



Security Council

Distr.: General
31 October 2005

Original: English

Letter dated 28 October 2005 from the Chargé d'affaires a.i. of the Permanent Mission of Eritrea to the United Nations addressed to the President of the Security Council

I have the honour to forward a letter dated 28 October 2005 addressed to you by H.E. Mr. Isaias Afwerki, President of the State of Eritrea, concerning the peace process on the border conflict between Eritrea and Ethiopia.

I should be grateful if you would kindly circulate the present letter and its annexes as a document of the Security Council.

(Signed) Tesfa Alem **Seyoum**
Chargé d'affaires a.i.

Annex to the letter dated 28 October 2005 from the Chargé d'affaires a.i. of the Permanent Mission of Eritrea to the United Nations addressed to the President of the Security Council

I write once again this letter to the Security Council as a follow-up to my letter this week to the United Nations Secretary-General and to underscore some fundamental legal matters. The disturbing fact is the Security Council has to date failed to carry out its obligations to maintain regional peace and security under the United Nations Charter and the two Algiers Agreements.

The December 2000 Algiers Comprehensive Peace Agreement, signed under the auspices of the United Nations and guaranteed by the Security Council, was premised first and foremost on the need for the legal delimitation and physical demarcation of the Eritrean/Ethiopian boundary. In Article 4.2, the parties agree “to delimit and demarcate the colonial treaty border, by a neutral Boundary Commission, on the basis of pertinent colonial treaties (1900, 1902 and 1908) and applicable international law”.

Article 4.15 further provides that, “the delimitation and demarcation determinations of the Commission shall be final and binding. Each party shall respect the border so determined, as well as the territorial integrity and sovereignty of the other party”. Article 14 of the Cessation of Hostilities empowers the Security Council to invoke Chapter VII of the United Nations Charter to take appropriate measures against the party that violates the Peace Agreement.

As will be recalled, the Algiers Agreement provided for a Temporary Security Zone (TSZ), encompassing 25,000 km² of Eritrean territory. This arrangement was predicated on the observance of the two Agreements in their entirety. In particular, the Agreement took as a given that both parties would respect the delimitation and demarcation determinations of the Boundary Commission. In this respect, the TSZ's duration was of a temporary nature that would come to end once the Boundary Commission accomplished its tasks within a specified time line in accordance with the Algiers Agreements. It was never intended to remain in place in the event of a violation of the peace agreements by Ethiopia.

The Boundary Commission rendered its final and binding legal decision on 13 April 2002. Shortly thereafter, the Commission issued to the parties its Demarcation Directions, in order to proceed to the physical demarcation of the boundary. Ethiopia rejected the delimitation decision of the Boundary Commission, in gross violation of the two Algiers Agreements. It repeatedly obstructed the work of the Commission, forcing the Commission to close its field offices in Eritrea and Ethiopia. These acts were condoned by the United Nations Security Council which took no remedial action to ensure the rule of law and the maintenance of regional peace and security.

In its sixteenth report to the Security Council in March of this year (S/2005/142, annex I), the Commission stated that, “it has been unable to secure resumption of the demarcation process and ... is taking immediate steps to close down its Field Offices. These can be reactivated if Ethiopia abandons its present insistence on preconditions for the implementation of the demarcation”. The Commission concluded by recalling “the line of the boundary was legally and

finally determined by its Delimitation Decision of 13 April 2002. Though undemarcated, this line is binding upon both Parties. Conduct inconsistent with this boundary is unlawful”.

Ethiopia’s presence in Badme and other areas north of the delimitation line constitutes forcible occupation of sovereign Eritrean territory, in violation of the Algiers Agreements and the United Nations Charter. Ethiopia, additionally, has disregarded the Security Council’s instructions in October 2002 to dismantle its illegal settlements north of the boundary line.

Despite Eritrea’s repeated appeals (see enclosures 1 and 2 and S/2004/116, annexes I to III), the Security Council has taken no action to enforce the relevant provisions of the United Nations Charter, the Algiers Agreements and the Boundary Commission’s Award of 13 April 2002. Its unwillingness to enforce the rule of law and to ensure respect for the sovereignty and territorial integrity of a United Nations Member State has compromised its credibility as well as its legal and moral authority.

In the same vein, calls for “dialogue” and attempts to impose a “Special Envoy” on the parties were diversions designed to slow the process further. The Security Council cannot stall the demarcation process by imposing preconditions that are in no way based on either the Algiers Agreements or general principles of international law. Indeed, the Security Council cannot be above the law, remain idle when the rule of law is breached, or assume authority to pass resolutions that violate legality and the United Nations Charter.

Eritrea has suffered immeasurably from Ethiopia’s occupation of its sovereign territory for almost six years. Our people have been held hostage, condemned to live in makeshift camps, under traumatic physical and psychological conditions. Ethiopia’s illegal occupation of our sovereign territories, with the apparent acquiescence of the Security Council, has hampered our development objectives and activities, imposing substantial losses on our economy.

Eritrea has shown maximum patience and restraint throughout the Ethiopian occupation. The measures that it takes to protect its sovereignty and territorial integrity are not tactically motivated posturing but rather legal acts of self-defence, recognized as such by the United Nations Charter. The people and Government of Eritrea cannot be blamed for the grave situation that faces our region today. Current attempts by the Security Council to blame Eritrea are unwarranted, both legally and politically.

(Signed) Isaias Afwerki

Enclosure 1

Letter dated 2 March 2004 from the President of Eritrea to the Secretary-General

I do not wish to waste your precious time to dwell further on our position regarding the special envoy since the messages I conveyed to you in my previous communications are clear and uncontroversial based as they are on legality. For us, irrespective of the designations given to, and rationale advanced for, appointing a special envoy, the act can only be tantamount to the establishment of a “new mechanism”. In the event, we cannot be expected to legally accept such a course of action, which would only entangle us in a web of unnecessary complications.

You underlined in your letter that this could not be regarded as an “alternative mechanism” because the Algiers Agreements provide for “the decision of the Commission to be final and binding”. Let me simply add that the Algiers Agreements; the final and binding nature of the Boundary Commission decision; and, the details of implementation of the decision have all been formulated in clear terms; leaving no room for equivocation or ambiguity.

The Agreement provides for the application of Chapter VII of the United Nations Charter against a party that violates its key tenets and terms. The Ethiopian regime has committed flagrant violations of the Agreement and obstructed the demarcation process for almost two years now. There is thus no reason whatsoever to militate against the application of Chapter VII or justify its delay. In this context, your allusion to “the absence of any external enforcement mechanism” is not only difficult to understand but it can only raise uneasiness on our part.

In the prevailing circumstances in which Ethiopia’s non-compliance and associated complication of the peace process is augmenting with time, the mission of your special envoy should have been solely aimed at securing Ethiopia’s respect of the rule of law and its treaty obligations.

You have made repeated references to the “restoration of normal relations between the two countries”. But how can this be achieved when the Agreements and the rule of law continue to be flouted; when our land remains occupied by force and our people dislocated from their hometowns and villages? Indeed, how can all potential arrangements of mutual benefit and normalization kick off when sovereign territories are not respected and demarcated?

It is unfortunate that the concerns and reservations that we harboured on your special envoy were only proven right. The information we have indicates that the special envoy is already exploring new arrangements that would accommodate and placate Ethiopia’s non-compliance with the terms of the Algiers Agreement and its rejection of the Boundary Commission decision. We have also learned that he has raised issues regarding the use of the ports, the movements of peoples and goods and other related matters.

On what legal grounds can the special envoy review the Algiers Agreements and the decision of the Boundary Commission? On what legal basis can he discuss the use of our sovereign ports with a party that has flouted the Peace Agreements and the rule of law? Under what rationale can one contemplate the free movement of peoples and goods when sovereignty remains violated and the boundary not demarcated?

It is sad that the special envoy has gone beyond this to make unwarranted and unhelpful press statements; apparently with a view to embroiling us in a public relations row that we do not want and accept. In this regard, I wish to assure you that we have no intention or appetite to go out of our way to engage in this sort of exercise.

For us, the critical issue remains ensuring the respect of the Algiers Agreements and the decision of the Boundary Commission. I thus urge you to work towards the application of Chapter VII of the United Nations Charter in accordance with the Algiers Agreement that was blessed with your signature since Ethiopia has and continues to maintain its intransigent position for almost two years now.

(Signed) Isaias **Afwerki**

Enclosure 2

Letter dated 15 March 2004 from the President of Eritrea to the Secretary-General

In my letter of 2 March to you, I mentioned our well-founded apprehension on the comportment of Mr. Axworthy, which we believe is not warranted by the circumstances.

My Government has plainly and categorically made its views and position known on the appointment of the special envoy because we remain firmly convinced that such a course of action will, in addition to its negative legal ramifications, complicate and corrode altogether the final and binding nature of the decision of the Boundary Commission as well as key tenets of the Algiers Peace Agreement. This considered opinion has otherwise nothing to do with the competence, professionalism or other attributes of the envoy in question.

We have now learned that Mr. Axworthy is trying to contact the President of the Boundary Commission as well as Eritrea's lawyers. We find this misguided action perplexing. Leaving matters of propriety aside, we wonder what legal and moral rights Mr. Axworthy can invoke to contact our lawyers, without our prior knowledge and approval. Again, how can Mr. Axworthy be emboldened to approach the Boundary Commission if he has no mandate to review the legal decision of the Boundary Commission — a mandate that would not be legal under any circumstances?

I feel very uncomfortable to have to write to you on this matter repeatedly. I hope that these unhelpful acts will come to an early end and allow us to focus on promoting a real solution to the problem on the basis of justice and legality.

(Signed) Isaias Afwerki
