

**ERITREA/ETHIOPIA  
BOUNDARY ARBITRATION**

**REQUEST FOR INTERPRETATION,  
CORRECTION AND CONSULTATION**

SUBMITTED BY  
THE FEDERAL DEMOCRATIC REPUBLIC OF  
ETHIOPIA

13 May 2002

This request is filed pursuant to Articles 28, 29 and 30 of the Rules of Procedure of the Eritrea–Ethiopia Boundary Commission (“EEBC” or the “Commission”), which provide for interpretation and correction of the Commission’s delimitation and demarcation decisions and which provide for consultation among the Commission, the parties and the United Nations in connection with the boundary demarcation process required to implement the Commission’s delimitation decision or decisions.

Certain of the issues set out below are clearly appropriate for Commission action pursuant to Articles 28 and 29 of the Commission’s Rules. In addition, other issues have been deferred in the Commission’s April 13, 2002 Decision Regarding Delimitation of the Border (hereinafter the “April 13 Decision” or the “Decision”) for resolution during the demarcation process.

Ethiopia considers, as specified below, that a number of important issues have been designated in the April 13 Decision for consideration during the demarcation process. In Ethiopia’s view, many such issues can best be decided by the Commission once factual information obtained from field work is available and the views of the parties have been considered. *See, for example,* Chapter VII of the Decision, para. 7.2. Thus, deferral of certain matters from the delimitation to the demarcation phase of the Commission’s work is highly appropriate. It is also consistent with the practice of States in other delimitation and demarcation situations, as will be seen in the discussion which follows in Section III below.

Should Ethiopia’s understanding of the Commission’s Decision with respect to deferral of certain issues for decision during the demarcation process be in error, this Request is intended to raise such issues as matters for resolution under Articles 28 and 29.

**SECTION I**  
**INTRODUCTION**

This Request raises issues appropriate for determination under Articles 28 and 29 as well as issues which the Commission may consider appropriate for resolution during the demarcation process provided for in Article 30.

Resolution of all the issues raised below will be important to the thorough and correct implementation of the April 13 Decision. Ethiopia submits that the boundary decision of April 13 must be implemented in a way that can command the support of both parties and the international community. This will require that the demarcation be carried out with unquestioned technical skill and precision; that it be done in a way that is transparent to both parties so that no questions can be raised by citizens of either State as to the application of the April 13 Decision; and that the terms of the April 13 Decision be carefully applied by the Commission itself wherever there arise questions beyond the scope of matters which surveyors and cartographers can address.

The experience of States with respect to demarcation of boundaries leads to the conclusion that important questions requiring legal consideration or interpretation are likely to arise during the course of demarcation. What may appear to be clear on a map of a scale of 1:1,000,000 may differ sharply from the physical facts of geography when confronted on the ground during field work. These differences may then require revised legal analysis and conclusions. Moreover, the demarcation process will be dependent to some considerable extent on the cooperation and participation of the parties, as will be shown in Section III below. In Section III Ethiopia proposes a framework for consultation which would allow the parties to participate in the demarcation

process in a way that would be fair and constructive and allow the necessary transparency, but which would not prevent an expeditious process.

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Ethiopia submits that in effecting the demarcation of the boundary delimited in the April 13 Decision in the coming months, the Commission should be guided by three objectives:

First, that the process of demarcation be as careful and precise and transparent as the delimitation has been. Only in this way can the citizens of both States fully understand and support it even though they may disagree with some of its specific features.

Second, bearing in mind the provisions of Article 4, paragraph 16 of the December 2000 Agreement, that the lives and welfare of the people living in the boundary area be given the highest priority as the demarcation process moves forward.

Third, that the relevant agreements have provided that no change of governmental administration in the boundary region should take place until the demarcation is completed. These agreements are discussed in Section IV below.

## **SECTION II**

### **ISSUES FOR INTERPRETATION, CORRECTION OR CONSULTATION**

The April 13 Decision gives rise to a number of ambiguities with respect to the precise meaning and scope of a number of its substantive elements and the manner in which decisions on several important points have been made and will be implemented at the demarcation phase.

## **Towns and Villages Along the Boundary**

Ethiopia first notes that the Commission has not identified principles relevant to the treatment of towns and villages that lie along the boundary determined by the Commission. Having studied the Decision, Ethiopia believes that there are towns and villages located along the boundary, particularly in the western and central sectors. With respect to this issue, Ethiopia notes that the Commission adjusted the treaty-based boundary in those sectors on the basis of the subsequent conduct of the Parties, including, in certain areas, on the basis of the evidence of *effectivités*. In this regard, the Commission observed:

As to activity on the ground, the actions of a State pursued *à titre de souverain* can play a role, either as assertive of that State's position or, expressly or impliedly, contradictory of the conduct of the opposing State. Such actions may comprise legislative, administrative or judicial assertions of authority over the disputed area. There is no set standard of duration and intensity of such activity. Its effect depends on the nature of the terrain and the extent of its population, the period during which it has been carried on and the extent of any contradictory conduct (including protests) of the opposing State. It is also important to bear in mind that conduct does not by itself produce an absolute and indefeasible title, but only a title relative to that of the competing State. The conduct of one Party must be measured against that of the other. Eventually, but not necessarily so, the legal result may be to vary a boundary established by a treaty.<sup>1</sup>

The Government of Ethiopia requests that the Commission be consistent in applying its analysis of the conduct of the parties to accommodate areas lying along the boundary, which the evidence demonstrates have been consistently administered by Ethiopia. The Commission will, thereby, minimize the dislocation of the large numbers of people living in the towns and villages in question.

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<sup>1</sup> Decision, para. 3.29.

### **River Confluence Points**

Ethiopia also notes that the Commission's Decision does not set forth principles for the determination of the location of river confluence points. This issue is of particular significance in the western sector, where the Commission describes two confluence points as relevant to the incidence of the land boundary, namely the confluence of the Setit and the Mai Tomsa and the confluence of the Mareb and the Mai Ambessa. The Commission also provides coordinates for each of these two points. Ethiopia understands that all coordinates identified in the Decision will have to be recalculated and made more precise during the demarcation phase as the Commission acquires additional information. Decision, para. 8.3. It is with this understanding that Ethiopia wishes to call to the Commission's attention the fact that the location of the confluence of the Setit and Mai Tomsa and the coordinates provided for that point in the Decision do not agree. Under these circumstances, the Government of Ethiopia requests that the Commission address during the demarcation phase the question of confluence points and identify the specific principles applicable to the determination of the precise location of such points. Ethiopia further requests that careful field work be undertaken during the demarcation phase so as to ensure that relevant rivers and streams are properly identified.

### **Identification of Geographical Features**

During the demarcation phase, the Commission will need to identify accurately the geographical features on which the delimitation is based. Article 27, paragraph 6 of the Rules of Procedure required that the Commission state whether the line depicting the delimitation was illustrative or definitive. In accordance with this requirement, the Decision states that the maps are

“small-scale illustrative maps”<sup>2</sup> and emphasizes that there will be no definitive maps of the boundary until after demarcation.

In addition, the Decision stresses that the coordinates identified for various geographical locations are not definitive and that more information must be gathered during demarcation before definitive coordinates will be known. For example, paragraph 8.2 of the Decision states that “[a] *definitive* map of the whole boundary on a scale of 1:25,000 will be produced on a sector-by-sector basis as each sector is finally demarcated and the exact coordinates of the locations of the boundary markers have been determined.”<sup>3</sup> In the next paragraph, the Decision provides that “[a]ll coordinates will be recalculated and made more precise during the demarcation as the Commission acquires the additional necessary information.” Similarly, in paragraph 2.16, the Decision states that coordinates for reference points “are not necessarily final and the Commission may have to adjust or vary them in the course of demarcation. *Only the final demarcation map will be definitive.*”<sup>4</sup> Thus, the Commission’s Decision places great importance on the correct identification of the geographical features on which the delimitation is based. Ethiopia understands that during demarcation the Commission, working with their experts and the parties, will conduct careful field surveys to locate geographical features relevant to the delimitation.

### **Fort Cadorna**

In the central sector of the boundary, the Commission adjusted its depiction of the Treaty-based boundary so as to leave Fort Cadorna, as shown on Map 11, within Eritrea. Unfortunately,

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<sup>2</sup> Decision, para. C1.

<sup>3</sup> Emphasis in the original.

<sup>4</sup> Emphasis supplied.

this adjustment to the Treaty-based boundary was based on a geographical error. The true location of Fort Cadorna is well known. It lies north of the Treaty-based boundary, and north of the location shown between points 17 and 18 on the Commission's Map 11. The basis for the Commission's adjustment to the Treaty-based line was Ethiopia's statement in her pleadings that Fort Cadorna was in Eritrea. This statement should not have caused any adjustment because Fort Cadorna is in fact well north of the Treaty-based line and well outside territory claimed by Ethiopia during the delimitation proceedings.

The Commission's Map 11 appears to have located Fort Cadorna on the basis of Eritrea's unsupported depictions of Fort Cadorna in her pleadings. It is also noteworthy that, as depicted by the Commission on maps illustrating the Decision, Fort Cadorna lies in territory that Eritrea did not even claim during the delimitation proceedings. Thus the Commission's decision has awarded to Eritrea territory beyond that which Eritrea had claimed, and, in this respect, is *ultra petita*.

Eritrea purported to base her depiction of Fort Cadorna on Map 52 of her Memorial Atlas, a very small-scale, extremely imprecise map.<sup>5</sup> As Ethiopia explained during the delimitation proceedings, the very detailed and much larger-scale Atlas Map No. 32 of Ethiopia's Counter-Memorial shows that Fort Cadorna is well to the north of where Eritrea depicted it and well outside of the area claimed by Ethiopia during the delimitation proceedings.<sup>6</sup> Even Map 52 of Eritrea's Memorial Atlas, despite its small scale and lack of precision, depicts Fort Cadorna as being on the road to Senafe and well north of 14° 30' latitude, in stark contrast to the depiction found in Eritrea's pleadings and in the illustrative maps attached to the Decision.

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<sup>5</sup> A copy of the relevant portion of this map is attached at Tab 1.

<sup>6</sup> A copy of this map is attached at Tab 2.



News articles reporting on the Ethiopian Army's capture of Fort Cadorna in 2000 reinforce the conclusion that any depiction of Fort Cadorna as being in the area claimed by Ethiopia during the delimitation proceedings is incorrect. The descriptions of Fort Cadorna's location in these news reports are consistent with Ethiopia's Counter-Memorial Map 32 and further demonstrate that Fort Cadorna is not located in the area depicted by the Commission's maps.<sup>7</sup> Ethiopia requests that the Commission correct the location of Fort Cadorna, as shown on the illustrative maps in the April 13 Decision, and make the necessary adjustments to the boundary during the demarcation phase.

### **Area between Point 17 and Point 18**

The Commission's delimitation of the boundary between the area it identified as "Fort Cadorna" and Point 18 is not defined by reference to rivers, turning points, or a geographical description. The Decision states that this section of the boundary follows Eritrea's claim line, which was based on a 1:100,000 scale map, but the Decision does not provide a technical basis for the demarcation or precise mapping of this segment of the boundary. Ethiopia requests that the Commission carefully address this issue so as to demarcate a line that recognizes the practice of the parties in this region and that will minimize the dislocations caused to residents of villages along this segment of the boundary.

In its Decision, the Commission also adjusted the Treaty-based boundary in the central sector so as to leave the Acran region to Eritrea. Ethiopia understands that the boundary points identified in this portion of the central sector are based on the Commission's view as to the location

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<sup>7</sup> An example of these articles and its English translation are attached at Tab 3.

of the Acran region. Ethiopia anticipates that the location of the Acran region will be more precisely defined during the demarcation phase.

### **Headwaters of Rivers**

The Commission identifies a number of boundary points by reference to the sources of particular watercourses. In the lower Irob area, for example, the Commission identifies the sources of tributaries as relevant to the incidence of the land boundary between points 24 and 25. Similarly, Point 20 is described as lying at the source of the headwaters of the Muna (Berbero Gado). The Commission does not at any point identify the principles applicable to the definition of the source of watercourses. As a precise determination of the location of watercourses can best be made with the benefit of factual information gained from examination in the field, Ethiopia requests that the Commission address this issue during demarcation.

### **Tserona and Zalambessa**

In its Decision, the Commission explicitly deferred to the demarcation phase the means by which the boundary would leave Zalambessa and its environs to Ethiopia and Tserona and its environs to Eritrea. Regarding Zalambessa, the *Dispositif* provides:

From Point 18, the boundary runs parallel to the road at a distance of 100 metres from its centre along its western side and in the direction of Zalambessa until *about* one kilometre south of the current outer edge of the town. In order to leave that town and its environs to Ethiopia, the boundary turns to the northwest to pass round Zalambessa at a distance of *approximately* one kilometre from its current outer edge until the boundary rejoins the Treaty line at *approximately* Point 20, but leaving the location of the former Eritrean customs post within Eritrea. *The current outer edge of Zalambessa will be determined more precisely during the demarcation.*<sup>8</sup>

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<sup>8</sup> Emphasis supplied.

In view of this language, Ethiopia requests that the Commission identify the relevant criteria for the definition of a town's "outer edge", in consultation with its experts and the parties, during the demarcation phase.

### **The Endeli Projection**

In its Decision, the Commission found that Ethiopia's proof of its administrative activity in the Endeli Projection and other evidence was strong enough to make an adjustment to the line based on the 1900 Treaty. The Commission stated, however, that it did not award the entire Endeli projection to Ethiopia because of its view that "in general, the impact of Ethiopian administrative activity has been weaker, and the impact of Eritrean activity stronger, in the *northern and western fringes* of the Endeli projection, and that therefore Ethiopia has not established its effective sovereignty to the required degree over those areas."<sup>9</sup> In light of these factors, the Commission decided to adjust the Treaty-based line "in the manner set out in Chapter VIII, paragraph 8.1, subparagraph B"<sup>10</sup> (the *Dispositif's* treatment of the Central Sector).

The *Dispositif's* description of the boundary in Irob is somewhat ambiguous. Between the boundary's departure from the Enda Dashim River at Point 22 and Point 26, where the boundary joins the Endeli River, the boundary follows only unnamed tributaries and an overland section between the sources of two of the unnamed tributaries. The illustrative maps attached to the decision depict a boundary that appears to be inconsistent with the description of the Commission's decision in paragraph 4.85, which indicates that Ethiopia has established its effective sovereignty to

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<sup>9</sup> Decision, para. 4.85. Emphasis supplied.

<sup>10</sup> *Ibid.* at 4.86.

the required degree over all but the “northern and western fringes” of the Endeli Projection. Ethiopia anticipates that during the demarcation phase the Commission will describe with greater precision the boundary between Points 22 and 26 in light of the description in paragraph 4.85 of its Decision.

### **River Boundaries**

In discussing the issue of boundary lines within rivers, the Commission observed that both Parties:

avored the deferment to the demarcation stage of the decision regarding the line within rivers and considered that the Parties should be consulted further on the matter at that stage, bearing in mind, amongst other factors, that different considerations might apply to different parts of the rivers.

In these circumstances, the Commission holds that the determination of the boundary within rivers *must be deferred until the demarcation stage*. In the meantime, there will be no change in the status quo. The boundary in rivers should be determined by reference to the location of the main channel; and this should be identified during the dry season. Regard should be paid to the customary rights of the local people to have access to the river.<sup>11</sup>

On the basis of paragraphs 7.2 and 7.3 of the Decision, Ethiopia understands that during the demarcation phase the Commission will address, in consultation with the parties, the principles applicable to the determination of river boundaries, including the factors that will determine the main channel of a river.

### **Nature and Variation of the Terrain**

In the eastern sector of the border, the Commission explicitly deferred to the demarcation phase the

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<sup>11</sup> Decision, paras. 7.2 and 7.3.

task of adapting the line to the nature and variation of the terrain.<sup>12</sup> Ethiopia requests that the Commission consult with its experts and the parties to develop during the demarcation phase the criteria that it will observe in making any adjustments to the boundary on the basis of the nature and variation of the terrain.

### **Bure**

Also in the eastern sector, the Commission provided no provisional coordinates for Point 40, the turning point at Bure. The *Dispositif* states that the coordinates at Bure are “to be determined during demarcation.” Ethiopia requests that the Commission consult with the parties in determining the proper placement of Point 40.

## **SECTION III**

### **CONSULTATION WITH THE PARTIES**

#### **Mechanism for Consultation and Commission Decision**

Ethiopia suggests that a simple and straightforward procedure be put in place through which the Commission, its staff and each party may be made aware of the other party’s views on issues that will arise in the demarcation process.

This mechanism for consultation would address logistical issues such as movement of the Commission’s staff, retention of experts, and selection of contracting firms to create and place the boundary pillars. Such consultation procedures would also address those issues which the Commission itself might need to resolve in the absence of agreement and which relate to the

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<sup>12</sup> Specifically, paragraph 6.34 of the Decision states that “the line of delimitation which the Commission has determined by application of Article I of the 1908 Treaty will serve as the basis for the demarcation, leaving open the possibility at that stage of ‘adapting it to the nature and variation of the terrain,’ as contemplated in Article II of that Treaty.”

application of the Decision to the physical geography of the boundary region. The system Ethiopia proposes is consistent with State practice and the approach taken by international arbitral bodies.

### **Initial Comments on Organization and Procedure**

Ethiopia proposes that each party be invited to submit any general views and observations, either procedural or substantive, with respect to the demarcation process to the Commission no later than 15 days after the upcoming meeting between the Commission and the parties.

A 15-day period should be provided for any responsive comments that either party might wish to make regarding the views submitted by the other party. Thereafter, the Commission could issue any directions that might be required, including its final Rules of Procedure for the demarcation.

### **Mechanism for Problem Solving**

Management of the demarcation process should provide an efficient structure for consultation with the parties on practical and legal problems as this process goes forward. Unforeseen issues are likely to arise during the course of demarcation. As noted in the Decision and in Section II above, there are also decisions which the Commission can only make once work in the field has produced relevant factual information. Ethiopia submits that a system of consultation with the following elements would provide an efficient and effective working arrangement for the demarcation process.

### **Briefing by Staff**

Ethiopia considers that it would be indispensable for the Commission demarcation staff to brief the parties from time to time, and initially within the next 10 days, of its plans for demarcation activities and would respond to questions to which this briefing may give rise. During the demarcation process the Commission's staff should schedule meetings with representatives of the parties as needed but no less frequently than once each month.

### **Comments of the Parties**

Second, where such briefings by the Commission's staff give rise to proposals or suggestions by the parties, these suggestions or proposals should be submitted in writing to the staff by the parties and exchanged by the parties so that all would be aware of any such matters and the parties' views.

If these meetings and written comments reveal problems which cannot be resolved through discussions, such issues should be referred to the Commission for decision.

### **Commission Action**

It may be that the Commission would see fit to appoint a single one of its members on a rotating basis to resolve disputes as they arise. There should be, however, at the option of either party, a right to refer any issue to the full Commission for its consideration. It is of the greatest importance to Ethiopia that there be a process in place such that its citizens can be assured the this Commission itself has ruled on any disputed issues of substance during the demarcation phase.

## State Practice

State practice and the decisions of arbitral courts and other international adjudicatory bodies confirm that a consultative process is appropriate. In this regard, the *Palena* case between Argentina and Chile is of particular significance. It is to be recalled that the parties in that case requested the Court of Arbitration not only to delimit a part of their mutual boundary but also to demarcate that part of the boundary.

In rendering its Award in *Palena*, the Court of Arbitration explicitly held that the Award “shall be executed *by the demarcation of the course of the boundary* in the sector between Boundary Posts 16 and 17 ..., and by each of the Parties taking such steps as may be necessary to carry out the Award.”<sup>13</sup>

The Court of Arbitration then proceeded to designate the authority responsible for carrying out the demarcation and to address the composition of the Demarcation Mission.<sup>14</sup> In this regard, the Court provided that “[e]ach of the Parties shall appoint a Liaison Officer to accompany the Mission ...”.<sup>15</sup> In practice, each party was represented on the Demarcation Mission by a Liaison Officer, an Assistant Liaison Officer, a Chief Technical Officer, a computer, two trigonometrical surveyors and three topographers. These individuals participated in the field work carried out by the Mission.

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<sup>13</sup> Award of Her Majesty Queen Elizabeth II, Pursuant to the Agreement for Arbitration (*Compromiso*) Determined by the Government of the United Kingdom of Great Britain and Northern Ireland on 1 April 1965 for the Arbitration of a Controversy between the Argentine Republic and the Republic of Chile concerning Certain Parts of the Boundary between Their Territories (“*Palena* Award”), 9 December 1966, at para. 2, *contained in* Lauterpacht, E., ed., *International Law Reports*, Butterworths, London, 1969, vol. 38, at pp. 10-19 (emphasis supplied).

<sup>14</sup> *Palena* Award, para. 3.

<sup>15</sup> *Ibid.*, para. 5.



## SECTION IV

### TRANSFER OF TERRITORIAL CONTROL AND GOVERNMENTAL AUTHORITY

As questions have arisen since April 13 regarding the effect of the Commission's Decision with respect to the transfer of territorial control and governmental authority, Ethiopia wishes to set out its views for the Commission's consideration.

The subject of transfer of territorial control and governmental authority is of great importance because of the consequences for individuals residing in territory which may come under the governmental authority of the other party as a result of the effect of Article 4 of the December 2000 Agreement. This issue has been carefully and clearly dealt with in the agreements that established the peace process.

#### **The Agreements Between the Parties Specify That Full and Sovereign Jurisdiction Over Territory Will Take Effect Once the Entire Border Has Been Demarcated**

The agreements signed by the two parties establishing the peace process are sufficiently clear with respect to the timing of transfer of territorial control and governmental authority. First, paragraph 10 of the Cessation of Hostilities Agreement and paragraph 6 of the Framework Agreement, which is attached at Tab 4,<sup>16</sup> indicate that "once the entire border has been delimited and demarcated, the legitimate authority will immediately exercise full and sovereign jurisdiction over the territory which will have been recognized as belonging to them."<sup>17</sup>

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<sup>16</sup> OAU Framework Agreement For A Peaceful Settlement Of The Dispute Between Eritrea And Ethiopia ("Framework Agreement").

<sup>17</sup> Framework Agreement, para. 6(b).

The parties have also agreed that their armed forces will not move from positions of redeployment taken pursuant to the Cessation of Hostilities Agreement until “delimitation/demarcation” has been completed.<sup>18</sup>

Finally, the parties have clearly agreed that the separation of forces would continue until the completion of the demarcation of the border. These commitments are made in Article 14 of the Cessation of Hostilities Agreement whereby “Ethiopia commits itself not to move its troops beyond the positions it administered before 6 May 1998,” and “Eritrea commits itself not to move its troops beyond the positions defined in paragraph 12 [25 km from the Ethiopian positions] above.” The parties additionally agreed that the integrity of this zone was to be ensured by the presence of a United Nations Peacekeeping Force. Article 5 of the Cessation of Hostilities Agreement clearly and simply states that “[t]he Peacekeeping Mission shall terminate when the delimitation-demarcation process of the border has been completed.”

Moreover, not only did Ethiopia and Eritrea agree that these security arrangements would remain in place until the completion of demarcation, but the OAU and the UN also committed to guarantee these arrangements until, as stated in Article 14: “the determination of the common border on the basis of pertinent colonial treaties and applicable international law, through demarcation/delimitation . . .” This guarantee includes monitoring by the peacekeeping mission as well as appropriate enforcement, including Chapter VII enforcement actions under the UN Charter.<sup>19</sup>

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<sup>18</sup> Cessation of Hostilities Agreement, art. 14.

<sup>19</sup> Cessation of Hostilities Agreement, art. 14.

Evidence that the Parties clearly agreed that the Temporary Security Zone should remain demilitarized until demarcation of the border is complete can also be found in statements of the Secretary General of the United Nations, the Secretary General of the OAU, the President of the Security Council, Resolutions of the Security Council, and this Commission's own Rules of Procedure.

In a joint statement entitled "Securing a Lasting Peace" published April 13, 2002, the Secretaries General of the United Nations and the OAU stated: "The Boundary Commission's decision will only be one step in the resolution of the border conflict. After delimitation . . . comes demarcation . . . In the Algiers agreements, the parties promised to respect the security arrangements *throughout this process*, with the continued monitoring of their compliance by UNMEE." In his 8 March 2002 report to the Security Council, the Secretary General of the UN notes that:

In accordance with the Agreement on Cessation of Hostilities, the security arrangements are to remain in effect until delimitation and demarcation are completed. Accordingly, arrangements for the separation of forces, as achieved by the establishment of the Temporary Security Zone, will continue to be of crucial importance. Until the border demarcation has been completed, UNMEE will continue to discharge its mandate.

According to his report of 5 September 2001 to the Security Council, the Secretary General considers "monitoring the redeployment of the two countries a key provision of the Mission's mandate in accordance with the Agreement on the Cessation of Hostilities," a mandate which does not end until demarcation is complete.

This position is also echoed in the report of the Security Council mission to Ethiopia and Eritrea of 21-25 February 2002, which states that the "separation of forces, as achieved by the establishment of the Temporary Security Zone, will continue to be of key importance" and further

reiterates that the mandate of UNMEE to monitor this separation of forces, based on the agreement of the parties, only ends when demarcation is complete.

The Security Council resolutions authorizing UNMEE are also clear on this point. For example, the most recent of these, Resolution 1398, issued 15 March 2002, “emphasizes that until the border demarcation has been completed, UNMEE will continue to discharge its mandate”. Resolution 1369 of 14 September 2001 states specifically: “the Algiers Agreements link the termination of UNMEE with the completion of the work of the Boundary Commission related to delimitation *and demarcation* of the Ethiopia-Eritrea border” and “further emphasizes that the Temporary Security Zone must be completely demilitarized.”<sup>20</sup>

In this respect, Ethiopia would recall that this Commission has been established pursuant to Article 4 of the December 2000 Agreement between the Parties. Article 4 paragraph 2 sets out a clear statement of the mandate of the Commission:

The parties agree that a neutral Boundary Commission composed of five members shall be established with the mandate to delimit and demarcate the colonial treaty border based on pertinent colonial treaties (1900, 1902 and 1908) and applicable international law. The Commission shall not have the power to make decisions *ex aequo et bono*.

Paragraph 13 of Article 4 notes that:

Upon reaching a final decision regarding delimitation of the borders, the Commission shall transmit its decision to the parties and Secretaries General of the OAU and the United Nations for publication, and the Commission shall arrange for expeditious demarcation.

Paragraph 16 recognizes that the Commission’s delimitation and demarcation work may create problems due to the transfer of territorial control, including problems related to the

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<sup>20</sup> Emphasis supplied.

consequences for individuals residing in previously disputed territory. The issues related to change of governmental administration, however, are not within the Commission's mandate. Rather, the parties, "request the United Nations to facilitate resolution of problems which may arise due to the transfer of territorial control, including the consequences for individuals residing in previously disputed territory." Article 4(16) of the December 2000 Agreement leaves to the parties, with the facilitation of the United Nations, the question of the transfer of control over territory which may result from the Commission's delimitation and demarcation.

### **The April 13 Decision**

The Commission's Decision makes clear that the precise location of the delimited boundary will not be known until after demarcation. The Decision provides not even provisional coordinates for a number of the boundary's turning points. As explained in Section II above, with respect to the coordinates provided, the Decision consistently emphasizes that the coordinates are not definitive and that more information must be gathered before definitive coordinates are to be known. In addition, the Decision stressed that the maps provided were illustrative and that there would be no definitive maps of the boundary until after demarcation. The Decision states in paragraph 2.16 that coordinates for reference points "are not necessarily final and the Commission may have to adjust or vary them in the course of demarcation. *Only the final demarcation map will be definitive.*"<sup>21</sup>

In light of the foregoing, it is appropriate to defer any transfer of governmental authority until the demarcation is completed and the Commission has promulgated a final demarcation decision.

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<sup>21</sup> Emphasis supplied.

**SECTION V**

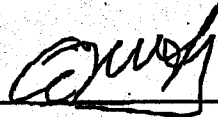
**CONCLUSION**

The Commission and the parties are now moving into the final phase of work to delimit and demarcate the boundary. As the Commission's President has rightly stated, this phase of the Commission's work will require flexibility and compromise. Ethiopia looks forward to an expeditious implementation of the Commission's Decision of April 13 through the demarcation process. Ethiopia appreciates the Commission's efforts to consult with the parties regarding the modalities for conduct of the demarcation process at the upcoming meeting at the seat of the Commission.

In filing this Request for Interpretation, Correction, and Consultation, pursuant to Articles 28, 29 and 30 of the Commission's Rules of Procedure, Ethiopia seeks to define and clarify the task now before the parties and the Commission in a way that will facilitate a successful conclusion.

Respectfully submitted,

(Signed) \_\_\_\_\_



Ambassador Fisseha Yimer

Co-Agent of the Federal Democratic  
Republic of Ethiopia

## **Tab 1**

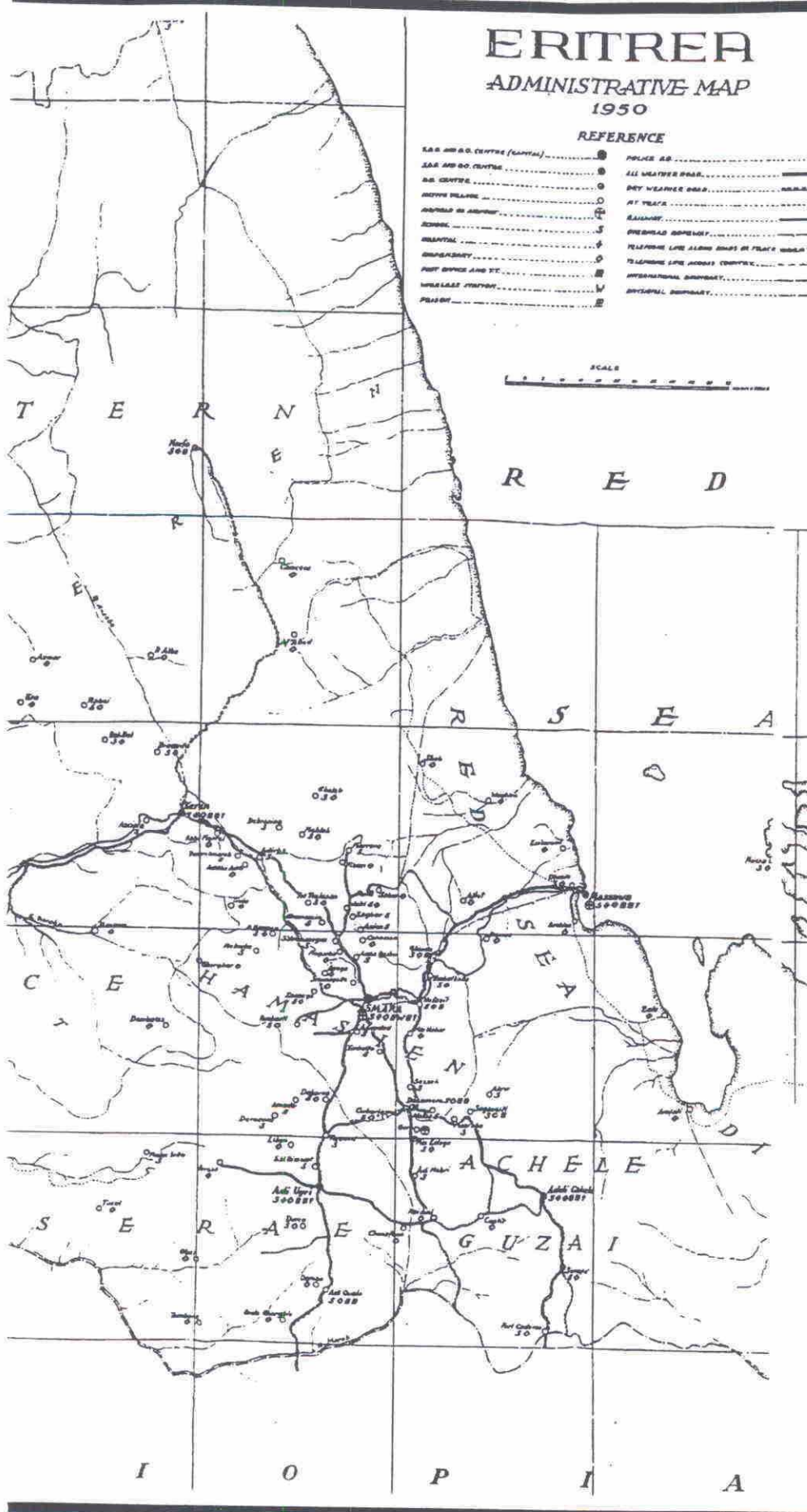
# ERITREA

## ADMINISTRATIVE MAP

### 1950

#### REFERENCE

... ..	...	POLICE ST.	.....
... ..	...	ALL WEATHER ROAD	.....
... ..	...	DRY WEATHER ROAD	.....
... ..	...	RAILROAD	.....
... ..	...	OVERHEAD POWERLINE	.....
... ..	...	TELEPHONE LINE (LONG SHORT OR PLATE SYMBOL)	.....
... ..	...	TELEPHONE LINE (JERRY'S SYMBOL)	.....
... ..	...	INTERNATIONAL BOUNDARY	.....
... ..	...	REGIONAL BOUNDARY	.....





## **Tab 2**



39° 20' (L'equidistanza delle curve è di metri 100) Scala nel rapporto di 1 a 100.000 Proprietà artistica riservata 39° 40' (Per le curve punteggiate di metri 50) 6 Chilometri (Legge 19. Set. 1882. N. 1012)

- Staz. Galleria Ferrovia
- in costruzione
- Strada rotabile
- in costruz.<sup>ne</sup>
- a fondo naturale
- carovaniere
- mulattiera
- Santiero
- Confine della Colonia Eritrea
- Torrente con acque perenne od affiorante in tutte le stagioni
- Torrente asciutto in alcune stagioni
- Pozzo con acque perenne ed abbondante
- non perenne
- Capanne
- Cimitero
- Rovine
- Località ove avvennero combattimenti

Levata nel 1898 Istituto geografico militare  
 (Colle correzioni del Maggiore Cossia 1917)  
 Edizione 1934-XII.  
 Aggiornata con i documenti pervenuti dal Comando R. Corpo Truppe Coloniali dell'Eritrea a tutto giugno 1934-XII.  
 ETHIOPIA D. 66

CARTA DELLA COLONIA ERITREA  
 Barachit  
 F. 33

## **Tab 3**

## Translation

### **Ethiopia-Eritrea: Artillery Duels around Senafe (south)**

Asmara, 30 may (ats/ansa) Artillery duels between the Eritrean and Ethiopian troops have taken place throughout the morning around the city of Senafe about 130 km to the south of the Eritrean capital Asmara. The correspondent of ANSA has verified [this].

The Eritrean soldiers have been deployed to the north of Senafe on the slopes of mountain Emba Tarika which overlooks the city; while the troops of Addis Ababa are to the south of Senafe and are positioned at Fort Cardona, an old fortress of the colony era.

From these two points, the arrival of cannon fire of the two armies has been heard throughout the morning.

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SDA - Servizio di base in Italiano

May 30, 2000

LENGTH: 100 words

HEADLINE: **Etiopia-Eritrea: duelli artiglieria attorno Senafe' (sud)**

BYLINE: By BP

BODY:

ASMARA, 30 mag (ats/ansa) Duelli di artiglieria tra le truppe eritree ed etiopiche si sono avuti per tutta la mattinata attorno alla citta' di Senafe', circa 130 km a sud della capitale eritrea Asmara. Lo ha constatato l'inviato dell'Ansa.

I soldati eritrei sono attestati a nord di Senafe' alle pendici del monte Emba Tarika che sovrasta la citta', mentre le truppe di Addis Abeba sono a sud di Senafe' e si sono posizionate a Forte Cadorna, un vecchio fortino dell'epoca coloniale.

Da questi due punti si sono udite arrivare le cannonate dei due eserciti per tutta la mattinata.

LOAD-DATE: May 31, 2000

## **Tab 4**

*The Legal  
and Accepted  
Document*

## **OAU FRAMEWORK AGREEMENT FOR A PEACEFUL SETTLEMENT OF THE DISPUTE BETWEEN ERITREA AND ETHIOPIA**

We, the Heads of State and Government, mandated by the 34th Ordinary Session of the Assembly of Heads of State and Government of the Organization of African Unity, held in Ouagadougou, Burkina Faso, from 8 to 10 June 1998, to contribute towards the search for a peaceful and lasting solution to the unfortunate conflict which erupted between the brotherly countries, the State of Eritrea and the Federal Democratic Republic of Ethiopia:

Deeply affected by the outbreak of the conflict between the two countries that are united by historic links of brotherhood and a common culture;

Saddened by this conflict which occurred at a time when the Federal Democratic Republic of Ethiopia and the State of Eritrea had launched a new era of relations built on a partnership and a common vision and ideals as regards the future of their peoples, the region and the whole continent;

Noting, however, that differences had emerged between the two countries relating particularly to their common border, differences which the two countries endeavored to resolve peacefully;

Deploring the fact that, notwithstanding those efforts, an open conflict broke out between the two brotherly countries, with which our 34th summit was seized;

Paying tribute to the commendable efforts made by friendly countries aimed at finding a peaceful solution to the conflict;

Conscious of the fact that resorting to the use of force results in loss of human lives, the destruction of property and socio-economic infrastructures as well as creating a division between the peoples, all the things which the two brotherly countries and our continent cannot afford at a time when all efforts must be channeled towards the promotion of peace and development which we greatly owe to our peoples;

Encouraged by the commitment made by the two Parties to the OAU High-Level Delegation to settle the conflict peacefully and by their positive response to its appeal to continue to observe the moratorium on air strikes and to maintain the present situation of non-hostilities;

Having considered and endorsed the Report and Recommendation of the Committee of Ambassadors, as submitted by the Ministerial Committee to the parties on 1 August 1998 in Ouagadougou, Burkina Faso;

Having listened to the two Parties and made an in-depth analysis of their respective positions, taking into account their legitimate concerns and after having thought deeply about the ways and means likely to contribute to the peaceful settlement of the crisis in a fair and objective manner;

MAKE on behalf of Africa, its peoples and leaders, a solemn and brotherly appeal to the Leaders of the State of Eritrea and the Federal Democratic Republic of Ethiopia to do everything in their power to opt for a peaceful settlement of the dispute and find a just and lasting solution to the conflict;

SUBMIT, hereunder, for the consideration of the two Parties, the elements of a Framework Agreement based on the following principles:

- resolution of the present crisis and any other dispute between them through peaceful and legal means in accordance with the principles enshrined in the Charter of the Organization of African Unity;
- rejection of the use of force as a means of imposing solutions to disputes;
- respect for the borders existing at independence as stated in Resolution AHG/Res. 16(1) adopted by the OAU Summit in Cairo in 1964 and, in this regard, determine them on the basis of pertinent colonial Treaties and applicable international law, making use, to that end, of technical means to demarcate the borders and, in the case of the controversy, resort to the appropriate mechanism of arbitration.

We recommend that:

1. The two Parties commit themselves to an immediate cessation of hostilities;
2. In order to defuse tension and build confidence, the two Parties commit themselves to put an immediate end to any action and any form of expression likely to perpetrate or exacerbate the climate of hostility and tension between them thereby jeopardizing the efforts aimed at finding a peaceful solution to the conflict;



3. In order to create conditions conducive to a comprehensive and lasting settlement of the conflict through the delimitation and demarcation of the border, the armed forces presently in Badme Town and its environs, should be redeployed to the positions they held before 6 May 1998 as a mark of goodwill and consideration for our continental Organization, it being understood that this redeployment will not prejudice the final status of the area concerned, which will be determined at the end of the delimitation and demarcation of the border and, if need be, through an appropriate mechanism of arbitration;
4. This redeployment be supervised by a Group of Military Observers which will be deployed by the OAU with the support of the United Nations. The Group of Military Observers will also assist the reinstated Civilian Administration in the maintenance of law and order during the interim period;
5. a. The redeployment be subsequently extended to all other contested areas along the common border within the framework of demilitarization of the entire common border and as a measure for defusing the tension and facilitating the delimitation and demarcation process. In effect, the demilitarization which will begin with the Mereb Setit segment, will then extend to the Bada area and the border as a whole;  
b. The demilitarization process be supervised by the Group of Military Observers;
6. a. The two Parties commit themselves to make use of the services of experts of the UN Cartographic Unit, in collaboration with OAU and other experts agreed upon by the two Parties, to carry out the delimitation and demarcation of the border between the two countries within a time-frame of 6 months which could be extended on the recommendation of the cartographic experts;  
b. Once the entire border has been delimited and demarcated, the legitimate authority will immediately exercise full and sovereign jurisdiction over the territory which will have been recognized as belonging to them;
7. In order to determine the origins of the conflict, an investigation 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 two Parties regarding their common border, including the incidents of July-August 1997.

8. a. At the humanitarian level, the two Parties commit themselves to put an end to measures directed against the civilian population and refrain from any action which can cause further hardship and suffering to each other's nationals;
  - b. The two Parties also commit themselves to addressing the negative socio-economic impact of the crisis on the civilian population, particularly, those persons who had been deported;
  - c. In order to contribute to the establishment of a climate of confidence, the OAU, in collaboration with the United Nations, deploy a team of Human Rights Monitors in both countries;
9. a. In order to determine the modalities for the implementation of the Framework Agreement, a Follow-up Committee of the two Parties be established under the auspices of the OAU High-Level Delegation with the active participation and assistance of the United Nations;
  - b. The committee begin its work as soon as the Framework Agreement is signed;
10. The OAU and the UN working closely with the international community, particularly the European Union, endeavor to mobilize resources for the resettlement of displaced persons and the demobilization of troops currently deployed along the common border of both countries;
11. The Organization of African Unity, in close cooperation with the United Nations, will be the guarantor for the scrupulous implementation of all the provisions of the Framework Agreement, in the shortest possible time.