

ERITREA-ETHIOPIA BOUNDARY COMMISSION
STATEMENT BY THE COMMISSION OF 27 NOVEMBER 2006

COMMISSION DE DÉLIMITATION DES FRONTIÈRES ENTRE
L'ÉRYTHRÉE ET L'ÉTHIOPIE
DÉCLARATION DE LA COMMISSION EN DATE DU
27 NOVEMBRE 2006

Commission established pursuant to the Algiers Agreement of 12 December 2000 between Ethiopia and Eritrea. The terms of the Agreement, and its object and purpose, preclude leaving the boundary between Eritrea and Ethiopia undemarcated for a long period or indefinitely.

Commission lacks authority to vary delimited boundary line as prescribed in the Delimitation Decision of 13 April 2002 except in cases of “manifest impracticability”.

The approach of the Commission to its mandate as requiring to actually emplace pillars at the boundary points assumed that the necessary cooperation of the Parties would be forthcoming and that the United Nations Mission in Ethiopia and Eritrea would not be prevented from providing essential assistance.

The Algiers Agreement is a constitutional instrument creating an international institution and conferring upon it functions and powers. Its interpretation must be approached in the same way as the constituent instruments of international organisations, that is, by way of the concept of institutional “effectiveness”. Even though a governing text may not explicitly empower an organisation to act in a particular manner, international law authorizes, indeed requires the organisation, if necessary for the effective discharge of its functions, to interpret its procedures in a constructive manner directed towards achieving the objective the Parties are deemed to have had in mind. The same is true of international judicial organs, as found by the International Court of Justice (ICJ) in the *Territorial Dispute (Libyan Arab Jamahiriya/Chad)* case.

The manifest objective of the Algiers Agreement was to bring the border dispute to an end at the earliest possible date by means of the identification of a boundary established by the prescribed colonial treaties and applicable international law with as much precision as could be achieved without deciding *ex aequo et bono*.

The fact that the Commission began its demarcation activity in one manner does not mean that it is precluded from following another course when confronted by the lack of necessary cooperation by the Parties. The Commission considered that the most practical way in which it could perform its mandate was to provide to the Parties with a list of boundary points identified by modern techniques of image processing and terrain modelling.

The consistency of the term “demarcation” with this method is supported by the United Nations Secretary-General and the United Nations Security Council in the process of demarcation of the Iraq-Kuwait border in 1993. It is further affirmed by the manner in which the United Nations Convention on the Law of the Sea deals with the limits of maritime claims by States.

Proposal by the Commission that the Parties, over the following twelve months, terminating at the end of November 2007, consider their positions and seek to reach agreement on the emplacement of pillars. If the Parties have not reached the necessary agreement and proceeded significantly to implement it, or have not requested and enabled the Commission to resume its activity, by the end of that period, the boundary would automatically stand as demarcated by the boundary points listed in the Annex, and the mandate of the Commission could be regarded as fulfilled.

La Commission a été établie conformément à l'Accord d'Alger du 12 décembre 2000, conclu entre l'Éthiopie et l'Érythrée. Les dispositions de l'Accord, son objet et son but, ne permettent pas de laisser la frontière entre l'Érythrée et l'Éthiopie non délimitée, que cela soit pour une longue période ou indéfiniment.

Conformément à la Décision de délimitation du 13 avril 2002, la Commission n'a pas la compétence pour modifier une ligne frontalière délimitée, à l'exception des cas d'«impraticabilité manifeste».

L'approche que la Commission a adoptée vis-à-vis de son mandat, impliquant le placement de piliers aux points de frontière, supposait que les Parties soient disposées à coopérer dans la mesure du nécessaire et que la Mission des Nations Unies en Éthiopie et en Érythrée ne soit pas empêchée de fournir une assistance essentielle.

L'Accord d'Alger est un instrument constitutionnel qui crée une institution internationale et confère fonctions et pouvoirs à cette dernière. Il doit être procédé à son interprétation de la même manière que pour les instruments constitutifs des organisations internationales, c'est-à-dire, selon le concept de l'«effectivité» institutionnelle. Même s'il se peut que le texte qui régit une organisation ne lui donne pas explicitement le mandat d'agir d'une certaine façon, le droit international autorise, ou même exige de l'organisation, s'il s'avère essentiel à l'exécution effective de ses fonctions, d'interpréter ses procédures d'une manière constructive afin d'atteindre les objectifs auxquels les Parties ont supposément pensé. Ceci s'applique également aux organes judiciaires internationaux, tel que reconnu par la Cour Internationale de Justice dans l'Affaire du différend territorial (*Jamahiriya arabe libyenne/Tchad*).

L'objectif manifeste de l'Accord d'Alger était de mettre fin au différend frontalier, le plus rapidement possible, par l'identification d'une frontière établie par les traités coloniaux pertinents et le droit international applicable, et ceci avec autant de précision qu'il est possible d'atteindre sans avoir recours à une décision *ex aequo et bono*.

Le fait que la Commission ait, d'une certaine manière, commencé son activité de démarcation ne signifie en aucun cas qu'elle ne puisse emprunter une autre voie lorsqu'elle est confrontée à un manque de coopération de la part des parties. La Commission a considéré que la manière la plus pratique d'exécuter son mandat était de fournir aux parties une liste de points de frontière identifiés par des techniques modernes de traitement d'image et de modélisation du terrain.

La consistance du terme «démarcation» avec cette méthode a été soutenue par le Secrétaire général et le Conseil de sécurité des Nations Unies dans le procédé de démarcation de la frontière entre l'Iraq et le Koweït en 1993. Ceci a également été confirmé par la manière dont la Convention des Nations Unies sur le droit de la mer règle les limites des réclamations des Etats relatives aux frontières maritimes.

La Commission a proposé que les Parties, pendant les douze mois à suivre, et ce jusqu'à la fin du mois de novembre 2007, considèrent leurs positions et s'efforcent de parvenir à un accord sur l'emplacement des piliers. Si, à l'expiration de la période mentionnée, les Parties n'ont pas conclu l'accord nécessaire, ni procédé à son application effective, ou si elles n'ont pas demandé et permis à la Commission de reprendre son activité, le tracé de la frontière correspondrait automatiquement aux points de frontière énumérés dans l'Annexe, et le mandat de la Commission pourrait ainsi être considéré comme accompli.

1. This Statement is issued by the Eritrea-Ethiopia Boundary Commission (“the Commission”) following its meeting in private session in The Hague on 20 November 2006 to consider the further procedures to be followed in connection with the demarcation of the boundary between Eritrea and Ethiopia. Invitations to the Parties were issued by e-mail on 8 November 2006. Both Parties declined the Commission’s invitation. Part of the meeting was attended by representatives of the following Witnesses to the Algiers Agreement of 12 December 2000: the Secretary-General of the United Nations, the European Union, the United States of America and the People’s Democratic Republic of Algeria.

2. By the Algiers Agreement, the Parties established the Commission to delimit and demarcate the border between them on the basis of the pertinent colonial treaties and applicable international law. The Parties stipulated that “the delimitation and demarcation determinations of the Commission shall be final and binding” and agreed that “each Party shall respect the border so determined, as well as the territorial integrity and sovereignty of the other Party”.

3. The Parties evidently considered the completion of the task of delimitation as urgent, because they provided in Article 4(12) of the Agreement that the delimitation should be completed within six months of the first meeting of the Commission. The Commission recognised that a similar sense of urgency attached to the demarcation process; Article 4(13) of the Algiers Agreement called upon the Commission to arrange for “expeditious demarcation”. The terms of the Algiers Agreement, and its object and purpose, preclude leaving the boundary undemarcated for a prolonged period or indefinitely.¹

4. The constitution of the Commission was completed on 20 February 2001 and the Commission immediately entered upon its task. After the receipt and study of substantial written pleadings, and having heard the oral

¹ The Commission recalls the observation of the Court of Arbitration in the *Beagle Channel* case – albeit in a somewhat different context: “It is not admissible that, because of the total non-cooperation of one of the Parties, contrary to its obligation under a valid Award, the Court should be compelled to remain indefinitely in existence in a state of suspended animation”. (See 52 *International Law Reports* 284.) The present case is not one involving the total non-cooperation of one Party, but rather the non-cooperation of both Parties, though in differing ways and degrees. Thus, the observation of the *Beagle Channel* tribunal applies *a fortiori*.

arguments of the Parties, the Commission delivered the Delimitation Decision of 13 April 2002. This identified the principal features of the boundary line, accompanied by a list of coordinates identifying the points through which the boundary runs. When the Delimitation Decision was rendered, both Parties promptly announced their acceptance of it. Thereupon, the Commission undertook the steps necessary to initiate the process of demarcation.

5. On 8 July 2002, in accordance with Article 30(1) of its Rules of Procedure, the Commission promulgated the Demarcation Directions. These were revised in November 2002 and in March and July 2003. In implementation of their obligations under these Directions, the Parties appointed Liaison Representatives and Field Liaison Officers to facilitate the participation by each Party in identifying sites for the emplacement of boundary pillars. The Commission established its Field Offices in Asmara and Addis Ababa in November 2001 and in Adigrat in July 2002. It also appointed a Chief Surveyor in October 2001 and a Special Consultant in May 2002 to provide technical advice and assistance to the Commission. The Chief Surveyor took up residence in Asmara on 15 November 2001. Surveying staff were recruited to assist him.

6. Initially, it was envisaged by the Commission, as reflected in the Demarcation Directions of 8 July 2002, that the task of demarcation would entail the emplacement of pillars as markers of the line of the boundary specified in the Delimitation Decision. On this basis, the Demarcation Instructions were issued on 21 March and 22 August 2003. Steps were taken towards the negotiation of contracts for the construction and emplacement of pillars.

7. On 24 January 2003, in response to a request by the Commission for comments on the draft 1:25,000 maps, Ethiopia filed a memorandum setting out at length its views on the process of demarcation. It emphasised the necessity of conducting the demarcation in a manner that takes into consideration the human and physical geography through the study of the facts on the ground.² It contended that, in the process of demarcation, alterations or adjustments of the delimited boundary should be made so as principally to eliminate those situations in which villages were divided or roads were cut by the boundary. The Commission later ruled that most of these contentions were inadmissible. Eritrea, for its part, insisted that the line described in the Delimitation Decision should be applied without any change. In paragraph 20 of the "Observations" which the Commission conveyed to the Parties on 21 March 2003, the Commission stated its view that, in the absence of express authorisation by the Parties, it lacked the authority to vary the delimited boundary line except in cases of "manifest impracticability". It also indicated that the description of certain parts of the boundary in the Dispositif of the Delimitation Decision would need to be completed when, as foreseen in that Decision, the Commission had received

² Submission by the Federal Democratic Republic of Ethiopia, 24 January 2003, Comments Pursuant to the December 2000 Agreement, the Commission's Rules of Procedure, the Commission's Demarcation Directions and Instructions provided at the Boundary Commission's Meeting on 6 and 7 November 2002, p. 61-74.

necessary information from the Special Consultant and the Chief Surveyor, in particular in relation to Tserona, Zalambessa and Bure.

8. On the basis of the colonial treaties, the application of which was prescribed in the Algiers Agreement, the demarcation of the boundary was approached in three sectors (Western, Central and Eastern), as had been the delimitation. Demarcation began in the Eastern Sector in March 2003 and the location of pillars was established through field assessment with the cooperation of both Parties by August 2003. A set of marked maps showing proposed boundary pillar sites in this Sector was sent to the Parties for comment. Eritrea accepted these marked maps of the Eastern Sector but Ethiopia did not respond. As the failure of a Party to participate could not prevent the Commission from performing its function, after the expiry of the period which the Commission gave to the Parties for comment on these maps the Commission adopted specific boundary points that could serve as locations for the emplacement of pillars in that Sector. These locations extended from the Djibouti border in the east to the Salt Lake in the north-west. Some of these locations departed from the boundary line as prescribed in the Delimitation Decision. The possibility of such variation was foreseen in the 1908 Treaty relating to the Eastern Sector (alone among the three treaties with such a permissive provision) and was necessary in view of the exceptional nature of the terrain. Despite these variations, each Party still ended up in effect with the same amount of territory as had been awarded to it by the Delimitation Decision.

9. The Commission encountered difficulties that were posed by the Parties when it was about to commence demarcation in the Central and Western Sectors. Although Ethiopia agreed that the Commission could continue with pillar emplacement in the Eastern Sector, it was not prepared to allow demarcation to begin in the Central and Western Sectors. Eritrea would not agree to pillar emplacement in the Eastern Sector unless demarcation work was begun simultaneously in the Central and Western Sectors.

10. More particularly, the obstacles from the Ethiopian side took various forms: prohibiting field-work within the territory under its control, thus impeding the survey of ground control points for the aerial photography and the secondary datum survey (April to July 2002); filing extensive comments on the Delimitation Decision, amounting to an attempt to reopen elements of the substance of that Decision, instead of limiting itself to the requested comments on the draft 1:25,000 maps (January 2003); alleging that the Field Liaison Officers appointed by Eritrea were intelligence officers and refusing to allow field work to continue in Ethiopian territory, then failing to appoint ad hoc Field Liaison Officers within the prescribed time limit following the Commission's Order of 9 February 2003 so as to allow field work to resume without further delay (January to February 2003); failing to appoint new Field Liaison Officers for the remaining demarcation activities following the Commission's Decision pursuant to Article 15B of the Demarcation Directions (July 2003 to March 2006); failing to provide assurances for the security of all demarcation

personnel (August 2003 to the present); failing to comment on maps which indicated the pillar locations in the Eastern Sector (September 2003); repeatedly refusing to authorise necessary flight requests lodged by the Chief Surveyor; eventually limiting the Commission's field work to the Eastern Sector by statements that the ad hoc Field Liaison Officers would only be permitted to operate in the Eastern Sector; complaining to the Secretary-General of the United Nations of what Ethiopia termed "illegal, unjust and irresponsible decisions" of the Commission in respect of Badme and parts of the Central Sector, and proposing that the Security Council set up an 5 alternative mechanism to demarcate the parts of the boundary it contested (September 2003); denouncing in that same letter the Commission's Delimitation Decision by stating that it would only recognise the southern boundary of the Temporary Security Zone ("TSZ") as the international boundary; failing to provide assurances for the security of the contractors selected for the emplacement and as-built survey of the boundary pillars (September to October 2003); rejecting the Commission's invitation to attend a meeting on 5 November 2003, claiming that the notice was too short and that there was no likelihood of anything being achieved (October 2003); refusing to permit any work to be carried out by the Commission's field staff in the Western and Central Sectors until the boundary in the Eastern Sector had been demarcated and subject to Ethiopia's approval of the Commission's method of demarcation (November 2003); failing to make prompt payment of its share of the Commission's expenses (February 2004 to February 2005); rejecting the Commission's invitation to a meeting to be held on 22 February 2005 on the ground that the meeting was premature, would be unproductive and could have an adverse impact on the demarcation process, as a result of which the Commission was obliged to cancel the meeting (February 2005); failing again to meet its financial obligations (May 2006 to the present); introducing qualifications to its previously unqualified acceptance of the final and binding quality of the Delimitation Decision (17 May 2006); failing to respond to the Commission's request for assurances of freedom of movement and security for its staff travelling to the region to reopen the Commission's Field Offices (July to August 2006); and failing to respond to the Commission's invitation to a rescheduled meeting on 24 August 2006.

11. After initial cooperation, Eritrea also began to raise obstacles. In October 2003, it informed the Chief Surveyor that it would withdraw its arrangements for the provision of security in the Eastern Sector if the contract then under negotiation for the emplacement of pillars did not cover the entire boundary as determined in the Delimitation Decision; it repeated its position at the meeting of the Commission on 19 November 2003, objecting to the continuance of demarcation in the Eastern Sector unless at the same time the work foreseen in the Western and Central Sector would continue concurrently; it impeded in a number of ways the ability of the United Nations Mission in Ethiopia and Eritrea ("UNMEE") to provide necessary assistance to the Commission's staff in the field; its conduct in October 2005 occasioned a 6 reference in Security Council resolution 1640 to Eritrea's restriction of "all

types of UNMEE helicopter flights within Eritrean airspace or coming to Eritrea, effective as of 5 October 2005, and the additional restrictions on UNMEE's freedom of movement imposed since then, which have serious implications for UNMEE's ability to carry out its mandate. . ."; on 6 December 2005, Eritrea sent a letter to UNMEE requesting members of UNMEE who were nationals of the United States of America, Canada and Europe, as well as the Russian Federation, to leave the country within ten days, a measure which occasioned a condemnatory statement by the President of the Security Council. In December 2005, the Security Council was led to relocate military and civilian staff of UNMEE from Eritrea to Ethiopia "solely in the interests of the safety and security of UNMEE staff. The lack of cooperation with UNMEE by the Eritrean authorities has produced conditions on the ground which prevent UNMEE implementing its mandate satisfactorily". (Statement by the President of the Security Council, 14 December 2005). This mandate included the provision of necessary assistance to the Commission's staff on the ground; in the Spring of 2006, Eritrea imposed far-reaching restrictions on UNMEE that had the effect of seriously impeding the resumption of operations by the Commission's field staff; it rejected the Commission's invitation to attend a meeting on 15 June 2006; instead, it sent a letter to the Commission stating that it was not prepared to continue its engagement, implying that the demarcation process was biased in favour of Ethiopia; in July 2006, it refused visas to the Commission's field staff who had been instructed to return to Eritrea to reopen the Field Office there. Like Ethiopia, Eritrea did not respond to the Commission's request for it to attend a meeting on 24 August 2006. The foregoing course of conduct has, regrettably, also contributed significantly to the present impasse.

12. These difficulties have persisted, notwithstanding that the Commission has held meetings with the Parties on several occasions with a view to securing their agreement to the renewal of the field work in the demarcation process. The most recent meetings of the Commission with the Parties were held on 10 March 2006 and 17 May 2006. The 15 June 2006 meeting was cancelled due to Eritrea's refusal to attend. The Parties were invited to a meeting to have been held on 24 August 2006 and the Parties' replies to the invitation were requested by 10 August. No replies were forthcoming and attempts to contact the Parties by the Registrar of the Commission elicited no responses. In the meantime, the Commission had decided to reopen the Field Offices after obtaining the Parties' agreement at the 10 March 2006 meeting. These offices had been operating with a reduced staff since January 2004 and were eventually closed on 31 March 2005. However, when the Deputy Secretary of the Commission was dispatched to Addis Ababa in early August 2006 with a view to introducing the newly recruited Field Office staff to the local officials, she was unable to gain access to any relevant Ethiopian officials. The Commission had also instructed her to proceed to Eritrea, but she was advised by the Eritrean authorities not to attempt to enter Eritrea. It thus proved impossible to implement the Commission's decision to reopen all the Field Offices or reactivate the demarcation process as originally contemplated.

13. These developments, including the problems confronting the Commission as a result of the attitudes of the Parties, have all been reported to the Secretary-General of the United Nations at three-monthly intervals and have been passed on by him to the Security Council. The Security Council has on no less than fourteen occasions called upon the Parties to meet their obligations but has achieved no more success than the Commission.³

14. The frustration of the demarcation process as originally conceived has continued for nearly four years. There is no present sign that the Parties will change their positions in the reasonably proximate future. The United Nations Security Council by resolution 1710 called on the Parties to “cooperate fully with the EEBC” and “to implement completely and without further delay or preconditions the decision of the EEBC and to take concrete steps to resume the demarcation process”. The Security Council specifically demanded that “Eritrea reverse, without further delay or preconditions, all restrictions on UNMEE’s movement and operations” and that Ethiopia “accept fully and without delay the final and binding decision of the Eritrea-Ethiopia Boundary Commission and take immediately concrete steps to enable, without preconditions, the Commission to demarcate the border completely and promptly.” The Commission, on 6 October 2006, wrote to the Parties asking them what steps they intended to take to implement the foregoing requests of the Security Council. The Commission asked for replies by 22 October 2006. Eritrea replied on 22 October reiterating the position that it had previously taken to the effect that no progress could be made until Ethiopia stated without qualification that it accepted the boundary as determined by the Commission in its Decision of 13 April 2002. As yet, Ethiopia has not replied to that request. Both Parties declined to attend the meeting of the Commission called for 20 November 2006.

15. The present situation is, therefore, that, in the Eastern Sector, the boundary points for the pillar emplacements have been established but no pillars have been emplaced; in the Central and Western Sectors no pillar site assessment has been conducted and the Parties have not enabled the Commission to meet the deadlines set out in the various schedules of work it has promulgated for those sectors.

16. Up to the time of, and immediately following, the delimitation of the border in April 2002, the Commission approached its mandate to demarcate the boundary as requiring it actually to emplace pillars at the turning points of the boundary. This assumed that the necessary cooperation of the Parties would be forthcoming and that UNMEE would not be prevented from providing essential assistance.

³ S/RES/1398 (15 March 2002), S/RES/1430 (14 August 2002), S/RES/1466 (14 March 2003), S/RES/1507 (12 September 2003), S/RES/1531 (12 March 2004), S/RES/1560 (14 September 2004), S/RES/1586 (14 March 2005), S/RES/1622 (13 September 2005), S/RES/1640 (23 November 2005), S/RES/1661 (14 March 2006), S/RES/1670 (13 April 2006), S/RES/1678 (15 May 2006), S/RES/1681 (31 May 2006 and S/RES/1710 (29 September 2006).

17. The Algiers Agreement, in establishing the Commission, is a constitutional instrument creating an international institution and conferring on it functions and powers. As such, its interpretation must be approached in the same way as international organisations have regularly approached the interpretation of their constituent instruments, that is, by way of the concept of institutional “effectiveness”. Even though the governing text may not explicitly empower the organisation to act in a particular manner, international law authorises, indeed requires, the organisation, should it find it necessary, if it is to discharge all its functions effectively, to interpret its procedures in a constructive manner directed towards achieving the objective the Parties are deemed to have had in mind. The same is true of international judicial organs. (*Territorial Dispute (Libyan Arab Jamahiriya/Chad)* Judgment, *ICJ Reports* 1994, pp. 6, 25 and the cases there cited in support of “one of the fundamental 9 principles of the interpretation of treaties, consistently upheld by international jurisprudence, namely, that of effectiveness. . . .”)

18. In the present case, the manifest objective was to bring the border dispute to an end at the earliest possible date by means of the identification of a boundary established by the prescribed colonial treaties and applicable international law with as much precision as could be achieved in the circumstances and without deciding *ex aequo et bono*.

19. Having carefully surveyed the alternatives now available to the Commission and having studied anew the written and oral presentations made to it by the Parties, the Commission feels obliged to adopt another approach to effect the demarcation of the boundary.

20. Modern techniques of image processing and terrain modelling make it possible, in conjunction with the use of high resolution aerial photography, to demarcate the course of the boundary by identifying the location of turning points (hereinafter called “boundary points”) by both grid and geographical coordinates with a degree of accuracy that does not differ significantly from pillar site assessment and emplacement undertaken in the field. The Commission has therefore identified by these means the location of points for the emplacement of pillars as a physical manifestation of the boundary on the ground.⁴ Although these techniques have been available for some time, the Commission has not resorted to them because the actual fixing of boundary pillars, if at all possible, was the demarcation method of first choice. However, it is only possible to demarcate a boundary by the fixing of boundary pillars with the full coop-

⁴ A comparable, though not identical, situation arose in the *Argentina-Chile Frontier Case* (1966) (38 *International Law Reports* 10), where aerial photography was used to identify points on the boundary. In the Dispositif of the Report of the Tribunal, the boundary was described in part as following the thalweg “of the Encuentro to Point A at the Confluence”. The following is attached to the text at this point: “The location of Point A and subsequent Points is shown on the diagram and air photographs incorporated in this Report. The diagram is not intended as an authoritative map. It is only an index to the air photographs. These photographs are the sole authority for the exact location of the points.” (p. 98).

eration of both the States concerned. This has been completely lacking in the Central and Western Sectors and to some extent in the Eastern Sector.

21. In these circumstances, the Commission considers that the most practical way in which it can advance performance of its mandate is to provide the Parties with the list of boundary points that the Commission has identified by the techniques just mentioned along the whole length of the boundary. This list represents the locations at which, if the Commission were so enabled by the Parties, it would construct permanent pillars. This list and some explanatory comments are annexed to this Statement which is also accompanied by forty-five maps illustrating the boundary points.^{*} It may be noted that the boundary so illustrated does not differ significantly from the boundary identified in the Delimitation Decision. The areas of Tserona and Zalambessa have been clarified, as contemplated in the Delimitation Decision, by determining the environs of those two places and taking into account, insofar as relevant, manifest impracticabilities.

22. As the Commission evidently cannot remain in existence indefinitely, it proposes that the Parties should, over the next twelve months, terminating at the end of November 2007, consider their positions and seek to reach agreement on the emplacement of pillars. If, by the end of that period, the Parties have not by themselves reached the necessary agreement and proceeded significantly to implement it, or have not requested and enabled the Commission to resume its activity, the Commission hereby determines that the boundary will automatically stand as demarcated by the boundary points listed in the Annex hereto and that the mandate of the Commission can then be regarded as fulfilled. Until that time, however, it must be emphasised that the Commission remains in existence and its mandate to demarcate has not been discharged. Until such time as the boundary is finally demarcated, the Delimitation Decision of 13 April 2002 continues as the only valid legal description of the boundary.

23. In adopting this approach, the Commission has been guided by significant authority in State practice, following the use of the word “demarcation” by the United Nations Secretary-General and United Nations Security Council when the Iraq-Kuwait border was “demarcated” in 1993.

24. Following Security Council resolution 687 (1991), the United Nations Secretary-General established the Iraq-Kuwait Boundary Demarcation Commission (“the IKBDC”). The terms of reference of the IKBDC were “to demarcate in geographical coordinates of latitude and longitude” the international boundary:

“The coordinates established by the [IKBDC] Commission will constitute the final demarcation of the international boundary The demarcation of the boundary between Iraq and Kuwait will be accomplished by drawing upon

^{*} The maps are contained on a DVD in the back pocket of this volume.—Les cartes se trouvent sur un DVD classé au dos de la dernière page de couverture de ce volume.

appropriate material, including the map transmitted by Security Council document S/22412, and by utilizing appropriate technology.” (Emphasis supplied.)⁵

25. The Security Council expressed support for the Secretary-General’s report.⁶ No doubt was expressed as to the legal acceptability of a “demarcation” by means of a list of coordinates. Although arrangements for the physical representation of the boundary were also made, this physical representation did not replace the demarcation in the form of geographic coordinates but simply represented it on the ground. In its Final Report, the IKBDC stated:

“ . . . [It] has simply carried out the technical task necessary to demarcate for the first time the precise coordinates of the international boundary reaffirmed in the 1963 Agreed Minutes. To this end, the coordinates established by the Commission, as reproduced in Section XIII below, constitute the final demarcation of the international boundary between Iraq and Kuwait.”⁷

26. Moreover, the feasibility and acceptability of the use of coordinates alone as a means of identifying international boundaries is clearly affirmed by the manner in which the United Nations Convention on the Law of the Sea deals with the limits of maritime claims by States.

27. The fact that the present Commission began its demarcation activity in terms of the location and construction of fixed pillars does not mean that it is precluded from following another course when confronted by the lack of necessary cooperation by the Parties, nor, in the circumstances described, do the Commission’s Rules of Procedure, Demarcation Directions and Demarcation Instructions, originally adopted on the assumption of full cooperation of both Parties, remain controlling. To the extent of any incompatibility between those procedural texts and the approach now to be adopted, the latter will prevail.

28. During the coming twelve months, the Commission will remain willing to provide assistance in emplacing the boundary pillars if the Parties jointly so request and provide assurances of cooperation and security.

[Signed]

Sir Elihu Lauterpacht CBE QC

President of the Commission

27 November 2006

⁵ U.N. doc. S/22558, Report of the Secretary-General regarding paragraph 3 of Security Council resolution 687 (1991), paras. 3-4, 2 May 1991.

⁶ Final Report on the Demarcation of the International Boundary between the Republic of Iraq and the State of Kuwait by the United Nations Iraq-Kuwait Boundary Demarcation Commission, S/25811, para. 13; also reproduced in 94 *International Law Reports* 1.

⁷ *Ibid.*, para. 112.

ANNEX TO THE COMMISSION'S STATEMENT OF 27 NOVEMBER 2006

LIST OF BOUNDARY POINTS AND COORDINATES

1. The boundary points listed below, and as illustrated on the accompanying 1:25,000 maps, fall into two categories: fixed points and movable points.¹

2. The fixed boundary points are located on land. Each is identified by its grid and geographical coordinates accurate to one metre and is illustrated on the maps by the conventional sign of a small square enclosing a dot. Fixed points adjacent to rivers are located a short distance from the river bank so as to avoid the effects of flooding or river movements.

3. The movable boundary points represent the turning points of the boundary which fall within rivers. As the boundary in rivers follows the middle of the main channel and may move from time to time, these turning points cannot be fixed permanently. They are marked on the illustrative maps by small circles which indicate the location of these points at the time of the aerial photography.

4. These movable points are to be found at the confluence of two rivers, or at the intersection between the middle of the main channel of the river and the extension riverwards of the straight line between the nearest fixed boundary point and the next or preceding fixed boundary point.

5. The list of coordinates is presented in eight columns.

Column 1 contains the numbers of the boundary points which are covered by each set of coordinates or are otherwise described.

Column 2 contains the numbers of the points identified in Maps 10, 11 and 12 that illustrate the Delimitation Decision of 13 April 2002. These are referred to below simply as "Points".

Columns 3 and 4 contain the Universal Transverse Mercator ("UTM") grid coordinates of each boundary point, not otherwise described, in the following projection:

Projection:	UTM Zone 37 extended eastward
Geodetic Datum:	Eritrea Ethiopia Boundary Datum 2002 (EEBD2002)
Longitude of Origin:	39° E
Latitude of Origin:	0° N
Latitude of Origin:	0° N
False Easting:	500,000m E

¹ A simplified map only for convenience of reference appears at the end of this Annex.

False Northing: 0m N

Unit of Measurement: Metre

Columns 5 and 6 contain the geographical coordinates in degrees of latitude and longitude in terms of the Commission's geodetic datum, EEBD2002.

Column 7 contains occasional descriptions of the location of the particular boundary point and an indication of the course of the boundary to the next boundary point.

Column 8 contains the number of the 1:25,000 map sheet on which the boundary point is located.

LIST OF BOUNDARY POINTS AND COORDINATES

Col 1	Col 2	Col 3	Col 4	Col 5	Col 6	Col 7	Col 8	
Boundary Point	Point	UTM Grid		Latitude/Longitude		Onward Course of Boundary	1:25,000 Sheet	
		East	North	North	East			
1	1	Setit opposite Western Tripoint					Boundary continues along middle of main channel of Setit to BP2.	1
2	6	Confluence of Setit and Tomsa					Middle of main channel of Setit is connected to BP3 by straight-line extension of the line from BP4 to BP3.	8
3		341211	1568706	14°11'06.6"	37°31'42.8"		Short distance from north bank of Setit at its confluence with Tomsa. Boundary continues in a straight line to BP4.	8
4		382976	1646771	14°53'34.6"	37°54'43.5"		Short distance from south bank of Mareb at its confluence with Mai Ambessa. Boundary continues to middle of main channel of Mareb by straight-line extension of the line from BP3 to BP4.	13
5	9	Confluence of Mareb and Mai Ambessa					Boundary continues along middle of main channel of Mareb to BP6.	13
6	11	Confluence of Mareb and Belesa					Boundary continues along middle of main channel of Belesa to BP7.	20
7	12	Confluence of Belesa A and Belesa B					Boundary continues along middle of main channel of Belesa B to BP8.	20
8		Intersection of Belesa B and straight-line extension from BP9					Boundary turns inland to BP9.	21
9		518200	1619525	14°38'56.9"	39°10'08.4"		Boundary continues in a straight line to BP10.	21
10		518084	1619354	14°38'51.3"	39°10'04.6"		Boundary continues in a straight line to BP11.	21
11		517846	1619000	14°38'39.8"	39°09'56.6"		Boundary continues in a straight line to BP12.	21
12		517527	1618587	14°38'26.3"	39°09'45.9"		Boundary continues in a straight line to BP13.	21

Col 1	Col 2	Col 3	Col 4	Col 5	Col 6	Col 7	Col 8
Boundary Point	Point	UTM Grid		Latitude/Longitude		Onward Course of Boundary	1:25,000 Sheet
		East	North	North	East		
13		517015	1617901	14°38'04.0"	39°09'28.8"	Boundary continues in a straight line to BP14.	21
14		516908	1617055	14°37'36.5"	39°09'25.2"	Boundary continues in a straight line to BP15.	21
15		516975	1616040	14°37'03.4"	39°09'27.4"	Boundary continues in a straight line to BP16.	21
16		517108	1615604	14°36'49.2"	39°09'31.9"	Boundary continues in a straight line to BP17.	21
17		516951	1615014	14°36'30.0"	39°09'26.6"	Boundary continues in a straight line to BP18.	21
18		518552	1613592	14°35'43.7"	39°10'20.1"	Boundary continues in a straight line to BP19.	21
19		518987	1613202	14°35'31.0"	39°10'34.6"	Boundary continues in a straight line to BP20.	21
20		519192	1612392	14°35'04.6"	39°10'41.4"	Boundary continues in a straight line to BP21.	21
21		520493	1611489	14°34'35.2"	39°11'24.9"	Boundary continues in a straight line to BP22.	21
22		521013	1611023	14°34'20.0"	39°11'42.3"	Boundary continues in a straight line to BP23.	21
23		522112	1610262	14°33'55.2"	39°12'19.0"	Boundary continues in a straight line to BP24.	21
24		523922	1610332	14°33'57.5"	39°13'19.5"	Boundary continues in a straight line to BP25.	21
25		525826	1610053	14°33'48.3"	39°14'23.1"	Boundary continues to middle of main channel of Belesa B by straight-line extension of the line from BP24 to BP25.	21
26		Intersection of Belesa B and straight-line extension from BP25				Boundary continues along middle of main channel of Belesa B to BP27.	21
27	14	Confluence of Belesa B and the tributary flowing from BP28				Boundary continues along middle of main channel of the tributary to BP28.	22
28	15	526864	1599914	14°28'18.3"	39°14'57.4"	Source of the tributary mentioned in BP27. Boundary continues in a straight line to BP29.	22

Col 1	Col 2	Col 3	Col 4	Col 5	Col 6	Col 7	Col 8
Boundary Point	Point	UTM Grid		Latitude/Longitude		Onward Course of Boundary	1:25,000 Sheet
		East	North	North	East		
29	16	526401	1599206	14°27'55.2"	39°14'41.9"	Source of a tributary of Belesa A. Boundary continues along middle of main channel of the tributary to BP30.	22
30	17	Confluence of Belesa A and the tributary flowing from BP29				Boundary continues along middle of main channel of Belesa A to BP31.	22
31		Confluence of Belesa A and the tributary flowing from BP32				Boundary continues along middle of main channel of the tributary to BP32.	22
32		529176	1594815	14°25'32.2"	39°16'14.4"	Source of the tributary mentioned in BP31. Boundary continues in a straight line to BP33.	22
33		529308	1595256	14°25'46.6"	39°16'18.9"	Source of a tributary of Belesa B. Boundary continues along middle of main channel of the tributary to BP34.	22
34		530761	1597627	14°27'03.7"	39°17'07.5"	On edge of east bank of Belesa B opposite the tributary mentioned in BP33. Boundary continues in a straight line to BP35.	22
35		531658	1598412	14°27'29.2"	39°17'37.5"	Boundary continues in a straight line to BP36.	22
36		531846	1599274	14°27'57.2"	39°17'43.8"	Boundary continues in a straight line to BP37.	22
37		532474	1599718	14°28'11.7"	39°18'04.8"	Boundary continues in a straight line to BP38.	22
38		533846	1599802	14°28'14.3"	39°18'50.6"	Boundary continues in a straight line to BP39.	22
39		535023	1599814	14°28'14.7"	39°19'29.9"	Boundary continues in a straight line to BP40.	23
40		536051	1599537	14°28'05.6"	39°20'04.3"	Boundary continues in a straight line to BP41.	23
41		537336	1599320	14°27'58.5"	39°20'47.2"	Boundary continues in a straight line to BP42.	23
42		536950	1599806	14°28'14.3"	39°20'34.3"	Boundary continues in a straight line to BP43.	23
43		536902	1600399	14°28'33.6"	39°20'32.7"	Boundary continues in a straight line to BP44.	23

Col 1	Col 2	Col 3	Col 4	Col 5	Col 6	Col 7	Col 8
Boundary Point	Point	UTM Grid		Latitude/Longitude		Onward Course of Boundary	1:25,000 Sheet
		East	North	North	East		
44		536398	1601176	14°28'58.9"	39°20'15.9"	Boundary continues in a straight line to BP45.	23
45		535430	1602185	14°29'31.8"	39°19'43.7"	Boundary continues in a straight line to BP46.	23
46		535413	1602382	14°29'38.2"	39°19'43.1"	Boundary continues in a straight line to BP47.	23
47		535942	1602200	14°29'32.3"	39°20'00.8"	Boundary continues in a straight line to BP48.	23
48		537041	1601817	14°29'19.8"	39°20'37.5"	Boundary continues in a straight line to BP49.	23
49		537273	1601661	14°29'14.7"	39°20'45.2"	Boundary continues in a straight line to BP50.	23
50		537455	1601546	14°29'10.9"	39°20'51.3"	Boundary continues in a straight line to BP51.	23
51		537983	1601199	14°28'59.6"	39°21'08.9"	Boundary continues in a straight line to BP52.	23
52		538798	1601208	14°28'59.9"	39°21'36.1"	Boundary continues in a straight line to BP53.	23
53		538528	1602662	14°29'47.2"	39°21'27.2"	Boundary continues in a straight line to BP54.	23
54		539482	1602526	14°29'42.7"	39°21'59.0"	Boundary continues in a straight line to BP55.	23
55		538493	1603778	14°30'23.5"	39°21'26.1"	Boundary continues in a straight line to BP56.	23
56		538352	1604031	14°30'31.8"	39°21'21.4"	Boundary continues in a straight line to BP57.	23
57		538843	1604759	14°30'55.4"	39°21'37.8"	Boundary continues in a straight line to BP58.	23
58		538562	1606101	14°31'39.1"	39°21'28.5"	Boundary continues in a straight line to BP59.	23
59		538888	1606728	14°31'59.5"	39°21'39.4"	Boundary continues in a straight line to BP60.	23
60		539045	1606574	14°31'54.5"	39°21'44.7"	Boundary continues in a straight line to BP61.	23
61		539279	1606370	14°31'47.8"	39°21'52.5"	Boundary continues in a straight line to BP62.	23
62		539719	1605996	14°31'35.7"	39°22'07.1"	Boundary continues in a straight line to BP63.	23
63		540025	1606770	14°32'00.8"	39°22'17.4"	Boundary continues in a straight line to BP64.	23
64		539924	1607174	14°32'14.0"	39°22'14.1"	Boundary continues in a straight line to BP65.	23
65		540196	1607425	14°32'22.2"	39°22'23.2"	Boundary continues in a straight line to BP66.	23

Col 1	Col 2	Col 3	Col 4	Col 5	Col 6	Col 7	Col 8
Boundary Point	Point	UTM Grid		Latitude/Longitude		Onward Course of Boundary	1:25,000 Sheet
		East	North	North	East		
66		540494	1607249	14°32'16.4"	39°22'33.1"	Boundary continues in a straight line to BP67.	23
67		541100	1607527	14°32'25.4"	39°22'53.4"	Boundary continues in a straight line to BP68.	23
68		541268	1607568	14°32'26.8"	39°22'59.0"	Boundary continues in a straight line to BP69.	23
69		541651	1607389	14°32'20.9"	39°23'11.8"	Boundary continues in a straight line to BP70.	23
70		541693	1607200	14°32'14.7"	39°23'13.2"	Boundary continues in a straight line to BP71.	23
71		541790	1607153	14°32'13.2"	39°23'16.4"	Boundary continues in a straight line to BP72.	23
72		541889	1607223	14°32'15.5"	39°23'19.7"	Boundary continues in a straight line to BP73.	23
73		541925	1607352	14°32'19.7"	39°23'20.9"	Boundary continues in a straight line to BP74.	23
74		542174	1607363	14°32'20.0"	39°23'29.3"	Boundary continues in a straight line to BP75.	23
75		542429	1607514	14°32'24.9"	39°23'37.8"	Boundary continues in a straight line to BP76.	23
76		542497	1607743	14°32'32.4"	39°23'40.1"	Boundary continues in a straight line to BP77.	23
77		542848	1607862	14°32'36.2"	39°23'51.8"	Boundary continues in a straight line to BP78.	23
78		543091	1607563	14°32'26.5"	39°23'59.9"	Boundary continues in a straight line to BP79.	23
79		543456	1607159	14°32'13.3"	39°24'12.1"	Boundary continues in a straight line to BP80.	23
80		543594	1606743	14°31'59.8"	39°24'16.7"	Boundary continues in a straight line to BP81.	23
81		543567	1606395	14°31'48.4"	39°24'15.8"	Boundary continues in a straight line to BP82.	23
82		543757	1605931	14°31'33.3"	39°24'22.1"	Boundary continues in a straight line to BP83.	23
83		544165	1605991	14°31'35.3"	39°24'35.7"	Boundary continues in a straight line to BP84.	23
84		544782	1606036	14°31'36.7"	39°24'56.3"	Boundary continues in a straight line to BP85.	23
85		544975	1605998	14°31'35.4"	39°25'02.8"	Boundary continues in a straight line to BP86.	23
86		544890	1605456	14°31'17.8"	39°24'59.9"	Boundary continues in a straight line to BP87.	23
87		544881	1605184	14°31'08.9"	39°24'59.6"	Boundary continues in a straight line to BP88.	23

Col 1	Col 2	Col 3	Col 4	Col 5	Col 6	Col 7	Col 8
Boundary Point	Point	UTM Grid		Latitude/Longitude		Onward Course of Boundary	1:25,000 Sheet
		East	North	North	East		
88		544981	1604979	14°31'02.3"	39°25'02.9"	Boundary continues in a straight line to BP89.	23
89		545071	1604867	14°30'58.6"	39°25'05.9"	Boundary continues in a straight line to BP90.	23
90		545163	1604573	14°30'49.0"	39°25'09.0"	Boundary continues in a straight line to BP91.	23
91		545599	1604717	14°30'53.7"	39°25'23.5"	Boundary continues in a straight line to BP92.	23
92		546708	1604848	14°30'57.9"	39°26'00.6"	Boundary continues in a straight line to BP93.	23
93		548228	1603658	14°30'19.1"	39°26'51.3"	Boundary continues in a straight line to BP94.	23
94		549224	1603811	14°30'24.0"	39°27'24.6"	Boundary continues in a straight line to BP95.	23
95		550285	1603913	14°30'27.2"	39°28'00.0"	Boundary continues in a straight line to BP96.	23
96		550952	1603096	14°30'00.6"	39°28'22.3"	Boundary continues in a straight line to BP97.	23
97		552040	1603343	14°30'08.6"	39°28'58.6"	Boundary continues in a straight line to BP98.	23
98		552740	1603656	14°30'18.7"	39°29'22.0"	Boundary continues in a straight line to BP99.	23
99		553191	1603340	14°30'08.4"	39°29'37.1"	Boundary continues in a straight line to BP100.	23
100		553273	1602765	14°29'49.7"	39°29'39.8"	Boundary continues in a straight line to BP101.	23
101		553334	1602011	14°29'25.1"	39°29'41.8"	Boundary continues in a straight line to BP102.	23
102		553325	1601557	14°29'10.4"	39°29'41.4"	Boundary continues in a straight line to BP103.	23
103		553435	1601320	14°29'02.6"	39°29'45.1"	Boundary continues to middle of main channel of Muna/Berbero Gado by straight-line extension of the line from BP102 to BP103.	23
104		Intersection of Muna/Berbero Gado and straight-line extension from BP103			Boundary continues along middle of main channel of Muna/Berbero Gado to BP105.		23
105	21	Confluence of Muna/Berbero Gado and Enda Dashim			Boundary continues along middle of main channel of Enda Dashim to BP106.		24

Col 1	Col 2	Col 3	Col 4	Col 5	Col 6	Col 7	Col 8
Boundary Point	Point	UTM Grid		Latitude/Longitude		Onward Course of Boundary	1:25,000 Sheet
		East	North	North	East		
106	22	Confluence of Enda Dashim and the tributary flowing from BP107				Boundary continues upstream along middle of main channel of the tributary to BP107.	24
107	24	557018	1610448	14°33'59.5"	39°31'45.5"	Source of the tributary mentioned in BP106. Boundary continues in a straight line to BP108.	24
108	25	557309	1612351	14°35'01.4"	39°31'55.4"	Source of a tributary of Endeli. Boundary continues along middle of main channel of the tributary to BP109.	24
109	26	Confluence of Endeli and the tributary flowing from BP108				Boundary continues along middle of main channel of Endeli/Ragali to BP110.	24
110		Middle of main channel of Ragali nearest BP111				Boundary continues to BP111 by the shortest line.	28
111	30	623635	1607676	14°32'21.3"	40°08'51.1"	Boundary continues in a straight line to BP112.	28
112	31	630815	1590835	14°23'12.0"	40°12'48.0"	Point at which the boundary under the 1900 Treaty reaches the Salt Lake and where the boundary under the 1908 Treaty starts. Boundary continues in a straight line to BP113.	29
113		635777	1593605	14°24'41.3"	40°15'34.2"	Boundary continues in a straight line to BP114.	29
114		648180	1587363	14°21'15.9"	40°22'27.0"	Boundary continues in a straight line to BP115.	30
115		656580	1582220	14°18'26.8"	40°27'06.3"	Boundary continues in a straight line to BP116.	30
116		669700	1578050	14°16'08.4"	40°34'23.2"	Boundary continues in a straight line to BP117.	31
117		682070	1573240	14°13'29.0"	40°41'14.7"	Boundary continues in a straight line to BP118.	31
118		695208	1567549	14°10'20.7"	40°48'31.4"	Boundary continues in a straight line to BP119.	32
119		702195	1563439	14°08'05.2"	40°52'23.3"	Boundary continues in a straight line to BP120.	33
120		709697	1557620	14°04'53.9"	40°56'31.8"	Boundary continues in a straight line to BP121.	33

Col 1	Col 2	Col 3	Col 4	Col 5	Col 6	Col 7	Col 8
Boundary Point	Point	UTM Grid		Latitude/Longitude		Onward Course of Boundary	1:25,000 Sheet
		East	North	North	East		
121		715424	1550343	14°00'55.6"	40°59'40.6"	Boundary continues in a straight line to BP122.	33
122		723722	1536679	13°53'28.8"	41°04'13.1"	Boundary continues in a straight line to BP123.	34
123		728700	1529698	13°49'40.3"	41°06'56.8"	Boundary continues in a straight line to BP124.	35
124		734656	1518798	13°43'44.0"	41°10'11.8"	Boundary continues in a straight line to BP125.	35
125		737647	1515754	13°42'04.1"	41°11'50.4"	Boundary continues in a straight line to BP126.	36
126		743336	1509458	13°38'37.6"	41°14'57.7"	Boundary continues in a straight line to BP127.	36
127		749681	1502409	13°34'46.4"	41°18'26.5"	Boundary continues in a straight line to BP128.	36
128		759980	1493976	13°30'08.9"	41°24'06.2"	Boundary continues in a straight line to BP129.	37
129		764903	1492478	13°29'18.6"	41°26'49.3"	Boundary continues in a straight line to BP130.	37
130		771157	1487947	13°26'49.2"	41°30'15.6"	Boundary continues in a straight line to BP131.	38
131		786337	1481301	13°23'07.9"	41°38'37.6"	Boundary continues in a straight line to BP132.	38
132		788954	1474505	13°19'26.0"	41°40'02.1"	Boundary continues in a straight line to BP133.	39
133		794837	1469208	13°16'31.7"	41°43'15.5"	Boundary continues in a straight line to BP134.	39
134		796468	1464926	13°14'11.9"	41°44'08.1"	Boundary continues in a straight line to BP135.	39
135		805190	1456707	13°09'41.5"	41°48'54.5"	Boundary continues in a straight line to BP136.	40
136		813540	1447044	13°04'24.3"	41°53'27.9"	Boundary continues in a straight line to BP137.	40
137		817638	1440008	13°00'34.0"	41°55'41.1"	Boundary continues in a straight line to BP138.	41
138		821900	1430658	12°55'28.4"	41°57'58.8"	Boundary continues in a straight line to BP139.	41
139		828570	1424411	12°52'02.8"	42°01'37.4"	Boundary continues in a straight line to BP140.	42
140		831844	1417116	12°48'04.4"	42°03'23.0"	Boundary continues in a straight line to BP141.	42

Col 1	Col 2	Col 3	Col 4	Col 5	Col 6	Col 7	Col 8
Boundary Point	Point	UTM Grid		Latitude/Longitude		Onward Course of Boundary	1:25,000 Sheet
		East	North	North	East		
141		840086	1414588	12°46'39.0"	42°07'55.0"	Boundary continues in a straight line to BP142.	43
142		846722	1413740	12°46'08.8"	42°11'34.4"	Boundary continues in a straight line to BP143.	43
143		849493	1413319	12°45'54.0"	42°13'06.0"	Boundary continues in a straight line to BP144.	43
144	40	856238	1399036	12°38'07.1"	42°16'43.4"	Between the two checkpoints of Eritrea and Ethiopia at Bure. Boundary continues in a straight line to BP145.	44
145		861776	1391941	12°34'14.2"	42°19'43.7"	Boundary continues in a straight line to BP146.	44
146	41	870133	1380752	12°28'07.1"	42°24'15.4"	Summit of Mt. Musa'ali, Primary Monument No. 90 of the Ethiopia-Djibouti boundary.	45

COMMENTS

A. The Western Terminus

6. This Point is described in paragraph 8.1, A(1) of the Dispositif of the Delimitation Decision as follows: “The boundary begins at the tripoint between Eritrea, Ethiopia and the Sudan and then runs into the centre of the Setit opposite that point (Point 1)”. This determination has not been questioned by either Party.

7. In investigating the matter, the Commission’s experts were not able to see any previously established monument marking the tripoint between Eritrea, Ethiopia and the Sudan. In these circumstances, the Commission adheres to the description of Point 1 (designated as Point 1 in the Delimitation Decision) and which it now designates as BP1 (see Map No. 1).

B. The Line from the Setit to the Mareb (from Point 6 to Point 9 in the Delimitation Decision)

8. The Delimitation Decision determined that a straight line runs from the Setit starting at Point 6 (the confluence of the Setit and the Tomsa) to Point 9 (the confluence of the Mareb and the Mai Ambessa). These Points are now joined by a straight line drawn between them on land. The only changes that may occur in the future are the minor ones at the northern and southern termini of that line if there are movements in the middle of the main channels of the two rivers. Point 6 is now BP2 and its fixed point on land is BP3 (see Map No. 8). Point 9 is now BP5 and its fixed point on land is BP4 (see Map No. 13).

C. Tserona and Zalambessa

9. The Commission directed the demarcation team to take full account of the proposed boundaries in the Parties’ comments on Tserona and Zalambessa.² As similar considerations affect the demarcation line around both places, these two items are dealt with together.

1. Tserona

10. The Dispositif of the Delimitation Decision, paragraph 8.1, B. (iv), provides in part that the boundary should “leave Tserona and its environs to Eritrea. The boundary runs round Tserona at a distance of approximately one kilometre from its current outer edge, in a manner to be determined more precisely during the demarcation”.

11. The Commission has considered the submissions of the Parties and has noted in particular the comment by Ethiopia that the “outer edge and environs of Tserona should be determined using precisely the same principles as

² Demarcation Instructions, 22 August 2003, p. 1, para. 1.

are used for the determination” of the outer edge and environs of Zalambessa³ (see paragraph 12 below). Eritrea expressed the same wish.⁴ The Commission has identified these environs by a line that leaves the Belesa B at BP8 and proceeds by a series of straight lines to BP26 where it returns to the Belesa B (see Map No. 21). BP8 is located at the intersection of the middle of the main channel of the Belesa B and the straight line extension of the line from BP10 to BP9. BP26 is located at the intersection of the middle of the main channel of the Belesa B and the straight line extension of the line from BP24 to BP25. Thence, the boundary follows the Belesa B southwards to BP27 where it leaves that river to run south-westwards towards BP28 (see Map No. 22).

2. *Zalambessa*

12. The Commission invited Eritrea to comment on Ethiopia’s proposed boundary for the town of Zalambessa and to submit its own proposal. Ethiopia identified a boundary which was influenced by physical obstacles to the use of certain lands around the environs of Zalambessa. Eritrea asked that whatever standard or procedures applied to Zalambessa should also be applied to Tserona.⁵ Eritrea also submitted that “Any alterations should, additionally, be balanced so that gains to one party are equalled by gains to the other.”⁶ There is a close similarity between the Eritrean and Ethiopian proposals for the boundary around Zalambessa except that the Ethiopian proposal also includes the plateau land to the east.

13. In demarcating the boundary around Zalambessa, the Commission has borne in mind the views of the Parties, the nature of its environs and the extent of manifest impracticability in parts of the area. The boundary therefore continues from BP41 through BP42 to BP103 where it meets the Muna/Berbero Gado at BP104 (see Map No. 23).

D. The boundary between Points 15 and 16

14. Paragraph 8.1. B.(v) of the Dispositif provides in part that the boundary continues to the source, at Point 15, of an unnamed tributary: “From that point it crosses the watershed by a straight line to the source of a tributary of the Belesa A at Point 16. . . .”

³ Submission by the Federal Democratic Republic of Ethiopia, 24 January 2003, Comments Pursuant to the December 2000 Agreement, the Commission’s Rules of Procedure, the Commission’s Demarcation Directions and Instructions provided at the Boundary Commission’s Meeting on 6 and 7 November 2002, p. 65, para. 1.181.

⁴ The State of Eritrea’s Comments on the Preliminary Orthophoto Maps; Boundaries within Rivers; The Boundary at Tserona, Zalambessa and Bure; and the Eastern Sector, 24 January 2003, p. 14.

⁵ *Id.*

⁶ The State of Eritrea’s Comments on the Eritrean–Ethiopia Boundary in the Proximity of Tserona and Zalambessa and on the Specific Provisions of Ethiopia’s Comments of 24 January 2003, 15 April 2003, p. 5.

15. The Commission has determined that “References to the headwaters or sources of rivers or streams mean the highest point at which the flow of water can be identified or, if the stream bed has become permanently dry, then the highest point at which the stream bed can be identified”.⁷ Points 15 and 16 are now identified as BP28 and BP29 (see Map No. 22). The boundary runs as a straight line between these two points. If either of these points is found not to lie exactly at the source of the relevant tributary, it shall nonetheless be treated as if it were the source. If necessary, this point shall be linked to the nearest position of the relevant tributary by the shortest line.

E. The Eritrean claim line (Points 17 to 18 of the Dispositif)

16. Paragraph 8.1. B.(v) of the Dispositif provides in part that, from Point 17, the boundary “continues up the Belesa A to follow the Eritrean claim line to Point 18 so as to leave Fort Cadorna and its environs within Eritrea. The Eritrean claim line is more precisely depicted on the 1:100,000 Soviet map referred to by Eritrea in its final submission on 20 December 2001. Point 18 lies 100 metres west of the centre of the road running from Adigrat to Zalambessa.”

17. The Eritrean claim line is now identified as BP30 to BP41. Regarding BPs 32 and 33, if either of these points is found not to lie exactly at the source of the relevant tributary, it shall nonetheless be treated as if it were the source. If necessary, this point shall be linked to the nearest position of the relevant tributary by the shortest line.

18. In its Demarcation Instructions of 22 August 2003, the Commission instructed that pillar sites should be “located within approximately 200 metres of the coordinates extracted from the Soviet map”.⁸ The positions of BPs 35–41 (see Maps Nos. 22 and 23) have been determined on this basis.

F. Boundary between Points 24 & 25

19. See paragraph 15 above. Points 24 and 25 are now marked as the highest points at which the streambed can be identified. The boundary runs as a straight line between them. These points are now BPs 107 and 108 (see Map No. 24). If either of these points is found not to lie exactly at the source of the relevant tributary it shall nonetheless be treated as if it were the source. If necessary, this point shall be linked to the nearest position of the relevant tributary by the shortest line.

G. Points 29, 30 and 31

20. The Dispositif provides in Paragraph 8.1. B. (xii) that, “From Point 28, the line continues down the Muna/Endeli/Ragali to Point 29, northwest

⁷ Demarcation Directions, 8 July 2002 (as revised in November 2002, March and July 2003), para. 14D.

⁸ Demarcation Instructions, 22 August 2003, p. 2, para. 11.

of the Salt Lake, and thence by straight lines to Points 30 and 31, at which last point this sector [i.e. the Central Sector] of the boundary terminates.”

21. The Commission has found that maintenance of Point 29 as a fixed point could lead in the event of a change in the main stream of the river to depriving one or other Party of access to the river’s water. The Commission has therefore decided that Point 29 must be abandoned and that, consistent with the principles enunciated in the Delimitation Decision, the course of the boundary in this area shall follow the middle of the main channel of the Ragali River until it reaches a point nearest to BP111 (Point 30) which is the point at which equal access to the river’s water is no longer significant. The middle of the main channel of the Ragali is linked to BP111 by the shortest line. A straight line is then drawn south-eastwards to BP112 (Point 31).

22. BP112 is where the Ragali River reaches the Salt Lake. Because of ground conditions, it has not been possible to determine the exact location of this Point either from field inspection carried out during pillar site assessment of the Eastern Sector or from the imagery of the aerial photography. It has therefore been necessary to estimate where the Ragali River reaches the Salt Lake and to identify BP112 accordingly.

H. The Eastern Sector

23. The Delimitation Decision described this boundary as a series of straight lines connecting Point 31 to Point 41 at the boundary with Djibouti. This line was to serve as the basis for the demarcation, leaving open the possibility at that stage of “adapting it to the nature and variation of the terrain” as contemplated in Article II of the 1908 Treaty.⁹ Demarcation Instructions for the identification of pillar sites in this Sector included the requirement that maintenance of an area balance between the lines joining the Points finally chosen compared to the original delimitation line of 13 April 2002 should be in the order of three percent. These Instructions also required the determination of the mid-point between the Eritrean and Ethiopian customs posts at Bure and the reinstatement of the original pillar emplacement on Musa’ali at Point 41.

24. The Commission’s field staff was able to undertake the selection of all pillar sites in the Eastern Sector in early 2003. The sites chosen were based, where possible, on the submissions of the Parties in their 24 January 2003 memoranda and were assessed according to the requirements set out by the Commission in the Demarcation Instructions of 21 March 2003. In May 2003, the Commission submitted an initial report of this work to the Parties for comment. The Parties’ comments were received on 11 June 2003 and indicated acceptance of the proposals in principle. The Demarcation Team, after considering these comments, made further adjustments, and presented a final report to the Commission in August 2003. This report set out the coordinates

⁹ Delimitation Decision, 13 April 2002, p. 93, para. 6.34.

as surveyed of all boundary positions in the Eastern Sector and achieved an almost exact area balance. The position of the mid-point between the Eritrean and Ethiopian customs posts at Bure was identified. At Musa'ali, the remains of the old monument were located and its position was fixed.

25. The boundary in the Eastern Sector is therefore now defined as passing through the boundary points from BP112 to BP146.

I. The boundary in rivers

26. The Commission has determined in the Demarcation Directions that, “Unless the Commission should decide otherwise after receiving a request from a Party that the boundary in a river requires demarcation, the Commission considers that the identification of a river as a boundary should normally suffice without actual demarcation therein, save as regards the identification of confluences, turning points that may give rise to doubts, and headwaters or sources.”¹⁰ The Demarcation Instructions provide that the river “boundary is in the middle of the main channel (the channel of greatest volume) and will move in accordance with any change in position of the middle of the main channel.”¹¹

27. The Demarcation Instructions further provide that “islands shall fall within the territory of either Party according to their location in relation to the main channel”.¹² Where islands are identified by the Parties in their comments, “the demarcation team shall determine by appropriate methods the position in relation to the main channel of those islands”.¹³ Although there were general comments from the Parties on some islands, these comments did not provide substantial or specific evidence requiring a variation from the Commission’s delimitation formula for boundaries in rivers; accordingly, all islands are distributed in accordance with this formula.

¹⁰ Demarcation Directions, July 2003 revision, para. 14B.

¹¹ Demarcation Instructions, 22 August 2003, p. 3, para. 20 (b).

¹² *Ibid.*, para. 20 (d).

¹³ *Ibid.*, para. 21.

