealing with arbitrations to adopt "virtual demarcation." In a sophomoric assertion it elevated itself to an international organization similar to the ICJ, for example, when its President Lauterpacht wrote as follows:

> "17. The Algiers Agreement, in establishing the Commission, is a constitutional instrument creating an international institution and conferring on it functions and powers. As such, its interpretation must be approached in the same way as international organisations have regularly approached the interpretation of their constituent instruments, that is, by way of the concept of institutional 'effectiveness.' Even though the governing text may not explicitly empower the organisation to act in a particular manner, international law authorises, indeed requires, the organisation, should it find it necessary, if it is to discharge all its functions effectively, to interpret its procedures in a constructive manner directed towards achieving the objective the Parties are deemed to have had in mind. The same is true of international judicial organs. (*Territorial Dispute (Libyan Arab Jamahiriya/Chad*) Judgment, *ICJ Reports* 1994, pp. 6, 25 and the cases there cited in support of "one of the fundamental 9 principles of the interpretation of treaties, consistently upheld by international jurisprudence, namely, that of effectiveness." [Eritrea-Ethiopia Boundary Commission Statement, 27 November 2006. *www.pca-cpa.org/upload/files/Statement%20271106.pdf*]

4. Lauterpacht is either deliberately or unknowingly confusing the issue of the competency (power) of the Commission. I believe he is deliberately saving-face because of the failure of the Commission due to the fact that its creation and the arbitration

presentations, and the role of other governments bearing on the process had compromised the Commission and had violated numerous international norms and principles. For example, if we consider what Lauterpacht claimed in his last letter as cited above, the issue is not on how to make the Commission "effective," but rather the question is whether the Commission has any power at all to proceed with its arbitration work when the parties that created it refused to participate in the process of arbitration. The issue of "effectiveness" assumes the preexistence of uninterrupted power, which is lacking in the Ethiopia-Eritrea arbitration tribunal since the parties refused to participate in the proceeding. Clearly, the Commission has no such power to proceed on its own.

5. The *Territorial Dispute (Libyan Arab Jamahiriya/Chad)* case cited to support such claims by Lauterpacht is irrelevant since it deals with a "Court" procedure which is distinguishable from an arbitration tribunal. In fact, for anyone to claim that an arbitration commission created through a bilateral agreement between two countries is an "international organization," such as the International Court of Justice, is utterly silly. The fact that there were witnesses does not change the legal issue of what is meant by an arbitration process and the arbitration tribunal's power and limitations. Whether Algeria or United States make appearances or whether there is a letter or a resolution from the Security Council, is all irrelevant and confuses unnecessarily the issue. Lauterpacht was a corrupt man who fancied himself on a par with the judges of the International Court of Justice.

6. The literature is full of instances where parties to a dispute do not agree and the decision of the arbitration commission or tribunal cannot be entered, the right approach had been to fold and declare the process ended without legal effect. All the Commissioners could claim is the payment of their fees. The Commissioners have failed to understand the distinction between an arbitration commission (tribunal) and a court. An arbitration tribunal or Commission is hired by the parties to do certain services, and if the parties failed to comply with instruction of the commission or the tribunal, the process of arbitration comes to an end and the commission cannot proceed as if it is a court setting new terms of arbitration, and new procedures. There is no provision in the arbitration agreement that allows virtual demarcation.

7. The *Argentina-Chile Frontier Case* (1966) (38 *International Law Reports* 10), and the *Beagle Channel* case – 52 *International Law Reports* 284 cases cited by Lauterpacht to justify his *ultra vires* activities (virtual demarcation) were not relevant because the facts were quite different from the facts in the Ethiopia-Eritrea boundary arbitration problems of the two parties refusal to participate in the arbitration process. Most importantly there was agreement by the parties in the *Argentina-Chile Frontier Case*, which agreement can be considered as an amendment to the arbitration agreement, and in that case it was Queen Elizabeth II who was the arbitrator who appointed Lord McNair to do the actual work for her. The parties were in total agreement with the process of using aerial photography due to the fact the 1902 posts of demarcation were far apart and at points indiscernible. The *Beagle Channel* case is totally irrelevant since it deals with only with one party refusing to participate at the award stage of the dispute.

8. Lauterpacht wrote in his last letter, "The present case is not one involving the total non-cooperation of one Party, but rather the non-cooperation of both Parties, though in differing ways and degrees. Thus, the observation of the *Beagle Channel* tribunal applies *a fortiori."*[*www.pca-cpa.org/upload/files/Statement%20271106.pdf*] Lauterpacht is blatantly misconstructing the meaning of the word "*a fortiori*" and using it out of context. The term "*a fortiori*" in Latin means "with even stronger reason," which applies to a situation in which if one thing is true then it can be inferred that a second thing that has more of the elements that made the first thing true is even more certainly true. A good example, thus, would be if John is underage to drink alcoholic beverage then his younger brother would be even more so *a fortiori*. Another example would be if "Abel is too young to serve as administrator, then his younger brother Cain certainly is too young." It is not a matter of addition, but that of contextual meaning. The situation where both parties refuse to participate in an arbitration is not the type of factual situation where one could use an *a fortiori* argument from the example of some other situation where only one party had refused to proceed with an arbitration. Whereas if both parties refuse to proceed with the arbitration, the consequence is not an *a fortiori* derivation to force both to participate but the opposite, for the entire arbitration process is nullified, for the parties created the arbitration tribunal and if they decide not to participate no one can force any arbitration proceeding on them least of all their own creation.

9. Judge Gilbert Guillaume, who was reputed to be very much concerned with the effort of Lauterpacht to turn an arbitration forum into a court type system, pointedly repudiated such expansion of arbitration tribunals, albeit with subtlety, when he addressed his peers on October 18, 2007 at a function to celebrate the second Hague Convention of October 18, 1907 for the pacific settlement of international disputes. The emphasis of Judge Guillaume is on the power of the parties to contract in a manner that fits them, not some abstract standard of "international organization" that Lauterpacht fancied. "In arbitration, the parties are free to choose the procedure which suits them and, in the past, have referred to the procedural rules of the PCA, those of ICSID, or have conducted the proceedings on an *ad hoc* basis. They are also free to choose the seat of the Arbitration Tribunal, in The Hague or elsewhere, and the place in which hearings may be held, as well as the languages of the arbitration. Lastly, the arbitration ruling may be kept confidential if the parties so wish." [Gilbert Guillaume, Member of the Permanent Court of Arbitration, Former President of the International Court of Justice, address of October 18, 2007, Centenary celebration of the second Hague Convention of October 18, 1907 for the pacific settlement of international disputes.]

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To be continued

<u>PART TWO</u>

IV. Which Countries are behind the diabolical scheme to destroy Ethiopia?
V. What Must Ethiopia do to reverse past misdeeds and errors?
VI. Conclusion