Editorial:
Meles Zenawi, Dump the 2000 Algiers Agreement,
and Invalidate, Terminate, and Void the Boundary Commission and Its Decision
By Tecola W. Hagos

I. Statement of Fact

The United Nations' new Secretary General Ban Ki-moon stated on 6 November 2007 that the Eritrean Government's deployment of its forces and militarization of the Temporary Security Zone (TSZ) [here after "Buffer Zone"], which Zone was to be kept free of militarization by the Eritrean government as part of the peace process pursuant to the 2000 Algiers Agreement, was a violation of that peace agreement. A year earlier, the previous Secretary General Kofi Annan stated before he left office that Eritrea had violated the Peace Treaty by moving tanks and its soldiers in the Buffer Zone. There is no question that the Eritrean Government has violated both the letter and spirit of the 2000 Algiers Agreement. There are numerous instances where there have been violations by the Eritrean Government of the 2000 Algiers Agreement since it signed that agreement seven years ago.

From the day the 2000 Algiers Agreement was signed, the Eritrean Government never for a single day rested from its concerted effort to undermine the interest, territorial integrity, and sovereignty of Ethiopia. The Ethiopian Government repeatedly has alleged that the Eritrean Government sent subversive agents into Ethiopia. The Ethiopian Government information service had stated repeatedly that it had arrested insurgents and terrorist agents deployed by the Eritrean Government to cause violence within Ethiopia. Most importantly, the Eritrean Government hosted Islamic Courts members in Eritrea, some of whom were identified as terrorists by the State Department. Even worse, the Eritrean Government trained terrorists, and shipped weapon to Somalia to arm the Islamic Courts to fight the UN recognized Transitional Federal Government of Somalia and the Ethiopian Military forces legitimately invited to help the Transitional Federal Government of Somalia. The Eritrean Government trained ONLF and other terrorist groups and shipped weapon through Somalia to arm the ONLF and other insurgents for subversive activities murdering Ethiopian citizens as well as foreign workers at an exploration site in the Ogaden. In fact, it is alleged that the Eritrean Government has its own military personnel engaged in active combat against Ethiopian forces and citizens camouflaged as ONLF insurgents.

The Report of the Monitoring Group on Somalia, a group organized pursuant to Security Council Resolution 1724 (2006), states, "Eritrea was the principal clandestine source and conduit for arms supplies to the Shabaab…. Based on information reflected both in past reports and in the current report, the Monitoring Group has observed a clear pattern of involvement by the Government of Eritrea in arms embargo violations. The Monitoring Group also concludes that the Government of Eritrea has made deliberate attempts to hide its activities and mislead the international community about its involvement." The Report was submitted to the Security Council on the 17th of July 2007 [S/2007/436].

There is no doubt that the Eritrean Government has violated both the letters and the spirit of the Algiers Agreement of 2000.

From the time of the illegal secession from Ethiopia in 1991, one can legitimately state that "Eritrea" has been the hub of the enemies of Ethiopia from all over the Arab Muslim nations bent on destroying Ethiopia as their forefathers have tried to do for centuries unsuccessfully. Eritrea has become the training, financial and military hardware exchange center for the entire Middle East as a base for the enemies of Ethiopia. This existing state of affair is not the desire of the people who currently live in "Eritrea" under a brutal dictatorial military government. This is one reason why the statements of politicians from both the United States House of Representatives and from the European Union Parliament against Ethiopia sound hollow and full of hypocrisy.

For example, in a recent article in the The New York Times, a paper that has peddled several anti-Ethiopian propaganda materials written by novice reporters and mercenary freelancers as news, there is an exception of a short commentary, in their Op-ed section, on the danger Ethiopia is faced with. "Arms and money from radicals throughout the Middle East, as well as troops trained in Eritrea, have strengthened an insurgency in Ogaden Province, in southeastern Ethiopia." By Vicki Huddleston and Tibor Nagy, "Don't Turn on Ethiopia," The New York Times, OP-ED, November 15, 2007. These two people, who wrote that brief statement, know what they are writing about far better than any Representative in the House or Parliamentarian in the EU. For Example, Vicki Huddleston is the former State Department High Official stationed in Addis Ababa for years, and now a distinguished member of the well respected Think-Tank, The Brookings Institute.

The illegal secession and creation of an "Eritrea" by force, fraud, and coercion from the historic territory of Ethiopia has resulted in the intense and violent conflict for the entire period of that creation since 1991. Due to the illegal landlocking of Ethiopia by occupying Ethiopia's Afar coastal territories and Ethiopia's Territorial Water on the Red Sea, there will always be violent conflict between Ethiopia and the occupying forces. Ethiopia, the ancient land and now home of eighty million sovereign and independent people, cannot be illegally denied its historic Afar coastal territories. The United States Government may have made a good policy decision when it decided to assist willing insurgency movements (EPLF, TPLF) to overthrow a brutal dictatorship in the pay of the Soviet Union, but it made a monumental mistake later when it forced on the people of Ethiopia the 2000 Algiers Agreement signed by former guerilla leaders who neither were elected officials nor patriotic Ethiopians but insurgency partners committed to destroy Ethiopia. The United States is responsible for all the conflict in Ethiopia because it played and is still playing a major role in landlocking Ethiopia, in pursuant to its own short-sighted national interest.

It is a fact according to reliable sources that State Department Officials, such as Anthony Lake, had exerted corrosive pressure on the Ethiopian leaders, who were at any rate willing partners, to sign the 2000 Algiers Agreement. The Clinton administration had caused Ethiopia the most serious damage to Ethiopia's continued survival as a sovereign nation. We all know the ethical shallowness of President Bill Clinton. Ethiopia is one of

his victims. His wife Mrs. Hillary Clinton as the First Lady chose to visit “Eritrea” in late March 1997 and not Ethiopia. In fact, Bill Clinton was in favor of “Eritrea” when it attacked Ethiopia in 1998 and would have sanctioned Ethiopia alone even though Ethiopia was the victim of that aggression if it were not for World opinion and the glaring facts. The Democratic Party, now in the person of Donald Payne, has continued its assault on Ethiopia.

Professor Yacob Hailemariam wrote in 2001 an excellent article stating the danger of landlocking Ethiopia and taking away by force its Afar coastal territories and its territorial waters on the Red Sea stating with clarity and precision:

> After WW II, recognizing Ethiopia's right of access to the sea, the 5-nation UN mandated Commission that convened to come up with measures for the disposition of Eritrea had underlined its recommendation by clearly stating, ‘Taking into account in particular Ethiopia's legitimate need for adequate access to the sea.’ Furthermore, in its recommendation, the Commission had warned, ‘The creation of a separate Eritrean State entirely on its own would contain all elements necessary to seriously prejudice the interest of peace and security in East Africa now and in the future.’
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> At the Paris Peace Conference on September 24, 1945, among the many world leaders who gave testimonials regarding Ethiopia's right of access to the sea, John Foster Dulles, head of the American Delegation, said, ‘to avert the possibility of [Eritrea] being used at any time in the future as a base against Ethiopia, and to give that state address to the sea, the eastern part of Eritrea including Massawa should be incorporated into Ethiopia.’ The British Delegate Mr. Mcnill also said, "the territory ceded to Ethiopia should include the Danakil Coast, the Port of Assab." The French and Italians said the same thing. The Reporter, January 9, 2002 Reposted in Warka, November 18, 2007.

So far, Ethiopia’s champion seems to be the one President I least expected, President George W. Bush. Having observed and studied the concerted effort of Democrats in the House (H.R. 2760 of 16 July 2003, H. R. 2003 October 2007) to undermine even destroy Ethiopia, I have reached a point of wishing that George W. Bush would have a Third Term as President of the United States for the sake of Ethiopia’s survival. The Democratic Party seems to have lost its way in international relations, and I am apprehensive of having any of the Democratic Party Presidential Candidates as President of the United States. There is no doubt in my mind that Gail Smith and John Prendergast will be in the White House as experts on Africa/Ethiopia if the Democrats win the Presidential election, and if such is the case there is no hope for Ethiopia. I might as well start an Ethiopian liberation front or leave Earth to a distant planet in the Andromeda Constellation. I only hope that the next 2008 election would bring about an enlightened but tough Republican President.

Let me simply remind everyone concerned about Ethiopia that the survival of Ethiopia and its very territorial integrity and Sovereignty is at great pearl at this very moment. Not only Ethiopia’s historic enemies are now surrounding Ethiopia for a final kill, but also

Ethiopia's own treasonous children in the guise of human rights concerns and in the name of opposition to the government of Meles Zenawi have themselves become Ethiopia's most dreadful enemies. Of course, this would go down in the history books as the most asinine and shameful "political" activity of few Diaspora Ethiopians who hurt the Motherland. ***Ttut nekash*** Generetion.

II. Meles Zenawi: Invalidate and nullify the Algiers Agreement and void and Terminate the Boundary Commission and it Decision *

There are several recorded aggressive violations committed by the Eritrean Government that warrant the immediate invalidation and nullification of the 2000 Algiers Agreement and all subsequent actions, processes, and decisions taken or entered by the Ethiopia-Eritrea Boundary Commission, which Commission was established pursuant to the 2000 Algiers Agreement. The purpose of the Algiers Peace Agreement was to bring about peace and security to the people of the two signatory parties. It has done neither. The Eritrean Government has continued its aggression and violated the purpose of the Algiers Agreement from the very day the Agreement was signed.

There is nothing Meles Zenawi would lose that he had not lost already by being a "good boy" to the United States and letting the Boundary Commission enter its final demarcation on a map the Commission had threatened to do by the end of November 2007, an illegal procedure in itself because the Commission has no authority to create such new procedure. Proactively rejecting and invalidating the Algiers Agreement and voiding the Boundary Commission and its decisions, Meles would have created a unique situation that would only benefit Ethiopia. If Meles for once become an Ethiopian patriot and take formal steps thus invalidating, nullifying, and voiding the Algiers Agreement and the Boundary Commission and its corrupt decision, by such simple act of real politick and legitimate legal maneuvering, he would have taken Ethiopia to its original position before the signing of the Algiers Agreement. There is no need to be encumbered with one more illegal procedure of markings on maps!

On the physical aspect of the conflict, if the Boundary Commission is allowed to continue its illegal demarcation on a map, what such illegal procedure would do is simply move the conflict with "Eritrea" closer home, shifting its advance-lines by some forty miles the length of the boarder between Ethiopia and "Eritrea" especially in the Afar Ethiopian coastal territories cutting off Ethiopia completely from its Territorial Waters on the Red Sea. The conflict with "Eritrea" is deeply seated, thus solution will not be found in appeasement or by an arbitration decision already tainted with corruption that was created pursuant to a fraudulent Algiers Agreement. However, through equitable negotiated agreement or through the determination of the International Court of Justice where the history of Ethiopia would have a determining role in either situation, solution can be found for the peace and security of the region. This can only be done after Ethiopia has a new Government leadership with no divided loyalty to governments that are hostile to Ethiopia's vital national interest.

By playing the geopolitical forces in the area and elsewhere against each other and offering "Eritrea" far better prospects in economic involvement and investment

possibilities within Ethiopia and eventual reintegration, an Ethiopian government can use effectively such strategy first by invalidating and nullifying the 2000 Algiers Agreement and the Boundary Commission. Such action in the long run is not for the benefit of Ethiopia but will bring about peace to the region. One must understand that prolonged period of conflict favors Ethiopia than an "Eritrea" that is already a fractured entity with very limited resources, both in economic terms and man-power. For Meles Zenawi own legacy, he might as well do the smart and wise thing by invalidating, nullifying, and voiding the Algiers Agreement and the Boundary Commission and its corrupt decision. Invalidating and nullifying the Algiers Agreement and voiding the Boundary Commission and its decisions, are his last chance acts to redeem his treasonous activities against Ethiopia of the last sixteen years. Meles must realize that as a family man that he should be cognizant of the type of legacy he is going to live to his children and the children of their children for generations.

The United Nations General Assembly defined aggression, in its non-binding (on the Security Council) Resolution 3314 (XXIX) adopted December 14, 1974:

> Article I: Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition.
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> Article 2: The First use of armed force by a State in contravention of the Charter shall constitute prima facie evidence of an act of aggression although the Security Council may, in conformity with the Charter, conclude that a determination that an act of aggression has been committed would not be justified in the light of other relevant circumstances, including the fact that the acts concerned or their consequences are not of sufficient gravity.
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> Article 3: Any of the following acts, regardless of a declaration of war, shall… qualify as an act of aggression: … (f) The action of a State in allowing its temtory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;(g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

The International Court of Justice (ICJ), in no uncertain terms has stated clearly what types of activities constitute interference that are contrary to the principle of peaceful co-existence of states as embodied in customary international law and the Charter of the United Nations. In 1986, in a landmark decision, the ICJ by twelve votes to three, decided that "the United States of America, by training, arming, equipping, financing and supplying the *contra* forces or otherwise encouraging, supporting and aiding military and paramilitary activities in and against Nicaragua, has acted, against the Republic of Nicaragua, in breach of its obligation under customary international law not to intervene in the affairs of another State." [emphasis added] *See Military and Paramilitary Activities in und against Nicaragua (Nicaragua* ***v.*** *United States of America). Merits, Judgment.* I.C.J. Reports 1986, p**.** 14. There are other cases too that support the view that "Eritrea"

has violated its international obligation under the 2000 Algiers Agreement and has violated also customary international law and the Charter of the United Nations "by training, arming, equipping, financing and supplying the…forces or otherwise encouraging, supporting and aiding military and paramilitary activities in and against" Ethiopia. The following are the main reasons for the invalidation and nullification of the 2000 Algiers Agreement and all subsequent actions, processes, and decisions taken or entered by the Ethiopia-Eritrea Boundary Commission:

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 encumber future generations of Ethiopians with any international obligations. The independence of Eritrea was achieved through collusion and complacency of the leadership of the EPRDF (still in power) and through force; however, 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 (null and void) with no legal consequences on Ethiopia and Ethiopians.

Meles Zenawi and Sebhat Nega, in several interviews have expressed their support of the independence of "Eritrea" in the past and in the present time. It is note worthy to pay attention to the radio interview of May 28, 2007 of Sebhat Nega and that of Meles Zenawi on several occasions there after that confirms the collusion that existed between those two leaders of the present Governments of Ethiopia and that of "Eritrea" at the time of the signing of the Algiers Agreement. The war between Ethiopia and "Eritrea" was prosecuted by a dissenting faction of the TPLF that had gained the upper hand momentarily, but lost power back to the Sebhat and Meles group soon after resulting in the decision to sign the one-sided 2000 Algiers Agreement that fully protected the interest of "Eritrea" only.

2. The Boundary Commission should have known and taken into consideration as public knowledge (*judicial notice*): a) the fact that Prime Minister Meles Zenawi and President Isaias Afeworki are leaders of liberation fronts, with long standing relationship supportive of each others organizations before the conflict of 1998; and b) the fact that Meles Zenawi and his Government gave unprecedented support to the independence of Eritrea due to the two leaders long standing understanding or 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 during the years the two leaders and their organizations launched a guerrilla war against the legitimate successive 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 thus fraudulent. It does not bind the State of Ethiopia and Ethiopians to any obligation. [Sebhat Nega's interview of May 28, 2007 confirms the collusion that existed between the leaders of the present Governments of Ethiopia and that of Eritrea.]

The Vienna Convention on the Law of Treaties, in *Article 49* (Fraud), *Article 50* (Corruption of a representative of a State), *Article 51* (Coercion of a representative of a State), and *Article 53* (Treaties conflicting with a peremptory norm of general international law "*jus cogens*") provides the legal basis for the invalidation and nullification of the 2000 Algiers Agreement due to fraud (Art. 49), due to corruption i.e. collusion of the leaders (Art. 50), and due to the violation of "jus cogens" (Art. 53).

3. The 2000 Algiers Agreement resurrected long defunct, dead, terminated, invalidated international instrument (1908) and annex (1900, 1902) 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, annex, or international legal instruments 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. In fact, the validity of those instruments is highly questionable even at the time of their creation because they violate long established principles of customary international law on treaties formation and executions between states.

4. The Boundary Commission did not specifically cite the principle of *uti possidetis* in its decision. However, the Commission's use of the international instruments (1908) and annex (1900, 1902) in order to establish legal rights amounts to the same thing. The development of such international legal principle must be understood in its contextual use first in several Latin American cases to settle disputed territorial boundaries and possessions. The concept developed forked solution one dealing with the test based on historic rights (Sovereign) and the second dealing with effective control (possession). At any rate, the principle of *uti possidetis* in its evolved form through the decisions of the ICJ as indicated below favors Ethiopia if it had claimed properly the Afar Coastal territories as its legitimate historic territory. [See *Frontier Dispute (Benin v. Niger)*, 12 July 2005.] 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 also the fact that the disputed area with its population is the natural extension of its territory and demography. The majority of Afars over ninety percent are found within the larger region within Ethiopia. Thus, there is no reason or principle of international law that would deliberately dived a people into such discreet areas with diminished human and political rights in order to award some territory to a newly created entity. Such process defies all reason, equity, principles of law whether international or domestic.

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 Boundary 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 *Frontier Dispute (Benin v. Niger)*, 12 July 2005.) 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. [See *Frontier Dispute (Benin v. Niger),* 12 July 2005.]

7. The 2000 Algiers Agreement preemptively benefits one party and negates the rights of the second party without the benefit of negotiation or representations 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 or annex or international legal instrument is done with a single beneficiary in mind--the interest and claims of "Eritrea," 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 2000 Algiers Agreement authorized a subordinate organ, the Boundary Commission, with power and authority that far exceeded its own, for the Decision of the Commission may end up affecting the human rights of individuals in violations of the principle of *Jus Cogens.*

9. The Boundary Commission established under the 2000 Algiers Agreement is invalid since it is based on an illegal and invalid agreement due to fraud and collusion as pointed out above in (1) and (2).

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 possibility of the unreliability of hearsay and 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 villagizations, nomadic life of pasturing and watering traditions et cetera in that part of Ethiopia.

12. The Boundary Commission was unduly influenced by the international political structure of the United Nations Security Council, mainly by the United States and its European allies. The replacement of the bipolar power structure of the Cold War era by a single Super-Power, the United States, has resulted in an unprecedented imposition and dictation of international relations by the United States that has resulted in the deformity and distortion of hitherto well established norms and principles of international customary law and practices. Ethiopia as a weak nation is treated as a dispensable pawn on a political chessboard totally dominated and controlled by the United States. Ethiopians should reject such degradation and being subjected to decisions for political expediency and the American strategy for that part of the World serving the national interest of the United States rather than principles of law. [See III (3) below for detail.]

13. The Chairman of the Boundary Commission, Elihu Lauterpacht, must be disqualified for breach of professional ethics (conflict of interest). Because of Lauterpacht's activities, the decision of the Boundary Commission is tainted and such decision must be declared null and void. The reasons for disqualification are previous and later arrangements Lauterpacht had with the Government of the United States. During the time Lauterpacht was the Chairman of the Commission, he was also retained as a lawyer by the United States as legal advisor earlier and as listed-counsel in the *Avena* case with Mexico. The United States is an interested party that has repeatedly expressed its preference of the "Eritrean" claims. At the same time Lauterpacht was working as Chairman of the Commission, he was also being paid by the United States Government as its legal advisor and counsel. If this is not a conflict of interest, show me what is? [See *ICJ case Avena and Other Mexican Nationals (Mexico v. United States of America)*.] 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." That principle of the "highest moral reputation" applies to all arbitrators who are chosen or elected to be arbitrators under the umbrella of the Permanent Court of Arbitration. Those arbitrators must also be "disposed to accept the duties of Arbitrators"

and not of any other function that conflicts with their function as arbitrators. [See IV (2) below for detail.]

14. The role of an Arbitration tribunal is not like that of a Court. A court has no other option except to render judgment. However, an arbitration tribunal can withdrew from rendering an arbitration decision. This is in the nature of arbitration as opposed to a judicial process. An arbitration tribunal is essentially a creation of the parties, thus does not have that "public" dimension as is the case with Courts. The Ethiopia-Eritrea Boundary Commission seems to have confused its role and status with that of the ICJ, and in few instances it seems to act as the ICJ. Where the parties to a dispute in an arbitration process have been uncooperative for any number of reasons, where one of the parties namely "Eritrea" has violated the very base for the creation of the Commission, the Algiers Agreement, the Commission has no valid authority whatsoever to enter a decision on its own right, for all of its authority is a derivative authority coming down directly from the parties (Ethiopia and Eritrea). Thus, any attempt to force on the parties a decision under the current situation is beyond the Commissions mandate and *ultra virus*. The Commission has no authority to draw boundary lines on a piece of paper and declare as the demarcation of boundaries. Such activity is illegal and an abuse of trust, and prosecutable by Ethiopia the Members of the Commission as a crime against its territorial integrity and vital security and economic interest.

15. The Boundary Commission faced with such hostile parties has one option and only one option, and that option is to withdraw from the Arbitration process. This is not the first time arbitrators have withdrawn from making a decision or from moving with a decision reached with some defect. I have argued for sometime now that the Commission was defective in its establishment, that it was wrongly established and called upon to arbitrate contending artificial claims affecting *Jus Cogens* principles of peremptory norms of international law and practices that should not be a subject for arbitration tribunal such as the Commission at all. The right thing to do for the Members of the Commission was to have withdrawn from the arbitration setup before entering their invalid decision.

16. The Boundary Commission Members have not submitted their full accounting. What they have submitted are statements for billings. The Ethiopian Government has every right to demand "full accounting" that will require the Commission Members to give detailed accounting of their activities hour by hour in their handling of the Arbitration.

17. 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 as whole 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 Boundary Commission's decision of 2002. The Security Council must adopt a new policy and strategic 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.

The Eritrean Government may not shield itself by claiming that it has not signed the Vienna Convention on the Law of Treaties. Other than the fact of a strong case that can be made under customary international law on the law of "State Successions," even more strong evidence of authority for adhering to the Vienna Convention on the Law of Treaties" could be found in the legislative history of that Convention and in the general customary international law principles and practices. The International Law Commission stated: "In short, the law of treaties is not itself dependent on treaty, but is part of general customary international law. Queries might arise if the law of treaties were embodied in a multilateral convention, but some States did not become parties to the convention, or became parties to it and then subsequently denounced it; for they would in fact be or remain bound by the provisions of the treaty in so far as these embodied customary international law *de lege lata*." See *Yearbook of the International Law Commission, 1959*, vol. II, document A/4169.

III. Legal and Policy reasons to declare the 2000 Algiers Agreement null and void.

1. Principle of *Jus Cogens:* Brownlie, an international law jurist of great depth and notoriety, pointed out the principle of *jus cogens* that states that there "are rules of customary law which cannot be set aside by treaty or acquiescence but only by the formation of a subsequent customary rule of contrary effect."[Brownlie, Principles of Public International Law, 515.] The difficult task faced by the Vienna Conference on the Law of Treaties was to draft provisions that would adequately retain the principle of *jus cogens* extracted from customary international law and practices. In fact, McNair asserts that it is easier to "illustrate these rules than to define them." [McNair, Lord, The Law of Treaties, Oxford: Oxford University Press, 1961, 214.] The first problem was to establish whether there are in fact peremptory norms of general international law. Some jurists consider the concept of *jus cogens* as a recent development of a version of "public Policy" [Elias, T.O. The Modern Law of Treaties, Leiden: A.W.Sigthoff, 1974, 177. In Osca Chinn Case (1934)P.C.I.J., Series A/B, No. 63, pp134-36, 146-50, the Court introduced the concept of international public policy.] with international dimension. However, "according to some authors, some international public policy has always existed." [Sztucki, Jerzy, *Jus Cogens* the Vienna Convention on the Law of Treaties: A Critical Appraisal, Wien New York: Springer-Verlog, 1974, 8.]

Article 53 of the Vienna Convention on the Law of Treaties codified the well established principle of *Jus Cogens* in no uncertain terms as follows:

"Article 53: Treaty Conflicting with Peremptory Norm of General International Law (*Jus Cogens*) A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purpose of the present convention, a

peremptory norm of general international law is a norm accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character."

The Algiers Agreement at its time of signing preemptively obligate Ethiopia under defunct, long dead, and supplanted international instruments, with dubious validity even at the time of their presentations in 1900, 1902 and 1908, to cede millions of acres of land and coastal territorial waters and islands dispossessing its own citizens or driving them of their ancestral homes; acts that would violate all fundamental principles of human rights incorporated in the Universal Declaration of Human Rights, the Charter of the United Nations and numerous General Assembly Resolutions. The status of human rights is considered to be *jus cogens* and the violation of which imposes *erga omnes* obligations on each Member state of the United Nations. [For the development and applicability of the principles of *jus cogens*, see German Settlers in Poland, (Advisory Opinion) 10 September 1923, PCIJ Series B, No. 6, at 36. In a recent Advisory opinion, the ICJ in the Legal Consequences of the Construction of a Wa11 in the Occupied Palestinian Territory, Advisory Opinion, I. C. J. Reports 2004, has clearly affirmed that human rights principles are indeed *jus cogens* principles.

If we accept the fact that anything agreed to by heads of governments is valid, we run into all kinds of absurd situations. This is one reason why the principle of *Jus Cogens* evolved. Imagine a situation where two dictators agreed on a treaty that will allow one nation to use some citizens of the other nation as slaves. How about selling a piece of territory, as the Czar of Russia did selling Alaska to the United States? Such an act of alienation of the territorial integrity of a sovereign state would have been considered illegal, as some still think the Alaskan deal is still illegal. The case is an extreme situation that clearly illustrates the problem. Any person will object to such an arrangement because such agreement violates fundamental human rights and principles on sovereign power.

The purchase of land by a private party and passing it to a foreign national government has confused ownership with sovereignty. The initial phase of the Rubattino Steamship Company in 1870 purchase of land in Assab (Ethiopia) was simply an ordinary contractual passing of ownership/possession of a piece of land under the legal system of a sovereign country, and the passing of such ownership right to the government of Italy later is not any different for the piece of land is still under the sovereign power of the State where the transaction took place. It might have confused in people's mind the simple ownership of land, which anyone person or corporate entity including other nations can exercise under the power of the granting sovereign state if its municipal laws permits, with the concept of sovereign power. When an individual or an entity owns property under the sovereign power of a people constituting a state, such as Ethiopia, irrespective of the fact of the personal status (citizen, foreigner, immigrant, male, female, single, married, et cetera) or corporate status (corporation, foreign governments, representatives of charitable or non-charitable organizations, et cetera) of that individual

or entity, such ownership is exercised at the pleasure of the granting Sovereign Power (in this case the People of Ethiopia as constituted as the State of Ethiopia).

Thus, ownership under the sovereign umbrella of a legitimate nation-state does not allow the fabrication or creation in any owner of real property that even remotely resembles "sovereignty" or "sovereign power." We can see how sound the principle of *Jus Cogens* is, and also how valid it is to our case under consideration. What the Algiers Agreement created is a legal anomaly that cannot be sustained under any principle of international law. There is no precedent how one can resurrect long dead colonial treaties without first violating principles of *Jus Cogens* and others in the present case of border dispute and alienation of hundreds of thousands of people into subjugation and minority status.

2. Fraud, Corruption (Collusion): The Vienna Convention on the Law of Treaties, which is a codification of customary international law, in Part V on "Invalidity, Termination and Suspension of the Operation of Treaties" in several Articles has embodied that principle. Both customary international law and multinational treaty based principles hold agreements entered where there is lack of competence (Article 46), or through fraud (Article 49), collusion (corruption) (Article 50), or under duress or coercion (Articles 51 and 52) to be void or voidable.

It is a fact that the TPLF/EPRDF and the EPLF had been in close cooperation as guerilla movements for over twenty years. They had coordinated their activities against the Ethiopian government during the period leading to their victory in 1991. There are eyewitnesses and documentary evidence proving prior agreements between the leadership of the two guerrilla movements against the interest of the Ethiopian people and the State of Ethiopia. It was none other than Meles Zenawi, along with Abai Tsehai, who signed on behalf of the TPLF such an agreement with the EPLF. No such agreement was ever disclosed to the people of Ethiopia (or Eritrea) when the two guerilla Leaders became head of states or governments after their victory over the Ethiopian Government in 1991. It is with such undisclosed prior agreement with hidden agenda the new Algiers Agreement was signed by the same guerrilla leaders pretending as if the Agreement was an arms-length negotiated agreement.

These same two leaderships of the two guerrilla movements have signed several other hidden agreements that they intended to implement as part of their general strategy to dismantle and destroy Ethiopia. The Algiers Agreement, which anticipated border demarcation as agreed to in their previous clandestine agreements between the two guerilla movements, is simply an implementation of that strategy now floating for all to see at the surface of their deep sea of deception. Thus, there is fraud in the activities of Meles Zenawi pretending to be a leader of the Ethiopian people, but in fact promoting the hidden agenda of an adversary foreign interest.

Where officials representing states had made some other arrangement unknown to their respective government organs (parliament, council of ministers et cetera) entrusted with the power to delegate state authorization to such agents, and where the entry of an agreement by such colluding agents is harmful to the interest of one of the signatories of

such an agreement to benefit the other, there is collusion; consequently, a base for voiding and nullifying such an agreement by the prejudiced party. The Vienna Convention on the Law of Treaties is absolutely clear on fraud corruption (collusion) in Part V as cited above.

3. Coercion and Interference by the United States and Others: The United States was not pleased when Ethiopia and Eritrea went to battle. However, it was not for the same reasons that you and I would have been thinking about to preserve peace in the world. The flare of that conflict prematurely ignited the type of war had it happened much later would have thorn Ethiopia apart and lead to the creation of several tiny nations. The plan of the United States CIA coordinating the Meles-Issaias axis to carry out the destruction of Ethiopia by dismantling Ethiopia into several pieces was to a great extent disrupted. The breakout of such actual engagement saved Ethiopia from CIA planned later destruction. Now we have a resurgence of Ethiopian nationalism that has effectively neutered the CIA from carrying out its ill conceived dismantling of Ethiopia across lines of cracks of Super Power induced ethnic "self-determination."

The Government of the United States through the United Nations Security Council and on its own national agenda is intimately involved with the Ethiopia-Eritrea border dispute. For all practical purposes its name should have been added to the name of the Commission such as "The United States-Ethiopia-Eritrea Boundary Commission." The United States government has coerced, threatened, and openly expressed its illegal desire to landlock Ethiopia in pursuit of its ill-conceived foreign policy and self interest. It has established "Eritrea" to acquire illegally Ethiopian territory.

Some members of Congress (Lantos, Payne et cetera) had introduced a bill [H.R. 2760 of 16 July 2003] condemning the Ethiopian government [SEC. 5(3)], and were involved in a process no different than cheap blackmailing of the current Ethiopian government with economic and military sanctions [SEC. 6 (a) and(b)] if the Ethiopian government does not go along with the highly prejudicial scheme the United States government had put in place in collaboration with "Eritrea" and Meles Zenawi starting with the drive for the independence of "Eritrea" to the signing of the Algiers Agreement and the setting up of the Commission. The draft bill in Congress had shown no restraint whatsoever, even going to the extent of expressing its support to the Commission [SEC. (1)] in an unusual foray prejudging a complex situation from a pulpit of self-righteous indulgence of self-importance. The replacement H. R. 2003 that was passed by Congress carries that legacy undermining the Sovereignty of Ethiopia.

IV. Precedent for the Rejection of the Decision of the Boundary Commission; Disqualification of Members of the Commission:

1. Precedent for the Rejection of the Decision of the Commission: Rejection of the determination of an international dispute by an arbitration tribunal or even by the more public forum of the International Court of Justice (ICJ) is not something unusual. It is in the nature of the dynamic relationship of states that determination by international tribunal such as the ICJ or the Arbitration Commission could be set aside by states

against whose interest such decision has been entered where the “vital interest” of such states was at stake.

Consider the following examples:

a) In 1974 France informed the United Nations Secretariat that it will not recognize the jurisdiction of the ICJ in its verdict in favor of Australian and New Zealand’s concern of the nuclear test conducted by France in the Pacific Ocean. The ICJ has directed France to stop its nuclear testing. [Nuclear Tests (Australia v. France) 1973- 1974; Nuclear Tests (New Zealand v. France, 1973-1974].

b) In 1984 the United States Government refused to accept the decision of the ICJ in the Nicaragua v. United States case [Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgments, I.C.J. Reports 1986]. The ICJ has found the United States has violated the rights of Nicaragua.

(c) In 1999 the ICJ ordered the stay of execution of a German national on a finding that the United States had violated international law; nevertheless, the United States rejecting the order executed the German citizen and his brother. [The LaGrand Case(Germany v. United States of America) 5 March 1999] In that case the Court unanimously upheld that treaty provisions override local criminal process, and ordered the following interim measures: “(a) The United States of America should take all measures at its disposal to ensure that Walter LaGrand is not executed pending the final decision in these proceedings, and should inform the Court of all the measures which it has taken in implementation of this Order; (b) The Government of the United States of America should transmit this Order to the Governor of the State of Arizona. “II. Decides, that, until the Court has given its final decision, it shall remain seized of the matters which form the subject-matter of this Order."

Among several other news media the CNN reported, “[T]he world court held a 30-minute hearing at which Sri Lankan Judge Christopher Weeramantry, the United Nations court's vice president, urged the United States to use ‘all the measures at its disposal’ to prevent the execution. It also said the United States should pay unspecified damages for the death of LaGrand's brother, Karl, who was executed last week for his part in the same crime. The world court, however, has no enforcement powers.” [cnn.com, March 4, 1999, Web posted at: 12:02 a.m. EST (0502 GMT)]

Let us fold back time in order to consider the decisions of the International Permanent Court of Arbitration soon after its creation in 1899. Some decisions entered by the newly created International Permanent Court of Arbitration between 1900 and 1932 were arbitrated mainly on limited border disputes, nationality issues, and interference or sovereignty conflicts. Almost all of the precedents set by those decisions dealing with boundaries and nationality issues were blown off with the events of the Second World War. New agreements, usually imposed by the victors on the losing sides, were put in place without regard to previous arbitration decisions in a number of peace agreements. Further political development in the Cold War period eroded such agreements. Moreover,

starting in the late 1980s, the borders of new countries have been once again redrawn popping out of the old global order.

All of the developments in international arbitration show us that nothing is written in granite, instead the literature of the time and the decisions of the arbitration tribunal are fluid and are meant to solve problems within a framework of an evolving world order and customary international law. There is no such thing that approximates the rigidity and clarity of say criminal law. It is this sublime mix of statesmanship, difference to history, and the desire to bring about peace and security between states and peoples that motivated and guided jurists and politicians alike.

Where there is clear error of principle as well as that of error of fact in an arbitral decision, no one can be held bound by such decision. Thus, for all the above reasons the Ethiopian government must reject the decision of the Commission. Such act of rejection is not unique, as shown above; in fact, one would fail in ones duty if one does not reject the decision of the Commission in order to protect the "vital interest" of Ethiopia--its survival as a viable nation. In fact, it is even more compelling to reject the decision of the Commission when we take into account the consequence and magnitude of accepting the decision of the Commission. Both the United States and France found it necessary to reject decisions of questionable impact on the survival or sovereignty of France or the United States by a far more public forum, the ICJ, than the case of Ethiopia rejecting a far reaching decision of a low level arbitration tribunal.

2. Conflict of Interest: a) Disqualification of Lauterpacht: All international adjudication/arbitration forums have certain standards of integrity that must be upheld by members of such Forums, courts, tribunals, or commissions. The basic documents of the ICJ as well as that of the International Permanent Court of Arbitration and the UNCITRAL rules all have provisions providing for "high moral" standards that members sitting to adjudicate or advise or arbitrate parties to a controversy and the world at large are expected and required to observe. The independence of any such body from undue influence of third parties is a well established principle that evolved out of centuries of the development of customary international law and principles. We have to consider also general principles of law practiced by all "civilized nations" of the World in connection with the integrity of an international court or forum.

Article 2 of the Statue of the ICJ holds that "[t]he Court shall be composed of a body of **independent** judges, elected... from among persons of **high moral** character." [Emphasis added]

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." [Emphasis added]

From the verse quoted here from the Bible, at least, we should consider its moral teaching. “For where your treasure is, there will your heart be also.” Matt. 6:21. We should understand the role of arbitrators to be distinct from that of ICJ judges in context of how arbitrators are chosen or appointed in the first place. However, this does not mean that we have to throw out all professional ethical standards when it comes to arbitrators. By the nature of their appointment or election, arbitrators do have certain preferences in supporting the position of the party that appointed or elected them. However, this does not mean that they are not bound by the “highest moral reputation” standard. It may be argued that that their preference to the party that appointed them may not disqualify them from being arbitrators. However, when it comes to the president or chairman elected by the arbitrators themselves pursuant to the arbitration agreed upon procedure, I believe both standards of “independence” and “highest moral reputation” standards are applicable to arbitrators who are thus elected by the other arbitrators to be presidents of particular commissions or tribunals.

The Commission members, especially the President, Sir Elihu Lauterpacht, have displayed an unusually blatant disregard of both the “high moral” standard expected of his position and impropriety in his activities that clearly shows his lack of independence from the influence of third party governments. It is with sincere regret that one is forced to challenge Lauterpacht’s professional ethical standard due to the gravity of the problem facing ones nation. Lauterpacht is over seventy five years old and well established international jurist who had led a distinguished life until this moment.

Lauterpacht has displayed a degree of liberties in his words of communication with the Government of Ethiopia that amounts to an impertinence. He seems to have cast his role as an ICJ judge or a “Secretary General” of an international organization like the United Nations rather than a “President” of a privately established arbitration tribunal. Let us consider the situation in a holistic manner taking into account other activities of undue interferences by third parties that may have direct bearing on the Ethiopia-Eritrea border dispute. Not withstanding the hollow diatribe of the Representative of “Eritrea” at the recent General Assembly of the United Nations, looked at with such global perspective, the Ethiopia-Eritrea Border Commission arbitration process is in a real mess. The Security Council, and the Secretary General are assuming roles that was never envisioned or authorized through practice—roles of a Judiciary (a supreme court) and that of a Chief –Justice.

Thus, it is obvious that the United States is acting in an adversarial role in the case involving the border dispute between Ethiopia and Eritrea. It is no more an impartial neutral body. With such public background in full view, the United States has further stained the arbitration process with its uncouth act of retaining as its lawyer Lauterpacht in its case with Mexico, a case pending at the ICJ [Avena and Other Mexican Nationals (Mexico v. United States of America)]. This act of the United States is no different, for example, from Eritrea hiring Lauterpacht to work on some legal case while Lauterpacht is still a member of the Commission. Thus, the fact of an interested party such as the United States retaining a sitting-Commissioner as its lawyer is only slightly a shade different than the actual party in the controversy—Ethiopia or “Eritrea”—retaining any of the

sitting-Commissioners as a private lawyer. It does not in any way mitigate the unethical and conflict of interest situation whether the Ethiopian Government new of the activities of Lauterpacht and not lodging objections thereof nor would it matter or make any difference identifying when Lauterpacht was retained as counsel for the United States. Rather, what remains is the negative shadow cast on the fitness of Lauterpacht as an arbitrator and the independence of the Commission as a whole. One must realize the Commission's work is not yet concluded, thus the members of the Commission are still bound by the standards set by the Basic document of the Court of Arbitration and principles developed for such purposes by customary international law.

It is only proper for Ethiopia to demand full disclosure by Lauterpacht of all his activities with third parties that are directly or remotely involved with the on going border dispute with "Eritrea." If this is not a clear case of conflict of interest, loss of independence, and a compromise of the principle of "high moral" standing expected and required of the members of the Commission, show me what is. Not only Lauterpacht is personally involved in such blatant conflict of interest, but also Watt and Riesman, Members of the Boundary Commission are also involved in other cases that put their behavior (professional responsibilities) in a compromised position. It seems that Lauterpacht is using the Permanent Court of Arbitration based commissions and tribunals as his private law firm away from his home base from his Chambers at 20 Essex Street. His partner Arthur Watts at the Chambers at 20 Essex Street is supposedly picked by Ethiopia for the Commission. Here you have an incestuous relationship where the same characters are showing up again and again as commission or tribunal members. Both the appearance of conflict of interest or conflict of interest in fact is rampant in the whole arbitration process where the "high moral" and "independence" standards are compromised.

Ideally, international arbitration was to be carried out by choosing from the members of the Permanent Court of Arbitration already designated by their respective governments who are signatories of the 1899 or 1907 Treaties (Conventions). With the adoption of the UNCITRAL rules the forum was expanded to include ad hoc arbitrators who are not designated by any member nations. This process seems to have opened the door for corruption and conflict of interest problems. One must not lose sight of the initial reasons why in 1899 the arbitration forum was needed. It seems there was an interest by the kings, queens, heads of States et cetera who meet at the Hague an idealized element of public duty to bring about peace and security to a Europe and a world at large racked with war and violence and" to record in an international agreement the principles of equity and right on which are based the security of States and the welfare of peoples," [Preamble, 1899 Convention]. It was envisioned that seasoned statesmen and international law jurists would help stabilize the world through their wisdom by arbitrating conflicting claims by states. It was never meant a career promoting and money making scheme for lawyers.

Looking at the record of the last ten years of international arbitrations, one cannot but notice that Lauterpacht and a few of his exclusive group of individuals seem to have made the process of "arbitration" a money making mechanism for their insatiable appetite for money. Most anyone would be tempted with the prospect of earning an exorbitant

amount of money. When I examined the docket of the Permanent Court of Arbitration ad hoc tribunals and commissions, I was amazed to read how Lauterpacht and Riesman seem to have their hands in every pot. Are these individuals truly "disposed to accept the duties of Arbitrators" or are they involved in some kind of money making scheme that compromised and defeated the purpose of having an arbitration in the first place?

Raising the issue of professional responsibility (conflict of interest, corruption et cetera) is a very sensitive and complex matter for anyone. It should not be a point of contention without solid ground. I have first hand experience of good intentions going sour and affecting the judicial system. The psychology of the individual involved is not that important in determining such issues. After all, it is a fact that the history of mankind's failure is littered with good intentions. Neither accusing the messenger of personal misdeeds nor giving examples of the trespasses of others can mitigate the harm done as a result of practices by a couple of Commissioners that undermined the integrity of the arbitration process and the rule of law in general. It is with great concern that I have addressed the issues discussed in this article.

The Government of Ethiopia has every right to void all agreements, including the Algiers Agreement, and to reject the entire decision of the Commission. Ethiopia cannot be obliged to accept a decision by a Commission that is corrupted where some members of the Commission have compromised their duty to exercise "independence" and "high moral" standards. It is not important to show that all and every member of the Commission is involved in such conflict of interest. As long as one can show at least one member is involved in such conflict of interest, the entire proceeding and all decisions thereof, which flowed from such process, are tainted, thus void. Ethiopia should demand the disqualification of the President of the Commission, Elihu Lauterpacht, for conflict of interest and corruption.

The disbarment of Lauterpacht and the other Members of the Boundary Commission is a distinct possibility. The Ethiopian Government ought to give notice of the corruption of the Boundary Commission due to conflict of interest, incompetence, overreaching, abuse of trust, padding their billable time to the Bar associations of each Members of the Boundary Commission. Such step must include also the fact that the Eritrean Government advisers are affiliated with Yale Law School as faculty members that created another dimension of infectious corrupt relationship between the Boundary Commission and the Eritrean Government.

b) Disqualification of Lawyers on the Ethiopian Team: A lawyer has a duty to serve the best interest of his client. The client in the boundary dispute between Ethiopia and "Eritrea" is the State of Ethiopia not Meles Zenawi or any body else. In an arbitration proceeding, the first designation of "Agent" of a particular government/state does not necessarily means that it is the so called "Agent" that will do the actual presentation of the case on behalf of Ethiopia. Through the use of agency legal principles, individuals from law firms, legal experts from law schools et cetera could be hired to do the representation at arbitration tribunals. Those individuals are held also to the highest professional responsibilities and ethics in their respective professional associations. The

following individuals are the principal lawyers and experts that were involved in the representation of the case on behalf of Ethiopia.

1. Mr. Ian Brownlie, CBE, QC, FBA, Chichele Professor of Public International Law (Emeritus), University of Oxford; Member of the International Law Commission; Member of the English Bar; Member of the Institut de droit international;
2. Mr. B. Donovan Picard, Verner, Liipfert, Bernhard, McPherson & Hand, Washington DC; Member of the Bar of the District of Columbia; Member of the Bar of the Supreme Court of the United States;
3. Mr. Rodman R. Bundy, Frere Cholmeley/Eversheds, Paris; avocat à la Cour d'appel de Paris, Member of the New York Bar; and
4. Ms. Loretta Malintoppi, Frere Cholmeley/Eversheds, Paris; avocat à la Cour d'appel de Paris, Member of the Rome Bar.

I believe the above named individuals have compromised their professional responsibility to their Client, the State of Ethiopia, by knowingly accepting and proceeding with a case harmful to their Client's best interest. They should have withdrawn from participating in a rigged situation where both Government Leaders of Ethiopia and "Eritrea" were working to insure the interest of "Eritrea" and against the interest of their Client the State of Ethiopia.

V. Third Party Funding as Corruption:

The fact of setting a "Fund" out of which Boundary Commissions' expenses and the compensation for the Members of the Boundary Commissions is paid has introduced into the process of arbitration an element that goes contrary to the desired independence of such forums. The problem is compounded by the fact of the involvement of the United Nations Security Council. Such direct involvement has subverted the process of Arbitration by invading the Boundary Commission with doses of political considerations rather than law and principles as the deciding factors playing major roles in the decision making process of the arbitration. Such new structure has further polarized and distorted the independence of the umbrella organization the International Permanent Court of Arbitration.

The United Nations role as played out by the Security Council in the Ethiopia – Eritrea arbitration process was an affront to the Sovereignty of Ethiopia. We have around the world some of the worst violators of international law, and yet the Council does nothing. In the case of Ethiopia, it seems that the United Nations is on the verge of drawing its equivalent economic "weapon of mass destruction" (sanction) against Ethiopia, as its predecessor League of Nations did in 1935 against a lone Ethiopia facing up with great courage Fascism and now ethnic based dismantling.

The recent concerted attack on Ethiopia by the United States House of Representatives to the point of passing a bill H.R. 2003 that challenges the very sovereignty of Ethiopia is a good evidence to show to what abominable length or extent the historic enemies of Ethiopia work through such institutions to undermine the survival of Ethiopia. It is a

violation of the Charter of the United Nations and numerous Resolutions of the General Assembly of the United Nations, as well as long established principles and practices of international law, to interfere in the internal affairs of a sovereign state.**Ω**

Tecola W. Hagos

Washington DC, November 17, 2007

* Few of the points identified above in II, and extensively in III. IV, and V were taken and modified from articles I wrote and posted in this Website titled "ETHIOPIA-ERITREA BOARDER DISPUTE: Challenging the Opposition," of December 30, 2005, and "Dumping the Decision of the Boundary Arbitration Commission" of June 10, 2007.

Reference:

The Vienna Convention on the Law of Treaties, done at Vienna on 23 May 1969. Entered into force on 27 January 1980.

PART V
INVALIDITY, TERMINATION AND SUSPENSION OF THE OPERATION OF TREATIES

SECTION 1. GENERAL PROVISIONS

Article 42
Validity and continuance in force of treaties

1. The validity of a treaty or of the consent of a State to be bound by a treaty may be impeached only through the application of the present Convention.

2. The termination of a treaty, its denunciation or the withdrawal of a party, may take place only as a result of the application of the provisions of the treaty or of the present Convention. The same rule applies to suspension of the operation of a treaty.

Article 43
Obligations imposed by international law independently of a treaty

The invalidity, termination or denunciation of a treaty, the withdrawal of a party from it, or the suspension of its operation, as a result of the application of the present Convention or of the provisions of the treaty, shall not in any way impair the duty of any State to fulfil any obligation embodied in the treaty to which it would be subject under international law independently of the treaty.

Article 44
Separability of treaty provisions

1. A right of a party, provided for in a treaty or arising under article 56, to denounce, withdraw from or suspend the operation of the treaty may be exercised only with respect to the whole treaty unless the treaty otherwise provides or the parties otherwise agree.

2. A ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty recognized in the present Convention may be invoked only with respect to the whole treaty except as provided in the following paragraphs or in article 60.

3. If the ground relates solely to particular clauses, it may be invoked only with respect to those clauses where: (a) the said clauses are separable from the remainder of the treaty with regard to their application; (b) it appears from the treaty or is otherwise established that acceptance of those clauses was not an essential basis of the consent of the other party or parties to be bound by the treaty as a whole; and (c) continued performance of the remainder of the treaty would not be unjust.

4. In cases falling under articles 49 and 50 the State entitled to invoke the fraud or corruption may do so with respect either to the whole treaty or, subject to paragraph 3, to the particular clauses alone.

5. In cases falling under articles 51, 52 and 53, no separation of the provisions of the treaty is permitted.

Article 45
Loss of a right to invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty

A State may no longer invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty under articles 46 to 50 or articles 60 and 62 if, after becoming aware of the facts: (a) it shall have expressly agreed that the treaty is valid or remains in force or continues in operation, as the case may be; or (b) it must by reason of its conduct be considered as having acquiesced in the validity of the treaty or in its maintenance in force or in operation, as the case may be.

SECTION 2. INVALIDITY OF TREATIES

Article 46
Provisions of internal law regarding competence to conclude treaties

1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.

2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.

Article 47
Specific restrictions on authority to express the consent of a State

If the authority of a representative to express the consent of a State to be bound by a particular treaty has been made subject to a specific restriction, his omission to observe that restriction may not be invoked as invalidating the consent expressed by him unless the restriction was notified to the other negotiating States prior to his expressing such consent.

Article 48
Error

1. A State may invoke an error in a treaty as invalidating its consent to be bound by the treaty if the error relates to a fact or situation which was assumed by that State to exist at the time when the treaty was concluded and formed an essential basis of its consent to be bound by the treaty.

2. Paragraph 1 shall not apply if the State in question contributed by its own conduct to the error or if the circumstances were such as to put that State on notice of a possible error.

3. An error relating only to the wording of the text of a treaty does not affect its validity; article 79 then applies.

Article 49
Fraud

If a State has been induced to conclude a treaty by the fraudulent conduct of another negotiating State, the State may invoke the fraud as invalidating its consent to be bound by the treaty.

Article 50
Corruption of a representative of a State

If the expression of a State's consent to be bound by a treaty has been procured through the corruption of its representative directly or indirectly by another negotiating State, the State may invoke such corruption as invalidating its consent to be bound by the treaty.

Article 51
Coercion of a representative of a State

The expression of a State's consent to be bound by a treaty which has been procured by the coercion of its representative through acts or threats directed against him shall be without any legal effect.

Article 52
Coercion of a State by the threat or use of force

A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations.

Article 53
Treaties conflicting with a peremptory norm of general international law (jus cogens)

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

SECTION 3. TERMINATION AND SUSPENSION OF THE OPERATION OF TREATIES

Article 54
Termination of or withdrawal from a treaty under its provisions or by consent of the parties

The termination of a treaty or the withdrawal of a party may take place: (a) in conformity with the provisions of the treaty; or (b) at any time by consent of all the parties after consultation with the other contracting States.

Article 55
Reduction of the parties to a multilateral treaty below the number necessary for its entry into force

Unless the treaty otherwise provides, a multilateral treaty does not terminate by reason only of the fact that the number of the parties falls below the number necessary for its entry into force.

Article 56
Denunciation of or withdrawal from a treaty containing no provision regarding termination, denunciation or withdrawal

1. A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless: (a) it is established that the parties intended to admit the possibility of denunciation or withdrawal; or (b) a right of denunciation or withdrawal may be implied by the nature of the treaty.

2. A party shall give not less than twelve months' notice of its intention to denounce or withdraw from a treaty under paragraph 1.

Article 57
Suspension of the operation of a treaty under its provisions or by consent of the parties

The operation of a treaty in regard to all the parties or to a particular party may be suspended: (a) in conformity with the provisions of the treaty; or (b) at any time by consent of all the parties after consultation with the other contracting States.

Article 58
Suspension of the operation of a multilateral treaty by agreement between certain of the parties only

1. Two or more parties to a multilateral treaty may conclude an agreement to suspend the operation of provisions of the treaty, temporarily and as between themselves alone, if: (a) the possibility of such a suspension is provided for by the treaty; or (b) the suspension in question is not prohibited by the treaty and: (i) does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations; (ii) is not incompatible with the object and purpose of the treaty.

2. Unless in a case falling under paragraph 1(a) the treaty otherwise provides, the parties in question shall notify the other parties of their intention to conclude the agreement and of those provisions of the treaty the operation of which they intend to suspend.

Article 59
Termination or suspension of the operation of a treaty implied by conclusion of a later treaty

1. A treaty shall be considered as terminated if all the parties to it conclude a later treaty relating to the same subject-matter and: (a) it appears from the later treaty or is otherwise established that the parties intended that the matter should be governed by that treaty; or (b) the provisions of the later treaty are so far incompatible with those of the earlier one that the two treaties are not capable of being applied at the same time.

2. The earlier treaty shall be considered as only suspended in operation if it appears from the later treaty or is otherwise established that such was the intention of the parties.

Article 60
Termination or suspension of the operation of a treaty as a consequence of its breach

1. A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part.

2. A material breach of a multilateral treaty by one of the parties entitles: (a) the other parties by unanimous agreement to suspend the operation of the treaty in whole or in part or to terminate it either: (i) in the relations between themselves and the defaulting State, or (ii) as between all the parties; (b) a party specially affected by the breach to invoke it as a ground for suspending the operation of the treaty in whole or in part in the relations between itself and the defaulting State; (c) any party other than the defaulting State to invoke the breach as a ground for suspending the operation of the treaty in whole or in part with respect to itself if the treaty is of such a character that a material breach of its provisions by one party radically changes the position of every party with respect to the further performance of its obligations under the treaty.

3. A material breach of a treaty, for the purposes of this article, consists in: (a) a repudiation of the treaty not sanctioned by the present Convention; or (b) the violation of a provision essential to the accomplishment of the object or purpose of the treaty.

4. The foregoing paragraphs are without prejudice to any provision in the treaty applicable in the event of a breach.

5. Paragraphs 1 to 3 do not apply to provisions relating to the protection of the human person contained in treaties of a humanitarian character, in particular to provisions prohibiting any form of reprisals against persons protected by such treaties.