

Annex I

Eighth report of the Eritrea-Ethiopia Boundary Commission

This is the eighth report of the Eritrea-Ethiopia Boundary Commission, covering the period from 1 December 2002 to 21 February 2003. There have been developments which are a cause of concern to the Commission and which it is obliged to bring to the attention of the Security Council without further delay. These are dealt with in the first three parts of the present report. Part Four deals with other matters arising in connection with the Commission's work. Part Five summarizes the action that the Commission hopes that the Council will feel able to take to assist in advancing the work of the Commission.

Part One

1. It will be recalled that the Commission rendered its Decision on Delimitation ("the April Decision") on 13 April 2002 and that the Commission's mandate required it then to proceed to the demarcation of the border. The continuation of the Commission's work was dependent upon the completion of the 1:25,000 scale map on which the border would then be marked, together with an indication of turning points therein. Until that stage was completed, it would not be possible to proceed to the physical construction of the boundary markers.

2. The completion of the map required, even after 13 April 2002, a considerable amount of surveying, most of it in territory under Ethiopian control. Ethiopian consent was therefore necessary to provide the surveyors with access by helicopter to the relevant points. This was normally given in sufficient time to enable the surveying schedule to be maintained. The survey material required for the preparation of the map was sent to the company actually making the map with only a slight delay. It was expected that the maps would be dispatched to the parties by 17 December 2002 so that they might be able to comment on them by the stipulated date of 17 January 2003. Unfortunately, due to a delay in the courier service, the maps did not reach the parties until 24 December 2002. According to the agreed schedule as amended, the comments of the parties on the map were due to — and did — reach the Commission on 24 January 2003.

3. The Commission had indicated that these comments were to be of an essentially technical nature. Those filed by Eritrea, amounting to some 17 pages, were of this character. The comments filed by Ethiopia were mostly of a quite different character and size. Amounting to 141 pages and going far beyond the scope of comments on the map, they contained instead a detailed exposition of the views of Ethiopia regarding the steps that it deemed necessary for the satisfactory completion of the demarcation. In a number of significant respects the comments amounted to an attempt to reopen the substance of the April Decision, notwithstanding Ethiopia's repeated statements, made both before and since, of its acceptance of the Decision.

4. The main thrust of the Ethiopian comments is that the boundary should be varied so as to take better account of human and physical geography. They are similar to those advanced by Ethiopia in discussions with the Commission in the

period since the April Decision. The Commission has always made it clear that it has not been given the power to vary the boundary delimited in the April Decision. In particular, the December 2000 Agreement expressly precluded the Commission from deciding matters *ex aequo et bono*: it did not confer on the Commission, as it could have done and as has been done in the demarcation arrangements for many other boundaries, the power to vary the boundary in the process of demarcation for the purpose of meeting local human needs. Absent such authority, the hands of the Commission are in large measure tied. The Commission regrets that the boundary lines found by it to follow from the Treaty provisions and international law which it is bound to apply may at certain points result in physical divisions within communities that may adversely affect the interests of the local inhabitants. The Commission has not been insensitive to certain likely problems; it expressly contemplated the possibility of variations to the line, but only at the request of and with the agreement of both parties. While the parties have not reached such agreement, nothing would preclude their doing so in the course of the demarcation, even on a location-by-location basis. In the absence of agreement, however, the Commission's ability to ameliorate — on its own initiative — any problems that might arise is limited to minor clarifications justified principally by the enlargement of the scale of the maps with which it is working.

5. Notwithstanding the clarity with which the Commission has stated the limits upon its authority, Ethiopia has continued to seek variations to the boundary line delimited in the April Decision, and has done so in terms that appear, despite protestations to the contrary, to undermine not only the April Decision but also the peace process as a whole. Thus, Ethiopia's comments contained the following passage:

“Ethiopia has understood that this line would be subject to refinement during the demarcation process when the effective administration of the Parties could be determined in the field. *It was on this basis that the Government accepted the April Decision and it is on this basis only that the Government continues to do so.*” [§ 1.5]

6. The Commission sees in the words italicized above an intimation that Ethiopia will not adhere to the April Decision if its claim to “refinement” of the April Decision delimitation is not accepted. The Commission's disquiet on this point has been increased by statements made on behalf of Ethiopia at the meeting on 9 February 2003.

7. In seeking to support its position in this way and to require the demarcation to depart from the delimitation line, Ethiopia is relying principally upon certain specific indications given by the Commission in its April Decision of the need to complete its findings on the basis of further information to be gathered on the ground in the course of demarcation. But the Commission's identification of these specific locations where the delimitation line still needed to be completed could not amount to a reservation of a general power to adjust the delimitation line wherever it might cut across a community. It may be regrettable, but it is by no means unusual, for boundary delimitation and subsequent demarcation to divide communities. This may require some movement of communities, some reconstruction of community facilities and some understanding between the parties regarding cross-boundary movement. But those are not matters to be remedied by the Commission. Rather

they are a concern of the United Nations, as is expressly laid down in Article 4.16 of the December 2000 Agreement:

“Recognizing that the results of the delimitation and demarcation process are not yet known, 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.”

8. While the Commission deems it necessary to bring the present situation to the attention of the Security Council, the Commission wishes to make it clear that if the parties wish to extend its mandate to include a power to consider the variation of the boundary, it will be prepared to act accordingly.

Part Two

9. On 28 January 2003, the Commission received from Ethiopia a complaint that Eritrea had been using the Commission’s field work as a cover for an Eritrean military intelligence-collection operation. No specific details of this operation were given, beyond linking it, though not explicitly, to the currently active field liaison officers appointed by Eritrea who are, according to Ethiopia, intelligence officers in the Eritrean Army. The Ethiopian letter stated that “neither will be allowed by Ethiopia to enter Ethiopian territory henceforth”. The Ethiopian letter further requested the Commission

“to ensure that proper security procedures are taken to protect sensitive materials from other intelligence operations which are likely being directed at the field staff and its offices by Eritrea”.

10. The Ethiopian letter concluded by stating that the Ethiopian Government is prepared to allow field work to continue but only on the basis that Eritrea nominate new field liaison officers, whose nominations Ethiopia “will consider ... as expeditiously as possible”. In the meanwhile, any field work that continues must be observed by Ethiopia’s field liaison officers “as provided for by the Demarcation Directions”. Since the Demarcation Directions do not contemplate that field work can continue in the absence of field liaison officers of one party unless it is that party that is responsible for the non-appearance of its own nominees, it is evident that the Ethiopian letter amounts to a prohibition of further field work pending the replacement by Eritrea of its field liaison officers by others acceptable to Ethiopia.

11. On 6 February 2003, Eritrea commented on the Ethiopian letter, observing that the military character of the field liaison officers nominated by Eritrea had long been known to Ethiopia since they had appeared regularly in the joint Military Coordination Commission. Eritrea argued that by refusing to allow the Eritrean field liaison officers to attend the proceedings, Ethiopia was violating the Demarcation Directions and had forfeited the right to send its own field liaison officers to accompany the demarcation technical staff.

12. The Commission held a meeting with the parties in London on 8 and 9 February 2003, in the course of which Ethiopia stated that the Ethiopian Foreign Ministry, which was responsible for the handling of demarcation matters, did not know who had been representing Eritrea in the Military Coordination Commission, which was a matter for the Ethiopian Defence Ministry.

13. Having heard the parties, the Commission made an Order observing that the statements of the parties evidenced disagreements which shall be referred for decision in accordance with paragraph 15B of the Demarcation Directions. Pending the decision of the Commission on these disagreements, each party was required forthwith to appoint two ad hoc field liaison officers to act in all sectors in the capacity of the field liaison officers earlier nominated by each party. In order to ensure continuation of the next phase of the demarcation work, the Commission ordered field work to continue in accordance with the Commission's "Schedule of the Order of Activities Ahead", as updated from time to time, of which a current copy is appended. This means that necessary field work should continue in the Western and Central Sectors, as well as beginning in the Eastern Sector. Actual pillar emplacement will begin in the Eastern Sector. The Demarcation Directions will be amended accordingly.

14. Having read the Order, the Ethiopian representative stated that

"it would seem to be inconsistent with Foreign Minister's letter [of 28 January 2003] to the Commission".

In response, the President of the Commission stated that the remarks made on behalf of Ethiopia did not affect the validity or binding quality of the Order. The Commission takes the view that it is not open to one party unilaterally to control the work of the Commission.

15. As of the date of preparation of the present report, Eritrea has within the prescribed time limit nominated its two ad hoc field liaison officers. Ethiopia has not. The Commission hopes that this will soon be done.

Part Three

16. *The Commission's Order of 17 July 2002.* In relation to the Commission's Order of 17 July 2002 requiring Ethiopia to withdraw those Ethiopian nationals from Dembe Mengul who had returned there after 13 April with Ethiopian Government support, the Commission, on 7 November 2002, made the following determinations:

"The Commission, having considered the views of the parties, now determines as follows:

1. The jurisdiction and powers of the Commission extend to its taking cognizance of, and where necessary making appropriate decisions on, any matter it finds necessary for the performance of its mandate to delimit and demarcate the boundary;
2. The Commission is accordingly entitled to take cognizance of any population movement across the boundary as determined in the Delimitation Decision and to make such orders as it finds necessary in relation to any such population movements, insofar as such movement may affect the process and implementation of demarcation;
3. Having regard to the Commission's Order of 17 July 2002, Ethiopia, in failing to remove from Eritrean territory persons of Ethiopian origin who have moved into that territory subsequent to the date of the Delimitation Decision, has not complied with its obligations;

4. Any decision by the Commission to inspect, whether by land or air, any location in the boundary area, and in particular Tserona and Zalambessa or their environs in implementation of paragraph 8.1.B iv and vi of the Delimitation Decision, is a decision foreseen in operative paragraph 1 above, and must be complied with.”

As at the date of the present report, Ethiopia has still not implemented the Commission’s Order of 17 July 2002.

Part Four

17. *The preparation of the 1:25,000 scale map.* The basic map has now been completed and it remains only for the line as delimited in the April Decision to be completed in the respects therein contemplated and then to be marked on the map.

18. *Marking of pillar sites.* Subject to the finalization of the delimitation in the locations through field assessment specifically foreseen in the April Decision, the Commission is now ready to mark the sites of the boundary pillars on the 1:25,000 scale map.

19. *Arrangements relating to pillar construction.* The Commission has been in touch with various companies in regard to the construction of the boundary pillars. All potential contractors have visited the area to assess the situation before deciding whether to tender for the work. In connection with these visits, some difficulty has been experienced in obtaining from Ethiopia all the authorizations needed for the related helicopter flights.

20. A second problem in this connection relates to the provision of accommodation and meal arrangements for the contractors when they begin work. It was originally hoped that safe accommodation and suitable catering arrangements could be provided within the perimeter of the UNMEE establishments at Adigrat, Barentu and Assab. It now appears that UNMEE does not consider that it is authorized to provide these services. The contractors would, therefore, have to be accommodated in tents or containers outside the UNMEE perimeters in these places. This creates problems regarding both the protection of the contractors and the provision of meals. These can only be solved by incurring significantly greater expenditure in the construction of accommodation, the provision of fencing and the hiring of private security personnel to protect the accommodation, as well as the construction of catering facilities and the hiring of required staff. Also, the need to lease appropriate sites for accommodation from local owners or the local government is likely to lead to further delay.

21. A further problem relates to the security of all Eritrea-Ethiopia Boundary Commission personnel in the field — both the field office staff and, in due course, the construction personnel. It has become evident that in certain locations they may be confronted by the hostility of local inhabitants due, for example, to the fact that the boundary line may be perceived as dividing communities or separating them from their cultivated fields. UNMEE takes the view that it is not authorized to protect Boundary Commission personnel against any assault, but that this is a matter for the party in control of the field location. The Commission is pleased to record that in response to the Commission’s specific request, both parties have assured the Commission that they each will provide fully adequate security in this respect. Nevertheless, since the parties are subject to restrictions on the introduction of their military personnel into the Temporary Security Zone, the Commission feels that it

would be desirable that UNMEE should be present to support the protection to be provided by the parties. It hardly needs saying that any assault on Boundary Commission personnel would likely lead to an immediate withdrawal of such personnel, the cessation of the demarcation process and the consequent frustration of the whole boundary demarcation process. The Commission therefore hopes that consideration can be given to the possible enlargement of UNMEE's authority so that its forces may accompany all Eritrea-Ethiopia Boundary Commission personnel and thereby deter or react to any threat to their security.

22. Associated with this is the need to protect the concrete bases of each pillar for at least one week after concrete has been poured and while it is setting hard. Again, the presence of UNMEE forces at each site for that limited period would ensure that the concrete bases are not disturbed.

23. *Mine clearance and maintenance of cleared areas.* The Commission notes with appreciation the essential mine clearance activity of UNMEE and stresses the importance of the unimpeded continuation of that work. It is concerned by reports that some areas have been remined. It relies upon UNMEE to ensure the maintenance of cleared areas and hopes that the mandate of UNMEE enables it to do this.

Part Five

24. In sum, the Commission expresses the hope that the Security Council will:

(a) Confirm that, while the parties themselves may jointly agree to vary the boundary and while the Commission in demarcating the boundary may consider minor adjustments justified principally by the subsequent enlargement of the scale of the maps in the light of which the April Decision was rendered, it is neither the responsibility of the Commission, nor within its authority, to vary the delimitation line to meet local needs asserted by Ethiopia. Rather it is for the United Nations to deal with the consequences of any aspect of the demarcation that involves transfer of territory or the division of communities — though the Commission is willing to assist in the process of boundary variation if the parties and the United Nations so wish;

(b) Call upon the parties to cooperate promptly and fully with the Commission to enable it to fulfil the mandate conferred upon it by the parties of *expeditiously* delimiting and demarcating the boundary;

(c) Clarify the mandate of UNMEE so as to permit accommodation of contractors' personnel within UNMEE encampments where needed, together with access to meal facilities; and

(d) Authorize and arrange for provision of security by UNMEE to all Eritrea-Ethiopia Boundary Commission personnel in the field and for the protection of pillar sites after mine clearance and during the construction phase, with authority to use such force as may be necessary for this purpose.

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

21 February 2003

Appendix

Schedule of the order of activities ahead as at 23 February 2003

24 February 2003

1. Draft specifications for pillar emplacement and as-built survey delivered to the parties for comments.
2. Commence interim factual survey of 3 towns and interim field assessment of pillar locations at turning points, intermediate positions and rivers in all sectors.

27 February 2003

3. Receipt of Parties' comments on draft specifications.

3 March 2003

4. Final Requests For Proposals delivered to potential contractors who visited the sites in January 2003.

17 March 2003

5. Delivery of interim factual report on the 3 towns.
(Subject to all approvals for flights and site inspections being promptly approved by the parties).

20 and 21 March 2003

6. Eritrea-Ethiopia Boundary Commission meeting for further consideration of 24 January 2003 comments from parties.

31 March 2003

7. Proposals due from potential contractors.
8. Completion of interim field assessment of pillar locations, of rivers and all sectors and delivery of interim field assessment report to the parties.
(Subject to all approvals for flights and site inspections being promptly approved by the parties).

1 April 2003

9. Receipt of parties' comments on interim factual report on the 3 towns.
(Demarcation Directions para. 14E).

15 April 2003

10. Receipt of parties' comments on interim field assessment report of pillar locations.
(Provision agreed after meeting with Parties in London in November 2002).

Late April 2003

11. Contractors selected.

Late April 2003

12. Liaison Meeting with Ethiopia.
13. Liaison Meeting with Eritrea.
14. Eritrea-Ethiopia Boundary Commission decides boundary line and pillar sites.

Mid-May 2003

15. Complete negotiations and signing of contracts.
(Subject to the procurement process meeting this timeline).
16. Production of marked maps in digital form by the Secretary and delivery to parties.

Late May 2003

17. Demining of pillar sites access commences.

Early June 2003

18. Receipt of parties' comments on marked maps.
(Demarcation Directions, para. 9C).
19. Liaison Meeting with Ethiopia.
20. Liaison Meeting with Eritrea.

Mid-June 2003

21. Eritrea-Ethiopia Boundary Commission meeting to confirm final boundary line and pillar sites.

Early July 2003

22. Pillar emplacement and as-built survey begins in Eastern Sector.
(Subject to demining proceeding as planned, the availability of materials for the construction of boundary markers and witness marks, contractor accommodation and operational facilities being established, the parties approval of visa, taxation, custom, etc., in terms of the time line and contractors being able to completely deploy to the site within 8 weeks).

Early August 2003

23. Completion of pillar emplacement and as-built survey of Eastern Sector.

Early September 2003

24. Eritrea-Ethiopia Boundary Commission issues the parties the final map of the Eastern Sector with a copy of the relevant pages of the register recording the final location of each pillar.

25. Completion of pillar emplacement and as-built survey in Central or Western Sector, depending upon which sector the Commission takes first.
(Subject to no significant delay during the wet season).

Early October 2003

26. Completion of pillar emplacement and as-built survey of remaining sector.
(Subject to no significant delay during the wet season).
27. Eritrea-Ethiopia Boundary Commission issues the parties the final map of the Central or Western Sector (depending upon which sector the Commission takes first) with a copy of the relevant pages of the register recording the final location of each pillar.

Early November 2003

28. Eritrea-Ethiopia Boundary Commission issues the parties the final map of remaining sector with a copy of the relevant pages of the register recording the final location of each pillar.