

**Security Council**

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Letter dated 30 November 2007 from the Permanent Representative of Eritrea to the United Nations addressed to the President of the Security Council

I have the honour to transmit a copy of a letter to the President of the Eritrea-Ethiopia Boundary Commission, Sir Elibu Lauterpacht, from the Legal Adviser to the President of Eritrea, Professor Lea Brilmayer (see annex), in response to a letter dated 27 November 2007 from the Minister for Foreign Affairs of Ethiopia of the same.

I should be grateful if the present letter and its annex could be circulated as a document of the Security Council.

(Signed) Araya **Desta**
Ambassador
Permanent Representative



Annex to the letter dated 30 November 2007 from the Permanent Representative of Eritrea to the United Nations addressed to the President of the Security Council

29 November 2007

Allow me to express our deep regret at your news of the passing of Sir Arthur Watts. I speak on behalf of both the Government of Eritrea and also myself personally in recognizing the great service that Sir Arthur performed as a member of the Eritrea-Ethiopia Boundary Commission as well as to the wider practice of international law.

Eritrea finds it necessary, unfortunately, to answer Ethiopian Foreign Minister Seyoum Mesfin's letter of 27 November 2007. This letter's misstatements of fact, and Ethiopia's continuing efforts to undermine the finality of the Commission's decisions, require a response.

1. First, Ethiopia is simply wrong in stating that "neither Ethiopia nor Eritrea have accepted the Commission's November 26, 2006 demarcation coordinates as constituting a final, valid demarcation." To the contrary, Eritrea acknowledges as both final and valid the coordinates that the Commission has specified and believes that these coordinates are as binding as other Commission decisions. While Eritrea does hope that the Commission will persist in its efforts to arrange for placement of pillars on the ground, this is not because of any lack of finality or validity to the Commission's identification of coordinates.

Eritrea believes, moreover, that the Commission's decisions about how best to approach demarcation are not challengeable by a dissatisfied party. The Algiers Agreement is explicit that the parties are bound to honor the Commission's decisions; this includes the Commission's rulings concerning the best method for demarcation. Ethiopia is apparently of the view that it has a right to review the Commission's choice of demarcation methods and needs honor only those that it agrees with. However, Ethiopia is not entitled under the Algiers Agreement to second guess the Commission, to conclude that its coordinates "are invalid because they are not the product of a demarcation process recognized by international law", or to insist that its own chosen methods be employed in place of the ones that the Commission adopted.

2. Second, Ethiopia is not correct to state that "implementation of the Commission's 2002 Delimitation Decision is now a matter for the parties." Adherence to the Commission's decisions is not optional under the Algiers Agreement. The Algiers Agreement makes the EEBC the sole method for resolving disputes over delimitation and demarcation. Article 4 paragraph 15 provides, "The parties agree that the delimitation and demarcation determinations of the Commission shall be final and binding ..." It is for the parties to respect the Commission's decisions, not to attempt to renegotiate them.

3. Third, as the Commission is well aware, it is Ethiopia and not Eritrea that is responsible for the fact that boundary pillars have not been erected. At the Commission's meeting of 6-7 September 2007, Ethiopia demonstrated clearly once again its unwillingness to honor the Commission's decisions. Ethiopia at that meeting demanded that Eritrea fulfill an extraneous and ever-expanding set of preconditions, after which (it said) it would "discuss" whether to demarcate the

boundary. Ethiopia stated clearly its rejection of the Commission's demarcation approach (an approach that includes a refusal to alter the delimitation line to reflect so-called "human geography") and it further rejected the Commission's instructions about what Ethiopia would have to do in order that demarcation might proceed. Eritrea, as will be recalled, pledged complete cooperation with these instructions.

Ethiopia has been in grave breach of the Algiers Agreement almost since the date that the 2002 Delimitation Award was first announced. Ethiopia's longstanding treaty violations include: failure to remove the unlawful settlements that it placed on the Eritrean side of the boundary in the summer of 2002; refusal to pay its financial assessments to support the Commission's work; and instances of physical interference with the Commission's technical team too numerous to list. It goes without saying that Ethiopia is not entitled first to make it impossible to place boundary pillars and then to insist that the Commission's approach is invalid because it did not complete the task of pillar emplacement that Ethiopia itself made impossible.

Eritrea therefore requests that the Commission specifically reiterate, as provided in the Algiers Agreement, that (1) Ethiopia is bound by its demarcation decisions, just as it is bound by the delimitation Award; (2) Ethiopia's claim to have a right to terminate the Algiers Agreements can have no effect on the finality of the Commission's decisions, whether relating to demarcation or to delimitation; and (3) the methodology and coordinates that the Commission has identified are final and binding under Article 4 paragraph 15 of the Algiers Agreement. The Commission should reaffirm at this juncture the finality and validity of the coordinates and methodology that it had adopted, as well as Ethiopia's obligation to respect them.

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