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Ethiopia and Eritrea: Allergic to Persuasion

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Map © UNMEE.

Summary

- Six years after they signed a peace agreement in Algiers, Ethiopia and Eritrea continue their confrontation. Ethiopia won't accept the ruling of the Boundary Commission. Eritrea won't negotiate. Tensions rise in Somalia as Ethiopia and Eritrea back different sides.
- The United Nations peacekeeping mission to Ethiopia and Eritrea, UNMEE, struggles to maintain a presence in the border area, its activities restricted and its exit strategy blocked. Major UN and US initiatives fail. The Border Commission resorts to a virtual boundary demarcation.
- This briefing paper charts the undermining of the Algiers Agreement by its two signatories. It examines the differing approaches of Ethiopia and Eritrea to diplomacy and the challenges that this poses for the international community – the United Nations, the United States, the European Union (EU) and the African Union (AU) – in trying to achieve lasting peace between these two new and highly antagonistic neighbours.

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On 12 December 2000, the leaders of Ethiopia and Eritrea signed a peace agreement in Algiers. It marked the end of the two-and-a-half-year war between the two countries that had cost the lives of more than 70,000 people. The underlying causes were local, but nonetheless complex. They had to do with growing economic rivalry, competing local nationalism and shifting power relations between former allies.

The overthrow of the Mengistu regime in Ethiopia had been achieved as a joint venture between two rebel forces, the Eritrean People's Liberation Front (EPLF) in Eritrea and the Ethiopian People's Revolutionary Democratic Front (EPRDF) in Ethiopia, which was dominated by fighters from the northern province of Tigray. Acceptance of Eritrea's independence was a central plank of the alliance between two groups and was formalized in 1993. On the surface excellent relations existed between Eritrea's President Isaias Afewerki and Ethiopia's Prime Minister Meles Zenawi and their ruling inner circles in the initial years after independence.

In reality deep differences had plagued relations between the rebel groups for many years, leaving a residue of resentment and distrust. Some differences were over military strategy and tactics. Others were ideological. At times relations had deteriorated into open confrontation and occasional clashes. While the outside world was largely unaware of these difficulties, they were never forgotten by the political elites.

All of this went largely unspoken, and was not open to public scrutiny. Formal arrangements were made for Ethiopia's continuing use of Eritrean ports. Eritrea also used Ethiopia's currency. But little was done to develop the institutions required to manage complex and increasingly divergent interstate interests.

Serious economic rivalry developed, particularly between party elites in Eritrea and the adjoining Ethiopian region of Tigray. Eritrea decided to adopt its own currency in 1997. This move brought simmering economic tensions surrounding bilateral trade and investment to the boil, rupturing the informal channels of communication and negotiation between the two political elites.

It was against this background, in May 1998, that a small border incident was mishandled and erupted out of control – neither side had planned it. The fighting ended in June 2000 after Ethiopian forces dislodged Eritrean forces from border positions they had seized in 1998.

The Algiers Agreement

The Algiers peace agreement of 12 December 2000 formally ended the war. It seemed at the time a model of its kind. Major powers, notably the United States, had put serious effort and resources into trying first to prevent and later to resolve the dispute. This was before the events of 9/11 changed the trajectory of international politics. But in the 1990s signs of the new logic were already discernible in the region. Ethiopia and Eritrea, along with Uganda, were allies in the US strategy of containment of Sudan, then under Hassan al-Turabi's Islamist influence. As if to underscore the risks, the Al-Qaeda attacks on the US embassies in Kenya and Tanzania occurred in the early months of the Ethiopia–Eritrea dispute, at a time when it still seemed possible that an all-out conflict could be prevented. Both countries were regarded as friends of the United States. Their sudden and bitter falling out was a grave disappointment to Washington. The moment the fighting was over rapid diplomatic steps were taken to move to a peace settlement.

Central to the peace agreement was a mechanism to decide the location of the border between the two countries. For external mediators this was the most tangible problem to solve in a conflict that otherwise seemed to defy logical explanation. Whether or not the un-demarcated border was the real cause of the war, neither side objected to treating it as the central issue.

Colonial borders

The Algiers Agreement was founded on the notion that border demarcation would permanently solve the conflict. It provided for the establishment of a neutral Boundary Commission consisting of eminent legal experts chosen by both countries. Their mandate was 'to delimit and demarcate the colonial treaty border based on pertinent colonial treaties (1900, 1902 and 1908) and applicable international law'.¹ The mandate specifically excluded the Commission from making decisions *ex aequo et bono*, a term that meant 'according to the right and good'. In the context of arbitration, it refers to the power of the arbitrators to dispense with consideration of the law and solely take account of what they deem to be fair and equitable in the case at hand.

Both countries agreed in advance that the decision of the Commission would be final and binding, and would be followed by 'expeditious' demarcation. A UN peacekeeping force, UNMEE, would oversee the demilitarized border area while the Boundary Commission came up with its findings.

Ethiopia and Eritrea both accepted that the boundary should be based on the international treaties signed by Ethiopia, Italy and Britain in the early years of the twentieth century. Most other African borders were established unilaterally by the colonial power and accepted, sometimes unwillingly, at independence in the 1950s and 1960s by the newly emergent nations. This was the principle adopted by the Organization of African Unity (OAU) as a means of preventing a new scramble for Africa at the time of independence. The principle of abiding by existing borders, no matter how unsatisfactory, was also accepted in the case of Ethiopia and Eritrea.

But their border has had an unusually troubled history. In the last 100 years it had often been in dispute, it had never been demarcated and it had twice been abolished. Where other African boundaries were simply reaffirmed at independence, the Italian administration on which Eritrea's boundaries were founded had ended some 60 years previously. Eritrea's most recent existence as a colony was under the temporary British Military Administration that ended in 1952. With the reassertion of Ethiopian sovereignty over Eritrea in 1952 and unification in 1962, the boundary had been abolished and became an administrative division. It remained so until Eritrea's formal separation from Ethiopia in 1993.

The authorities in Addis Ababa and Asmara were aware of the need to reach agreement on their undemarcated border. But the war broke out before they had got beyond the initial conversations.

The ruling – false dawn

The Boundary Commission deliberated for just over one year. Much of the 1,000-km border followed natural features and was unlikely to prove controversial. But a great deal rested on the location of the little town of Badme. Badme was an Ethiopian-administered town that lies in the vicinity of a 'straight line' section of the border, as defined in the colonial treaty. In May 1998 Eritrean forces entered and occupied the town following an incident between local militias that escalated out of control. This dramatic action, since deemed by the Claims Commission to be in violation of international law,² was for Ethiopia the *casus belli* of the 1998–2000 conflict. The symbolic importance of Badme lay in the fact that whoever had legal title to it could claim that they had been defending their sovereign territory when the conflict broke out.

The Boundary Commission revealed its findings in The Hague on 13 April 2002. The 125-page Delimitation Decision, with accompanying maps, was dense and difficult for a layperson to absorb. The

reasoning behind the Commission's adjudication was long and complex, but essentially turned on two specific points: what the colonial treaties said and whether either party had established by administration a claim so strong as to supersede the provisions of the treaties. The effective date for such administration was 1935.

The Commission considered the location of the western portion of the border, which covered the town of Badme, on the basis of the 1902 treaty (to which Britain was also a party since it related to the frontier between Eritrea and Sudan). Having weighed up the treaty and the map evidence presented by the two parties, it agreed upon an interpretation of the straight-line section of the boundary such that it fell to the east of Badme, placing the town, therefore, just inside Eritrea.

The Commission then went on to examine Ethiopia's claim that it had administered the Badme area for such a long time that it had won effective title to the area, even if it had not been awarded it by treaty. Having looked at evidence such as the collection of taxes, the establishment of an elementary school and the destruction of incense trees, the Commission concluded as follows:

These references represent the bulk of the items adduced by Ethiopia in support of its claim to have exercised administrative authority west of the Eritrean claim line. The Commission does not find in them evidence of administration of the area sufficiently clear in location, substantial in scope or extensive in time to displace the title of Eritrea that had crystallized as of 1935.³

That appeared to be clear enough. Certainly the legal team that drew it up thought they had made their decision crystal clear. However the Commission did not indicate the location of Badme on the maps that accompanied the decision. Instead they gave the coordinates of the line along which the border would run. Exactly why the town was not shown on the maps provided by the Commission is open to speculation.

Both countries had their own legal teams at The Hague when the decision was given. Observers from the United Nations and the OAU were also present. Within an hour of the ruling being given to them one of the OAU staff sent a message to OAU headquarters outlining the ruling. It contained a crucial error. The first point read:

1. Western Sector. Delimitation line follows claim of Eritrea i.e. from common border with Sudan,

*follows Mereb River down to Setit point 6 and straight to Mai Ambessa, point 9. This confirms the Colonial boundary and Ethiopia retains Badme.*⁴

According to an official active in the border dispute, the information that Badme had been awarded to Ethiopia was relayed at once by the OAU to Ethiopian foreign minister, Seyoum Mesfin.⁵ He immediately called a press conference. On the question of Badme he said:

*The rule of law has prevailed over the rule of the jungle. This decision has rejected any attempt by Eritrea to get reward for its aggression. This decision was fair and legal. Badme and its surroundings which Eritrea invaded and occupied in May 1998 on the basis of its false claims, its (sic) now been decided by the Commission that Badme and its surroundings belong to Ethiopia.*⁶

Ethiopian journalists punched fists in the air and applauded Seyoum Mesfin as he told them that all the government's territorial demands had been met.

Eritrea took the news altogether more coolly, putting out a statement attacking the 'flowery and bombastic statements' that were issued by Ethiopia and declaring simply 'it is the Eritrean people who have emerged victorious.'⁷ In the event they were right. Although Eritrea lost some land along the border, they had been awarded Badme.

For a moment it seemed that both sides had accepted the Boundary Commission's ruling. But this was only due to the initial confusion, when both countries thought they had got Badme. Once it became clear that Badme had been awarded to Eritrea, Ethiopia began to row back from full acceptance.

Objections to the ruling

Ethiopia's first appeal to the Boundary Commission took the form of a lengthy commentary on the Delimitation Decision, arguing that errors had been made and adjustments would be required during the demarcation phase. The Commission delivered its response in Observations of 21 March 2003.⁸ These stressed that the Delimitation Decision was final and binding, that having made its determination it could not receive further representations from the parties, that demarcation could only proceed on the basis of that decision and that the Boundary Commission had no authority to vary the boundary line. This was precisely in line with Eritrea's position.

Ethiopia then suspended its cooperation with the Boundary Commission and appealed instead to the UN Security Council. In a letter of 19 September 2003 to

the UN Secretary General, Prime Minister Meles declared that the work of the Commission was in terminal crisis as a result of the Commission's decision on Badme and parts of the Central Sector. This he characterized as 'totally illegal, unjust and irresponsible'. Commenting on the award of Badme to Eritrea, he wrote that it was 'unimaginable for the Ethiopia people to accept such a blatant miscarriage of justice' which would be 'a recipe for continued instability and even recurring wars'. He appealed to the Security Council to set up an 'alternative mechanism to demarcate the contested parts of the boundary in a just and legal manner'.⁹ This was rejected.

The Boundary Commission, for its part, was moved to issue a short response to the letter. This reaffirmed its mandate and the authority of its decision on Badme, going on to observe somewhat tartly, that

*there is no 'crisis', terminal or otherwise, which cannot be cured by Ethiopia's compliance with its obligation under the Algiers Agreement, in particular to treat the Commission's delimitation determination as 'final and binding' and 'to co-operate with the Commission, its experts and other staff in all respects during the process of demarcation'.*¹⁰

Ethiopia did not comply, thereby ensuring that there could be no further progress on demarcation.

Ethiopia has repeatedly attempted to have the Commission's ruling reopened, by demanding that there should be discussions with Eritrea before the border is demarcated. Eritrea, on the other hand, has stuck to the legally correct position that the ruling be implemented in full and without alteration.

As there is no legal basis for Ethiopia's attempt to amend the ruling, it has relied on its greater weight as a regional partner and its experience in international politics to win the argument. So far the UN and its most important member – the United States – has refused to move away from the initial ruling, attempting instead to sweeten what is, for Addis Ababa, a bitter pill to swallow. However, skilful diplomacy has helped Ethiopia to present its case for non-compliance with a 'final and binding' ruling in the best possible light.

Eritrea, on the other hand, has had considerable difficulty gaining sympathy, despite having the law on its side. It has tried hard to get the international community to put pressure on the Ethiopian government to accept the ruling and allow demarcation to take place. As a new country, with no experience of getting its way in international politics, its blunt demand that the international community compel Ethiopia to comply with the ruling (and give

up Badme) has largely fallen on deaf ears. Eritrea finds it hard to accept the reality of its weak international standing *vis-à-vis* Ethiopia. But it has made matters worse by playing its diplomatic hand particularly badly, alienating previously friendly powers.

Attempts to end the stand-off

The UN Security Council had repeatedly stated that the prime responsibility for implementing the Algiers Agreement lay with parties themselves. But the blind alley of Ethiopia's refusal to accept the boundary ruling carried a significant financial tag for the UN. Demarcation was the completion point of the UNMEE mission. Without it there was no exit strategy. The attempts to resolve the matter followed a tried and tested formula. In December 2003 the UN Secretary General appointed a Special Representative, former Canadian Foreign Minister Lloyd Axworthy, to help resolve the stalled peace process. The hope was to exert pressure on both sides to find a compromise.

The time-honoured formula immediately struck a rock: Eritrea construed Axworthy's appointment as an attempt to smuggle in the 'alternative mechanism' for solving the border issue that Ethiopia had requested in September. An Eritrean spokesman said simply 'the concept of a special envoy is not acceptable to us'.¹¹ The Eritreans stuck to their guns and refused to meet the luckless Axworthy or allow him to visit the country. Whatever satisfaction this hard-nosed posturing gave to the Eritrean government, it allowed Ethiopia to seize the diplomatic advantage. Axworthy had meetings with Meles in Addis Ababa in February and September 2004 and again in January 2005. This helped to create the impression that it was Ethiopia that was looking for a solution and Eritrea that was being obdurate.

Ethiopia went further in November 2004, announcing a Five Point Peace Plan to resolve the dispute.¹² This declared Ethiopia's acceptance 'in principle' of the Delimitation Decision. It then proposed to 'start dialogue immediately with the view to implementing the Ethiopia-Eritrea Boundary Commission's decision in a manner consistent with the promotion of sustainable peace and brotherly ties between the two peoples'. This reasonable-sounding plan brushed over the fact that the Algiers Agreement placed responsibility for demarcation exclusively with the Boundary Commission. It was immediately rejected by Eritrea, which saw it as yet another attempt to renegotiate the boundary decision.

However, the Five Point Plan – which is still on the table – scored Ethiopia another diplomatic success. The plan quickly earned the support of the UK (the Prime

Minister had recently visited Ethiopia) and was welcomed by the EU and the UN. The US, however, remained conspicuously silent on the matter.

Since Eritrea would not talk and Ethiopia would not allow demarcation, the demarcation process remained in cold storage for the whole of 2004 and most of 2005. Despairing of progress, the Boundary Commission suspended its fieldwork, but not before its Chairman made one final, but important, remark.

The Commission must conclude by recalling that the line of the boundary was legally and finally determined by its Delimitation Decision of 13 April 2002. Though un-demarcated, this line is binding upon both Parties, subject only to the minor qualifications expressed in the Delimitation Decision, unless they agree otherwise. Conduct inconsistent with this boundary line is unlawful.¹³

Breaking the stalemate

It was Eritrea that eventually took steps to break the impasse. There were several reasons for this. First of all, the Boundary Commission decision was in its favour and it had every reason to want it implemented. Secondly, the state of no war and no peace was hurting Eritrea much more than Ethiopia. Whereas Ethiopia had substantially demobilized since 2000, Eritrea took the view that the un-demarcated border required it to remain on a war footing. The country was paying a terrible social and economic price as a result of having some 10% of its population tied up in military service. Thirdly, it was becoming obvious that Eritrea's trenchant demands that the international community compel Ethiopia to comply with its legal obligations were not gaining any traction at all. Indeed Eritrea was losing ground in the diplomatic stakes, with Ethiopia having increasing success in portraying it as the uncooperative party.

There were various diplomatic strategies that Eritrea might have tried, but instead it opted to apply direct pressure on UNMEE. In October 2005 Eritrea abruptly announced restrictions on UNMEE's activities. These included restrictions on road travel and a ban on helicopter flights, which directly impinged on UNMEE's ability to fulfil its mission. It also affected evacuations by air of ill and injured UN personnel. Eritrea then demanded that all European and North American staff be withdrawn from UNMEE, leading to the hasty removal of around 180 members of staff.

Eritrea correctly calculated that these actions would gain attention – albeit negative attention. In November 2005 the Security Council passed Resolution 1640 threatening economic sanctions against Eritrea

unless it reversed its restrictions on UNMEE. It also demanded that Ethiopia allow the demarcation of the border, without further delay. Neither side has complied. In January 2006 the UN Secretary General laid out six options for the future of UNMEE.¹⁴ These ranged from maintaining the current configuration of the force (which he said was unacceptable, given the restrictions imposed by Eritrea) to the withdrawal of the entire mission. As he said, 'None of these options is perfect.' At the same time Mr Annan concluded that maintaining some kind of monitoring force would be desirable, so as to 'prevent a resumption of hostilities and create the much needed space for the full implementation of the Algiers Agreement and dialogue between the parties'.

A diplomatic initiative

By now the Eritrean government was refusing point blank to discuss the border issue with any third party. With the fate of UNMEE hanging in the balance, a fresh round of diplomatic activity began in 2006, spearheaded by the US.

While it was clearly in Eritrea's interests to get the process moving again, President Isaias spurned all contact with American government representatives. This provided Ethiopia with another easy win. In January 2006 the Assistant Secretary of State, Jendayi Frazer, wanted to lead a high-level team to both Asmara and Addis Ababa. Her aim was to see the border situation for herself. In the event, although Eritrea provided visas for her team, it refused to allow her to visit the border, and that leg of the mission was cancelled. Ms Frazer went instead to Ethiopia, and was taken from there to see the disputed frontier. She also held talks with Prime Minister Meles Zenawi.

The first vehicle of the US diplomatic initiative was a meeting of the Witnesses to the Algiers Agreement – the US, EU, AU and Algeria – which was held in New York in February. After a brief restatement of the core issues (namely the final and binding nature of the delimitation and demarcation determinations of the Boundary Commission), the Witnesses asked the Boundary Commission to call a meeting and to 'consider the need for technical discussions with the support of a neutral facilitator to assist with the process of demarcation'.¹⁵ General Carlton Fulford, formerly Deputy Commander in Chief, US European Command, was mooted for the job of facilitator. The UN Security Council backed the proposal.

Meetings of the Boundary Commission took place in London on 10 March and 17 May. Both sides attended. Eritrea registered in advance its suspicions about the addition of any 'neutral technical experts' to the process, but as its entire position hinged on the

authority of the Boundary Commission it readily attended the meeting. Ethiopia's attendance was more of a concession, since it had refused to attend meetings of the Commission since 2003. Ethiopia said it was taking part 'with the conviction that the meeting was consistent with the Five Point Peace Proposal of November 2004' which, it claimed, remained 'the most realistic road map for peace between Ethiopia and Eritrea'. The modest outcome of the meetings was an agreement for the Boundary Commission to set up survey offices and to continue meeting.

Meanwhile, the Security Council continued to fret about UNMEE and the restrictions that Eritrea had placed upon it. Eritrea deemed these 'secondary issues' – compared to the primary issue of compelling Ethiopia to accept the boundary decision – and was unimpressed by a Security Council warning that UNMEE would be reduced in size and scope unless the restrictions were lifted. At the end of May, with no sign of the restrictions being lifted, the Security Council cut the peacekeeping force to 2,300, a reduction of more than 1,000 troops. The mandate was renewed to the end of September and has since been extended to the end of 2006. Since October, Eritrea moved 1,500 troops and 14 tanks into the Temporary Security Zone (TSZ). UNMEE restrictions have not been lifted. According to their website the zone remains 'volatile and tense'.

Creating a virtual boundary

The next meeting of the Boundary Commission was due to take place in June 2006 but was cancelled when Eritrea refused to attend. By then, Eritrea had taken umbrage and denounced the whole US initiative as 'pro-Ethiopian'. President Isaias declared that the US administration was primarily responsible for complicating the demarcation process.¹⁶ He accused the US administration of trying to lump together the 'cardinal issue of acceptance or rejection of the "final and binding" award with secondary matters relating to the activities of the peacekeeping force, "the special envoy", and the "facilitators"'.¹⁷ He charged the US with 'putting pressure on the Boundary Commission as well as trying to wrest the case from its jurisdiction'. Isaias concluded that the US administration was vouching for Ethiopia's defiance of international law.

Eritrea also took issue with what seemed a new approach by the Boundary Commission. It quoted a draft amendment produced by the chairman of the Commission, Sir Elihu Lauterpacht, entitled: 'Proposed amendments to the Demarcation Directions'. The Commission had pointed out that since it had been unable to visit the border before delivering its ruling, some of its boundary markers, or pillars, might be in

locations which were 'manifestly impracticable'. By this the Commission meant that they might be halfway down a cliff, or in the middle of a river. Ethiopia had attempted to use this to mean that where a village was divided by the border, the border itself was 'a manifest impracticability' – an interpretation that went way beyond the Commission's interpretation of the phrase.

The new proposal would have allowed for a Special Consultant – probably General Fulford – to investigate the alleged 'manifest impracticability' and to report back to the Boundary Commission. At the same time the Commission made it absolutely explicit that a) dividing a village did not fall into this category and b) only the Commission itself would decide whether the border was impracticable, and should therefore be adjusted. However, in the latter part of the proposal it did allow for a reference to another body, if the Commission decided it could not deal with the 'manifest impracticability'. The reference would be through the UN Secretary General to any fora established by the UN or the witnesses to the Algiers peace treaty of 2000.

Eritrea objected in writing to the concept of a new forum or mechanism to resolve the crisis. It also objected to the appointment of a Special Consultant. Both these suggestions cut across Eritrea's consistently repeated view that the Boundary Commission's ruling had to be implemented in full, and without amendment. Thereafter, Eritrea ended its cooperation with the Boundary Commission.

The Boundary Commission tried to convene meetings in August and November. Both parties declined to attend. With all avenues to progress blocked, the Boundary Commission gave notice on 20 November of a new approach: using 'modern techniques of image processing and terrain modelling', the Commission had identified the location for the emplacement of boundary pillars on the ground in accordance with the 2002 Delimitation Decision. It gave the parties a list of the locations of the pillars and 45 maps illustrating the boundary points. It invited them, once more, to reach agreement on the emplacement of the boundary pillars on the ground. The Boundary Commission gave notice, however, that if at the end of November 2007 Ethiopia and Eritrea had still failed to agree or to enable the Commission to resume its activities, the boundary described on the maps would automatically stand as demarcated and the mandate of the Commission would be regarded as fulfilled.

The Claims Commission

While the Boundary Commission has been a relatively high-profile operation, with its every decision dissected by both parties, the same cannot be said of the Claims Commission. Under the chairmanship of Professor Hans van Houtte, who had previously undertaken similar work in the Balkans, it has managed to make quiet if unspectacular progress. Its mandate was provided by the Algiers peace agreement of 2000. This stipulated that the Commission would '... decide through binding arbitration 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 ...' arising from the war, or violations of the Geneva Convention, or international law.

The Commission decided to begin by hearing claims in particular areas, and concerning particular issues, before issuing reports on the financial damages to which these give rise. In 2001 both countries filed claims relating to the conduct of military operations, the treatment of prisoners of war and of civilians, and the impact of the hostilities on civilians and their property.¹⁸ The financial awards are due to be made in 2007, and may be given in two parts, or provided as a single decision.¹⁹

Each of the findings of the Claims Commission has been published in clear language. The issues discussed have been highly controversial, and threw much more light on the conduct of the war than had previously been available. Yet because they were delivered in a low-key manner, and the hearings were in camera, they have received almost no public attention. Perhaps both sides decided to allow the process to proceed quietly, rather than engage in the kind of public rhetoric that has undermined so much of the work of the Boundary Commission and UNMEE.

Both countries have fared badly from this intense scrutiny. For example, in the Central Sector, Eritrea was found to have beaten and killed civilians (including the elderly) in the town of Zalambessa, after it was taken in June 1998. In the Irob area Eritrean soldiers were not prevented from raping civilians. For their part, Ethiopia was found to have destroyed property in Senafe and Tserona, and also to have failed to stop its soldiers raping women.

Among the most important findings of the Commission has been that on the origin of the war, and whether Eritrea has been in the right when it retaliated in force to the killing of its soldiers during the original clashes in May 1998. This was something a Commission of the OAU was supposed to consider, but it had never done so. Ethiopia asked the Claims

Commission to undertake the task, claiming that Eritrea has planned and carried out attacks in violation of international law and the UN Charter.²⁰ Eritrea responded that Ethiopia had been illegally occupying its territory, and had carried out an incursion on 6 and 7 May 1998, killing eight Eritrean soldiers. This – they asserted – set off the chain of events that led to war.

After examining the claims, the Commission ruled that a localized border skirmish did not constitute an armed attack as specified by the UN Charter. Eritrea's use of at least two brigades, supported by tanks and artillery, was a disproportionate response and therefore violated the UN Charter. In effect, Eritrea was found to have been the aggressor. At the same time the Commission rejected Ethiopia's claim that Eritrea's action was premeditated, saying it had insufficient evidence to rule on this issue. An important implication of this finding is that Eritrea will have to pay all the costs arising from the attack and the initial phase of the war, but not the full costs of the whole two-and-a-half years of the conflict.

One of the most contentious issues was the treatment of the approximately 500,000 Eritreans living in Ethiopia when hostilities erupted, and the way Eritrea dealt with the approximately 110,000 Ethiopians living in Eritrea.

The two groups were rather different. Many Eritreans had lived in Ethiopia for generations, moving there during the time of the empire, when it made little difference which province they lived in. A good number had put down roots, establishing successful businesses, and some had never visited Eritrea in their lives. Members of the Eritrean community had participated freely in the referendum that led to their country's independence in 1993. This, argued Ethiopia, required proof of Eritrean citizenship and meant they could be expelled when the war broke out.²¹ The Commission turned this argument down, deciding that only those who went beyond voting, by joining the Eritrean ruling party, the People's Front for Democracy and Justice (PFDJ), as the EPLF became known after independence, or taking part in Eritrean associations, could be regarded as having lost their Ethiopian citizenship. The Commission also decided that the way in which Ethiopia deprived many of their properties was illegal.

The Ethiopians living in Eritrea in May 1998 were very much more mixed. Around 20,000 were labourers in the port of Assab, which came to a halt when the war commenced. They packed up and went home, and the Commission found Eritrea had behaved well towards them. Indeed, the Eritrean authorities had early on issued orders that Ethiopians were not to be mistreated. The real trouble came after May 2000, when Ethiopia broke Eritrean lines, advancing deep

into its territory and forcing three-quarters of a million Eritreans to flee from their homes. The harassment of Ethiopian civilians, including the detention of more than 10,000 in a notorious camp (Wi'a), became intense. The Commission ruled that although the government had not whipped up hatred against Ethiopian civilians, it had not given them sufficient protection and had allowed their property to be seized.

Why has diplomacy proved so difficult?

Since May 1998 the international community has expended a great deal of time, energy, money and political capital on this issue. With UNMEE now practically immobilized and the Boundary Commission unable to complete its task, one has to ask what the peace process has achieved and, indeed, why it has failed.

• *Neglect of Africa?*

The conventional explanation – lack of international effort on African problems – does not stand up to close scrutiny. The two nations had at their disposal a thoroughly credible conflict resolution process, including in the Boundary Commission the services of some of the world's most respected international legal authorities on borders. This was supplemented by UNMEE, a professional UN Peacekeeping operation, operating at full complement at a cost of about \$200 million per annum, or \$1 billion since 2000. The process was about as good as it gets. The answers to the question why it has not delivered need to be sought elsewhere.

• *The protagonists themselves?*

First, the protagonists themselves have proved impervious to persuasion. This is largely a matter of the political culture that they share, deepened by years of guerrilla struggle, in which compromise is equated with capitulation. This was exacerbated by past mistrust and antagonism between the two ruling parties. There is not a great deal that the outside world can do about this, but it does make diplomacy much harder.

Events have also moved on from 1998. Isaias and Meles still lead their countries, but each of them faced serious criticism from their close inner circle in the aftermath of the war. They have reason to feel less secure and less confident of their positions. At the same time, each side feels the other is on the brink of collapse and therefore in no position to budge. This reduces their incentives to work for a final settlement.

There may indeed be interests in keeping things as they are. The status quo still broadly favours Ethiopia:

with an un-demarcated boundary it keeps Badme. It has substituted the use of handy Eritrean harbours for ports in Djibouti, Sudan and Kenya, at considerable cost, but without obvious damage to its economy. For Eritrea, the balance of disadvantage over the boundary can be weighed against the political advantages of keeping tight control of the country. Constitutional and political development has been completely arrested since 1998 in the name of war preparedness.

• *An unequal contest?*

The unequal match of diplomatic skills has probably impeded progress. Events since 2000 have shown up Ethiopia's vastly superior skill in diplomacy. Once the Boundary Commission die was cast in April 2002, Ethiopia's refusal to comply might well have lost it friends and influence in the process. But its own traditions of diplomacy have been put to excellent use, enabling it brilliantly to disguise what was in legal terms an essentially weak hand. This was matched by Eritrea's startlingly inept approach to diplomacy, which has allowed it progressively to lose the advantage of the favourable decision on Badme. Suspicious that any conversation about the border would be tainted by the threat of dialogue, Eritrea has ended up backed into a corner in almost complete international isolation.

Underpinning the unequal diplomatic contest is Ethiopia's greater weight in the world. This arises from its far larger size and population, its status as the only African country never to have been colonized, its position as host to the African Union and its standing with the US in the Global War on Terror. It has attempted to use these advantages to win a revision of the Commission's ruling. It is helped by the fact that it is a more open and amenable society than Eritrea: it has elections, even if these are flawed; it has an independent press, even if this is curtailed and journalists are locked up; and it has a greater ethnic diversity. Eritrea is today almost hermetically sealed from the outside world. It is in a permanent state of emergency, with its youth almost entirely conscripted into the trenches, the free press has been stifled, the opposition – even within the ruling party – has been crushed, and assistance from the West and the UN is spurned.

A further advantage for Ethiopia over Eritrea is the very positive relationship it has built with international donors. The amount of money at its disposal does have an impact on the country's ability and readiness to wage war. Ethiopia is an attractive target for aid donors because of the scale of its poverty, its strong economic performance in recent years and the 'pro-poor' focus of its policies. Around

24% of budgeted donor funding in 2006 – US\$375million – was in the form of Direct Budget Support. In the event, much of this was redirected to regional governments through a World Bank Protection of Basic Services Project. However, the sums involved completely dwarf the international assistance to Eritrea, which has made a point of rejecting much international assistance in the name of self-reliance.

• *Weaknesses of the Agreement?*

With hindsight, the Algiers Agreement may have been mistaken in placing quite so much emphasis on border delimitation. The causes of the war were clearly more complex than this single issue. (And there are plenty of un-demarcated borders that have not given rise to war.) The decision on Badme could only produce a winner and loser, and the strong focus on delimitation may have reduced the room for manoeuvre. At the very least it can be said that the risks of signing up in advance to a final and binding adjudication did not seem to be fully appreciated by both parties at the time. An approach that sought to address the consequences of the war rather than its ostensible causes might have had the effect of opening doors rather than closing them.

It is also worth asking whether the 'colonial borders' methodology was the right one to employ in circumstances where one side had apparently already won the war.²² Africa is the exception in having its boundaries decided by third party treaties: most state borders represent the realities of power. Christopher Clapham has drawn attention to the striking flaw at heart of the Boundary Commission ruling, namely that it flew in the face of the result of the fighting – literally requiring Ethiopia to snatch defeat from the jaws of victory.²³

The interpretation of colonial treaties might have been an adequate method to decide on the boundary if – as was proposed by US mediators in 1998 – Eritrea had pulled out of Badme while an adjudication took place. But Eritrea refused to pull back and was only removed by force. This reality underscores the limitations of the legalistic approach to boundary-making.

The impact of failure – regional instability

The failure of the peace process to achieve a lasting settlement has consequences that go far beyond relations between the two countries. The determination of the two sides to pursue their differences in every available forum exacerbates local conflicts and deepens regional instability. Ethiopia and Eritrea already harboured and supported each other's

opposition movements. Their rivalry has played out ever more dangerously in regional conflicts, particularly in Somalia. Ethiopia's strategy of support for the Transitional Federal Government (TFG) of Abdullahi Yusuf was matched by Eritrea's support for the Islamic Courts Union (ICU) in Mogadishu.

The nature and extent of this support are disputed. The UN group that monitors the arms embargo against Somalia reported a major arms build-up resulting from a systematic programme by both Ethiopia and Eritrea to arm their respective Somali allies. It claimed that Eritrea played a key role in channelling sophisticated weapons and equipment to the Islamic Courts from countries such as Djibouti, Egypt, Iran, Libya, Syria and Saudi Arabia.²⁴ Ethiopia, assisted by Uganda and Yemen, is said to have supplied weapons and munitions to the forces of the TFG.

After a dangerous escalation of tension in Somalia, Ethiopian troops moved decisively to support the TFG. Meles Zenawi had told parliament that his country was prepared for any possible attack by Somali Islamists and warned of action to combat what he called the 'clear and present danger' to the country. In late December Ethiopian forces dislodged the Islamists from Mogadishu and installed the TFG in the capital.

They met little resistance and no real evidence of the alleged Eritrean presence.

Reporting back to parliament on 2 January 2007, Meles nonetheless noted Eritrea's role in support of the Courts, quipping 'it is evident that the Eritrean Government is prepared to fight Ethiopia until the last drop of blood of the people of Somalia'.²⁵ He also dismissed Eritrean predictions that Ethiopia's intervention in Somalia would turn out to be a quagmire and would increase regional instability.

For now Ethiopia is riding high on its success in Somalia, which has further enhanced its standing as a US ally in the War on Terror. However, Eritrea is likely to remain a critic and an irritant in Ethiopia's Somalia policy. As a member of the Intergovernmental Authority on Development (IGAD), Eritrea may yet be able to disrupt or delay efforts to mount a regional force to replace Ethiopian troops in Somalia. The 1998 conflict between Ethiopia and Eritrea has therefore had lasting implications, which have been both domestic and regional. What began as a confrontation over the insignificant border village of Badme has left the ruling parties of both Ethiopia and Eritrea bitterly divided, drained the scarce resources of two of the world's poorest states, spread conflict across the rest of the Horn and left a legacy of bitterness and distrust that will take years to abate.

Endnotes

¹ Agreement between the Government of the Federal Democratic Republic of Ethiopia and the Government of the State of Eritrea, Algiers, 12 December 2000.

² Eritrea-Ethiopia Claims Commission Partial Award *Jus As Bellum* Ethiopia's Claims 1-8, 19 December 2005. All the rulings by the Claims Commission can be found on the website of the Permanent Court of Arbitration. <http://www.pca-cpa.org/ENGLISH/IRPCI/>.

³ 'Decision regarding delimitation of the border between the State of Eritrea and the Federal Democratic Republic of Ethiopia'. Eritrea-Ethiopia Boundary Commission. April 2002. Para 5.88. p. 83.

⁴ Message dated 13 April 2002 (in M. Plaut's possession).

⁵ Interview with M. Plaut.

⁶ Transcript of Press Conference compiled by UNMEE public information office, Addis Ababa, 13 April 2002.

⁷ Statement on the Determination of the Eritrea-Ethiopia Border Commission. Government of Eritrea, Asmara, 13 April 2002.

⁸ Eritrea-Ethiopia Boundary Commission. Observations of 21 March 2003. Published as an addendum to the Progress Report of the UN Secretary General, UN Doc. S/2003/257/ Add 1 of 31 March 2003.

⁹ The text of the letter is reproduced on the website Demarcation Watch.

¹⁰ Eritrea-Ethiopia Boundary Commission. Letter to the Secretary-General from Chairman of the Commission dated 7 October 2003. Published as Appendix 1 of UNSG Progress Report S/2003/1186 of 19 December 2003.

¹¹ BBC News, 2 January 2004, quoting Yemane Gebre Meskal.

¹² The text of the Five Point Plan appears in the UNSG's progress report S/2004/973 of 16 December 2004, para. 14.

¹³ Eritrea-Ethiopia Boundary Commission. Sixteenth Report on the work of the Commission. Appendix 1 of UNSG Progress Report S/2005/142 of 7 March 2005.

¹⁴ Report of the Secretary-General on Ethiopia and Eritrea. S/2006/1. 3 January 2006. <http://daccess-ods.un.org/TMP/2753199.html>.

¹⁵ Statement of Witnesses to the Algiers Agreement of 22 February 2006.

¹⁶ President Isaias Afwerki's speech on 15th Independence Day Anniversary, 24 May 2006. *Shabait.com*.

¹⁷ Source: <http://www.asmera.nl/eritrea2006/eritrea6524.htm>.

¹⁸ All the rulings by the Claims Commission can be found on the website of the Permanent Court of Arbitration. <http://www.pca-cpa.org/ENGLISH/IRPCI/>.

¹⁹ Phone interview with Professor van Houtte, September 2006.

²⁰ Partial Award *Jus Ad Bellum*, Ethiopia's Claims 1–8. Ethiopia–Eritrea Claims Commission, December 2005.

²¹ Some 70,000 Eritreans voted in the 1993 referendum on independence at polling stations inside Ethiopia. They had to produce evidence of Eritrean nationality in order to do so.

²² Eritrea maintains that it was not defeated, but had merely executed a strategic withdrawal from the lowlands. It argued it had undertaken similar withdrawals several times during its 30-year war of independence and that it was designed to save its forces for a later confrontation in more mountainous terrain. 'Ethiopians believe in God, *Sha'abiya* believe in Mountains.' Richard Reid in Dominique Jacquin-Berdal and Martin Plaut (eds), *Unfinished Business: Ethiopia and Eritrea at War* (Trenton, NJ: Red Sea Press, 2005).

²³ Christopher Clapham, 'Notes on the Ethio-Eritrean Boundary Demarcation', 16 October 2003. EastAfricaForum. <http://www.cfeefces.org/code/claph.htm>.

²⁴ Somali Sanction Monitoring Group report, November 2006.

²⁵ Prime Minister Meles' report to the House of Representatives, Ethiopian News Agency, 2 January 2007.

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