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Identical letters dated 22 May 2006 from the Deputy Permanent Representative of Ethiopia to the United Nations addressed to the Secretary-General and the President of the Security Council

I have the honour to transmit herewith a report by the Government of Ethiopia on compliance with resolution 1640 (2005) and cooperation with the new peace initiative (see annex).*

I should be grateful if the text of the report could be circulated as a document of the Security Council.

(*Signed*) Negash **Kebret**
Ambassador
Deputy Permanent Representative

* The annex is reproduced in the language of submission only.

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Annex to the identical letters dated 22 May 2006 from the Deputy Permanent Representative of Ethiopia to the United Nations addressed to the Secretary-General and the President of the Security Council

Report by the Government of Ethiopia on compliance with resolution 1640 (2005) and cooperation with the new peace initiative

1. In light of Security Council Resolution 1678, dated 15 May 2006, in which the Council expressed its intent to assess the compliance of Eritrea and Ethiopia with Resolution 1640 and their cooperation with the new peace initiative, Ethiopia submits its views regarding this matter.

2. Ethiopia wishes to convey its appreciation to the Witnesses of the Algiers Agreement for the new initiative on the peace process, led by the United States. As the Witnesses expressed in their Statement issued after the meeting held in New York on February 22,2006, the purpose of the initiative is "to resolve the current impasse in the peace process between Eritrea and Ethiopia in order to promote stability and good relations between the parties and lay the foundation for sustainable peace." The initiative so stated is consistent with achievement of the object and purpose of the Algiers Agreement, which is sustainable peace between the parties.

3. The international community has emphasized three key elements essential to the success of the new peace initiative: first, that UNMEE's freedom of operations and the sanctity of the Temporary Security Zone must be fully restored and that the parries refrain from the threat or use of force; second, that demarcation commence with the support of a neutral facilitator to assist in the demarcation process; and third, that normalization of relations between the parties be realized. By accomplishing these key elements, compliance with Resolution 1640 will be reached and the object and purpose of the Algiers Agreement achieved.

4. Regarding Resolution 1640, the United Nations Security Council specifically deplored Eritrea's restrictions on UNMEE and demanded that Eritrea lift its restrictions; called on both parties to show maximum restraint and to refrain from any threat or use of force; demanded that both parties return to the 16 December 2004 levels of deployment, which for Eritrea requires the removal of its forces from the TSZ, and that Ethiopia accept the delimitation decision of the Eritrea Ethiopia Boundary Commission (EEBC) and support demarcation of the boundary completely and promptly.

5. In this Report, Ethiopia establishes that it has fully complied with the requirements of Resolution 1640, including paragraphs 1 and 5, and is cooperating with the new initiative. The Report will also show that Eritrea has rejected its obligations under the Algiers Agreements, the United Nations Charter and UN Security Council Resolutions, in particular Resolution 1640, and that Eritrea has erected barriers to the new peace initiative endorsed by the Security Council.

I. Restoration of UNMEE and the TSZ; refraining from the threat or use of force

A. The parties' fundamental obligations under the Algiers Agreements and the Charter of the United Nations

6. The fundamental obligations of the Algiers Agreements, which form the foundation of the Agreements and the peace process, are found in Article 1 of the December 2000 Agreement:

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

7. In relation to Article 1 of the December 2000 Agreement, the Cessation of Hostilities Agreement sets forth the following obligations at Article 1:

(a) Immediate cessation of hostilities starting from the signature of this document. In particular the Parties agree to the following:

- cessation of all armed air and land attacks;
- guarantee of the free movement and access of the Peacekeeping Mission and its supplies as required through the territories of the Parties;
- respect the and protection of the members of the Peacekeeping, (emphasis added)

(b) Despite Eritrea's attempt to confuse the international community, UNMEE's mandate as provided in this Agreement is as follows:

- monitor the cessation of hostilities;
- monitor the redeployment of Ethiopian troops;
- ensure the observance of the security commitments agreed by the two parties in this document, in particular those provided in paragraph 14;
- monitor the temporary security zone provided for in paragraph 12 of this document;

(c) Under Article 5 of the Cessation of Hostilities Agreement, the mandate of the peacekeeping mission shall terminate only once the delimitation and demarcation process has been completed.

(d) Also in relation to Article 1 of the December 2000 Agreement, the Cessation of Hostilities Agreement establishes a Temporary Security Zone (TSZ):

> ... to create conditions conducive to a comprehensive and lasting settlement of the conflict through the delimitation and demarcation of the border, the Eritrean forces shall remain at a distance of 25 km (artillery range) from positions to which Ethiopian forces shall redeploy in accordance with paragraph 9 of this document. This zone of separation shall be referred to in this document as the "temporary security zone." (Article 12) and that " Ethiopia commits itself not to move its troops beyond the positions it adininistered before 6 May 998. Eritrea commits itself not to move its troops beyond the positions in paragraph 12 above. (Article 14)

8. The sanctity of the TSZ is so fundamental to the peace process that from among the entirety of the Agreement with regard to this obligation alone, the parties agreed that Chapter VII measures of the United Nations Charter should be invoked should a party violate its commitment to honor the TSZ. Article 14 of the first Algiers Agreement on Cessation of Hostilities provides in part:

> The OAU and the United Nations commit themselves to guarantee the respect for this commitment of the two Parties [to keep troops outside of the TSZ] until the determination of the common border on the basis of pertinent colonial treaties and applicable international law, through delimitation/demarcation and in case of controversy, through the appropriate mechanism of arbitration. This guarantee shall comprise of:
>
> a) measures to be taken by the international community should one or both of the Parties violate this commitment, including appropriate measures to be taken under Chapter VII of the United Nations Charter by the UN Security Council;

9. These provisions are clear in their affirmation of the cessation of hostilities and reaffirmation of the fundamental obligation of all member states of the United Nations to refrain from the threat and use of force. They constitute the foundation for the peaceful settlement of disputes under the Algiers Agreements. Violations of these provisions or attempts to alter them cannot be ignored or minimized by the international community, but must be prevented in order to preserve the Algiers Agreements, the new initiative, and the peace process. As the Secretary General, at paragraph 33 of his Report to the Security Council of March 6,2006, emphasized:

> For the current initiative to proceed, all restrictions of UNMEE operations must be lifted.

B. The necessity of fully restoring UNMEE and the TSZ

10. The full restoration of UNMEE and the TSZ is not only fundamental to the Algiers Agreements and the peace process, but it is also essential for demarcation to take place. This has been emphasized repeatedly by the United Nations Secretary-General, Security Council, UNMEE, and the Commission's field staff. For example, the UN Security Council Presidential Statement (S/PRST/2006/10) of February 24,2006, provides:

> The Security Council demands that the parties permit UNMEE to perform its duties without restrictions and provide UNMEE with the necessary access, assistance, support and protection required for the performance of these duties, including its mandated task to assist the EEBC in the expeditious and orderly implementation of the Delimitation Decision, in accordance with Security Council resolutions 1430 (2002) and 1466 (2003). (emphasis added)

11. In their meeting of 22 February 2006, the Witnesses to the Algiers Agreements issued a the Statement providing that:

> The Witnesses urge the parties to permit UNMEE to perform its duties without any restrictions and call on the parties to ensure the free movement of UNMEE personnel in the performance of their responsibilities . . . In particular, the Witnesses note that demarcation of the border cannot proceed unless UNMEE is allowed full freedom of movement throughout its area of operations, (emphasis added)

12. Ambassador Legwaila described the restrictions at the EEBC's March 10 meeting as follows:

> As the witnesses and the Security Council said, if you were to ask me to help you today, I would not be able to do so. I would not be able to do so because I have no helicopters and my people are scattered all over the place and as I say, we withdrew from 18 team sites [within the TSZ]. In other words, you will have to restore UNMEE to what it was before these restrictions and hopefully that is what will happen because otherwise we will be useless to the Boundary Commission as we are now to the Parties. Right now we are useless to the Parties.

13. At the last EEBC meeting of May 17, the Commission requested the views of representatives of the UN, UNMEE, and the Commission's own staff regarding the support that was needed for UNMEE in order for demarcation to take place. All stated forcefully and unequivocally that demarcation could not be supported by UNMEE without the sanctity of the TSZ being completely restored and UNMEE being given full freedom of movement. This included restoring UNMEE forces back to Eritrea and rebuilding all 18 sites within the TSZ, which have been taken over by Eritrean troops. It was their expressed opinion that without fully restoring all of UNMEE's capacity and freedom of movement and the sanctity of the TSZ, no demarcation could take place. It was further noted that UNMEE at its present reduced capacity was ill-equipped to support the demarcation and that if UNMEE were to be reduced to an observer mission, it would simply be impossible for UNMEE to assist in the demarcation.

C. Ethiopia's compliance with and Eritrea's rejection of paragraphs 1 and 2 of resolution 1640 (2005)

14. In paragraph 1 of Resolution 1640, the Security Council demands that Eritrea restore, without further delay or precondition, UNMEEs freedom of movement. Five months after the Resolution was issued, Eritrea still refuses to comply with the Security Council's demand. In the EEBC meeting of May 17, the Commission repeatedly urged Eritrea to fully restore UNMEE and the sanctity of the TSZ. Despite the Commission's efforts, Eritrea refused to comply. In its most recent communication to the Commission dated May 22,2006, Eritrea's states that it might permit UNMEE enough freedom to perform certain tasks. In effect Eritrea is asking to unilaterally alter the Algiers Agreements. This position was expressly rejected by the UN, UNMEE, and Commission staff at the last EEBC meeting and is a blatant rejection of paragraph 1 of Resolution 1640. Eritrea has clearly rejected the demands of the Commission that UNMEE's freedom of movement must be restored fully without any preconditions. In contrast, Ethiopia continues to provide UNMEE with full freedom of movement, including the authorization to make direct flights from Asmara to Addis Ababa.

15. Paragraph 2 of Resolution 1640 calls upon the parties to refrain from any threat or use of force and demands that the parties redeploy their troops to the 16 December 2004 levels of deployment. In this regard, Ethiopia moved it troops located in the border region to positions of December 16,2004, despite the risk posed by Eritrean threats and troop infiltration within the TSZ and Ethiopia having no obligation to do so under the Algiers Agreements.

16. In contrast, Eritrea has repeatedly refused to redeploy its troops out of the TSZ. In his March 6, 2006 Report to the Security Council, the Secretary General confirmed the presence of Eritrean armed forces in the TSZ. At the EEBC meeting of March 10, Ambassador Legwaila indicated that Eritrea has forced UNMEE to evacuate 18 of the observation posts in the TSZ which were manned by UNMEE personnel and that Eritrean troops are in full control of those strategic posts.

17. In addition, Eritrea has repeatedly stated that it will resort to force to resolve the remaining disputes with Ethiopia, in clear violation of the most basic principles of international law, Article 1 of the Algiers Agreement, and Resolution 1640. For example, Eritrea's senior official, addressing the 60th Session of the United Nations General Assembly, stated in the context of the boundary demarcation: "In conclusion, I whish to categorically inform the Assembly that Eritrea is determined, and has the right, to defend and preserve its territorial integrity by any means necessary."

18. More recently, at a March 6 meeting, Eritrea's representative to UNMEE's Military Coordination Commission stated: "Eritrea has the right to/whatever measures it deems necessary to assert its territorial rights." These threats made by senior officials of the Eritrean Government constitute a blatant violation of the United Nations Charter and the Algiers Agreements and can only be taken seriously by Ethiopia. It should be recalled that the other Commission established under the Algiers Agreements, the Eritrea Ethiopia Claims Commission, unanimously found Eritrea liable for starting the armed conflict in 1998 by invading Ethiopia without provocation in violation of Article 2(4) of the Charter.

19. Because Eritrea is in flagrant violation of the Algiers Agreements, and paragraphs 1 and 2 of Resolution 1640, Ethiopia calls upon the Security Council to take appropriate measures against Eritrea, including Chapter VII measures, pursuant to Article 14, of the on Cessation of Hostilities Agreement and paragraph 4 of Resolution 1640.

II. Demarcation with the support of a neutral facilitator

A. The call for demarcation with the support of a neutral facilitator

20. As part of the new initiative, the Witnesses and Secretary General have called upon the parties to resume demarcation, pursuant to paragraph 5 of Resolution 1640, with the support of a neutral facilitator. At paragraph 31 of his Report to the Security Council of March 6,2006, the Secretary General stated:

> Eritrea and Ethiopia should seize this unique opportunity and extend the necessary cooperation to the Boundary Commission so that the expeditious demarcation of their common border can take place. In this context, the recommended role of the neutral facilitator will be very important. The parties' commitment to this process should also lead to an early normalization of relations between the two neighboring countries.

21. Similarly, the Statement of the Witnesses of February 22,2006, provides:

> The Witnesses urge the Commission to convene a meeting with the parties and invite the Commission to consider the need for technical discussions with the support of a neutral facilitator to assist with the process of demarcation.

22. In his letter of February 24, 2006, the President of the EEBC stated that the Commission "invites the Parties to meet with it to discuss resumption of the implementation of the Delimitation Decision and to determine how to deal with problems arising from any anomalies and impracticabilities..." In this regard, at the EEBC meeting of March 10, 2006, the President stated that the parties and the Commission were meeting at the recommendation of the Security Council and the Witnesses of the Algiers Agreement to participate in a new initiative supported by the Security Council, Secretary General, and the Witnesses. The President also announced the appointment of U.S. retired General Fulford as a special consultant to "... work with Mr. Robertson in the resolution of any difficulties that may arise."

23. Later in the meeting, the President elaborated on the special consultant's responsibilities as follows:

> We are all aware that there are often references in the delimitation decision and subsequently to the existence of anomalies and impracticabilities and these will have to be resolved. I think that that is accepted as much by Eritrea as it is by Ethiopia and in the resolution of these anomalies and manifest impracticabilities a certain amount of judgment is called for. Mr. Robertson undoubtedly has great powers of judgment and he may find it helpful to have the additional assistance of an outsider who also has powers ofjudgment. I think that that would be a fair statement of the possible function of General Fulford. As to the number of anomalies and manifest impracticabilities that may confront the demarcation teams, it is impossible to say at this stage.

B. Ethiopia's acceptance and Eritrea's rejection of resuming demarcation with the support of a neutral facilitator

24 Ethiopia has expressed its acceptance of the appointment of a neutral facilitator and has cooperated with the resumption of the demarcation process. In the EEBC meeting of March 10 and thereafter, Ethiopia has reaffirmed its acceptance of the Delimitation Decision without qualifications-as asked of it in paragraph 5 of Resolution 1640—and has indicated to the Commission its support for the appointment of General Guilford as a neutral facilitator to facilitate discussions between the parties with the view to arriving at amicable solutions to disputes that would arise between the parties in the demarcation process.

25 In contrast, at the March 10 and May 17 meetings, Eritrea has repeated rejected the appointment of a neutral facilitator, and instead, has tried to persuade the Commission to restrict the terms of reference of a special consultant so as to render his appointment meaningless.

26. Also with respect to the appointment of a neutral facilitator, in its opening remarks at the EEBC's May 17 meeting and again in its letter dated May 21, Ethiopia stated:

> Ethiopia has reiterated that it accepts the Boundary Commission's delimitation decision. The task now is to move forward towards demarcation in a manner that fulfills the object of the peace agreement and in a manner that is consistent with the purpose of the new initiative as expressed in the Statement of Witnesses. In other words, the task ahead is to implement the delimitation decision in a manner that can promote sustainable peace between the two countries. This implies that there must be consultation between the parties through a neutral facilitator. It implies that it is the two parties who must discuss all the issues under dispute and come to an agreement on how to resolve them. Ethiopia stands ready to do so.

27. In addition to accepting the appointment of a neutral facilitator, Ethiopia has cooperated with the Commission with respect to other aspects of the demarcation. Ethiopia has attended the Two meetings recently called for by the EEBC and has agreed to make the requested payment to cover its work. Ethiopia has also appointed field liaison officers at the Commission's request and has stated that its eagerness to submit a security plan for demarcation immediately upon Eritrea restoring UNMEE and the TSZ so as to make a security plan possible. In short, Ethiopia has demonstrated its compliance with paragraph 5 of Resolution 1640 to take "concrete steps" in support of demarcating the border completely and promptly.

28. In stark contrast, Eritrea has continued to place barriers to the demarcation and has failed to cooperate with the Commission and the new initiative. As described above, Eritrea has refused the appointment of a neutral facilitator and has rejected the call for UNMEE and the TSZ to be fully restored, despite the Commission, UNMEE, and the UN making it clear that demarcation could not be carried out otherwise. Indeed at the last EEBC meeting of May 17, it was pointed out by the Commission, that five of seven action items that were sought by the Commission could be completed if Eritrea simply restored UNMEE and the TSZ.

III. Normalization of relations

A. The call for normalization of relations as an integral part of the peace initiative

29 The international community has indicated that normalization of relations is an integral part of the peace process and the new initiative. In the Secretary General's Report to the Security Council of March 6, 2006, he stated at paragraph 31:

> Eritrea and Ethiopia should seize this unique opportunity and extend the necessary cooperation to the Boundary Commission so that the expeditious demarcation of their common border can take place. In this context, the recommended role of the neutral facilitator will be very important. The parties' commitment to this process should also lead to an early normalization of relations between the two neighboring countries. Both Governments and peoples stand to gain immensely from such a course of events, which is also essential for regional stability, (emphasis added)

30. Similarly, U.S. Ambassador Jendayi Frazer, in her speech at the meeting of the Witnesses, on February 22, 2006, explained:

> The task for the parties is clear. Each of us must be firm in our resolve to advocate forcefully without any hesitation on the importance that the parties fulfill their promises to demarcate the border and refrain form the threat or use of force against each other. In keeping with these promises, They need to resolve their differences and build a peaceful and stable relationship. . . . The holding of this witness meeting will begin an important process, testing whether the parties themselves are committed to the process and whether we as witnesses can assist the parties to achieve a successful start of the demarcation process and the final normalization of relations to lay the foundation for sustainable peace. (emphasis added)

31. The Security Council has also called upon the parties to normalize their relations. In paragraph 9 of Resolution 1662, the Security Council:

> Calls upon both parties to achieve a full normalization of their relationship, including through political dialogue between them.

B. Ethiopia's acceptance of and Eritrea's refusal to enter into normalization talks

32. Ethiopia has repeatedly reaffirmed its acceptance of entering into normalization talks with Eritrea in order to restore bilateral relations. Eritrea, however, continues to reject such talks, which the international community has called upon the parties to enter so that a full normalization of relations can be achieved and peace initiative can succeed. As the international community has repeatedly expressed, the primary responsibility for the peace process rests with the parties. Consequently, Eritrea has the obligation to resolve all of its disputes with Ethiopia through negotiations and dialogue.

IV. Conclusion

33. Ethiopia is committed to the peaceful settlement of all disputes with Eritrea in accordance with the United Nations Charter and the Algiers Agreements. Ethiopia reiterates its full support for the new initiative by the Witnesses, which includes demarcation of the boundary with the support of a neutral facilitator. Ethiopia has demonstrated its willingness to cooperate with the EEBC to accomplish this endeavor and is in full compliance with Security Council Resolution 1640.

34. On the other hand, Eritrea has wholly and publicly rejected Resolution 1640. Eritrea:

a. continues to threaten the use of force against Ethiopia;
b. continues to deploy its military forces in the TSZ;
c. continues to use its military forces to prevent UNMEE from performing its obligations mandated by the Algiers Agreement and United Nations Security Council:
d. continues to place obstacles to demarcation of the boundary and to the new initiative.

35. In order to restore the basic foundation of the peace process under the Algiers Agreements, Ethiopia calls on the United Nations Security Council to:

a. ensure that Eritrea restores the integrity of the TSZ and refrains from further threat or use of force;
b. ensure that Eritrea removes without preconditions all restrictions against UNMEE to permit the peacekeeping mission to undertake its full mandate as defined in the Cessation of Hostilities of Agreement and to assist in the demarcation process;
c. ensure that Eritrea enters into political dialogue, as called for by the Security Council.