

DETERMINATIONS, DECISION OF 7 NOVEMBER 2002

CONCLUSIONS, DÉCISION DU 7 NOVEMBRE 2002

DETERMINATIONS

7 November 2002

WHEREAS,

1. Questions have arisen as to the scope of the Commission's jurisdiction and powers,

2. Article 4(2) of the December 2000 Agreement mandates the Commission "to delimit and demarcate" the border between the Parties,

3. Article 4(15) of the same Agreement provides that "the delimitation and demarcation determinations of the Commission shall be final and binding" and that "[e]ach party shall respect the border so determined, as well as the territorial integrity and sovereignty of the other party",

4. Article 14(A) of the Demarcation Directions provides: "The Commission has no authority to vary the boundary line. If it runs through and divides a town or village, the line may be varied only on the basis of an express request agreed between and made by both Parties",

5. The Security Council of the United Nations in Resolution 1430 of 14 August 2002 called upon the parties "to cooperate fully and promptly with the Boundary Commission, including by implementing without conditions its binding Demarcation Directions, by abiding promptly by all its orders, including the two issued on 17 July 2002",

6. The Delimitation Decision of 13 April 2002 is final and binding in respect of the whole of the boundary between the Parties with the exception of Tserona, Zalambessa, Bure, the Eastern Sector, and the rivers, to the limited extent therein stated,

7. The Commission on 13 April 2002 stated that it "considers that the fact that it must now proceed to demarcate the boundary in accordance with the December 2000 Agreement does not qualify the immediate effect of the

determination of the boundary between the Parties and the limits of their respective sovereignties",

8. Both Parties have stated that they accept the Delimitation Decision as final and binding,

9. The Commission is bound, in implementation of the December 2000 Agreement, to proceed expeditiously to complete the delimitation in the above-mentioned localities and to demarcate the whole of the boundary,

10. The Commission believes that it would be helpful to the Parties in discharging their duties to each other and to the Commission for the Commission to determine the legal position in respect of certain matters,

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 or 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.

The Commission expects the Parties to act in accordance with these determinations.

London, 7 November 2002

Signed by the Commission:

(Signed) Professor Sir Elihu Lauterpacht, President

(Signed) Prince Bola Adesumbo
Ajibola

(Signed) Professor W. Michael
Reisman

(Signed) Judge Stephen M. Schwebel

(Signed) Sir Arthur Watts

(Signed) Dr. Hiroshi Murakami
Secretary

(Signed) Bette E. Shifman
Registrar