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Eritrea-Ethiopia: The Algiers Peace Agreement and its Aftermath*

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*I rest my case;
the Horn of Africa has been the most conflicted corner of the world since the end of World War II
and this situation is not likely to change any time soon.*¹

Abstract

Eritrea and Ethiopia are two major players in peace and security of the Horn of Africa. After the demise of the Derg regime in 1991, there was a great deal of hope for peace and security of the region. At that time, Eritrea and Ethiopia emerged from a long history of armed conflicts and committed themselves to a peaceful coexistence. After a brief respite of seven years, the two countries embarked in what has become one of the biggest interstate armed conflicts of recent years. The war was officially concluded in June 2000 by an agreement on cessation of hostilities which was finally buttressed in December 2000 by a peace accord, known as the Algiers Peace Agreement. In spite of this, a very tense military and political confrontation has prevailed between the two countries for the last ten years, becoming another major factor for the description of the Horn of Africa as “the most conflicted corner of the world” since the end of the Second World War. Taking this as a point of departure, the paper analyses the 1998-2000 Eritrea-Ethiopia border conflict with the objective of identifying the major causes of the failure of the Algiers Peace Agreement. In so doing, the paper also adopts some key recommendations for improvement.

Key terms: Eritrea, Ethiopia, Horn of Africa, conflict, peace, security

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¹ David H Shinn “Challenges to Peace and Stability in the Horn of Africa,” paper presented at the World Affairs Council of Northern California, 12 March 2010, available at <http://www.scribd.com/doc/28390831/Challenges-to-Peace-and-Stability-in-the-Horn-of-Africa> (accessed 27 January 2011).

I. Introduction²

Eritrea and Ethiopia fought a devastating border conflict between May 1998 and June 2000. On 12 June 2000, the two countries signed an Agreement on Cessation of Hostilities,³ which was followed by a comprehensive peace accord, known as the Allergies Peace Agreement,⁴ signed on 12 December 2000. As an agreement intended to end a violent conflict, the peace agreement has averted the continuation of active hostilities between the countries. However, a situation of “no war no peace” which is no less harmful than an active hostility has prevailed between the two countries for the last ten years. The Algiers Peace Agreement has remained largely ineffective in terms of ushering a lasting peace between the two countries. By analysing the most important factors that led to the near failure of the Algiers Peace Agreement, this paper analyses the ensuing stalemate between Eritrea and Ethiopia, and proposes key recommendations for improvement.

II. Contextual Background

Apart from being two of the poorest countries in the world, Eritrea and Ethiopia share a common history of political violence and prolonged episodes of armed conflict. Counting only from the last quarter of the 20th Century, both countries have suffered from extreme levels of political repression under the Derg regime.⁵ Both countries emerged victoriously from their grisly past in 1991 by which time Eritrea became a de facto independent state,

² This paper consolidates and develops further the most important findings of the present authors made in a previous and similar contribution: “Dealing with the causes and consequences of the 1998–2000 Eritrean-Ethiopian border conflict: The need for a holistic approach towards transitional justice” in Roba Sharamo, Berouk Mesfin and Jamila El Abbellaoui (eds) *Regional Peace and Security in the Post-Cold War Horn of Africa* (Institute for Security Studies: Pretoria, forthcoming 2011).

³ Agreement on Cessation of Hostilities between the Government of the State of Eritrea and the Government of the Federal Democratic Republic of Ethiopia, 18 June 2000, available at <http://www.pca-cpa.org> [hereinafter Agreement on Cessation of Hostilities].

⁴ Agreement between the Government of the Federal Democratic Republic of Ethiopia and the Government of the State of Eritrea, 12 December 2000, available at <http://www.pca-cpa.org> [hereinafter Algiers Peace Agreement].

⁵ This regime is the military dictatorship of Mengistu Hailemariam which ruled Eritrea and Ethiopia from 1974 to 1991. For further on this, see Andargachew Tiruneh *The Ethiopian Revolution 1974–1987: A Transformation from an Aristocratic to a Totalitarian Autocracy* (1993) 15.

which was to be a de jure independent state in 1993, after an overwhelming national referendum for independence. Both countries belong to the Horn of Africa, which is one of the most troubled regions in the world. Some experts, such as a former US Ambassador to Ethiopia, describe the Horn of Africa (*with a bold assertion*) as a region which “has consistently been the most conflicted corner of the world” since the end of the Second World War.⁶ The simplest arithmetic model translates this assertion into a suffering of more than sixty years. This means the Horn of Africa has been under constant security threats and strategic challenges for more than six decades. Eritrea and Ethiopia are two major players in the intertwined dynamics of the Horn of Africa.

Another long time observer of the region, Martin Plaut, describes the Horn of Africa as “a region in which governments routinely plot against each other, cultivating opposition movements to undermine neighbouring regimes.” According to him, this region has “a long tradition of infiltrating rebels across border, of shipping arms and ammunition to foster rebellion.”⁷ Characteristically, the countries in the Horn of Africa suffer from a deep mistrust which makes it easier for them “to plot and scheme than plan for peace,”⁸ as they are sure that the other counterpart would also be doing much the same. One pertinent example in this regard is an allegation by the Ethiopian government publicised in January 2011 which accuses Eritrea of infiltrating seven militants allegedly trained by the Eritrean government to commit terrorist attacks in Ethiopia.⁹

In a region where “open discussion and public debate is firmly suppressed,”¹⁰ there is no room for democratic dialogue, which is a very essential precondition for peace and security. The sad reality in the Horn of Africa resonates with the astute observation of one of the architects of “African Renaissance,” the former South African President,

⁶ Shinn, note * above.

⁷ Martin Plaut “Report of the 2010 Atlanta Peace Conference on the Horn of Africa,” broadcasted on BBC’s *From Our Own Correspondent*, 25 December 2010, transcription available at http://www.bbc.co.uk/iplayer/episode/p00cjwpw/From_Our_Own_Correspondent_25_12_2010/ (accessed 27 December 2010).

⁸ Plaut, note * above.

⁹ Tesfa-Alem Tekle “Ethiopia Says Thwarted Eritrea-Planned ‘Terrorist’ Attack,” *Sudan Tribune*, available at <http://www.sudantribune.com/Ethiopia-says-thwarted-Eritrea,37718> (accessed 22 January 2011).

¹⁰ Plaut, note * above.

Thabo Mbeki. He describes some parts of Africa as places where “guns have usurped the place of reason” routinely, and “opposing ramparts [speak] to one another in the deadly language of bazooka and mortar shells and the fearsome rhythm of the beat of machine-gun fire.”¹¹ The Horn of African portrays these distinct characteristic features and the current debate on the Algiers Peace Agreement is to be seen within such context.

Taking further the above observation, David Shinn asks: “why has there been so much conflict and instability in the Horn of Africa over the past sixty years or so?” One of the reasons he provided in response to his own query is: leadership deficiency in the countries of the Horn. In addition to this, there are a number of other factors which contribute to regional instability in the region. We will address some of these factors when we discuss the issue of why the Algiers Peace Agreement has failed to deliver its expected outcome, namely a lasting peace between Eritrea and Ethiopia. Before that, it is important to discuss the genesis and development of the 1998-2000 border conflict and the current stalemate between the two countries.

III. Origin and Development of the Border Conflict¹²

Controversies abound the circumstances that led to the commencement of the border conflict in May 1998.¹³ However, the Claims Commission established that the conflict started when Eritrean forces attacked Ethiopian administered territory in the western region of the border between the two countries.¹⁴ The most known flashpoint of the conflict is a border village called Badme, over which both countries claimed ownership, triggering a full-scale war in May 1998. The border conflict came to an official end on 18

¹¹ Thabo Mbeki “The African Renaissance Statement of Deputy President, Thabo Mbeki,” SABC, Gallagher Estate, 13 August 1998, available at <http://www.dfa.gov.za/docs/speeches/1998/mbek0813.htm> (accessed 31 December 2010).

¹² This section relies heavily on Mekonnen and Tesfagiorgis, note * above.

¹³ Won Kidane “Civil Liability for Violations of International Humanitarian Law: The Jurisprudence of the Eritrea-Ethiopia Claims Commission in The Hague” *Wisconsin International Law Journal* (2007) 25(1): 28.

¹⁴ Claims Commission, Partial Award, *jus ad bellum*, Ethiopia’s claim 1–8 (*jus ad bellum*), award of 19 December 2005, paras 14–16.

June 2000 when the two countries signed the Agreement on Cessation of Hostilities.¹⁵ By signing this agreement, the two countries officially committed themselves to ceasing hostilities. Ever since the ratification of this agreement there has been no major armed conflict between the two countries. However, the situation is very tense.

The Agreement on Cessation of Hostilities paved the way to the comprehensive peace accord, the Algiers Peace Agreement, which was signed by the two countries on 12 December 2000. Prior to that, on 31 June 2000, the UN Security Council, by Resolution 1312 (2000), established the United Nations Mission in Ethiopia and Eritrea (UNMEE). One of the major responsibilities of UNMEE was to operationalise the mechanism for verifying the cessation of hostilities.¹⁶ To ensure this, the entire border between the two countries was supervised by UNMEE's peacekeeping forces, which were physically stationed in the border area and kept apart the armed forces of the two countries. As is now known, the mandate of UNMEE was terminated on 31 July 2008 by the UN Security Council after repeated obstruction of its tasks and hostilities on the part of Eritrea against UNMEE, which included severe restrictions on the movement of UNMEE personnel and other hostile acts. Some observers note that with the termination of UNMEE's mandate the risk of a return to war has considerably increased.¹⁷

According to the Algiers Peace Agreement, Eritrea and Ethiopia agreed to submit their disputes to two independent bodies, working independently from each other. The first was the Eritrea-Ethiopia Boundary Commission (the Boundary Commission), whose mandate was "to delimit and demarcate the colonial treaty border based on pertinent colonial treaties (1900, 1902 and 1908) and applicable international law."¹⁸ The second was the Eritrea-Ethiopia Claims Commission (the Claims Commission), whose mandate

¹⁵ UNMEE "The Conflict and its Aftermath," August 2006, http://www.unmeeeonline.org/index.php?option=com_content&task=view&id=16&Itemid=47 (accessed 17 August 2006).

¹⁶ See UNMEE, Press Briefing, August 2006, http://www.unmeeeonline.org/index.php?option=com_content&task=view&id=413&Itemid=53 (accessed 17 August 2006).

¹⁷ Jonathan Ewing "Ethiopia and Eritrea in Turmoil: Implications for Peace and Security in a Troubled Region," Institute for Security Studies, Situation Report, 1 December 2008, http://www.iss.co.za/dynamic/administration/file_manager/file_links/SITREPETHERIT301108.PDF? (accessed 10 January 2009).

¹⁸ Algiers Peace Agreement, article 4(2).

was to decide, through binding arbitration, on all claims for loss, damage or injury that were related to the conflict and were the result of violations of international humanitarian law, including the 1949 Geneva Conventions, or other violations of international law.¹⁹

As regards the issue of ownership over Badme, the Boundary Commission, in its decision of 12 April 2002, decided that the town belongs to Eritrea.²⁰ Contrary to its declared commitment to honour the decision of the Boundary Commission, Ethiopia stipulated a set of preconditions before it would hand over Badme to Eritrea. In a legal sense, the Ethiopian government's refusal to implement the decision of the Boundary Commission and accordingly hand over Badme to Eritrea reneges on the obligations of Ethiopia emanating from the Algiers Peace Agreement and customary international law. However, this issue is part of the complicated background of the conflict, which is not yet adequately addressed. Therefore, it is questionable whether handing over Badme would in itself normalise relations between the two countries. What is clear now is the fact that the Algiers Peace Agreement has not attained its intended main objective.

The failure of the peace process and the ensuing political stalemate between the two governments have now destabilised the entire Horn of Africa. Ethiopia's refusal to accept and implement the ruling has been used by the Eritrean government as a major pretext to maintain Eritrea for more than ten years in a situation of an undeclared state of emergency. Although the Boundary Commission and the Claims Commission have resolved several fundamental issues, a multitude of other intricate issues remain unresolved between the two governments. These issues, especially at this stage, can only be resolved by a genuine political commitment, including political dialogue on the part of both governments, which is currently lacking. Several sources have repeatedly reported on the danger of a renewed war between the two countries. In effect, the two countries are at war through their active involvement in the ongoing civil war in Somalia.

¹⁹ Algiers Peace Agreement, article 5(1).

²⁰ Boundary Commission, *Decision on the Delimitation of the Border between Eritrea and Ethiopia*, Chapter 8, *Dispostif*.

Important to the current debate are some of the awards of the Claims Commission delivered on 9 December 2005. In one of the awards, the State of Eritrea was found to be in violation of international humanitarian law for unlawfully invading the flashpoint of the conflict, Badme, which, before the war, was peacefully occupied by Ethiopia. Legally speaking, the border conflict escalated into a fully fledged war, when on 12 May 1998, Eritrean forces invaded some territories under the peaceful control of Ethiopia. According to the Claims Commission:

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 neighbouring 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 ... 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-defence under the UN Charter.

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.

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.²¹

Throughout the entire 1998–2000 border conflict, the Eritrean government was repeatedly requested by international mediators to withdraw its troops from the controversial territories and enter into peace dialogue with Ethiopia. The Ethiopian government, on its part, refused to enter into any dialogue before Eritrea withdrew its troops from those territories occupied on or after 12 May 1998, and demanded a strict restoration of the status quo ante. In light of the final verdict of the Claims Commission on *jus ad bellum*, the precondition presented by the Ethiopian government since the start

²¹ Claims Commission, Partial Award, *jus ad bellum*, paras 14–16. See also the operative part of the same award. For a critical appraisal of the decision of the Claims Commission on *jus ad bellum* claims, see generally Christine Gray “The Eritrea/Ethiopia Claims Commission Oversteps its Boundaries: A Partial Award?” *European Journal of International Law* (2006) 17(4): 699–721.

of the conflict seems justifiable. However, the Eritrean government rejected the precondition, only to accept it after a humiliating defeat in May 2000.²²

By the time Eritrea signed the Agreement on Cessation of Hostilities on 18 June 2000, irreparable damage had already been done to the country and its people. Ethiopia had already occupied a substantial part of Eritrea's territory, displacing some 700 000 people from their homes and villages. In addition to the humiliating defeat, according to conservative government figures, 19 000 Eritrean soldiers were killed in the war.²³ Thousands were maimed, families and children displaced, and farms and means of livelihood abandoned. From the start of the war, 77 000 Eritreans and Ethiopians of Eritrean origin were inhumanely and arbitrarily deported from Ethiopia, without any chance to bid a decent farewell to their loved ones or to collect their property and belongings. In the process, families were separated and many were subjected to gross violations of international humanitarian law.²⁴ The human suffering sustained by Eritreans in the 1998–2000 border conflict was exceedingly harsh. With a varying degree, similar violations were also perpetrated against Ethiopians living in Eritrea, including their expulsions and prevention of taking their belongings along with them, or selling their property.

Although the excesses of both governments²⁵ have contributed much to the immense suffering of civilians and non-civilians, the starting point of this misery was the unlawful act of aggression by the Eritrean government and its obstinate refusal to withdraw from

²² Dan Connell *Conversations with Eritrean Political Prisoners* (2005) 103–124, 125–135.

²³ Others indicate that this number is too conservative. See, for example, Awate Team “Statistical Report of Eritrea's Casualties in the Eritrea-Ethiopia Border War (1998–2000),” available at http://www.awate.com/martyralbum/statistics_files/statistics.htm (accessed 16 January 2005). Some reports indicate that between 100 000 and 150 000 soldiers from both sides died during the war. See Daniel R Mekonnen *Transitional Justice: Framing a Model for Eritrea* (2009) 106–110.

²⁴ Mekonnen, note *, 106–110.

²⁵ For violations committed by both governments, see Claims Commission, Partial Award, Prisoners of War, Ethiopia's Claim 4, award of 1 July 2003; Partial Award, Diplomatic Claim, Ethiopia's Claim 8, award of 19 December 2005; Partial Award, Western and Eastern Fronts, Ethiopia's Claims 1 and 3, award of 19 December 2005; Partial Award, Diplomatic Claim, Eritrea's Claim 20, award of 19 December 2005; Partial Award, Loss of Property in Ethiopia Owned by Non-Residents, Eritrea's Claim 24, award of 19 December 2005; Partial Award, Western Front, Aerial Bombardment and Related Claims, Eritrea's Claims 1, 3, 5, 9–13, 14, 21, 25 and 26, award of 19 December 2005; Partial Award, Economic Loss throughout Ethiopia, Ethiopia's Claim 7, award of 19 December 2005.

territories occupied after 12 May 1998. The determination of the Claims Commission (the award of 9 December 2005 on *jus ad bellum*) on the culpability of the Eritrean government is the most authoritative source in this regard. In August 2009, the Claims Commission also decided on the amount of damages each government has to pay to the other as a result of the violations perpetrated in the two-year border conflict. Accordingly, the Eritrean government has to pay Ethiopia a total of \$174 036 520,²⁶ and the Ethiopian government has to pay Eritrea a total of \$163 520 865, including that of individual claimants, which amounts to \$2 065 865.²⁷ This means Ethiopia was awarded a net payment of \$10 515 655. Nonetheless, the crux of the matter goes beyond this. As Plaut notes, “the real tragedy is that the money, like the rest of the internationally supported peace process, will settle very little.”²⁸ The challenge has a lot to do with the failure to resolve the root causes of the conflict and understandably this has necessitated far-fetching repercussions to the entire Horn of Africa region.

IV. The Aftermath of the Peace Agreement

In section II above, we have asked why the Algiers Peace Agreement has failed to deliver its expected outcome, namely a lasting peace between Eritrea and Ethiopia. One possible and simplistic answer is: lack of genuine political commitment on the part of both governments to resolve the border conflict according to the commitment they made in the Algiers Peace Agreement. However, there are also a number of other factors that have contributed to the failure of the peace process.

The main problem with the Algiers Peace Agreement is that it lacked clearly defined implementation mechanisms. As in most peace processes, the urgency and intensity negotiators displayed at the negotiation stage (particularly the negotiation of the Agreement on Cessation of Hostilities) was lacking during the implementation stage, notably at the stage which requires the full implementation of the decision of the

²⁶ See Claims Commission, Final Award, Ethiopia’s Damages Claims, award of 17 August 2009.

²⁷ See Claims Commission, Final Award, Eritrea’s Damages Claims, award of 17 August 2009.

²⁸ BBC News “Eritrea to Pay Ethiopia Millions,” <http://news.bbc.co.uk/2/hi/africa/8208285.stm> (accessed 18 August 2009).

Boundary Commission which awarded the flash point of the conflict, Badme, to Eritrea. As far as implementation is concerned, the Algiers Peace Agreement is incomplete and vague. The document is replete with expedient stipulations that are not easy for implementation. Experts with an extensive experience in this area advise that implementation of peace processes require careful development of carrots and sticks for foot-draggers.²⁹ This essential requirement was a glaring shortcoming of the Algiers Peace Agreement.

There are two paragraphs in the Algiers Peace Agreement which are closer to enforcement mechanisms. These are paragraphs 14 and 15 of article 4, which read as follows:

The parties agree to cooperate with the Commission, its experts and other staff in all respects during the process of delimitation and demarcation, including the facilitation of access to territory they control. Each party shall accord to the Commission and its employees the same privileges and immunities as are accorded to diplomatic agents under the Vienna Convention on Diplomatic Relations.

The parties agree 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 territorial integrity and sovereignty of the other party.

Neither the above provisions nor other stipulations of the Algiers Peace Agreement have adequately provided for enforcement mechanisms that address non-compliance of either party with the decision of the Boundary Commission or that of the Claims Commission. This is the most daunting shortcoming of the Algiers Peace Agreement. On the other hand, article 14 of the Agreement on Cessation of Hostilities contains some provisions which might be taken as relevant for purposes of non-compliance. The relevant part of the provision reads as follows:

The OAU and the United Nations commit themselves to guarantee the respect for this commitment of the two Parties 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 be comprised of: a) measures to be taken by the international community should one or

²⁹ Centre for International Security and Arms Control, Stanford University “Why Peace Agreements often Fail to End Civil Wars,” available at <http://news.stanford.edu/pr/97/971119civilwar.html> (accessed 27 January 2011).

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.

From the above, it is clear that the commitment of the OAU (now AU) and the UN was limited up to the time when the common border would be determined on the basis of the pertinent colonial treaties. The document is silent as to what would happen after the determination of the common border and in particular in case of non-compliance by one of the parties with such a determination. The Agreement on Cessation of Hostilities was meant mainly to halt active hostilities between. Understandably, its focus was limited on how to achieve this particular objective. Provisions on the enforcement of the arbitral awards of the two commissions had to be clearly defined in the final pact, the Algiers Peace Agreement. Nonetheless, the latter has completely evaded this issue in that it does not contain specific provisions referring to non-compliance and/or enforcement mechanisms. On the other hand, it is important to note that the Algiers Peace Agreement is an international peace accord brokered by a number of global actors, namely, UN, EU, AU, IGAD and USA. Given the broad global support the peace accord enjoys there is adequate space for diplomatic and political leverage on the part of these actors. Nonetheless, little has been done by the international community in terms of ensuring the full implementation of the symbolic part of the Algiers Peace Agreement, namely, the decision of the Boundary Commission. However, as noted in the previous section, the handing of Badme to Eritrea may not necessarily bring a lasting peace between the two countries, because there are myriad of issues which have never been addressed properly since the commencement of the conflict.

Another shortcoming of the Algiers Peace Agreement is that it does not address the core issues of the conflict satisfactorily. As is now widely agreed, there are two major classifications of the causes of the conflict: official and non-official. What the world knows as the “official” root cause of the conflict is the claim to ownership of Badme, which was finally awarded to Eritrea. In reality, however, the conflict is not only about this particular issue.³⁰ There are myriad intertwined economic, diplomatic and political

³⁰ Asmarino.com “Interview with the Ethiopian Prime Minister Mr Meles Zenawi,” available at <http://tig.delina.org/tig/documents/171audio> (accessed 12 August 2009).

issues behind the conflict. Some of these issues may even date back several years to when the two current governments were liberation movements fighting against the authoritarianism of the Derg regime. What the Boundary Commission and the Claims Commission tried to resolve is only the “official” cause of the conflict, as stated by the two parties – the ownership of Badme and issues directly related to this. Nonetheless, the crux of the conflict lies in several economic, diplomatic and political differences that have been brewing clandestinely since Eritrea’s de facto independence in 1991 and de jure independence in 1993. Ulf Terlinden and Tobias Debiel explain one of the unofficial root causes of the conflict as follows:

No less importantly, the rapid and fierce escalation of the border conflict had to do with unresolved claims to supremacy. While Ethiopia, also vis-à-vis Eritrea, sees itself as the region’s dominant power because of its geographical position, size and history, the self-image of Eritrea’s leadership is still stamped by its victory over Mengistu and the military superiority of the EPLF [Eritrean People’s Liberation Front] over the TPLF [Tigray People’s Liberation Front] at that time.³¹

Consequently, addressing merely the declared cause of the war, that is, the disagreement of where the border lies and where Badme is geographically located – as important as this may be, since it has become an issue – will not bring a lasting resolution to the conflict or eliminate its destabilising effect on the region. With regard to the origins and root causes of the conflict, article 3 of the Algiers Peace Agreement envisages the establishment of an independent and impartial body, in addition to the Boundary Commission and the Claims Commission, which shall investigate the background of the conflict. This body was to be set up by the Secretary General of the then OAU in consultation with the Secretary General of the UN. This never happened, denying the Eritrean and Ethiopian public the opportunity to know the real causes of the conflict that go beyond the border issue.

The crisis requires an approach which addresses both the officially known root cause of the conflict and the undisclosed root causes, or at least contributing factors, to the conflict. The fact that Badme has now been awarded to Eritrea, but Ethiopia is not willing to hand over the town unconditionally lies at the epicentre of the conflict. The

³¹ Ulf Terlinden and Tobias Debiel “Deceptive Hope for Peace? The Horn of Africa between Crisis Diplomacy and Obstacles to Development” *Peace, Conflict and Development* (2004) 4: 4.

international community has not done enough to coerce Ethiopia into implementing the decision of the Boundary Commission, resulting in an excessive delay in the demarcation of the border. This, in turn, has caused immense frustration on the part of the Eritrean government, which has equated the international community's inaction with support for Ethiopia's real or purported intransigent position. The outcome is Eritrea's prevailing attitude towards the international community and its undesirable path of entering into any conflict calculated to antagonise Ethiopia, including a proxy war in Somalia. As is now known, this has finally led to the adoption by the UN Security Council of Resolution 1907 in December 2009. The resolution condemns Eritrea, among other things, for its destabilising role in Somalia, an act which is a by-product of the unresolved border conflict with Ethiopia.

Another important factor for the failure of the Algiers Peace Agreement is the absence of robust democratic institutions and accountability in both countries. Democracy is a vital tool not only for good governance but also for peace and security in any country or region. Democracy has not yet taken its deep roots in both countries. The situation is by far worse in Eritrea than in Ethiopia. The governments in the two countries descended to power from a history of liberation struggle which is replete with undemocratic style of leadership given the very common pattern of secrecy and military exigency among liberation movements. After transforming themselves to governments, the Ethiopian government has confirmed (or tried to confirm) its access to power in several rounds of general election, although these processes have not been free from serious criticisms. In the case of Eritrea, the access of the current government to power has never been confirmed in a national election since the country's independence in 1991. Although with varying degrees, both countries lack strong democratic institutions (parliament and judiciary) that can monitor delicate matters of peace and war as would be designed and implemented by the executive branch of government which remains the most powerful government institution in both countries.

As noted by Terlinden and Debiel, pride and stubbornness have also contributed in aggravating the conflict and frustrating the solutions devised by the Algiers Peace

Agreement. The approach of the Eritrean government at the earliest stage of the conflict is criticized by the authors for its stubbornness which has thwarted finding a solution during this phase. According to the authors, “only after Ethiopia had carried out several massive offences did [Eritrea] gradually give way and become receptive to a process of negotiation.”³² At the end of the conflict and particularly after the Boundary Commission awarded Badme to Eritrea, the stubbornness came from the Ethiopian government when the latter refused to hand over Badme unconditionally.

Terlinden and Debiel also identify one characteristic feature of the peace process, which is over concentration on the countries’ elite, ignoring societal actors and opposition forces. This means that the peace process lacked popular support base and ownership within the general public in Eritrea and Ethiopia. Similar to the initiation of the war, the conclusion of the peace agreement was handled and seen as a clandestine, almost private matter between rulers. In terms of long term societal recovery and reconciliation, a number of issues have remained enigmatic. Based on this observation, Terlinden and Debiel describe the peace process as something which cannot be dealt within classical categories of international conflict and disregarding core domestic aspects. This was clear from the domestic political developments in the two countries that took place shortly after the signature of the Algiers Peace Agreement. In both countries, senior government officials who openly criticised their respective governments on the conduct of the war were either criminalised (in Ethiopia) or remain in detention without trial for about ten years (in Eritrea).³³ This strengthens the belief that for some leaders war is often safer than peace as “it has a familiar pattern” in terms of imposing orders, stifling dissent, and in some cases generating unravelling profits. To war mongering leaders, peace may be seen as something which involves loss of political control as it requires bargaining concessions and contingent exchange of promises that can come undone.³⁴

A major part of the stalemate is Eritrea’s belligerent foreign policy, described by the International Crisis Group (ICG) as one which favours war as a foreign policy and is

³² Ulf Terlinden and Tobias Debiel, note * above, 4.

³³ Ulf Terlinden and Tobias Debiel, note * above, 5.

³⁴ Centre for International Security and Arms Control, Stanford University, note * above.

notoriously know for its “alarming tendency of fight first and talk later.”³⁵ For example, for the past several years, Eritrea has withdrawn its membership from AU and IGAD, closing the most immediate diplomatic corridors and making it extremely difficult for external actors who wanted to assist in the resolution of the stalemate.³⁶ Complicating matters, Eritrea was hit by stringent sanctions of the UN Security Council adopted in December 2009. The resolution was initiated, first by IGAD and subsequently backed by the AU before it was finally endorsed by the UN Security Council. It is described as the first ever to be formally initiated by the AU against its own member state, after the experience of apartheid in South Africa, thus becoming one of the most exceptional resolutions in the history of the UN.³⁷

Clearly, Eritrea has already amassed “unravelling record of international provocation.”³⁸ Externally, this has made Eritrea a pariah state and internally it has turned the nation into a completely militarised state where a combination of excessive militarism, authoritarianism and social anomie,³⁹ is rapidly fragmenting societal fabrics and state apparatus. This can possibly lead to a complete state failure, unless the sad state of affairs is halted immediately. In a region which has already produced one failed state in the last two decades, the possibility of Eritrea becoming another failed state is not far-fetched. This claim has a very strong support base at least in the following assertion by one of the leading think-tanks on human security:

All this is necessary to prevent another failed state from emerging in the Horn [of Africa]. That outcome is otherwise distinctly possible given the widespread lack of support for the government within the country and the deteriorating state of the army, whose ability to either

³⁵ International Crisis Group *Eritrea: The Siege State*, Africa Report No 163, 21 September 2010: 5, 20–25.

³⁶ In January 2011 Eritrea has reinstated its membership at the AU. Whether this development will make any positive change in the current stalemate is to be seen in the future. However, it comes as a positive development. See VOA “Eritrea Reopens African Union Mission,” available at <http://www.voanews.com/english/news/africa/Eritrea-Reopens-African-Union-Mission-114212594.html> (accessed 19 January 2011).

³⁷ Nathaniel Meyers “Africa’s North Korea: Inside Eritrea’s Open-Air Prison,” *Foreign Policy*, July/August 2010, also available at http://www.foreignpolicy.com/articles/2010/06/21/africas_north_korea?page=0,0 (accessed 25 October 2010). Meyers writes: “It was the first time the African Union had ever supported sanctions against one of its own members.”

³⁸ Meyers, note ** above.

³⁹ On the concept of social anomie, see Nicole Hirt “‘Dreams Don’t Come True in Eritrea’: Anomie and Family Disintegration due to the Structural Militarization of Society,” GIGA Working Papers, 119/2010, January 2010, 7-9.

sustain Isaias Afwerki's regime or to successfully manage regime transition is increasingly questionable.⁴⁰

As argued by Berouk Mesfin, the real causes of conflict, including border problems, are present anywhere.⁴¹ What is lacking is a policy decision and effort to pursue good neighbourliness in the entire Horn of Africa region. Political dialogue supported by concerted diplomatic efforts is the most strategic option for addressing this problem. Given the myriad unresolved issues, another round of negotiations might be inevitable. If this has to happen, it should be one which supplements and not replaces the terms of the Algiers Peace Agreement and the decisions of the Boundary Commission and the Claims Commission. There are a number of outstanding issues not fully resolved by both commissions and these can only be resolved either by a second round of devastating armed conflict which is not favoured by all except by those who benefit from wars, or by a peaceful and tactful political negotiation between the two governments. In this regard, much is expected from the Eritrean government which has completely ruled out any possibility for dialogue. This is relevant to avoid the continued stalemate between the two countries and the possible resumption of another conflict in the nature future. At the same time, stringent measures by the international community may also be required when the actions of governments seem to go beyond control.⁴²

V. Concluding Remarks

Once praised as amongst the most promising countries in Africa, Eritrea and Ethiopia have remained arch-enemies since the outbreak of a border conflict in May 1998 which ended officially in June 2000. In December 2000 the two countries signed the Algiers Peace Agreement which stipulated for the formation two independent commissions,

⁴⁰ International Crisis Group *Eritrea: The Siege State*, Africa Report No. 163, 21 September 2010, ii.

⁴¹ Berouk Mesfin "The Eritrea-Djibouti Border Dispute," Institute for Security Studies, Situation Report, 15 September 2008, available at http://www.iss.co.za/dynamic/administration/file_manager/file_links/SITREP150908.PDF? (accessed 10 January 2009), citing William Zartman *Ripe for Resolution: Conflict and Intervention in Africa* (1989) 15.

⁴² See, for example, Daniel R Mekonnen and Loot Pretorius "Prosecuting the Main Perpetrators of International Crimes in Eritrea: Possibilities under International Law" *Journal for Juridical Science* (2008) 33(2): 76–108.

among others, to resolve the border conflict and decide on concomitant issues. A Boundary Commission and a Claims Commission were accordingly established and both commissions have rendered arbitration awards in several of the contentious issues. The flashpoint of the conflict, Badme, has been awarded to Eritrea by a decision of the Boundary Commission. However, Ethiopia refused to hand over Badme, reneging on its obligations emanating from the Algiers Peace Agreement and customary international law. This is now seen as a major factor to the continued stalemate between the two countries. Nonetheless, it is also questionable whether handing over Badme would in itself normalise relations between the two countries. This is so because the commissions established by the Algiers Peace Agreement have not resolved adequately all issues that have led to the border conflict and other matters that emanate from this conflict. All such matters are significantly contributing to the prevailing stalemate between the two countries.

The repercussion has proven too costly to the entire Horn of Africa, by contributing to other major conflicts in the region, such as the civil war in Somalia. In real sense, the Eritrea-Ethiopia border conflict is yet to be resolved fully. The primary responsibility in this regard falls on the governments of the two countries. The international community also takes its own blame for failing to enforce the decision of the Boundary Commission, resulting from a binding international agreement between the two countries and for failing to looking into all means available to resolve the conflict between the two countries and its destabilizing effects on the entire region. This calls for a fresh and concerted diplomatic effort supported by continued political dialogue between the two countries which is severely missing at this moment. Another round of negotiations might be inevitable to resolve the stalemate but this should only be done as a supplement to, instead of a replacement of, the Algiers Peace Agreement and the decisions of the Boundary Commission and the Claims Commission.