

ETHIOPIA AND ERITREA:

WAR OR PEACE?

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ETHIOPIA AND ERITREA: WAR OR PEACE?

EXECUTIVE SUMMARY AND RECOMMENDATIONS

The next few weeks will go far to determining whether Ethiopia and Eritrea resume a path toward war – which took some 100,000 lives between 1998 and 2000 – or solidify their peace agreement. Ethiopia must decide whether to allow demarcation of the border to begin in October 2003 even though the international Boundary Commission set up under the Algiers agreement that ended the fighting has ruled that the town of Badme – the original flashpoint of the war – is on the Eritrean side. The outcome will have profound implications for both countries and the entire Horn of Africa, as well as for international law and the sanctity of binding peace agreements and arbitration processes. The international community, particularly the U.S., the African Union (AU), and the European Union (EU), all of which played major roles in brokering the Algiers agreement, need to engage urgently to help Ethiopia move the demarcation forward and to assist both parties to devise a package of measures that can reduce the humanitarian costs of border adjustments and otherwise make implementation of the demarcation more politically palatable.

The two warring states agreed at Algiers to establish the Boundary Commission and accept its judgement as final and binding. The Commission made its ruling in April 2002. After a series of technical and political delays caused largely by Ethiopia's objections, in particular to the disposition of Badme, it announced in July 2003 that physical demarcation on the ground should begin in October. On 12 September, the UN Security Council extended the mandate of the United Nations Mission in Ethiopia and Eritrea (UNMEE), which monitors the border, and called on both parties to fulfil their commitments under the Algiers agreement by creating "the necessary

conditions for demarcation to proceed, including the appointment of field liaison officers", providing security for the demarcation process, and pursuing political dialogue.

The governments of both Ethiopia and Eritrea face harder line elements that believe too much has already been given away in the peace process and are unwilling to countenance further flexibility. Many Ethiopians are determined not to cede any territory to Eritrea after having allowed its independence. The most potent mobilising factor for Eritreans is the threat of encroachment by Ethiopia on their hard-won sovereignty. For Ethiopians who opposed Eritrean independence, the threatened loss of Badme is emblematic of the loss of Eritrea, while for many Eritreans the fate of that town of 5,000 cannot be separated from their worry that Ethiopia may one day try to regain access to the sea. For both sides, losing Badme would make the sacrifices of the 1998-2000 conflict much harder to justify.

While neither Ethiopia nor Eritrea wants to return to combat, incidents of isolated violence have been occurring with increasing frequency along the border, as have reports of incursions by troops into the neutral zone. There is no real dialogue between the parties. Each views the other's government as decaying and its military as weak and unprepared. Each supports elements of the other's opposition, and, perhaps most dangerously, underestimates the will of the other to hold together if there is a new military confrontation. All these are attitudes eerily similar to those that prevailed prior to and during the war.

The integrity of the peace agreement is on the brink of being compromised. Despite its renewal of the UNMEE mandate and its correct insistence that the agreement be implemented immediately and without renegotiation, the UN Security Council remains relatively unengaged and preoccupied with other responsibilities. Washington, which negotiated the agreement in tandem with the AU, has largely ignored the issue, despite its interest in regional stability. The AU has remained largely silent as well.

The international community cannot afford to look away and hope for the best, however. Vigorous diplomacy is needed now. While the parties should not be permitted to deviate from implementing a Boundary Commission decision that both agreed would be “final and binding”, creative solutions can be found to make implementation more politically acceptable by reducing the security and humanitarian impacts while demarcation proceeds. These diplomatic efforts should not be the prerequisite for implementation. But an early demonstration that the international community is serious about finding ways to soften the losses perceived by both parties would be a positive inducement for constructive action. Timing is important since an Ethiopian decision not to cooperate with the October schedule could set in motion a rapid deterioration of the situation, and a small incident – whether unplanned or provoked by either side – could easily escalate out of control.

RECOMMENDATIONS

To the governments of Ethiopia and Eritrea:

1. Implement the peace agreement promptly and fully and in particular provide the Boundary Commission and UNMEE all necessary support and security guarantees so that demarcation of the border can begin in October 2003 pursuant to the Boundary Commission’s April 2002 decision.
2. Seek creative ways to facilitate implementation of the Boundary Commission’s decision by negotiating parallel initiatives with the help of the U.S., AU and EU aimed at reducing the humanitarian impacts on the populations of the border region and preventing conflict which might result from the demarcation process.

To the governments of the United States, the African Union and the European Union:

3. Undertake an immediate public diplomacy campaign that spells out for political elites in Ethiopia and Eritrea the importance of full implementation of the Algiers agreement, the benefits of compliance, and the costs of collapsing the peace process, and develop a set of gradually escalating political and financial measures that could be applied against a party that blocks implementation of the agreement.
4. Conduct missions to the contested areas of the border in advance of the scheduled October 2003 start of border demarcation to explain the approach taken and absorb some of the responsibility for easing the political, security and humanitarian difficulties that will ensue when the parties implement the Boundary Commission’s decision.
5. Begin to discuss immediately with each party, and coordinate with each other to the extent possible on, the parallel initiatives cited in recommendation 2 above, which could include the following measures:
 - (a) dual citizenship for affected populations, maintenance of existing citizenship in cases where administration changes hands, and/or codification of the rights of non-citizens living in either country;
 - (b) immediate opening of the border and negotiation of port access for Ethiopia;
 - (c) administration by UNMEE for a short face-saving period of the border areas that are to change hands;
 - (d) mutual agreement, in the context of technical alterations suggested by the two parties’ field liaison officers, on small adjustments to the demarcation line to satisfy humanitarian, geographical, security or political needs; and
 - (e) generous compensation and development aid to affected local populations, including support for relocation, reconstruction of infrastructure, and restoration of livelihoods.

To the UN Security Council:

6. Consider early expansion of UNMEE's mandate so that it can administer for a short face-saving period the border areas that are to change hands, and instruct UNMEE once demarcation of the border has begun to:
 - (a) conduct joint patrols along the border with the parties; and
 - (b) create a rapid response verification capability to troubleshoot border difficulties and deter those who may want to manufacture a problem, including to embarrass a national government intent on fulfilling its obligations.

Nairobi/Brussels, 24 September 2003



ETHIOPIA AND ERITREA: WAR OR PEACE?

I. INTRODUCTION

Before they fought their war between 1998 and 2000, Eritrea and Ethiopia maintained warm political, security and economic relations and followed a robust joint regional agenda. In the aftermath of that traumatising conflict and riven by deepening food crises, however, the two have mostly turned inward.¹ The war forced hundreds of thousands of villagers and nomads to flee from both sides of the joint border, reducing them to a precarious existence in makeshift settlements. Over a million people became refugees, many because both sides resorted to mass expulsions.

The ceasefire and peace agreements signed in Algiers in 2000 gave hope for gradual normalisation, and for two years there was encouraging compliance. Not one life was lost on either side as a result of hostile fire. The Special Representative of the Secretary General, Legwaila Joseph Legwaila, and his two deputies, Ian Martin and Cheikh-Tidiane Gaye, provided excellent leadership of the UN mission. In sum, it was a model peacekeeping operation.

In April 2002, however, the Boundary Commission established by the peace agreement² handed down its decision delimiting the 1,000 km border and

placing the town of Badme, the battle for which in May 1998 was the proximate cause of the conflict, on the Eritrean side. Despite the agreement's terms that the Boundary Commission ruling would be accepted as "final and binding" by both parties, Ethiopia claimed that the judgement resulted from a flawed process and launched a legal and political campaign designed to reverse or alter it. By mid-2003, implementation was stalled and tensions were rising.

The urgency of resolving the border deadlock is all the greater because the two countries face massive humanitarian crises. Two thirds of Eritrea's population needs food assistance. UNICEF warns that Ethiopia's social services, governance and safety nets may collapse in the next decade under the burden of the HIV/AIDS pandemic. The economies are quite different but alike in their vulnerability to the shock of another war. Eritrea's small economy was devastated by the 1998-2000 fighting and has not yet recovered. Ethiopia, one of Africa's largest countries, has a diversified economy, though one heavily marked by government and party ownership. Its development agenda would be crippled by renewed conflict.

Further escalation between Ethiopia and Eritrea would exacerbate an already perceptible trend towards destabilising intervention in the affairs of neighbours in the Horn and East Africa. At present, Ethiopia, Yemen and Sudan are supporting the Alliance of Eritrean National Forces; Ethiopia is supporting the Somali Reconciliation and Restoration Council; Eritrea is aiding the Oromo Liberation Front from Ethiopia and the National Democratic Alliance from Sudan; Egypt and Djibouti are supporting the Transitional National Government in Somalia; Sudan is supporting the Lord's Resistance Army in Uganda and the Eritrean

¹ Ethiopia has been more engaged than Eritrea in the New Partnership for Africa's Development (NEPAD) initiative, peacekeeping operations, international trade debates, and other manifestations of international engagement, but far less than before 1998.

² The Boundary Commission is based at the International Court of Justice in The Hague, and is one of three Commissions established by the Algiers Agreements. The other two focus on war damage claims and war causes.

Islamic Jihad; and Uganda is supporting the Sudan People's Liberation Movement/Army (SPLA).

In order to shape its response, the international community needs to understand better how Ethiopia and Eritrea view victory and defeat. The latter considers that it won the war because it held on to the Red Sea port of Assab, which Ethiopia had ceded at independence, and because the Boundary Commission awarded it Badme, which Ethiopia had retaken during the fighting. It believes it could hold out a second time if the war resumes. Ethiopia, however, substantially prevailed in the ground combat and believes it can militarily defeat Eritrea again.

Though the Ethiopia-Eritrea confrontation is a classic candidate for conflict prevention, not least because it has been unfolding – or unravelling – in slow motion, little has yet been done. The international community risks demonstrating again that it only takes notice in Africa when war has already erupted and people are dying. The challenges include:

- preventing escalation and a return to war;
- ensuring compliance with the Boundary Commission's decision in order to implement the Algiers agreement;
- softening the political blow that compliance involves for Ethiopia;
- avoiding the security problems associated with compliance;
- promoting mutually beneficial cooperation between the two countries; and
- producing sustainable regional security.

Physical demarcation of the border is a crucial component of the peace process and must be followed to its conclusion. There may never have been a boundary case in which one party did not take issue with the decision, so the present difficulty is neither surprising nor exceptional. Nevertheless, there are negative repercussions resulting from the Boundary Commission's decision. The international community should help mitigate them in order to make Ethiopia's decision to cooperate easier and – by reducing the disruption to lives on both sides of the border – to create an environment in which peace can be firmly anchored.

II. BEYOND BADME: CAUSES OF THE CONFLICT

On 12 May 1998, simmering tension erupted into full-scale military conflict at the border village of Badme that no one saw coming.³ Even the two governments were surprised by its scale and speed.

Ambiguity over the exact location of the long border was the most visible cause. Large stretches are relatively arid, unproductive, and sparsely populated, with meagre infrastructure, basic services and governmental presence. Except for a few fixed crossing points, the border did not exist in any physical sense, and people crossed it regularly to find grazing for their herds, to trade, or to seek employment. In fact, the border had never been demarcated; both the Eritrean and the Ethiopian governments relied on their own interpretations of imprecise colonial treaties from 1900, 1902 and 1908. Prior to the war and the establishment of UNMEE, the border was a grey zone in which Eritrea and Ethiopia had overlapping and competing influence.

Badme was a microcosm of that confusion. Ethiopia administered it before the war, and its residents had largely voted in that country's elections. The currency was the Ethiopian Birr, not the Eritrean Nakfa. However, the two ruling parties had contested the area when they were still liberation fronts. Eritrea claimed that the colonial treaties clearly demonstrated it should be in Eritrea. No precise population figures exist for any of the border areas. Badme and its environs are estimated roughly to have 5,000 residents. "No one has figures", said one diplomat. "That is part of the problem".⁴

In fact, most aspects of the bilateral relationship were relatively informal as a result of a party-to-party relationship between the two liberation movements turned ruling parties and the friendship and shared history between Ethiopian Prime Minister Meles Zenawi and Eritrean President Isaias Afewerki. During their common war, which deposed Mengistu Haile Mariam and his Derg

³ John Prendergast, "U.S. Leadership in Resolving African Conflict: The Case of Ethiopia and Eritrea", U.S. Institute of Peace, 2001.

⁴ ICG interview, September 2003.

regime in 1991 and led to Eritrea's independence, the two movements developed a battlefield alliance. However, the informal lines of communication between Meles's Tigrayan People's Liberation Front (TPLF) and Isaias's Eritrean People's Liberation Front (EPLF) never solidified into clear institutional ones.⁵

After Eritrea became independent in 1993, this lack of bilateral institutional mechanisms initially did not seem to matter, due to the historically close ties between the two leaderships. An open border facilitated the free movement of people and goods. There was close political and security cooperation and efforts to integrate economies and set up local committees to settle disputes. But the two sides lacked the foresight to negotiate a treaty to define their border, and they failed to address the issue of Ethiopians of Eritrean descent whose citizenship could be considered affected by Eritrea's independence. As a result, the "ownership" of citizens and resources along the border was open to interpretation and reinterpretation according to convenience.

In the years leading up to the war, Ethiopia and Eritrea often made conflicting claims regarding the location of the border. Provocative military manoeuvres escalated tensions until Eritrea entered and occupied Ethiopian-administered Badme in May of 1998, and the war began.

Of course, other factors also fomented animosity. Many differences arose between the neighbours over migration, labour, and trade. Particularly controversial was Eritrea's introduction of its own currency in November 1997, despite Ethiopia's strong protest. Tension also developed over the use of the port of Assab, which Ethiopia had ceded to Eritrea at independence. Its loss cost a suddenly landlocked Ethiopia significant revenues, and resentment smouldered.

On both sides of the border, people refer to inter-communal reasons for conflict between Tigrayans and Eritreans. "There is ill feeling between the two peoples", said the leader of an Ethiopian women's organisation. "The hostility emerged out of pride, and

different historical heritages. The border conflict is a people-to-people dispute, not one between governments".⁶ Inter-communal tension can be attributed not only to historical circumstances but also to natural resources in an area where population growth far outstrips the available productive land.

Ultimately, though, the driving force was competition between two ruling parties that had not yet – and still have not – found a way to resolve disputes through institutional mechanisms of the state.

⁵ The TPLF is now the dominant party in Ethiopia's ruling coalition, the Ethiopian People's Revolutionary Democratic Front, and the EPLF transformed into what is now the ruling party in Eritrea, the People's Front for Democracy and Justice.

⁶ ICG interview in Ethiopia, July 2003.

III. 1998-2000: THE CONFLICT AND THE PEACE PROCESS

Despite its surprise, the international community reacted quickly to the war and for the most part maintained a unified front. Within days, a U.S. team led by then Assistant Secretary of State Susan Rice and a Rwandan team led by then Vice President Paul Kagame were invited by both parties to assist in preventing further escalation. Working together, they produced a framework for resolution of the border conflict, but it failed to stop the fighting because it was accepted only by Ethiopia.

About the only visible success of this early mediation came in response to an increase of Ethiopian aerial attacks and Eritrean retaliation. In a move that probably saved thousands of lives and much destruction, a U.S. team, supported by frequent calls from President Clinton to the two leaders, negotiated an air strike moratorium that ended the threat to both capitals and effectively limited destruction to the border area. Although Ethiopia violated it in the late stages of the conflict, this moratorium saved much of the infrastructure in both countries and made post-conflict reconstruction less daunting.

In late 1998 President Clinton named former National Security Adviser Anthony Lake as his Special Envoy to the region. Lake and a U.S. civil-military team shuttled for two years between Asmara and Addis Ababa and worked closely with the Organisation of African Unity (OAU), the predecessor organisation of the AU, and its designated lead country, Algeria. In the winter of 1998, the OAU, in collaboration with the Lake team and drawing upon the original U.S.-Rwanda work, produced two drafts: a Framework Agreement and Modalities of Implementation. Ethiopia accepted them but Eritrea did not. Heavy fighting broke out along the border again in February 1999, and Ethiopia resumed air strikes on civilian targets, notably in and around the ports of Massawa and Assab.

By August 1999, both parties had accepted the Framework Agreement and the Modalities of Implementation but Ethiopia judged unacceptable a third document prepared by the OAU, the UN and the U.S. on the technical arrangements for implementation. The following May, the Ethiopians conducted a massive offensive, breaking Eritrea's defensive line in numerous places, bombing ports

and airports, and thereby disrupting supply lines, including those through which humanitarian aid was flowing. The offensive created further urgency at the Algiers negotiations, where the mediators prioritised a ceasefire that was signed on 18 June 2000. It called for a peacekeeping mission to monitor it, the redeployment of forces, and a demilitarised Temporary Security Zone (TSZ) completely inside what was considered to be Eritrean territory.

UN Security Council Resolution 1298 of 31 July 2000 established UNMEE, and by mid-September the first UN military observers had been dispatched and logistical preparations initiated.⁷ On 2 December the Military Coordination Commission, a body established by the UN and the OAU to enable the UN and both parties to communicate on military matters and so reduce the risk of potentially lethal misunderstandings, held its first meeting.

On 12 December 2000 and after further negotiations, President Isaias and Prime Minister Meles signed the broader Algiers agreement, witnessed by the UN Secretary General, the OAU, the EU and the U.S. It made provision for first delimiting and then demarcating the border,⁸ investigating the war's causes, and addressing both sides' compensation claims.

⁷ UN Security Council Resolution 1320 (15 September 2000) authorised a force of 4,200 military personnel. The actual size, as of 31 July 2003, was 4,074. That same resolution mandated UNMEE to assist in ensuring observance of the security commitments agreed by the parties to the Algiers agreement; monitor and verify redeployments of Ethiopian and Eritrean forces that were to be separated by a distance of 25 kilometres; monitor the TSZ to assist in ensuring compliance with the ceasefire; chair the Military Coordination Commission; coordinate and provide technical assistance for demining in the TSZ and adjacent areas; and coordinate in the TSZ and adjacent areas with humanitarian and human rights activities of the UN and other organisations. This mandate was broadened by Resolution 1430 (14 August 2002) to cover demining in support of demarcation and administrative and logistical support for the Boundary Commission's field offices. The most recent six-month extension of UNMEE was decided in Resolution 1507 (12 September 2003).

⁸ Delimiting refers to the process of establishing the course of the border on maps by reference to treaties and other documentary evidence, demarcation to the physical identification of the border on the ground by laying marker stones and similar means.

IV. 2000-2003: IMPLEMENTATION OF THE AGREEMENT

The war sparked major turmoil within the ruling parties in both countries. President Isaias and Prime Minister Meles faced significant, but very different, challenges from prominent members of their parties – the PFDJ in Eritrea and the TPLF in Ethiopia. Throughout the war and afterwards, pressure inside Ethiopia came from hardline elements, who saw Meles as too soft on Eritrea and too willing to negotiate rather than to push militarily on to Asmara and Assab and topple Isaias. Pressure inside Eritrea came from moderates, who considered Isaias unwilling to compromise and responsible for the war. Their criticism was also directed at the lack of democracy in Eritrea, the failure to follow constitutional procedures, and what they perceived to be the monolithic power wielded by the president.⁹

Both governments countered these internal challenges through a mix of arrests, sackings of officials, court cases, and marathon party meetings. A weakened Meles barely survived a major rift in the TPLF. Eritrea detained a number of leading reform advocates and closed the independent press. Neither situation has been fully resolved, and internal political dynamics – though very different in each country – will greatly influence how the challenges of the next weeks and months will be handled. Meles may have much less political space than Isaias in which to make decisions. He risks being replaced by harder line TPLF elements if he proceeds with full implementation of the Boundary Commission's decision.¹⁰

For the first two years after signature of the Algiers agreement, there was adequate political will and general compliance, although both parties created specific logistical problems. For example, UNMEE experienced resistance from both regarding its freedom of movement in the areas adjacent to the

TSZ.¹¹ However, not one life was lost to hostile fire during what appeared to be a model peacekeeping operation.

In December 2001 Ethiopia and Eritrea submitted their claims for war damage to the Claims Commission established by the Algiers agreement. It held hearings one year later and is now determining the awards. Both parties have cooperated well with the Commission, and although it has extended its schedule due to the "breadth and complexity of the work remaining to be done"¹², it is progressing steadily.

The return of prisoners of war (POWs) began immediately after the peace agreement was signed, and both countries have officially repatriated everyone. However, Ethiopia accuses Eritrea of retaining some, including a pilot who was shot down and paraded through the streets in 1998.¹³ Reports abound regarding human rights abuses against POWs on both sides.

Many refugees remain in Ethiopia, mostly Eritreans of the Kunama ethnic group who followed the Ethiopian troops when they pulled out of Kunama-inhabited lands occupied during the fighting and redeployed to pre-6 May 1998 lines. The Kunamas claim that they are oppressed in Eritrea and fear reprisals if forced to return.¹⁴ Additional refugees have been filtering in, mostly young men who claim to be fleeing forced conscription in Eritrea.¹⁵ Other war victims include an estimated 75,000 Ethiopians of Eritrean origin whom Ethiopia forcibly expelled to Eritrea on national security grounds without any hearing or appeal. Eritrea expelled or took part in the voluntary repatriation of an estimated 70,000 Ethiopian residents, despite its claims that it had no official expulsion policy comparable to Ethiopia's.

⁹ ICG correspondence with Horn of Africa expert Kjetil Tronvoll, August 2003.

¹⁰ Eritrean officials strongly reject this line of analysis, arguing that the TPLF overstates its internal divisions in order to reduce external pressure on the government. ICG interviews in Asmara, August 2003.

¹¹ "Progress Report of the Secretary-General on Ethiopia and Eritrea" to the UN Security Council, S/2003/665, 23 June 2003.

¹² Ibid., Annex II, "Note on the work of the Eritrea-Ethiopia Claims Commission".

¹³ BBC News, "Ethiopia, Eritrea to Free all POWs", 23 August 2002, and Amnesty International Annual Report, 2003.

¹⁴ IRIN, "Plight of the Kunama Refugees", 2 December 2002, and "Fire Again Breaks Out At Refugee Camp for Eritreans", 9 May 2003.

¹⁵ IRIN, "Eritrean Deserters in 'Enemy' Land", 22 November 2002.

The second of the three commissions established by the peace agreement, the Commission to Investigate the Origins of the War, has not begun work since the situation between the two former belligerents is “not conducive” to such an investigation.¹⁶

A. THE DISPUTED BOUNDARY COMMISSION DECISION

The UNMEE peacekeeping operation has gone relatively smoothly for the most part. The Eritrean and Ethiopian armies are disciplined, and the administrations in both capitals have been reasonably cooperative. However, the first serious crack in the implementation process occurred with the decision of the Boundary Commission that the village of Badme is on the Eritrean side of the border.

The Algiers agreement spelled out that a neutral Boundary Commission would “delimit and demarcate the colonial treaty border based on the pertinent colonial treaties...and applicable international law”. The parties agreed that the decision of the Commission would be “final and binding”. The agreement also specified that “the parties request the UN 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”.¹⁷

Ethiopia and Eritrea each appointed two members of the Commission, who then selected the fifth member to serve as president.¹⁸ The parties did not

authorise the Commission to make an ad hoc ruling based on what it might consider a “fair” modern boundary. Rather, its mandate was to utilise as the sources of its decision the colonial treaties of 1900, 1902 and 1908, applicable international law, and the OAU’s 1964 resolution on the sanctity of existing borders. The treaties were to be the main – but not exclusive – source of evidence. Other factors that could be introduced by the parties included administrative patterns and any customary international law that might bear on the case.¹⁹

When the Boundary Commission announced its decision in April 2002, both Asmara and Addis Ababa initially claimed victory. The source of confusion was the decision itself, which did not identify coordinates for the village of Badme. The Commission clarified on 28 March 2003 that the area known as the Badme Plains largely was Ethiopian, but the village of Badme was inside Eritrea.²⁰

Both parties formally accepted the April 2002 decision, as did the UN Security Council. However, Ethiopia presented a detailed response that raised serious questions about the process. It stated that, while it accepted the Commission’s decision, “during the demarcation phase, when the Commission will have its first opportunity to examine the situation on the ground in the border region...certain local problems can be addressed”. It added that such local problems, if not carefully treated, could give rise to further conflict and suffering. Its specific complaints ranged from the claim that it possessed evidence that contradicted elements of the Commission’s decision to the fact that the border delimited by the Commission would divide a number of communities. It requested the Commission to address the evidentiary issues

¹⁶ IRIN, quoting Said Djinnit of the African Union, in “AU Commission Report Still Awaited”, 28 July 2003.

¹⁷ “Agreement between Eritrea and Ethiopia”, Algiers, 12 December 2000, available at U.S. Institute of Peace Library, www.usip.org/library/index.html.

¹⁸ The Commission is a distinguished one. Ethiopia appointed Prince Bola Adesumbo Ajibola, a Nigerian citizen and former judge on the International Court of Justice at The Hague; and Sir Arthur Watts, a British citizen and former legal adviser of the Foreign and Commonwealth Office, ambassador, and international mediator on state succession issues with respect to the former Yugoslavia. Eritrea appointed W. Michael Reisman, a U.S. citizen and professor of international law at Yale University; and Stephen M. Schwebel, a U.S. citizen and former president of the International Court of Justice. These four then selected as their president British citizen

Elihu Lauterpacht, the director of the Research Centre for International Law at Cambridge University and a prominent writer on international law as well as practitioner before the International Court of Justice and other tribunals.

¹⁹ Ethiopia-Eritrea Boundary Commission, Delimitation Decision, Chapter Three (The Task of the Commission and the Applicable Law), 13 April 2002.

²⁰ The Commission’s deliberations were not conducted in public, and its decision was announced as that of the Commission without indication whether there were any differences between its members. While Badme is the point of greatest contention, both sides have additional concerns: Eritrea’s centre on the loss of Zelambessa and Tsonora, while Ethiopia is unhappy at the loss of the Irob area.

through a further deliberative process and the community division issues during demarcation.²¹

The Commission rejected Ethiopia's requests, explaining that it had acted under the Algiers agreement, which provided no appeal procedure for a "final and binding" decision, that no evidence or legal research presented by a party after the decision had been rendered could be used to alter the decision, and that the delimited line could only be modified by agreement of the two parties. Although it is in the parties' mutual interest to look at the humanitarian and security implications of the border line - and they may be considered obliged to their citizens as responsible governments to do so - no legal requirement arises from the Algiers agreement.

Given the complexity of the Commission's task, it may well be possible, at least in theory, to identify one or another procedural flaws but the fact remains that the agreement signed by both parties makes no provision for reopening the decision. The consensus among independent experts is that the Boundary Commission, which consisted of experienced professionals four fifths of whom were selected by the parties themselves, made a good faith effort to carry out their mandate under the Algiers Agreement.²² The problem now is to ensure that the decision is carried out, except in so far as Ethiopia and Eritrea jointly agree to modify it, and that this happens in a manner that solidifies the peace rather than creates new points of contention and potential conflict.

B. DIPLOMATIC FALLOUT

UN Secretary General Kofi Annan has called for demarcation of the border pursuant to the Boundary Commission's decision and further dialogue between the parties to proceed on parallel tracks, saying that:

Expeditionary demarcation of the border is crucial... Since the terrible suffering of war ended three years ago, the Governments and peoples of the two countries have invested heavily in peace. It is crucial that they take

the remaining steps required to benefit fully from the yields of that investment.²³

Eritrea has not rejected the possibility of negotiating unspecified improvements or practical humanitarian measures with Ethiopia but it insists that demarcation must precede any such negotiation, dialogue or other process aimed at normalisation of relations, or even amelioration of the worst human effects of the demarcation, which will cut some communities in half. Ethiopia insists that the Boundary Commission's decision must be revisited before demarcation occurs. Essentially, neither side has moved from its position for sixteen months, and the Ethiopian embassy in Asmara has been closed since January 2003.

Ethiopia says that it remains committed to the Algiers peace agreement and adds of the Boundary Commission's decision, "The most we can do is to say that the decision is unfair. We have to live with it".²⁴ Nevertheless, it is playing a form of diplomatic brinkmanship to see if it can extract concessions in the demarcation stage. An official said:

Interposing peacekeepers and telling us to implement won't assist the parties. Yes, the agreement is final and binding. But the whole focus is on legality, and people forget that the objective of the process is on achieving a lasting peace. If the demarcation fails to achieve this, then what is the point? The demarcation of this line will plant seeds of future conflict. The moment UNMEE leaves, within days no one can tell the situation. If we are pressed for implementation of this line, this is a recipe for disaster. Once it is unleashed, war will ensue.²⁵

The greatest concern of senior Ethiopian officials is not that the army would defy orders to implement the decision and renew hostilities but that border incidents provoked by opponents of the decision would trigger renewed conflict.²⁶ "The government might in the end accept to implement the ruling, but

²¹ For example, Ethiopia asked that the outer boundary of the town of Zelambessa be determined more precisely during demarcation.

²² ICG interviews, August and September 2003.

²³ "Progress Report of the Secretary-General", op. cit.

²⁴ ICG interview with an Ethiopian official, in Ethiopia, July 2003.

²⁵ ICG interview in Ethiopia, July 2003.

²⁶ Some diplomats did express concern to ICG, however, that the Ethiopian military might not uphold a decision to allow the demarcation to proceed.

the people will not”, said an Ethiopian community activist. “The Tigrayans would instigate skirmishes, and this could erupt into full scale war”.²⁷

Eritrea’s position is that it is taking a principled stand for international law, that justice delayed would be justice denied, and that with respect to the Boundary Commission’s decision, as one official said:

There is nothing to discuss. It is a closed chapter. There is nothing ambiguous about the process. We feel we are the one to have complaints with the process, but we accepted the decision in advance as final and binding. Either we have a solution or we don’t. People in Eritrea are fed up. Either pressure the Ethiopian government to implement the decision and we can all look forward to peace, or the international community should just leave us alone. The only way to have a solution is to implement this agreement.²⁸

The Eritrean government points out that it accepted what it deemed to be an unfavourable decision four years earlier in a territorial dispute with Yemen over the Hanish Islands, and it expects the Ethiopian government to do the same.²⁹ It argues that if Addis Ababa is recalcitrant, the Security Council should bring pressure to bear to allow the demarcation to proceed. “If the decision is reopened, then we will reopen the Hanish Islands decision”, warned one official.³⁰ A diplomat added that “The government won’t talk [about any other issue] as long as it perceives that Ethiopia is occupying its land”.

Early in 2003, Ethiopia appealed for UN help in adjusting the boundary decision. The Secretariat responded that the UN could not engage in reinterpretation or revision of the decision on the basis of the Algiers agreement, that the article cited by Ethiopia anticipated humanitarian problems for those caught on the “wrong” side of the border

once demarcation was final and was not intended to vary the line of delimitation.³¹

C. RISING BORDER TENSIONS

Security along the border has become more brittle as the demarcation is delayed. Troops from both sides, but particularly Ethiopians, have made illegal incursions into the TSZ.³² Eritrean troops continually frustrate UNMEE’s freedom of movement in adjacent Eritrean areas. Shootings along the border are also increasing, by troops and militias alike. Five Italian missionaries were shot by Eritreans in June when they were mistaken for fleeing Eritreans.³³ On 18 May an Eritrean boy was killed by Ethiopian troops after crossing the border in search of his livestock.³⁴ Ethiopian herdsmen – often accompanied by armed men – have more frequently entered the TSZ, heightening the risk of armed clashes. Shootings were reported in the TSZ in April between local militias,³⁵ but whether this was related to the border issue or competition over resources remains unclear.

Mines remain the greatest danger to those who live and work along the border. On 21 August 2003, six persons were killed in Ethiopia when their tractor struck a mine.³⁶ Mine clearance by UNMEE, NGOs and governmental agencies was going steadily until that month, when Eritrea asked most of the teams to leave, asserting that its demining authority should do the job.³⁷ Particularly worrisome is that since early 2003, new mines have been laid on

²⁷ ICG interview in Ethiopia, July 2003.

²⁸ ICG interview in Eritrea, August 2003.

²⁹ The Hanish-Zuqar Islands were awarded to Yemen based on its relatively recent history of use and possession of the islands. The full text of the International Court of Justice’s 94-page decision on the Eritrea-Yemen dispute can be downloaded from the International Boundaries Research Unit at <http://www-ibru.dur.ac.uk>.

³⁰ ICG interview, August 2003.

³¹ The Ethiopian appeal cited Article 416 of the Algiers agreement, which calls for UN assistance in dealing with humanitarian problems arising from the Boundary Commission’s decision. ICG interviews, July and August 2003.

³² In August 2003, the UN officially protested to Addis Ababa the entrance of armed troops into the TSZ in order – they said – to play football. IRIN, “UN Protests to Ethiopia over border incursions”, 14 August 2003. Some diplomats believe that the football match was a provocation. ICG interviews, August 2003.

³³ IRIN, “UN concerned about upsurge in border shootings”, 4 July 2003.

³⁴ “Progress Report of the Secretary-General”, op. cit.

³⁵ Ibid.

³⁶ IRIN, “Six Killed in Mine Blast”, 22 August 2003.

³⁷ Eritrea had already told one of two international demining groups to leave the country in June 2003. IRIN, “Government has capacity to clear mines itself – government ministry”, 13 June 2003.

roads previously cleared, endangering UNMEE patrols and local inhabitants alike. The Eritrean Islamic Jihad Movement, a group opposed to the government in Asmara, has claimed responsibility for some of the mines³⁸ but is probably not the only group involved. Many mines have been laid in the central sector, far from where it operates.

The demobilisation that was to have followed from the Algiers agreement has not begun in earnest in Eritrea where some 300,000 troops – a significant proportion of able-bodied adults in a country of 3.5 million – are being held ready for action.³⁹ Sustaining such a military posture comes with economic, social and internal political costs but demobilisation will not go forward while the border situation remains unresolved.⁴⁰ Ethiopia has halved its army to approximately 150,000 men but retains its considerable advantage in material, notably air power.⁴¹

V. THE OCTOBER 2003 DECISION POINT

On 7 July 2003 the Boundary Commission released a “Decision Pursuant to Article 15B of the Commission’s Demarcation Directions”, which responded to an Ethiopian complaint raised about procedures intended to facilitate the demarcation. Both parties are required to appoint Field Liaison Officers (FLOs) whose mission is to liaise with the demarcation team and serve as a conduit for communication between that team and the FLO’s government. Ethiopia objected that Eritrea was using this cover to send military officers to the border to gather intelligence. The Boundary Commission concluded that the already designated FLOs should be replaced and new rules promulgated for the selection of their successors, necessitating a further delay in launching the demarcation itself, which had initially been foreseen for April. However, it set a new date of October 2003 for work to begin.⁴²

Ethiopia thus faces a decision of great consequence in the next few weeks. It can block the process indefinitely simply by refusing the demarcation team visas but the consequences would be much harder to calculate or limit.

There is no appetite in either capital for starting another war. “We will leave no stone unturned to prevent a return to war”, said one Ethiopian official. “We don’t need it. Our interests are not in more war”.⁴³ Another insisted, “The conflict was stupid, and we won’t get into another one”.⁴⁴ An Eritrean official similarly said, “We don’t want to go to another war. The populations in both Eritrea and Ethiopia are suffering from drought and the effects of

³⁸ IRIN, “Islamic Group Says it Planted Mines”, 21 March 2003.

³⁹ The World Bank and European Union have set aside U.S.\$60 million for demobilisation activities, to be spent once the Eritrean government takes certain initial steps.

⁴⁰ ICG interview with Eritrean official, August 2003.

⁴¹ *Africa Confidential*, Vol. 44, No. 15, 25 July 2003, p. 1.

⁴² The demarcation team will be composed of technicians working under the authority of the Boundary Commission. It is to begin by planting pillars in the ground along the eastern sector of the border and conducting surveys in the central and western sectors. In addition to complying with the new requirements respecting FLOs, both parties will need to issue travel documents for the demarcation team and give adequate security guarantees. UNMEE claims it is not mandated to provide security for the demarcation team. Under the terms of the Algiers agreement, Ethiopia and Eritrea are not permitted to have military units in the TSZ. Living quarters for the demarcation team present another practical problem, and, of course, the presence of mines, discussed above, represents a further security threat.

⁴³ ICG interview in Ethiopia, July 2003.

⁴⁴ ICG interview in Ethiopia, July 2003.

war. Another war is not acceptable".⁴⁵ A diplomat agreed: "Eritrea does not want – nor can it afford – another war. There is no stomach there for military reengagement". However, there is some latent popular support for forcible possession of Badme on both sides of the border. "The situation is calm, quiet, but very unstable", said one diplomat.⁴⁶

Even Ethiopians not supportive of the government are opposed to the Boundary Commission's ruling. "People in the north of Ethiopia will be traumatised by the demarcation of this line", said one diplomat. "The graves of their ancestors will suddenly fall on the other side of the border".⁴⁷ Violence in this environment is all too imaginable, many have argued. "If you dictate to a group an opposite identity from that which it believes, they will fight", said an Ethiopian NGO leader. "You cannot dictate their identity".⁴⁸

Sentiment is strongest against demarcation of the Boundary Commission's line in the Tigray Region of northern Ethiopia bordering Eritrea. Leaders of the Tigray Regional Administration have stated unambiguously that populations along the border cannot accept the ruling. Tsegaye Berhe, president of the Administration, said "It is possible there will be trouble when they come to put the pillars in ... we cannot imagine the consequences". He warned that accepting the decision to concede traditionally Ethiopian-administered areas would weaken the TPLF, the leading party within the ruling EPRDF, in the eyes of the Tigrayan people.⁴⁹ According to Afeworki Gebre-Hiwot, an administrative official of the Badme area, resistance to the Commission's decision reaches the grassroots level. "We will never give Badme to Eritrea... The people will not accept this, and they will fight for it."⁵⁰ An Ethiopian official in the capital concluded, "The people there will never accept this as a fair decision. It is a nightmare scenario for Ethiopia".⁵¹ A diplomat added, "There are established local populations there that believe they are Ethiopian. This feeds into the politics of Mekelle [the Tigrayan Region capital], which feeds

into the hard-line Tigrayan elements in Addis Ababa".⁵²

While Meles held the line during the war against acquisition of territory by force despite heavy pressure from within his party, popular sentiment in Ethiopia views a failure to keep Badme as symptomatic of a larger concession of sovereign territory to Eritrea. There continues to be strong opposition to Eritrean independence, as well as criticism of the Meles government for recognising that independence and losing the country's outlet to the sea. "The territorial integrity of Ethiopia has been violated by letting Eritrea go", said a former minister. "People would be willing to fight to regain it. Every further inch that is lost is painful". An Ethiopian Muslim leader asserted that:

People want Assab, not Badme. They are angry that we didn't take Assab during the war. The Ethiopian people will pressure the government to try to keep Badme, but they really want to raise the issue of Assab and access to the sea. They want to take Assab. Many would line up to volunteer to fight for that.⁵³

Another community leader agreed that "Badme is not just Badme, it is symbolic of Ethiopia letting Eritrea go".⁵⁴ There is a widely held view in Ethiopian government circles that Isaias is weak and that if Ethiopia drags the process out, keeps up its pressure, and supports the opposition in Asmara, it is likely that his PFDJ government will collapse. An Ethiopian government official warned:

When UNMEE leaves, people here will say that aggression has been unjustly rewarded. The slightest spark will start a chain reaction. The combustible material in the area will await a small spark that will inevitably ignite. This is a moment for extremists. Rationality can be termed traitorous. It is easy for that madness to return again, and it will if we implement this decision blindly. People think we are traitors because we didn't occupy Assab. We won't be able to stop this madness a second time.⁵⁵

The EPRDF Congress in late September 2003 at which the leadership will debate whether to allow the

⁴⁵ ICG interview in Eritrea, August 2003.

⁴⁶ ICG interview, August 2003.

⁴⁷ ICG interview, August 2003

⁴⁸ ICG interview in Ethiopia, July 2003.

⁴⁹ "It will damage the image of the TPLF, and the capacity of the TPLF to hold the people may be restrained", IRIN, 1 April 2003.

⁵⁰ IRIN, 6 May 2003.

⁵¹ ICG interview in Ethiopia, July 2003.

⁵² ICG interview.

⁵³ ICG interview in Ethiopia, July 2003.

⁵⁴ ICG interview in Ethiopia, July 2003.

⁵⁵ ICG interview in Ethiopia, July 2003.

demarcation to proceed will be critical. The old dispute about whether Meles was right not to seize Assab or attempt to overthrow the government in Asmara during the war will be close to the surface.⁵⁶ Fault lines will be further exacerbated as the party attempts to widen its base, potentially at the expense of those in the TPLF who are most opposed to implementing the Boundary Commission's decision. The prime minister is:

fighting for his political life and his international reputation amidst growing internal dissent Meles has been under increasing pressure to refuse the [Border Commission] ruling.... The choice for Meles is to fight to hold on to Badme, with all that implies in terms of international aid, or face removal His opponents in Tigray and the TPLF are lining up with Amhara nationalists and various opposition parties which believe Ethiopia should have taken the port of Assab when it could have done so in 2000. Meles' own estimate of the danger these pose is to say: "If Badme goes, I go".⁵⁷

Similarly, there is support in Eritrea for the government's position that there should be no further negotiation on this issue and that Badme is Eritrea's. "President Isaias is very supported in his demand for Badme", said a regional analyst. "The Eritrean opposition even supports this".⁵⁸ Some go further, as an Eritrean community leader summarised: "If Ethiopia doesn't accept the ruling, we are going back to war, and people will support this. We fought, bled and died for this land, and it is our land. If they fight, we will fight for it again".⁵⁹

The government is losing patience with what it perceives as international acquiescence to Ethiopian delaying tactics. Some diplomats worry that Eritrea will eventually ask UNMEE to leave but its options are limited, so it continues to press the Security Council to impose sanctions on Ethiopia, as the Algiers Agreement suggests might be done in the event of non-compliance by a party with its military terms.⁶⁰ "Eritrea has to be convinced to stay with the

process", said a diplomat. "Their biggest fear is that they could lose everything".⁶¹

Eritrea is preparing for the possibility of further fighting. "If you cheat me once, shame on you; if you cheat me twice, shame on me", explained an official. "If Ethiopia produces more aggression, we will not be deceived. Since 2000 we know that Ethiopia is not finished, and we have been planning since then".⁶²

Emotions are further inflamed by the maintenance of large camps of displaced persons of Eritrean origin who were deported by Ethiopia during the war. The camps are a symbol of the humiliation caused by the conflict, and a wound that continues to fester in the absence of a final settlement on compensation.⁶³ They fuel Eritrean opposition to discussing adjustments of the demarcation line on the basis of "human geography", a term referring to people caught on the "wrong" side of the border by the demarcation. "How can 'human geography' be a problem for Ethiopia after all of the deportations, and in the context of huge resettlement programs in Ethiopia", asked an Eritrean official. "We are very exhausted intellectually with these machinations".⁶⁴

There may be some generational differences in Eritrea respecting a possible new conflict with Ethiopia. The policy of national service has alienated many younger Eritreans, who like their counterparts everywhere in the world would prefer to focus on furthering their education and diversifying their livelihood opportunities. National service requirements have left many in limbo, serving the state in the army or a variety of other jobs for much longer than the official eighteen-month term. However, an Eritrean military official asserted:

Everyone is learning the meaning of war. The former core of the army is being replaced by a new core. New people are gaining valuable experience. We are a small country with a big resource: our people. If war comes, our people will be united for survival. We will prevail.⁶⁵

⁵⁶ ICG interview with a diplomat.

⁵⁷ *Africa Confidential*, Vol. 44, No. 15, 25 July 2003, p. 1-2.

⁵⁸ ICG interview, August 2003.

⁵⁹ ICG interview in Eritrea, August 2003.

⁶⁰ ICG interviews, July and August 2003.

⁶¹ ICG interview, September 2003.

⁶² ICG interview in Eritrea, August 2003.

⁶³ The Claims Commission established by the Algiers Agreement will probably not complete its work until the border is demarcated and the final status of the border areas thereby determined.

⁶⁴ ICG interview in Eritrea, August 2003.

⁶⁵ ICG interview in Eritrea, August 2003.

VI. A COMPREHENSIVE CONFLICT PREVENTION APPROACH

“The [Algiers] agreement is final and binding, but can it be implemented”, asked a diplomat. “The question is not a legal one, it is a political one. Unless the political problem is solved, the legal one may not be able to be implemented”.⁶⁶ Another diplomat cautioned that:

The general experience in the last three years has been that if you step so much as a foot away from the agreed-to process, you end up in quicksand without a way out.⁶⁷

Key Security Council members, notably the U.S., which was so active at earlier stages of the Ethiopia-Eritrea dispute, the UN Secretary General, the AU and the EU, need to concert their policies. The objective must be to help Ethiopia decide to meet its commitments and accept demarcation of the border in accordance with the Boundary Commission’s decision and, through sustained, separate dialogues with the two parties, assist them in reducing the negative effects of demarcation.

Part of the effort should be a public diplomacy campaign that does what both the parties to the Algiers agreement and the witnesses failed to do at the time, namely spell out to the politically sophisticated segments of the public in Ethiopia and Eritrea the vital interest they share in resolving disputes solely by peaceful means. One side of this message relates to the principles of international law. The other side inevitably relates to the pragmatic matter of the benefits that will be made available to those who take this course - as opposed to more tangible penalties that would fall upon the party that reneges on binding commitments or resorts again to force. Candid talk would make it much easier for either government to implement the agreement, since the consequences of compliance or non-compliance would be visible for all.

Beyond that, the international community must decide whether to press for the immediate implementation of the Boundary Commission decision or delay the demarcation again in the hope that tensions might thereby recede, either of

themselves or because of the use made of the respite to satisfy the concerns of the parties, primarily Ethiopia, with respect to that demarcation. The decision should not be difficult. The postponement announced by the Boundary Commission in July was necessary to permit several practical logistical issues to be worked out and prudent because it allowed the Ethiopian ruling party time for debate at its Congress. There is little to be gained from further delay, however, except the short-lived and deceptive satisfaction derived from putting off the difficult moment. It is hard to see how it could do more than reinforce an already dangerous tendency of the parties to conclude that stonewalling and threats produce rewards.

Nevertheless, pressing the parties to proceed in October to demarcation pursuant to the Boundary Commission’s “final and binding” decision should not preclude a great deal of diplomatic activity aimed at reducing the negative fallout from that decision and sensitising communities along the border to the rationale for the changes in their status.

Some political analysts believe that Ethiopia’s faithful implementation of the agreement could indeed hasten the demise of the Meles government and produce a much harder line successor.⁶⁸ Eritrean officials discount the possibility and assert that it represents a bluff played by the Ethiopians throughout the original negotiation of the Algiers agreement and the present implementation stage in order to diminish international pressure.⁶⁹ In fact, the decision - whether to implement the Boundary Commission’s decision and the wider issue of relations with Eritrea - are volatile enough to impact on the composition of the government in Addis Ababa. Whether the consequences would be of a magnitude to bring down the government is unknowable, but their nature would certainly be much influenced by what the international community does or does not do to help the prime minister keep his commitments.

One helpful measure would be for members of the UN Security Council and representatives of the African Union to undertake explanatory missions to the contested areas of the border. This would allow some of the responsibility for the decision to be focused internationally, rather than on the

⁶⁶ ICG interview, September 2003.

⁶⁷ ICG interview, September 2003.

⁶⁸ ICG interviews, July and August 2003.

⁶⁹ ICG interviews in Eritrea, August 2003.

Ethiopian government, the larger rationale of implementation to be explained, and the discussion to be extended beyond the local political framework and its inherent limitations.

A key question that will confront the Security Council if Ethiopia does not comply with the demarcation process will be whether to impose some form of penalty.⁷⁰ The Eritrean government would view a failure to respond as an abdication of international responsibility for an agreement that was mediated by the U.S. and OAU and witnessed by the UN Secretary General, the EU's representatives and others.⁷¹ Diplomats experienced with the dynamics since the war broke out in 1998 believe with some reason, however, that, as one put it, "Neither side is amenable to being bullied by the U.S. or anyone else. The more they are challenged, the more they stick to their guns".⁷² It would be prudent to stress the benefits of implementation in the public diplomacy campaign that should be waged over the next weeks. If it becomes necessary to move to the cost side of the equation as a result of non-implementation or use of force, this should be done gradually, with carefully calibrated measures that allow for quick reversal if the offending party changes its behaviour.

In such an eventuality, first measures might involve putting the offending party in a form of diplomatic quarantine, as a sign of displeasure with its disdain for international law. This could involve, for example, cancellation of high level visits and refusal of certain contacts at the UN General Assembly or other major events. If the situation deteriorated from simple non-implementation to actual military action or refusal to rein in elements that attempted to provoke fighting, stronger measures would be needed. Along a continuum of responses, these might include an arms embargo imposed by the Security Council; reduction or cessation by donors of bilateral budget support (though not necessarily project or program support so as to limit the negative impact on the lives of ordinary citizens); reduction or termination of bilateral cooperation in counter-terrorism and

military matters and some areas of development assistance; a cut-off of all non-humanitarian assistance and World Bank and IMF credits; and a visa ban on leading officials of the offending government.

Simultaneously with the public diplomacy campaign and missions to the border, the U.S., EU, and AU should begin to craft jointly with the parties a package of measures aimed at facilitating full implementation of the agreement, mitigating tensions, addressing the concerns and hardships of communities living on the border whose lives will be disrupted by the demarcation, and ensuring that further conflict is prevented. Ideally, the various international actors should work closely together, perhaps even appointing representatives to a small common team that would deal with the parties. In view of the need to launch the initiative within the next weeks if it is to influence the decisions that Ethiopia and Eritrea will take in connection with the demarcation issue, however, it might be necessary for each to do what it can singly and then seek an early occasion to coordinate efforts better or even combine them.

This package cannot be developed fully in the few weeks before Ethiopia takes its decision on border demarcation, and as already argued, the international community should not delay the timetable for that demarcation again. The package should not, in other words, be the condition precedent for implementation. However, an early demonstration that the international community is serious about finding ways to soften the losses perceived by both parties would be a positive inducement for constructive action.

Such a package might include the following measures:

Dual citizenship for affected populations.

Although the boundary line will be demarcated as delimited by the Commission, the populations of areas where administration is transferred could have the option of dual citizenship. This would not be easy for either government to accept but might well be supported locally for commercial reasons. Border trade could be facilitated and the crucial survival strategy of labour migration made easier. Traditionally, Eritreans have bought teff in Ethiopia, and Ethiopians have migrated to areas of

⁷⁰ Four members of the U.S. House of Representatives have introduced a non-binding resolution that would urge the president to restrict economic and military assistance for a party that did not implement the Algiers agreement. IRIN, 12 August 2003.

⁷¹ ICG interviews in Eritrea, August 2003.

⁷² ICG interview, August 2003.

labour shortages in Eritrea. Two-thirds of Eritrea's external trade before the war was with Ethiopia.⁷³

A less ambitious variant that would leave the dual citizenship issue open for the future would be for both parties to provide guarantees of freedom of movement for the inhabitants of border towns, for example by issuing border crossing cards. Another option might be to allow individuals to retain their preferred citizenship regardless of which country administered the area, with guarantees for the rights (e.g., property and inheritance rights) of those whom the new administration considered "foreign".

Immediately Open the Border and Negotiate Port Access. The new border between Ethiopia and Eritrea should be reopened immediately, in order to unleash the economic potential that has been repressed for the past five years. Since the closed border has strangled the communities on both sides, this would provide immediate, tangible and mutual economic benefits that would cushion the political fallout from the demarcation decision. Joint infrastructure projects such as bridges and connector roads would be important, but should be developed only after the civilian populations on both sides of the new border were consulted as to what would be most useful.

The prospect of regaining access to Eritrean ports would be an important incentive for Ethiopia, which presently must rely on less efficient alternatives in Djibouti, Port Sudan and Berbera. "Such access should be guaranteed internationally", a diplomat said. "This would give the Ethiopian government something to show to its people".⁷⁴ There could be international guarantees that Ethiopian goods would not be confiscated if a situation developed between the two countries. Eritrea has already indicated to diplomats that it would allow the UN to "blue flag" any Ethiopian goods in order to ensure their safe passage and delivery.⁷⁵

Transfer administration to UNMEE for an interim period. In order to reduce the possibility of an immediate incident with uncertain consequences, UNMEE could assume temporary administration of areas in which administration is

to change hands. This would avoid the need for one side to turn its administration over directly to the other, at the least a potentially humiliating prospect. There seems to be mutual willingness to explore this idea. An Ethiopian official explained, "Badme is symbolically so important. It is impossible for the government to accept the decision as is. But that doesn't mean we have to possess Badme. We just can't hand Badme over to Eritrea".⁷⁶ An Eritrean official remarked, "It is not clear how administration is transferred. This is a technical issue. A soft landing is the best way to do things".⁷⁷ The Algiers Agreement calls for the UN "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".⁷⁸ It could assume temporary administration in order to prepare the population, something the two governments have not yet done. This would require an amendment to UNMEE's mandate.

Make humanitarian adjustments in the context of demarcation. Mutually agreeable alterations in the border demarcation, whether for political, geographical, or humanitarian reasons, could reduce not only immediate tensions but also the likelihood of security problems for the government that assumes administration of an area that it heretofore did not control. "The international practice of demarcation usually takes into consideration human factors", an international legal expert noted. "A delimitation line is often very abstract. On the ground realities must impact on demarcation".⁷⁹ A prerequisite for pursuing this, of course, is that both parties agree to implement the Boundary Commission decision, so that any alteration would be purely technical. Political negotiations would not be practicable in current circumstances. Rather, the field liaisons of the two parties – working with demarcation team surveyors – would be best positioned to recommend jointly possible amendments to the line, in the spirit of mitigating humanitarian problems. Nevertheless, this option is very controversial. Eritrea would only discuss small adjustments to the line if it had solid evidence that Ethiopia would allow demarcation to proceed based on the "final and binding"

⁷³ IRIN, 7 April 2003.

⁷⁴ ICG interview, August 2003.

⁷⁵ ICG interviews in Eritrea, August 2003.

⁷⁶ ICG interview in Ethiopia, July 2003.

⁷⁷ ICG interview in Eritrea, August 2003.

⁷⁸ Agreement between Ethiopia and Eritrea, op. cit.

⁷⁹ ICG interview, September 2003.

Commission decision. It also highly unrealistic that Badme could be adjusted in this fashion.⁸⁰

Compensate aggrieved parties generously. In order to reduce the pain from changes in administration of border areas resulting from the demarcation process, local residents should be given considerable help, whether to relocate if they wish or in the way of special economic and educational opportunities.⁸¹ Again, they should be consulted extensively to ascertain the most useful forms of compensation and economic promotion. Tangible economic benefits must result since empty promises could prove highly counterproductive. This is clearly an area where donors can make a difference.

VII. CONCLUSION

Ultimately, Ethiopia will have to accept and implement the Boundary Commission's ruling. Those who did much to help the parties end their war and produce the Algiers agreement in 2000, including UN Security Council members (especially the U.S.), the OAU, and the European Union need to understand the political and potential security repercussions of that impending decision and be prepared to help the parties discuss a package of practical parallel measures that allow the border to be demarcated peacefully in accordance with the Commission's findings and then sustained.

A first step would be to conduct a public diplomacy campaign to influence a wide circle in Ethiopia and Eritrea over the next few weeks, as the Boundary Commission's target for an October 2003 start for border demarcation nears. The campaign should clearly lay out the benefits of bringing this issue rapidly to closure and spell out as well, though in as non-threatening a manner as possible, the repercussions if this does not happen.

Simultaneously, it is important to assist the parties to develop measures aimed at facilitating full implementation of the agreement, mitigating tensions, and addressing the hardships of communities living on the border whose lives will be disrupted by the demarcation. The effort to construct such a package, which would help prevent fallout from the demarcation becoming a contributing factor to further conflict, would not be a requirement that must be met for demarcation to begin, but would aim to make it politically easier for the parties to keep their commitments under the Algiers agreement and for that peace agreement to be sustainable over the long term.

When it renewed the UNMEE mandate for a further six months on 12 September 2003, the Security Council decided to remain actively seized with the complex of remaining issues. It would be useful for the Council to consider ways in which UNMEE could make a further contribution to keeping the border area calm at this particularly delicate time. For example, it might instruct it to conduct joint patrols with the parties along the border and to establish a rapid response verification capability to trouble shoot any difficulties and deter those who might wish to manufacture a problem. It should

⁸⁰ ICG interviews, August 2003.

⁸¹ ICG interviews, July and August 2003. Some diplomats have even suggested building a new Badme on the Ethiopian side of the demarcated line.

also consider revising the mandate so that UNMEE could accept responsibility for briefly administering areas that are to change hands as a result of the demarcation. Such an extremely time limited role might make it easier for Ethiopia and Eritrea alike to implement the Boundary Commission's ruling since they would not have to hand sensitive areas over directly to the other party.

There is both a general and a specific international interest in seeing that all this gets underway in the next few weeks. The general point relates to the sanctity of agreements, including international guarantees, and other peace processes that are ongoing in Africa – in Sudan, Somalia, Liberia, Burundi and the Congo. The terms of the Algiers agreement are clear: the parties accepted that the decision that would be handed down by the Boundary Commission they created would be “final and binding”. If either side is permitted to go back on that, as Ethiopia threatens with respect to

the demarcation issue, or the international community does not respond vigorously to a risk of renewed conflict, it will become much more problematic both to reach and to implement future peace agreements.

More particularly, the Ethiopia-Eritrea peace process is at a turning point. If border demarcation is begun on schedule next month and a parallel diplomatic process can be moved forward to give the parties political cover and the populations on the ground the help they will need to live with the practical consequences, there are good reasons to believe that peace can be firmly anchored. If this does not happen, a highly destructive war could start up again with horrific consequences for the parties and destabilising implications for the entire Horn of Africa.

Nairobi/Brussels, 24 September 2003

APPENDIX A

MAP OF ERITREAN-ETHIOPIAN AREAS OF CONFLICT



Source: Country Profile, Eritrea 2003, Economist Intelligence Unit.

APPENDIX B

ABOUT THE INTERNATIONAL CRISIS GROUP

The International Crisis Group (ICG) is an independent, non-profit, multinational organisation, with over 90 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

ICG's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, ICG produces regular analytical reports containing practical recommendations targeted at key international decision-takers. ICG also publishes *CrisisWatch*, a 12-page monthly bulletin, providing a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world.

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September 2003

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EU Crisis Response Capabilities: An Update, Issues Briefing, 29 April 2002

CRISISWATCH

CrisisWatch is a 12-page monthly bulletin providing a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world. It is published on the first day of each month.

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* The Algeria project was transferred from the Africa Program to the Middle East & North Africa Program in January 2002.

APPENDIX D

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