

Annex

Fifth report of the Eritrea-Ethiopia Boundary Commission to the Secretary-General of the United Nations

1. This is the fifth report of the Eritrea-Ethiopia Boundary Commission, covering the period 1 March to 31 May 2002.
2. The principal development during this period has been the delivery on 13 April of the Decision of the Commission delimiting the boundary. The text of the Decision has been transmitted to you and to the Secretary-General of the Organization of African Unity, as required by the Agreement of December 2000. You have circulated it as document S/2002/423. The Decision covers the whole of the boundary. Both Parties have made statements accepting the Decision.
3. On the same afternoon as the delivery of the Decision, the Commission held a meeting with the Parties to discuss the procedure for demarcation. However, neither Party was at that stage prepared to enter into this discussion. A further meeting was arranged for 8 May but was postponed until, and was held on, 21 May. Representatives of the United Nations Mission in Ethiopia and Eritrea (UNMEE) (in particular, the Special Representative of the Secretary-General, H.E. Mr. Legwaila J. Legwaila) and of the Department of Peacekeeping Operations of the United Nations Secretariat were present as observers.
4. In the meantime, preparatory work for the demarcation had already begun. Aerial photography of the border in connection with the construction of the definitive 1:25,000 scale map of the border region commenced immediately after the Delimitation Decision indicated where the boundary would be, and a certain amount of work on the ground in this connection was done by the Chief Surveyor appointed by the Secretary of the Commission. On 27 April 2002, however, before the necessary ground work was completed, the Government of Ethiopia prohibited further work within the territory under its control. This was followed on 15 May by a letter to me from the Minister for Foreign Affairs of Ethiopia containing certain criticisms of UNMEE regarding logistical assistance given to the Chief Surveyor and expressing doubt about the neutrality of the Boundary Commission's Field Office. That letter also contained a request for an update on the work of the Field Office. This was subsequently provided in the meeting between the Commissioners and the Parties on 21 May (see below). In the meantime, Ethiopia has continued to prohibit work by the Commission's surveyors on the ground, notwithstanding my request that the prohibition be lifted. At the meeting on 21 May, I again urged the Ethiopian Government to lift the ban so that the Chief Surveyor's work could be completed before the beginning of the rainy season. It was made clear to both Parties that each is obliged to cooperate with the demarcation process, and that neither may raise special conditions for its cooperation. At the time of writing of this report the ban has not been lifted.
5. On 13 May, within the 30-day period allowed for such steps in the rules of procedure of the Commission, the Government of Ethiopia filed a "Request for Interpretation, Correction and Consultation". This has been transmitted to the Government of Eritrea for its comments, to be filed by 14 June. The Commission expects to give its decision on this request by the end of June.
6. On 17 May, the President of Eritrea sent me a letter raising, rather unusually in relation to an arbitral proceeding, a number of questions regarding the Decision, though without giving any details as to why the questions were raised: had the Commission adhered to the provisions of the December 2000 Agreement relating to the law to be applied by the Commission; had the Commission acted in accordance with the appropriate procedural requirements; had the Commission permitted itself to be influenced by any political pressure or similar considerations; and was the Decision final and binding? I replied on 21 May, affirmatively to the first, second and fourth questions and negatively to the third.
7. The meeting between the Commission and the Parties on 21 May was devoted entirely to various aspects of the demarcation process. In particular, information was shared with the Parties about the modalities of demarcation, the concerns of the Parties were heard and discussed and detailed information was given to them regarding the technical aspects of the demarcation. Consideration was given to the role of UNMEE in the process, including the work of its demining component, the UNMEE Mine Action

Coordination Centre (MACC), as well as to the establishment and role of field offices of the Commission within Ethiopia. The Government of Ethiopia was urged to resume without delay its cooperation with the Commission in the demarcation process. I undertook that the Commission would prepare detailed demarcation directions setting out the procedures to be followed during the demarcation, taking into account the concerns expressed by Ethiopia, and that the directions would be circulated in draft to the Parties for their comments. The preparation of this document is presently in hand.

8. The meeting on 21 May was adjourned for an hour and a half to enable a working group consisting of representatives of the Parties and the Secretary and the Chief Surveyor to discuss informally the location of field offices in Ethiopia. Unfortunately, no agreement could be reached.

9. Nonetheless, it is to be hoped that, as a result of the meeting on 21 May and the subsequent provision of the information requested, the Government of Ethiopia will be able to resume its cooperation with the Commission and thus enable the demarcation to proceed as it should. If the completion of the 1:25,000 map, which is essential for the demarcation, is not held up further, the Commission expects that the identification of the places at which boundary markers are to be located can be completed in October/November 2002, that the necessary local demining can then begin, that it can be concluded by the spring of 2003 and that the emplacement of the boundary markers can be begun in parallel with the demining. The work will proceed in stages, on a segment-by-segment basis, in an order to be determined by the Commission. I am, of course, concerned by the fact that the work of demarcation has already suffered delay. The schedule mentioned above can only be fulfilled if the present impediments to the Commission's work are speedily removed.

10. The next meeting between the Commission and the Parties to consider further the demarcation process has been fixed for 16 July in The Hague.

11. A memorandum of understanding governing the relations of UNMEE and the Boundary Commission was signed on 2 April 2002.

12. It bears recalling that, although an extensive degree of consultation about the demarcation process is taking place between the Commission and the Parties,

the responsibility for the demarcation rests with the Commission as mandated by article 4(2) of the Agreement of 12 December 2000. It is for the Commission to decide on how the demarcation will be carried out and for the Parties to cooperate with the Commission as provided in article 4(14) of the same Agreement and article 30(2) of the rules of procedure.

13. The Security Council will no doubt bear in mind that the Commission is now moving into the most costly phase of its work and that this will require substantial additional contributions to the Trust Fund.

14. Finally, may I, on behalf of the Commission, thank the Security Council for its continued support of the work of the Commission — support which is of great importance if we are to be able to continue expeditiously with the demarcation.

(Signed) Sir Elihu **Lauterpacht**
President of the Commission

30 May 2002