

ERITREA-ETHIOPIA CLAIMS COMMISSION

DECISION NUMBER 1:

The Commission's Mandate/ Temporal Scope of Jurisdiction

Under Article 5(1) of the Agreement of December 12, 2000 ("The Agreement"), the Commission has jurisdiction over "all claims for loss, damage or injury by one Government against the other, and by nationals (including both natural and juridical persons) of one party against the Government of the other party . . . that are (a) related to the conflict that was the subject of the Framework Agreement, the Modalities for its Implementation and the Cessation of Hostilities Agreement, and (b) result from violations of international humanitarian law, including the 1949 Geneva Conventions, or other violations of international law."

A. No Supervisory Jurisdiction Over Interpretation or Application of the December Agreement. The Commission decides that claims regarding the interpretation or implementation of the Agreement as such are not within this grant of jurisdiction. Such an important grant of jurisdiction cannot be implied. Neither the text of Article (5)1 nor any other part of the Agreement gives such a supervisory role to the Commission. This contrasts with the jurisdiction of the Iran-United States Claims Tribunal, which was expressly authorized to decide disputes regarding the interpretation and application of the Claims Settlement Declaration.

B. Claims Arising During the Conflict. The Commission believes that the central reference point for determining the scope of its mandate under Article (5)1 of the Agreement is the conflict between the parties. In the overall context of the relevant documents cited in Article (5)1, the Commission understands this to mean the armed conflict that began in May 1998 and was formally brought to an end by the Agreement on December 12, 2000. There is a presumption that claims arising during this period "relate to" the conflict and are within the Commission's jurisdiction.

C. Claims After December 2000. The Commission has concluded that certain claims associated with events after December 12, 2000 may also "relate to" the conflict, if a party can demonstrate that those claims arose as a result of the armed conflict between the parties, or occurred in the course of measures to disengage contending forces or otherwise to end the military confrontation between the two sides. These might include for example, claims by either party regarding alleged violations of international law occurring while armed forces are being withdrawn from occupied territory or otherwise disengaging in the period after December 12, 2000. Any such claims must be filed within the filing period established by the Agreement. Moreover, as noted in Part A above, the Commission does not have jurisdiction over claims for alleged breached of the Agreement.

D. Claims Before May 1998. The Commission believes that Claims arising prior to May 1998 are of a different character and do not come within its jurisdiction. Logically, such claims cannot "relate to" the conflict in the direct sense indicated above for certain claims arising after December 12, 2000, because the armed conflict that is the central focus of the Commission's jurisdiction had not yet occurred. Accordingly, the Commission must examine whether there are other ways to interpret the term "related to" that would be in harmony with the term's ordinary meaning and the purpose and structure of the December Agreement.

In their papers and in oral argument, both Parties recognized that this concept might be given broad interpretations that would bring within the Commission's jurisdiction long-standing legal controversies, not just going back to July and August 1997, but perhaps going back for decades.¹ Neither Party suggested that the Commission adopt such a broad interpretation. Indeed, such an interpretation could not be effectively implemented given the limited capacity and resources of the five-member claims commission created by the December 12 Agreement. However, the arguments presented in support of jurisdiction over events prior to May 1998 did not indicate to the Commission any principled way to interpret the text to avoid this extreme result, a result apparently not intended by either Party.

Moreover, the Commission's mandate under Article 5 must be construed so as to be in harmony with the overall institutional structure established by the Agreement. In this regard, the Parties gave two other institutions clear and expansive mandates regarding events that occurred before the outbreak of the armed conflict. It is difficult to see how this Commission could inquire into and pass judgement regarding events prior to May 1998 and without running afoul of the mandates of these other bodies.

For example, during oral argument, it was urged that certain claims arising before May 1998 should fall within the Commission's jurisdiction. However, these disputes essentially resulted from the Parties' disagreements over the location of their boundary. Article 4 of the Agreement creates a neutral Boundary Commission, and gives to that Commission alone the responsibility for determining the boundary. It would not be consistent with the structure created by the Agreement for this Commission to attempt to arbitrate a dispute that has at its heart the question of the correct location of the boundary.

The Parties assigned other important responsibilities regarding events prior to May 1998 to yet another body. Under Article 3 of the Agreement, an independent impartial body appointed by the Secretary-General of the OAU is to carry out an investigation "on the incidents of 6 May 1998 and on any other incidents prior to that date which could have contributed to a misunderstanding between the parties regarding their common border, including the incidents of July and August 1997." Again, it is difficult to see how this Commission could exercise jurisdiction with respect to the events occurring prior to May 6, 1998 that are most in dispute between the parties without running afoul of the mandate of the investigating body authorized by Article 3.

Thus, the Parties expressly gave to mechanisms other than this Commission the primary responsibility for deciding questions related to the boundary and for assessing the character and consequences of controversies between the Parties before the outbreak of the armed conflict in May 1998. Given this, the Commission believes that it would not be proper for it to interpret the words of Article 5 to include as well claims for violation alleged to occur before the outbreak of the armed conflict in May 1998, on the ground that those claims "relate to" that conflict.

¹ See, e.g. Memorandum of the State of Eritrea, May 1, 2001 at 26, ("certain claims may be properly compensable before the Commission even though they concern, in part, events taking place prior to the summer of 1997 . . . it is difficult to state categorically any jurisdictional time frame identifying which claims are suitable for consideration by this Commission."); Memorandum of the Federal Republic of Ethiopia, June 15, 2001, ("The facts and events of the past during which misunderstandings arose over the boundary reach back to the 19th century, when boundary treaties were first concluded.")