

THE LEGALITY OF ETHIOPIAN INTERVENTION IN SOMALIA FOR SELF DEFENSE IN 2006, IN THE  
PERSPECTIVE OF INTERNATIONAL LAW

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## Preface

In my course of writing this research, Tigist Alemu and Yikram Mohammed, the kids in the compound where I live, often peer through my study window. Though intelligent, these kids exhibited an extraordinary curiosity in the words flickering across my memorandum. And in the same compound as I sat proofreading, some plucky doves displayed an equally remarkable interest in the fluttering pages I was correcting. I have no idea what they have trying to tell me. This avian enthusiasm, I am bound to say, far exceed that evinced by pragmatic people: that these children tell me that the present and the coming generation should keep in mind that Ethiopia is a peace loving country in its history and this will ever continues. And the doves also may assure this very fact of the existence of peace.

Of course yes. Because the concept of law lies at the heart of social and political life of the people. Law of Jurisprudence illuminates it and its relation to the universal questions of justice, rights and morality. It analyses the nature and purpose of our legal system, and its practice by courts, lawyers and judges.

Legal theory is, of course, a demanding discipline. Several dangers lie in wait for any one injudicious to endeavor to condense or elucidate its primary concerns. In embarking upon this imprudent course, I have been alert to these perils. But I have been fortified by the guidance and encouragement I have received from friends and colleagues who have been charitable enough to suppress their about my attempts to identify and unravel some of the mysteries I have selected for the analysis. This has sustained me during periods that I feared that the task I had undertaken was hopelessly intractable one.

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***Lemma Oluma***  
***Addis Ababa***  
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Bibliography

## **Abstract**

*Since 1991, Somalia has become the epitome par excellence of a collapsed state. One is tempted to seek explanation and explore the role of state authorities entrusted with the responsibility to law and order in such countries. The quasi-abandonment by the international community, the ongoing disorder in Somalia, reluctance of the major players in the international arena, simply meant simply meant the total inability of its Transitional Federal government to survive the consequence of the withdrawal by Ethiopia. This is compounded by the chronic deficiency of a state structure in the country and the virtual international Islamists connection to Somalia's internal conflict, which led otherwise willing African countries hesitate to intervene. This paper uses the case of Somalia to demonstrate that there is still need for the United Nations, the world's major player in mediating peace and order, as well as actors with in Africa to define clear and equitable standards designed to operationalise this new paradigm. The objective of the research is, examine the efforts, by international and local actors, to restore law and order in Somalia. For this perspective, this research has assessed the legality or otherwise, of Ethiopia intervention in Somalia.*

# INTRODUCTION

Any community is said to function more effectively towards the general welfare of its members if it follows a certain set of rules; the international community of states being no exception.

Sir Humphrey Waldock of the International Law Commission<sup>1</sup> defined international law as “the body of rules and principles of action which are binding upon civilized states in their relations with one another”. Identification of these rules is at the core of their proper enforcement. In other words, knowing what the rules are, how they are formed, and when they are breached, lies at the heart of applying sanctions for possible misbehavior. Understanding the sources of international law, set of rules of the international community, is thus vital for an efficient functioning of the world society.

The law of self-defense is the subject of the most fundamental disagreement among states and among scholars on issues such as scope of right of self defense, especially as to whether anticipatory or preemptive self-defense, protection of nationals, and the like have been discussed since the establishment of United Nations.

Differences over the scope of self-defense prevented any substantive provision of this being included in General Assembly resolutions designed to codify the law on the use of force. States negotiating the 1970

*“Declaration<sup>2</sup> on Friendly Relations and co-operations states that: “Every state has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another state or acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to the present paragraph involves the threat or use of force....”*

and the 1974 *Definition of Aggression<sup>3</sup>* did not include any provision on self-defense. They could not go beyond the statement that ‘states have the inherent right of individual or collective Self-defense if an armed attack occurs’, as set forth in the Charter of the United Nations.

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<sup>1</sup> Sir Humphrey Waldock, “International Law.” In: Bernhardt, Rudolf et al.(eds.) Encyclopedia of Public International Law, vol. II. Heidelberg: Max Planck Institute for Comparative Public International Law, 1995 pp. 1159-1178.

<sup>2</sup> United Nations General Assembly Resolution 2625 (XXV).

<sup>3</sup> United Nations General Assembly on definition of Aggression Resolution 3314 (XXIX), 1974.

States using force against another state, almost invariably, invoke self-defense, in the vast majority of such claims. This has not given rise to any doctrinal issues to any divisions between states as to the applicable law. Whether the use of force is a minor incident either involving an attack on a state's territory, sea, or air forces outside its territorial limits or an ongoing conflict or not shall be considered.

Typically, one or both states involved assert that it has been the victim of an armed attack and claims the right of self defense. The controversy centers on the questions of fact as to whether there has been an armed attack and, if so, which state was a victim. In theory, it should always be possible to determine—whether there was an armed attack and who is acting in self-defense. But in practice, the situation is more complex.

For instance, the USA in the *Nicaragua case*, argued that the international court of justice should not pronounce on claims of self-defense because Article 51 provides a role in such matters only for the Security Council. Although Article 51 envisages a crucial role for the Security Council, it does not necessarily require the Council to pronounce on the legality of any claim to self-defense.

The right to use force in self-defense only exists as a measure of *last resort* in emergency situations, situations in which the use of force to protect and preserve the lives of the citizens of the claimant state is the only means of guaranteeing their protection. Consequently, a claimant state would need to show that there were no peaceful ways of resolving the dispute and that any delay in the use of force would make it impossible to guarantee the defense of the state. The essence of the limitation is that force can only be used in self-defense as a last resort

When it is clear that there is no other way of guaranteeing the protection of the state's fundamental Security. The implication from Webster's formula in *the Caroline case* is that if there is any opportunity for "a

# CHAPTER ONE

## 1. FRAMEWORK OF THE RESEARCH

Under this chapter, the overall nature, background and objectives of the research have been outlined. The purpose, in doing this, is to make sure that the subsequent chapters of the thesis are addressed with a clear direction and focus as to the main theme of the research endeavor. In addition, a brief review of the existing literature is included within the scope of the same chapter. This is intended to show the gap in the existing literature and propose how this research can make a significant contribution towards filling that gap in our current knowledge of these aspects of international law.

Any attempt to understand the current predicament of Somalia and its conflict necessitates, as is the case with virtually all African countries, a rebound into its political past, especially the post-colonial era. In this regard Bayne believes that:

*...at the end of the nineteenth century, the colonial powers divided the Somali people into five distinct units: Cote Française des Somalis (now the Republic of Djibouti)...the Ogaden district of Ethiopia...Somalia Italia: British Somaliland and Northern Frontier District of Kenya.<sup>4</sup>*

### 1.1. Background of the Study

Over 17 years, since 1991, Somalia has been without a strong central government. After the overthrow of the, not so kind, dictatorial government, there came a more cruel and unruly warlord administrations in different parts of the country. Somalis were forced to seek refuge within their tribes or immigrate to neighboring states. Moreover, neighboring states took an adverse interest in the Somali affairs. Consequently, Somali people turned to their faith for answers and become more religious than ever before.

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<sup>4</sup> Bayne, S 2001. The European Union's Political and Development response to Somalia. ECDPM Discussion paper 25. Maastricht. Francis, D J et-al 2005. Dangers of co-operative peacekeeping in Africa, Aldershot/Burlington: Ashgate. International Crisis Group (ICG) 2006. Can Somali crisis be contained? African Report, 116, Nairobi/Brussels: ICG.

Prior to the civil war, as nomads, Somalis migrated and lived anywhere in the country regardless of what clan lays a claim to any region or not. Somalis of different clans co-mingled and intermarried harmoniously. Children whose parents originated from one part of the country were born and grew up in the other parts of the country. And as the result of the false attempt of October 21<sup>st</sup> revolution to abolish tribalism among other things, majority of the children born after 1969 didn't know of their lineage let alone where their clans originated or claimed home. If one couldn't his/her ancestral lineage, he/she was presumed to be from the rival clan. At the height of the civil war in early 1991, a commonly practiced militia code was the slaughter of one whose ancestral lineage couldn't be verified lest that person could be from a rival clan. Because the city-born -and- bred kids couldn't recite the genealogy lines, some of them were killed mercilessly.<sup>5</sup>

Somalia's descent chaotic lawlessness did not occur over night and could have long been predicted.<sup>6</sup> Because of its geographical location and resources, Somalia has always been a strategic magnet to neighboring and other world powers. Due to the absence of central strong government authority, the civil war provided opportunities to all actors, foreign or domestic, to carry business, legal or not.

Barre's advent to power brought dramatic changes to Somalia, most of which accelerated the country's slide towards failure, namely the decision to turn Somalia into a Socialist state (1970), the integration of Somalia into the Arab League (1974), and the instauration of a single- party system (1976).<sup>7</sup>

Both Ethiopia and Somalia are neighboring countries located in the eastern part of Africa sharing Border of about 1, 600 Kilometers. The

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<sup>5</sup> Union of the Islamic Court: challenges to reconstruct a viable Somali state see at [http:// www.cato.org/pubs /pas 208 htm](http://www.cato.org/pubs/pas/208.htm) -accessed on 26 January 2008.

<sup>6</sup> Aytteh.G: The Somali crisis: time for an African solution,cato policy Analysis,1994.Available at [www.cato.org/pubs/pas/pa-205.htm](http://www.cato.org/pubs/pas/pa-205.htm)accessed 8 September 2008.

<sup>7</sup> Ibid.P.2

relationship of both countries has always been mixed with suspicion and fear. As the result, the two antagonists fought a series of sharp border struggles over the area in the early 1960s and had subsequently engaged in a competitive arms race fueled by unresolved dispute.

Throughout the early 1970s, the indigenous western Somali liberation front conducted a low level insurgency against Ethiopian rule; the Ogaden question had been at the root of longstanding confrontation between Ethiopia and the Somali Democratic Republic.

Between 1977 and 1978, Somalia fought with its neighbor Ethiopia in the Ogden war. The goal of Somali nation was to liberate and unite the Ogaden into the Somali lands. However, Somalis were being expelled from Ogden province by Ethiopian forces, and Somalia, already ever began preparing for war since the failure of diplomacy, supported by the insurgent groups, the Ogden peoples liberation front (ONLF).

In 1978, a coup attempt against Barre failed. The dissidents then formed guerilla movements, the Somalia Salvation Front (SSF), which, in 1984, became the Somalia Salvation Democratic Front (SSDF) operating from the north east. In 1982, a second guerilla movement, the Somali National Movement (SNM), was created in the north- west. Two years later, a third guerilla movement, the Somali Patriotic Front (SPF), merged in the south. The common features of these guerilla movements were their reliance on clans. Each one has its power base either one major clan or coalition of several minor clans. Though these clan base guerillas were instrumental in the dismantlement of the Barre regime in early 1991, they subsequently became victims of their own factionalism, leaving the country to slide towards generalized disorder.

Since the ousting of General Mohammed Siad Barre in 1991; Somalia has embarked on the 'road to hell'. Indeed, in Somalia driving away the dictator has not necessarily meant finding the way to a democratic

dispensation or a semblance of it. Instead, in the current debate Somalia has become the epitome of a collapsed state.

Clans had been central to the political and social lives of Somali, long before they encountered European domination. By imposing a single party dictatorship, Barre reinforced people's reliance on their perspective clans (his Marehan clan).<sup>8</sup> This was legitimized even further as Barre himself displayed overt favoritism towards his own clan while excluding the others from key positions in government. But Somali apparently understand the limitations of their respective clans to develop into viable political entities.

Since 1991, for the last 17 years, Somalia has suffered civil war between rival clans and has had no functioning central government. Despite for fourteen initiatives by the international community to establish government of nations, the Transitional Federal Government (TFG), was formed in 2004, in Kenya. However, due to weakness in power, it was unable to assert its authority across the country.

Somalia's Union of Islamic Courts (UIC) has come to be viewed as the embodiment of Al -Qaeda in sub-Saharan Africa, in June 2006. The Union of Islamic Courts (UIC) dramatically expanded its territorial control of Somalia, including the capital of Mogadishu, with the blessing of the Somali business community. Many observers also worry that Somalia, whether plagued by anarchy, or ruled by an Islamic regime, could become a safe- haven for terrorist groups, much like that of Afghanistan. Efforts by the United Nations (UN), the Intergovernmental Authority on Development (IGAD), the African union (AU), and the Arab league [AL] to mediate the conflict have thus far failed to initiate productive negotiation between the fledging Transitional Federal Government and the increasingly powerful Union of Islamic Courts(UIC).

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<sup>8</sup> Op.Cit, Bayne, at 1 above, P.10.

In this paper, the researcher has deserved to engage to the debate on the essential significances of the concept of self defense and its application when a state is threatened and the legal responsibility to act preemptively to avert such threat under the principles of international law perspectives and some related issues.

## **1.2 Statement of the Problem**

External Military intervention for the purpose of self defense has been a controversial both when it has happened as in Somalia and Iraq, and when it has failed to happen as in Rwanda. For some, the only real issue is ensuring that coercive interventions are effective; for question about legality, process and possible misuse of precedent loom much larger.

- The first issue to be initially examined is whether or not Ethiopia's intervention in Somalia was legitimate?
- The second closely related specific issue is whether Ethiopia's claim to intervene for self defense as a necessary action for its own national security, was legitimate under international law.
- How did the international community respond to similar situation in other places such as Iraq and others?

## **1.3 Research Questions**

- What is the basis for Ethiopia's serious concerns about the conflict in Somalia?
- Was it legally correct for Ethiopia to intervene acting in its sole national capacity, while others IGAD & AU members were reluctant or disinterested of the same during the initial stage of Ethiopia's intervention?

## **1.4 Objective of the Study**

There are two kinds of objectives. These are General and specific objectives.

### **1.4.1 General Objectives**

In this research, the researcher endeavors to investigate the immediate cause of Ethiopia's intervention in Somalia and the results achieved in international law perspective.

### **1.4.2 Specific Objectives**

- To examine the legal and conceptual basis for intervention in anticipatory self -defense under international law.
- To examine that Ethiopia has a legitimate security interests concerning development inside Somalia.
- To investigate whether Ethiopia concerns about the rise of the Islamic courts and the support they receive from Eritrea, and their plan for terrorist attack is well grounded.

## **1.5 Significance of the Study**

- Reveals that the failure or collapse of a state will bring a political vacuum which leads to human tragedies in regional and international security.
- Give a legal frame work for the basis of intervention of a state in anticipatory self defense in the territory of other states.
- To show that intervention must take place in “a clear and present danger” and it should be taken as the lost resort.
- It contributes for the researchers some information's in which a state has a legal ground to intervene in the territory of another state for self defense especially where there is no responsible government to control such non state actors who have great relation to Al-Qaeda.

## **1.6 Methodology**

In this paper, the researcher has attempted to address whether the military intervention for self defense is legal or not under international law. In order to do so, a state has to be authorized by existing Security Council Resolutions, if any, and the defense of United Nation's authority is the key element in such action. This research note sets out the international framework concerning the use of force. For the researcher has used the applicable methodologies as exhaustive as possible.

*First*, for the past century the international community has developed legal principles concerning the use of force in international relations, in order to prohibit recourse to violence as an instrument of foreign policy. The most significant codifications of these principles are the 1945 Charter of United Nations. So, the researcher has attempted to assess exhaustively the articles of the Charter in relation to the particular issue at hand and examined them relating to the most relevant cases to show the experiences of states that had resorted to military intervention in the name of self defense.

*Second*, Mainly focusing on Ethiopia's recent intervention in Somalia, the researcher has attempted to collect and assess information relevant to the issue. To do so, the recent solutions of the Security Council on Somalia were examined; various international and domestic concerned officials' press conferences were considered, and to that end, the theme of the debate of the government and the opposition parties in the Ethiopian parliament and the final decision made together with the Resolution of the parliament has been verified and the minute of the debate has been hereby annexed.

*Thirdly*, information from various angles have been collected and analyzed, like Books, journals, Magazines, internets, and News papers were gathered and processed for the more reliability of the research.

Finally, the positions of international community including AU and IGAD up on the issue have been regarded.

### **1.7 Scope the of Study**

Even if the topic on the legality in anticipatory self defense is a world-wide phenomenon, the paper focuses upon the Ethiopia's recent intervention in Somalia in the name of averting the threat of Union of Islamic Courts in Somalia in December 2006.

### **1.8 Limitations**

There were a number of constraints causing obstacles on the researcher's attempt in conducting the thesis.

*In the first place*, the novelty of the topic by itself had a number of constraints in getting references. That means the absence of earlier researched papers, as the result the no way to go for references.

*Secondly*, the uneasiness and inaccessibility of interview to concerned officials in the time planned due the sensitivities of the issue and the tightness of the schedule up on them by itself.

*Finally*, lack of experience of the researcher up on such new topic had also the limitation to collect data and interpret them with in the intended time as it was planned due inaccessibility to the current information and the day to day situations and conditions in Somalia.

## 1.9 LITERATURE REVIEW

### 1.9.1 Nature of Self Defense

By nature, the decision to resort to force in self defense is a subjective one. It is for the individual state facing an emergency situation to decide that it must resort to force to defend itself. Article 51 refers to the right of self defense as an interim privilege. The Charter recognizes the right of an individual state to use force in self defense:

*--until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by members in the exercise of this right of self defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.*

One of the major defects of such international relation was that it failed to provide machinery to which a state party to a dispute could approach for peaceful solutions. As the result of this failure, the states frequently resort to war even to decide minor disputes. The Hague convention on the pacific settlement of disputes was created in 1899. But this convention was failed to prevent the outbreak of First World War.<sup>9</sup> As Timothy L.H. McCormack cited Vattel's idea stating that:

*"State must exercise care not to act upon vague and doubtful suspicions lest it should run the risk of become itself the aggressor"* <sup>1011</sup>

The continued dominance of the view that resort to war as a sovereign right and the dependence of legitimacy of the war on the formal admissions of the interested states law in answering the question as to

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<sup>9</sup> Bowett, *Self Defense in International Law*, 1958, P 385

<sup>10</sup> Timothy McCormack, *Self Defense in International Law*, ST.Martin's Press, New York, the Magnes Press, the Hebrew University, Jerusalem 1998.

the basis and character of self defense Hence, the natural law concept was neither satisfactory nor adequate in such circumstances.

The empirical method was submitted to be a more sound approach. It involved an examination of the rights which can be protected by exercising self defense. Therefore, self defense is distinguished from reprisal in which the former is preventive character in orders enforce legal rights. The condition precedent to the lawful exercise of the was the breach of those duties correlated to those rights, so the purpose of the right is the protection of certain essential rights like protection of territorial integrity and so on.

A further development of customary law brought about the positivist doctrine which rejected the concept "*bellum Justus*", the positivists propounded the view that self defense as a legal right should necessarily exclude self defense against self defense.

**D. Bowett summed up this view as follow:**

*(t)he states freedom to go to war was not dependent on any prior breach of duty by the victim state. Once undertaken, the aim of capable subjugation of the victim was apparently permissible, and the reaction of the eviction was legally indistinguishable from the attack of the "aggressor" once de jure existed, the two states engaged in action in like that kind In war, the duty of non intervention disappeared substantive right upon existent and the" right of self defense" becomes meaningless".<sup>12</sup>*

The English Jurist Hall's<sup>13</sup> writing at the end of the nineteenth century recognized that since international law at the time did not possess judicial or administrative authority, individual states which considered themselves aggrieved and which had exhausted all peaceful means of satisfying their complaints were entitled to obtain redress by the unilateral use of force. It was recognized in international law that was as permitted one made of implementing legal rules and principles.

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<sup>12</sup> Op.Cit.at 6,above

<sup>13</sup> W.E.Hall, A Treatise on International Law,4<sup>th</sup> ed, London Clarendon Press,1995 p.420,

Despite the freedom of states to resort to war through out this period, an important incident, known as the *Caroline case*, occurred in 1837. In this case, the US and British Governments, the disputes between the parties was settled on the basis of legal criteria, limiting the right of states to use unilateral force, in international relations.

### **1.9.2. Self Defense in Customary International Law**

The international Customary Law can more easily be a foundation of universal laws than international treaties. The two requirements that are necessary to be satisfied here are first, that states in fact do follow the custom (state practice), and second, that they accept it to be necessary a law (*Opinio juris sive necessitatis*)<sup>14</sup>. In other words, international custom has to be evidenced by general state practice and at the same time regarded as binding law in the normative sense. The two elements are often referred to as the objective and subjective (or mental and ideational) elements of international custom respectively.

State practice is a relatively uncontroversial condition for a custom to be interpreted as a law. State practice includes activity of the organs and officials of states that relate the possible rule of international law. This means also state practice at the meetings international organizations (such as the United Nations General Assembly) by voting or otherwise expressing their view on matters under consideration. There are also instances where only what states say can be the evidence of their view on proper conduct in particular situation (such as in the case of *Nicaragua v United States: ICJ Reports*).<sup>15</sup> The practice has to be consistent and regular, but does not have to be perfectly uniform by all states.

The second element (*Opinio juris*) is crucial from a normative theoretical position. One could understand its importance by focusing on the

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<sup>14</sup> Barker, J. Craig. 2000. *International Law and International Relations: International Relations for 21<sup>st</sup> century*. London, Continuum, p.55.

<sup>15</sup> Wikipedia, "European Union Law", "International Court of Justice", *Sources of International Law*", 2000, Accessed on 12 October 2008.

prisoner's dilemma again. Its stable outcome is a welfare- inferior behavior \_ that is, defection on the sides of both players. In case both players know that cooperation strategy is the norm ("law"), and the defection on cooperation is sanctioned in at least some way, then both actors can be better off cooperating with the certainty that also the other players will cooperate. This all allows international law to be not just what states in fact do, and what they would do any how (which would then be no rule of law at all), but also what states want to be done. The enforcement of such rules in an anarchical environment is a complicated matter. Here, the researcher is not in need to focus on this issue deeply. It is sufficient to stress that the material element of a custom (state practice or enforcement), being one of the two constitutive parts of this source of law, brings the normative concerns back to reality by proving the viability of certain ideals of behavior.

The most important cases connected to customary international law are the asylum case (*Columbia v Peru*) and the North Sea continental shelf case (*Germany v Denmark and Netherlands*). In the asylum case, a Peruvian rebel was not extradited from Columbia on the ground that Peru repudiated on steps that would constitute such a custom. In the case of the dispute over the North Sea continental shelf, a custom of using an equidistance principle in dividing the seabed among neighboring countries was not found to be universal practice. Another example of traditionally customary law is that of diplomatic privileges (1961 Vienna Convention on Diplomatic Relations),<sup>16</sup> however, have been codified in multilateral treaties, especially in the period after Second World War. This could be interpreted as decline reliance on customs as rules of international community.

The other requirement that gives rise to this customary right was enunciated in the widely cited *Caroline incident*. This means that in the early nineteenth century Canada, in which *Caroline*, at the time, still

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<sup>16</sup> David Harris, *Cases and Materials on International Law*, 6<sup>th</sup> Ed. London: Sweet & Maxwell, 2004 p 353.

under British rules, anti British attacks were being conducted throughout the country. In 1837, a small group of British soldiers entered the United States from Canada. Their aim was to destroy the American boat *Caroline*, which had carried supplies to Canadian insurgents in the north.

The *Caroline* was set alight and left to drift down river. At defense, arguing that the *Caroline* would continue to supply the Canadian rebels otherwise. Accepting the explanation, the then America Secretary of State, Daniel Webster, set out basic elements of the right, stating that there should be a *necessity of self defense*, where it must be, *instant, overwhelming, leaving no choice of means and no moment for deliberation*".<sup>17</sup>

The customary right to self defense, either in anticipation or otherwise, would therefore, be valid when the requirements of *necessity and proportionality* are fulfilled. Because, necessity in Webster's formulation denotes something *instant, imminent and immediate*. These two elements have been joined by a third, that of *immediate*. The process of setting the *Caroline case* was therefore, important and relevant for the topic at hand.

According to Webster, the requirements for legitimate use of force are:

*"that there be an imminent threat or necessity of self -defense, which was so directed and immediate as to leave no choice of means and no moment of deliberation" that the force used must be proportional to stop that the threat posed the specific" necessity" which had caused for the use of force in self defense*".<sup>18</sup>

Some writers also agree to the idea proposed by Daniel Webster's stressing upon necessity in self defense. One of them was Jennings explaining his stating his idea as in the following:

*"...the Caroline was the first important case of intervention in self defense where the intervention was suffered by a strong state. Consequently, the intervening state was not allowed to plead self*

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<sup>17</sup> Jennings, Oppenheim International Law, volume 1,9<sup>th</sup> Ed, New York, Longman, 1996

<sup>18</sup> Op.cit UK (1840-41), 1131, 1138, repented in Timothy above at 5, 1998 p.246

*defense as a mere shibboleth. Some attempt was made to define the limits of self defense to examine its legal content".*<sup>19</sup>

He further stated that, the use of force should not involve "anything unreasonable or excessive, since the act justified by the necessity of self defense must be limited by that necessity and kept clearly within it."<sup>20</sup>

In general, Jennings seems to be on the argument that it is for the state claiming self defense 'to show a necessity of self defense' as indicated above, based on the requirements of *necessity* and *proportionality* in relation to self defense in international law were established. The requirements of *necessity and imminence* for a state to claim self defense shall briefly be considered under chapter two of this paper.

### **1.9.3 League of Nations and the Legality of Self Defense**

The League of Nations was created by the document of the Versailles Treaty. It can be said that the covenant radically changed the whole foundation of the whole world organization as it was the first deliberate attempt to set up permanent machinery for settling disputes between states and to take action against a state declared to be an aggressor.

For the first time, it provided an institutional framework for resolution of international conflicts by making its members states duty bound to submit to it any dispute which was likely to lead to 'war' or 'resort to use force'. The League, to certain extent guaranteed the political index, prudence and territorial integrity of member's states and proclaimed that any war or threat of war was its concern and the covenant of the League authorized it to take appropriate actions to prevent them. But due to the organization's defects, the League was not very successful in preventing wars, and finally the out break of second world war sounded the death kneel of the League.

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<sup>19</sup> R.Y. Jennings, "the Caroline and MC lead cases", American Journal of international law, 1938, pp82-99

<sup>20</sup> Ibid, 1996: P.420

One of the most significant weaknesses in the efficacy of the covenant provisions was the use of the phrase "resort to war." It became the formula of subjective interpretation by individual states and was used by them to avoid obligations under the covenant.

#### **1.9.4 The Pact of Paris (Kellogg -Briand Pact)**

An important and radical change in international law, in the period between two world wars, was the adoption of the general treaty for the renunciation of war, commonly referred to as the "pact of Paris". Prior to the conclusion of this treaty and under the provision of the covenant of the League of Nations, war was not unlawful.

The diplomatic origins of the General treaty were due to the initiatives of France and USA. The Pan- American conference in February 1928 passed a resolution which prohibited all wars of aggression and declared that pacific means should be employed in all cases to settle international disputes. But, in the mean time, there was a proposal from Mr. Briand of France to Mr. Kellogg of the USA for the conclusion of a pact between the two countries that "war as instrument of national policy" be renounced. Kellogg, his reply, suggested that such a pact should be multilateral. Briand and Kellogg, after much mediation, sent a circular to the governments of Germany, Great Britain, Italy and Japan, a draft of multilateral treaty. This culminated in the acceptance of the pact by 65 states. The negotiations were over and finally the treaty was signed in Paris on 27 August 1928.

Therefore, the most important achievement the League of Nations was *Kellogg Briand pact*, which finally abolished war as a legal institution which led to the conclusion of the General Treaty for Renunciation of the war. And the parties to this treaty undertook to renounce war or threat of war as an instrument of national policy and accepted the duty of submitting all their disputes for pacific settlement.

It was agreed in the preamble by and between the parties to the treaty that "all changes in their relations with one another should be sought only by pacific means and be the result of a peaceful and orderly process, and that any signatory power which shall here after seek to promote its national interests should be denied the benefits furnished by this treaty". The treaty was, then, stated in its two provisions.

**Article 1.**

*The high contracting parties solemnly declare; in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another.*

**Article 2.**

*The high contracting parties agree that the settlement or solution of all disputes or conflicts of whatever nature and whatever origin may be, which may arise among them, shall never be sought except by pacific means.*

Although the problems posed and criticisms raised in the interpretation of the pact are of academic interest, the purpose of the researcher in this study is to discuss problems in so far as they are relevant to the prohibition of war and the development of the right of self defense. The general renunciation of war was the pact's main contribution to contemporary international law, as it marked the beginning of a new period of efforts towards outlawing aggressions.<sup>21</sup>

The obligations of the pact are still binding even under the United Nations.<sup>22</sup> These and other series of historical events ultimately led to the formal establishment of the United Nations, which traceably helped to joint declaration of establishing a permanent system of general security against any future aggression, that was expressed by President Roosevelt and Prime Minister Winston Churchill on August 14, 1941 in the so called Atlantic Charter. <sup>23</sup>

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<sup>21</sup> P. Jessup, "A Modern Law of Nations", 1948, P.165- 166.

<sup>22</sup> . ibid. 165

<sup>23</sup> Timothy LH.MC McCormack, self defense in international law, Hebrew university 1996, p.115

In this Charter, the parties declared their belief that all Nations of the world, in the realistic as well as spiritual reasons, must come to the abandonment of the use of force since no future can be maintained if land, sea or air armaments is continue to be employed by nations of the frontiers. They believe pending the establishment of wider and permanent of general security, then, the disarmament of such actions is essential. So, the United Nations, as a world organization, was constituted for the purpose of solving the problem of war.

### **1.9.5 The Effect of Article 51 on Customary Law**

The UN Charter is the Primary Instrument for guiding the use of force in international relations. It provides a codified version of the international community's condemnation of recourse to war and an instrument of national policy, sentiments and the implementation of the Kellogg Briand pact.<sup>24</sup>

The present day prohibition on the use of force arises in UN Article 2 (4) of the Charter, that states as:

*All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations Charter.*

The purposes of the UN are enshrined in Article 1(1) of the Charter, the primary purposes being to: maintain international peace and security being to Maintain international peace and security and to that end:

*to take effective collective measure for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other reaches of the peace. These provisions apply equally to both members and non members of the UN, and prohibit all recourse to force, whether*

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<sup>24</sup> Ibid. 116

*unilateral acts of aggression or multilateral efforts to protect human rights or to conduct humanitarian intervention.*<sup>25</sup>

Notwithstanding these provisions, however, there are two exceptions to the general rule against the use of force. The first of these relates to acts authorized by the UN Security Council, as pursuant to Article 42 of the Charter, which permits the Council (and by extension UN members) to take any such actions to maintain and restore international peace and security, where non-forcible measures, (like negotiation, arbitration...etc), would or have proven to be inadequate. Absent any specific authorization, however, the use of force would be unlawful, and it is not for individual states to determine when threats to the peace have occurred. The Security Council alone has legal authority to authorize forcible military actions.<sup>26</sup> The second exception to the general rule is the use of force in self defense.

Article 51 of the Charter provides for this exception, stating in part as that:

*Nothing in the present charter shall impair the inherent right of individual or collective self defence if an armed attack occurs against a member of the United Nations until the Security Council has taken measures necessary to maintain international peace and security.*

It is commonly agreed that the words, *armed attack*, in Article 51 strictly a limit to the extent of self defense under the Charter, and indicates that the right can not be justified for pre-emptive or anticipatory military strikes. Yoram Dinstein, for example has stated that “Article 51 permits self defense solely when an armed attack occurs”.<sup>27</sup> This proposition was similarly supported by the International Court of Justice (ICJ) in the 1986, in *Nicaragua Vs United States of America* case, where the court stated that the exercise of this right is subject to the state concerned

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<sup>25</sup> Yoram Dinstein, *war Agression and Self Defense*, 3<sup>rd</sup> United Kingdom, Cambridge Press 2001.P. 67

<sup>26</sup> *ibid*, 2001, p.85

<sup>27</sup> *ibid*. 165

having been the victim of an armed attack.<sup>28</sup> The use of force outside such an instance would therefore be unlawful.

There was a debate, as to whether the UN Charter extinguishes the Customary right of self defense or simply preserves it. A Number of commentators for example, argued that the UN Charter supplants the customary law self-defense. Article 51 evidences that the Charter intended to recognize and continue the customary right that existed prior to the establishment of the United Nations.<sup>29</sup> Article 51 itself professes that “nothing in present Charter shall impair the inherent right...” the implication being that the customary rules continue “to exist unimpaired, after ratification”.<sup>30</sup> The researcher supports this assertion that it seems to be the correct one, for it was acknowledged by the ICJ in *the Nicaragua case*, where the court stated... *inter- alia* as:

“...the Charter itself testifies to the existence of the right of collective self defense in Customary International Law”,<sup>31</sup> and that “the exception to the prohibition of force constricted by the right of individual or collective self defense is already included under Customary International Law.<sup>32</sup> While the court remained silent on the issue of pre-emptive or anticipatory self defense, its comments in the same document are still evidence that Webster’s formulation of the customary law rules (which permits anticipatory self defense), are still seem to be valid defenses, and may therefore, be raised under the *Caroline elements*, despite being precluded by Article 51.

States practice since the inception of the UN also indicates, as suggested in *Oppenheim’s international law*, that the customary international laws

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<sup>28</sup> International Court of Justice, 1986 Justice, 1986, Military and paramilitary Activities in, and Against Nicaragua. KJ Reports P.103.

<sup>29</sup> Arend, international law and the preemptive use of military force, the Washington Quarterly, 26 (2),2003 pp.89-103

<sup>30</sup> Glenn on, M. The fog of law: Self Defense, inherence and incoherence in Article 51 of the United Nations charter; Harvard journal law

and public policy 25(2) pp.539-558

<sup>31</sup> . ICJ Reports, 1986, p.103

<sup>32</sup> Ibid

are still valid, and continue to exist” alongside the law established by the Charter”.<sup>33</sup> The issue of self defense has arisen numerous times in the Security Council, and in three particular briefed instances herein under, there are some discussions on the right of anticipatory self defense based on the *Caroline* elements.

#### **1.9.5.1 The Cuban Missile Crisis**

During the 1962 Cuban missile crisis, the US instituted what it called a “defensive quarantine” around Cuba, done in response to the positioning of offensive Soviet Missiles on the island. The US defended its actions on the basis of self defense. Because the US had not actually suffered an armed attack, but feared the Soviet Missiles could be used against them, the issue of pre-emptive self defense arose. While the validity of the customary rules was not specifically addressed at the subsequent Security Council discussions, the requirements of Webster’s formulation were examined in relation to the US’s actions.

This amounts to an implied acknowledgement that the customary laws have continued in relevance despite Article 51. A number of delegates for example, asked whether America’s decision to implement a defensive quarantine could be justified because of a necessity of self defense, as instant, over whelming and leaving no choice of means and no moment for deliberation.<sup>34</sup>

#### **1.9.5.2 The Six Day war**

The so-called six Day war of 1967, in which Israel invaded neighboring Arab territories, was justified by the Israelis on the basis that they were “acting in anticipation of what was believed to be an imminent attack by Arab states”.<sup>35</sup> The notion of anticipatory self defense was not looked up

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<sup>33</sup> Oppenheim, at above p-418

<sup>34</sup> Op.cit Arend, at 20 p. 94

<sup>35</sup> Ibid p.95

on favorably in this case, however, the debate over Israel's actions were hardly objective, and "support for Israel tended to fall along predictable political lines".<sup>36</sup>

As result, there was no clear consensus one way or the other, as to whether pre-emptive self defense is valid in international law. However, the fact that the Israelis justified the actions by claiming participation self defense and that this became an important issue throughout the Security Council debates is evidence that states do consider it a valid legal notion.

### **1.9.5.3 The Osiraq Reactor**

Israel again claimed anticipatory self defense after it destroyed an Iraqi nuclear reactor in 1981. The Israelis based their argument on the belief that the reactor could have been used in the creation of nuclear weapons, which it believed, would be used against them. Israel was widely condemned for its actions however, and even the US voted for a resolution to the effect.<sup>37</sup> Much of the debate on this issue examined, as was the case in previous examples, the rules enunciated in the Caroline case. In particular, delegates were concerned with the *necessity* and *immediacy* elements, which will be discussed in chapter two as indicated above. Representatives from Sierra Leone and the United Kingdom (UK) for example, stated that "the plea of self defense is untenable where no armed attack has taken place or is imminent", and that in this instance, "there was no instant or overwhelming necessity for self defense".<sup>38</sup>

The Security Council found "the military attack by Israel is a clear violation of the Charter of the United Nations and the norms of international conduct."<sup>39</sup> The American representative to the UN Security Council, Ambassador Jeanne Kirkpatrick, stated that the United States,

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<sup>36</sup> Ibid p.95

<sup>37</sup> House of commons, the response to September 11, Condon House of Commons Library, 2001, Pp.85-86

<sup>38</sup> Arend, 20, .above.

<sup>39</sup> SC Res.487 (June 19, 1981); see also Dinstein at 16 P.169 and W.T. Mallison & Sally Mallison, The Israeli Aerial Attack of June 7, 1981, upon the Iraqi Nuclear Reactor: Aggression or Self defense? 75 Vand. J. TRANSNAT'L L.417 (1982).

too, understood Israel had violated the Charter, in particular because it had not exhausted peaceful alternatives before striking.<sup>40</sup> Many Representatives were impressed by the testimony of the Director General of the International Atomic Energy Agency who testified that the IAEA had found no evidence of unlawful weapons development by the Iraqi government.<sup>41</sup> Not only did the IAEA find no diversion of nuclear material, but Israel put forward no evidence that the attack was imminent, let alone underway.

Proponents of a broader right of anticipatory self defense generally base their arguments on the word “inherent” in Article 51.<sup>42</sup> The argument in that Article 51, by pledging not to “impair the inherent right of self defense,” left intact and unchanged the law of customary self defense predating the adoption of the UN Charter.

The drafters of UN specifically designed the Security Council to meet threats to the peace, preserving the right of a state to act unilaterally only in cases of armed attack. In cases lacking objective evidence of an armed attack, the Charter requires multilateral decision- making. Permitting pre-emptive self defense at the sole discretion of a state is fundamentally at odds with the Charter’s design. It is an exception that would overthrow the prohibition on the use of force in Article 2(4) and the very purposes of the UN. The International Court of Justice in the Nicaragua Case rejected the right to use force in the absence of an armed attack, as have most governments.

Some writers promoting the “inherent right” theory, argue of the right of self defense are unchangeable by Charter text and subsequent agreement or practice. These are the so- called *jus- cogens* principles. But no authority has ever identified a unilateral right of anticipatory self defense as a *jus- cogens* principle. The Charter’s expectation was that states

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<sup>40</sup> UN SCOR 36<sup>th</sup> Sess.,2288<sup>th</sup> mtg.at 14,UN Doc.S/PV.2288 and corr.1 (1981)

<sup>41</sup> Ibid at 3

<sup>42</sup> see A. Casey & David B. Rivkin, Jr., “Anticipatory” Self defense Against Terrorism is Legal (Dec.14, 2001) available at <http://www.wlf.org/upload/casey.PDF>.

would rely on the decision of the Security Council to deal with early concerns about international security. Indeed, the International Court of Justice has identified the Charter prohibition on the use of force, Article 2(4) as *jus cogens*, not self defense.<sup>43</sup>

The dramatic change in the international environment which followed the events of 11 September 2001 have also led to reordering of priorities and a redefinition of interest and national security agendas in the regions underscore the need for a careful analysis of the way in which “the war on terror” is affecting international efforts to respond in a more integrated manner to security and development problems. “The US’s global war on terror” has the potential both to reinforce the search for stability and undermine it. It does not have to compete with other stated policy objectives, such as democratization, conflict resolution, peace and security, and human rights, particularly when it comes to funding.

#### **1.9.5.4. Operation Iraq Freedom**

More recently, much of the debate over the United States’ invasion of Iraq focused on the necessity of an action, particularly given in the belief amongst many states that continued weapons inspections were a more favorable alternative to the use of force. Additionally, the ability of the US to show that Iraq posed an imminent threat to its national security was a vital feature of the debate, evidenced by continued attempts by the US and UK governments to provide reports to that effect.

A number of countries, while maintaining that military intervention in Iraq was wrong, believed that the use of force might have been justifiable if the US had proven beyond a doubt that Iraq not only possessed WMDs, but also was a clear and immediate threat to the US, its allies or interests. This would have required the US to show that the threat posed by Iraq was sufficient enough to bring it within the Caroline elements, thereby giving rise to the legitimate use of pre-emptive self defense.

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<sup>43</sup> Nicaragua at 19 above, para.190.

These examples illustrate that while the law relating to anticipatory self defense is not entirely settled; there is the basis for that right in customary international law, and that states generally accept this as the case. Based on these considerations, it is therefore, arguable that the customary right to self defense, as enunciated in the *Caroline* case and which allows for a right to anticipatory self defense, is still valid today as a complement to Article 51. This is an assertion supported by states practice since the *Caroline* incident and the founding of the United Nations Charter. Most of the time, US used to claim anticipatory self defense than other states of the world.

What option then does this leave for US policy makers, and how can they employ a pre-emptive doctrine that is legal?

In order to apply the pre-emptive self defense, the researcher argues that US has to take the following into consideration:

*Firstly* the US needs to accept the *Caroline* elements as the governing norms of the pre-emptive self defense, at least when dealing with whom it calls rogue states. While this could require the government to back away from its stated policy goals of adapting the imminence criteria,<sup>44</sup> it is a less controversial tactic and will make it easier for the US to win the support for any future pre-emptive strikes. The Iraq union has shown that the international community would be more willing to accept the use of pre-emptive force in *Caroline* elements can be fulfilled with conclusive evidence of an immediate threat.

A potential problem with this approach, as to the knowledge of the researcher, is that it seems not to address America's concerns about the threats of WMDs and terrorism. It is arguable however, that the *Caroline* elements remain applicable to the current security environment to the extent that states are capable of obtaining WMDs, hosting terrorist

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<sup>44</sup>Arend, A. 'International Law and the Pre-emptive use of military force'. *The Washington Quarterly* 26 (2):89-103.

training camps ( with the host government knowledge or otherwise), or supplying weapons and components to the terrorists.

These activities are directly comparable to those that originally gave rise to the doctrine of pre-emption in 1837-namely the supply of weapons and provisions to Canadian insurgents. The *Caroline* case therefore, provides strong legal precedent, not only because the rules governing pre-emptive self defense were first enunciated in that case, but also because the situation that gave rise to those rules is one that could occur today. The British argument in 1837 was that it was the victim of ongoing attacks by Canadian insurgents, and that was therefore, justified in acting pre-emptively to prevent the future attacks. Analogies can be drawn between this and the US argument that it is the victim of ongoing terrorist incidents “carried out sporadically over a long period of time”.<sup>45</sup>

If strong evidence existed, for example, that a particular state was involved in supplying terrorist groups with weapons or other forms of support, then the customary law rules would be fulfilled without requiring any alteration or extension. This may have been a better justification for the Iraq war, had solid evidence been available of a link between Saddam and Al Qaeda, and provide a more valid basis for future pre-emptive strikes.

*Secondly*, the US should avoid acting unilaterally unless a threat is imminent in the strict sense, and should, in all cases act only if the customary elements can be fulfilled. This would require the US to provide strong evidence in each instance to show that pre-emption is justified, and raises the question of who is to judge the validity of each claim. International law allows states some latitude to make their own assessments as to threats, but does not permit a wide discretion.<sup>46</sup>

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<sup>45</sup> House of Commons: The Response to September 11 in London: House of commons Library, 2001, 85-86.

<sup>46</sup> Ibid.2001, P. 83.

Because the UN Security Council has, for some time, had legal authority to authorize the use of force, the US should, in the absence of an imminent threat, seek to justify its actions in that forum. While the Americans did attempt this prior to operation Iraqi freedom, they did so only when it became clear that a strike against Iraq would not be supported unless a full range of diplomatic and political measures were pursued before hand. As a consequence of this, an administration that was keen to justify war, provided information and intelligence that was, as many reports now suggest, wrong. This has added to the controversy surrounding the war.

Based on these arguments the researcher believes that, this is a clear indication for the concept of self defense is *in the state of flux*. Because the changes in the potential forms of attack have significantly raised the stakes, and the increased threat of terrorism has altered the nature of potential aggressor. Further more, the 11 September 2001 attacks against the US illustrate, terrorism has become a far greater threat than was conceivable in 1945.

It is clear that, the combined threats of weapons of Mass Destruction (WMD) and terrorism, so well as the changing values of international community, are precipitating a *paradigm shift in international law*. This paradigm shift may in time result in a broadening of the notion of 'imminent threat' as it applies to the law of self-defense.

*Finally*, the researcher supporting the idea proposed by J. Record saying that by seeking to justify its actions in a multilateral setting such as the Security Council, the US is a "unilateralist, overbearing hypower" and should reassure the world that America will use its power with restraint and responsibility.<sup>47</sup> Such a policy would also remove the possibility of states abusing the laws of preemptive self defense, and, as Anthony Arend believes, "contribute to a return to a more rule based legal regime."<sup>48</sup>

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<sup>47</sup> J. Record, 'The Bush Doctrine and War with Iraq '.Parameters 33(10): 4-18.

<sup>48</sup> Ibid see Arend above.

In conclusion, a right of self defense that encompasses both actions done in response to an armed attack, and actions done in anticipation of an armed attack, are provided by customary international law after the Caroline incident. However, the extent of the customary rules may remain somewhat controversial-as evidenced by the debate over the US's recent National Security Strategy and operation Iraqi Freedom.

The US has argued that the notion of imminence should be extended to allow for pre-emptive strikes against terrorist groups, and to forestall the use of WMDs by rouge states. However, the dangers that might arise from the alteration of the existing framework are numerous. To extend these requirements too far for example, would leave the notion of self defense open to abuse, and could give states an opportunity to cloak aggressive military strikes under the mantle of preemptive self defense. Despite this, the notion of pre-emption is permitted in international law, and the US can therefore, maintain a policy of pre-emption that is legal. It is arguable that the Caroline elements remain applicable to the current security environment, at least to the threat of rogue states that sponsor terrorism, and therefore, allow the US of using pre-emption under the traditional legal framework.

To do so this, however, the US needs to accept the traditional elements as law, and to avoid using the right unilaterally. The US should seek to justify its actions in a multilateral setting such as the Security Council, ensuring that it does so with credible evidence. This will go some way to soothing the tension that arose over the Iraq, and will limit the problems that could arise from an extended doctrine of pre-emption. It will also give the US an option of pre-emptive action that confirms with international law.

To that end, military intervention must always be regarded as an exceptional action of the *last resort*. Such action is inherently a symptom of failure to peace resolution. As long as states will be unwilling or unable to protect their populations or effectively carry out their responsibilities as states, intervention will be needed, and there will be irresistible pressure for it to occur. This objective must be local grievances do not become matters of domestic conflict and that domestic conflict does not explode into matters of regional international concern.

## CHAPTER TWO

### 2. PRINCIPLES OF INTERNATIONAL LAW ON INTERVENTION IN SELF DEFENSE

Under this chapter, the research intends to elaborate the basic principles of international law with a view to laying the ground for the discussion on the specific theme of this research. Although time and space may not allow making an extensive discussion of these principles, an attempt is made to put a broad outlines on the basic principles of international law related to the topic.

#### **2.1 The Concept of Self Defense.**

International law is essentially a set of principles that regulates relations among nations that possess sovereignty as part of the international community. The sovereign status and right remain respected in times of war and peace without allowing another subject of international law to interfere with it. Under a circumstance where the sovereignty and territorial integrity of any country is threatened by external power of international law does recognize the right of the victim country to exercise right for self defense.

The UN Charter governing actions which can be taken legitimately where there is a threat to intervention, peace and security, provided that the right to self defense, is still acceptable under appropriate circumstances(Article 51 UN Charter):

*...peace and security. Measures taken by members in the exercise of this right of self defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as necessary in order to maintain or restore international peace and security.*

The relevant provision of the Charter requires that states may resort to exercising the right for self defense only when there is an actual or imminent threat to their sovereignty and national security. Among other

things, the right to self defense may be to prevent aggression, external interference and attack on the territorial jurisdiction of the state.

Meanwhile, there are also different circumstances which may not be sufficiently clear to show that there is actual aggression or interference against the country concerned. In such a circumstance, the latter may be in a dilemma not being sure whether it can exercise the right to self defense. Thus, international law seems to accommodate interests directed to avert aggression at a stage when it has not yet materialized. This means, such a country has found itself in a situation where there is clear and imminent danger to its sovereignty while that threat has not yet taken place in reality.

If the state concerned, has to wait until the threat takes place in reality, then there will be danger and destruction against its people and territory. In order to avoid such a possibility, the state may understandably take an action with the intention to prevent or avert the occurrence of that kind of dangerous situations. This is what is called preemptive self defense. This aspect of the law requires that the threat to be averted should be clear and imminent.

## **2.2. The Right of Self-Defense**

The traditional definition of the right of self defense in customary international law occurred in the Caroline case.<sup>49</sup> This dispute revolves around an incident in 1837 in which the British subjects seized and destroyed a vessel in an American post. This had taken place because the *Caroline* had been supplying groups of American nationals, who had been conducting raids into Canadian territory. In the correspondence with the Britain authorities which followed the incident, the American secretary of state laid down the essentials of self defense. There had exist a necessary of self defense, *instant, overwhelming, leaving no choice of means, and no moment for deliberation?* Not only were such conditions necessary before

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<sup>49</sup> R.Y Jennings, 'The Caroline and McLeod case' 32 ATIL 1938, P.82

self-defense became legitimate, but the action taken in pursuance of it must not be unreasonable or excessive', since the act justified by the necessity of self defense must be limited by that necessity, and kept clearly within it 'these principles were accepted by the British government at that time and are accepted as part of customary international law.<sup>50</sup>

*Nothing in the present Chapter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a member of the United Nations until the Security Council has taken the measure necessary to maintain international peace and Security measures taken by members in the exercise of this right of self defense shall be immediately reported to the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain to restore international peace and security.<sup>51</sup>*

There is extensive controversy as to the precise extent of the right of self defense in the light of article 51 in conjunction with the article 2(4) now specifies the scope and limitations of the doctrine. In other words, self defense can only be resorted to 'if armed attack occurs', and in no other circumstances.<sup>52</sup> On the other hand, there are writers who maintain that the opening phrase in article 51 specifying that 'nothing in the present charter shall impair the inherent right of---self defense over and above the specific provisions of the article 51, which refer only to the situation where an armed attack has occurred.<sup>53</sup>

The international court of justice in the Nicaragua case has<sup>54</sup>, however, clearly established that the right of self defense exists as an inherent right

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<sup>50</sup> See eg. The legal advisory the US Department of state who noted that the exercise of the inherent right of self defense depends upon a prior delict, an illegal act that presented an immediate, overwhelming danger to an actual and essential right of the state. When these conditions are present, the means used must then be proportionate to the gravity of the threat of danger' Digest of US practice in international law (DUSPIL), 1975, p. 17

<sup>51</sup> UN charter article 51

<sup>52</sup> H. Kelsen, The law of United Nations , London, 1950, p.914

<sup>53</sup> H. Waldock, 'General Course on Public International law' 166, HR, 1980, pp.6, 231-7

<sup>54</sup> ICJ Reports, 1986, pp.14, 94, ILR, p. 349, 428.

under customary international law as well as under UN charter. It was stressed that:

*Article 51 of the charter is only meaningful on the basis that there is a 'natural' or 'inherent' right of self defense and it is hard to see how this can be other than of customary nature, even if it's present content has been confirmed and influenced by the charter. It cannot, therefore, be held that article 51 is the provision which 'subsumes and supervenes' customary international law.*

Accordingly, customary law continued to exist alongside treaty law (i.e. UN Charter) in this field. There was no exact overlap and the rules did not have the same content. The court also discussed the notion of 'an armed attack' and noted that this included not only actions by regular armed forces across an international border, but additionally the sending by or on behalf of the state of armed forces or its substantial involvement therein.<sup>55</sup>

A further issue is whether a right to anticipatory or preemptive self defense exists. This would appear unlikely if one adopted the notion that self defense is restricted to responses to actual armed attacks. The concept of anticipatory self defense is of particular relevance in the light of modern weaponry that can launch an attack with tremendous speed, which may allow the target state little time to react to the armed assault before its successful conclusion.

Israel launched a strike in 1967 upon its Arab neighbor, following the blocking of its southern port of Eliat and the conclusion of military pact between Jordan and Egypt. This completed of chain of events precipitated by then mobilization of Egyptian forces on Israel's borders and the eviction of the United Nations peacekeeping forces from the area by the Egyptian president.<sup>56</sup> It could, of course, also argued that the Egyptian blockade itself constituted the use of force, thus legitimatizing Israeli actions without the need for 'anticipatory' conceptions of self defense,

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<sup>55</sup> The court noted that this provision, contained in article 3(g) of the definition of Aggression annexed to General Assembly Resolution 3314 (XXIX) OF 1974, reflected customary international law, ICJ Reports, 1986, p. 103; ILR, P.437.

<sup>56</sup> See generally, The Arab- Israeli conflict, ed. J.N. Moore, Princeton, 3 vols. 1974.

especially when taken together with the other events.<sup>57</sup> It is noteworthy that the United Nation in its debates in the summer of 1967 apportioned no blame for the outbreak of fighting and did not condemn the exercise of self defense by Israel.

The trouble, of course, with the concept of anticipatory self defense is that it involves fine calculation of the various moves by the other party. A preemptive strike embarked upon too early might constitute an aggression. There is a difficult line to be drawn. The problem is that the nature of the international system is such as to leave such determinations to be made by the states themselves, and in the absence of an acceptable, international alternatives, it is difficult to foresee a modification of this.

States generally are not at ease with the concept of anticipatory of self defense. However<sup>58</sup>, once the possibility would be to concentrate upon the notion of an 'armed attack', so that this may be interpreted in a relatively flexible manner.<sup>59</sup> One suggestion has been to distinguish anticipatory self defense, where an armed attack is imminent and unavoidable so that the evidential problems and temptation of the former concepts are avoided without dooming threatened states to making the choice between violating international law and suffering the actual assault.

According to this approach, self defense is legitimate both under customary law and under article 51 of the Charter, where an armed attack is imminent. It would then be a question of evidence as to whether that was an accurate assessment of the situation in the light of the information available at the relevant time. In any event, much will depend upon the characterization of the threat and the nature of the response, for this has to be proportionate.

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<sup>57</sup> Note that Gray writes that Israel did not argue that it acted in anticipatory self defense, but rather in self defense following the start of the conflict, use of force, pp. 112-13

<sup>58</sup> The Security Council debate on Israel's bombing of the Iraqi nuclear reactor in 1981, 20 ILM, 1981, pp. 230.

<sup>59</sup> The dissenting opinion of judge schwebel , Nicaragua case, ICJ Reports 1986, pp.14, 347-8

However, the fact that self-defense is an *inherent* doesn't mean that it is an autonomous right. The right does not exist outside the law but is defined and limited by the law.<sup>60</sup> Whilst there are limits relating to the exercise of collective, as opposed to individual self-defense, the collective nature of the use of force, for example, against Iraq, is not especially contentious. However, the researcher of this paper will not explore this particular limit. But as it has been indicated above, the articulation of the main limits to the use of force in self-defense appears in the 1841, in letter written by US secretary of state, Daniel Webster, to Henry Fox, British Minister in Washington DC.<sup>61</sup> Webster stated that:

*it is for the state claiming self-defense to show a 'necessity of self-defense, instant, overwhelming, leaving no choice of means and no moment for deliberation'.*

The concept of necessity and proportionality are the heart of self defense in international law. Therefore to apply it, these requirements are necessary to be considered in relation to self-defense in the international law to be established as indicated herein under.<sup>62</sup>

### **2.2.1 Necessity**

The requirement of "necessity" is more complicated and needs to be clarified. It is insufficient simply to ask whether there was a necessity to resort to force without explaining what constitutes a valid 'necessity'.

Daniel Webster's formula that must show a necessity of self defense, instant, overwhelming, no choice of means, and no moment of deliberation<sup>63</sup> remaining a classic statement on the requirement of necessity for a legitimate claim of self defense. Here, there may be a problem up on the absence of definition in the statement of Daniel Webster. As a result it lacks clarity of what necessity is.

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<sup>60</sup> Ibid, p.277

<sup>61</sup> The Caroline (exchange of diplomatic note between United Kingdom of Great Britain and Ireland and the United States of America), letter from lord Ash Burton to Mr. Webster (28 July 1842, British and foreign state papers 195-196 ('The Caroline'

<sup>62</sup> UN charter art 51

<sup>63</sup> US secretary of State Daniel Webster's letter of 24 April 1842 to British Minister at Washington Mr. Fox. UK (1840-41), 1131

To solve such problem of definition, Ian Brownlie has noted that Webster only defines necessity in terms of itself. The claimant state must show a “necessity of self defense” and this tells us nothing about what actually constitutes a necessity for the purpose of limiting an exercise of self defense.<sup>64</sup> It is obvious that Webster’s formula is inadequate for this purpose.

Under the restrictive view the issue is simplified. A “necessity” to use force in self defense only exists once an armed attack has commenced against the defending state. In any other situation, regardless of the nature of the threat, a necessity to use force does not exist. One of the most appealing features of the restrictive view is its simplification of the retroactive evaluation process of a state action. Despite this simplistic approach, however, states do not always wait for an attack to commence before they respond with force to defend neither themselves nor, it is suggested, does the law require them to do so.

The notion that, for a state to respond to a threat, that the threat must be one of imminent danger, is an integral part of the law of self defense. Yet, the notion of imminence warrants further consideration. It is unclear at what point a state of concern, say, possessing WMD or sponsoring terrorism poses an imminent threat. In an age where modern methods of intelligence can provide convincing proof of state’s hostile intent before an armed attack actually occurs, as Anthony Arernd suggested “*does a state have to wait until missiles with chemical warheads are on the launching pad for the danger to be deemed imminent?*”<sup>65</sup> Does a state have to remain inactive in the face of evidence pointing towards a future terrorist attack until the attack is deemed sufficiently imminent?

At present, the law is on state of flux. It is clear that the notion of ‘imminence’ is crucial to the doctrine of self defense. Yet, it must develop

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<sup>64</sup> Ian Brownlie, *International Law and the use of force by states*, 1986, P.499

<sup>65</sup> Anthony Arend, ‘International Law and Rogue States: The failure of *Charter* Framework (2002) 36 *New England Law Review* 735, 746.

in accordance with the times. The notion of 'imminence' must adequately address the dual threat of WMD and terrorism. It is highly arguable that the enormity of the devastation resulting from successfully delivered WMD, and the speed at which such weapons can be delivered, merits a weakening of the threshold of reasonable foreseeability.

The researcher argues that, perhaps rather than being a test based on objective knowledge, the test for imminence should be based on the reasonable subjective belief of the state in question. Such a subjective approach would arguably be more realistic assessment of the catastrophic threat posed by WMD in the hands of terrorists than an objective approach.

Unless the notion of imminence changes to such an extent that an attack can be deemed imminent where an individual state reasonably believes that a threat exists, irrespective of the views of other states, and irrespective of whether there is evidence of an actual plan to attack. In this view, the researcher argues that the 2003 use of force against Iraq cannot be regarded as a response to an imminent attack.

To make it more simple, 'necessity' has two most logical requirements, which should be taken by the individual state in question. These are:

- the *severity of the threat* to the defending state. To evaluate a claim to be acting in self defense, it is essential to know what rights and interests a state is entitled to use force to protect and, how extensive the threat to those rights or interests, has to be examined before force is used, and;
- the *proximity of the threat* faced by the defending state. At what time can it be said that a threat is sufficiently imminent to justify a forceful response?

### **2.2.1.1. The Severity of the Threat**

The severity of the threat is the first criterion which must be satisfied before an action can be a legitimate use of force in self defense. A state can only use force in self defense to protect its fundamental national security. The claimant state will not satisfy the requirement of necessity if it uses force merely to further its own political interest in situations where its fundamental security is not at a stake.

According to Article 2(4) of the Charter, states have an obligation to refrain from “the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.” The primary purpose of UN organization is the maintenance of international peace and security. It follows from this that, pursuant to Article 2(4), a state is obligated not to threaten another state is obligated not to threaten another state in a way that would undermine international peace and security. Once it does so, it has violated its obligation under that Article. However, in more recent years several new categories of forceful threats have been developed and applied.

Terrorism is one such new category. While it may be difficult to find a universally acceptable definition of terrorism,<sup>66</sup> in recent years the international community has witnessed the emergence and development of a new mode of conflict. Terrorist acts are often perpetrated against unpredictable targets, such as airlines, buses, schools and so on. Although the direct victims of terrorist attacks are usually innocent individuals, the ultimate target is the state to which they belong or happen to be associated with.

It is unrealistic for states which are the object of terrorist attacks to expect to be able to successfully defend every possible terrorist target.

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<sup>66</sup> Ga-or, The annual debate and fundamental lack of consensus in the UN General Assembly on a Resolution condemning terrorism is a good example of the difficulties of agreement on the definition of terrorism. The definitional problems are also reflected in the International Law Commission's (ILC) Draft code of crimes.

Even if security could be increased at airport terminals and at embassy buildings it would be impossible to guard every public place, particularly when terrorists are prepared to conceal explosives on their own body and killed themselves. However, in an international community where the centralized authority is unable to defend the lives of citizens of particular state against terrorist attacks, it is also unreasonable to expect that the state has no right to defend its own citizens by force. The difficult issue is to decide how a state can effectively defend itself against such attacks.

The terrorist attack will often be successfully undertaken and the only means of effective defense may be to use force against the infrastructure of the terrorist organization itself,<sup>67</sup> or of the state sponsoring its activity.<sup>68</sup> If force is used after the terrorist attack has been completed it may be difficult to distinguish the action from reprisal or situation.<sup>69</sup>

However, given the nature of terrorist attacks, a case could be made out that a counterattack is the only means of defense against terrorist attacks. If a claimant state uses force to defend itself against terrorist attacks, it would need to show that its actions were not simply in retaliation for earlier attacks, but were for protection against the clear likelihood of imminent future attacks which were unpredictable both in timing and in their intended targets.

A state facing a threat of this magnitude, with no external guarantee of its security, especially (where there is no responsible government as in the case of Somalia, the main issue, relevant to this paper), *prima facie* should be entitled to use force to defend it self. To deny an individual state the right to use force to defend itself from annihilation, especially when the centralized authority is unable to do anything to guarantee the

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<sup>67</sup> Timothy L.H. McCormack, *Self defense in International Law*, Op.Cit.at 13 above.

<sup>68</sup> One of the characteristics of recent international terrorism is the extent to which some states have been sponsoring such activity. Rather than be overtly involved in the actions against another states, are willing to finance, equip, train and harbor groups who will carry out the actual attacks themselves. This was certainly the Ethiopian allegation against Eritrea at the initial stage and through out the war with Union of Islamic Court in Somalia.

<sup>69</sup> Bowett, 1958 at 6 above, says that "The purpose of self defense is to protect certain essential legal rights, its aim is preventive & and non retributive, and it is this characteristic which distinguishes self defense from reprisal."

state's defense, is an unrealistic suggestion. Further more, the requirement that the defending state must actually wait until the nuclear weapons (say, WMD), has been released is equally unrealistic. The defending state must have good reason to believe that the attack is actually intended and is not just a remote future possibility.

### **2.2.1.2. The Proximity of the Threat**

The right to use force in self defense only exists as a measure of last resort in emergency situations, situations in which the use of force to protect and preserve the lives of the citizens and territorial integrity of the claimant state is the only means of guaranteeing their protection. Consequently, a claimant state would need to show that there were no peaceful ways of resolving the dispute and that any delay in the use of force would make it impossible to guarantee the defense of the state.

The essence of the limitation is that force can only be used in self defense as a last resort when it is clear that there is no other way of guaranteeing the protection of fundamental security. The implication of Webster's formula in the *Caroline* case is that if there is any opportunity for "a choice of means" and any "moment for deliberation" the claim to be acting in self defense cannot be legitimate.

Those who argue against an anticipatory right of self defense claim that once a state is allowed to use force against a threat that has not yet materialized into an actual armed attack, the law will be incapable of operating to regulate the use of force. States would then be free to use force whenever they chose because the clear objective requirement of an actual armed attack has been replaced by a subjective assessment as to whether or not the threat is likely to materialize.

We can say that in international law, there is no body with compulsory jurisdiction to decide the legality of the actions of states claiming to be

acting in self defense, but that is a separate issue to the question of limitations to the exercise of that right.<sup>70</sup>

In supporting its claim to be acting in self defense, the claimant state would need to explain the basis for its decision that it had no choice but to use force to defend itself. The answers to several questions could be helpful.

As clearly indicated above, in 1967, after its resort to force in the Six Day war, it was relatively easy for Israel to argue that it had no choice but to use force if it was to successfully defend itself against the threatened attack from neighboring Arab states. But the Six Day war is often cited as the quintessential case of self defense, and it is much harder to apply the test of proximity in other situations where the threatened attack is not so imminent. In what situations can a state use force in self defense to protect itself against future terrorist attack?

The *first* requirement must be that there is no alternative peaceful means of protection. The claimant would need to show that it had exhausted all diplomatic channels to effect a non-violent solution and that there were no other peaceful means to open to it. To justify a forceful response to the threat to the threat of terrorist attacks, the claimant state must be able to show that the only available means of protection.<sup>71</sup>

The *second* requirement is that there must be a reasonable basis for a belief that any delay in the resort to force could jeopardize the ability to guarantee the protection of the threatened state. Because there will be no certainty about where and when the next terrorist attack will take place, it is important that there is some basis for believing that future attacks are likely if the proposed defensive action is not taken. Some times, a claimant state may be able to adduce evidence from intelligence sources that future attacks are planned. But such evidence may not always

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<sup>70</sup> Op. Cit. Timothy, at 57 above.

<sup>71</sup> Ibid.

available and the claimant state may be relying on the existence of recent attacks. This sort of evidence, if proved, may be sufficient to satisfy the requirement.

However, the requirement that any delay in resorting to force to force may result in an inability to guarantee protection would probably not be satisfied where a single isolated attack has taken place and it is not certain who is responsible for the attack. When a state is faced with the threat of nuclear attack it may also be difficult to know how imminent that threat really is.

At what point can a state respond in force to a threat of nuclear attack for such threat satisfies the requirement of proximity?

The *first* requirement is that the claimant state must show that there was no alternative peaceful means of guaranteeing its protection. The claimant state would need to show that it had done all it could to secure a guarantee from the threatening state not to use nuclear weapon against it. If the claimant state also possessed nuclear weapons it would need to have demonstrated a willingness to negotiate a reciprocal treaty commitment not to be the first state to use nuclear weapons.

The *second* requirement is that the claimant state would need to show that any delay in the use of force would make it impossible to guarantee the protection of the threatened state. Although the claimant state would not have to wait until an attack had actually commenced before it responded in force to defend itself, it would not be sufficient to claim that simply because another state possesses nuclear weapons and those might one day be used against it. In that case, it has the right to use force to protect itself from this possibility.

Whether the nuclear attack is likely to exist or not, depends upon the facts in each situation. For instance, when the USA acted to remove the nuclear weapons from Cuba, as it was discussed above, it claimed that it

was protecting itself from a future possibility of attack in one sense. The US consistently claimed that it could never effectively defend US cities within the range of nuclear weapons installed in Cuba once those weapons were launched. If the US had not acted when it did the weapons would pose an indefensible threat.

Suppose that if the argument of US is justified in using force to defend itself in the Cuban missile crisis, would it not be possible for any state threatened by terrorist groups gathered together and incubating where there is no responsible government as like that of today's Somalia?

The fact leads us to another requirement called '*proportionality*' that needs to be satisfied before such claim is to be raised as an issue for self defense as a legitimate claim.

### **2.2.2. Proportionality**

Although Article 51 is silent as to the requirement of '*proportionality*', the concept is easily understood as a limit to the use of force in self defense. Given that, self defense exists only as a limited right to protect and preserve certain essential rights in situations of *overwhelming* and *immediate* necessity, it follows that the actual amount of force used must be limited to that which is necessary to protect those rights. Article 51 makes no mention of limits to the actual amount of force used in self defense.

However, by definition, a state which goes beyond the limited purpose of protecting its rights and uses more force than it is necessary to do, is no longer acting in self defense. This requirement was certainly considered to be fundamental limitation on the right to use force in self defense under customary international law. Timothy L.H. Mc. Cormarck cited Waldock's comment as in the following:

*'...must not be unreasonable or excessive, since the acts justified by a necessity of self defense must be limited to that necessity and kept within it.'*<sup>72</sup>

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<sup>72</sup> Op. Cit. Timothy, at 57 above.

It is the necessity to take action which justifies the resort to use force. Consequently, once the necessity ceases to exist, any force beyond that is unjustified. This principle has often been referred to as the requirement of *proportionality*.

One commentator said:

*The defense must be in proportion to the danger run and must cease when the danger ceases. When the attacker runs away, the defender may not pursue and inflict injury.*<sup>73</sup>

It has been argued that there are limits to an exercise of anticipatory self defense. The 'defending' state must show: (1) that as a result of the particular threat it faced, it was necessary to respond with force without delay in order to defend it; and (2) that its use of force was limited to the purpose of defense. These limits can be applied to factual situation to determine whether or not a particular use of force was in self defense. If a particular action extends beyond the limits, the action cannot be justified as a self defense.

The fact that individual states can abuse the right of anticipatory self defense and "get away with it" is a reflection of the lack of a mandatory judicial authority and an ineffective centralized body. But the level of "maturity" of the international legal system is not a basis for denying a genuine claimant the right to use force to defend it before the attack actually takes place.

However, for the use of force to constitute self-defense, *there must be an undue time-lag* between the armed attack and the invocation of self-defense.<sup>74</sup> Because of this linking Saddam Hussein's of Iraq with al-Qaeda, in light of the amount of time that passed between the September 11 attacks and the use of force against Iraq in 2003 as a response to those attacks seems to be irrelevant. In this, I mean that if US responded for the incident occurred in 9/11, there is clearly a time-lag between it

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<sup>73</sup> Ibid

<sup>74</sup> Yoram Dinstein, war, Aggression, and self defence, third edn.2002, p.184

and the action taken in 2003 against Iraq. In this case, there should not be a time gap in the principle of anticipatory self defense. Because anticipatory self defense only applies to that of future attack, but yet it must be imminent. Therefore, the action taken by US against Iraq in 2003 should not be invoked as anticipatory self defense for the incident of 9/11 of the destruction of the world trade center, in the United States.

### **2.3. Limits to the Right for Self Defense.**

It is very likely that a situation which may be considered as the threat by one state may not be so perceived by another state. Whether a given situation is a threat or not justifying preemptive self defense, needs to be put to test using widely acceptable standards. There remains some debate however, as to the limits of the customary laws.

Of particular concern is the extent to which self defense can be used Pre-emptively. This debate has become more pronounced in light of Operation Iraqi Freedom and US calls to alter the existing framework.<sup>75</sup> Historically, most emphasis has been placed on the dual requirements of necessity and imminence, suggesting that pre-emptive self defense can be validly exercised only when these elements are fulfilled. This further supported by the assertion that it is unreasonable for a state to have to wait for an armed attack to occur before taking action.”<sup>76</sup>

However, Dinstein contends to this view saying that, “it would be absurd to require that the defending state should sustain and absorb a devastating (perhaps fatal) blow, only to prove an immaculate conception of self defense.”<sup>77</sup> The concept of imminence however, has been complicated by the perceived threats that exist today. The dual issues of *threats* and *terrorism* are proving difficult in this respect. The imminence

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<sup>75</sup> Jennings, R. Oppenheim, International Law volume 1, 9<sup>th</sup> ed, Longman New York, 1996

<sup>76</sup> Ibid, P 422

<sup>77</sup> Dinstein, Y. War, Aggression and Self defense, 3<sup>rd</sup> ed. United Kingdom :Cambridge University Press, 2001

of terrorist attack is extremely difficult to determine, and in comparison to the massing of troops along a border, is near impossible to detect.<sup>78</sup>

Because of such concerns, the US has argued that the concept of imminence should be adapted to the threats the world currently faces<sup>79</sup>. This policy is a result of September 11 terrorist attacks, and in light of the devastation caused by those attacks, and in light of the devastation caused by those attacks, is one that might seem desirable.

However, the difficulties that could potentially arise from such a policy are numerous. An extension of the imminence criteria for example, would leave the customary rules open to abuse,<sup>80</sup> a fact acknowledged by US itself.<sup>81</sup> Many argue for example, that the right of pre-emptive self defense if applied too broadly could be used by states to "cloak aggression in the mantle of self defense".<sup>82</sup> This would in turn provide dangerous precedent and could, as Mary Ellen O'Connell believes, provide "Justification for Pakistan to attack India" and For "North Korea to attack South Korea, and so on".<sup>83</sup>

This poses fundamental dilemma for the United States' National security strategy, as extending the current criteria will not only create a dangerous precedent, but finding a new framework that avoids such issues will be extremely difficult in it self. These concerns aside, the US will find it difficult even to institute change in this area, because many American allies, particularly in Europe, seem reluctant to alter their understanding of the laws of Self defense and the role of multilateralism in international relations.<sup>84</sup> Indeed the build-up to the Iraq war illustrates that most world

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<sup>78</sup> Deller, 'Jus and Bellum, law Regulating Resort to Force, Human Rights, 2003 -30(1) p.98

<sup>79</sup> The White House 2002, The National Security Strategy of the United States of America, the White House press secretary, Washington DC, September 2002, p.15

<sup>80</sup> Deller. N Op.Cit.at 38, , p.2

<sup>81</sup> Op.Cit. at 39 above P. 15

<sup>82</sup> Rivkin, 'Remember the Caroline! National Review 54(2) e American society of 2002 p-18.

<sup>83</sup> O'Connell M. The myth of preemptive self defense int'l international law Task on Terrorism paper series Washington DC American society law.2002

<sup>84</sup> Payne R. and Peter Dombowski eds.2003 'Global Debate and limits of the Bush Doctrine(<http://www.Louisville.edu/a-s/polsi/Payne/>) Accessed on 19 July 2007.

leaders believe that any attempts by the U.S to extend the imminence criteria are nothing more than *blatant* American unilateralism. This has proven detrimental even in the post war environment as, the rift between the U.S and some European Union (EU) and Security Council members has spilled over the reconstruction stage,<sup>85</sup> indicating that any future attempts to employ an extended form of pre-emptive self defense will be wholly rejected.

#### **2.4. Is Anticipatory Self-Defense Lawful?**

The Doctrine of Anticipatory Self-Defense concerns the right of state, in certain circumstance, to resort to force in self-defense before an armed attack has commenced.<sup>86</sup> Grotius recognized the right to anticipatory self-defense in 1625, and Webster's famous Declaration of the requirement of self-defense, set out as indicated as in above, and was actually made in reference to a case of anticipatory self-defense.<sup>87</sup>

According to Brownlie, 'the ordinary meaning of the phrases precludes action which is preventive in character'.<sup>88</sup> Further, given that the key objectives of the UN are 'to maintain international peace and security'<sup>89</sup> and to minimize the unilateral use of force, it stands to reason that self-defense, as an exception to the prohibition on the use of force, should be narrowly construed.<sup>90</sup>

Proponents of the view of that anticipatory self-defense is not lawful frequently cite international reaction to the Israeli bombing of an Iraqi

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<sup>85</sup> Ibid.P.8

<sup>86</sup> . Michael Glenn,'Pre-empting Terrorism-The case of Anticipatory Self Defense,'The weekly Standard,Washiington D>C> US,28 January 2002/P.24-5

<sup>87</sup> Michael Scharter, 'clear and present danger: enforcing the international ban on biological and chemical weapons through sanctions, use of force, and Criminalization, and Michigan journal international law, 1999 P.234

<sup>88</sup> Ian Browlie, international law and the use of force by state, 1963, p. 275

<sup>89</sup> UN charter article 1(1)

<sup>90</sup> Bruno Simma et al (eds.) The Charter of the United Nations:A commentary (1<sup>st</sup> Ed.)1994, p.676.

nuclear reactor under construction at Osiraq in 1981 as evidence that there is no rule under Customary International Law supporting the doctrine of anticipatory self-defense as it is indicated in earlier chapter, Israel justified the attack by stating that the reactor would be used to manufacture weapons for the purpose of attacking Israel. The Security Council unanimously passed a Resolution strongly condemning 'the military attack by Israel in clear violation of the Charter of the United Nations and the norms of international conduct'.<sup>91</sup>

The opposing view (and, it is submitted, the correct view) is that anticipatory self-defense is lawful. Many proponents of this view contend that article 51 was not intended to invalidate prior customary international law, which permitted anticipatory self-defense.<sup>92</sup>

Bowett has stated 'it was never the intention of the Charter to prohibit anticipatory self-defense.'<sup>93</sup> Since '[n]o state can be expected to await an initial attack which, in the present state of armaments may well destroy that state's capacity for further resistance and so jeopardize its very existence.'<sup>94</sup> McDougal has stated that use of force is permitted where a state 'regards itself as intolerably threatened by the activities of another.'<sup>95</sup>

In his dissenting opinion in Nicaragua, Judge Schwebel expressed his view on the issue; even though it was not directly related to the case. He stated:

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<sup>91</sup> Resolution 487, SC Res 487, UNSCOR, 36th Sess, 22 88<sup>th</sup> mtg., UNSOCS/RES/487, 1981.1. It should be noted that since the passing of this resolution, the argument that with hindsight the Israeli strike was justified has been propounded: See E.g. W. Michael Reisman, 'international Legal response to terrorism', 1999, 22 Houston Journal of international law 3, 18. In fact, there are some reputable Scholars who supported the legality of the Israeli intervention in Iraq at the time that it occurred. See. E.g. Anthony D'Amato, 'Israel's air strike up on the Iraqi nuclear reactor, 1983 P.77. American journal of international law p.584.

<sup>92</sup> Guy Roberts, "the counter proliferation self-help paradigm: a legal regime forenforcing the norm prohibiting the proliferation of weapons of mass destruction, Denver journal of international law and policy, 1999, p.486-8.

<sup>93</sup> Derek Bowett, reprisals involving recourse to armed force, American Journal of international law, 1972, pp.1,4

<sup>94</sup> Derek Bowett, Self Defenses in International Law 1958, p.191-2

<sup>95</sup> Myre McDougal, Comments on Address by Louis Henkin: Force intervention and Neutrality in contemporary International law, American Society of International law, 1963.

*I do not agree with a construction of the United Nations charter which would read articles 51 as if it were worded 'nothing in the present charter shall impair the inherent right of individual or collective self-defense if, and only if, an armed attack occurs----'I do not agree that the terms or intent of article 51 eliminate the right of self-defense under customary international law, or confine its entire scope to the express terms of Art.51. <sup>96</sup>*

Under Article 51 of the UN Charter, it is interesting to note that in many instances where the international community has rejected a claim of anticipatory self-defense, it has done so out of a belief that one of the Core requirements of necessity and proportionality were not met, rather than on the basis that an 'armed attack' had not occurred. For example, many of the states that declared that the Israeli attack on the Iraqi construct at Osiraq was illegal took this view based on the fact that there was no 'imminent' threat, rather than based on the belief that anticipatory self-defense is illegal per se.<sup>97</sup>

The researcher of this paper also argues that international law, 'is not a suicide pact, especially in an age of uniquely destructive weapons began to be fabricated at the end of 20<sup>th</sup> century. The claim that a state is required at all times to absorb the first blow in an age of terrorism and WMD, where the first blow could be swiftly delivered and could of itself eliminate the state, is absurd. Therefore, it is submitted that anticipatory self-defense is permissible pursuant to Article 51 of the UN Charter.

In order to consider whether anticipatory self defense is legal or not, there a state should show that it has no alternatives except resorting to use force as clearly indicated above.

In case of USA, it was suggested that the U.S. did not exhaust all peaceful avenues for resolving the perceived problem of Iraq's WMD before resorting in the use of force. It is clear that, since the Gulf war, Iraq has breached numerous UN Security Council resolutions and has consistently

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<sup>96</sup>. Nicaragua (merits)(1986) ICJ Rep.14(173) (Dissenting Opinion of Judge Schewebel).

<sup>97</sup> Sean Cordon, 'justification for unilateral action in response to the Iraqi threat: a critical analysis of operation desert Fox, Military law review,1999 p.115, 143.

failed to cooperate with inspections regimes. Thus, it is unsurprising that, prior to the US invasion; Iraq was not fully and actively cooperating with the United Nations Mission. However, in his 14 February 2003 briefing the UN Security Council, the executive mission chairman Hans Blix stated that:

*It seemed from our experience that Iraq had decided in principle to provide cooperation on process, most importantly prompt access to all sights and assistance to UNMOVIC in the establishment of the necessary infrastructure. This impression remains, and we note that access to sites has so far been without problems, including those that had never been declared or inspected, as well as to presidential sites and private residences.<sup>98</sup>*

Even if the U.S. had a reasonable apprehension that Iraq possessed WMD, in light of this report, it is difficult to argue that the U.S. was left with no choice but to invade Iraq. However, where the threat of terrorism is concerned, it is not clear what alternative to the use of force existed. Given the covert nature of the relationship between Iraq and Al-Qaeda, conventional political solution were not available to aid in extinguishing the Al-Qaeda threat that the US reasonably apprehended was emerging from within Iraq.<sup>99</sup>

## **2.5. The Emergence of New Doctrine?**

Few would disagree with notion that the law must keep pace with social and political changes. Nevertheless, how to develop the law of self-defense in a way that addresses the current threats from WMD and terrorism remains a point of contention. Some have propounded the view that an effective way of addressing current threats is for states to enter into agreements with other states to address specific concerns.

For example, former UNSCOM executive chairman Richard Butler has proposed that:

*Certainty of enforcement (of treaty objection) can be achieved if the following steps are taken. First, the permanent members of the*

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<sup>98</sup> UN SCOR, 58<sup>th</sup> Sess. 4707<sup>th</sup> mtg, UN DOC S/PV.4707 (2003) 3

<sup>99</sup> It is arguable that the use of force against states that harbour terrorists may be the only way in which a victim state can defend itself against a terrorist attack: see e.g. The fog of law: self defense, incoherence and incoherence in article 51 of the united nations Charter, Harvard journal of law and public policy 2002, 539,550.

*Security Council must agree and solely declare to the world that they will always act together to remedy any situation identified by a credible report on the violation of.....treaties (relating to WMD). Second, this must mean that they will undertake never to use or to threaten to use their veto in such circumstances.*<sup>100</sup>

It is submitted that the traditional law of self-defense allows for the proportional use of force against a state of concern, such as Iraq which proliferate WMD and supports terrorism, if the threat of imminent danger is posed by state, and there is no longer an option for peacefully resolving the disputes. The law has lagged behind reality in its conception of imminence 'in an age of terrorism and WMD, to expect a state to wait until there is a 'necessity of self-defense instant...no moment for deliberation.'<sup>101</sup>

It resorts to the use of force in self-defense is to expect a state to be complicit in its own demise. This is the framework in which the emerging paradigm shift is taking place. The notion of 'imminent threat' is clearly changing. If other states move towards the views and practices of the US and its allies, the mere reasonable subjective apprehension of the possession of WMD and harboring of terrorists by state of concern may be sufficient to constitute an 'imminent threat'.

Here, as to my finding, I suggest that the US resorted to the use of force in self defense is flawed pursuant to the prevailing understandings of the laws of self defense. However, as a result of increasing global concern relating to the growing threat of terrorism combined with WMD, international law is currently likely to undergoing a *paradigm shift* that may be considered as emerging doctrine. As the nature of the game is changing, so, too, must the rules. In time, the law may shift to such an extent that the reasonable subjective belief of a state that a threat exists may be sufficient to constitute an "imminent threat" for the purposes of

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<sup>100</sup> Richard Butler, *Saddam Defiant: the threat of weapons of Mass Destruction and the Crisis of Global security* 2000, P. 253.

<sup>101</sup> OP. Cit. Caroline above at 38

the law of self defense. Thus the use of force against Iraq did not fall within the legal requirement of self defense.

The researcher argues just as plants and animals must adapt to the changing of their environment in order to survive, the law must adapt to changing social, political and technological factors to remain relevant. Whilst the use of force against Iraq was probably illegal according to the traditional law, the law is in the process of changing. What remains undetermined is whether ultimately, change will be propelled by US might or by Global consensus on what is right.

It is also possible to assume that just as the US invasion of Iraq has produced more terrorists than it has suppressed. Israel's bombing of its enemies only generates more ill will toward the country. If Israel doesn't begin to take negotiations seriously, its very own war with out end will spiral further out of control. Ethiopia's recent sending of its troops into Somalia to prop up a weak government in order to prevent the growing power of the Islamic Courts and a militant Islamic movement that has its own militias.

Still, commentators argue that this intervention is a part of the longstanding conflict with Eritrea, which Ethiopia accuses of supporting the Islamic Courts. These Issues directly lead to us to consider whether the current Ethiopia's intervention for the security interest in Somalia, is legal or not, shall be examined in the perspective of international law.

## **CHAPTER THREE**

### **3. THE LEGALITY OF ETHIOPIA'S (2006) INTERVENTION IN SOMALIA FOR SELF DEFENSE**

Under this chapter, the researcher has attempted to address the question of legality of Ethiopian intervention under international law. In order to maintain the logical sequence of the argument, the theme of this chapter is discussed under four sub-topics.

These include:

- appraisal of the situation on the ground;
- the rationale used by the Ethiopian Government in justifying the intervention;
- the perspectives of the critics, and
- an independent assessment by the researcher.

#### **3.1 The Situation on the Ground**

This relates to that particular situation which was found by Ethiopia unacceptable. By and large, the situation may be divided into three different categories. The first, one was the threat to Ethiopia's territorial integrity and sovereignty by UIC, although the latter was not acting as a fully constituted Government of Somalia.

*First*, Somalia has been drifting toward a new war since the Transitional Federal Government was formed, in Kenya, in October 2004. The stand-off between the TFG and its Ethiopian ally on the one hand, and the Islamic Courts, which now control Mogadishu, on the other, threatens to escalate into a wider conflict that would consume much of the south, destabilize peaceful territories like Somaliland and Puntland and possibly involve terrorist attacks in neighboring countries unless urgent efforts are made by both sides and the international community to put together a government of a national unity.

But in the world of Somali politics, unfortunately, no news is ever purely good news and the progress of the peace process has been largely downhill since then. The Transitional Parliament, based in Nairobi, Kenya, elected Colonel Abdullahi Yusuf Ahmed, an archetypal war lord unpopular in most of Somalia, as interim President. Yusuf immediately side stepped the Transitional Charter in order to get his preferred candidate appointed as prime minister: a veterinarian and civil society activist named Ali Mohamed Geedi.

Yusuf's supporters portray him as a decisive, nationalistic and statesman like while his detractors see in him an incipient dictator and a parochial clan chieftain. The interim government has yet to return to Somalia, which is still under the state of insecurity, though returned to Somalia. To the majority of the Somalis who are neither his followers, admirers, Yusuf's election represented not a national consensus, but rather the victory of one camp in the long running civil war. The question is that whether Yusuf and his supporters will continue to exploit their new legitimacy to entrench themselves in power or dedicate themselves to building a genuine peace. On balance, since time on, Yusuf's taking office have compounded rather than alleviated anxieties about the future of the peace process.

Since the TFG's inauguration, unusually heavy fighting has erupted in two of the regions, Jowhar and Baidoa, generating hundreds of casualties. As it was suggested by most commentators that one of the cause of conflict was the interim president's move to the appeal for 20,000 strong African Union (AU) military forces to help enforce his government's authority. Within Somalia, this was widely perceived as a signal that Yusuf was prepared to impose his authority by force to cause deep frustration to his rivals. A number of Somali leaders, including several key Islamist, have since flagged their opposition to the plan, the price of weapons and ammunition in Mogadishu has skyrocketed, and there have been reports of new stock entering the city arms markets.

Since June/July 2006, after a lightning military offensive<sup>102</sup>, most of Somalia (the capital, the centre and the large part of the south) came under the control of jihadist bands (that grouped together to become the Union of Islamic Court or UIC). At the end of July 2006, the UIC became the Supreme Islamic Council Somalia (SICS) with Hassen Dahir Aweys<sup>103</sup> as a president.

Meanwhile, the Union of Islamic Courts (UIC) dramatically expanded its territorial control of Somalia, including the city of Mogadishu, with the blessing of the Somali Business Community. AS a result, the on going internal instability in Somalia has been exacerbated by regional geopolitical tensions.

*Secondly*, the presence of international terrorists with in Somalia, in the absence of an effective government, which shoulders the international legal responsibility for any actions that may take place with in the Somali territory.

The Islamic Court's success, and the rise to prominence of a hard-line jihad Islamists with them, has alarmed neighbors and sent shock waves through broader international community. Ethiopia which suffered terrorist attacks by al-itihad al-islami (AIAI) in the 1990's, considers the courts a direct threat. Kenya is alarmed by links between key figures within the courts and individuals of concerns within its own borders. The U.S. believes jihadi Islamists within the courts shield al Qaeda operatives responsible for bombing two of its embassies in 1998.

All share determination not to allow Somalia to evolve into the African versions of Taliban- ruled Afghanistan. Meanwhile, the Transitional Federal Government is increasingly perceived within Somalia as a faction rather than a national authority and is so wracked by internal dissent

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<sup>102</sup> Rodier, Alain. Somalia in the process of becoming Talibanised? CF2R, Current news n° 43, June 2006, [http://www.cf2r.org/fr/actualite/notes\\_actualite\\_43.php](http://www.cf2r.org/fr/actualite/notes_actualite_43.php) accessed on 14 January 2008

<sup>103</sup> For more information on Hassen Dahir Aweys :INTERNATIONAL CRISIS GROUP, Counter Terrorism in Somalia:Losing hearts and minds, Africa Report no 95, July 2005

and the accelerating defections of cabinet ministers that it threatens to fall apart.<sup>104</sup>

Al Qaeda was reported to have been involved in Somalia for the first time, during the US-led United Nations intervention between 1992 and 1995. Islamist militants of diverse origins, including Al Qaeda, reportedly flowed into the country at that time, offering resources, arms and training in the hopes of transforming Mogadishu into a “second Kabul” or a “second Beirut” for the American interests.<sup>105</sup>

The fundamentalist, former head of the military wing of the *Ali-Ittihad Al-Islami* movement was suspected by US sources of maintaining relations with Al Qaeda. The creation of SICS (usually used by the researcher as UIC) “has resulted in the marginalization of the Federal Transitional Government (TFG) in Somalia from the president Abdullahi Yusuf. Established in 2004 with the support of the United Nations, the TFG has only ever been able to control its headquarters, Baidoa, a small town in the center of the country, and even that has presented problems. Devoid of an army, or almost, and worn down by internal disputes, the TFG appears ready to fall”.<sup>106</sup>

The military wing of the UIC is said to be headed by the redoubtable Aden Hashi Ayro,<sup>107</sup> who is considered to be the spiritual son of Hassen Dahir Aweys.<sup>108</sup> This assumption of power is inevitably accompanied by the beginnings of political organization.

Other Jihadist Organizations exist alongside this embryo political Islam, such as *Ali-Ittihad Al-Islami* (a small group essentially active in Somalia,

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<sup>104</sup> International crisis group, [http:// www.crisisgroup.org/home/index.cfm?id=4333&l=1](http://www.crisisgroup.org/home/index.cfm?id=4333&l=1) accessed on 5 June 2008

<sup>105</sup> Yossef Bodansky, *Bin Laden: The man who declared war on America*(New York. `1999) p.83

<sup>106</sup> BERTHEMET, Tanguy. Ethiopia puts pressure on Somalia, *Li Figaro*, July 22<sup>nd</sup> 2006, [http://www.lefigaro.fr/international/2006721.www000000265\\_somalie\\_ethiopie\\_le\\_spectre\\_dune\\_nouvle\\_guerre.html](http://www.lefigaro.fr/international/2006721.www000000265_somalie_ethiopie_le_spectre_dune_nouvle_guerre.html)-accessed on Dec 25, 2008.

<sup>107</sup> For more information on Aden Hashi Ayro: INTERNATIONAL CRISIS GROUP, *Counter Terrorism in Somalia: Losing hearts and minds*, Africa Report no 95, July 2005, [http://www.crisis\\_group.org/library/documents/Africa/horn\\_of\\_Africa/095\\_counter\\_terrorism\\_in\\_Somalia.PDF](http://www.crisis_group.org/library/documents/Africa/horn_of_Africa/095_counter_terrorism_in_Somalia.PDF) and INTERNATIONAL CRISIS GROUP, *Somalia's Islamists*, Africa Report no 100, December 12<sup>th</sup> 2005, accessed on February 21 2008.

<sup>108</sup> ROGEZ, Oliver. The Islamists Tribunals, on the Rubble of the state, RFI, June 21<sup>st</sup> 2006, [http://www.rfi.fr/actufr/articles/078\\_article\\_44568.asp](http://www.rfi.fr/actufr/articles/078_article_44568.asp)

Ethiopia and Kenya) or the Somali branch of *Al-Takfir Wal-Hijra* (an Egyptian organization). But these entities do not really have any political potential, as they are essentially neo-fundamentalist. However, they can definitely contribute to providing public support for political Islam and do play an auxiliary role.

Created in 1984, *Al-Ittihad Al-Islami* <sup>109</sup>has defined its aim as the creation of large Muslim union in the Horn of Africa. The organization, listed by Washington as an organization associated with international terrorism (links with Al Qaeda have been established<sup>110</sup>), entered the limelight during the nineties by leading destabilization activities against the regime of Siad Barre and attacking Ethiopian positions in Ogaden in an attempt to regain the region of Somalia. Two raids by the Ethiopian army in 1996 and 1997 against *Al-Ittihad Al-Islami* training camps in Somalia put an end to its activism.

As for the *Al-Takfir Wal-Hijra*, this is one of the most radical of the Jihad movements. Created in Egypt in 1996, *Al-Takfir Wal-Hijra* is sectarian in its approach and advocates an unusually violent jihad.<sup>111</sup> The Somali branch of the movement runs a training camp for terrorist in the Ras Kambooni region of Somalia<sup>112</sup>and American and Kenyan intelligence services have discovered that *Al-Takfir Wal-Hijra* maintains relations with Al Qaeda<sup>113</sup>and the Iraqi organization that used to be led by Abou Moussab Al-Zarqawi.<sup>114</sup>

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<sup>109</sup> For more information on Al-Ittihad Al-Islami: INTERNATIONAL CRISIS GROUP. Somalia's Islamists, Africa Report no 100, December 12<sup>th</sup> 2005, [http://www.crisisgroup.org/library/documents/Africa/horn of africa /100somalia's Islamists .pdf](http://www.crisisgroup.org/library/documents/Africa/horn%20of%20africa/100somalia's%20Islamists.pdf). accessed on 23 March 2008

<sup>110</sup> US DEPARTMENT OF STATE, Country Report on Terrorism 2005,office of the co- coordinator for Counter terrorism, April 2006, [http://www.mipt.org/pdf/Country Reports-Terrorism -2005.pdf](http://www.mipt.org/pdf/Country%20Reports-Terrorism-2005.pdf); US DEPARTMENT OF STATE< patterns on Global Terrorism 2003, April 2004, <http://www.mipt.org/pdf/2993PoGT.pdf>,accessed on 15 June 2008

<sup>111</sup>TAMBLE E. John, HOLT E. Melvin, LI Changsheng and SALEK Joel. Report of the Monitoring Group on Somalia pursuant to Security Council Resolutions 1558 United Nations Security Council (S/ 2005/153) March 8<sup>th</sup> 2005, <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/SOMALIA%2005153.pdf>

<sup>112</sup> INTERNATIONAL CRISIS GROUP. Somalia's Islamists, Africa Report no 100, December 12<sup>th</sup> 2005, see at 85 above.

<sup>113</sup> Al-Qaeda's number 2, Ayman Al- Zawahiri, is a member of Al-Takfir- Wal-Hijra.

<sup>114</sup> INTERNATIONAL CRISIS GROUP. Somalia's Islamists, Africa Report no 100 December 12<sup>th</sup> 2005, OP.Cit at 90 above

Therefore, the members of the Al Qaeda's Somalia cell are today among the most wanted fugitives on the planet. As the "wildcard" of the group, the so called Fazul is considered the most dangerous and is, therefore, the most sought after.<sup>115</sup> He is also maddeningly elusive, moving with apparent ease between Kenya, the Comoros and Somalia. Mogadishu counter-terrorism sources claim he alternates between several safe houses and uses false travel documents procured locally and from the UK.<sup>116</sup>

*Finally*, the UIC, which is essentially jihadist, is turning into true political movement and therefore, preparing the imminent institution of political Islam in Somalia. However, the reaction of Ethiopia, which feels in real danger faced with eventuality<sup>117</sup> and which has been established by the United States as "the regional rampart" against Islamism and Jihadism in Somalia. The Somali neo-fundamentalists jihad movements could then themselves to be important allies for the UIC in maintaining terrorist pressure on Ethiopia and rallying Ethiopian Muslims to resist the "infidels".

*The third category* is the fact that the Transitional Federal Government of Somalia, despite its weakness to exercise full controls through out the country, did invite Ethiopia for assistance in restoring peace and order in the country.

Under international law, a state can invite a third state to intervene in case such state is encountering a foreign military attack or an armed attack from internal armed rebels who may or may not get assistance from foreign forces.<sup>118</sup> This means that it can lawfully be assisted by a third-state to repel the attack by way of collective Self-Defense.<sup>119</sup> In most

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<sup>115</sup> Crisis Group interview with US government official, June 2005.

<sup>116</sup> Crisis Group interview, Nairobi 17 April 2004.

<sup>117</sup> PRIER, *Pere*. Ethiopia is concerned about the new Somali leadership, *Le Figaro*, June 26<sup>th</sup> 2006, [http://www.lefigaro.fr/international/20060626,FIG0000001591ethiopie\\_s\\_inquiete\\_de\\_la\\_nouvelle\\_donnesomallinne.html](http://www.lefigaro.fr/international/20060626,FIG0000001591ethiopie_s_inquiete_de_la_nouvelle_donnesomallinne.html)

<sup>118</sup> see the concept of Article 51 of the UN Charter

<sup>119</sup> Casses, *International Law* (2nd edn. Oup, oxford, 2005), pp368-71

cases, some commentators argue that such interventions are illegal unless the inviting government makes a clear invitation, and such invitation must be made on *ad hoc* basis. So an intervention made in this way is not contrary to Article 2(4) of the UN Charter (prohibition of the use of force), and does not run against Preemptory norms as well.<sup>120</sup>

On May 22, South African Ambassador Kumalo, Chairman of the UN Security Council committee on Somalia, presented the latest Report of the UN Security Council. Subsequently, Ambassador Kumalo wrote to the Ethiopian mission in New York regarding the presence of Ethiopian troops in Somalia. Ambassador Negash, Deputy Head of the Ethiopian Mission to the United Nations, in his letter to the chairman of the UN Security Council Committee on Somalia, has replied: ".<sup>121</sup>

*I have the honor to refer to your letter S/AC.29/2008/OC.28, dated 23 May 2008, regarding the presence of Ethiopian military in Somalia, and the apparent implication that this might be in breach of the UN Arms Embargo on the delivery of arms and military equipments to Somalia (UN Security Council Resolutions 733(1992) and 1425 (2002).*

Ambassador Negash has further added that the UN committee previously, made it clear that Ethiopia's presence in Somalia cannot be seen as a breach of the arm embargo. Moreover, he added that:

*Ethiopia is, of course, involved in Somalia at the invitation of the Transitional Federal Government (TFG) and of the Transitional Federal Parliament of Somalia to assist the government in defense of the Transitional Federal Institutions (TFIs) from persistent attack by local and international extremist groups. Indeed, I believe your Excellency was present in Djibouti when President Abdullahi Yusuf of Somalia addressed the Security Council Mission on June 2<sup>nd</sup>. I understand President Abdullahi Yusuf specifically noted that the presence of Ethiopian troops in Somalia came under a bilateral agreement between Somalia and Ethiopia and with the approval of the Transitional Federal parliament.*

Moreover, P.M. Meles Zenawi in his report to the House of Peoples Representatives stated that:

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<sup>120</sup> Ibid, 370-1

<sup>121</sup> Letter of Ambassador Negash, to the chairman of the UN Security Council Committee on Somalia ,found at Walta Information center, Addis Ababa., May 2008.

“...at the request of the Transitional Government of Somalia, Our Defense forces were deployed in Somalia in order to thwart the threat of extremism which had prevailed in Somalia ...”<sup>122</sup>

Based upon this, then, Ethiopia justifies its military presence in Somalia by the fact that the interim government had invited it to intervene. The Somalia Parliament also being assembled in Baidoa approved such an invitation.

Even if President Yusuf’s government is not constitutionally elected, it has enjoyed a support and recognition from international community,<sup>123</sup> where it can have internationally legal admission to invite another state for help. Because it was very weak, with control of only a tiny area of the country while UIC controlled huge area as much of central and Southern Somalia.

Upon this still, some commentators suggest that UIC also managed to maintain stability in the capital and other cities/towns which were under its control.<sup>124</sup> As some opponents suggest Ethiopia was not concerned for the mere overtake of power by Islamic government, but their agenda for destabilization of the region has a serious concern.

In historical and modern times, Ethiopia has never had political problems with the fact that several of its neighbors are principally Islamic. It does not have a problem with the fact that the Sudanese government has implemented Islamic law; the problem is related only to aggressive and destabilizing aspects to that Islamist agenda.

The strength of *militant Islam* has been as oppositional ideology that can rally disaffected young people and latch on to local discontent. One danger today is that the conflict will generate its own jihad logic,

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<sup>122</sup> Six month Report by H.E. Prime Minister Meles Zenawi to the House of People’s Representatives of the Federal Democratic Republic of Ethiopia, 29th March 2007, Addis Ababa.

<sup>123</sup> In Res. 1744/2007, the UN SC reiterated its support for the Transitional Government of Somalia: for the AU’S position, UN DOC S/PV 5633 (20 February 2007)1 and 3.

<sup>124</sup> For the facts, D.Shinn’s, stabilizing Somalia and Ethiopia’s role key points (2 January 2007). <http://www.ethiopia.com>-see also SOMALIA: Ethiopian troops roll in (2006) 43 African Research Bulletin Political, social and Cultural series (ARB-PSCS) 16723B- 16725A. Associated Press (9 January 2007), see also J.Gettleman, ‘Eight Eritrean Captured carrying briefcase packed with cash’ New York times (3January 2007).

attracting Somali and foreign militants to a struggle that is portrayed as one front in a global insurgency against the security of the neighbor.<sup>125</sup>

It is argued that UIC was not only formed of Somalia's force. Latter on, it was made clear in the course of the conflicts by capturing of the foreign fighters, notably Eritrean troops and officials, Arab fighters and some Ethiopian rebels.<sup>126</sup>

### **3.2 The Rationale used by the Ethiopian Government**

The ground for Ethiopian intervention was made known through the report submitted by the Prime Minister to the House of Peoples Representatives. Generally speaking, the reasons for intervention may be analyzed in four different items. Each one of them has been addressed below with reference to the report of the Prime Minister submitted to the House of Peoples Representatives.

#### **3.2.1. Other Avenues for Peace Exhausted**

The Prime Minister reported that his government had done every thing possible to persuade the UIC leaders that Ethiopia did not intend to interfere in the internal affairs of Somalia. The only conditions that Ethiopia wanted UIC leaders to fulfill was that they should reciprocally stop from interfering in and posing threats to Ethiopian sovereignty, territorial integrity and security.

Ethiopia clearly states in its foreign policy that it is always ready to address differences in peaceful manner. Time and again, Ethiopia has shown much patience and duty bound to resolve problems peacefully.

To do so, as usual, the country passed through numerous course of actions to reverse the danger posed on it in a peaceful manner before taking foiling the offensive through military measure means.

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<sup>125</sup> I. Brownlie, Principles of International law (6th edn, OUP, oxford 2006)708, see also cases, no 72 above).

<sup>126</sup> Terrorists from Canada, UK, and Pakistan captured in Somalia. The Associated Press (9 Janu.2007),see also J.Gettleman 'Eight Eritrean captured carrying briefcase packed with cash' New submitted York Times (3Janu.2007). P.237.

The self styled Union of Islamic Court (UIC) led by a radical Islamists, with some listed as on wanted terrorists list, took control of most of south Somalia, in disregard of the Transitional Federal Government (TFG) which was internationally recognized government of Somalia. The UIC backed terrorists at the international level who saw the chaos in Somalia as an opportunity to spread their fanatic ideology in the Horn of Africa. This threat posed on Ethiopia was clear after the UIC showed anti Ethiopian sentiment and declared jihad on several occasions.

It started showing the blatant disregard for the sovereign integrity of Ethiopia by working to realize Siad Barre's 'Greater Somalia' dream through terrorism; annexing the Somalia Region of Ethiopia, as well as Somalia inhabited areas of Kenya and Djibouti. It also started viewing Ethiopia as a 'Christian Enemy' to be dealt with disregarding that it is Muslim country too, where the two religions have been in harmony.<sup>127</sup> The Ethiopian government repeatedly tried, though in vain, to have the grave threat removed peacefully. But UIC's control of most south Somalia must have emboldened them into thinking that they were (would be) invincible.

Having exhausted all its efforts, Ethiopia reached a point where the situation could no longer be tolerated. It became all too apparent for the stakeholders that the radical UIC wasn't going to abate the terrorist activities, but rather press ahead with its agenda.

Then, the Ethiopian Parliament approved of the bill,<sup>128</sup> on 30 November 2006, where it authorized the government to take all legal measures against the UIC, subject to the prior exhaustion of all peaceful avenues. The Parliament believes that there is *a clear and present danger* to our country, where the UIC has continued of training, sheltering and arming

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<sup>127</sup> Ethiopian Herald, Wednesday 25 Feb.2009

<sup>128</sup> Minute of the Debate by House of the Peoples Representatives, (On 30 November), as here in annexed.

Ethiopian rebels that are trying to overthrow the government and to annex the Somali-speaking parts of Ethiopia...<sup>129</sup>

Following the Parliament's Resolution, negotiation to resolve the situation peacefully were held with the extremists, initially in Djibouti and later in Dubai, despite the escalation of attacks by the extremists entrenched in Mogadishu. However the negotiation failed due to the conviction of the extremist leadership that they had the capacity to forcefully execute their objectives and their determination to fulfill their objective during the week of Id Al- Adaha when Muslims all around the world would be celebrating.<sup>130</sup>

Finally on 21 December 2006, Sheik Hassen Dahir Aweys, one of the UIC declared from Mogadishu that Somalia was in the state of war against Ethiopia, and that all Somalis should take part in this struggle against Ethiopia. This was just what the Ethiopian leadership had been waiting for this provides Ethiopia with a legitimate reason to officially confront the UIC in Somalia.

### **3.2.2 The Collaboration with the Eritrean Government**

The Prime Minister told the parliament that UIC leaders had already established *un-holly* alliance with the Eritrean aiming to attack Ethiopia. It is known that Ethiopia and Eritrea governments were engaged in bloody armed conflicts some years ago. Since the relationship of the two countries has not yet been normalized, then a lot remains to be done before actual normalization.

Thus, the Ethiopian Government considered the alliance between UIC and the Eritrean Government as a real threat to its national security. Rival Eritrea has been fighting a proxy war in Somalia to destabilize Ethiopia. Of course, there is no dispute that Ethiopia, which shares more than

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<sup>129</sup> Ibid

<sup>130</sup> Report to the House of Peoples Representatives on Operation in Somalia, by H.E.Prime M. Meles Zenawi, Tuesday 2<sup>nd</sup> January 2007.

1600 km of border with Somalia has legitimate interest in that country. However, Eritrea has no such common boundary and no legitimate security concerns in Somalia, except proxy war. Eritrea has no reason to be involved in Somalia except focusing on undermining Ethiopia's peace and security.

Moreover, the Eritrean government and its supporters believe that the rapid strengthening of the UIC extremist leadership would put Ethiopia in an inextricable and untenable situation. Having this in mind, they had hopes that, if Ethiopia does not take any action in due time as now to destroy the extremist leadership, the extremist forces would take control of the whole of Somalia. If so, they would remain an indelible thorn in the side of Ethiopia, creating mayhem in the country, and in case Ethiopia takes actions against the extremist leadership, it would be definitively embroiled in a quagmire.

Taking the UIC's objectives and desires into account, Eritrea directed actions against Ethiopia using UIC as a means may have amounted to an armed attack in the light its role. The International Court of Justice (ICJ), held in the *Nicaragua case* that 'an armed attack must be understood as including not merely action by regular armed forces across an international border; but also the sending of 'irregulars' into another states territory.<sup>131</sup> The court also added that 'effective control' of the operations by the state is required.<sup>132</sup>

Thus, one may argue whether Eritrea had such level of control over the operations of the UIC and other rebels in Somalia. The UN panel finding affirmed *inter- alia* that on 15 July 2006 colonel Yusuf Negash Warque, an Eritrean Military Officer, arrived in Mogadishu on a Chartered Aircraft. The colonel... conducted a meeting with leaders of the supreme Council of Islamic courts.... He also traveled...for a meeting with....Sheik Hassan

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<sup>131</sup> Case concerning military and paramilitary activities in and against Nicaragua (Merits) 1986 ICJ Rep.103

<sup>132</sup> Application of the convention for prevention and Punishment of Genocide 2006) ICJ Report Para. 369-401, Reaffirming, *the Nicaragua judgment*.

Dahir Aweys <sup>133</sup> inside Somalia. It has to be borne in mind that Eritrean high-ranking military officer were engaged in these activities on a regular basis. Along with other evidence, this clearly establishes that Eritrea was not only providing arms, training, finance and logistics to UIC but also directing and organizing its military operation. Such major involvement may suffice *the Nicaragua test* on degree of control as indicated in above.

This situation entitles Ethiopia to take necessary and proportional action to reverse the imminent security threat. A question may arise whether Ethiopia's Military action in the attack against the UIC, Eritrea and others was proportionate. The basic purpose for which Ethiopia planned to deploy military force was to dismantle the UIC, Eritrean force and other fighters' military capability. The use of jet fighters and heavy artillery against UIC fighters does not make Ethiopia's action disproportionate.<sup>134</sup>

Moreover, Eritrea has allegedly supplied arms to the Islamic courts in violation of an arms embargo passed by Security Council's Resolution 733/1992. For instance, an Eritrea airplane was reported to have landed in Somalia to deliver a shipment of landmines, bombs and guns. The Eritrea government has vehemently denied exploiting the Somali conflict to wage a proxy war against Ethiopia and blamed the deteriorating situation "misguided policies by external actors," such as the US.<sup>135</sup>

The Eritrea government is continuing its effort of using various anti-peace Ethiopian elements and its main instrument to cause insecurity and unrest in various parts of the country, including Addis Ababa. This government has proven beyond any doubt that it has become the center for international terrorism and the main backer of terrorists ensconced in Somalia. It has continued to give them sanctuary and to try to recognize them after their debacle.

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<sup>133</sup> OP.cit.99, above

<sup>134</sup> Ago, as quoted by Dinstein P.240, rightly underlined that it would be mistaken.... To think that there must be proportionality between the conduct of constructing the armed attack and the opposing conduct... what matters... is the result to be achieved by the "Defensive" action, and not the forms substance and strength of action itself.

<sup>135</sup> Rayn Holliday, Researcher and writer, quoting United Nations operation in Somalia/unified task force, 2006

These are some of the evident in which the Eritrean government is prepared to fight Ethiopia until the last drop of the blood of the people of Somalia. The Eritrean government elaborated the strategy in order to advance its object through the blood of the Somalis. It believed that by strengthening the extremists in Somalia, Ethiopia would be put in an inextricable situation and that it would not have the capacity and willingness to wage direct military conformation.

### **3.2.3. Declaration by the UIC to attack Ethiopia**

The report of the Prime Minister also mentions that UIC leaders had already declared their intention to wage 'Jihad' against Ethiopia. These amounts to serious interference and attack against Ethiopian sovereignty and national security.

All states have an inherent right to defend themselves when they face an 'armed attack' from another state, or by state sponsored armed groups, in accordance with Article 51 of the UN Charter. Initially, the right was meant to address an attack from a state. The terrorist attack against the US of 11 September 2001 and its aftermath have brought terrorist actions within the domain of the notions of self defense there may be an 'an armed attack', irrespective of whether the terrorist are sponsored by the state.<sup>136</sup>

As the result the dramatic rise of the Union of Islamic Courts had taken the international community by surprise. Between June and December 2006, they evolved into the most powerful political and military force in southern Somalia. Senior court leaders had publicly spoken of unifying "Greater Somalia," which includes the Ogaden region, under the Islamic government. There was evidence of collaboration between the courts and two Ethiopian rebel groups, namely the Ogaden National Liberation Front (ONLF) and the Oromo Liberation Front (OLF). Besides, the court received

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<sup>136</sup> Ian Brownlie, *Principles of International Law* (6<sup>th</sup> edn. OUP. Oxford) P.713-14...

military and political supports from Eritrea; Ethiopia's strategic adversary.

The key members of the courts espoused jihadist ideologies and sanctioned the provisions of sanctuary to a small potent of Al Qaeda cell and began to violate the rights of the citizens by introducing a strictly conservative version of Islamic Share's Law, shutting down local movie houses, outlawing parties, and music and dancing, banning smoking and consumption of mild stimulant leaf called *Chat*.

Despite the military and political activities of the UIC as stated above, Ethiopian Government has made extensive efforts to explain to the international community about the challenges it faced in the activities of the UIC in Somalia. In this regard, special emphasis was given to clarifying and seeking for Ethiopia's position in the Arab world. To do so, two separate delegations were dispatched to the Gulf States in addition to wide variety of activities carried out by Ethiopian Embassies. However, the UIC turned its deaf ears towards Ethiopia's call for peace negotiation, but continued its provocation to declare Jihad war.

It is important to acknowledge, however, that Ethiopia has a legitimate security interests concerning developments inside Somalia. Ethiopia is seriously concerned that a hostile desperate group in Mogadishu would strongly support the ONLF and OLF and revives Somalia's post-independence goal of encouraging the Somali-inhabited areas of Ethiopia to join it.

These groups had included in their agendas and declared these agendas as in the following which forced Ethiopia to turn to take anticipatory self defense.

- Senior Court leaders had publicly spoken of Unifying "Greater Somalia," including the Ogaden region of Ethiopia, under a single Islamic government;

- There was evidence of collaboration between the Courts and two Ethiopian rebel groups, the Ogaden National Liberation Front and the Oromo Liberation Front.
- And the Courts received military and political support from Eritrea-Ethiopia's strategic adversary. Furthermore, key members of the Courts espoused jihads ideologies and sanctioned the provision of sanctuary to a small but potent Al Qaeda cell.<sup>137</sup>

For this reason, Ethiopia has supported Abdullahi Yusuf's TFG, which does not favor such a policy. Ethiopia has also a growing concern about the rise of the Islamic Courts and the support they receive from Eritrea, a country that is virtually at war with Ethiopia following their dispute that broke out in 1998. As indicated above, several of the Islamic Court leaders previously held senior positions in Al-Ittihad Al-Islamic, an organization that acknowledged in the mid-1990s that it conducted terrorist attacks inside Ethiopia. These same leaders have suggested that it is now necessary to negotiate with Ethiopia over the future of its Somali-inhabited territory. Ethiopia's position is that there is nothing to negotiate; the borders are history.

However, extremist's leadership began to declare that they had the capacity to forcefully execute their objectives and their determination to be fulfilled. This satisfies the test of proximity as it was indicated under chapter two of this paper. Ethiopia subsequently turned to show that it was committed to achieving a peaceful solution to the dispute and had done what it could to that end.

Despite Ethiopia's call for peace, the UIC reached at the stage where it could assemble anti-peace force around the border, in its relentless effort to facilitate the infiltration of these forces into Ethiopia. Ethiopia had to show that this was the last opportunity and it had to guarantee for its protection from a real threat and reach the decision on taking the

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<sup>137</sup> John Prendergast, 15 years after Blackhawk Down: Somalia's Chance, 'Blowing the Horn,' foreign Affairs, March/April 2007.

measure of self defense. The seriousness of the threat and the failure of peace talks caused Ethiopia to be involved in such last resort to protect the sovereignty of the country.

If Ethiopia waited until UIC commences war on it, there would be no guarantee of protection of the acts of terrorists. Because the terrorists could locate their actions wherever they wanted latter on no one is capable of destroying them. Nor could Ethiopia guarantee constant monitoring, detection and successful interception of every incoming terrorist's action, unless it is combated from its source such as this.

The seriousness and imminence of the threat, provoked Ethiopia not wait on any one else to guarantee its security. Because the UIC gains upper hand in a fragile Somalia with such destabilizing agenda and declares war on Ethiopia, then the devastation would have been immeasurable. To conclude, the imminence and seriousness of the threat, in addition to, absence of responsible government, forced Ethiopia to rely on anticipatory self defense to guarantee its security for safeguarding its sovereignty once the peaceful talks failed.<sup>138</sup>

#### **3.2.4. Consent given by the Internationally Recognized Transitional Federal Government of Somalia.**

Both Ethiopia and Somalia are Horn countries sharing the common regional platform of IGAD. Thus, the Transitional Federal Government of Somalia had invited the Ethiopian Government to go and assist it in restoring peace and rule of law in the country.

There was a situation in which Transitional Federal Government officially applauded and approved the presence of Ethiopian military force in Somalia. Somalia's Prime Minister Ali Mohammed Gedi, speaking to CNN from Baidoa said that the Ethiopian intervention was justified:

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<sup>138</sup> P.M. Meles Zenawi's Report to the House of people's Representatives on Operation in Somalia, Tuesday 2<sup>nd</sup> Jan.2007

*“because of threats, the so called Islamist Court” has made against Ethiopia. They have the right to get involved and prevent any attempt of the terrorists to attack their country and their people.”*<sup>139</sup>

With regards to support for the Transitional Government, Ethiopia along with the rest of the international community, back the Transitional Government in Somalia and the Transitional Institutions. It was also believed that there should be a peace keeping operation in Somalia to provide support for the Transitional Government. It was also expected that African Union would take steps in that direction. But no significant contribution was made until the Ethiopian military force intervened being invited by the Transitional government.

P.M. Meles Zenawi also in his report to the House of Peoples Representatives stated that:

*...at the request of the Transitional Government of Somalia Our Defense force was deployed in Somalia in order to thwart the threat of extremism which had prevailed in Somalia...”*<sup>140</sup>

Ethiopia has justified its military presence in Somalia by the fact that the Interim Government had asked it to intervene. The Somalia Parliament Assembled in Baidoa approved such an invitation. Though President Yusuf's government is not constitutionally elected, it has enjoyed a support and recognition from international community.<sup>141</sup>

However; it was very weak, with control of only a tiny area of the country until the beginning of the Ethiopian military offensive. The UIC which held control of much of central and Southern Somalia began to intensify the situations in completing its preparations to launch an all out all out against the Transitional Federal Government of Somalia. Furthermore, it reached a stage where it could assemble anti- peace forces around

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<sup>139</sup> UN envoy seeks Security Council action for Somalia, Associated Press, Dec.27, 2006.

<sup>140</sup> Six month Report by H.E. Prime Minister Meles Zenawi to the House of People's Representatives of the Federal Democratic Republic of Ethiopia, 29th March 2007, AddisAbaba.

<sup>141</sup> In Res. 1744/2007, the UN SC reiterated its support for the Transitional Government of Somalia: for the AU'S position, UN DOC S/PV 5633 (20 February 2007)1 and 3.

Ethiopian border, in its relentless effort to facilitate infiltration of these forces into Ethiopia.

These acts objectively demonstrate that the extremist leadership had no desire whatsoever to resolve the problem peacefully, and after exhausting all avenues for peace, the Government, in accordance with resolution of the House of Peoples Representatives, prepared a plan for a counter-offensive to protect the country from attack which has been planned to be implemented in coordination with the Transitional Federal Government and other forces in Somalia. Furthermore, the Union of Islamic Courts' representative announced, "The country is open to all Muslim jihadists worldwide."<sup>142</sup>

Of course, one should not support wars of unilateral intervention, especially in the country already devastated by civil war, disease, and poverty. Ethiopia claimed that it had no alternatives except averting the forces declaring war and pulling its forces towards border and to Baidoa, where the Ethiopian forces were, to help the Transitional Federal Government. Therefore, Ethiopia took responsibility for its security into its own hands once the peaceful failed, where it was forced to stack in the war for itself rather than relying on the west to do so for it.

### **3.3. The Perspective of the Critics**

The critics against Ethiopian intervention may be divided in to two. The first category consists of UIC leaders and their supporters. The second group comprises people holding different perspectives, although they all share disapproval against the action taken by Ethiopian government.

UIC and their supporters are already a party in the conflict. Thus, it is understandable that they accuse Ethiopia of committing aggression against Somalia. But, to the knowledge of the researcher, they have not produced evidence either to the UN, the AU, or IGAD showing that they

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<sup>142</sup> Awes Osman Yusuf , "Islamists call world Muslim fighters to wage their jihad war in Somalia," *Shabelle Media Net work*, December 23, 2006. <http://www.shabelle.net/news/ne1930.htm>, accessed on 5 February 2007.

did not commit an act of hostility threatening the sovereignty and national security of Ethiopia.

The second group argues that Ethiopia went into Somalia in support of foreign parties and not due to its own national interest. But among such critics, Ethiopian Members of Parliaments (MPs), representing opposition political parties did argue in a more extensive manner. The issue was divisive among Ethiopian Parliament, where Professor Beyene Petros, of the Coalition Party argued that:

*“if sporadic incursion warranted a Declaration of War, there would be no peace in the world. Here we are only being told of sporadic incursions and there is nothing to show us an act of invasion. Therefore, we do not believe the threat is appropriately being defined [nor] that it justified such Resolution”.*<sup>143</sup>

In the light of the minutes of the House of peoples Representatives, we may say that the common notion reflected by these MPs was that the threat to attack Ethiopia was not supposed to be taken as a full fledged action that could justify military response by Ethiopia. It has been argued that it would be unwise and risky for Ethiopia to intervene in Somalia which had stayed for long as a stateless country. This means that the MPs seemed to prefer that Ethiopia should wait and see whether or not the UIC would materialize the threat they had directed against Ethiopia. In other words, the MPs were reluctant to support the government in its inclination to a pre-emptive action in self defense.

From the forgoing discussion, we can see that there is a general understanding that a country which becomes victim of aggression is entitled to exercise the right to self defense. The basis of the argument by the critics is, therefore, based on the claim that there was no actual or real threat posed by the UIC, to justify Ethiopia’s intervention by Ethiopia.

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<sup>143</sup> G. Dawit, ‘A critical and timely resolution to defend our severity’ the Ethiopian Herald (3 Dec 2006).

### 3.4. Opinion of the International Community

Various Governments and leaders across the world have supported Ethiopia's right to self defense and have refrained from questioning its inherent right to self defense.

In the United Nation's Security Council deliberation on the issue, among the 15 members, only Qatar, argued against Ethiopia's right to self defense, where the motion was defeated from the other 14 members of the Council. Therefore, the United Nation's Security Council did not question Ethiopia's right to take action in self defense.<sup>144</sup>

After the major hostilities began in December, the Council neither condemned nor formally supported Ethiopia's action. Qatar circulated a draft presidential statement 'calling for an immediate withdrawal of all international forces, specifying Ethiopian troops.' The US, Russia, Britain, France, and African members Ghana and Tanzania among others, objected to signaling out Ethiopia and calling for an immediate withdrawal' and advocated the resumption of dialogue between the warring parties.<sup>145</sup>

In the February 2007 session of the Council on Somalia (which led to the authorization of the deployment of African peacekeepers into the country), the UK 'for the first time in 15 years, the Somali people have prospect of being governed by representative institutions that will provide them with security and stability'; it also called upon states to lend their support to the Somali Government 'to turn this opportunity into reality'. France added that 'it is up to the Somalis alone to seize the unique opportunity offered by the African Union'.<sup>146</sup> There was no statement made to the contrary. This may be interpreted that the majority gave their tacit

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<sup>144</sup> See Security Council Resolution 1725/2006 upon Somalia.

<sup>145</sup> UN Envoy seeks Security Council Action for Somalia, CNN News (27 Dec. 2006) at <<http://edition.cnn.com/2006/WORLD/africa/12/26/somalia.ethiopia/index.html>>

<sup>146</sup> UN Doc S/PV 5633 (20 Feb. 2007) 1 and 3. Resolution 1744/2007 was adopted unanimously.

approval to the Ethiopian military action and refrained from questioning Ethiopia's inherent right to Self-Defense.

The African Union also took a claim and principled position on the issue. The African Union Peace and Security Council's statement of 8 January 2007 appears to impliedly welcome Ethiopia's action saying:

*The Peace and Security Council noted that the recent developments in Somalia have represented a new and historic opportunity that should be seized upon by the Somali parties and the international community alike, with a view to fostering peace and reconciliation in Somalia.*<sup>147</sup>

This shows that the AU unequivocally and publicly declared that Ethiopia has a right to take legal measures to defend herself from the extremist leadership of the UIC. Overall, one can say that the International Community, the African Union and other major countries accepted Ethiopia's right to self defense and the measures Ethiopia took.<sup>148</sup>

After the major hostilities began in December, the Council neither condemned nor formally supported Ethiopia's action. Qatar circulated a draft presidential statement calling for an immediate cease-fire and the immediate withdrawal of all international forces, specifying Ethiopian troop'. The US, Russia, China, Britain, France and African members Ghana and Tanzania, among others, 'objected to singling out Ethiopia and calling for an immediate withdrawal and advocated the resumption of dialogue between the warring parties.

In the February 2007 session of the Council on Somalia (which led to the authorization of the deployment of African peacekeepers into the county), the UK underlined that for the first time in 16 years, the Somali people have a prospect of being governed by representative institutions that will provide them with security and stability; it also called upon States to lend their support to the Somali Government 'to turn this opportunity into a

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<sup>147</sup> 'Press statement on the situation in Somalia' BBC News (27 Dec.2006 at <<http://news.bbc.co.uk/go/pr/fr/-i/hi/world/africa/6212807/stm.>>

<sup>148</sup> Ibid.

reality'. France added that 'it is up to the Somalis alone to seize the unique opportunity offered by the African Union'. There was no statement made to the contrary. This may be interpreted that the majority gave their tacit approval to the Ethiopian military action.

However, whilst the Deputy secretary of the African Union acknowledged Ethiopia's defensive action against the UIC, the African Union supported by the Arab League and IGAD called upon Ethiopia to withdraw its troops from Somalia. Prime Minister Meles Zenawi considered the call as proper and in line with Ethiopia's military objectives, which were to weaken the UIC and others' military capability and leave Somalia without any delay. The African Union Peace and Security Council's statement of 8 January 2007 appears to impliedly welcome Ethiopia's action saying:

*The Peace and Security Council noted that the recent developments in Somalia have represented a new and historic opportunity that should be seized upon the Somali parties and the international community alike, with the view to fostering peace and reconciliation in Somalia.*<sup>149</sup>

Moreover, the US defended the Ethiopian action as legitimate and shortly became a party to the conflict by carrying out the contentious air raids on fleeing UIC targets. On December 26, 2006, US state Department spokesman Janelle Hironimus accepted Ethiopia's action as a response to "**aggression**" by Islamists.<sup>150</sup> The only party that took a different position on the issue was the rival government of Eritrea for the very fact of its destabilization ambition.

Furthermore, a senior British foreign office Minister, Lord Triesman, was quoted in a Kenyan newspaper saying that: 'with evidence those fundamentalists were "massing" on its borders, Ethiopia had a little option but to react; he urged the international community to understand this.<sup>151</sup> Among Arab countries, the Yemeni Ambassador to Ethiopia said

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<sup>149</sup> Press statement on the situation in Somalia, African Union Peace and Security Council (8 January 2007), Addis Ababa, Ethiopia at <<http://www.ethio.embassy.org/uk/news/news/htm>> accessed on 5 April 2008.

<sup>150</sup> A. Talbot, 'US Backs Ethiopia's invasion of Somalia (28 Dec. 2006) at <[www.wsws.org](http://www.wsws.org)> accessed on 25 January 2007

<sup>151</sup> Lord Triesman, Int'l community needs to understand why Ethiopia launches counterattacks on fundamentalists (8 Jan. 2007) at <[http://www.ena.gov.et/English News/2007/Jan/08Jan07/13540.htm](http://www.ena.gov.et/English%20News/2007/Jan/08Jan07/13540.htm)>

that it was 'threat not ambition that drives Ethiopia into war'. He added that Ethiopia 'has the right to defend itself'.<sup>152</sup> Egyptian President Hussein Mubarek thought that Ethiopia's concern and actions were understandable.

Therefore, the prevalent view of the international community does seem impliedly to approve the Ethiopian presented by Ethiopian action against the UIC and other foreign fighters. Pre- and-post military operation evidence affirms most of Ethiopian claims which led to the military action, the presence of foreign elements, fundamentalists, and Ethiopian armed rebels operating within and from Somalia.

### **3.5. Stack in the War**

As it was clearly stated above, the acts of the extremist's leadership objectively showed that they had no desire to resolve the problems peacefully. Of course, Ethiopia has the responsibility and duty to protect itself from any attack and this, like any other sovereign country, solely belongs to it. It neither expected nor requested any assistance from any foreign government for its operations. In this case the concerned government officials expressed their concern about the immediacy and imminence of the action of Union of Islamic Courts in Somalia as in the following: President Girma Woldegiorgis said:

*Nations Nationalities and peoples of Ethiopia should stand the unison in reversing the threat posed by the Union of Islamic Courts in Somalia he Eritrean Government, and other anti-peace forces to disrupt the peace and sovereignty of Ethiopia and to disregard the right of self determination in the country.*<sup>153</sup>

The government identified and targeted as enemies only those extremist leaderships of the UIC and terrorists assembled from different countries including the Eritrean Government soldiers who have been cooperating and assisting these groups.

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<sup>152</sup> GAK Alaghbari, 'Threat not Ambition that drives Ethiopia to war' Ethiopian News Agency (17 Jan.2007)

<sup>153</sup> President Girma Woldegiorgis, Ethiopian President's calls on Public to defend nations against Islamists, December 08, 2006.

Up on this, Prime Minister Meles Zenawi, in his six months report to the House of Peoples Representative said that:

*Ethiopian defense forces were forced to enter into war to protect the Sovereignty of the Nation. We are not trying to set up a government for Somalia's international affairs. We have only been forced by the circumstances.*<sup>154</sup>

Again a spokesman for Ethiopia's information Ministry, Zemedkun Tekle said that:

*"what do you expect us to do? Wait for them to attack our cities?"*<sup>155</sup>

The campaign was conducted in a manner that lessens potential harm to the civilian population, and disperses the majority of the clan militia assembled around the UIC leadership and to destroy the main enemies.

### **3.6. Win the War**

The Ethiopian military force had moved into Somalia two years ago. It went there with a clear mission –to foil the clear and present danger - created by extremists force and their clique that had repeatedly declared jihad against Ethiopia. In spite of achieving its mission, in the first two weeks,<sup>156</sup> the forces stayed in Somalia for the last two years as per the request of TFG of Somalia.

Has Ethiopia executed the actions compatible with the foreign Affairs and National Security policy, and the mandate taken from the regional and international institution?

The entrance of Ethiopian military force to Somalia came after the government made all the series of endeavors, got support from IGAD members, received official call from TFG of Somalia, approved by Ethiopian cabinet and Parliament and immense support from the people of Ethiopia.<sup>157</sup> In relation to the accomplishment of its missions, it is possible to summarize in the following manners:

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<sup>154</sup> J.Gettleman, 'Ethiopia hits Somalia targets, 'declaring war', International Herald Tribune (24 Dec 2006)

<sup>155</sup> Ibid.

<sup>156</sup> Ethiopian Herald, the official English News, Saturday 25 January 2009

<sup>157</sup> Ibid

### 3.6.1. Thwarting Clear and Present Danger

The major mission of the Ethiopian defense force which was to remove the threat posed to the country by the extremists was completed in the first two weeks.<sup>158</sup> This speaks the great determination and efficiency of the defense force, which is always ready to defend the nation from any anti-peace element that attempted to put the prevailing peace, stability and development, endeavors in jeopardy.

Ethiopia had a number of defensive goals when it was forced to enter into the war. It removed the thorn in its side before it caused irreversible damage. Having taken measures proportionate to the attacks on it, Ethiopia has successfully managed to achieve the goal of defending itself.

Though its major aim was protecting itself from attacks, with in the framework of the operations undertaken to achieve this goal, Ethiopia also sought to support the efforts of the people of Somalia that disengage themselves from the *Taliban style rule of extremist* and to realize sustainable peace.

To that end, responsibility and duty to protect Ethiopia from any attack is solely belongs to Ethiopia and its government. For this reason, it neither expected nor requested any assistance from any foreign government during the defensive operations. Time and again, Ethiopia has continuously made unstinted efforts to persuade the international community to accept its right to Self-Defense and support where possible the measures the government has taken to protect itself. In this regard too, the government accomplishing great measure the goals it has set to achieve in the diplomatic endeavors.<sup>159</sup>

Ethiopia was successful in achieving its goal because of its defense forces, with the backing of the people, have fought displaying outstanding

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<sup>158</sup> Ibid

<sup>159</sup> See Opinion of the international community at above 130.

military capability in a spirit of brotherhood with the Somali allies, with tremendous political prudence and political sentiment.

In this case the measures that has been taken has not only enabled Ethiopia to attain all objectives in a satisfactory manner but has also unequivocally disproved the misguided perceptions and forecasts that have been propagated by various quarters and pundits over the previous months as the crisis was heightening.

Therefore, Ethiopia accomplished its mission in thwarting the dreams of the destabilizing forces in Somalia, and by now the issue of bringing lasting peace in Somalia hinges on the joint effort of the international community together with the effort of Somalia, IGAD and AU in more responsible to create a window of hope in Somalia. Furthermore, the greater support from the UN and the international community is also highly expected if lasting peace should be resorted in the country.

### **3.6.2. Ensuring Relative Peace and Stability**

Back to 2006 Somalia was in huge chaos. The extremists controlled most regions of Somalia including the capital Mogadishu. The Extremists, which linked with Al Qaeda, had been expanding everyday and become huge threat to the region. The TFG based in Baidoa then, did not have organized force to halt expansion and the threat of extremists. There was no possibility and space at all to bring peace and stability, as well as create forum for reconciliation.

During the two years of stay, the Ethiopian military force executed several encouraging activities in bringing stability of that country. The force supported establishment of public administration at lower level although the TFG did not keep on strengthening the effort in an organized manner. Moreover, activities were exerted to boost decision making power of the public.

Upon the completion of this final phase of the mission, within the first few weeks of the war, Ethiopia decided to withdraw its forces. However, the

TFG requested the Ethiopian Government to stay while until the international community deploys peace keeping forces. As the result, Ethiopian military forces stayed in Somalia until the end of 2008, when the government decided for it withdrawal.

Generally, the situation in Somalia when the force moved in to there and while the troops are withdrawing is totally different. Currently, it is the TFG which has an organized and strengthened force. The TFG, AMISOM, Business persons and militias have joined force to make use of the opportunity, where Ethiopia will keep on doing its level best till lasting peace and stability ensured in Somalia.

### **3.7. An Independent Assessment by the Researcher**

The current crisis in the Horn of Africa, especially the Ethiopian military intervention in Somalia, in pursuit of what Ethiopia perceives as legitimate national security interest, has led some circles to much polarize and analysis on the region.

While it may be true that the historic evidence shows that during the 1990s Africa's regional actors tended to see conflicts in their region through "the colored glasses of narrow national self-interest" and more often intervened for national than for humanitarian reasons, there are a number of theoretical and practical problems with employing this as an argument against the conduct of the regional peace operation in the future.

The motivation to intervene that is arising from "national self interest" and not pure altruism must not always be judged negatively. To be more specific, there seems, hardly anything wrong with intervening for reasons of national interest as long as this is legitimate and benefits the large majority of people on the ground (no intervention will ever benefit anyone) and is geared towards a lasting resolution of the conflict at hand.

This is not to say that a common end, that is the restoration of peace, necessarily legitimizes every one's underlying motivation or all means of achieving that end, but only those national interests need not to be narrowly thought of as springing exclusively from resource greed or military ambition. Given the massive influx of refugees, political unrest, it may well be in the national interest of a conflict neighboring state to join a regional intervention in order to prevent or at least mitigate such a spillover effects by ending the conflict. The researcher would agree that there is nothing wrong in it.

On the contrary, by having a great stake in the resolution of the conflicts, such countries are likely to be more determined, than neutral outside the regional countries. Again, in comparison with the effects of the US body bag syndrome on the intervention in Somalia with the way Ethiopia stayed, the course in Somalia seems to validate this in line of thought that exhibits their great staying power than such neutrals.

Somalia's Islamic Courts fell more dramatically than they rose. In little more than a week in December 2006, Ethiopian and Somali Transitional Federal Government (TFG) forces killed hundreds of Islamist fighters and scattered the rest in a lightning offensive.<sup>160</sup> On 27 December, the Council of Islamic Courts in effect dissolved itself, surrendering political leadership to clan leaders. This was a major success for Ethiopia and the U.S. who feared emergence of a Taliban-style haven for Al-Qaeda and other Islamist extremists, but it is too early to declare an end to Somalia's foes.<sup>161</sup>

The Ethiopia's military victory has dismantled only the most visible part of the courts. In this case, military attacks on the basis of UIC and its supporters effectively eliminated the threat posed by Al Qaeda affiliated and forced them to stop pointing their fingers towards Ethiopia. Ethiopia also supported efforts to rebuild a central government for the country,

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<sup>160</sup> International Crisis Group, B45 Somalia: The tough part is the head, Africa Briefing No 45, <http://www.crisisgroup.org/home/index.cfm?id=4630&1=1>, accessed 26 January 2008.

<sup>161</sup> *Ibid.*

consistently extending assistance to any groups ready to work for stability. To that end, Ethiopia has consistently tried to shore up legitimate authorities in neighboring states, believing that this will serve Ethiopia's best interest.

The current military intervention into Somalia has been only one of instances of Ethiopia's strategy for dealing with immediate threats to the national security and regional stability, which uses a combination of diplomacy and force in pursuit of consistent goals. The great danger that faces the Horn today is that, problems that are local in nature and can easily be manageable, but if not controlled in due time, are allowed to spiral out of control, leading to escalation in violence, confrontation and polarization.

Situations in Somalia prove that statement quite very well. Neighboring Ethiopia had to interfere urgently. Islamic regime in Somalia had all chances to become exactly what the Talib regime in Afghanistan become for the world after 11 September 2001 attack. At that time, a global anti-terrorism coalition had to be created to solve it. It was already impossible to overcome the Talib regime with less sacrifice.

Although poor, Ethiopia has a long history of statecraft and a sense of a national identity and military tradition, which together mean that it is capable of acting in of pursuit of a clearly – conceived national interest. Ethiopia's population is almost equally divided between Christians and Muslims and the country contains old cities, like the city of Harar, which is one of Islam's holiest sites.

For a number of centuries, with only brief interludes, Ethiopia's history has been marked by mutual respect and tolerance among faiths. The attitude of successive governments has been to nurture this accommodation and resist the politicization of religion. As the result, Ethiopia keeps a watchful eye on the activity of foreign militias in the horn, who regularly introduce destabilizing agendas in the name of

religion. An attempt by radical Islamists to create Islamic states, like Eritrea, would be a profound threat to Ethiopia.

To avert this clear and present danger, Ethiopia took direct military action against extremist groups on Somalia soil. Then, Ethiopia fully understood that it soon become the first target for the UIC terrorist actions. So the country had one alternative as it recognized the failure of diplomatic efforts. It must willy-nilly act against the aggression in order to defend itself and its people from the attacks. Ethiopia did it. Zemedkun Tekle, a spokesman for Ethiopia's information Ministry asked: "*What do you expect us to do? Wait for them to attack our cities?*"<sup>162</sup>

Recently, Ethiopia deployed its military force in Somalia, only for the fact that, its national security was threatened by terrorist affiliates UIC, and its supporter's publicly declaring jihad on Ethiopia. As the result, Ethiopia, understanding this danger early, reached upon the decision that, unless such danger is being confronted early to manage it locally, it would become out of control, where itself would be the first target of these terrorist actions.

Since the situation in Somalia proves this statement quote well, then neighboring Ethiopia had to interfere urgently. Because Islamic regime in Somalia had all chances to become what the Talib regime in Afghanistan become for the world after 11 September attack. At that time, a global anti terrorism coalition had to solve it. It was already impossible to overcome the Talib regime with less sacrifice for it was not managed as early as possible.

So, the question arises, is there some other way to neutralize, the threat as this, spreading in the world? The researcher agrees that, Ethiopia, in fact, is now showing this new way of solving the problems with radical

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<sup>162</sup> Gettleman, 'Ethiopia hits Somalia targets, 'declaring war'', International Herald Tribune (24 Dec 2006)

Islamism and terrorism, which will replace the global anti-terrorism coalition...*slow, expensive, and out-dated.*

Perhaps the world should thank Ethiopia for undertaking that dirty work, relieving great countries from the unpleasant necessity to gather, to summon UN Security Council, and to think what to do with Somalia's Islamists keeping in mind their own interests.

The researcher further argues that Ethiopia has never had political problems with the fact that several of its neighbors are principally Islamic, as for instance, the case of Sudanese government implemented Islamic law. But in Somalia, the concern only comes to the picture with the UIC's aggressive and destabilizing aspects to that Islamist agenda.

So in its recent intervention, Ethiopia did defend itself from a clearly – identified threat emerging from Somalia. Ethiopia has no other agenda than securing itself from destabilization and threat of violence, in order to have a progress for the project of democratization began in Ethiopia. The absence of responsible government in Somalia causes for the incubation and shelter of local and international terrorists which should strictly considered by concerned organ of the international community.

Due to the failure of the international community, particularly the UN, in fulfilling its proper role in containing Somalia, it seems both as immoral and illogical to prevent Ethiopia from doing so. Old habits of thoughts die hard, and perhaps no where more than among international lawyers. And “pack thinking” does not guarantee “right thinking”.

The UN Charter is not a suicide pact. It is not, and need not be read as, a suicide pact for states engaged in genuine self defense and the defense for freedom of the sovereignty.

Therefore, Ethiopia, in fact, is showed the new way of solving the problems with radical Islam and terrorism, which will replace and out of date, by taking the necessary measures with less time and less expense.

The findings of the researcher in this paper can be summarized as in the following:

1. It must be clear that the notion of '*imminence*' is crucial to the doctrine of self defense, where it must be developed in accordance with the times where the international law needs to keep a pace with social and political change of the global reality.
2. International law is not a suicide pact. To claim that a state is required at all times to absorb the first blow in an age of terrorism and Weapon of Mass Destruction, where the first blow could be swiftly delivered and could of itself eliminate the state must be taken seriously.
3. For the use of force to constitute self defense, there must not be an undue time-lag between armed attack and the invocation of self defense.
4. Ethiopia is showing the world the new way of solving the problem, which will replace the global anti-terrorism coalition which is *slow, expensive* and *out-dated* by taking the proportionate measure in the earlier possible.

Finally, just as plants and animals must adapt to the changing nature of their environment in order to survive, the law must adapt to changing social, political, and technological factors in order to remain relevant. Therefore, the concerned organs of the international community are responsible enough to reconsider time and again of these burning issues.

## CHAPTER FOUR

### 4. CONCLUSION AND RECOMMENDATION

#### 4.1. Conclusion

The researcher is correctly cautious that the doctrine of pre-emption is open to abuse, if it surely is, in the wrong hands and in different situations, as are so many other rights and lofty principles. The abhorrence of war is understandable, but when it is too abolitionists, it may have pernicious unintended consequences. Military intervention must always be regarded as an exceptional action of last resort. Such action is inherently a symptom of failure other peaceful resolutions. But as long as states will be unwilling or unable to protect their populations or effectively carryout their responsibilities as states, intervention will be needed, and there will be irresistible pressure for it to occur. This objective must be to do the things necessary to ensure that the local grievances do not become matters of domestic conflict, and that domestic conflicts do not explode into matters of regional and broader international concern.

In relation to this, a right of self defense that encompasses both actions in response to an armed attack, and actions done in anticipations of an armed attack, are, provided by customary international law after the *Caroline* incident. However, the extent of the customary rules remain somewhat controversial-as evidenced by the debate over the US's recent National Security strategy and operation Iraqi freedom.

The US has argued that the notion of imminence should be extended to allow for pre-emptive strikes against terrorist groups, and to forestall the use of WMDs by rogue states. However the dangers that might arise from an alteration of the existing framework are numerous. To extend these requirements too far for example, would leave the notion of self defense open to abuse, and could give states an opportunity to cloak aggressive

military strikes under the mantle of pre-emptive self defense. Despite this, the notion of pre-emption is permitted in international law, and the US can therefore, maintain the policy of pre-emption that is legal. It is arguable that the Caroline elements remain applicable to the current security environment, at least to the threat of rogue states that sponsor terrorism, and therefore, allow the US the option of using pre-emption under the traditional legal frame work.

The Horn of Africa is rough neighborhood. It is one of the most complex and conflicted regions of the world. The current crises have many facts, including the Collapse of State Authority in Somalia, the unresolved conflict between Ethiopia and Eritrea, and a partially, development Agenda of Political Islam in Region.

The outcome of the research can be formulated as in the following:

- For the use of force to constitute self defense, there must not be an undue time-lag between the armed attack and the invocation of self defense as in the case of United States vs. Iraq.
- Self defense has to be inherently relative concept-relative to the time and circumstances in which it is involved. This means that self-defense in the days of naval warfare that used to be occurred, is very different thing from self defense in the days of nuclear warfare and terrorism.
- The concept of self defense is in the state of flux. Changes in the potential forms of attack have significantly raised the stakes, the increased threat of terrorism has altered the nature of the potential aggressor, where the notion of 'imminence's crucial to the doctrine of self defense. Yet it must develop in accordance with the times where the law must keep pace with social and political change.

The current crisis has underscored that Ethiopia must lie at the center of any stabilization of the Horn. However, the burden of regional stability is too heavy for one government to bear, especially in a Region driven by so much distrust. Ethiopia cannot stabilize Somalia on its own, both because of its own limited capacity and because of the historical political baggage that it carries. Ethiopia can only pursue its multilateral strategy successfully within a multilateral framework, in chiding the inter-government authority on development (IGAD), the African Union, and the UN (and in case of Somalia, the League of Arab states). The first step is to communicate its political aims. The overall game plan should be to build a new Peace and Security Architecture for the Horn. The time to start discussing this framework is now.

Ethiopia needs regional stability for its own domestic reasons. Unless the Ethiopian state is secure from destabilization and the threat of violence, the project of democratizing-Ethiopia began under this government cannot progress. Only when there is a strong state that commands consensus and alliance across all sectors of its population, and commands the respect of its neighbors, can there be a successful transition and a viable regional peace and Security order.

In the international law perspective it has been argued here that Art 51 of the Charter of the UN includes the customary International Law Right of Anticipatory self-defense despite the argument against this position, it has also been suggested that there are limits to the exercise of this right and that those limits are capable of legal analysis. Ethiopia faced Al-Qaeda's affiliated terrorist's threat which it had tried to remove by peaceful means for several times. It had no guarantee of its own security other than by taking its Unilateral Defense action. It had a limited opportunity to remove that threat and chose to do so in a way that required a minimum amount of force with the least loss of human life. This particular use of force constituted an appropriate application of the right of anticipatory self-defense in international law.

In this case, if the international community particularly the UN, fails to fulfill its proper role in containing Somalia, it is illogical and immoral to prevent Ethiopia from doing so. Old habits thought die hard and perhaps no where more than among international lawyers. And “pack of thinking” does not guarantee “right thinking”. The UN Charter is not the Suicide Pact. It is not, and need not be read as, a suicide pact for states engaged in genuine self defense and the defense for freedom.

*Finally*, Whether Ethiopia’s action was right and whether it was a success has different answers depending on who is doing the explaining. As to the conclusion of this research based on the facts displayed the researcher believes that, since like any other country, Ethiopia has legitimately did the right thing in intervening Somalia, to avert a clear and present danger pointed by Union of Islamic Courts, by breaking the back bone of the terrorist from the source.

#### **4.2. Recommendations**

- It is important that to reiterate that the primary responsibility for achieving peace stability rests with the Somali leaders and people. They must demonstrate sufficient political will and leadership to overcome their differences and engage in an all-inclusive process, which remains essential for the success of all peace efforts in Somalia.
- The United Nations and the international community as a whole should continue to support genuine Somali-led dialogue and reconciliation efforts in Somalia as the basis for our collective efforts to promote sustainable peace, stability and reconstruction.
- It is essential that the process of building and strengthening the transitional federal institutions be based on the strong and principled framework contained in the Transitional Federal Charter, including the international human rights instruments ratified by

Somalia. The Transitional Federal Government has a primary responsibility to uphold these commitments.

- While the United Nations and its partners redouble their efforts to secure durable peace and stability in Somalia, it is essential that everything be done to meet the immediate humanitarian needs of the Somali population. I, therefore, urge donors and others whom it may concern generously support emergency relief operations in the country through the United Nations consolidated appeals process for Somalia.

የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ

3ኛው የሕዝብ ተወካዮች ምክርቤት

2ኛ ዓመት የሥራ ዘመን

8ኛ መደበኛ ስብሰባ

ቃለ ጉባኤ

ህዳር 21 እና 26 ቀን 1999 ዓ.ም.  
አዲስ አበባ

በመደገፍ ምን ጊዜም እንደሚያደርጉት ሁሉ ከጌናችን በዕናት መሰለፋቸውን በማድነቅና ለዚህም አድራጎታቸው በማመስገን፤

11. በሶማሊያ የሚገኘው ሰራዊታችን ተልእኮውን በብቃት በመፈፀሙ ቀደም ሲል በመንግስት የተወሰነው ሶማሊያን በአጭር ጊዜ ለቆ የመውጣት ውሳኔ ሃላፊነት በተሞላበት አኳኋን በዕናት ተግባራዊ እንደሚደረግ በማረጋገጣቸው ክቡር ጠቅላይ ሚኒስትር በዛሬው እለት ያቀረቡት ሪፖርት የምክር ቤቱ ውሳኔዎች በትክክል መፈፀማቸውን ያረጋገጠ ቀጣዩን ሂደትም ያመላከተ በመሆኑ ምክር ቤቱ ተቀብሎ አዕድቆታል።

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 ተከፋፍሎ ⇒ 22  
 ይገኛል ⇒ 16 በገንባታው ያገኘ  
 ይደርሳል።  
 15

ክቡር ጠቅላይ ሚኒስትር መለስ ዜናዊ የአገራችንና የሶማሊያን ወቅታዊ ሁኔታ በማስመልከት ለህዝብ ተወካዮች ምክር ቤት ባቀረቡት ሪፖርት ላይ የተላለፈ የውሳኔ ሃሳብ

ዛሬ ታህሳስ 24 ቀን 1999 ዓ.ም ክቡር ጠቅላይ ሚኒስትር መለስ ዜናዊ የአገራችንና የሶማሊያን ወቅታዊ ሁኔታ በማስመልከት ባቀረቡት ሪፖርት ላይ ምክር ቤቱ ከተወያየ በኋላ የሚከተለውን የውሳኔ ሃሳብ አሳልፏል።

ክቡር ጠቅላይ ሚኒስትሩ ያቀረቡት ሪፖርት፣

1. ምክር ቤቱ የሶማሊያ እስላማዊ ፍርድ ቤቶችን ህብረትን አመራር የተቆጣጠረው አሸባሪ ሃይል በአገራችን ላይ የሚያካሂደውን ጥቃት ከተቻለ ሰላማዊ መፍትሄን በማስቀደም ለማስቆም፣ ይህ ጥረት ካልተሳካ ደግሞ አገራችንን ከጥፋት ለመታደግ መንግስት ራሳችንን የመከላከል መብታችንን በተግባር ላይ እንዲያውል መወሰኑ ትክክለኛና ታሪካዊ መሆኑን በመገንዘብ፣ 18
2. መንግስት ይህን የምክር ቤቱን ውሳኔ ተግባራዊ ለማድረግ ለሰላማዊ መፍትሄ ቅድሚያ በመስጠት ተገቢ እንቅስቃሴ ማድረጉን በማረጋገጥ፣
3. በመንግስት በኩል የተደረጉት የሰላም ጥረቶች በአክራሪው አመራር እምቢተኝነት ምክንያት ሊሳኩ ባለመቻላቸው፣ ይልቁንም አክራሪው አመራር ለሰላም ያደረገውን ትእግስት የተመላበት እንቅስቃሴ ከድክመት ቆጥሮ በአገራችንና በሽግግር መንግስቱ ላይ ጥቃቱን ማፋፋሙን በመገንዘብ፣
4. መንግስት የአገራችንን ሉአላዊነት ለማስከበርና ተገቢ ሆኖ በተገኘው ጊዜ ርምጃ ለመውሰድ የሚያስችል ብቁ ዝግጅት ማድረጉንና በመጨረሻም ሁሉም የሰላም ጥረቶች ከተሟጠጡና በኤርትራ መንግስትና በአለም አቀፍ አሸባሪዎች አይዞህ ባይነት የተፋፋመውን የአክራሪ ሃይሉን ጥቃት ለመመከት ከችግሩ ጋር ተመጣጣኝ የሆነ ወታደራዊ ርምጃ መውሰዱን በማድነቅ፣
5. መንግስት የወሰደው ርምጃ ሰላም ወዳዱን የሶማሊያ ህዝብና የሽግግር መንግስቱን በወዳጅነት፣ በሶማሊያ እስላማዊ ፍርድ ቤቶች ህብረት የተሰጠውን አክራሪ

ገዳር 21 ቀን 1999 ዓ.ም የተካሄደው የኢ.ፌ.ዴ.ሪ 3ኛው የህዝብ ተወካዮች ምክር ቤት 2ኛ ዓመት የሥራ ዘመን 8ኛ መደበኛ ስብሰባ የተመራው በምክር ቤቱ አፈ-ጉባኤ በተከበሩ አምባሳደር ተሾመ ቶጋ ሲሆን በቅድሚያም የተከበሩ አፈ-ጉባኤው በኢ.ፌ.ዴ.ሪ ህገ መንግስት አንቀጽ 58(1) እና በተሻሻለው የኢ.ፌ.ዴ.ሪ የህዝብ ተወካዮች ምክር ቤት የአሰራርና የአባላት ስነ ምግባር ደንብ አንቀጽ 22(3) መሰረት ከምክር ቤቱ አባላት መካከል 413 የተገኙ በመሆኑ ምልዓተ ጉባኤው መሟላቱንና ስብሰባው መጀመሩን አስታውቀው የዕለቱ አጀንዳም፦

1. የሶማሊያ ወቅታዊ ሁኔታን አስመልክቶ የቀረበውን የውሳኔ ሃሳብ መርምሮ ማጽደቅ፤
2. በኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ እና በዓለም አቀፍ የልማት ማህበር መካከል ለሁለተኛው የመንገድ ዘርፍ ልማት ፕሮጀክት ተጨማሪ ወጪ እንዲውል የተደረገውን የብድር ስምምነት ለማጽደቅ የወጣ ረቂቅ አዋጅን፤
3. በገቢ ላይ የሚከፈለውን ግብር በሚመለከት ተደራራቢ ግብርን ለማስቀረት እና በታክስ ላይ የሚፈጸምን ማጭበርበር ለመከላከል በኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ እና በአልጄሪያ ህዝባዊ ዲሞክራሲያዊ ሪፐብሊክ መንግስታት መካከል የተደረገውን ስምምነት ለማጽደቅ የወጣ ረቂቅ አዋጅን፤
4. በገቢ ላይ የሚከፈለውን ግብር በሚመለከት ተደራራቢ ግብርን ለማስቀረት በኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ እና በቱኒዚያ ሪፐብሊክ መንግስታት መካከል የተደረገውን ስምምነት ለማጽደቅ የወጣ ረቂቅ አዋጅን፤ በሚመለከት የበጀትና ፋይናንስ ጉዳዮች ቋሚ ኮሚቴ ያቀረባቸውን ሪፖርቶችና የውሳኔ ሃሳቦች መርምሮ ረቂቅ አዋጆቹን ማጽደቅ፤

የሚል እንደሆነ ገልጸው፤ በአጀንዳው ቅደም ተከተል መሰረት የሶማሊያ ወቅታዊ ሁኔታን አስመልክቶ የቀረበውን የውሳኔ ሃሳብ የመንግስት ዋና ተጠሪ የተከበሩ አቶ ሸፈራው ጃርሶ እንዲያቀርቡ መድረኩን ክፍት አድርገዋል።

ለ. በአፍሪካ ቀንድ የሚገኙ ሱማሊኛ ተናጋሪ ህዝቦችን በሙሉ አንድ አደርጋለሁ ብሎ በይፋ በማወጅ የሀገራችንን ሉዋላዊነት ለአደጋ በማጋለጡ፤

ሐ. የሀገራችንን ህገ መንግስታዊ ስርአት በሀይል ለመናድ የተነሱ ኃይሎችን በማስታጠቅ፣ በማሰልጠን፣ መጠለያ በመስጠትና ወደ ሀገራችን በማስረገጥ በሀገራችን ላይ ወረራ በመፈጸሙ፤

መ. ከኤርትራ መንግስትና ከሌሎች ፀረ-ኢትዮጵያ ወገኖች ጋር በተቀናጀ መንገድ ወረራ እየፈጸሙ መሆናቸው በሰላማችንና በሉዋላዊነታችን ላይ የሚያደርሱት አደጋ በከፍተኛ ደረጃ እንዲጨምር የሚያደርግ በመሆኑ፤

ሠ. በአጠቃላይ ይህ ቡድን በሀገራችን ሉዋላዊነትና ሰላም ላይ ግልጽና ወቅታዊ አደጋ የደቀነ ኃይል ነው ብሎ ምክር ቤቱ ያምናል።

2. የኢ.ፌ.ዴ.ሪ መንግስት ይህንን አደጋ በቅድሚያ በሰላማዊ መንገድ ለመፍታት እስካሁን እያደረገ ያለውን ጥረት ም/ቤቱ እያደነቀ ይህ ሰላማዊ ጥረት አሁንም የበለጠ ተጠናክሮ እንዲቀጥል ወስኗል።

3. ከሰላማዊ ጥረቱ ጎን ለጎን የኢ.ፌ.ዴ.ሪ መንግስት በእስላማዊ ፍርድ ቤቶች ህብረት በሀገራችን ላይ እየፈጸመ የሚገኘውን ወረራና ጥቃት ለመቋቋም አስፈላጊ ሆኖ የተገኘውን ማንኛውንም ህጋዊ እርምጃ እንዲወስድ ምክር ቤቱ ወስኗል።

አመሰግናለሁ!!!

ከዚያም የተከበሩ አፈጉባኤው ቀደም ሲል የመንግስት ዋና ተጠሪ የተከበሩ አቶ ሽፈራው ጃርሶ እንደገለጹት የቀረበው የአጀንዳ ነጥብ በ6ኛው መደበኛ ስብሰባ ላይ ውይይትና ክርክር የተደረገበትና የተመከረበት ቢሆንም በወቅቱ በውሳኔ ሃሳቡ ላይ በፓርቲዎች መካከል የጋራ መግባባት ለመፍጠር እንዲያስችል ተጨማሪ ጊዜ እንዲሰጥና ውሳኔውም እንዲዘገይ በተጠየቀው መሰረት የውሳኔ ሃሳቡ እስካሁን ለምክር ቤቱ ሳይቀርብ መቆየቱን፣ በመሆኑም በዕለቱ ስብሰባ በውሳኔ ሃሳቡ ላይ ውይይትና

ቤቱን አሰራር ያልጣሰና ትክክለኛውን መንገድ ተከትሎ እየሄደ ያለ መሆኑን አስረድተው መድረኩን በድጋሚ ለተከበሩ ፕሮፌሰር በየነ ጴጥሮስ ክፍት አድርገዋል።

በዚህም መሠረት የተከበሩ ፕሮፌሰር በየነ ጴጥሮስ የኢትዮጵያ ዲሞክራሲያዊ ኃይሎች ህብረትን በመወከል በሰጡት አስተያየት የሶማሊያ ወቅታዊ ጉዳይን በማስመልከት የተዘጋጀው የውሳኔ ሃሳብ ቀደም ሲል ምክር ቤቱ ባካሄደው 6ኛ መደበኛ ስብሰባ ለውይይት ቀርቦ በነበረበት ወቅት የውሳኔ ሃሳቡ በደንብ ባልበሰለ ሁኔታ ወደ ውሳኔ መሄዱ ለሀገሪቱም ሆነ ለማናቸውም የማይበጅ በመሆኑ ጊዜ ተወስዶ በድጋሚ እንዲታይ በተጠየቀውና ኢህአዴግም ጥያቄውን ተቀብሎ በተስማማበት መሰረት ለመወያየት መቻላቸውን፣ ይህም አሰራርተገቢ በመሆኑ ለወደፊቱ ተጠናክሮ መቀጠል እንዳለበት ገልጸው የቀረበው የውሳኔ ሃሳብ ሁሉንም የሚያቀራርብና በተባበረም ድምጽ በሀገሪቱ ጉዳይ ላይ ውሳኔውን አሳልፈው ምክር ቤቱንም አስከብረው የሚወጡበትን መንገድ ለመሻት ብዙ ሲጨነቁ፣ ሲጠበቡና ሲመክሩበት መቆየታቸውን፣ ለዚህም ከስጋታቸው በመነሳት አቀራረቢ ይሆናሉ ብለው ያመነባቸውን የማሻሻያ ሃሳቦች ኢህአዴግም ሆነ ሌሎች በምክር ቤቱ መቀመጫ ያላቸው ፓርቲዎች እንደሚመለከቷቸው ቢያደርጉም በኢህአዴግ በኩል ቀደም ሲል ከቀረበው የውሳኔ ሃሳብ ይዘት በወጣ ጉዳይ ላይ ለመነጋገርም ሆነ ለመቀራረብ ፍቃደኛነቱን ማየት ባለመቻሉ ፓርቲያቸው በጉዳዩ ያዘነ መሆን አሳውቀዋል።

በማስከተልም የውሳኔ ሃሳቡን ጊዜ ወስዶ ለማየት በተገኘው ዕድልና በተደረገው ውይይት የችግሩን ስፋትና ጥልቀት እንዲረዱ የተሰጠውን ሰፊ ማብራሪያና ለዚህም የተወሰደውን ጊዜ እንደሚያከብሩት ጠቁመው በአንድ ጉዳይ ላይ ለመቀራረብና አንድ አቋምም ይዞ ለመሄድ መስጠትና መቀበል ያለ በመሆኑ መንግስትና ገዥው ፓርቲ የጠየቀው ጥያቄም እጅ የማያስር እና የሚያስኬድ እስከሆነ ድረስ አንዳንድ ስጋቶቻቸው ሊታዩ ይገባል የሚል አካሄድ ፓርቲያቸው የነበረው መሆኑን ከገለጹ በኋላ ከስጋቶቻቸውም ውስጥ አንዱ ምክር ቤቱ 6ኛ መደበኛ ስብሰባውን ህዳር 14 ቀን 1999 ዓ.ም ባካሄደበት ወቅት በአጀንዳው ላይ አንስተውት የነበረው ጥያቄ "በውሳኔ ሃሳቡ የቀረበው የጦርነት አዋጅ ነው ወይ?" የሚል እንደነበረና በወቅቱም ለጥያቄአቸው የተሰጠው ምላሽ የጦርነት አዋጅ አይደለም የሚል እንደነበር፣ ነገር ግን በውሳኔ ሃሳቡ ላይ በተሰጡ ተጨማሪ ማብራሪያዎች መረዳት እንደተቻለው የውሳኔ ሃሳቡ ጦርነት

የነበረ ቢሆንም ተቀባይነት ሳያገኝ መቅረቱን፣ ከዚህ በተጨማሪም በውሳኔ ሃሳቡ ተራ ቁጥር 1 "ሠ" ላይ "በአጠቃላይ ይህ ቡድን በሀገራችን ሉአላዊነትና ሰላም ላይ ግልጽና ወቅታዊ አደጋ የደቀነ ኃይል ነው ብሎ ምክር ቤቱ ያምናል" በሚል የተቀመጠውን ሃሳብ በቀረበበት መልኩ መቀበሉ ችግር ስለሚፈጥር በተወሰነ ደረጃ ለዝቦ እንዲቀርብ ቢደረግ የተሻለ እንደሚሆን ሃሳብ አቅርበው የነበረ ቢሆንም ይህም ተቀባይነት ሳያገኝ መቅረቱን አስታውቀዋል።

አያይዘውም በውሳኔ ሃሳቡ ቁጥር ሁለት ለችግሩ መፍትሄ ለመስጠት ስለ ሰላማዊ እርምጃዎች በቁጥር ሶስት ደግሞ ህጋዊ እርምጃዎችን መውሰድ መብት እንደሆነ በሚል ተነጣጥለው የተቀመጡት ሃሳቦች "ሰላማዊና ህጋዊ እርምጃዎችን በመውሰድ መፍትሄ መሻት ወይም የሀገርን ደህንነት መከላከል" በሚል ተጣምረው ቢቀመጡ የትርጉም ክፍተት እንዳይፈጠር ያደርጋል የሚል ምክር የተሰጠበት ሁኔታ ቢኖርም ተቀባይነት ሳያገኝ መቅረቱን፣ ይህ ከመሆኑ የተነሳም የውሳኔ ሃሳቡን በቀረበበት መልኩ ለመቀበል ስጋቶች የተፈጠሩባቸውና የተቸገሩበት ሁኔታ መኖሩን አመላክተዋል።

የተከበሩ ፕሮፌሰር በየነ ጴጥሮስ በማስከተል ስጋቶቻቸውን ሲያስረዱም አንደኛው ስጋት በቀረበው የውሳኔ ሃሳብ ሰነድ ወረራ ተፈጽሞብናል ተብሎ የተገለጸው መሆኑን አሳውቀው በሰርጎ ገብ እና አንድ አገር በሌላ አገር ላይ ሙሉ በሙሉ በምታደርገው ወረራ መካከል ልዩነት ያለ ስለመሆኑ ሁሉም ሊገነዘበው እንደሚችል፣ በመሆኑም እስካሁን ድረስ ጥቃት እያደረሱ ያሉትን በተመለከተ ፓርቲያቸው በሰርጎ ገብነት ደረጃ የሚታዩ መሆናቸውን እንደሚያምን፣ ሰርጎ ገቦች በታዩበት ሁሉ ጦርነት እየታወጀ የሚኖር ቢሆን በዚች አለም ላይ መኖር የሚቻል እንደማይመስላቸው ከጠቆሙ በኋላ የዚህ አይነት ሁኔታዎች ሲያጋጥሙ አንዱ መንግስት ሌላውን እየወቀሰና እየከሰሰ በዚህ አይነት ተሳትፎም እንደሚኖር ስለሚታወቅ ወረራ ተፈጽሞብናል የሚለው ፅንሰ ሃሳብ ጥቃት ተሰንዝሮብናል፣ ሰርጎ ገቦች ወደ ሀገር ውስጥ እንዲያልፉ እየተደረገ ነው በሚል ለዝቦ እንዲቀርብና በዚህም የሚገደብ እንዲሆን፣ ለዚህም ጉዳይ በአሁኑ ጊዜ እርምጃ ለመውሰድ አስፈላጊ ነው ተብሎ መመረጡ አስጊና ምናልባትም ተገቢ ሂደት አለመሆኑን አብራርተዋል።

እንዳልሆነ ሊሰመርበት እንደሚገባ፣ ይህን አቋማቸውንም ገዥው ፓርቲም ሆነ ምክር ቤቱ እንዲሁም መንግስት በአግባቡ ይረዱታል የሚል እምነት እንዳላቸው አስገንዝበዋል።

በማስከተልም የተከበሩ አቶ ተመስጌን ዘውዴ የቅንጅት ለአንድነትና ለዴሞክራሲ ፓርቲን በመወከል በሰጡት አስተያየት የተከበሩ ጠቅላይ ሚኒስትሩ የዛሬ ሁለት ወር አካባቢ ለምክር ቤቱ ሪፖርት ባቀረቡበት ወቅት "የኢትዮጵያ ወታደሮች የሶማሊያን ድንበር አልፈው ገብተዋል ወይ?" የሚል ጥያቄ ከቅንጅት ለአንድነትና ለዴሞክራሲ ፓርቲ በቀረበበት ወቅት "የኢትዮጵያ ወታደሮች የሶማሊያን ድንበር ጥሰው አልገቡም፣ ጥቂት ወታደሮች ግን የሽግግር መንግስቱን ወታደሮች እንዲያሰለጥኑ ልከናል" የሚል አጭር ምላሽ በተከበሩ ጠቅላይ ሚኒስትሩ የተሰጠበት ሁኔታ እንደነበር አስታውሰው ይህ ምላሽ በተከበሩ ጠቅላይ ሚኒስትሩ ሲሰጥ ጉዳዩ አሳሳቢ እንደሆነ ባለመታየቱ ችግሩ ተባብሶ አሁን ካለበት ደረጃ ላይ ይደርሳል የሚል ግምት እንዳልነበራቸው ከገለጹ በኋላ የተከበሩ ጠቅላይ ሚኒስትሩ ህዳር 14 ቀን 1999 ዓ.ም በተካሄደው መደበኛ ስብሰባ ላይ ለምክር ቤቱ ያቀረቡትን የውሳኔ ሃሳብ በዕለቱ ስብሰባ ምክር ቤቱ እንዲያጸድቀው መጠየቁ በጣም ያስገረማቸው ጉዳይ ሆኖ ማግኘታቸውን፣ ምክንያቱም ከጎረቤት አገር ጋር ደም የሚያፋስስ ጉዳይ ሲኖር ህዝብን የወከለው ምክር ቤት በስፋት ሳይነጋገርበት፣ ስራ አስፈጻሚውም ምክር ቤቱን ሳያማክርና ሳያሳውቅ ብሎም የምክር ቤቱን ሃሳብ ሳይጠይቅ የመረጃ ክፍተቱ ባለበት ሁኔታ በሶስት ቀን ውይይት ብቻ ውሳኔ እንዲወሰንና አቋም እንዲያዝ መጠየቁ ተገቢ አለመሆኑን አሳውቀዋል።

አክለውም ምክር ቤቱ ስራ አስፈጻሚው የሚያቀርባቸውን የተለያዩ ህጎች እንዳቀረቡ የሚያጸድቅ ሳይሆን የሚመጡ ሃሳቦችን በተለይም የሀገርን ሰላም በሚመለከቱ ጉዳዮች ላይ በደንብ አብላልቶና ተነጋግሮ ለኢትዮጵያ ሕዝብ ሰላምና ልማት በሚጠቅም አኳኋን ውሳኔ የሚያሳልፍ በመሆኑ ከዚህ በተቃራኒው በተጣደፈ ሁኔታ ውሳኔ ማሳለፍ ተገቢ አለመሆኑን፣ ስለሆነም ይህን ጉዳይ በተመለከተ የምክር ቤቱ አባላት በሙሉ እንዲወያዩበትና እንዲነጋገሩበት ባልተደረገበት ሁኔታ በሶስት ቀን ጊዜ ውስጥ እኛን መስላችሁ አቋማችሁን ተናገሩ፤ የእኛን አቋም ያልያዛችሁ አቋማችሁ ከጅሃዲስቶች ጋር ነው፤ እየተባለ አቋም እንዲያዝ መጠየቁ አግባብነት

ቀጥለውም የተከበሩ አቶ ልደቱ አያሌው ኢ.ዴ.ፓ መድሀንን በመወከል በሰጡት አስተያየት ለውይይት የቀረበው ጉዳይ እጅግ አሳሳቢና ውስብስብ ከመሆኑ አኳያ ከፍተኛ ጥንቃቄ የሚያስፈልገው መሆኑን እንደሚያምኑ ገልጸው በአካባቢው ችግሩ እየተጠናከረ ከመጣ ምናልባትም ከ4 እና ከ5 ወር በፊት ጀምሮ ፓርቲያቸው በጉዳዩ ላይ ያለውን አቋም አስመልክቶ ለሕዝብ ሲገልፅ የቆየበት ሁኔታ እንደነበር ከአስታወሱ በኋላ እንደፓርቲያቸው እምነት የኢትዮጵያ መንግሥት ጉዳዩን በአግባቡ ይዞ ከዚህ ደረጃ አድርጎታል የሚል ግንዛቤ እንዳለው በመግለጽ ወደፊትም መንግስት በተመሳሳይ ሁኔታ ጉዳዩን በከፍተኛ ጥንቃቄ ይዞት እንዲዘልቅ በተለያዩ ጊዜ አቋማቸውን ሲገልጹ የቆዩ መሆናቸውን አመላክተዋል።

በማስከተልም በጉዳዩ ላይ የተከበሩ ጠ/ሚኒስትሩና ተቃዋሚ ፓርቲዎች ሰሞኑን ውይይት አካሄደው የነበረ መሆኑንና በውይይቱም ፓርቲያቸው ጥያቄዎችን አቅርቦ ምላሽ ያገኘ መሆኑን አስታውሰው ፓርቲያቸው ካቀረባቸው ጥያቄዎች ውስጥ አንደኛው ጥያቄ በውሳኔ ሃሳቡ ወረራ ተፈፅሞብናል የሚለውን አስተሳሰብ በተመለከተ በቂ የሆነ መረጃ እንዲሰጣቸው ጥያቄ አቅርበው በተወሰነ ደረጃም ቢሆን በቂ ማብራሪያ የተሰጣቸው መሆኑን ገልጸዋል።

ጉዳዩ ምናልባት ወደ ጦርነት ደረጃ ከፍ ቢል የጂቡቲ መንግሥት አቋም ምን ሊሆን ይችላል? መንግስት ይህን ጉዳይ በተመለከተ አስፈላጊውን ሁሉ ጥንቃቄ አድርጓል ወይ? የወደብ አጠቃቀም ጉዳይ አጠቃላይ ለአገሪቱ ሰላም በተለይም ጦርነት ውስጥ ሲገባ ወሳኝ ነገር በመሆኑ በዚህ ረገድ ምን ያህል አስተማማኝ ሁኔታ አለ? በሚል ላቀረቡት ሁለተኛው ጥያቄአቸውም አበረታች ጉዳዮች እንዳሉ ማብራሪያ የተሰጣቸው መሆኑን አሳውቀዋል።

በሦስተኛ ደረጃ አቅርበው ለነበረው ጥያቄ ማለትም በኢትዮጵያና በሱማሊያ እስላማዊ አክራሪ ቡድኑ መካከል የሚኖረው አለመግባባት ምናልባት ወደ ጦርነት የሚያድግ ከሆነ ዓለም አቀፉ ሕብረተሰብ በኢትዮጵያ ላይ የሚኖረው ዕይታ ምን ሊመስል ይችላል? ይህን ጉዳይ በተወሰነ ደረጃ ለማየት ተሞክሯል ወይ? የሚል እንደነበር እና ለዚህም ጥያቄያቸው በተለይ ኢትዮጵያ በዚህ ጉዳይ ራሷን የመከላከል መብት ያላት ስለመሆኗና አብዛኛዎቹ መንግስታት ጥያቄ ውስጥ የሚያስገባ አቋም

አጠቃላይ የፖለቲካ ታሪክና ባሕል ብዙ እንከኖች ያሉበት መሆኑ ቢታወቅም በሌላ በኩል ግን አንድ ጠንካራ ጎን ያለው መሆኑን፣ ይኸውም ኢትዮጵያውያኖች በውስጥ ችግራቸው የከፋ ልዩነት በኖራቸው ጊዜ ሁሉ ውጫዊ የሆነ ጥቃት ሲፈጠርባቸው በጋራ የመቆም ባሕልና ታሪክ ያላቸው መሆኑን ከአስታወሱ በኋላ ይኸው ባሕልና ታሪክ ዛሬም ተጠናክሮ መቀጠል እንደሚኖርበት አሳስበዋል።

ሁለተኛውን ምክንያት ሲያስረዱም ጉዳዩ ከድርጅት ጥቅምና ፖለቲካዊ ስሜት በላይ መታየት ያለበት የአገርና የሕዝብ ጉዳይ መሆኑን ድርጅታቸው በመገንዘቡ ጉዳዩን እንደ ፖለቲካ ፓርቲ ብቻ ሳይሆን እራሳቸውን እንደመንግሥትና ገዥ ፓርቲ አስቀምጠው ለማየት የሞከሩበት ሁኔታ መኖሩን ገልጸው የዛሬ 28 እና 29 ዓመት ሶማሊያና ኢትዮጵያ ጦርነት በገጠሙበት ወቅት የወቅቱ የደርግ ተቃዋሚ ኃይሎች ኢ.ህ.አ.ፓ እና ሕ.ወ.ሀ.ትን የመሳሰሉት በወቅቱ በደርግና በኢትዮጵያ ሕዝብ መካከል ያለውን የጥቅም ልዩነት በአግባቡ ማየት ተስኗቸው ኃይላቸውን ከዚያድባሬ መንግሥት ጋር ያሰለፉበት ሁኔታ ታይቶ እንደነበር ከአስታወሱ በኋላ ይህም ለነዚህ ድርጅቶች የታሪክ ጠባሳ የሆነባቸውና ስሜቱም አሁን ድረስ ያለ እንደሚመስላቸው ገልጸው የዚህ ዓይነቱን ተመሳሳይ ታሪካዊ ስህተት ፓርቲያቸው ኢ.ዴ.አ.ፓ መድሀን ሊደግመው እንደማይፈልግ አስገንዝበዋል።

በማስከተልም ድርጅትና አገር ወይም ሕዝብን ለይቶ የማየት ኃላፊነት ፓርቲያቸው ያለበት መሆኑን ጠንቅቆ እንደሚያውቁና ከዚህም ማንም ሳይሆን ገዥው ፓርቲ ሊማርበት እንደሚገባ ጠቁመው ከዚህ ጋር በተያያዘም በሕገ መንግሥት የሚተዳደሩና በፓርላማ ውስጥ ያሉ በመሆናቸው ሀገርን የሚጎዳ ችግር ሲፈጠር ከተቃዋሚነት በላይ አደጋውን የመከላከል ኃላፊነትና ግዴታ ያለባቸው መሆኑን እንደሚያምኑ ከገለጹ በኋላ በቅርቡ ተቃዋሚና ገዥው ፓርቲ ባደረጉት ድርድርና በደረሱበት ስምምነት መሠረት ሕገ-መንግሥታዊ ባልሆኑ መንገዶች የመንግሥት ለውጥ ለማምጣት የሚደረጉ ሙከራዎችን ሁሉ በጋራ ለመታገል የገቡትን ስምምነት የማክበር ኃላፊነትና ግዴታ ያለባቸው እና የተገነዘቡ መሆናቸውን አብራርተዋል።

ቀጥለውም የተከበሩ አቶ ልደቱ አያሌው የፓርቲያቸውን አቋም አስመልክተው አንዳንድ የፖለቲካ ኃይሎች ኢ.ዴ.አ.ፓ መድሀንን በተለመደ አሉባልታ ስም ለማጥፋትና

አክለውም የተከበሩ አቶ ቡልቻ ደመቅሳ በውሳኔ ሃሳቡ በ«መ» ላይ የተቀመጠው ሃሳብ አስፈላጊ አለመሆንን አስመልክተው ሲያብራሩ ዘጠኝ ዓመት ባልሞላው በኢትዮ-ኤርትራ ጦርነት ወንድም ከወንድሙ ጋር ደም ሲፋሰስ አለም የተሳቀቀበትን ጦርነት በድጋሚ ማንሳቱ ተገቢ ባለመሆኑና ኤራትራውያንም ድንበር አልፈው ባልመጡበት ሁኔታ በውሳኔ ሃሳቡ መካተቱ ትክክል አለመሆኑን፣ በተለያዩ ምክንያቶች በሕገ-መንግሥቱ የማይገዙ የኢትዮጵያ አማፅያንን በተመለከተም የተፈጠረውን ልዩነት በኢትዮጵያ ሕግና ፖሊሲ መፈታት አለበት እንጂ ጉዳዩን ከጂህዲስቶች ጋር በማገናኘትና በመዋጋት ችግሩን ለመፍታት እንደማይቻል፣ ይልቁንም ችግሩን የሚያራዝምና ብዙ ዘመን የሚፈጅ እንደሚሆን ስጋታቸውን ገልፀዋል።

አስከትለውም የውስጥ ጉዳይ ከውጭ ጉዳይ ጋር ሳይገናኝ በአገሪቱ ሕግ፣ ፖሊሲና ወግ መሠረት ይፈታ የሚል ሃሳብ ፓርቲያቸው አቅርቦ የነበረ ቢሆንም ተቀባይነት ሳያገኝ መቅረቱን ገልፀው ጠላትን መከላከል ተገቢ በመሆኑ ሁሉም ለዚህ ዓላማ ዝግጁ ሆኖ ሣለ ተገቢ ያልሆኑ ጉዳዮች በውሳኔ ሃሳቡ ተካተው በመቅረባቸው ግን ፓርቲያቸው የተቸገረበት ሁኔታ መኖሩን፣ በመሆኑም ሞሽኑን በቀረበበት መልኩ ለመቀበል ያቃታቸው መሆኑን አሳውቀዋል።

የተከበሩ አቶ ቡልቻ ደመቅሳ አክለውም የሶማሊያ እስላማዊ ፍ/ቤቶች ሕብረትን እንከላከላቸዋለን የሚል የውሳኔ ሐሳብ ብቻ ቢቀረብ ኖሮ ማንም የማይቃወም መሆኑን፣ ነገር ግን አቀራረቡ ከሌሎች ጉዳዮች ጋር ተወሳሰቦ የቀረበ በመሆኑ ለመቀበል በመቸገራቸው ልዩነት ቢፈጠርም የኢትዮጵያን የውጭ ፖሊሲ በሚመለከት ጉዳይ ሁሉ ልዩነት ይኖራል ማለት አለመሆኑን ጠቁመው ኢትዮጵያ ወደፊት የምታካሂደው ጦርነት ትክክለኛ ስላልሆነ ወደ ጦርነት መግባት የለባትም በማለት እንደማይከላከሉና የፕሮፓጋንዳ ቅስቀሳ ሳያካሂዱ ፀሎት ብቻ እያደረጉ ውጤቱን እንደሚጠባበቁ አስታውቀዋል።

ከዚያም የተከበሩ አፈ-ጉባኤው የሶማሊያን ወቅታዊ ሁኔታ አስመልክተው የፓርላማ ቡድን አቋሙን እንዲያሳውቅ በጠየቁት መሠረት የተከበሩ መቶ አለቃ ጎአ ፈንታ የሐገሪቱ ዳር ድንበር ካልተጠበቀ መሐላም ዳር ስለሚሆን ጥበቃው አስፈላጊ



ግን በዚህ ወቅት ኢትዮጵያን ከጅቡቲ በኩል የሚያሰጋት ነገር እንደሌለና የወደብ አጠቃቀምንም በተመለከተ ከግንኛውም ጊዜ በተሻለ ሁኔታ ለመጠቀም የሚያስችል ስምምነት ሁለቱ አገሮች መፈራረማቸውንና ስምምነቱም ለም/ቤት በቅርቡ እንደሚቀርብ ለተከበሩ የም/ቤት አባሉ መንግሥት ያረጋገጠላቸው መሆኑን አስረድተዋል።

ቀጥለውም ኢትዮጵያ የሶማሊያ እስላማዊ ፍ/ቤቶች ህብረትን በተመለከተ ባቀረቡት የውሳኔ ሃሳብ ላይ የዓለም ህብረተሰብ የሚኖረውን አመለካከት ሲያብራሩ የሀገሪቷን ሉዓላዊነት ለመከላከልና ደህንነቷን ለማረጋገጥ የኢትዮጵያን መንግሥት ተክቶ ይዋጋል ባይባልም ሀገሪቷ በተጨማሪ ተወራ ባለችበት ሁኔታ የመከላከል መብቷን ከመቀበል ውጭ ሌላ አቋም ሊያዝ እንደማይችልና ራሷን ለመከላከል ስለምትወስደው እርምጃም በአሁኑ ጊዜ ተቃውሞ እየታየ እንዳልሆነ ለተከበሩ የም/ቤት አባሉ መንግሥት ያረጋገጠላቸው መሆኑን ገልፀው በገዢው ፓርቲ በቀረበው የውሳኔ ሃሳብ ይዘት ላይ መሠረታዊ ለውጥ በማያስከትል መልኩ መስተካከል አለባቸው በማለት አዴአፓ መድሀን ባቀረበው ሃሳብ መሠረት እንዲስተካከል መደረጉን፣ እንዲሁም በተቃዋሚ ፓርቲዎች የቀረቡና ገዥው ፓርቲም ተገቢ ናቸው ብሎ ባመነባቸው ጥያቄዎች ላይ ገዥው ፓርቲ ለማብራራት ጥረት ያደረገ በመሆኑ የተከበሩ ፕሮፌሰር በየነ ጴጥሮስ እንደገለፁት በጉዳዩ ላይ በቂ ውይይት ተደርጎበታል ማለት የሚቻል መሆኑን አስረድተዋል።

የተከበሩ ጠ/ሚኒስትር መለስ ዜናዊ አስከትለውም የተከበሩ አቶ ቡልቻ ደመቅላ ያቀረቧቸው ሃሳቦች በጣም መሠረታዊ እና ለቅንነታቸውም ያላቸውን አድናቆት ለመግለፅ እንደሚፈልጉ ገልፀው የተከበሩ የም/ቤት አባሉ እንደገለፁት የውሳኔ ሃሳቡን ተቀብሎ ማፅደቅ ማለት ጦርነት ማወጅ ወይም አስቀድሞ ለመምታትም እንዳልሆነ እና ጦርነት በሀገሪቷ ላይ ቅድሚያ ስለታወጀ አስቀድሞ ጦርነት ማወጅ እንደማይቻል፣ ነገር ግን በሀገሪቷ ላይ ጦርነት እንደታወጀባት ታውቆ ራስን ለመከላከል መዘጋጀት አስፈላጊ መሆኑን፣ እንዲሁም በሀገር ላይ የመጣውን አደጋ መከላከል ያስፈልጋል በሚል መንግሥት ያቀረበውን የውሳኔ ሃሳብ ማብራሪያ የተከበሩ የም/ቤት አባሉን እንዳሳመናቸውና እንደተቀበሉት፣ ቅን በሆነ መንገድ ማስቀመጣቸውን አውስተው የትኛውም ድርጅት በዚህ ጥያቄ ላይ ብዥታ ሊኖረው እንደማይችል አስምረውበታል።



አያይዘውም ይህን ዓላማ ለማሳካት ከጅሀዲስቶች ጋር መቆማቸውን ገልጸው ከጅሀዲስቶች ጋር ተሰልፈዋል ያለውም የኢትዮጵያ መንግሥት ሳይሆን የኢትዮጵያ ሠራዊት ሶማሊያ ከመግባቱ በፊት ጅሀዲስቶቹ ሞቃዲሾን ሲቆጣጠሩ ያስታጠቃቸው፣ ያሰለጠናቸውና የአመራር ድጋፍ የሰጣቸው ሻዕቢያ መሆኑን የተባበሩት መንግሥታት የፀጥታው ም/ቤት ያቋቋመው አጣሪ ኮሚቴ ግልፅ አድርጎ ማስቀመጡንና በይፋ የሚታወቅ ነገር መሆኑን አስገንዝበው ይህንን በይፋ የሚታወቅ ነገር ለመከላከል ስለሚወሰደው እርምጃ ጠላት ይበዛብናል፣ አላስፈላጊ ጦርነትም ከኤርትራ ጋር እንገጥማለን የሚል ስጋት የሚፈጥር ቢሆንም ጠላት እናበዛለን በሚል ስጋት የመጨረሻው ኤርትራ ሳይሆን የመጨረሻው ሶማሌ እስኪሞት ድረስ ለመዋጋት መወሰናቸው እየታየ፣ ይህንን በዝምታ ማለፍ ጠላት የማይቀነስ መሆኑን ጠቁመው ይህንንም በምሳሌ ሲያስረዱ አንድ እግሩ በጅብ እየተበላ ያለ ሰው "ጎደኛው የምን ድምፅ ነው የምሰማው" በማለት ሲጠይቀው "ጅቡ እግሬን እየቆረጠመ ስለሆነ እንዳይሰማን ዝም በል" በማለት መለሰለት የሚባለውን ተረት እንደሚያስታውላቸው፣ በመሆኑም "ጅቡ ነው እግሬን እየበላው ያለው እንዳይሰማን" የሚባል ካልሆነ እየተቆረጠመ ያለውን እግር ከዚህ ጅብ አፍ እናውጣ ማለት ጠላት ማብዛት አለመሆኑን፣ ይልቁንም እግር እየተቆረጠመ ዝም ማለት ለተጨማሪ ጥቃት መጋለጥ እና ሁለተኛውንም እግር እንዲበላ በር የሚከፍት እንደሚሆን አብራርተዋል።

አክለውም ከኤርትራ ጋር ጦርነት መክፈት ይሆንብናል በሚል የቀረበውን አስተያየት በተመለከተ የኢትዮጵያ መንግሥት ከኤርትራ ጋር ጦርነት መክፈት እንደማይፈልግ፣ ጦርነትም አለመክፈቱን፣ ጦርነት መክፈት የሚፈልግ ከሆነ የኤርትራ መንግሥት ሠራዊት 500 ሜትር ርቀት ላይ እንደሚገኝ፣ እንዲሁም የኤርትራ መንግሥት ሠራዊት የተባበሩት መንግሥታት የፀጥታ አስከባሪ ኃይልን በሙሉ ማስወጣቱን፣ ነገር ግን የኢትዮጵያ መንግሥት ወረራ ካልተፈፀመ በስተቀር ጥይት ላለመተኮስ መወሰኑን፣ በመሆኑም በውሃኔ ሃሳቡ በ"ሐ" እና "መ" የተገለፁትን ማውጣቱ አደጋውን መሸፋፈን እንደሚሆን አስገንዝበዋል።

የኤርትራ መንግሥት ከአሥመራ ጀምሮ እስከሞቃዲሾ ድረስ ኢትዮጵያን የማተራመስ ግንባር የፈጠረ በመሆኑ ይህንን ግንባር እንዳመጣጡ ሳይደባብቁ መመከት

ሚሊሺያዎች ሕብረት በአገሪቱ ላይ ወረራ ያከናወኑና ጥቃት የሰነዘሩ በመሆናቸው ሀገሪቱ ሉዓላዊነቷን ለማስጠበቅ የመከላከል መብቷን ማረጋገጥ ያለባት መሆኗን፤ በዚህ ደረጃ ያለውን ወረራ ተገንዝቦ የአገሪቱን የመከላከል መብት መወሰን የሚገባው ም/ቤቱ በመሆኑ ጉዳዩ ለም/ቤቱ እንዲቀርብ መደረጉን፤ ም/ቤቱ የተቃጣውን ወረራ መከላከል እንዳለብን ሲወስንም አገሪቱ ወዲያውኑ ወደ ጦርነትና ወደ ማጥቃት ትሸጋገራለች ማለት ሳይሆን የሰላም አማራጭ እስከሚሟጠጥ ድረስ ጥቃት እየደረሰም ቢሆን ችግሩን በሰላም ለመፍታት እስከመጨረሻው ድረስ ጥረት እንደሚደረግ ካስገነዘቡ በኋላ አንዳንድ የተቃዋሚ ፓርቲዎች በግልፅ የተቀመጠውን የውሳኔ ሃሳብ ለመቀበል መቻላቸው የሚያሳዝናቸው መሆኑን፤ ለመቀበል የተቸገሩበት ምክንያትም የቃላትና የአቀራረብ ልዩነት ሳይሆን በውሳኔ ሃሳቡ በተራ ቁጥር 1 /ሐ/ እና /መ/ ላይ ሩ በተቀመጡት ሃሳቦች ስለመሆኑና ይህም ማን የት እንደቆመ በግልፅ እንደሚያሳይ አብራርተዋል።

አክለውም የኢትዮጵያ መንግሥት አገሪቱን ከወራሪው ለመከላከል የሚያደርገውን ሙከራ አናደናቅፍም፤ ነገር ግን አንደግፍም አጥር ላይ ሆነን እንመለከታለን በሚል የቀረበውን ሃሳብ ግን ተገቢ ያልሆነ ታሪካዊ ስህተት መሆኑን፤ ጉዳዩም የፖለቲካና የህሊና ጉዳይ መሆኑን አስገንዝበው የፓርቲዎቹ ይፋዊ አቋም ምንም ይሁን ምን ሀገሪቱ በወራሪ ኃይል እየተጠቃች ባለችበት ወቅት የተቃዋሚ ፓርቲዎች አባላት አጥር ላይ ይቀመጣሉ፤ ለህሊና የሚቆረቁር አቋም ይወስዳሉ የሚል ስጋት እንደሌላቸው ከገለፁ በኋላ የተቃዋሚ ፓርቲ አባላት የቀረበውን የውሳኔ ሃሳብ እንዲደግፉ አሳስበዋል።

ከዚያም የተከበሩ አፈጉባኤው በውሳኔ ሃሳቡ ላይ ድምፅ ከመሰጠቱ በፊት የተከበሩ ጠቅላይ ሚኒስትሩ መግለጫ ከሰጡ በኋላ በፓርቲ ደረጃ የአቋም ለውጥ አደርጋለሁ ብሎ የሚያስብ የም/ቤት አባል ካለ ሃሳቡን ማቅረብ እንደሚችል በመግለፅ መድረኩን ለተከበሩ ፕሮፌሰር በየን ጴጥሮስ ክፍት ባደረጉት መሠረት የተከበሩ ፕሮፌሰር በየን ጴጥሮስ ቀደም ሲል ያቀረቡት ሃሳብ ፓርቲያቸው በጉዳዩ ላይ ተወያይቶ የደረሰበትን አቋም መሆኑንና በዚህ ቅፅበታዊ ወቅትም የተቀየረ አቋም ይቅረብ ቢባል እንኳ ከድርጅታዊ አሠራር አንፃር ተገቢ እንዳልሆነ ገልፀው ም/ቤቱ

ህዳር 26 ቀን 1999 ዓ.ም. የተካሄደው የኢ.ፌ.ዴ.ሪ 3ኛው የሕዝብ ተወካዮች ምክርቤት 2ኛ ዓመት የሥራ ዘመን 8ኛ ቀጣይ መደበኛ ስብሰባ የተመራው በምክርቤት አፈገባኤ በተከበሩ አምባሳደር ተሾመ ቶጋ ሲሆን በቅድሚያም የተከበሩ አፈገባኤው በኢ.ፌ.ዴ.ሪ ሕገመንግሥት አንቀጽ 58/1 እና በተሻሻለው የኢ.ፌ.ዴ.ሪ የሕዝብ ተወካዮች ምክርቤት የአሠራርና የአባላት ሥነምግባር ደንብ አንቀጽ 22/3 መሠረት ከምክርቤት አባላት መካከል 369 የተገኙ በመሆኑ ምልዐተ ጉባኤው መሟላቱንና ስብሰባው መጀመሩን አስታውቀው የዕለቱ አጀንዳም፦

1. የምክርቤት 2ኛ ዓመት የሥራ ዘመን 1ኛ ልዩ ስብሰባ፣ 3ኛ እና 4ኛ መደበኛ ስብሰባ ቃለ-ጉባኤዎችን መርምሮ ማፅደቅ፤
2. በኢ.ፌ.ዴ.ሪ እና በዓለም አቀፍ የልማት ማህበር መካከል ለሁለተኛው የመንገድ ዘርፍ ልማት ፕሮጀክት ተጨማሪ ወጪ እንዲውል የተደረገውን የብድር ስምምነት ለማፅደቅ የወጣ ረቂቅ አዋጅን፤
3. በገቢ ላይ የሚከፈለውን ግብር በሚመለከት ተደራራቢ ግብርን ለማስቀረት እና በታክስ ላይ የሚፈፀምን ማጭበርበር ለመከላከል በኢ.ፌ.ዴ.ሪ እና በአልጀሪያ ሕዝባዊ ዲሞክራሲያዊ ሪፐብሊክ መንግሥታት መካከል የተደረገውን ስምምነት ለማፅደቅ የወጣ ረቂቅ አዋጅን፤
4. በገቢ ላይ የሚከፈለውን ግብር በሚመለከት ተደራራቢ ግብርን ለማስቀረት በኢ.ፌ.ዴ.ሪ እና በቱኒዲያ ሪፐብሊክ መንግሥታት መካከል የተደረገውን ስምምነት ለማፅደቅ የወጣ ረቂቅ አዋጅን፤

በሚመለከት የበጀትና ፋይናንስ ጉዳዮች ቋሚ ኮሚቴ ያቀረባቸውን ሪፖርቶችና የውሳኔ ሃሳቦች መርምሮ ረቂቅ አዋጆችን ማፅደቅ የሚል እንደሆነ ገልፀው በዚህ መሠረት በምክርቤት 2ኛ ዓመት የሥራ ዘመን 1ኛ ልዩ ስብሰባ ቃለ-ጉባኤ ላይ የሚነሱ የማስተካከያ ሃሳቦች ካሉ እንዲቀርቡ ቢጠይቁም የተከበሩ አቶ ክፍሌ ሀ/ማርያም በአጀንዳዎች አቀራረብ ዙሪያ ጥያቄ ማቅረብ እንደሚፈልጉ ጠቁመው ተዛማጅነት ያላቸው አጀንዳዎች አንድ ላይ መቅረብ ሲገባቸው ምንም አይነት ግንኙነት የሌላቸው አንድ ላይ ሲቀርቡ እንደሚታዩ፣ ለምሳሌ በዕለቱ አጀንዳ በተራ ቁጥር አንድ የተጠቀሰው የምክርቤት 2ኛ ዓመት የሥራ ዘመን 1ኛ ልዩ ስብሰባ የሚለው ርዕስ ሆኖ እያለ በ3ኛ ተራ ቁጥር ላይ ያለው 5 ርዕሶችን የያዘ ሲሆን፣ በተራ ቁጥር 4 ላይ ደግሞ

በመጠየቅ የም/ቤቱ ስብሰባዎች ቃለ-ጉባኤዎች ለም/ቤቱ ቀርበው በሚፀድቁበት ወቅት ማንኛውም የም/ቤት አባል የመደገፍና የመቃወም መብት ያለው ቢሆንም እየተሰጠ ያለው ተቃውሞና ድምፅ ተአቅቦ ግን ትርጉም እያጣ እንደሆነ ገልፀው ቃለ-ጉባኤ ማለት ም/ቤቱ በዕለቱ የነበረውን ውሎ በፅሁፍ መያዝ ማለት በመሆኑ ስህተት አለ ከተባለ ሁልጊዜ እየተደረገ እንዳለው እንዲስተካከል ማድረግ እንደሚቻል፣ ነገር ግን ቃለ-ጉባኤው ከተስተካከለና እርማት ከሌለው ቃለ-ጉባኤው ተቃውሞ የሚቀርብበትና ድምፅ የማይሰጥበት ምክንያት ከም/ቤቱ የድምፅ አሰጣጥ ሥርዓት ጋር ትርጉም እያጣ በመሄድ ላይ ስለሆነ ወደፊት ታስቦበት ደንቡ ላይ ውይይት ሲደረግ አብሮ ሊታይ እንደሚገባው አሳስበው የም/ቤቱ 2ኛ ዓመት 1ኛ ልዩ ስብሰባ ቃለ-ጉባኤ በ332 ድጋፍ፣ በ15 ተቃውሞና በ18 ድምፅ ተአቅቦ በአብላጫ ድምፅ ተደግፎ መፅደቅን አስታውቀዋል።

በመቀጠልም ቤቱ የም/ቤቱን 2ኛ ዓመት የሥራ ዘመን 3ኛ መደበኛ ስብሰባ ቃለ-ጉባኤን ለማፅደቅ ውይይቱን የቀጠለ ሲሆን በቅድሚያም የተከበሩ አፈ-ጉባኤው በቃለ-ጉባኤው ላይ የሚነሱ የማስተካከያ ሃሳቦች ካሉ እንዲቀርቡ ቢጠይቁም ባለመኖሩ ቃለ-ጉባኤው እንዲፀድቅ ለድምፅ አቅርበው ቤቱ በ357 ድጋፍ፣ በ1 ተቃውሞና በ6 ድምፅ ተአቅቦ በአብላጫ ድምፅ ደግፎ አፅድቆታል።

በማስከተልም ቤቱ የም/ቤቱን 2ኛ ዓመት ሥራ ዘመን 4ኛ መደበኛ ስብሰባ ቃለ-ጉባኤን መርምሮ ለማፅደቅ ውይይቱን የቀጠለ ሲሆን በቅድሚያም የተከበሩ አፈ-ጉባኤው በቃለ-ጉባኤው ላይ የሚነሱ የማስተካከያ ሃሳብ ካለ እንዲቀርብ በጠየቁት መሠረት የተከበሩ አቶ ታገሰ ሀንዲሶ በቃለ-ጉባኤው ገፅ 6 ፓራግራፍ 2 ላይ «...የሚያደፋፍር መስሎ እንደሚታያቸው» የሚለው «...የማያደፋፍር መስሎ እንደሚታያቸው» በሚል እንዲስተካከል እንዲሁም በገፅ 7 2ኛው መስመር ላይ «...የፖለቲካ ፓርቲ ወይም ለአባላቱ...» የሚለው «የፖለቲካ ፓርቲ ቅስቀሳ...» በሚል የተገለፀ ስለሆነ እንዲስተካከል ጠይቀዋል።

በመቀጠልም የተከበሩ ዶ/ር ሙሉአለም ታረቀኝ በቃለ-ጉባኤው ገፅ 2 ሶስተኛው ፓራግራፍ ላይ «ለሌላ አገልግሎት» የሚለው «ለሌላ ሳይሆን ለሥልጣን ማስጠበቂያ

ከዚያም የተከበሩ አፈ-ጉባኤው ከላይ የተነሳውን ነጥብ በተመለከተ ከቃለ-ጉባኤ ዝግጅት ክፍሉ ጋር በመሆን የተከበሩ ዶ/ር ነጋሶ ባለብት እንደሚረጋገጥ ገልጸው ተጨማሪ የማስተካከያ ሃሳብ ካለ እንዲቀርብ በጠየቁት መሰረት የተከበሩ አቶ ቢዶ ጁሶ በቃለ-ጉባኤው ገፅ 9 3ኛ ፓራግራፍ መጨረሻው መስመር ላይ «...እንደሚል፣ ይህም በምርጫ ተወዳድረው የሚመጡ ስለሆነ ትክክል መሆኑን፣ » የሚለው በገፅ 10 ላይ የተደገመ በመሆኑ ደግግሞሹ እንዲሰረዝ ጠይቀዋል።

በመቀጠልም የተከበሩ አቶ ገበየሁ አያቶ በገፅ 12 2ኛ ፓራግራፍ 4ኛ መስመር ላይ «...የሥራ አፈፃፀም ይሚላለታል» የሚለው «የሥራ አፈፃፀም ይሞላለታል» በሚል እንዲስተካከል ጠይቀዋል። በማስተካከል የተከበሩ አቶ እንዳለ በዙ በገፅ 9 ፓራግራፍ 1 መጨረሻው ዐረፍተ ነገር ላይ «...ዋስትናው በዚያ መልክ እንዳይካተት...» የሚለው «...ዋስትናው በዚያ መልክ እንዳይከበር...» በሚል እንዲስተካከል ጠይቀዋል።

ከዚያም የተከበሩ አፈ-ጉባኤው ተጨማሪ የማስተካከያ ሃሳብ ካለ እንዲቀርብ ቢጠይቁም ባለመቅረቡ የቀረቡት የማስተካከያ ሃሳቦችና የተከበሩ ዶ/ር ነጋሶ ጊዳዳ ያነሱት የትርጉም ጉዳይ ታይተው ቃለ-ጉባኤው እንዲፀድቅ ለድምፅ አቅርበው ቤቱ በ362 ድጋፍ፣ በ1 ተቃውሞና በ6 ድመፀ ተአቅቦ በአብላጫ ድምፅ ደግፎ አፅድቆታል።

በማስተካከልም ቤቱ በኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ እና በዓለም አቀፍ የልማት ማህበር መካከል ለሁለተኛው የመንግስት ዘርፍ ልማት ፕሮጀክት ተጨማሪ ወጪ እንዲውል የተደረገውን የብድር ስምምነት ለማፅደቅ የወጣውን ረቂቅ አዋጅ በሚመለከት የበጀትና ፋይናንስ ጉዳዮች ቋሚ ኮሚቴ ባዘጋጀው ሪፖርትና የውሳኔ ሃሳብ ላይ ውይይቱን የቀጠለ ሲሆን በቅድሚያም የኮሚቴው አባል የተከበሩ አቶ ኩታዬ ኩሲያ የውሳኔ ሃሳቡን ለቤቱ በንባብ ከማሰማታቸው በፊት ከውይይቱ የተገኙ ዋና ዋና ጭብጦች በሚለው በተራ ቁጥር 3.3 ላይ «በመንገድ ዘርፍ የውስጥ» የሚለው «በመንገድ ዘርፍ የውስጥ» ተብሎ እንዲስተካከል፣ የውሳኔ ሃሳብ በሚለው ርዕስ ሥርም «87.5» የሚለው «87.3» በሚል እንዲስተካከል ጠይቀው የውሳኔ ሃሳቡን ለቤቱ በንባብ አሰምተዋል።

የችሮታ ጊዜን ጨምሮ በ30 ዓመት ተከፍሎ እንደሚያልቅ የተገለጸበት ሁኔታ ስላለ ይህ እንዴት ሊሆን እንደቻለ ማብራሪያ እንዲሰጣቸው ጠይቀዋል።

ከዚያም የተከበሩ አፈ-ጉባኤው ተጨማሪ አስተያየቶችና ጥያቄዎች ካሉ እንደሚቀርቡ መድረኩን ክፍት ቢያደርጉም ባለመኖራቸው ለተነሱት አስተያየቶችና ጥያቄዎች ምላሽ እንዲሰጥ መድረኩን ክፍት አድርገዋል።

በዚህም መሰረት የተከበሩ አቶ ኩታዬ ኩሲያ ከመንገድ ሲዛይን እና ከዋጋ ንረት ጋር ተያይዘው ከሚመጡ ችግሮች ከማምለጥ አንፃር በብድር የተገኘውን ገንዘብ በአስቸኳይ ወደ ተግባር የመለወጡን የበጀትና ፋይናንስ ጉዳዮች ቋሚ ኮሚቴ እና ተሳታፊ የነበሩ የመሰረተ ልማት ጉዳዮች ቋሚ ኮሚቴ አባላት ያደረጉት ሰፊ ውይይት ከሚመለከታቸው አባላት ጋር በተደረገው ውይይት ቃለ-ጉባኤ ላይ በተከበሩ አቶ ብሩ የተነሳውም አስተያየት ከዚህ ጋር ተመሳሳይነት ስላለው በገንቢነት እንደሚቀበሉት ጠቁመው ጉዳዮችን በውይይቱ ብቻ ማንሳቱ በቂ ስለማይሆን ም/ቤቱም ሆነ እያንዳንዱ ቋሚ ኮሚቴ ክትትል በሚያደርግበት ጊዜ ቀደም ሲል የተነሱት ጉዳዮች ትኩረት ተሰጥቶአቸው መሰራት እንደሚገባቸውና ወደፊትም ይህ አሰራር መቀጠል እንዳለበት አመላክተዋል።

አክለውም የመንገዶች ግንባታ መዘግየትንና የመንገድ ዲዛይኖች ለውጥን በተመለከተ ለቀረበው አስተያየት ምላሽ ሲሰጡ በኮሚቴው ቃለ-ጉባኤ ላይ እንደተገለጸው የመንገዶች ዲዛይን በሚለወጥበት ጊዜ የትኛውን ተጠቃሚ ቢያደርግ እንደሚሻልና ተጠቃሚ ሊያደርግ ያልቻለውስ በምን ምክንያት እነደሆነ እንዲሁም በአካባቢው የሚያደርሰውንም ተጽዕኖ ለህዝብ በሚገባ ማሳወቅ እንደሚገባ ገልጸው የመንገድ ሲዛይን የተለወጠው ለምን እንደሆነ የማሳመን ሥራ ተግባራዊ ማድረግ እንደሚገባ ቋሚ ኮሚቴው እምነቱ እንደሆነ አስረድተዋል።

አያይዘውም የተገኙ ብድሮች በፍጥነት ወደሥራ እንዲገቡ ማድረግ ተገቢ ነው በሚል የተሰጠውን አስተያየት እንደሚቀበሉ፣ ብድሩ ተከፍሎ የሚያልቅበትን ጊዜ አስመልክቶ ለተነሳውም ብድሩ ተከፍሎ የሚያልቀው በ40 ዓመታት ጊዜ ውስጥ

የተከበሩ አቶ ኩታዬ ኩሲያ ሪፖርቱንና የውሳኔ ሃሳቡን በንባብ ከማሰማታቸው በፊት በውሳኔ ሃሳቡ መግቢያ ላይ «የብድር ስምምነት» የሚለው እንዲሰረዝ ጠይቀዋል።

ከዚያም የተከበሩ አፈ-ጉባኤው በቀረበው ሪፖርትና የውሳኔ ሃሳብ ላይ የሚነሱ አስተያየቶችና ጥያቄዎች ካሉ እንዲቀርቡ መድረኩን ክፍት ባደረጉት መሰረት የተከበሩ ዶ/ር ነጋሶ ጊዳዳ ከውይይቱ የተገኙ ዋና ዋና ጭብጦች በሚለው በተራ ቁጥር 5 ሥር የሰፈረው መስፈርት መቀመጥ ያለበት እንደሚመስላቸው ጠቁመው ይህ ከሆነ ከሌሎች ሃገሮች ጋር የሚሰራው በዚህ መልክ እንደሆነ አስረድተዋል።

ከዚያም የተከበሩ አፈ-ጉባኤው ለተነሳው አስተያየት ምላሽ እንዲሰጥ ለቋሚ ኮሚቴው አባል መድረኩን ክፍት ባደረጉት መሰረት የተከበሩ አቶ ኩታዬ ኩሲያ በውሳኔ ሃሳቡ ውስጥ የተቀመጡት መመዘኛዎች የኢትዮጵያና የአልጀሪያ ግንኙነት ምን ይመስላል የሚለውን ለመግለፅ ኮሚቴው የተጠቀሙበት ዘዴ እንደሆነ፣ ነገር ግን ኢትዮጵያና አልጀሪያ የቆዩ ታሪካዊ ግንኙነት ያላቸው አገሮች መሆናቸውንና፣ ይኸኛው ስምምነትም ለ3ኛ ጊዜ የተደረገ መሆኑን፣ በአሁኑ ወቅት ፀረ ቅኝ አገዛዝንና ፀረ ሽብርተኝነትን በተመለከተ ያለው አለማቀፍ አቋም ምን እንደሚመስል በም/ቤቱ በኩል እንደሚታወቅ ጠቁመው ሽብርተኝነት ለማንም ጠቃሚ ስላልሆነ ኢትዮጵያና አልጀሪያ በዚህ ጉዳይ ላይ አቋም በመያዝ ቢገናኙ አቋማቸው ትክክል ስለሆነ የሚያስደንቅ ነገር እንዳልሆነና የሁለቱ ሃገሮች ወዳጅነት በዚህ ስምምነት ብቻ ሳይገደብ ከዚህ በፊት በተለያዩ ጊዜያት ባደረጓቸው ስምምነቶች እንደሚገልፅ ይኸውም ሁለት ሃገሮች በ1996 የኢንቬስትመንት፣ በ1997 ደግሞ የንግድ ስምምነት መፈራረማቸውን አስታውሰው በዕለቱ የቀረበው የስምምነት ረቂቅ አዋጅ ከዚህ በፊት ከተደረጉት ስምምነቶች የቀጠለ መሆኑንና በሁለቱ ሃገሮች መካከል ያለውን ሰፊ ግንኙነት ለማመላከት ከጊዜ አኳያ አስቸጋሪ እንደሆነ ገልፀው ሁለቱ ሃገሮች በዚህ አቋም ላይ የሚያደርጉት ስምምነት ክፋት እንደሌለው አስገብዘዋል።

ከዚያም የተከበሩ አፈ-ጉባኤው በገቢ ላይ የሚከፈለውን ግብር በሚመለከት ተደራራቢ ግብርን ለማስቀረትና በታክስ ላይ የሚፈፀምን ማጭበርበር ለመከላከል በኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ እና በአልጀሪያ ህዝባዊ ዲሞክራሲያዊ ሪፐብሊክ መንግስታት መካከል የተደረገውን ስምምነት ለማፅደቅ የወጣው ረቂቅ አዋጅ

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