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**LEGALITY OF ETHIOPIA'S DECISION TO ENFORCE THE ALGIERS
AGREEMENT ON ETHIO-ERITREA BORDER DISPUTE (INTERNATIONAL
LAW PERSPECTIVE)**

A Thesis Submitted in Partial Fulfillment of the Requirements of LL.M Degree in Public
International Law

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Plagiarism Declaration

I HERAN MOA do hereby declare that the thesis “LEGALITY OF ETHIOPIA’S DECISION TO ENFORCE THE ALGIERS AGREEMENT ON ETHIO-ERITREA BORDER DISPUTE (INTERNATIONAL LAW PERSPECTIVE)” is my original work and that it has not been submitted for any degree or examination in any other university. Whenever other sources are used or quoted, they have been duly acknowledged.

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This Thesis is submitted to the College of Law and Governance Studies and to the College of Graduate Studies of Addis Ababa University in fulfillment of all requirements for the degree of Masters in Public International Law.

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Acronyms

AU	African union
CSO	Civil Society Organization
EEBC	Ethiopian and Eritrean Border Commission
EECC	Ethiopia and Eritrea claim commission
ELF	Eritrean Liberation front
EPRDF	Ethiopian People’s Revolutionary Democratic Front
EPLF	Eritrean People’s Liberation Front
FDRE	Federal democratic republic of Ethiopia
HPR	House of People Representatives
ICRC	International Committee for Red Cross
IGAD	Inter Governmental Authority for Development
OAU	Organization for African unity
TFG	Transitional Federal Government
TPLF	Tigray People’s Liberation Front
UIC	Union of Islamic Court
UN	United Nations
UNSC	United Nations Security Council
US	United States
WWII	The Second World War

ABSTRACT

Until its separation from Ethiopia in 1993, Eritrea was component part of Ethiopia under international law. For a short while, the newly born state of Eritrea had coexisted with Ethiopia peacefully. Soon after, the short-lived peaceful coexistence was disturbed followed their dispute along their border. The border dispute proved extra ordinarily difficult for diplomatic solution as the overall bilateral relation had already become deteriorated. Consequently, it leads to full-fledged war that claimed thousands of lives on both sides. The two parties agreed to cease hostility and resolve the border dispute through arbitration. Accordingly, the Ethio-Eritrea arbitration commission deployed, under the terms, which were agreed up on, Algiers in 2000. The arbitration commission issued its report, which required Ethiopia to hand over the disputed Badme area to Eritrea. However, the Ethiopian government declined to accept the verdict on the ground that it could not bring sustainable solution to the problem. The Ethiopian parliament endorsed the famous five-point peace plan proposed by the late Prime Minister Ato Meles Zenawi. Apparently, the international community did not consider Ethiopia's position as a violation of the bilateral Algiers agreement and decision of the arbitration commission.

After several years, the current prime minister of Ethiopia assumed the leadership of the ruling party in Ethiopia EPRDF's has taken a position, which appears to be significantly different from the official position of Ethiopia so far. The current EPRDF executive committee has reportedly decided to hand over the disputed Badme area without any pre-condition. This newly declared position of the federal government has evoked some issues that need to be addressed from an independent legal perspective. This thesis is intended to do that as a modest contribution to the multi dimension efforts toward finding long lasting solution to the problem.

CHAPTER ONE

INTRODUCTION

1.1. Background of the study

The people of Ethiopia and Eritrea have close historical, ethnic, and cultural ties that go back to time immemorial. Before gaining its independence in 1993, Eritrea was part of Ethiopia for at least four decades. There was strong bondage between the people living in the two countries, which is not only bound by myth, legend, and history but also by race, culture, and ancestral roots. They are indeed an offspring of the same parents and entwined by blood and flesh.

Italy created a colony called Eritrea around Asmara in the 19th century when Ethiopia remain independent during the colonial conquest of Africa. After World War II and Italy defeated, Britain occupied Eritrea. Then Eritrea federated with Ethiopia in 1952 by the ratification of UN General Assembly resolution 390. This ignored the independence desire of the Eritrean people. In the 1950s Eritrean began organizing an armed rebellion from their base in Cairo. In 1962 by the vote of the Eritrean parliament abolished federal arrangement and unitary system placed, this triggered a war that lasted three decades. Eritrea seceded from Ethiopia through their war of independence in 1993.¹

After Eritrea became officially independent in 1993, Ethiopia and Eritrea enjoyed a short period of warm peace and cooperated along with many sectors including defense. However, this warm peace lasted only 4 years. In 1997 relations between the two countries dramatically deteriorated. In May 1998, the two years border war flared up around the Bademe area.² The war came to cease as when the two countries solely took a purely legalistic approach to solve their conflict.

¹ . Sigatu Tadesse Kaleab, "No Peace No War: The Ethiopian–Eritrean Conflict" (2019) 18 Academic and Applied Research in Military and Public 79

<https://www.researchgate.net/publication/336978824_No_Peace_No_War_The_Ethiopian-Eritrean_Conflict/link/5dee0006299bf10bc34c6266/download> accessed August 15, 2019.

² . Murphy, Sean D "The Eritrean-Ethiopian War (1998-2000)" [2016] SSRN Electronic Journal

<https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=2492&context=faculty_publications> accessed August 15, 2019

The Algiers Agreement signed on December 12, 2000, which terminated the war provided for the establishment of two arbitral tribunals; the boundary commission and the claim commission.³ Each has to base all its decisions on relevant rules of international law. Particularly, the Ethiopia and Eritrea Boundary Commission, hereinafter EEBC, given mandate to delimit and demarcate the border between the two countries based on 1900, 1902, and 1908 treaties and applicable international law.⁴ On this base, the EEBC considered the claims of each side as to where exactly the boundary between the two countries should be. It then decided on the case on April 13, 2002. The first is that each state won some territories the other had claimed, and the territories won or lost by each were not particularly vast or endowed proven resources. The other is that Badme was the flashpoint of the conflict, awarded to Eritrea, although this was not mentioned in the award itself.⁵

Following this Ethiopia's former foreign minister and representative at the border commission requested Ethiopians to celebrate the decision passed by the commission as its decision gave the main disputed areas to Ethiopia. However, later on, when the people carefully looked into the decision, it became clear that most of the warfront of Badme and the entire Tsorena along with its environs went to Eritrea. Then, backtracking on that decision was not a right decision to Ethiopia since she obviously agreed to take the decision of the EEBC as final and binding. Therefore, the Ethiopian parliament has adopted the five-point peace proposal, which accepts the Ethiopia-Eritrea boundary commission decision *in principle*; and sent it to the UN Security Council (UNSC).⁶ As a result, the two states remain hostile for last two decades with the no war no peace situation.

After several years, the current prime minister of Ethiopia assumed the leadership of the ruling party in Ethiopia EPRDF's new chairperson has taken a position, which appears to be significantly different from the officials of Ethiopia so far. The EPRDF central committee chaired by new prime minister has reportedly decided to hand over the disputed Badme area without any pre-condition. This newly declared position of the federal government has evoked some issues that need to be

³Agreement between the government of the Federal Republic of Ethiopia and the government of the State of Eritrea (Ethiopia and Eritrea) (adopted 12 December 2000) Article 4 and 5.

⁴. Id. Article 4 (2).

⁵. *Decision regarding delimitation of the border (Eritrea v Ethiopia)(Final award)*(Eritrea - Ethiopia Boundary Commission, 12 April 2002) [paragraphs 8.1 and 8.2]

⁶. UNSC 'progress report of the Secretary-General on Ethiopia and Eritrea' (27 December 2004) S/2004/973/Add.1

addressed from an independent legal perspective. This thesis intends to do that as a modest contribution to the multi dimensional efforts towards finding long lasting solution to the problem

1.2.Statement of problem

The recent trends of Ethiopia-Eritrea relation has given rise to quite a number of issues. This research tries to address only one of such issues that related to the legal basis of Ethiopia's latest position on the issue.

On the one hand, Ethiopia had already declined to implement the decision of the arbitration Commission that required hand over of the disputed Badme area to the State of Eritrea. The international community appeared to have accepted Ethiopia's concern, including the five points, Peace plan that defined the terms to be fulfilled for Ethiopia to be able to implement the decision of the Arbitration Commission fully and without reservation.

On the other hand, there is a recent declared decision position of the new Prime Minister of Ethiopia, which appears to accept the decision of the Arbitration commission without the preconditions, which had been proposed by the late Prime minister endorsed by the parliament, and apparently permitted by international community.

The people of Ethiopia on whose behalf the two-conflicting decisions have been taken by the two prime ministers of their country are confronted by serious illusion concerning the legality of the recent position of their government on this issue, which touches up on the sovereignty, and territorial integrity of their country. The different segments of the society, including the civil society organizations CSO's and opposition parties, are likely to raise the issue of legality of the recent decision to hand over the disputed Badme area without any pre-condition.

One may wonder whether the position taken by the late Prime Minister Meles Zenawi and the subsequent endorsement of the position by the Ethiopian parliament, including gesture of understanding of the international community to it, had been consistent with international law. Assuming it was consistent, one would raise whether or not the recent position of the Ethiopia could equally be consistent with the international law.

Thus, this proposed research looked in to the legality of the recent decision from the perspective of international law.

1.3. Objective of the research

General objective;

The general objective of this research is to examine the legality of the decision of the Ethiopian government to enforce the Algiers agreement in from the perspective of international law.

Specific objectives;

- To examine the decision of the EPRDF to hand over the disputed territory (Bademe) to state of Eritrea,
- To identify whether the decision of the EPRDF is a new decision or continuation of the previous decision,
- Can the decision of the PM build and maintain durable and sustainable peace between the two counties?
- What would be the International law perspective of enforcing of such agreement after such a long period?

1.4. Significance of the study

A number of studies have done on Ethiopia and Eritrea relations. Most of those studies are focusing on the on Ethio-Eritrean war, especially the cause of the war, the no war no peace situation, consequences of the war and some focus on the area of economic and political problems of the two countries after the Algiers agreement. Therefore this study is unique in that it pays due attention to the post ‘no war no peace situation’ relation of the two country following the declaration willingness of Ethiopia’s government to accept both the Algiers agreement and the decision of the boundary commission. Therefore, this study will add important literature on this issue that can bring durable and sustainable peace to the people of both countries.

1.5. Scope and Limitation of the Study

The scope of this study is limited to the case of Ethiopia and Eritrea only. It only focuses on the Ethiopia and Eritrea relation after the Ethiopian government accepted the Algiers agreement without any precondition and only focuses on the legality of Ethiopia's decision from international law perspective. The reason to focus in this area is to examine the legality of the decision and in turn to know if such decision has significance from international law perspective. As far as limitation of the study concerned, since the topic is a recent phenomenon it was hard to get relevant sources.

1.6. Literature review

This section reviewed literature, which relates to the key concept of this study. Though the number of books written on the issue is limited, the literatures on the Ethiopia-Eritrean conflict are vast. There are numerous theses, articles, journals, reports, and media releases dealing with the conflict. Among those;

Kalewongel Minale⁷ in his thesis on 'Ethiopia and Eritrea: The quest for peace and normalization' discussed the reasons why the peace process was not able to bring a successful settlement to the conflict and be able to achieve peace. He also tried to draw an attention to the unheard and unrepresented views of the local people in the disputed territories in the Ethiopian side. Here, he answered the question by stating the reason was that the exclusion of the public and particularly the local people living along the disputed border in Ethiopia in the process and the final text of the Algiers peace agreement. Accordingly, these people living in the disputed territories have natural rights that should be taken into account in the resolution of the border disagreement. Furthermore, the local understanding the people have about the local practice of the border could also be used as resources in the resolution of the border disagreement and achieving peace. The local people were not made part of the forgoing peace process. In line with this he concluded that the line that should be taken in the future needs to be different from the one taken in the past. Any solution in

⁷ Kalewongel Minale Gedamu, 'Ethiopian and Eritrean: The quest for peace and normalization' (MA Thesis, University of Tromsø 2008)

the future that aim at ending the current impasse and border controversy should be participatory and broad based.

Fireweini Habtom⁸ in her thesis ‘Ethio-Eritrea conflict and the role of scholars and intellectuals in the stalled peace process and reconciliations’ tried to explore different perspectives to end the long time border conflict between Ethiopia and Eritrea. Specifically she focused on the possible contributions of intellectuals and scholars to bring lasting peace and implement the peace agreement. Accordingly, she concluded that Employing different concepts and theories of conflict resolution and assessing the early engagement of scholars and intellectuals both from Ethiopian and Eritrean side is very important. Since the scholars and intellectuals are influential groups and play critical roles, even if they are not decision makers in the context of the developing countries, they are considered as middle level leaders who can influence both state officials and the people at large and can have crucial role in solving the Ethiopia- Eritrea border conflict.

Another literature related to my paper is also article of Leenco Lataa his ‘The Ethiopia-Eritrea war’; Review of African political economy volume 30 has discussed how ethio-eritrea conflicts defies attempts to fit it into conventional categories and fingering its most critical cause is uncommonly difficult for it falls in to a pattern peculiar to the region. To this end he examined different classifications of conflicts (inter- state and intra –state conflicts) and finally reached at conclusion that the ethio eritrea conflicts are interlinked conflict and could be resolved only by redefining sovereignty, the basis of citizenship and the meaning of borders. By refering Lyons, Terrence ‘The horn of african region...’he also suggests that authorities must assert the conventional approaches to sovereignty, territorial integrity, nation and nation building need to be re-assessed to address and resolve the Horns’s conflict. the leaders of both ethiopia and eritrea who love the conventional concept of sovereignty must know that absolute sovereignty has never corresponded with reality they must find a balance between the needs to good internal governance and the requirements of an ever more interdependent world.

Robera regassa on his thesis “Ethio-Eritrea relations: problems and prospects in the aftermath of algiers peace agreement” described and analyzed the extent to which Ethiopia-Eritrean bilateral

⁸ Fireweini Habtom, ‘Ethio-Eritrea conflict and the role of scholars and intellectuals in the stalled peace process and reconciliations’ (MA thesis, Addis Ababa University 2016)

relations have been underpinned by political and economic problems since the aftermath of Algiers peace treaty. To this end, he briefly assessed the economic problems facing both Eritrea and Ethiopia because of the conflict and the strained relation. Moreover he point out the Ethiopia's dependence on port of Djibouti and its problem to economic development of Ethiopia, and finally he critically analyze the impacts of destabilization action and proxy war between the two countries on peace and security of the Horn and states the future prospects for the two countries relations in the Horn. Based on these analyzing, finally he concluded that Ethiopia may seem to be the most interested in the continuing stalemate in the short term, as it continues to control territories. In the long run, however, both countries will be affected, as each continues with its attempts to weaken and destabilize the other by supporting rebel movements. This could invariably increase internal tensions and lead the two countries to experience a vicious circle of conflict as each tries to manipulate internal weaknesses. Although peace benefits both countries, the two governments have clearly failed to negotiate and resolve their differences amicably. Hence, it is time to involve the people who have had no say in the peace processes that have taken place, but who have continued to pay dearly due to the continued stalemate. If the people had been involved in the first place, the issues of the border and economic relations would not have been complicated as much by the rhetoric of their governments. Therefore, both countries should embrace the process of accommodation to come out of such problem.

However, there is no research conducted on the legality issue of the recent decision of the Ethiopian prime minster to hand over the disputed area (Badme) to the state of Eritrea specifically except the writing of Zeray weldesenbet on the 'Legitimacy of the EPRDF' decision on the Algiers agreement and border ruling; Fuzzy, Illicit, Maneuver And Incomplete Retreat 2018'. Here, the writer tried to evaluate the legitimacy of the decision of the prime minster to enforce both the Algiers agreement and the Ethiopia Eritrea boundary commission's decision in its entirety by contrasting to the five- point peace plan with Eritrea on November 25, 2004 adopted by the house of people representatives (HPR). He argued that the decision of the prime minster is not legitimate and against the FDRE constitution in general and the power and the function of the Ethiopian parliament in particular. This is because the house of people representative has the exclusive authority to approve, or otherwise of any international treaty concluded by the executive. Thus, the ruling political party has no constitutional authority to do that. He also argued that any peace

deal should be measured by its value added to the process of peace building and maintaining long-lasting and sustainable peace between the two nation states, but not by its verbose and jargonizing.

Generally, the above studies have direct or indirect relevance to my thesis. However, it is clear that not to evaluate the legality of the decision of the new prime minister of Ethiopia to enforce the Algiers agreement and the subsequent decision of the boundary commission without any precondition. Therefore, my thesis is to examine the decision in detail matter from international law perspectives.

1.7.The research question and hypothesis

The research questions of the study are in a way to enable the researcher to answer stated objectives of the study:

- What are the legality issues of the decision of the EPRDF?
- Was the decision transparent and participatory?
- Can the decision of the EPRDF build and maintain durable and sustainable peace between the two counties?
- Does it address the key issues of the two years bloody war between the two countries?
- What are the International laws can used to enforce such agreement after long period?

1.8.The research methodology

This research is contingent on the doctrinal type of research. So to realize the main theme of this study, the research methodology that utilized was both primary and secondary sources which are relevant to the subject matter. To this end, the research involved the examining of both primary and secondary sources. The primary sources are Ethiopia's Constitution, other parliamentary decisions, international treaties like Algiers agreement, decision of the Ethiopia and Eritrea boundary commission, and its reports, and treaty laws. The secondary sources that employed for this research are books, journals, articles, unpublished materials like thesis and manuals accessed from internet.

1.9.The thesis organization and size

This thesis is organized of five main chapters. The first chapter focuses on introduction to the research (the Proposal). The next chapter is the review of literature on the topic. It also include chapter three Analysis of the Ethiopia-Eritrea boundary dispute, the Algiers agreement and decision of the Ethiopia-Eritrea boundary commission. Chapter four of the research tried to analyze the legality or otherwise of the decision of the EPRDF to enforce the Algiers agreement. Chapter five finalizes with conclusion and recommendation.

CHAPTER TWO

ETHIO-ERITREA DISPUTE

2.1. Overview of Ethiopian and Eritrea: Historical Relations

Until the 1880s, Eritrea was an integral part of Ethiopia. However, in 1882 Italy controlled the coastal areas of Assab and in 1885 assisted by the British it expanded and controlled the port of Massawa. In 1889 Italy signed the Treaty of Wuchale with Ethiopia which gave it full control of Massawa, Western lowlands and highlands which eventually established its colony of Eritrea in 1890.⁹It signed treaties in 1900, 1902 and 1908 and delimited its 1000 km border with Ethiopia. Italy administered Eritrea until it was ousted by British in 1941. In 1935 Italy combined Tigray and Eritrea as one province as part of Italian East Africa Empire.¹⁰This further complicated the border issue between Ethiopia and Eritrea. After the defeat of Italy in WWII, Eritrea was under the British military rule from 1941-1952. The British proposed to merge eastern part of Eritrea with Tigray and create an independent state. The western part of Eritrea to be included with Sudan under Anglo-Egyptian Condominium and the southern-eastern portion including the port of Assab to be given to Ethiopia.¹¹

The British administration differed from Italian colonial rule in several aspects. They allowed freedom of the press, publication of newspaper in Tigrigna and Arabic, freedom of association and formation of political parties. In 1943 the liberal progressive party (LPP) was formed and advanced the notion of independence. It was more in-favor of Tigrai-Tigrigni, the union of Tigrai and Eritrea. It had few followers from Muslim communities and led by Ras Tessema Asberom. The unionist party founded in 1944 and advocated the union of Eritrea with Ethiopia. It was the largest party and composed of members mainly from highland areas of Eritrea. In 1946, the Muslim League founded and advocated for Eritrean Independence. Its main area was in the Muslim communities

⁹ . Negash T and Tronvoll K, *Brothers at War: Making Sense of the Eritrean-Ethiopian War* (Currey 2000)p,5

¹⁰ . Fireweini (n 7) p 29

¹¹ . Ibid.

of Western lowlands. There was no consensus among the big powers regarding Eritrea's independence or unification with Ethiopia.¹²

In 1952 by UN resolution Eritrea was federated with Ethiopia. However, the federation was abrogated and Eritrea was incorporated into Ethiopia in 1962. Beginning from 1960s the boundary was not as such an international one but seized the character of administrative province. For three successive decades, there was an armed struggle by Eritrean secessionist groups named the Eritrean Liberation Front (ELF), founded in 1961 and then later by Eritrean People's Liberation Front (EPLF), established in 1970 by splitting from ELF against two successive Ethiopian regimes. In 1975 the Tigray People's Liberation Front was established and was occasionally supported by EPLF militarily. The TPLF was also assisted the EPLF and defended its military base from attacks in post 1974 period. In 1991, the military government commonly known as Dergue regime was defeated through the collaboration of the two fronts, EPLF and TPLF. TPLF in collaboration with other insurgent groups established transitional government in Addis Ababa and EPLF set up provisional government in Asmara. In 1993, Eritrea officially became an independent state through a UN mandated referendum.¹³

After Eritrea's independence the two countries maintained good relations and signed treaty of cooperation on July 13, 1993 in economic, political, social and security areas. In addition, they signed a number of treaties in order to cooperate in economic, peace and security areas in the Horn of Africa. They reached an understanding to trade freely, to exempt from imposing taxes on their products, to use birr as their common currency, to allow Ethiopia to use port Assab and Massawa

¹². Ibid .

¹³. Ruth Iyob, "The Ethiopian-Eritrean Conflict: Diasporic vs. Hegemonic States in the Horn of Africa, 1991-2000" (2000) 38 The Journal of Modern African Studies 659

and to allow the nationals of the two countries to move and work freely and so on. Nevertheless, the implementations of the treaties were not really materialized.¹⁴

2.2 Origin of the Dispute

To understand the origins and the nature of the dispute, one needs to look back in time to ascertain the intention and modus operandi of the action and decisions that emanated in the attacks in 1998 and the ensuing border war. Around this period the relation between the two countries were close and cordial. Therefore, it is difficult to make sense of why the town of Badme in Eritrea, often cited as the only cause of the war.

The Eritrea-Ethiopia war of 1998-2000 was a tragic conflict that resulted in a wide spread loss of life as well as other injury and damage, for these two developing countries in the horn of Africa. It had been given different names. Tekeste negash and Tronvoll, describe it as “the war that fought between two brothers”. While Mengisteab and Yohannis call it ‘senseless war’. Others also describe the war as ‘prestige war, border war ‘and so forth.¹⁵

The root causes of the war could be traced back in history to the imperialist policy of great powers of Europe, an international phenomenon during the 19th century. Eritrea as a new independent entity was created by Italian colonization. Italian colonization did not only create a new independent state of Eritrea but also a separate Eritrean identity. As a result of the socio-economic improvements created by the Italian colonial legacy, Eritreans developed a distinct Eritrean identity and a sense of “civilized-ness” against their counterparts in Ethiopia. Since one of the colonial impact was the evolution of a distinct identity on the basis of the growing gap between the socio-economic realities of Eritrea and Ethiopia. In the 1930s the Italians had propagated the view that Italian rule had civilized the Eritreans while Ethiopia and the Ethiopians were described as backward and thus in need of the ‘Italian civilizing mission’.¹⁶

Although Ethiopia and Italy signed three treaties (1900, 1902, and 1908) regarding the common border, none of these treaties were demarcated. Having the intention of further expansion, Italians

¹⁴. Freweini, (n 8), p.21

¹⁵ Ibid. p, 30.

¹⁶ Tekeste and Tronvoll, (n 9), p.8

did not seem interested in effecting the demarcation of the border. Indeed, Italians interpreted the border treaties unilaterally and drew a new borderline of their own.¹⁷

Italian illegal occupation of Ethiopia and the creation of the Great Eritrea, combining the Tigrayan speaking provinces of both Eritrea and Ethiopia made the demarcation of the border unimportant.¹⁸

The structure of the international system and the role of super powers is also a factor in the making of wars. According to the Hegemonic Stability Theory, a super power produces peace by creating regimes that define common rules, norms, procedures and organizing principles that guide the actions of other states.

The hegemonic power plays restraining or permitting role against the acts of other states to go to war. However, the hegemon acts on the basis of its national interest and thus could engage or disengage itself in issues of other countries depending on its interest. At times, the hegemony might refrain from engagement in some crisis when it feels that its interest is not endangered.¹⁹

Although the US acted immediately to mediate the Ethiopian and Eritrean conflict, its role in constraining the two countries from resorting to war was minimal. Generally, following the debacle its army suffered in Somalia in the early 1990's, the US followed a policy of limited engagement in Africa.²⁰

In an effort to stabilize the post Dergue regimes, the US doubled its support to Eritrea and Ethiopia in the early 1990s. However, US aid (grant and credit) to Eritrea and Ethiopia declined tremendously in the late 1990s. This lower aid reduced the level of pressure the US could have exerted to influence the behavior of governments in Addis Ababa and Asmara in 1998. Furthermore, the US created permitting conditions for the war with its blessing of millions of dollars of aid provided by the World Bank to Ethiopia and Eritrea throughout the war, which was diverted to secure arms. Furthermore, the limited engagement of the US invited other powers, such as the Russia and China, to take the vacuum and supply arms to the parties.²¹

¹⁷ . Ibid. p. 9.

¹⁸ . Ibid. P.8.

¹⁹ . Kalewongel, (n8) p.43

²⁰ .Ibid.

²¹ . Ibid. p. 44

2.3. Causes of disputes

There are a number of things over which Ethiopia and Eritrea in conflict. As many writers argued, economic interest, border, and other deep-rooted historical causes are among major causes for the 1998 Ethiopia -Eritrean conflict.

2.3.1. Political cause

The outbreak of violence between Eritrea and Ethiopia was puzzling, considering that TPLF has been portrayed by the international community as the ‘little brother’ of EPL, and that they were dependent upon EPLF during the struggle. This understanding of TPLF has also been favored by EPLF, which frequently portrayed itself as the dominant and leading political movement in the region.²²

The two insurgent groups named EPLF and TPLF had disagreements on ideological principles since the time of armed struggle. The TPLF was much in-favor of Maoist-style of socialism whereas EPLF adopted the soviet type of socialism. The military strategy of EPLF was conventional warfare but TPLF used guerrilla tactics. Their administration stance was and still is contradictory in which TPLF embraced ethnic federalism and the right of nations up to succession and EPLF uphold the creation of strong nation with distinct Eritrean identity. The relations between these two insurgent groups were not smooth and their cooperation was only short lived. The Governance System suffered from lack of free press and control of foreign policy and decisions by one man and absence of opposition political parties in Eritrea and systematically controlled in Ethiopia.²³

2.3.2. Economic cause

A. Currency-the conflict between Ethiopia and Eritrea had its origin in dispute in economic issues following Eritrea’s introduction of new currency called Nafka in 1997. The Eritrean government proposed Nafka and the Ethiopian Birr should have equal value and should be used in both countries. However, this proposal was rejected by the Ethiopian government, which instead insisted on using hard currency as a medium of exchange. It is this demand from Eritrea that angered the Ethiopian government as well as the Ethiopian public in general. This is because the

²² Tekeste and Tronvoll, (n 9), p. 12

²³.Freweini, (n 8) p. 31

introduction of Eritrea's new currency left the Eritrean central bank with a large quantity of now worthless Birr notes on its hands that created a deteriorating relationship between the two states that made war possible.²⁴

B. Trade-prior to the outbreak of the war, Eritrea's main trading partner was Ethiopia and exported up to 67% of its exportable products to Ethiopia. The economic strategy of Ethiopia was the building of its agricultural potential and agriculture supporting its industry where as Eritrea inclined to export oriented free market economy.²⁵ It was aimed to create Eritrea as industrial zone and Ethiopia to provide raw materials and markets for finished industrial products. Moreover, Eritrea wanted its Eritrean residents in Ethiopia to invest freely without any restriction whereas Ethiopia put stringent restrictions on economic sectors such as banking and finance.²⁶

C. Access to ports- In retaliation to Ethiopia's new trade or monetary policy, Eritrea imposed high tariffs on products that were imported and exported from and to Ethiopia through its port of Assab.

2.3.3. Socio-psychological cause

Even if, mere socio-psychological disparities cannot be considered as a cause to instigate the war, but it is perceived and taken for granted that Eritreans consider themselves as superior, civilized, exclusive, and militarily strong.²⁷ However, some writers argue that Eritreans had strong assertions towards their independence, which was achieved at high cost and wants to maintain their right and existence as people despite the sufferings and sacrifices they paid to be recognized as such. He considered these —superiority complex as unrealistic accusations. These two perceptions collides, clashes and continues for decades without clearly and easily been managed and resolved.²⁸

2.4. The Border dispute

²⁴ .Ibid.

²⁵ . Ibid.

²⁶ Ibid.

²⁷ . Ibid. p.32

²⁸ . Ibid.

When Eritrea gained independence from Ethiopia in 1993, the border was not demarcated, but it had been defined in successive colonial treaties between Ethiopia and Italy, the colonial power in Eritrea. Ethiopia's unilateral annexation of Eritrea in 1962 made that border an internal administrative boundary, which at least in practice slightly shifted over time, leading to some local frictions in the mid-1990s. In view of the friendly relations between the two countries, neither considered this a priority, and contacts were pursued at various levels to resolve the issue. Between 1993 and 1998, relations were shaped predominantly by trade and citizenship issues and regional security policy. The escalation of the minor border dispute into full-scale war took both countries by surprise.

In May 1998, an intense border conflict broke out in the Horn of Africa between Ethiopia and Eritrea. The hostilities surprised most analysts and close observers because the current rulers of both nations had fought side-by-side to overthrow the Ethiopian military regime of Mengistu Haile Mariam in 1991 and had maintained seemingly amicable relations in the subsequent years.²⁹ After the 1993 referendum, by signing a treaty of friendship and cooperation on 13th July 1993, the two countries formalized their relations. It was agreed that Eritreans would continue to use the Ethiopian birr as their currency, which was to be provided by Ethiopia. Ethiopia would return Eritrean bank deposits that had been transferred to Ethiopian banks in the final period of Dergue rule.

The border dispute was an immediate cause of the war between Ethiopia and Eritrea 1998-2000. Here the particular issue was the border through Badme plain. As the result of the 1902 treaty, the Badme plain is bisected by the border, which runs in a straight line between the gash and Tekeze River. This was a tripartite colonial treaty between Italy, Great Britain, and Ethiopia demarking borders after Italy's territorial acquisition in the horn of Africa towards the end of the nineteenth century. Ethiopia's interpretations of this treaty awarded to pass to Ethiopia, but the border commission affirmed that this was within Eritrea.³⁰ In the pre-colonial period, borders in this region

²⁹. Prunier, Gérard, "The Ethio-Eritrean Conflict: An Essay in Interpretation" (Refworld 1998)

<www.refworld.org/cgi-bin/texis/vtx/rwmain?page=printdoc&docid=3ae6a6b74> accessed 25 August 2019

³⁰. Ghidewon Abay Asmerom, "In Search of Badme From Mai Tenne to Mai Teb to Sittona Ethiopia's Inconsistencies and Misconceptions" <<http://dehai.org/demarcation-watch/articles/six-not-four.html>> accessed December 14, 2019

had been fluid. In 1902, remote and almost unpopulated, the area was not considered to be of any great significance. Indeed, it is difficult to see how much importance could be attached to this area today. The various emirates and even the Ethiopian empire did not resemble nation-states in the modern sense, with controlled immigration and citizenship policies. People moved about with much more freedom. Even when Eritrea's separation from Ethiopia was officially accepted at the end of the 30-year freedom struggle, "no one paid too much attention to the details of the divorce settlement", or to this disputed territory.³¹ While Eritrea was part of Ethiopia, the question of where the border lay was academic. According to BBC Ethiopia has tended to push its border beyond the colonial boundary, although for decades it had claimed that Eritrea was a historical part of Ethiopia. The 1902 treaty had defined the border somewhat vaguely. Ethiopia especially wanted to retain access to the red sea. Badme does not facilitate this without also providing a corridor to the coast.

2.5. Resort to dispute

According to the Ethiopian perspective, the war started at the moment that Eritrea invaded Ethiopian territory on the 12th of May, 1998. Ethiopia argues that it did not expect an attack like this. Evidence for this statement follows from the information that there were only some militia and police forces of the Ethiopian side present at the moment of the attack.³² Besides, the then Prime Minister Meles Zenawi repeatedly emphasized that Ethiopia sought for ways to peacefully respond to the aggressive invasion of their neighboring country, such as the economic measure to call the Ethiopian ships not to go to the Eritrean ports of Massawa and Assab.³³ However, it soon became clear to Ato Meles that there was no other option to defend the country than resorting to violence.³⁴ As the cause of the Eritrean aggression, Meles points towards Isaias' aggressive territorial ambitions and his aim to expose his power.³⁵

31 "Africa | Border a Geographer's Nightmare" (BBC News 12 May 2000)

<<http://news.bbc.co.uk/2/hi/africa/396571.stm>> accessed December 15, 2019

32 .Sari Holtland, 'Authoritarianism And War: An Attempt To Rationalize The Eritrean-Ethiopian Border Conflict Of 1998 - 2000' (Master thesis, Leiden University 2017), p.18

33. Panafrican News Agency, 26 May 1998

34 'Walta Information Center,' *Chronology of Ethio-Eritrean conflict, and basic documents* (Mega 2001), pp, 133-138.

35. Ibid. pp. 145-158

Eritrea also provides a different story for the same conflict. The Eritrean government acknowledges that on 12May they attacked areas that were previously administered by Ethiopia. However, they do not conceive their attack as an invasion, but rather as an “act of retaking” of what was already theirs given that the colonial treaties show the disputed areas belong to Eritrea.³⁶

Furthermore, Isaias explains that Ethiopia has been committing hostilities across their common border since July 1997.³⁷ These hostilities included the killing of eight Eritrean soldiers. Therefore, he argues that Ethiopia should be considered as the party that started the war.

³⁶. Ibid. pp. 190-198.

³⁷. Ibid. pp. 225.

CHAPTER THREE

ARBITRATION

Under this chapter I am going to discuss the Ethiopia -Eritrea arbitration commission specifically the Algiers agreement, objective and nature of the agreement, the boundary commission which established following the conclusion of the Algiers agreement, its mandate, the boundary delimitation decision and finally the stalemate to enforce the decision of the commission.

3.1. The Algiers agreement

On 12 December 2000, after further negotiations, the two parties (Ethiopia and Eritrea) signed a comprehensive peace agreement in Algiers known as the Algiers Peace Agreement. The peace agreement was mainly brokered by the government of Algeria, as the chairman of the OAU at the time. Representatives of the UN, European Union, and the US witnessed the signing of the agreement. And, Ethiopia has ratified the agreement by its parliament under proclamation 225/2000.

In the preamble of the agreement, the parties reaffirmed their acceptance of the OAU framework of agreement and its modalities of implementation as well as the agreement on the cessation of hostilities. The agreement was very important since it made provisions for first delimiting and then demarcating the border, investigating the war's causes, and addressing both side compensation claims.³⁸

3.1.1. Objective of the agreement

The objective of the Algiers agreement was to bring about lasting peace through expeditious delimitations and demarcations of the boundary between the two countries as established by the prescribed colonial treaties and applicable international law with as much precision as could be achieved. It expressly forbade reference to *ex aequo et bono*, which refers to the settlement of a dispute through arrangements and agreements of the parties notwithstanding the law. This was

³⁸Mutii elvis kivoto. Global army: A case study of the horn of Africa, 2013, p. 12.

expressly forbidden. What the EEBC was set to determine was clarification on the fluid nature of the boundaries as it was the custom.

The agreement has contained six main articles. In the first article, the two parties agreed to “permanently terminate military hostilities between themselves and “refrain from the threat or the use of force against the other.”³⁹

Article two of the agreement deals with the prisoners of war, persons under custody in connection with the armed conflict and the treatment of the nationals of the other state. In fulfilling the obligation, they owe under international humanitarian law and the 1949 Geneva Convention, both parties agreed to release all prisoners of war in cooperation with the International Committee of the Red Cross. They also agreed to release, repatriate, and return all those persons who were detained because of the armed conflict and extend humane treatment to the nationals of the other state residing in their territories.

The rest of the articles of the peace agreement were devoted to the establishment of three commissions that would work to end the conflict. These are; an Independent Body to investigate the origins of the armed conflict, a neutral Boundary Commission to decide on the course of the boundary line and an impartial Claims Commission to decide on issues of compensation.

Generally the agreement reaffirmed the (i) cessation of hostilities agreements (ii) exchange of prisoners (iii) return of displaced persons, and (iv) establishment of the boundary commission to demarcate the border (EEBC) and a claims commission to assess damages(EECC).⁴⁰

3.1.2. Nature of the agreement

Both Ethiopia and Eritrea had agreed that the delimitation and demarcation determination of the commission would be “final and binding” and that each would respect the border so determined, as well as the territorial integrity and sovereignty of the other party. The EEBC was required to reaffirm colonial borders, respect colonial treaties for applicable international law to be applied.⁴¹

³⁹ .Algiers agreement (2000), (n 3), article (1)

⁴⁰ . Ibid. preamble.

⁴¹ Ibid. article 4(15)

Further the agreement provided that Ethiopia and Eritrea were required and committed to “cooperate with the [EEBC] commission, its experts and other staff in all respects during the process of delimitation and demarcation”. The UN was required to facilitate resolution of humanitarian problems which may arise due to the transfer of territorial control, including the consequences for individual residing in previously dispute territory.⁴²

There was no provision in customary international law, which would have allowed the possibility of demarcators not so expressly empowers nonetheless to possess such power and the commission cited three compelling reasons.⁴³

- First, both parties knew and had unequivocally agreed that the result of the commission’ delimitation s of the boundary may not be similar to previous areas of territorial administration and therefore might follow a course which resulted in certain populations ending up on the wrong side of the boundary. Further where such a situation arose the ensuing problems were for resolutions by the UN rather than by the commission, article 4(16).of the Algiers agreement;
- Second, the parties knew in advance and agreed that it was not open to the commission to make its decision on the basis of *ex aequo et bono* considerations, as per article 4(2); and
- Third, the parties knew in advance and agreed that the boundary as delimited by the commission’s Delimitation Decision would be final and binding as per article 4(15) and therefore would not be subject to amendment during the process devoted to and limited to demarcation of the boundary –which Ethiopia had consistently maintained should occur.

3.2. The boundary commission

Under article 4(2) of the Algiers peace agreement a neutral, five -member boundary commission was established. The mandate of the commission was to delimit and demarcate the colonial treaty

⁴² Ibid. article 4(14)

⁴³. Rudy Sandhu, ‘Analysis: The Algiers peace agreement’ TesfaNews (24October 2016) www.tesfanews.net/eritrea-algiers-peace-agreement/ accessed 03 August 2019.

boundary based on pertinent colonial treaties (1900, 1902) and 1908) and applicable international law. The commission shall not have the power to make decision *ex aequo et bono*.

By March 2001, the commission and the parties held their first meeting in The Hague. In this meeting a tentative plan was worked out, and agreed upon by the parties to carry out the first task of the commission's delimitation of the borderline.

The Commission adopted its rules of procedure on June 2001, according to which, the parties filed their first submissions (a memorial) to be filed at the end of June 2001. This was followed by the second submissions (counter memorials) to be filed not later than 22 September 2001. And any other pleading that the commission deems necessary after consulting the parties, such pleading to be filed not later than one month after filing of the Counter-Memorials. The parties undertook three rounds of arguments and responded to the questions posed by the commission.⁴⁴

In April 2002, the commission delivered its delimitation decision. The delimitation decision was presented by categorizing the border into three sectors, the west, the central, and the east.

3.2.1. The mandate of the commission

The commission pointed out that its main task in the process of determining the course of the border was the legal interpretation of the colonial treaties. This was mainly because the parties agreed that the treaties in question covered the whole boundary between them and the meaning of the treaties constituted the "central feature" of the dispute.⁴⁵

The commission did not only rely on the interpretation of treaties but also based on the consideration of applicable international law.⁴⁶ Applicable international law was used both for the interpretation of the treaties and determining the course of the disputed boundary line. The central element in the commission's consideration of international law was the subsequent practice of the

⁴⁴.Ethiopia-Eritrea boundary commission rules of procedures, 2002, article. 16(2)

⁴⁵ .Malcolm Shaw, "Title, Control, and Closure? The Experience of the Eritrea -Ethiopia Boundary Commission"(2007) 56 International and Comparative Law Quarterly 755
<www.cambridge.org/core/journals/international-and-comparative-law-quarterly/article/title-control-and-closure-the-experience-of-the-eritreaethiopia-boundary-commission/731C52F74B9C39487F7EFFEB212639AAB>
accessed 12 September 2019

⁴⁶ Agreement between Ethiopia and Eritrea(2000) (n3) Art.4/2

parties.⁴⁷ In considering the conduct of the parties, the commission looked at maps; activity on the ground tending to show the exercise of sovereign authority (affectivities), diplomatic exchanges and records and also even assertions of sovereignty before the commission.⁴⁸

The commission recognized the possibility for the conduct of the parties to be different from the clear provision of the colonial treaties. In such cases of contradiction, the commission noted that the latter practice of the states is given preference over the treaties. According to the commission, the inability of one of the parties to reject the acts of the other party within a reasonable time could be regarded as a tacit agreement to the practice and conduct of the other party.⁴⁹

In line with the provisions of the Algiers agreement, the commission also made reference to the OAU principle of respecting borders drawn by European colonial powers and existing at independence. In the case of Ethiopia and Eritrea, the commission interpreted this principle as referring to the border that prevailed when Eritrea became independent in 1993. Developments subsequent to that date were not considered relevant, unless they could be “seen as continuance or confirmation of a line of conduct already clearly established or take the form of express agreement between them.”⁵⁰

3.2.2. The Delimitation decision of the commission

On 13 April 2002, the commission delivered its delimitation decision. The first two chapters of the decision dealt with procedural and substantive introductions. Chapter one traces the background of the commission to the provisions of the Algiers agreement and states how the commission was constituted. The substantive introduction presents a short summary of the history of the two countries and explains the controversy that is involved regarding their common border. Chapter three dealt with the mandate of the commission and the law applied. The delimitation

⁴⁷ EEBC decision (2002), (n 5) [paragraph 3.6]

⁴⁸ Ibid, [paragraph 3.16]

⁴⁹ Ibid, [paragraph 3.9]

⁵⁰ Ibid, [paragraph 3.36]

decision was presented by categorizing the border into three sectors, the west, the central and the east.⁵¹

The last chapter or chapter eight of the commission presents its decisions. According to the seventh chapter of the commission's decision, Ethiopia was awarded the town of Zala Ambassa and much of the Irob area but left without any specification about the disposition of Badme.⁵² Initially, Ethiopia claimed Badme since it has administered Badme for a long time as part of the Tigray province. Soon, an OAU official in The Hague reported to his headquarter that Ethiopia shall retain Badme. However, after a thorough discussion on the status of Badme, the delimitation decision had found that Badme has to be within Eritrea. Though, initially the two parties have agreed in advance as the decision of the commission will be final and binding, at last Ethiopia rejected the decision. Consequently, Ethiopia began challenging the delimitation decision.

3.3. The Stalemate to Enforce the Decision of the Commission

When the boundary commission announced its decision in April 2002, both Asmara and Addis Ababa initially claimed victory. The source of confusion was the decision itself. That did not identify coordinates for the villages of Badme. The commission clarified on 28th of March 2003 that the area known as the Badme plains largely was Ethiopian, but the village of Badme was inside Eritrea. Both parties formally accepted the April 2002 decision, as did the UN Security Council. However, Ethiopia presented a detailed response that raised serious questions about the process. It states that, while it accepted the commission's decision, "during the demarcation phase, when the commission will have its first opportunity to examine the situation on the ground in the border region... certain local problems can be addressed". It added that such local problems, if not carefully treated, could give rise further conflict and suffering. Its specific complaints ranged from the claim that it possessed evidence that contradicted elements of the commission's decision to the fact that the border delimited by the commission would divide number of communities. This led to the beginning of stalemate between the two countries. Ethiopia also requested the commission

⁵¹ EEBC decision(2002), (n 5)

⁵² Ibid

the evidentiary issues through further delimitative process and the community division issues during demarcation.⁵³

The commission rejected Ethiopia's request explaining that it had acted under the Algiers agreement, which provided no appeal procedure for "final and binding" decision. And, that no evidence or legal research presented by a party after the decision had been rendered could be used to alter the decision and that the delimited line could only be modified by the agreement of the two parties.⁵⁴ Eritrea also refused to negotiate on anything regarding the decision of the commission.

In order resolve the impasse, UN secretary General Kofi Annan in December 2003 appointed former Canadian foreign minister Lloyd Axworthy as his special Envoy. While Ethiopia welcomed the appointment Eritrea refused to receive him on the grounds that the appointment undermines the Ethiopia-Eritrea Boundary Commission's (EEBC) decision and clouded what it considered a clear issues: Ethiopia's failure to implement demarcation. And president Isaias wrote letter to the security council:

*...the commission long ago issued detailed demarcation directions and specific time frames for implementation. The whole process should have been completed successfully in November 2003. Accordingly, there are no new issues that warrant a new round of discussion or which require a special Envoy...The problem lies in the violation of the Algiers agreement by Ethiopia, its rejection of the EEBC and its willful obstruction of the implementation of the decision. In the circumstances, we expect your good offices to be directed towards Ethiopia's compliance with provisions of the Algiers agreements and the decision of the boundary commission.*⁵⁵

On the other hand, on November 25, 2004, Ethiopia through house of people representative (HPR), (Ethiopian parliament) adopted the peace proposal, which called **five-point peace plan**. Then the late Prime Minister Meles Zenawi indicated the adopted five-point peace proposal in his letter sent

⁵³ Ethiopia asked that the outer boundary of the town of Zalambesa be determined more precisely during demarcation.

⁵⁴ International Crisis Group, 'Ethiopia and Eritrea: War or Peace?' (International Crisis Group 2003) <www.crisisgroup.org/africa/horn-africa/ethiopia/ethiopia-and-eritrea-war-or-peace> accessed 26 May 2019, p.7

⁵⁵ International Crisis Group, 'Ethiopia and Eritrea: Preventing War' (International Crisis Group 2005) <www.crisisgroup.org/africa/horn-africa/ethiopia/preventing-further-conflict-and-fragmentation-ethiopia> accessed 26 May 2019, pp 5-6.

to UN Security Council. In the five-point peace plan Ethiopia accepted the decision of the commission “in principle” providing preconditions to make negotiation for demarcation.⁵⁶

Generally, both states were not agreed on the implementation of the boundary commission’s decision. While Eritrea agreed with the decision of the commission, Ethiopia refused to implement the decision accepting the decision in principle with some reservation. She also requested the commission for further interpretation and complaining that the decision did not take into consideration the existing reality on the disputed territory. Moreover Ethiopia explain that the decision is unjust and only included the legal aspect in which it cannot bring lasting peace between the two nations.

⁵⁶ Peace proposal presented by government of Ethiopia to the UN security council, <www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/EE%20S2004973ADD1> accessed 10 June 2019

CHAPTER FOUR

Legality of the Ethiopia's Recent Decision to Accept the EEBC decision

4.1. Legality or otherwise of the first decision by Ethiopian government on EEBC decision

According to article 4(15) of the Algiers agreement Ethiopia and Eritrea expressly agreed the delimitation and demarcation determination of the Ethiopia-Eritrea boundary commission shall be final and binding. Each party shall respect the border so determined as well as territorial integrity of and sovereignty of the other party. Accordingly, when the decision of the commission became official in April 2002, the representative of Ethiopia government in the Algiers agreement Mr. Seyoum Mesfin gave press conference, calling the People of Ethiopia to celebrate the decision by the commission as its decision gave the main disputed areas to Ethiopia.⁵⁷ The world also confused the same celebration happen in capital of Eritrea, Asmara. When people carefully looked into the decision most of the war front of Badme and the entire Tsorena along with its environs went to Eritrea.⁵⁸

Later on 25 November 2004 the Ethiopian government proposed five-point peace plan and announced that it accepted the decision of the commission in principle. Ethiopia called the decision as 'illegal, unjust, and irresponsible decision' in awarding Badme to Eritrea in its letter to the then UN secretary general Kofi Annan to help resolve the impasse.⁵⁹

Here the question is whether the five-point peace plan of Ethiopia is a precondition to implement the decision of the commission and at the same can the stand of Ethiopia to accept the decision 'in principle' is legal from the wording of art. 4 sub 15 of the Algiers agreement. The provision expressly states the decision of the commission is final and binding.

On the other hand, the peace proposal number 2 and 5 has a keen sense of requesting fresh dialogue, which can bring sustainable peace and brotherly ties between the two peoples as clearly stipulated. Moreover, point number two of the peace plan whispers that the root cause of the

⁵⁷MuziQaTube, 'Announcement Of The Hague Verdict On Bademe'

<<https://www.youtube.com/watch?v=tnifvXGdV0s>> accessed 9 July 2019

⁵⁸Bereket Gebru, 'Fresh Steps to Implement an Old Decision' (Walta, 2019)

<<https://www.waltainfo.com/index.php/FeaturedArticles/detail?cid=40768>> accessed 7 May 2019.

⁵⁹. International crisis group, (n 54)

dispute was not only the boundary dispute but also as other causes exist, and Ethiopia want to resolve that through dialogue. In response to these questions, I have tried to assess some writings and the findings are as follows.

An Eritrean writer Tesfamicael Yohannes argued as follows: “For Ethiopia if the five point plan is not get recognition by Eritrea it implies that the decision of the boundary commission is not acceptable for Ethiopia.”

To strengthen his argument he looked at the Security Council Resolution 1662(2005) in which the council called on the parties to implement completely and without further delay the 2002 delimitation decision of the Ethiopia Eritrea boundary commission and to create the necessary condition for demarcation to proceed expeditiously. According to Tesfamicael the resolution of the Security Council shows that, the concerned bodies at the Security Council are not serious enough to what they are looking for, to the implementation of the boundary commission decision. Because they did not enforce their resolution with mechanism that have consequence if the parties did not complied with the given resolution. For him this means the security council takes the five point peace plan of Ethiopia, which is becoming an obstacle to the implementation of the boundary commission decision, as precondition set by Ethiopia. Therefore, Tesfamichael conclude every call for dialogue by Ethiopia or Security Council can be taken as an excuse for not transferring to the demarcation phase according to the decision; which means the peace proposal a precondition to implement the decision of the commission.⁶⁰

An Ethiopian writer Zeray Weldesenbet also argued that the acceptance “in principle” within the context of the five point peace proposal means the border ruling shall not be the only basis of demarcation process, but also by the result obtained after a conciliation to resolve outstanding issue and normalize relations between the two countries. So according to him “in principle” means incomplete acceptance or the house have some reservation over the border decision.⁶¹

⁶⁰Tesfamicael Yohannes, ‘Is the five point peace plan of Ethiopia a precondition’
<www.afnorway.com/documents/old_article.php?entry_id=1260799822&title-is-the-five-point-peace-plan-of-ethiopia-a-precondition%3F> accessed 04 November 2019

⁶¹Zeray Weldesenbet, ‘The Legitimacy of EPRDF’s decision on the Algiers Agreement and Border Ruling: Fuzzy, Illicit, Maneuver And Incomplete Retreat’< <https://hornaffairs.com/2018/07/15/legitimacy-of-eprdfs-decision-on-the-algiers-agreement-and-border-ruling>> accessed 20 august 2019.

From the arguments of both writers, it is possible to conclude that Ethiopia accepted the decision of the commission with reservation which clearly contradicted to the above provision of the Algiers agreement. In addition, the legality of the decision of Ethiopia to accept the EEBC's decision in principle and requesting for further negotiation is in question.

4.2. Legality or otherwise of the second decision by Ethiopian government

In 2018, the current executive committee of the EPDRF decided to implement both the Algiers agreement and the ruling of the boundary commission without any precondition with the view to stabilize the country and to promote regional integration under the new leadership of PM Dr. Abiy Ahmed Ali.

Following the decision, Eritrea has sent a delegation to Ethiopia to 'gauge current development directly' and plan. The PM Abiy Ahmed, higher government officials and renowned athletes, received the delegation. In return, PM Abiy Ahmed has visited Asmera and President Isaishas also visited Ethiopian capital after 20 years.

This act of the PM Abiy Ahmed has brought mixed feelings nationally and internationally. Nationally, there was group saying that he gave Badme which was kept by blood of patriots and that was in vain. This question was also raised in the parliament for the PM to answer how the relation with Eritrea was going. The PM answered as they did not specifically talk about the demarcation of the boarder specifically about the Badme and the talking about the delimitation is yet to continue in win-win way to both countries. And remembers the members of the parliament that they have ratified the Algiers agreement and they have the duty to follow up the same.

Some say improved situation relation between the countries could make the two countries strong trading partners. Agricultural products could be exported to Eritrea while the latter could provide Ethiopia with an outlet to the sea through the ports of Massawa and Assab.⁶²

⁶² Bereket Gebru 'Fresh start to implement and old decision'
<www.waltainfo.com/index.php/FeaturedArticles/detail?cid=40768> accessed on 20 sep 2019

International community praised the act Ethiopia as good gesture of love and peace in the drought and war region of the Horn of Africa specifically and Africa as a whole. The 2019 Noble peace prize also goes to the PM specifically for his contribution to a peaceful resolution of this border dispute.

When we come to the legality issue, since this decision of the executive committee is recently took place it is hard to find writings on the legality or otherwise of the decision. However, Zeray Weldesenbet tried to criticize the stand of the committee from national law perspective. According to his argument the decision of the PM. Abiy Ahmed and the executive committee's decision to implement both the Algiers agreement and the decision of EEBC entirely is against the EPRDF constitution in general and the powers and function of the Ethiopian parliament. Since the ruling party or the political party does not have both the constitutional and legal authority to decide whether to accept the Algiers agreement and/or EEBC decision according to article 55(12) of the FDRE constitution this power is exclusively given to the parliament.⁶³

The prime minster on the other hand argued in favor of the legality of this decision. Stating that there is no new decision made by the committee, rather it is all about implementing what is already agreed the then executive committee and ratified by the parliament and has a status of proclamation.⁶⁴

4.3. The position of international community regarding each of the two apparent position of the Ethiopian government on the implementation of EEBC decision

4.3.1The position of UN

The fact that the Ethiopian government called the ruling given by the EEBC 'unjust and illegal', and yet claims to accept it 'in principle', created vagueness and inconsistency of the peace proposal before the international community. However, the OAU/AU and other bodies like UN and US failed to criticize Ethiopia expressly for not accepting the decision of the EEBC or to realize the

⁶³ Zeray, (n 61)

⁶⁴Tenaadam, 'DrAbiy Ahmed On Eritrea And Ethiopia | TPLF | EPRDF | Badme' <https://www.youtube.com/watch?v=xyz3_GDrXv8> accessed 13 December 2019.

decision of the commission.⁶⁵ This failure of international community to criticize Ethiopia reflected on the report on the new Ethiopia- Eritrea peace initiative submitted to the house of people representative (Ethiopian parliament). Paragraph 18 of the report states that;⁶⁶

“The international community has supported dialogue between the two countries. It has done so out the realization the implementation of the decision, as it might undermine peace between the two countries and based on its conviction that the fundamental differences between the two countries should be resolved through peaceful means only. Hence, the effort that the government of Eritrea has made to drive a wedge between Ethiopia an international community has completely failed. On the other hand, the international community has nonetheless been asking Ethiopia not to appear to be violating the decision of a court and not to seem to be defying international law, and demanding, in this regard, that Ethiopia declare its acceptance of the decision of the commission. Because of the confusion surrounding Ethiopia’s position, it has been difficult for international community to support aggressively the proposal made by Ethiopia for dialogue between the two countries. International communities have expressed this in different ways.⁶⁷

Eritrea on the other hand had considerable difficulty gaining sympathy, despite having the law on its side. It has tried hard to get the international community to put pressure on the Ethiopian government to accept the ruling and allow demarcation to take place. As new country, with no experience of getting its way in international politics, its blunt demand that the international community compel Ethiopia to comply with the ruling (and give up Badme) has largely fall on deaf ears.⁶⁸

⁶⁵. Befekadu Bogale, ‘Eritrea’s Relation with IGAD and the OAU/AU: The Domestic and International Dynamics’(2014) 13/3 Turkish Journal of International Relations < <https://dergipark.org.tr/en/download/article-file/19340>> accessed 18 September 2019, P.66

⁶⁶ .“Report on the new Ethiopia- Eritrea peace initiative submitted to the house of people representative s by H.E PM Meles Zenawi” published on November 2004.

⁶⁷ . Ibid.

⁶⁸ . Sally Healy and Martin Plaut ‘Ethiopia and Eritrea: Allergic to persuasion’ (2007) 07/01 The Royal Institute of International Affairs < <https://chathamhouse.org/sites/default/files/public/Research/Africa/bpethiopiaeritrea.pdf&sa=U&ved=2ahUKEwj4urL0LDmAhUt0FKKHR8cBAoQFjAAegQIChAB&usg=AOvVaw3I7aOMeyppVvB6RXXWTsnho>> accessed 18 September 2019, P. 5

The UN Security Council had repeatedly stated that the prime responsibility to implement the Algiers agreement lay with the parties themselves. However, the blind alley of Ethiopia's refusal to accept the boundary ruling carried a significant financial tag for the UN.

Notwithstanding the above points, the five-point peace plan of Ethiopia scored Ethiopia another diplomatic success. The plan quickly earned the support of the UK (the prime minister had recently visited Ethiopia) and was welcomed by the EU and the UN. The US, however, remained conspicuously silent on the matter.

With regard to the second decision in which Ethiopian accept the Algiers agreement, the UN secretary general Antonio Guterres said the recent evolution in relation between Eritrea and Ethiopia is very important signal not only for the two countries, not only for Africa, but also for the whole world.⁶⁹

4.3.2. The position of OAU/AU

The Algiers agreement was brokered by the OAU. Under the terms of the agreement, specifically article 14, the OAU was among the major stakeholders set responsible for the implementation of the decision of the Ethiopia Eritrea boundary commission decision. After the commission gave its verdict in favor of Eritrea, Eritrea sought the OAU to enshrine its responsibility as provided in the agreement. However the organ has failed to rescue the situation. The high status of the Ethiopia among the AU member states as the host of the AU headquarters has imposed limits to AU intervention for the implementation of the ruling of boundary commission.⁷⁰ Thus, Eritrea has virtually lost faith in the AU as a forum for furthering its strategic regional interest.⁷¹

The decision given by the current EPRDF central committee to implement the Algiers peace agreement without any condition has the support of the AU commission Moussa Faki Mahamat. On the press release made on July 8, 2018 expressed his appreciation as follows;

⁶⁹ Xinhua news, AU, "UN hail the latest dev't in Ethio-Eritrea relations" (Xinhua news 10 September 2018) www.xinhuanet.com/english/2018-07-10/c_137312843.htm, accessed on 17 November 2019.

⁷⁰ "The Ethiopia-Eritrea Border Conflict and the Role of the International Community" African center for the constructive resolution of disputes <<https://www.accord.org.za/ajcr-issues/000/the-ethiopia-eritrea-border-conflict-and-the-role-of-the-international-community/>> accessed March 7, 2019

⁷¹ Ibid.

*“We appreciate political courage of the prime minister of Ethiopia who has taken this initiative; he has accepted to respect what was adopted 20 years ago and since yesterday he has been in Asmara. We have seen the warm welcome that has been accorded to him to share that the African peoples want peace and stability on the continent”*⁷²

4.3.3. The position of IGAD

One of the major factor that affected Eritrea’s relation with neighboring countries, the IGAD and international community at large was the Ethiopia’s military intervention in the Somalia against the union of Islamic courts (UIC) in support of the Transitional Federal Government (TFG) of Somalia. Eritrea angrily opposed the intervention and found herself allied with the union of Islamic courts (UIC). Eritrea’s alliance with UIC, which was categorized as fundamental organization by the US with links to al-Qaida, in turn angered the IGAD member states. IGAD not only failed to oppose the intervention, as the Eritrean regime wished but also approved it; leading to Eritrea’s self-suspension from the organization in April 2007.⁷³

IGAD has also followed the steps of UN and AU praising the culmination of two decades hostility of the two countries. Executive secretary of the IGAD Mahboub Maalim has said the normalization of bilateral ties would benefit the peoples of the two countries and would contribute to the realization of the shared aspiration of peace and integration in the east African region and the African continent.⁷⁴

4.4. Consistency or otherwise of the two decisions by the Ethiopian government

Under this title, I am trying to address the research questions provided under the first chapter of the thesis. The legality and consistency of decision or any peace deal must be measured based on the following values, at least.

4.4.1. Maintaining durable and sustainable peace

⁷² Xinhua news, (n 69)

⁷³ Befekadu, (n 65)

⁷⁴ Xinhua news, (n 69)

When we weigh the first decision of Ethiopia with the above values, the decision was aimed at maintaining durable and sustainable peace as it stated on the peace plan but did not attain that. However, it became source of disagreement and obstacle to the ongoing peace deal started in 2002.

The second decision has a very good start and obtained full acceptance from the government of Eritrea unlike the first one. However, sustainable peace between the peoples of the two countries cannot be achieved only by implementing the boundary commission's decision.

Samuel Fikresellase suggested that to achieve this good starting of peace talk, the two nations need to explore a new approach in dealing with conflict that are deeply rooted in history and memory. Sincerity is a key component of post war diplomacy as the main audience is the victims of the war. He also adds the building of normal relationship between the two nations to create conditions for a long-term reconciliation, it is vital for the people of both countries to be aware of the other side's perceptions and understanding of history. As the first step to improve the relationship, both need to take time to replay the events that are causing tension and so gain a perspective on the reasons for the relationship's deterioration. Without knowing exactly what the other side's perspective is, and reasoning behind the perspective, it is hard to find a solution. As part of this process Ethiopia and Eritrea should also begin to conduct history education reform and should resume their joint history research and joint history textbook projects.⁷⁵

Kalewengel suggested that negotiation enhance the possibility to the realization of a mutual accepted solution. As opposed to forced peace, negotiation provides a chance for consensual peace to be achieved and launch measures towards normalization of relations.⁷⁶

4.4.2. Transparency and participatory

The first decision to accept the EEBC decision 'in principle' was adopted by parliament after deliberation on it. Thus, it was transparent. But not as such participatory. The public knew the same decision televised on the national television. Of course, it was peace initiative calling Eritrean

⁷⁵ Samuel Fikresellase 'Ethiopia and Eritrea's peace must be rooted in past' (2019) , < www.ethiopia-insight.com/2019/08/07/trashed/> accessed on 06 December 2019.

⁷⁶Kalewengel, (n 7), p.103

government for further dialogue on the boundary commission's decision after the government of Ethiopia met with stiff resistance from Tigray Regional State Council against the EEBC decision.⁷⁷

The second decision was more or less followed the same steps except the voting part by the parliament. The EPRDF executive committee and the new prime minister decided to accept the commission's decision entirely and disclosed this to the public through their media and official page.

According to Mahari Taddele, leaders must consult, institutionalize the negotiations, and be transparent. Because the peace arrangement should not be reached based on the good will of the two leaders alone. Implementations related to resolution of border dispute will be local; thus, the involvement of local authorities in all agreement on border issues is vital for the long-term stability. He adds, to achieve sustainable peace between the two nations there is a need to build effective border governance with the actual participation of local authority and communities. Just as participation of community, must be central in cross border dialogue and security governance. He also suggested that transparency is also necessary. Within EPRDF, the Eritrean file has always been handled under a cloak of absolute secrecy. This old habit has escaped reform so far, and such secrecy during internal struggle inevitably invites suspicion and speculation. And this is what the recent rapprochement between Addis Ababa and Asmara faced from Tigray.⁷⁸

4.4.3. Addressing all causes for dispute

As I have tried to discuss under chapter two of this paper the real cause of Ethiopia-Eritrean dispute was not only border issues, it was rather historical factors as well as economic and regional military interests. This means an agreement or decision made by both states is expected to be the one that can address all root causes of the dispute. In this regard, the five-point peace plan of Ethiopia indicates the intention of the government to resolve all root causes of the conflict through dialogue, with the view to normalizing relations between the two countries.

⁷⁷MahariTaddele, 'Politicizing Eritrean peace perpetuates conflict cycle' (2019) <https://www.ethiopia-insight.com/201901/31/politicized-eritrea-peace-perpetuates-conflict-cycle/>, accessed 04August 2019.

⁷⁸ Ibid.

The recent decision somehow differed from the first one in which the government only declared its willingness to implement both the agreement and the decision of the commission.⁷⁹ Notes the readiness of the Ethiopian government alone is not sufficient for the successful implementation of the peace accord. There are practical challenges to implement the agreement.

This means the decisions are not the end rather they are a means to an end. Therefore, it is up to the parties to genuinely discussing to solve the dispute from the root.

4.5. An independent assessment of legality or otherwise of Ethiopia's position under international law

Under this part I am going to assess the legality of Ethiopia's late acceptance of Algiers agreement and the respective boundary commission decision from the international law perspective to which Ethiopia is bound.

As I tried to discuss in previous chapters, the decision of the Ethiopia and Eritrea boundary commission was not implemented. While Eritrea accepted the delimitation decision and claim for a clear-cut demarcation on the disputed areas, Ethiopia disagreed with the decision of the commission and claim for further interpretation. This may raise the question that whether Ethiopia's refusal to accept the decision for almost eighteen years, and later on accept the same decision is sound from international law perspective.

Based on my independent assessment the previous decision of our government is said to be a valid decision from the perspective of national interest. And it is more inclusive as it tried resolve other issues not directly related to the border disputes, to be agreed up on through diplomatic means. Because the decision of the commission is totally did not consider the practical situation in the disputed areas and cannot lead to comprehensive settlement. For example, the main reasons why Ethiopia refused to accept the decision was, firstly, the fact that, the contested area of Badme for which it has fought the bloody war has long been administered by it as part of Tigray province of Ethiopia. Secondly, The conditionality of its earlier acceptance of decision up on some adjustment during the demarcation process. To clarify this, the Ethiopia's understanding during agreement

⁷⁹ Tigray Online 'Author Kahsay Abraha talks about the recently restarted Ethiopia and Eritrea peace talks' (Tigray online 2 July 2018), <www.tigraionline.com/articles/kahsay-abraha-speaks-18.html> accessed 01 October 2019.

was that the process of demarcation line would be subject to some sort of modification so that the effective administrative of the parties could be determined. Thirdly, Ethiopia raised the failure of the decision to consider the reality of the local people and the area itself.

If this was the case, it is obvious that the decision of the commission could affect the rights of the local community, in which it could divide them and it can be against the national interest for which thousands sacrificed. On this regard, Ethiopia's decision to accept the decision of boundary commission 'in principle' is right decision. This is what can be supported by Ethiopia's principle for external relations as provided under article 86 of the FDRE Constitution. Under this provision, one of the objectives of foreign policy is to observe international agreements, which ensure respect for Ethiopia's sovereignty and are not contrary to the interest of its people.⁸⁰

As an independent observer, there is a good ground in some of the official statement of the UNSC that gives support for such attitude, it may be recalled that, the Security Council had reminded both parties that their dispute and conflict should be concluded by “ a comprehensive and final peace settlement”⁸¹

However, the national interest was what should be taken in to account during the Algiers agreement. While one country (Ethiopia) entered in to international obligation it must agreed on each and every detail of its rights and obligations exhaustively. Negligence while signing an agreement cannot be raised as a defense for failure to obey international obligation. A significant part of treaty making is that signing a treaty implies recognition that the other party is sovereign state that the agreement being considered is enforceable under international law. Moreover, countries while making treaties should be very careful about terming an agreement to be treaty. Therefore, it was Ethiopia's historical mistake to agree on the finality and binding nature of the commission's decision in advance and later claim for negotiation.

Doing that on the other hand, can be a clear violation of international law to which they gave their full consent. Under article 4 sub article 15 Ethiopia clearly agreed, “The delimitation and demarcation determination of the commission shall be final and binding. Each party shall respect

⁸⁰ Proclamation No.1/1995, Constitution of the Federal Democratic Republic of Ethiopia, Art. 86 (4)

⁸¹ U.N. Security Council Resolution 1320, 15 September, 2000

the border so determined, as well as territorial integrity of and sovereignty of the other party”. From this provision, it is possible to understand that Ethiopia agreed that she would accept whatever decision was reached and there was no right of appeal. She cannot appeal or cannot request any modification of the decision of the commission. What she could do was only asking Eritrea to modify the Algiers agreement on which the decision of the commission based. Otherwise rejecting the decision of the commission and providing precondition to the decision amounts to violation of the international law that is the Algiers agreement. In addition, the fact that international communities and international organizations (i.e. UN, OAU/AU, and IGAD) failed to put pressure on Ethiopia to realize the implementation of the commission’s decision should not be taken as Ethiopia’s position was accepted internationally.

With regard to the recent decision, which is very different from the previous one, the government of Ethiopia (the EPDRF the executive committee) declared its willingness to accept both the Algiers agreement and the decision of the boundary commission without any pre-conditions. From this, one can understand that Ethiopia is not only ready to normalization the Ethiopia-Eritrea relation by avoiding the no war no peace situation but also ready to assume her international obligation to which she gave her absolute consent. This is a very important decision for both countries as compared to the previous decision in different ways. During the ‘no war, no peace’ situation both countries suffered economically. Borders were totally closed and telephone connection disconnected. Families, relatives and friends from the same origin but were living in both states could not see each other. This affected both countries’ peoples socially and psychologically. On this regard, implementing the Algiers agreement plays vital role. It seems that the Ethiopian government opts to live in peace with neighboring countries. Especially normalizing the Ethiopia-Eritrean relation is very important for the people of both countries since they share common things together.

Moreover, this position of Ethiopia or her recent decision is in line with the provisions of the Algiers agreement article 4 sub article (2) and sub article (15).

Article 4(2), which states that :-

“The parties agree that a neutral Boundary Commission composed of five members shall be established with a mandate to delimit and demarcate the colonial treaty border based on pertinent

*colonial treaties (1900, 1902, and 1908) and applicable international law. The Commission shall not have the power to make decisions **ex ae quo et bono**”. And*

Article 4 (15) it is further stipulated:

“The parties agree that the delimitation and demarcation determinations of the Commission shall be final and binding. Each party shall respect the border so determined, as well as the territorial integrity and sovereignty of the other party.”

- Based on these sub articles the recent decision of the Prime Minister Abiy Ahmed to accept the decision of boundary commission cannot raise legality issues from perspective of the relevant international law that is Algiers agreement.
- From the national law perspective also, the decision cannot raise legality issue because the executive committee or the prime minister (the chief executive) did not make new agreement rather implement what is already ratified and its implementation is delayed.

When we see the significance of this late acceptance of the decision from international law perspective, there is no doubt that, it will contribute more for the development and the effectiveness of the international law since international law to large extent relies on treaties.

Again, the enforcement mechanism of international law is not strong like that of national law. Rather it depends on the consent of the parties to treaty. Countries may raise their sovereignty not to obey international law. International organizations and international community also cannot force the sovereign states to obey the international laws, except putting some pressures and sanctions. It is this softness of international law enforcement mechanism that put Ethiopia and Eritrea in no war, no peace situation for long period time. Therefore, it is what must be encouraged when states show their willingness to respect their international obligation by their own motion.

So, knowing the fact that Ethiopia fought bloody war and lost thousands of lives, become landlocked and had strong position not to hand over Bademe to state of Eritrea, now with the view of creating good relations with this country and respect the already signed agreement it will be legal and acceptable from international law perspective. And it has the implication that international laws (the Algiers agreement between Ethiopia and Eritrea) will have a great role in

solving conflicts between sovereign states and will have a significance for the development of international legal system, No matter how long it stayed without being implemented.

It will also contribute for both countries in their international relations with world states. It help both parties to have good image before world community this will contribute more for their foreign relations. For example, Ethiopia has formally submitted a request to the United Nations to lift a decade-old sanctions imposed on Eritrea to UN secretary general Antonio Guterres in Addis Ababa on 09 July 2018.

Chapter Five

Conclusions and recommendations

5.1. Conclusions

- As has been discussed in previous chapters, before the outbreak of conflict between there have been many things that Ethiopia and Eritrean shared in common. They have shared similar culture and history. However, the two countries went in to border conflict in 1998 on land found around their common border. The conflict unexpectedly changed in to full-scale war and resulted in loses of thousands of lives from both sides. The war ended with the signing of the Algiers peace agreement on December 2000.
- The agreement was very important since it established the Ethiopia Eritrea boundary commission with the mandate to delimit and demarcate boundary between the two states.
- The boundary commission started its functions and, delivered its delimitation decision In April 2002.
- Eritrea accepted the decision of the commission and claim for demarcation. While Ethiopia rejected the ruling of the commission that awarded Badme to Eritrea because of that, the decision is unjust, illegal and the border delimited by the commission would divide number of communities. Ethiopia also requested the commission the evidentiary issues through further delimitative process and the community division issues during demarcation. The commission rejected Ethiopia's request explaining that it had acted under the Algiers agreement, which provided no appeal procedure for "final and binding" decision. Eritrea also refused to negotiate on anything regarding the decision of the commission. This led to the beginning of stalemate between the two countries.
- In 2004, Ethiopia came up with peace initiative plan with the aim of resolving the dispute with Eritrea peacefully. However, Eritrea was unwilling to negotiate on demarcation issues. This created the no war no, peace situation between the two states for many years; as a result both states faced various economic and political problems. Ethiopia has lost from closure of trade with Eritrea its free access to the port of Assab. Similarly, Eritrea lost

from the closure of trade with Ethiopia that is its past sources of industrial raw materials import of food products and sector of market place for its industrial outputs.

- In 2018, the executive committee of EPRDF decided to implement the Algiers agreement. And this viewed as one of the numerous efforts to stabilize the country and promote regional integration under the new leadership of prime minister Abiy Ahmed.
- This decision of the committee creates ambiguity. Some Argue that the decision is a new which handover the disputed area Badme to Eritrea, so it is against the national interest of Ethiopia.
- The government on the other hand argued that no new decision is made; rather it is all about implementing what is agreed and ratified by Ethiopian in Algiers. We are simply showing our willingness to respect the decision of boundary commission since the important decisions were all made when Ethiopia signed the Algiers agreement and presented its border claim to the commission.
- The objective this paper was to examine legality issues of Ethiopia's recent decision to implement the decision of boundary commission and to assess its significance from international law perspective.. Accordingly, it has focused on relevant materials to the topic and tried to reach at the following conclusions.
 - ✓ The decision made by the new pm minister is not a new decision rather it only that what government decide to obey international law to which the country previously gave her consent to be bound by it.
 - ✓ Whether this decision can bring the sustainable peace between the two state is still in question, this is because the feasibility and sustainability of peace is contingent on the extent to which the parties are willing to negotiate on each cause of their conflict. In this regard the country only declared her willingness to implement the Algiers agreement which only govern boundary disputes, but the cause of the dispute was not only border issues. Therefore, unless the two states go further to resolve all causes of dispute exhaustively through dialogue it may be difficult to escape the no war no peace situation.
 - ✓ The other one is also the participation and transparency issue. Even though the government's aim is to bring normalization and peace between the peoples of the two states it should take in to account the opinion of the communities in those

disputed areas. Any decision made on behalf of the people must take in to account the interest of the concerned people. Otherwise, the root cause of the dispute cannot be solved.

5.2. Recommendations

Based on the research conducted by scholars and writings of intellectual of both states and my independent assessment I would like to make the following recommendations.

- The Ethiopia and Eritrea conflict must be end forever. To this end, any decision of both governments must incorporate the participation of the people of the country specifically those which the decision has direct impact on them.
- Since the cause for their conflict is not only the boundary issue which was the immediate cause to the war, but also economic, political and social and psychological causes are founded as causes of the dispute, the leaders of both states must focus on solving all the root causes of their dispute. Therefore, they must clearly agree and take a long time discussion to solve all causes of dispute exhaustively.
- Ethiopian government must give priority for the national interest issue while entering into international obligations. Their decision should not be contrary to the principle of foreign policy that provided under constitution of the country.
- Both Eritrea and Ethiopia must focus on the interest of the community living around the disputed area, instead of past disagreements or hostilities.
- The states through their negotiation must reach at bringing durable and sustainable peace to the dispute. Because different writings show that the mere fact that leaders of both states reached at an agreement to implement the Algiers agreement cannot bring a comprehensive and permanent peace to the people.
- Both governments might found it important to negotiate on non-aspects; at that stage, we may witness “comprehensive and final settlement” as proposed by UNSC thereby leading to sustainable peace between the two countries.

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ANNEXES

AGREEMENT BETWEEN
THE GOVERNMENT OF THE FEDERAL DEMOCRATIC REPUBLIC OF
ETHIOPIA
AND
THE GOVERNMENT OF THE STATE OF ERITREA

The Government of the Federal Democratic Republic of Ethiopia and the Government of the State of Eritrea (the “parties”),

REAFFIRMING their acceptance of the Organization of African Unity (“OAU”) Framework Agreement and the Modalities for its Implementation, which have been endorsed by the 35th ordinary session of the Assembly of Heads of State and Government, held in

Algiers, Algeria, from 12 to 14 July 1999,

RECOMMITTING themselves to the Agreement on Cessation of Hostilities, signed in Algiers on 18 June 2000,

WELCOMING the commitment of the OAU and United Nations, through their endorsement of the Framework Agreement and Agreement on Cessation of Hostilities, to work closely with the international community to mobilize resources for the resettlement of displaced persons, as well as rehabilitation and peace building in both countries,

Have agreed as follows:

Article 1

1. The parties shall permanently terminate military hostilities between themselves. Each party shall refrain from the threat or use of force against the other.
2. The parties shall respect and fully implement the provisions of the Agreement on Cessation of Hostilities.

Article 2

1. In fulfilling their obligations under international humanitarian law, including the 1949 Geneva Conventions relative to the protection of victims of armed conflict (“1949 Geneva Conventions”), and in cooperation with the International Committee of the Red Cross, the parties shall without delay release and repatriate all prisoners of war.
2. In fulfilling their obligations under international humanitarian law, including the 1949 Geneva Conventions, and in cooperation with the International Committee of the Red Cross, the parties shall without delay, release and repatriate return to their last place of residence all other persons detained as a result of the armed conflict.
3. The parties shall afford humane treatment to each other’s nationals and persons of each other’s national origin within their respective territories.

Article 3

1. In order to determine the origins of the conflict, an investigation will be carried out on the incidents of 6 May 1998 and on any other incident prior to that date which could have contributed to a misunderstanding between the parties regarding their common border, including the incidents of July and August 1997.
2. The investigation will be carried out by an independent, impartial body appointed by the Secretary General of the OAU, in consultation with the Secretary General of the United Nations and the two parties.
3. The independent body will endeavor to submit its report to the Secretary General of the OAU in a timely fashion.

4. The parties shall cooperate fully with the independent body.
5. The Secretary General of the OAU will communicate a copy of the report to each of the two parties, which shall consider it in accordance with the letter and spirit of the Framework Agreement and the Modalities.

Article 4

1. Consistent with the provisions of the Framework Agreement and the Agreement on Cessation of Hostilities, the parties reaffirm the principle of respect for the borders existing at independence as stated in resolution AHG/Res. 16(1) adopted by the OAU Summit in Cairo in 1964, and, in this regard, that they shall be determined on the basis of pertinent colonial treaties and applicable international law.
2. The parties agree that a neutral Boundary Commission composed of five members shall be established with a mandate to delimit and demarcate the colonial treaty border based on pertinent colonial treaties (1900, 1902 and 1908) and applicable international law. The Commission shall not have the power to make decisions *ex aequo et bono*.
3. The Commission shall be located in The Hague.
4. Each party shall, by written notice to the United Nations Secretary General, appoint two commissioners within 45 days from the effective date of this Agreement, neither of whom shall be nationals or permanent residents of the party making the appointment. In the event that a party fails to name one or both of its party-appointed commissioners within the specified time, the Secretary-General of the United Nations shall make the appointment.
5. The president of the Commission shall be selected by the party-appointed commissioners or, failing their agreement within 30 days of the date of appointment of the latest party-appointed commissioner, by the Secretary-General of the United Nations after consultation with the parties. The president shall be neither a national nor permanent resident of either party.
6. In the event of the death or resignation of a commissioner in the course of the proceedings, a substitute commissioner shall be appointed or chosen pursuant to the procedure set forth in this paragraph that was applicable to the appointment or choice of the commissioner being replaced.
7. The UN Cartographer shall serve as Secretary to the Commission and undertake such tasks as assigned to him by the Commission, making use of the technical expertise of the UN Cartographic Unit. The Commission may also engage the services of additional experts as it deems necessary.

8. Within 45 days after the effective date of this Agreement, each party shall provide to the Secretary its claims and evidence relevant to the mandate of the Commission. These shall be provided to the other party by the Secretary.
9. After reviewing such evidence and within 45 days of its receipt, but not earlier than 15 days after the Commission is constituted, the Secretary shall transmit to the Commission and the parties any materials relevant to the mandate of the Commission as well as his findings identifying those portions of the border as to which there appears to be no dispute between the parties. The Secretary shall also transmit to the Commission all the claims and evidence presented by the parties.
10. With regard to those portions of the border about which there appears to be controversy, as well as any portions of the border identified pursuant to paragraph 9 with respect to which either party believes there to be controversy, the parties shall present their written and oral submissions and any additional evidence directly to the Commission, in accordance with its procedures.
11. The Commission shall adopt its own rules of procedure based upon the 1992 Permanent Court of Arbitration Optional Rules for Arbitrating Disputes Between Two States. Filing deadlines for the parties' written submissions shall be simultaneous rather than consecutive. All decisions of the Commission shall be made by a majority of the commissioners.
12. The Commission shall commence its work not more than 15 days after it is constituted and shall endeavor to make its decision concerning delimitation of the border within six months of its first meeting. The Commission shall take this objective into consideration when establishing its schedule. At its discretion, the Commission may extend this deadline.

13. Upon reaching a final decision regarding delimitation of the borders, the Commission shall transmit its decision to the parties and Secretaries General of the OAU and the United Nations for publication, and the Commission shall arrange for expeditious demarcation.
14. The parties agree to cooperate with the Commission, its experts and other staff in all respects during the process of delimitation and demarcation, including the facilitation of access to territory they control. Each party shall accord to the Commission and its employees the same privileges and immunities as are accorded to diplomatic agents under the Vienna Convention on Diplomatic Relations.
15. The parties agree that the delimitation and demarcation determinations of the Commission shall be final and binding. Each party shall respect the border so determined, as well as territorial integrity and sovereignty of the other party.
16. Recognizing that the results of the delimitation and demarcation process are not yet known, the parties request the United Nations to facilitate resolution of problems which may arise due to the transfer of territorial control, including the consequences for individuals residing in previously disputed territory.
17. The expenses of the Commission shall be borne equally by the two parties. To defray its expenses, the Commission may accept donations from the United Nations Trust Fund established under paragraph 8 of Security Council Resolution 1177 of 26 June 1998.

Article 5

1. Consistent with the Framework Agreement, in which the parties commit themselves to addressing the negative socio-economic impact of the crisis on the civilian population, including the impact on those persons who have been deported, a neutral Claims Commission shall be established. The mandate of the Commission is to decide through binding arbitration all claims for loss, damage or injury by one Government against the other, and by nationals (including both natural and juridical persons) of one party against the Government of the other party or entities owned or controlled by the other party that are (a) related to the conflict that was the subject of the Framework Agreement, the Modalities for its Implementation and the Cessation of Hostilities Agreement, and (b) result from violations of international humanitarian law, including the 1949 Geneva Conventions, or other violations of international law. The Commission shall not hear claims arising from the cost of military operations, preparing for military operations, or the use of force, except to the extent that such claims involve violations of international humanitarian law.
2. The Commission shall consist of five arbitrators. Each party shall, by written notice to the United Nations Secretary General, appoint two members within 45 days from the effective date of this agreement, neither of whom shall be nationals or permanent residents of the party making the appointment. In the event that a party fails to name one or both of its

party-appointed arbitrators within the specified time, the Secretary-General of the United Nations shall make the appointment.

3. The president of the Commission shall be selected by the party-appointed arbitrators or failing their agreement within 30 days of the date of appointment of the latest party-appointed arbitrator, by the Secretary-General of the United Nations after consultation with the parties. The president shall be neither a national nor permanent resident of either party.
4. In the event of the death or resignation of a member of the Commission in the course of the proceedings, a substitute member shall be appointed or chosen pursuant to the procedure set forth in this paragraph that was applicable to the appointment or choice of the arbitrator being replaced.
5. The Commission shall be located in The Hague. At its discretion it may hold hearings and conduct investigations in the territory of either party, or at such other location as it deems expedient.
6. The Commission shall be empowered to employ such professional, administrative and clerical staff as it deems necessary to accomplish its work, including establishment of a Registry. The Commission may also retain consultants and experts to facilitate the expeditious completion of its work.
7. The Commission shall adopt its own rules of procedure based upon the 1992 Permanent Court of Arbitration Optional Rules for Arbitrating Disputes Between Two States. All decisions of the Commission shall be made by a majority of the commissioners.
8. Claims shall be submitted to the Commission by each of the parties on its own behalf and on behalf of its nationals, including both natural and juridical persons. All claims submitted to the Commission shall be filed no later than one year from the effective date of this agreement. Except for claims submitted to another mutually agreed settlement mechanism in accordance with paragraph 16 or filed in another forum prior to the effective date of this agreement, the Commission shall be the sole forum for adjudicating claims described in paragraph 1 or filed under paragraph 9 of this Article, and any such claims which could have been and were not submitted by that deadline shall be extinguished, in accordance with international law.
9. In appropriate cases, each party may file claims on behalf of persons of Ethiopian or Eritrean origin who may not be its nationals. Such claims shall be considered by the Commission on the same basis as claims submitted on behalf of that party's nationals.

10. In order to facilitate the expeditious resolution of these disputes, the Commission shall be authorized to adopt such methods of efficient case management and mass claims processing as it deems appropriate, such as expedited procedures for processing claims and checking claims on a sample basis for further verification only if circumstances warrant.
11. Upon application of either of the parties, the Commission may decide to consider specific claims, or categories of claims, on a priority basis.
12. The Commission shall commence its work not more than 15 days after it is constituted and shall endeavor to complete its work within three years of the date when the period for filing claims closes pursuant to paragraph 8.
13. In considering claims, the Commission shall apply relevant rules of international law. The Commission shall not have the power to make decisions *ex aequo et bono*.
14. Interest, costs and fees may be awarded.
15. The expenses of the Commission shall be borne equally by the parties. Each party shall pay any invoice from the Commission within 30 days of its receipt.
16. The parties may agree at any time to settle outstanding claims, individually or by categories, through direct negotiation or by reference to another mutually agreed settlement mechanism.
17. Decisions and awards of the commission shall be final and binding. The parties agree to honor all decisions and to pay any monetary awards rendered against them promptly.
18. Each party shall accord to members of the Commission and its employees the privileges and immunities that are accorded to diplomatic agents under the Vienna Convention on Diplomatic Relations.

Article 6

1. This agreement shall enter into force on the date of signature.
2. The parties authorize the Secretary General of the OAU to register this agreement with the Secretariat of the United Nations in accordance with article 102(1) of the Charter of the United Nations.

DONE at [Algiers, Algeria] on the [12th] day of December, 2000, in duplicate, in the English language.

FOR THE GOVERNMENT OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA:

[Prime Minister Meles Zenawi]

FOR THE GOVERNMENT OF THE STATE OF ERITREA:

[President Issaias Afewerki]

ANNEX II



Security Council

Distr.: General
27 December 2004

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Progress report of the Secretary-General on Ethiopia and Eritrea

Addendum

Annex I

Eritrea-Ethiopia Boundary Commission: fifteenth report on the work of the Commission

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S/2004/973/Add.1

Enclosure I

Letter dated 6 December 2004 from the Legal Counsel to the Federal Democratic Republic of Ethiopia addressed to the President of the Eritrea-Ethiopia Boundary Commission

I write today, at the instruction of the Government of Ethiopia, to convey to the Commission information on the Government's most recent initiative for resolving the dispute between Ethiopia and Eritrea.

On 25 November, the Prime Minister of Ethiopia, His Excellency Meles Zenawi, gave a major address to the House of Peoples' Representatives (Federal Parliament) regarding the peace process and, after discussion, the House adopted the five-point peace proposal presented by the Prime Minister.

The Government of Ethiopia has asked that I inform the Commission that on the basis of paragraph (4) of the five-point peace proposal, its outstanding dues will be paid immediately. In addition, Ethiopia's liaison officers will be appointed promptly from a list of candidates now being considered. Their names and information regarding their background will be transmitted to the Commission as specified in the Commission's order of 7 July 2003.

I have also enclosed herewith the five-point peace proposal and the statement delivered by Prime Minister Zenawi to the House of Peoples' Representatives of the Federal Democratic Republic of Ethiopia on this same day, 25 November 2004 (see appendix).

(Signed) B. Donovan **Picard**
Legal Counsel to the Federal Democratic Republic of Ethiopia

Appendix

Decision on the five-point proposal for resolving the dispute between Ethiopia and Eritrea

The House of Peoples' Representatives of the FDRE having discussed in detail the five-point peace proposal submitted to it by H.E. Prime Minister Meles Zenawi;

Realizing that the desire for sustainable peace of the peoples of Ethiopia and Eritrea can only be achieved when the present no war no peace situation is replaced with a lasting and durable peace between the two countries;

Cognizant that the resolution of all disputes between neighboring countries by peaceful means only and through negotiation is the only guarantee for lasting peace and for promoting mutual interests;

Reiterating Ethiopia's conviction which remains unchanged that the decision of the Eritrea-Ethiopia Boundary Commission was flawed, but nonetheless realizing that nothing is more important than the achievement of lasting peace between the two countries; and

Convinced that the establishment of a lasting peace between the two countries will make significant contribution for making the Horn of Africa a peaceful region; Has hereby adopted the following five-point peace proposal.

1. Resolve the dispute between Ethiopia and Eritrea only and only through peaceful means.
2. Resolve the root causes of the conflict through dialogue with the view to normalizing relations between the two countries.
3. Ethiopia accepts, in principle, the Ethiopia-Eritrea Boundary Commission decision.
4. Ethiopia agrees to pay its dues to the Ethiopia-Eritrea Boundary Commission and to appoint field liaison officers.
5. Start dialogue immediately with the view to implementing the Ethiopia-Eritrea Boundary Commission's decision in a manner consistent with the promotion of sustainable peace and brotherly ties between the two peoples.

S/2004/973/Add.1

Enclosure II

Letter dated 10 December 2004 from the Legal Adviser to the Office of the President of the State of Eritrea addressed to the President of the Eritrea-Ethiopia Boundary Commission

The Boundary Commission's Registry recently informed Eritrea that a copy of Prime Minister Meles Zenawi's new "Peace Proposal" had been forwarded to it by Ethiopia. The only peace plan that the Commission is mandated to implement, however, is the Algiers Agreement of 12 December 2000, which created the Commission.

Prime Minister Meles has repeatedly informed the Ethiopian people and the international community that his "five-point peace proposal" is an alternative to the 13 April 2002 Eritrea-Ethiopia Boundary Commission Award, not an agreement to honour it as written. In a 3 December 2004 Reuters interview published under the headline *Ethiopia agrees to demarcate **most** of border* (emphasis added), the Prime Minister reiterated his demand to alter all portions of the Award to which Ethiopia cannot agree:

"On the so-called 85 per cent of the boundary (with Eritrea), we have said all along that we don't have any objection and it can be demarcated straight away", Meles told resident diplomats in Addis Ababa in a briefing session attended by reporters.

"Meles said disagreement over the remaining 15 per cent of the border could be solved through dialogue with Eritrea, which went to war with Ethiopia between 1998-2000".¹

In a 7 December 2004 interview with the *Ethiopian Herald*, reprinted by Walta Information Centre, the Prime Minister once more condemned the 13 April 2002 Award and demanded its alteration:

“We have reiterated that the decision passed by the Commission does not bring about peace. Any attempt to implement the decision unaltered could undermine the peace between the two countries, which is precarious and not yet dependable. Accordingly, we suggested a proposal for dialogue and negotiation to reach a solution ... [T]he international community realized that the implementation of the decision of the Boundary Commission might undermine the peace between the two countries ...”²

Although the Boundary Commission may be heartened to learn that Ethiopia is considering paying its share of the tribunal’s expenses, Ethiopia’s proposal says nothing about considerably more important outstanding obligations. Ethiopia has not complied with the Commission’s 17 July 2002 Order to remove illegal settlements from Eritrean territory, an order that was explicitly endorsed by the Security Council on 14 August 2002 and 6 September 2002. Nor has it complied with Security Council resolutions calling on the parties to refrain from moving populations into affected areas.

¹ *Ethiopia agrees to demarcate most of border*, Reuters (3 December 2004).

² *Meles says the new peace initiative will bring about lasting and durable peace between Ethiopia and*

Eritrea, *Ethiopian Herald*, reprinted by Walta Information Centre (7 December 2004). 4

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It is incumbent upon Ethiopia immediately to express unconditional respect for the work of the Boundary Commission, including full acceptance of the 13 April 2002 Award. Ethiopia must withdraw its troops from Eritrean territory and cooperate fully with expeditious demarcation of the boundary.

(Signed) Lea **Brilmayer**
Legal Adviser to the Office of the President
State of Eritrea