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2005年12月20日埃塞俄比亚常驻联合国代表团临时代办给安全理事会主席的信

谨随函转递埃塞俄比亚联邦民主共和国外交部发布的新闻稿(见附件)和2005年12月19日厄立特里亚-埃塞俄比亚索赔委员会对埃塞俄比亚提出的有关诉诸战争权索赔要求的裁决,其中认定厄立特里亚要对1998-2000年对埃塞俄比亚发动的战争负责,指明它是侵略者。

请将本信及其附件作为安全理事会文件分发给安全理事会全体成员为荷。

临时代办

大使

特鲁内赫·泽纳(签名)



2005年12月20日埃塞俄比亚常驻联合国代表团临时代办给安全理事会主席的信的附件

国际法庭裁定厄立特里亚要对 1998-2000 年对埃塞俄比亚发动的战争负责，指明它是侵略者

厄立特里亚-埃塞俄比亚索赔委员会在昨天（2005年12月19日）公布的裁决（见附文）中裁定，厄立特里亚应对发起同埃塞俄比亚的两年战争负责。委员会还认定，厄立特里亚应对故意杀害、殴打和绑架埃塞俄比亚平民负责，并应对厄立特里亚攻击和占领边境地区埃塞俄比亚领土期间广泛抢劫和毁坏平民财产负责。尽管委员会并未在所有诉讼上作出有利于埃塞俄比亚的判决，但这些裁决指明厄立特里亚是侵略者，揭露了致使和平进程目前陷入僵局的厄立特里亚政权的好战本性，意义十分深远。

委员会在认定厄立特里亚对两国 1998 年爆发的危机负有责任时指出，1998 年 5 月，厄立特里亚在未受到任何挑衅的情况下，攻击和占领了巴德梅以及埃塞俄比亚其他不设防地区，违反了国际法。在裁决的第 16 段，委员会对发动战争，因而要对战争引起的两国之间的流血负责的一方作出了以下明确认定：

……委员会认定，厄立特里亚诉诸武力，在 1998 年 5 月 12 日开始的进攻中，攻击和占领了当时由埃塞俄比亚和平管理的巴德梅以及埃塞俄比亚 Tahtay Adiabo Wereda 和 Laelay Adiabo 地区的其他领土，违反了《联合国宪章》第二条第四款，并有责任向埃塞俄比亚赔偿这一违反国际法行为造成的损害。

在厄立特里亚何时开始非法入侵和发动无端攻击的厄立特里亚部队的人员组成问题上，委员会的陈述非常具体。关于厄立特里亚最初是如何开始对埃塞俄比亚发动无端攻击的，委员会作了以下陈述：

证据显示，1998 年 5 月 12 日凌晨 5 时 30 分左右，至少由两个旅正规军组成的厄立特里亚武装部队，在坦克和大炮的掩护下，进攻了埃塞俄比亚 Tahtay Adiabo 地区的巴德梅镇和几个其他边境地带，并至少进攻了邻近 Laelay Adiabo 地区的两个地方。当天及其后的几天内，厄立特里亚武装部队跨过平坦的巴德梅平原，向东部的高地推进。

在发生进攻时，埃塞俄比亚相信两个兄弟民族不会相互威胁，因此在该地区没有部署部队。委员会在裁决的第 14 段证实了这一点，指出“大部分证据表明，埃塞俄比亚的防御人员仅是民兵和一些警察，他们迅速被入侵的厄立特里亚部队击溃。”

委员会断然驳回了厄立特里亚为其 1998 年 5 月 12 日的非法行为提出的所有辩解理由。“鉴于厄立特里亚没有遭到武装攻击，”委员会在同一段表示，“5 月 12 日开始的进攻不能以按照《联合国宪章》进行合法自卫为由。”

不妨回顾，厄立特里亚政府一贯辩称，埃塞俄比亚通过其议会于 1998 年 5 月 13 日向厄立特里亚宣战，它在索赔委员会也是这样辩称的。厄立特里亚通过故意曲解埃塞俄比亚议会通过的决议来进行辩解。它试图为其侵略行为进行辩解，而委员会没有受其误导。委员会在同一裁决的第 17 段表示：

1998 年 5 月 13 日，埃塞俄比亚内阁和议会通过了一份决议，谴责 5 月 12 日的入侵并要求厄立特里亚部队立刻无条件撤出埃塞俄比亚领土。这一决议并不象厄立特里亚所说的那样，是一份交战宣言。

委员会还在裁决的第 15 段落明确阐明，厄立特里亚以埃塞俄比亚侵犯厄立特里亚的领土完整为由攻击埃塞俄比亚是站不住脚的。委员会是这样说的：

厄立特里亚部队那天首先入侵的地区，要么位于不存在争议的埃塞俄比亚领土上，要么位于埃塞俄比亚和平管理的、埃塞俄比亚武装部队后来于 2000 年根据 2000 年 6 月 18 日《停战协议》所撤至的有关划线的埃塞俄比亚一侧的领土内。

委员会重申说，将在诉讼的损害赔偿阶段确定厄立特里亚要负责赔偿的范围。

任何一个有一定的客观性并尊重事实的第三方，只要审视一下引发埃塞俄比亚与厄立特里亚之间的危机的事实，都会得出这一结论；埃塞俄比亚从未对此怀疑过。非统组织在当时设立的大使委员会也作出了同样裁定。厄立特里亚政府曾试图利用边界委员会的决定来混淆事实，在两国危机的起源问题上误导其本国人民和国际社会。现在已经不可能再这样做了。厄立特里亚领导人任何掩盖真相的企图都不会成功。埃塞俄比亚和厄立特里亚的关系今天之所以这样，是由一个无可争辩的事实造成的，索赔委员会现在已予以明确阐明。这一事实就是厄立特里亚不幸地无端对和平的埃塞俄比亚发动了灾难性进攻。这一裁决对埃塞俄比亚和厄立特里亚之间的和平进程现状有极为深远的影响。索赔委员会的这一最新裁决毫无疑问地明确阐明，厄立特里亚根本没有任何理由声称在这一冲突中，它在道义上占上风。它是侵略者。正如委员会在其裁决的第 16 段所指出的，厄立特里亚违反了《联合国宪章》第二条第四款，该款规定：

各会员国在其国际关系上不得使用威胁或武力，或以与联合国宗旨不相符之任何其他办法，侵害任何会员国或国家之领土完整或政治独立。

必须在此指出，厄立特里亚的依法提出的立场是，根据国际法，仅为夺取自己提出领土主张但由另一国和平管辖的领土而威胁使用或使用武力是正当的，委员会直接驳回了这一立场，指出：

各国的做法和著名国际法专家的著作表明，不能援引自卫来解决领土争端。在这一方面，委员会指出，各国之间的边界争端频繁发生，有关禁止对所指称被非法占领的领土威胁使用或使用武力的规定如有任何例外，都会使国际法的一个重大规则出现危险的大漏洞。

不论从哪一方面来看，厄立特里亚在 1998 年至 2000 年期间对埃塞俄比亚进行无端的侵略都没有任何辩解理由。索赔委员会在其 2005 年 12 月 19 日的裁决中就是这样认定的。

厄立特里亚显然是在没有受到埃塞俄比亚任何挑衅的情况下进行了侵略。这就是索赔委员会的裁决，它不仅消除了人们对这一危机的起源可能持有的任何怀疑，而且也让人们对两国间和平进程要面临的挑战的性质有了有益的了解。厄立特里亚 1998 年 5 月的侵略没有任何正当理由。厄立特里亚目前正在采取行动加剧共同边界沿线的紧张关系，阻碍危机的解决和关系的正常化，它这样做没有任何正当理由。

附文

PARTIAL AWARD

Jus Ad Bellum
Ethiopia's Claims 1-8

between

The Federal Democratic Republic of Ethiopia

and

The State of Eritrea

By the Claims Commission, composed of:
Hans van Houtte, President
George H. Aldrich
John R. Crook
James C.N. Paul
Lucy Reed

PARTIAL AWARD – *Jus ad Bellum* – Ethiopia’s Claims 1–8
between the Claimant,
The Federal Democratic Republic of Ethiopia, represented by:

Government of Ethiopia

Ambassador Fisseha Yimer, Permanent Representative of the Federal Democratic Republic of Ethiopia to the United Nations, Geneva, Co-Agent
Mr. Habtom Abraha, Consul General, Ethiopian Mission in The Netherlands
Mr. Ibrahim Idris, Director, Legal Affairs General Directorate, Ministry of Foreign Affairs of the Federal Democratic Republic of Ethiopia, Addis Ababa
Mr. Reta Alenu, First Secretary, Coordinator, Claims Team, Ministry of Foreign Affairs of the Federal Democratic Republic of Ethiopia, Addis Ababa
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and the Respondent,
The State of Eritrea, represented by:

Government of Eritrea

His Excellency, Mohammed Suleiman Ahmed, Ambassador of the State of Eritrea to The Netherlands
Professor Lea Brilmayer, Co-Agent for the Government of Eritrea, Legal Advisor to the Office of the President of Eritrea; Howard M. Holtzmann Professor of International Law, Yale Law School
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PARTIAL AWARD – *JUS AD BELLUM*
ETHIOPIA'S CLAIMS 1–8

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ETHIOPIA'S CLAIMS 1–8

I. INTRODUCTION

1. This Claim (included as a component of all of Ethiopia's Claims 1–8) has been brought to the Commission by the Claimant, the Federal Democratic Republic of Ethiopia ("Ethiopia"), pursuant to Article 5 of the Agreement between the Government of the Federal Democratic Republic of Ethiopia and the Government of the State of Eritrea of December 12, 2000 ("the Agreement"). The Claimant asks the Commission to find the Respondent, the State of Eritrea ("Eritrea"), liable for loss, damage and injury suffered by the Claimant, including loss, damage and injury suffered by the Claimant's nationals, as a result of the alleged use of force against the Claimant in violation of the rules of international law regulating the resort to force, the *jus ad bellum*, in May and June 1998.¹ The Claimant requests monetary compensation.

2. The Respondent asserts that it fully complied with international law in its resort to military operations.

II. JURISDICTION

3. Eritrea asserted that the Commission has no jurisdiction over this issue, because the Agreement, in Article 3, assigns the responsibility to address it to another body. The Commission finds that argument unpersuasive. Article 3 provides for the creation of an "independent and impartial body" to be appointed by the Secretary-General of the Organization of African Unity in consultation with the Secretary-General of the United Nations, and defines its task in the following terms:

In order to determine the origins of the conflict, an investigation will be carried out on the incidents of 6 May 1998 and on any other incident prior to that date which could have contributed to a misunderstanding between the parties regarding their common border, including the incidents of July and August 1997.

The Commission understands that the independent body authorized by Article 3 has never been constituted.

4. The terms "origins of the conflict" and "misunderstanding between the parties regarding their common border" are not the same as the legal issue posed by Ethiopia for adjudication in this Claim, that is, whether Eritrea's actions in May and June 1998 involved the unlawful resort to force against Ethiopia resulting in liability in accordance with applicable rules of international law. Determination of the origins of the conflict and the nature of any misunderstandings about the border, had they been made by the impartial body

¹ Both Parties utilized the terminology of *jus ad bellum* to describe the law governing the initial resort to force between them. At the hearing of this Claim in April 2005, Ethiopia confirmed that it meant by this the use of force contrary to the Charter of the United Nations, June 26, 1945, 59 Stat. p. 1031, 3 Bevans p. 1153 [hereinafter UN Charter].

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anticipated by Article 3, could have been helpful in promoting reconciliation and border delimitation, but they certainly would not have answered the question of the legality of Eritrea's resort to force. The factual inquiries called for by Article 3 were largely different from the factual determinations this Commission must make in assessing Ethiopia's claim under Article 5. Moreover, it seems clear that Article 3 was carefully drafted to direct the impartial body to inquire into matters of fact, not to make any determinations of law. This Commission is the only body assigned by the Agreement with the duty of deciding claims of liability for violations of international law.

5. Upon first reading, the last sentence of Article 5 of the Agreement might well be thought to exclude the Commission's jurisdiction over rules of international law regulating the resort to force. That sentence provides that "[t]he Commission shall not hear claims arising from the cost of military operations, preparing for military operations, or the use of force, except to the extent that such claims involve violations of international humanitarian law" (emphasis added). However, at an early stage of the proceedings, the Parties agreed upon an interpretation of that sentence limiting it to claims solely for the costs of the enumerated activities, and the Commission agreed to respect that interpretation. That agreed interpretation was recorded in point 5 of the Commission's letter to the Parties of July 24, 2001.² Consequently, the Commission has jurisdiction pursuant to Article 5 over Ethiopia's *jus ad bellum* Claim.

III. THE MERITS

6. Ethiopia claimed that Eritrea carried out a series of unlawful armed attacks against it, beginning on May 12, 1998, in violation of the *jus ad bellum*, and made this an element of all eight of the Claims it submitted to the Commission.³ The Commission, in ordering filing schedules, decided to hear that Claim along with Ethiopia's Claims concerning alleged violations of applicable international law, including the *jus in bello*, in the Western and Eastern Fronts (Ethiopia's Claims 1 and 3). Consequently, this Claim was heard in the Commission's April 11–15, 2005 hearings on liability.

7. The Commission informed the Parties on August 29, 2001 that it intended to conduct proceedings in Government-to-Government claims in two stages, first concerning liability, and second, if liability is found, concerning damages. Ethiopia filed its Statement of Claim on December 12, 2001, Eritrea's Statement of Defense was filed on December 16, 2002,

² Point 5 of the Commission's July 24, 2001 letter to the Parties states:

The Commission notes the agreement of the Parties that the last sentence of Article 5, paragraph 1 of the Agreement of 12 December 2000, despite its wording, was intended to mean that claims of compensation for all costs of military operations, all costs of preparing for military operations, and all costs of the use of force are excluded from the jurisdiction of the Commission, without exception. Consequently, the Commission shall respect that interpretation of the provision.

³ See, e.g., Partial Award, Central Front, Ethiopia's Claim 2 Between the the Federal Democratic Republic of Ethiopia and the State of Eritrea (April 28, 2004), para. 4 [hereinafter Partial Award in Ethiopia's Central Front Claims].

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Ethiopia's Memorial on November 1, 2004, Eritrea's Counter-Memorial on January 17, 2005, and Ethiopia's Reply on March 10, 2005.

8. In essence, Ethiopia contended that Eritrea planned and carried out these attacks against Ethiopia in violation of its obligations under international law, including notably the requirement of Article 2, paragraph 4, of the Charter of the United Nations ("UN Charter") that all Members refrain from the threat or use of force against the territorial integrity or political independence of any State. Ethiopia alleged that, between May 12 and June 11, 1998, Eritrea launched a "full scale" invasion of Ethiopia at many points along their mutual border from Badme in the west to Bure in the east.

9. In addition to its jurisdictional objections, dealt with above, Eritrea denied Ethiopia's allegations on the merits. In its written pleadings, Eritrea made the following three main defensive assertions: (a) that Ethiopia was unlawfully occupying Eritrean territory in the area around Badme, which was the area of much of the initial hostilities in May 1998, citing the decision of the Eritrea-Ethiopia Boundary Commission of April 13, 2002;⁴ (b) that Ethiopian armed militia near Badme carried out forcible incursions into Eritrea in early May 1998 and fired on Eritrean forces on May 6 and 7, killing eight Eritrean soldiers and setting off fighting between small units in the area during the next several days; and (c) that it was Ethiopia that declared war on Eritrea on May 13, 1998. On the last day of the hearing, Eritrea argued that its actions in taking Badme and adjacent areas on May 12, 1998 were lawful measures of self-defense, consistent with Article 51 of the UN Charter, taken in response to the fighting near Badme that began on May 6 and 7, 1998. While Eritrea asserted that these incidents occurred within Eritrean territory, Ethiopia asserted that they occurred within Ethiopian territory.

10. The Commission cannot accept the legal position that seems to underlie the first of these Eritrean contentions – that recourse to force by Eritrea would have been lawful because some of the territory concerned was territory to which Eritrea had a valid claim. It is true that the boundary between Eritrea and Ethiopia in the area of Badme was never marked in the years when Eritrea was an Italian colony, during Eritrea's subsequent incorporation into Ethiopia, or after Eritrean independence in 1993, and it is clear that the Parties had differing conceptions of the boundary's location. However, the practice of States and the writings of eminent publicists show that self-defense cannot be invoked to settle territorial disputes.⁵ In

⁴ Decision Regarding Delimitation of the Border between the State of Eritrea and the Federal Democratic Republic of Ethiopia, Eritrea-Ethiopia Boundary Commission, April 13, 2002, *reprinted in* 41 I.L.M. p. 1057 (2002).

⁵ *See, e.g.*, Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations (the "Friendly Relations Declaration"), UN General Assembly Resolution 2625 (XXV) of Oct. 24, 1970, G.A. Res. 2625, U.N. GAOR, 25th Sess., Supp. No. 28, U.N. Doc. A/8028, *reprinted in* 9 I.L.M. p. 1292 (1970) ("[E]very State has the duty to refrain from the threat or use of force . . . as a means of solving international disputes, including territorial disputes"); GAETANO ARANGIO-RUIZ, *THE UNITED NATIONS DECLARATION ON FRIENDLY RELATIONS AND THE SYSTEM OF THE SOURCES OF INTERNATIONAL LAW* pp. 104–105 (Sijthoff & Noordhoff 1979); ALFRED VERDROSS & BRUNO SIMMA, *UNIVERSELLES VOLKERRECHT* p. 905 (Duncker und Humblot 1984); Michel Virally, *Article 2:*

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that connection, the Commission notes that border disputes between States are so frequent that any exception to the prohibition of the threat or use of force for territory that is allegedly occupied unlawfully would create a large and dangerous hole in a fundamental rule of international law.

11. The Commission turns next to Eritrea's second line of argument. In general, recourse to the use of armed force by one State against another is unlawful unless it is used in self-defense or occurs with the sanction of the Security Council pursuant to Chapter VII of the UN Charter.⁶ As the text of Article 51 of the Charter makes clear, the predicate for a valid claim of self-defense under the Charter is that the party resorting to force has been subjected to an armed attack. Localized border encounters between small infantry units, even those involving the loss of life, do not constitute an armed attack for purposes of the Charter. In that connection, the Commission notes that Eritrea did not report its use of armed force against Ethiopia on May 12, 1998 to the Security Council as measures taken in self-defense, as it would be obligated to do by Article 51 of the Charter in case of self-defense against armed attack.

12. With respect to the events in the vicinity of Badme that occurred during the period from May 6–12, 1998, the Commission takes note of the sharply different accounts offered by the Parties as to the precise location of the incidents of May 6 and 7 and of the numbers and types of forces involved. It need not resolve these differences, because it is clear from the evidence that these incidents involved geographically limited clashes between small Eritrean and Ethiopian patrols along a remote, unmarked, and disputed border. The Commission is satisfied that these relatively minor incidents were not of a magnitude to constitute an armed attack by either State against the other within the meaning of Article 51 of the UN Charter.

13. The Parties agreed that a joint body met in Addis Ababa on May 8, 1998 to discuss border problems.⁷ Ethiopia asserted, and Eritrea did not dispute, that the head of the Eritrean delegation to that meeting was its Minister of Defense and that, following the meeting on May 8, its delegation left Addis Ababa during the night. Ethiopia asserted that it had expected the meeting to continue on May 9 and that it was surprised by the departure of the Eritrean delegation. Eritrea asserted in response that its delegation left because the meeting had concluded. Ethiopia also asserted that the meeting had been cordial and that agreement had

Paragraphe 4, in LA CHARTE DES NATIONS UNIES pp. 119–125 (Economica, 2d ed. 1991); OSCAR SCHACHTER, *INTERNATIONAL LAW IN THEORY AND PRACTICE* p. 116 (Nijhoff 1991); PETER MALANCZUK, *AKEHURST'S MODERN INTRODUCTION TO INTERNATIONAL LAW* pp. 314–315 (Routledge, 7th rev. ed. 1997).

⁶ See, e.g., UN Charter, *supra* note 1, arts. 2(4), 24, 39–42; IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* pp. 699–700 (Oxford University Press, 6th ed. 2003); ANTONIO CASSESE, *INTERNATIONAL LAW* pp. 296–298, 305–307 (Oxford University Press 2001); Albrecht Randelzhofer, *Article 2(4), in THE CHARTER OF THE UNITED NATIONS: A COMMENTARY* pp. 111–118 (Bruno Simma ed., Oxford University Press 1994).

⁷ The Parties disagreed regarding the nature of this body. Ethiopia contended that the Parties established a formal commission to address questions relating to the boundary. Eritrea characterized it in less formal terms. In any case, the Parties were engaged in a process of consultations regarding questions related to the boundary before hostilities began.

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been reached that both sides should avoid border crossings by armed personnel and that the two sides would meet again in two months in Asmara to seek agreement on border issues. Eritrea did not respond in the present proceedings to those assertions.⁸

14. The evidence showed that, at about 5:30 a.m. on May 12, 1998, Eritrean armed forces, comprised of at least two brigades of regular soldiers, supported by tanks and artillery, attacked the town of Badme and several other border areas in Ethiopia's Tahtay Adiabo Wereda, as well as at least two places in its neighboring Laelay Adiabo Wereda. On that day and in the days immediately following, Eritrean armed forces then pushed across the flat Badme plain to higher ground in the east. Although the evidence regarding the nature of Ethiopian armed forces in the area conflicted, the weight of the evidence indicated that the Ethiopian defenders were composed merely of militia and some police, who were quickly forced to retreat by the invading Eritrean forces. Given the absence of an armed attack against Eritrea, the attack that began on May 12 cannot be justified as lawful self-defense under the UN Charter.

15. The areas initially invaded by Eritrean forces on that day were all either within undisputed Ethiopian territory or within territory that was peacefully administered by Ethiopia and that later would be on the Ethiopian side of the line to which Ethiopian armed forces were obligated to withdraw in 2000 under the Cease-Fire Agreement of June 18, 2000. In its Partial Award in Ethiopia's Central Front Claims, the Commission held that the best available evidence of the areas effectively administered by Ethiopia in early May 1998 is that line to which they were obligated to withdraw in 2000.⁹ In the same Partial Award, the Commission explained why it must hold Eritrea liable for violations of international humanitarian law committed by it within such territory and why such holdings concerning conduct during the war have no effect on the international boundary as subsequently determined by the Eritrea-Ethiopia Boundary Commission.¹⁰ The same principle governs application of the *jus ad bellum*.

16. Consequently, the Commission holds that Eritrea violated Article 2, paragraph 4, of the Charter of the United Nations by resorting to armed force to attack and occupy Badme, then under peaceful administration by Ethiopia, as well as other territory in the Tahtay Adiabo and Laelay Adiabo Weredas of Ethiopia, in an attack that began on May 12, 1998, and is liable to compensate Ethiopia, for the damages caused by that violation of international law.¹¹

⁸ The evidence included references to other high-level contacts and conversations between the Parties in the days prior to May 12, 1998, as well as suggestions of military preparations on both sides of the boundary during this period. However, these matters were not clarified during the proceedings, and the Commission is constrained to act on the basis of the record available to it.

⁹ Partial Award in Ethiopia's Central Front Claims, *supra* note 3, para. 31.

¹⁰ *Id.* at paras. 27–31.

¹¹ In addition to the UN Charter, Ethiopia contended that Eritrea's actions also violated the Charter of the Organization of African Unity, May 25, 1963, 479 U.N.T.S. p. 39 [hereinafter OAU Charter], as well as several bilateral agreements and customary international law. While the OAU Charter articulates important principles,

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17. This leaves Eritrea's third line of argument, based on Ethiopia's alleged declaration of war. On May 13, 1998, the Ethiopian Council of Ministers and Parliament passed a resolution that condemned the May 12 invasion and demanded the unconditional and immediate withdrawal of Eritrean forces from Ethiopian territory. This resolution was not, as Eritrea has asserted, a declaration of war. In international law, the essence of a declaration of war is an explicit affirmation of the existence of a state of war between belligerents.¹² Nevertheless, the resolution made clear that Ethiopia would not accept Eritrea's advances as a *fait accompli* and was determined to act in self-defense until the Eritrean forces withdrew or were compelled to leave the areas they had occupied. Ethiopia so notified the United Nations Security Council, pursuant to Article 51 of the UN Charter. Moreover, the Commission notes that the Parties subsequently maintained diplomatic relations and some economic relations, both of which would appear inconsistent with a formal declaration of war.

18. Ethiopia also contended that the unlawful armed attack by Eritrea that began on May 12 included all of Eritrea's subsequent attacks in May and June 1998 into Ethiopian territory along other parts of the border between the two States, as it considered those attacks to be a continuous second phase of a "30-day offensive" by Eritrea. It alleged that those attacks occurred across the Mareb River and at Zalambessa on the Central Front and at Adi Murug and Bure on the Eastern Front. In essence, Ethiopia contended that Eritrea carried out a program of pre-planned and coordinated armed attacks in multiple locations in violation of international law. This contention, however, has not been proved.

19. The evidence indicated that Eritrea's armed forces were more fully mobilized than those of Ethiopia and thus had the initiative in the first several months of the war, but that does not prove that Eritrea's actions, other than those in the areas of what became known as the Western Front addressed in this Partial Award, were predetermined. Based on the evidence before it, the Commission cannot resolve whether the Eritrean military operations from mid-May to mid-June 1998 in what became the Central and Eastern Fronts were pre-planned attacks, as Ethiopia contends, or were determined by developing military demands as both Parties sought to control key corridors of attack and defense after it became clear that Ethiopia would not acquiesce in Eritrea's captures of territory on the Western Front. What is clear is that, once the armed attack in the Badme area occurred and Ethiopia decided to act in self-defense, a war resulted that proved impossible to restrict to the areas where that initial attack was made.

20. In view of these holdings establishing Eritrea's liability for the unlawful armed attack on the Western Front that began on May 12, 1998, the Commission will request further briefing in the damages phase concerning the scope of the damages for which Eritrea is liable

because of the fundamental role of the UN Charter in relation to the issues presented, this Partial Award does not consider these additional claims in detail.

¹² See Hague Convention (III) Relative to the Opening of Hostilities, Oct. 18, 1907, 36 Stat. p. 2259, 1 Bevans p. 619.

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by reason of that attack, in addition to those damages following from the Commission's other Partial Awards.

IV. AWARD

In view of the foregoing, the Commission determines as follows:

A. Jurisdiction

1. The Commission has jurisdiction over the Claimant's *jus ad bellum* Claim.

B. Findings on Liability for Violation of International Law

1. The Respondent violated Article 2, paragraph 4, of the Charter of the United Nations by resorting to armed force on May 12, 1998 and the immediately following days to attack and occupy the town of Badme, then under peaceful administration by the Claimant, as well as other territory in the Claimant's Tahtay Adiabo and Laelay Adiabo Weredas.

2. The Claimant's contention that subsequent attacks by the Respondent along other parts of their common border were pre-planned and coordinated unlawful uses of force fails for lack of proof.

3. The scope of damages for which the Respondent is liable because of its violation of the *jus ad bellum* will be determined in the damages phase of these proceedings.

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Done at The Hague, this 19th day of December 2005

H. Houtte

President Hans van Houtte

George H. Aldrich

George H. Aldrich

John R. Crook

John R. Crook

James C.N. Paul

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Lucy Reed

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