

***ETHIOPIA AND ERITREA IN CONFLICT: BORDER
DEMARCATON ON THE BASIS OF COLONIAL
“TREATIES” AND PROSPECT FOR
DURABLE PEACE***

***By
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Acronyms

EEBC	Eritrea – Ethiopia Boundary Commission
ELF	Eritrean Liberation Front
ELM	Eritrean Liberation Movement
EPLF	Eritrean People’s Liberation Front
EPRDF	Ethiopian People’s Revolutionary Democratic Front
JMC	Ethio-Eritrean Joint Ministerial Council
OAU	Organization of African Unity
PMAC	Provisional Military Administration Council
TGE	Transitional Government of Ethiopia
TPLF	Tigray People’s Liberation Front
UNMEE	United Nations Mission in Ethiopia and Eritrea
UNSC	United Nations Security Council

Abstract

A relationship of comrades - in - arms between EPLF and TPLF leaders since the latter's creation, and friendship and cooperation that existed between Ethiopia and Eritrea in 1991 - 1998 suddenly changed into armed conflict in May 1998.

It is on 6 May 1998 a small group of Eritrean soldiers entered a disputed territorial zone on the Badme plains along the western borders of Eritrea and Tigray, the northern most regional state in the Ethiopian federation. The move was intended to mark Eritrean presence and interests in these areas, and to substantiate the Eritrean position in already ongoing border negotiations between the two governments. The handful of Eritrean soldiers were confronted by Tigrean militia and security police and asked to put down their arms and return to undisputed territories. A shoot-out between the Eritrean unit and the local militia followed, resulting in a few casualties on both sides.

In this study, attempts have been made to investigate and identify the causes of the conflict. Whether the colonial "treaties" which have been made the basis for the Decision of EEBC are tenable and whether border demarcation on the basis of colonial "treaties" could serve the prospects for permanent peace and stability have also been explored. In this connection, the question of demarcation of borders and areas of normalization of relations has been discussed. The study further explored the prospects for future relations between the two countries. Here, factors conducive for peaceful relationship, such as economic factors, geopolitical factors, the historical and socio-cultural ties binding the two countries have been examined.

The following major points emerge from the analysis. The Ethio-Eritrean conflict of May 1998 cannot be explained by a single factor as its cause; it can only be explained by a combination of factors. Colonial legacy, border issue, nationalism, ethnicity, etc, were considered by some people to be the main causes of the conflict. Though these might have contributed to the conflict, the main cause of the conflict relates to historical, political and economic issues. Despite the fact that international media and Eritrean trace the cause of the conflict to be the border issue, it has only served as a pretext to trigger the conflict. Accordingly, peace efforts that focus exclusively on the border issue and demarcation using colonial "treaty" will not result in lasting peace. How is it possible for two formerly friendly groups, who fought the military regime in unison, to turn into deadly adversaries in a matter of weeks, willing to sacrifice tens of thousands of their people on the battlefields? Why mobilize people and resources on such a scale that resulted in the loss of many lives, if the reason for the war is – as it is officially stated – some relatively marginal square kilometers of agricultural land that could have been delimited on the basis of colonial "treaty" as it was agreed later on? It is truly a senseless war if we rely on such official reasoning – but may there be some hidden motives for the war that explain the intense ferocity demonstrated by the two warring parties? Could Colonial "Treaties" be tenable and valid basis for the decision of the border issue? Does this have the capacity to bring permanent peace? These are the questions this thesis attempts to answer.

CHAPTER 1

INTRODUCTION

This study is on border demarcation on the basis of colonial "treaties". Though the focus of the study is on the validity of the 1900, 1902 and 1908 colonial "treaties" in disposing of Eritrean "border" conflict, it briefly assesses theoretical framework of conflict that may serve to analyze the Ethio-Eritrea case, and the situation of inter-state conflict. In May 1991 that the 30 year-old war between the successive Ethiopian governments and the Eritrean insurgents ended. As a result, the Eritrean People's Liberation Front (EPLF) established the Provisional Government of Eritrea. Of considerable part of Eritrea was an integral part of Ethiopia prior to the colonial interlude (1890-1941). The creation of Eritrea as a political entity separate from Ethiopia was a result of the imposition of Italian rule in the latter part of the nineteenth century. The period of Italian rule lasted from 1890 to 1941. After the termination of British rule in 1952, Eritrea was reintegrated into Ethiopia under a federal arrangement sponsored by the UN. The federal arrangement was dissolved ten years later in 1962. The dissolution of the federation led to separatist movements and armed resistance which lasted for 30 years.

On May 24, 1991, the EPLF entered Asmara and established the Provisional Government of Eritrea. In May 1993, Eritrea formally became an independent sovereign state. Until May 1998, Ethiopia and Eritrea had relations of friendship and cooperation.

Following the overthrow of the Dergue in May 1991, the new Ethiopian Government (The Transitional Government of Ethiopia, led by the Ethiopian Peoples Revolutionary Democratic Front (EPRDF,)) accepted the right of the Eritreans to independence, helped to legitimize their independence and provided them with substantial support. The Eritrean authorities were allowed to continue using the Ethiopian Birr as a medium of economic transaction. After formal declaration of independence on 24 May 1993, an Agreement of Friendship and Cooperation was signed on 13 July 1993 in Addis Ababa. Based on this agreement, the Ethio-Eritrean Joint Ministerial Commission (JMC) was formed (Addis Birhan, 1999:297). The Commission formed three joint committees for political, economic and social affairs, which held extensive meetings, discussion and consultations in their respective areas (ibid.). A Protocol Agreement on the Harmonization of Economic Policies between the two countries was signed covering issues of fiscal, monetary, trade and investment policies (ibid.). In the Transit and Port Service Agreement signed on 29 Sept. 1993, the two countries agreed that the ports of Assab and Massawa would

serve Ethiopia as transit ports for surface transport of goods originating from and destined to Ethiopia.

Other agreements in the areas of trade, free movement of people, etc. were also signed and issues of common concern and mutual interest were resolved (Protocol Agreement between Transitional Government of Ethiopia and the state of Eritrea, 1993). This agreement entitled the nationals of each country to enter into and leave the country without the requirement of entry visa, to reside in each other's country without a special permit on equal terms with the nationals of the other. For the next five years until May 1998, Ethiopia and Eritrea had smooth and cordial relations. In the words of Addis Birhan (1999:297), "Ethio-Eritrean relations were exemplary." In May 1998, everything changed all of a sudden.

On 12 May 1998, Eritrean troops launched a surprise attack against Ethiopia's undefended and demilitarized border and forcibly occupied areas under Ethiopian administration. The Eritrean authorities initially claimed that Ethiopia had invaded their territory and that they had retaken it (Black, 1998:4).

The fast escalation of the conflict between the two countries was a great surprise to many. The study aims at investigating and identifying the immediate and underlying causes of this surprising conflict. The study shall explore and examine the Algiers Agreement between The Government of EFDR and the Government of State of Eritrea that establish a neutral Boundary Commission (EEBC) composed of five members with a mandate to delimit and demarcate the colonial treaty border based on "pertinent" colonial treaties (1900, 1902 and 1908) and applicable international law, but with no power to make decisions *exaequo et bono*. This study shall also assess the decision of EEBC on the basis of colonial treaties and the subsequent conducts of the parties. Here, the question of demarcation of borders, the questions of the validity of colonial treaties in demarcating the border between Ethiopia and Eritrea, normalization of relations shall be examined. Furthermore, prospects for permanent peace for the two countries shall be explored. In this connection, possible areas of normalization shall be discussed.

With those objectives in mind, an overview of the subject matter under discussion is presented in an introductory manner in Chapter 1; conflict shall be defined, and causes and types of conflict shall be identified in the chapter dealing with the literature review and theoretical framework. Before embarking upon the historical aspects of the problem between Ethiopia and Eritrea in

Chapter 3, international treaties and boundary disputes shall be introduced briefly in Chapter 2. After providing a brief background on Ethio-Eritrean relations in post-1991 years, an overview of conflict shall be made, and political and economic causes of conflict between Ethiopia and Eritrea shall be identified in chapter 4. Chapter 5 shall deal with the "Treaty" of 10th July 1900, the Note of 15th May 1902 and the "Convention" of 16th May 1908, which are endorsed by the Algiers Agreement as a "legal" tool for solving the problem of boundary issue between Ethiopia and Eritrea, and principles like *uti possidetis*, and respect for border that exist at the moment of independence shall be discussed. Last but not least the tenets and effects of the Eritrea - Ethiopia Boundary Commission (EEBC) Decision, the Algiers Peace Agreement and prospects for the resolution of conflict and possibilities for future cooperation and sustainable peace shall also be discussed.

Finally, in Chapter 6, conclusion and recommendations follow.

1. Background to the Problem

Ethiopia has for long been an independent member of the international community. Apart from the period following its annexation by Italy in 1935 there has been no relevant discontinuity or change in its status.

The boundary issue between Ethiopia and Eritrea has its roots thus with the advent of colonial power in the region (the Horn of Africa). It is the outcome of the death of Atse Yohannes IV in 1889 and the assumption of power by Atse Menelik of Shoa (Bahru, 1991:113 -114). This condition provided the Italians with the favorable opportunity to execute their colonial dream, and was gradually encroaching on the high lands of present Eritrea.

Italy began to assert a colonial presence in the region, first at the Red Sea port of Assab and in 1885 at Massawa. Subsequent Italian attempts to expand its control inland were successfully resisted by Ethiopian forces. However, in 1889, by the Treaty of Ucciali (Wuchale), Ethiopia and Italy established the boundary between Ethiopia and the areas of Eritrea then in Italian possession. On 1 January 1890, Italy formally established the Colony of Eritrea. In 1893, the Ethiopian Emperor Menelik denounced the Treaty of Ucciali, but Italian expansion inland continued until the battle of Adwa in 1896, in which Italian forces were defeated.

After the battle of Adwa, with the Italian defeat, - - - sober judgment prevailed on both sides - - - the new government in Rome saw the advantage of peace with retention of Eritrea. Menelik

sought reconciliation - - and concluded peace with Italy in the Treaty of Addis Ababa signed on 26 October 1896, leaving Eritrea to Italy (Henze, 2001:235-236). The delimitation of the boundary between Ethiopia and Italian colony in the Red Sea area (the name Eritrea did not exist then), has passed several stages. By a treaty with Italy, dated 10 July 1900, Eritrea was severed from Ethiopia (Bahru: 113).

A temporary boundary arrangement was then established between Ethiopia and Italy. Subsequently, in 1900, 1902 and 1908, Ethiopia and Italy concluded three boundary agreements that, together, addressed the entire common boundary of the Colony of Eritrea and the Empire of Ethiopia.

However, the agreements were not without problems. First, delimitation on the map was not always followed by demarcation on the ground. Secondly, the absence of effective administration in the frontier regions made the boundary delimitation a cartographic exercise. Thirdly, boundary agreements were concluded without taking cognizance of seasonal movements and ethnic unity of the frontier peoples (Ibid: 113-114). None of the boundaries thus agreed was demarcated. Indeed, as will be seen, each of these boundaries was, to varying degrees, not fully delimited.

In 1935, Italy invaded, occupied and annexed the whole of Ethiopia. In 1941, the United Kingdom expelled Italian forces from both Ethiopia and Eritrea and established a British Military Administration, which governed both countries from headquarters in Addis Ababa. The British Military Administration ended in Ethiopia with the conclusion of an agreement between the United Kingdom and Ethiopian on 31 January 1942. Emperor Haile Selassie then resumed control of his country. The former Italian Colony of Eritrea remained under British control until 1952.

By Article 23 of the Treaty of Peace with the Allied Powers of 1947, Italy renounced "all rights and title to the Italian territorial possessions in Africa" and agreed that "pending their final disposal, the said possessions shall continue under their present administration." As the Allied Powers were not able to agree upon the disposition of Eritrea within the time period established by the Peace Treaty, the matter was referred to the United Nations General Assembly under Paragraph 3 of Annex XI of the Treaty. On 2 December 1950, the General Assembly adopted Resolution 390A (V), which recommended that "Eritrea shall constitute an autonomous unit



federated with Ethiopia under the sovereignty of the Ethiopian Crown." The Federation of Eritrea with Ethiopian was accordingly established on 11 September 1952.

But after the federation and reunification of Eritrea with Ethiopia in 1952 and 1962 respectively, boundaries delineated during colonial period became administrative line with some variations. Even after the demise in May 1991 of the military government that heralded a new period in the relations between Ethiopia's government and the state of Eritrea, the boundary issue has been left untouched. Boundary issue was not given due regard, and ushered in the conflict between the two states in 1998.

On 11 September 1952, Ethiopia declared null and void the "*Treaties*" of 1900, 1902 and 1908. On 14 November 1952, Ethiopia declared the Eritrean Constitution void, ended the federal status of Eritrea, dissolved the Eritrean parliament and incorporated Eritrea into Ethiopia as a province.

Shortly after the incorporation of Eritrea into Ethiopia, an armed Eritrean resistance developed. In 1975, the Ethiopian armed forces deposed Emperor Haile Selassie, and a junta or Dergue, led by Mengistu Haile Mariam, took control of Ethiopia. The Dergue continued to prosecute the war against the Eritrean People's Liberation Front ("EPLF"). By the late 1980s, the EPLF controlled most Eritrea except for Asmara and Massawa. In February 1990, the EPLF captured Massawa. In 1991, Mengistu fled Ethiopia and the Ethiopian People's Revolutionary Democratic Front ("EPRDF") established an interim government, while the EPLF took control of Asmara. At a Conference on Peace and Democracy held in Addis Ababa in 1991, the right of the people of Eritrea to determine their own political future by an internationally supervised referendum was recognized. In April 1993, the referendum was held in Eritrea. It has been said over 99% of the voters' favored independence.

On 27 April 1993, Eritrea became independent and was admitted as a member of the United Nations. On 29 April 1993, Ethiopia-EPRDF recognized Eritrea's sovereignty and independence and on 30 July 1993, the two Governments concluded an Agreement of Friendship and Co-operation. However, all these were done without any border delimitation and demarcation on which the whole of the problems revolve.

2. Statement of the Problem

In May 1998, hostilities broke out between Eritrea and Ethiopia. After a number of attempts to re-establish peace between the two Parties, the December Agreement was signed on 12

December 2000, providing for the permanent termination of military hostilities between them. A major component of this Agreement was Article 4, the terms of which have been set out below, providing for the establishment of The Boundary Commission.

The Eritrea-Ethiopia Boundary Commission (EEBC) was established pursuant to an agreement dated 12 December 2000, alternately entitled "Agreement between the Government of the State of Eritrea and the Government of the Federal Democratic Republic of Ethiopia" and "Agreement between the Government of the Federal Democratic Republic of Ethiopia and the Government of the State of Eritrea".

Article 4 of the December (Algiers) Agreement provides as follows:

- a) *The parties agree that a neutral Boundary Commission composed of five members shall be established with a mandate to delimit and demarcate the colonial treaty border based on pertinent colonial treaties (1900, 1902 and 1908) and applicable international law. The Commission shall not have the power to make decisions exaequo et bono meaning with no consideration of fairness and justice (emphasis added).*
- b) *The parties agree that the delimitation and demarcation determinations of the Commission shall be final and binding. Each party shall respect the border so determined, as well as the territorial integrity and sovereignty of the other party (emphasis added).*

On April 13, 2002 the Commission gave its decision. To cite but a few:

- 5.94. . . . *One time dating from 1970 refers to the destruction of incense trees. There is some evidence of policing activities in the Badme Woreda in 1972-1973 and of the evaluation of an elementary school at Badme town. There are, addition, a few items dating from 1991 and 1994.*
- 5.95. *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.*

On this clear decision EPRDF misinformed the Ethiopian people by declaring that it is decided to Ethiopia's favor, including Badme and its environs. But in a few days later EPRDF started questioning the decision and blaming the Commission. And for the last two and half years it is propagating that the decision is wrong, unjust, and it won't accept in its totality but in principle.

Thus, though the parties have agreed to demarcate disputed borders by the decision of EEBC, delimitation and demarcation of boundary between Ethiopia and Eritrea is still high on the

agenda. The subsequent conduct of the parties, even after (1) they agreed to be abide by the decision of the Commission and (2) the Commission disposed of the issue using colonial “*treaties*”, makes the problem unabated.

But the Agreement made by the two Governments to be abide by the decision of the Commission on the basis of colonial “*treaties*”, without having any resort to *exaequo et bono* decision, added to the inherent problems of colonial treaties, such as its arbitrariness in paying attention to the needs of the local population (Tyranowski, 1980: 128), movement of people and ethnic unity, delineating only on papers (Bahru:113-114), especially in case of Ethiopia and Eritrea, may be a long time before peace and cooperation is realized.

3. Objective of the Study

The thesis has the general objective of pointing out the legal and factual determinant factors in delimiting and demarcating borders between two countries. The specific objectives of the study are to:

- Assess the status of colonial boundary “*treaties*” in delimiting and demarcating borders between Ethiopia and Eritrea;
- Examine the rights and duties of the two states under international law and the Boundary Commission Decision;
- Explore and analyze the common and unique socio-economic and ethnic grouping of the two countries for future relations;
- Investigate the conditions and possibilities to bring lasting peace between Ethiopia and Eritrea.

4. Hypothesis

The hypothesis of the research is that Ethio-Eritrean conflict is caused not only by border dispute; and Colonial Treaties have no relevance to settle Ethio-Eritrean conflict; and could not bring sustainable peace because it fails to take in to account other important factors such as historical ties, socio-cultural, and economic factors that could serve endeavors toward guaranteeing peace and security than demarcation and delimitation of frontiers.

5. Scope and coverage

The historical relations and the conflict between Ethiopia and Eritrea have many dimensions. This study, however, is limited to some aspects of historical, colonial and political convergence and divergence. Moreover, among several causes of the conflict, this study covers only the

immediate causes to the May 1998 conflict and the war that followed. Conflict between Ethiopia and Eritrea before 1991 is viewed as a domestic issue. It has been said that it was given a political solution when Eritrea attained independence and when its independence was recognized by EPRDF. The study also examines the relevance of colonial “treaties” to demarcate border disputes and its capacity to bring long lasting peace between the two countries.

5. Methodology

This study shall be based on the politic – legal approach as a theoretical perspective. This is because the case for the study has a political aspect, on the one part, for Eritrea and Ethiopia were under a unified system of governance, or administration so to say, and multifaceted political phenomena were there; and on the other legal issues are being involved starting from the 1889, treaties 1896, 1900, 1902, 1908 colonial “Treaties” through the 1950 UN General Assembly Resolution 390A(V) to the Algiers Agreement and the April 2002 Boundary Commission Decision, which are in deed the subject of analysis in this thesis.

Thus, though I could not find a kind of “politico – legal” approach, this way of approaching is relevant to the theme of the study, for one thing, Ethio-Eritrean case is a political one that needs to be seen critically since the creation of Eritrea as a political entity separate from Ethiopia and the result of the imposition of Italian rule in the later part of 19th Century (1890-1941) is the major, if not the only one, source of the problem; and for another, the problem that ensued to the present stalemate has its roots in the Algiers Agreement by which the preference of the two governments, in solving the problems of the two countries, far goes to the 1900, 1902 and 1908, century back colonial “Treaties”, as a legal background to the discussion at hand.

6. Methods

This is a case study. It shall depend on the analysis of secondary sources such as books, journals, published and unpublished materials, conference papers, deliberations, reports, treaties, conventions and Ethio-Eritrean Boundary Commission Decision (EEBCD). The type of investigation to be used in this study is analytical.

CHAPTER 2

LITERATURE REVIEW AND THEORETICAL FRAMEWORK

2.1. Conflict and Causes of Conflict

2.1.1. Conflict in General

The definition of conflict varies depending on the objective of the study and the methods employed by different authors. For instance, Stanger (1967:15) defined the concept as:

... Conflict is a situation in which two or more human beings desire goals which they perceive as being obtainable by one or the other but not both. This compact definition can be opened out and clarified by saying that there must be at least two parties; each party is mobilizing energy to obtain a goal, a desired object or situation; and each party perceives the other as a barrier or threat to that goal.

According to Dougherty and Pfaltzgraf (1990:187), the term conflict also refers to a condition in which one identifiable group of human beings (whether ethnic, linguistic, cultural, religious, socio-economic, or other) is engaged in a conscious opposition, to one or more identifiable group because these groups are pursuing what appear to be incompatible goals.

Coster (1956:3) also defines conflict as a struggle over values, and claims to scarce resources, in which the aims of the opponent are to neutralize, injure or eliminate their rivals. There is yet another definition in terms of competition. Thus, it is defined as “escalated natural competition between two or more parties about scarce resources, power and prestige. Parties in a conflict believe that they have incompatible goals and their objective is to neutralize, gain advantage over and injure or destroy one another” (Laue, 1987:17).

In the definitions given above, incompatibility of goals or divergence of interests may be taken as common elements. But an element to injure or destroy another may not be taken as a necessary component of definition of conflict because conflict is not always destructive; it may play a constructive role (Mesfin, 1999:118)

Mesfin defines conflict as “a practice of disagreement on public issues that affect lives of groups, essentially about means and ends regarding their mutual relationships, diverse interests, different values, institutions or organizations”. Mesfin further explains that the manifestation of such disagreements may range from political combat to armed struggle leading either to integration or disintegration. This definition embodies the possible elements that constitute conflicts, that is, parties in conflict may perceive that they have incompatible goals and interests; the manifestation

of conflict may be violent or non-violent, and that conflict may be constructive or destructive (it may end in integration or disintegration).

Conflict implies more than competition. People may compete with each other for something that is in shortage without being fully aware of their competitors' existence, or without seeking to prevent the competitors from achieving their objectives. Competition shades off into conflict when the parties try to enhance their own position by reducing that of others; try to thwart others from gaining their own ends, and try to put their competitors "out of business" (Dougherty, *ibid*).

In Marxist literature, conflict (or contradiction) is the foundation of all analysis of social phenomena. For Marxists, conflict is inevitable and necessary for social change and development (Marx and Engels Quoted in Mesfin, 1999:116). But the perception that conflict is inevitable and necessary is not exclusively Marxist. Quoting George Simmel, Mesfin (p.117) observes that "*conflict of some sort is the life of society, and progress emerges from struggle in which individuals, group or class or institution seeks to realize its own idea of good.*" Although conflict may end up in destruction, and even in death, conflict may also result in an enhanced relationship and further goal attainment (Moa Quoted in Mesfin: 116).

Does the argument that conflict is inevitable hold true in international relations? The stark picture of inequality that exists globally contains the fundamental reasons why the human species has not managed to eradicate international war and conflicts. According to Coulumbis and Wolfe, (1986:365).

The statistics of inequality in the world leads to one conclusion: There is a vast unevenness of development both within and among nation-states. It follows, almost as an automatic rule of politics that the advantaged countries seek to defend and hold onto their accomplishments, whereas the disadvantaged want to redress the balance, to narrow the gap, and redistribute the wealth, status and military power in more equitable fashion.

As a result, one can argue that conflict becomes the Siamese twin of inequality. On the other hand, the international system today remains a decentralized system. Nation - states are legally and formally sovereign-independent but are behaviorally interdependent to a greater degree than in the past. Nationalism persists along with Transnationalism. National governments are bigger than ever but less able by themselves to deal with problems those spillover national boundaries. National security continues to be of a permanent concern. The international system remains



stratified in terms of power and wealth (Pearson and Rochester, 1988:94). Morgenthau, the famous proponent of the realist theory, defined politics as a struggle for power and also defines the fundamental goals of a state – the national interest – in power terms. The most fundamental interest of states, according to this theory is survival:

Because of the anarchic nature of the global system, territorial integrity and political sovereign are not assured. Moreover, since there is no common sovereign to defend the legitimate interests of state and to punish aggression, each state is ultimately responsible for protecting it self and for promoting its own interests in the world community (Morgenthau, 1973:15).

These are situations that may, in one way or another, give rise to conflicts among states. In other words, these situations indicate the inevitability of conflicts in the international system.

2.1.2. Causes and Types of Conflict

As to why does war occur numerous and contradictory explanations are given to the causes of war. There are people who argue that war is a universal human trait or that wars are planned by decision-makers (for instance, Spinoza, Jhon Milton and Betrand Russel). Others contend that wars are the result of impersonal historical forces or the consequence of ambitions of individual national leaders, (Aron, 1966). Still others argue that conflict inheres in the nation-state or that violence results from errors of judgment on the part of decision-makers (Lieber, 1988: 227). Population pressure, economic imperialism, rigidifying balance of power, individual political and personal ambitions etc, are also considered as causes of war (Ibid.). Most of these are single factor explanations: yet the dimensions of conflict seem far more complex than any factor can encompass. That is why Coulombis and Wolfe (1986: 196), contend “any effort to identify any single cause of war relevant to all times is futile.” Therefore, causes of conflict and war have to be sought not in a single factor or explanation but in a systematic pattern or in groups of explanations.

Such systematic pattern or levels of analysis was first suggested by Kenneth Waltz (1973) suggested that the causes of war could be found at the levels of individual, the nation-state, and the international system.

The individual level focuses primarily on human nature and instinct theories and on individual political leaders and their belief systems, personalities and psychological processes (Levy, 1996:4). This level of analysis finds in man himself the locus of important cause of war. The

seventeenth century philosopher, Spinoza, as quoted by Lieber (P. 232), explained violence by reference to human imperfections. Similarly, John Milton (quoted by Lieber) stated that war was inevitable because men were irreparably evil. Classical realism also inphasizes that the roots of armed conflicts rest with human nature (Kegley and Wittkopf, 1997:360).

Psychological conflict theories also fit to this explanation or level of analysis. Some of their analysis focuses on individual leaders. Others assume that because war represents aggressive behavior of nations, an understanding of its causes can be obtained by examining the determinants of aggressive behavior in individuals (Kelman, 1966:7). In this connection Kegley and Wittkopf, (1997:351) wrote:

In a sense, all wars between states originate from the decisions of national leaders, whose choices ultimately determine whether armed conflict will occur. We must therefore consider the relationship of war to individuals and their choices, and for this, questions about human nature are central.

Foreign policy behavior can also be affected by the psychological processes involved in individual judgment and decision-making. Capabilities and intentions of the adversary may be misperceived, or the capabilities and the hostile nature of the adversary's intentions may be exaggerated. The hostility of ones adversary may also the underestimated. All these are psychological processes most likely to have a major impact on the processes leading to war (ibid.). Misperceptions of adversary's capabilities may be critical. The underestimation of adversary capabilities relative to one's own generates military overconfidence and the common belief that a rapid military victory involving minimal costs is quite likely. Beliefs or psychology of any single decision-maker may be minimized if more people are brought into the decision-making process (this is so in a democratic society) (Levy; 1996:17).

In the Nation-state level or societal-level source of international conflict, domestic sources, such as the political and socio-economic system, ethnicity, nationalism, ideology, etc. can be considered.

The perspectives of President Woodrow Wilson and V.I. Lenin fall within the category of nation-state level sources of international conflict. In the years before the First World War, President Wilson had identified the cause of war as the absence of self-determination and democratic government (Lieber, 1988:238). In his view, wars occurred at the behest of dictatorial regimes, whereas government responsive to the will of its people would not be likely to embark upon aggressive action. Wilson's formulation that democracies are more peaceful while authoritarian

and monarchical states are aggressive falls short of providing comprehensive explanations. America's experience in Vietnam, Argentina's with Britain in the Falkland Islands, France's experience in Indochina, etc, do not help in explaining the non-aggressive character of democracies. There is little evidence that the type of political system and socio-economic setting is a key factor associated with war. All types of states-democracies as well as dictatorships, capitalist as well as communist countries, seem to have roughly equal propensity to end up in war at some time (ibid.).

As opposed to Wilson's perspective, Lenin held that international conflict was caused by the dynamics of imperialism. Lenin and others, who argue that this is the cause of international conflict, identify human greed as the root cause and the profit motives of capitalism as the catalyst of war (Reynold, 1981:201). The struggle to capture new markets or to control new sources of raw materials drives governments to embark upon imperialist ventures that invariably result in conflict (Magdoff, 1978:42).

Another societal level theory of international conflict is "diversionary theory" or scapegoat hypothesis. Under certain conditions, political leaders may be tempted to undertake risky foreign ventures in an attempt to divert attention from domestic problems and bolster political support. Although this theory of war may explain certain cases, internal political insecurity does not always lead to external scapegoating. As Levy (P. 1) observes there must be certain conditions internally under which scapegoating is possible-low level of domestic political support and legitimacy, poor economic performance and the perception that a diplomatic or military victory is feasible with minimum costs.

Ethnic problems or nationalism may also cause international conflict. Wars of secession and of national unity may be internationalized if they threaten to alter balance of power at regional level or between states. This creates incentives for external states to intervene to insure the weakening of a potential enemy (ibid.). Ethno-national conflict may also contribute to international migration, which in turn may add pressure and strain on scarce resources in the host country, and can change the balance of power among religious or ethnic groups thereby resulting in conflicts.

The traditional literature on the causes of war is dominated by the realist paradigm: a broad systemic level framework that incorporates several distinct theories. Each of these theories assumes that the key actors are sovereign states that act rationally to advance their security, power and wealth in an anarchic, threatening international system. In the realist world view,

assumptions of an inherently conflicting world and uncertainties regarding the present and future intentions of the adversary lead political leaders to focus on short-term security needs and on their relative position in the system, to adopt worst case thinking, to engage in the struggle for power and to use coercive threats to advance their interests, and influence the adversary and maintain their reputations (Levy:5).

According to Levy (ibid.), at the level of international systems, there are four theories of international conflict: balance of power theory, power transition theory, hierarchical equilibrium theory, and lateral pressure theory.

Those who advance balance of power theory argues that balance of power (military parity) between states tend to deter aggression whereas a breakdown in military balance tends to invite aggression. There are other balance of power theorists who hold that war is most likely between equals than unequals, since between unequals the weaker dare not fight and the stronger need not (Pearson and Rochester:264). The empirical evidence is, however, inconclusive as wars can occur between equals as well as unequals, but the greater the inequality the less likely it is that war will occur (ibid).

It is sometimes suggested that wars result from changes in power relationships. This situation is explained by power transition theory, a form of hegemonic theory that shares realist assumptions but that emphasizes the existence of order within a nominally anarchic system. Hegemons commonly arise and use their strength to create a set of political and economic structures and norms of behavior that enhance the stability of the system at the same time that these structures and norms advance the security of the hegemon. Differential rates of growth lead to the rise and fall of hegemons, and the probability of a major war is greater at a point where the declining leader is being overtaken by the rising challenger (Levy:82). Either the challenger initiates the war to bring its benefits from the system into line with its rising military power, or the declining leader initiates a "preventive war" to block the rising challenger while the chance is still available (Geller, 1994:173).

A combination of balance of power and power transition theories, "hierarchical equilibrium theory", posits that peace is most likely under conditions of equality of power between two major blocks, but with hierarchical dominance within each block by a hegemon. Hegemonic theories and hierarchical equilibrium theory each suggest that the erosion or collapse of hierarchical

authority within an empire or block system will increase the probability of violent conflict between political entities and communal groups in that system especially if they have a tradition of rivalry. Katz (1996) illustrates this point using the experience of the Soviet Union and Yugoslavia.

The fourth systemic level theory of international conflict is "lateral pressure theory." Choucri and North (1986:257) consider competition for resources, market, superiority in arms, and the strategic advantage among the major causes of conflict. A society with insufficient resources within its territory will be seriously constrained in its activities unless it finds some way of acquiring the resources it demands. How a society reaches for its resources beyond its sovereignty is conditioned, among other things, by power and friendliness of its neighbors (ibid).

Another systemic level theory, one that derives from a liberal rather than a realist paradigm and that also includes a substantial domestic component, is the liberal economic theory of war. The basic argument is that free trade within an international market economy is the best guarantor of peace. One of the theoretical arguments advanced to support this proposition is the idea that trade promotes prosperity (following the law of comparative advantage), and that prosperity promotes peace in part because people are too busy growing rich to have time for war. Tariffs, quotas, and any other restrictions on the natural operation of market mechanisms have the opposite effect (Kegley and Wittkopf:8).

A related argument emphasizes the intervening role of interdependence rather than prosperity: because trade increases interdependence and creates mutual vulnerability to any interference with free trade, the fear of loss of welfare gains from trade deters political leaders from initiating militarized conflict. Liberals conclude, therefore, that trade is economically efficient and that it promotes peace among industrial states (now that the foundations of wealth and power have shifted from territory to industrialization).

Levy (P. 5) asserts that it is logically possible and in fact often desirable, to combine variables from different levels of analysis in causal explanations. Independent variables from one level can be used to explain dependent variables at another level, and variables from several levels can be combined in an explanation of a single dependent variable. Systematic or dyadic (interactions between two states) level security threats can shape individual level foreign policy preferences. In addition, national or individual-level variables can be the primary causes of Systematic and

dyadic level outcomes. Domestic political pressures, bureaucratic conflicts and compromises, or the belief systems of individual leaders, can be the main causes of some wars.

Among the theories of international conflict and the types of conflict discussed above, the most relevant ones for the purpose of explaining the causes, actually the immediate ones, and the types of Ethio-Eritrean conflict shall be discussed in the following. Ethio-Eritrean conflict cannot be explained by a single factor causes: it can only be explained by a combination of factors, which get expression at different levels of analysis. First and for most, duration of independence matters more for new states to be prone for conflicts. New states are more likely to initiate wars than are mature states (Wright 1942). Newly independent countries typically go through a period of internal political upheaval, which often serves as a catalyst to external aggression (Kegley and Wittkopf: 353). Karl Deutsch, a German - born political scientists, described that nationalism is highly connected to armed conflict (Quoted in Kegley and Wittkopf). "Nationalism-love of and loyalty to a nation-is widely believed to be the cauldron from which wars often spring" (Van Evera, 1994). All these follow suits the case of Eritrea. To come back to the analyses of the systemic – level sources of international conflict, Ethio-Eritrean conflict may be explained by power transition theory, lateral pressure theory and balance of power theory (of course, in the context of the sub-region of the Horn of Africa). At a societal (nation-state) level source of international conflict, we have diversionary theory, theories of nationalism, ethnicity (which expresses itself in a desire to create an Eritrean-ethnicity, and political ideology of the two fronts leading the two countries). At the individual level sources of international conflict, we have the belief systems of the Eritrean leaders, their personalities, psychological process-misperceptions of the military capabilities of Ethiopia, underestimation of Ethiopian capabilities, exaggeration of Eritrean military capabilities etc. Misperception of the intentions of the Eritrean leadership on the part of the Ethiopian leaders has also contributed a lot to the conflict.

A society with insufficient resources within its own territory will be seriously constrained in its activities unless it finds some way of acquiring the resources it demands. If resources cannot be obtained within national boundaries, they may be sought beyond. This expansion into foreign territory produces lateral pressure. Any mode of activity in which lateral pressure is expressed-commercial activities or dispatch of troops into foreign territory may contribute to international conflict (Choucri and North: 257). This theory explains vividly the Ethio-Eritrean conflict. The presence or absence of various national attributes can strongly affect a country's foreign policy



behavior, particularly in terms of scope and *modus operandi* (Pearson and Rochester: 161). Kifle (1998: 114) contends that a wrong self-image of the Eritrean elite has led them into a belief that Eritrea could play a greater role in Africa than its size and resource could allow. Addis Birhan (P. 90) also argues that the Ethio-Eritrean conflict has something to do with the attempt of the Eritrean leadership to achieve goals beyond its means. Eritrea had formulated ambitious economic policies beyond its national capabilities.

Another systemic level theory that explains the Ethio-Eritrean conflict is "power transition theory." According to this theory, wars result from changes in power relationships. The probability of war is greater at a point when a declining power is being overtaken by the rising challenger. The Eritrean leadership perceived Ethiopia as a declining power in the Horn of Africa. The image of Ethiopia that the Eritrean government was painting to its people and the rank and file of its army was of a country fragmented and divided, (Solomon, 1998: 14). The Ethiopian armed forces under the Dergue had been demobilized by EPRDF. EPRDF had also demobilized some of its fighting forces to accommodate recruits from other nationalities. According to Eritreans, these and other measures weakened Ethiopia's military capability. The Eritrean view was that the neighboring countries and large stretches of the wider continent were in political disarray while Eritrea was united by a triumphant nationalism. Accordingly, the asset that gives Eritrea comparative advantage over her neighbors was its political unity. Moreover, with an army never demobilized and whose numbers were increasing through continuous conscription, the Eritrean leadership saw itself as the emerging regional power in the Horn of Africa (Andreas, 1998: 110). Thus, the Eritrean leadership perceived an opportunity to score rapid and decisive victory against a declining Ethiopia. Eritreans were of the opinion that military balance in the Horn of Africa was in their favor. With Ethiopia in disarray, its army demobilized and weakened by internal strife, war promised to prevent any foreseeable resurgence of Ethiopian power in the sub-region. In other words, Ethiopia's existence as a strong power in the Horn of Africa was seen by Eritreans as a threat to their regional aspirations. And any vestige of that threat had to be done away with.

But how can one explain the connection between the historical incidence that created an Eritrean entity and the current conflict between Ethiopia and Eritrea? Addis Birhan (1998:41) answers this question based on the hiatus, which developed because of the separation while under colonial rule, which led to an Eritrean separate development and its effects on the Eritrean culture and

psyche. According to Addis Brihan, this hiatus gave rise to a desire of "national definition." Getahun Kassa (1999:132) quotes Issayas Afeworki as saying "The Eritrean people are a special people in the world." Another consequence of a separate development as observed by Kifle (1999:114) is "the wrong self-image that the Eritrean elites have of their collective capacity." This is the self-image that Eritreans are more advanced than Ethiopians, and that they should be allowed to have a greater say in determining Ethiopian-Eritrean relations. This desire of Eritrean elites to play a greater role in Ethiopia (especially in economic sphere) brought the two countries into conflict.

Another societal-level theory that explains Ethio-Eritrean conflict is "diversionary theory." According to this theory, under certain conditions, political leaders may be tempted to undertake risky foreign ventures in an attempt to divert attention from domestic problems. Black (1998:3) states that "the basic problems of Eritrea are both economic and political. Since independence, Eritrea has had little development investment. Eritrea has insignificant arable land. The failure of the Eritrean Government to invest on increasing the productivity of the available land, has given rise to food insecurity. Eritrea needs, 1 million tons of grain a year but produces only 200,000 to 250,000 tons. The rest comes from food aid. (Black: *ibid.*) further states" the proportion of the Eritrean population who almost depend entirely on food aid and remittances for survival is higher than in any other country of the region."

At societal level sources of international conflict, we find nationalism. In the case of the Ethio-Eritrean conflict, this may be explained in terms of the colonial legacy. Halliday and Molyneux (1981:175) trace the cause of Ethio-Eritrean conflict to the history of Eritrea. The establishment of Eritrea as an entity separate from Ethiopia was a result of not only Italian but also Britain's rule in the latter part of nineteenth century. Eritrea was an integral part of Ethiopia except for the period of Italian occupation (1890-1941) and British Administration (1941-1952). Eritrean boundary and national consciousness arose from the period of colonial rule (Addis Birhan, 1998:31; Medhane Tadesse, 1999:1; Boutros Ghali, 1996:6; Henze, 1999:26; Mesfin, 1999:175). Of course the territorial boundary and growing national consciousness of many present-day states in the Third World arose from colonial rule. What was distinct about Eritrea was not that colonial boundaries separated it from ethnically contiguous areas, but rather that the areas from which it were divided remained independent (Halliday and Molyneux: 175).

Ethio-Eritrean conflict can also be explained in terms of ideological differences between the two leading fronts: EPLF and TPLF. Young (1996:105) describes relations between EPLF and TPLF as containing "tensions and pragmatism." The Eritrean and Tigrian movements for many years fought a common enemy in contiguous geographical areas, apparently on the basis of roughly similar ideological perspectives; and when they emerged onto the international stage in 1991 they did so as "brothers in arms" (Vaughan, 1998:61). These circumstances have done much to obscure the profound differences between what each movement sought to do, and how they set out to do it. They have also obscured a history often characterized by competition, tension, dispute and mutual criticism (ibid.). In the post-*Dergue* period, the two governments tried to conceal these tensions. The important fact that the two fronts have not been reconciled after their conflicting years of 1980s, had also slipped from the attention of international community, and had likewise been hidden by the fronts themselves (Young:108).

Ideological and political differences between EPLF and TPLF go back to their formative stages. According to Tekeste (2000:15):

Even at the very start of the contacts between TPLF and EPLF, they disagreed on ideological principles. In their analysis of the Ethiopian society, the TPLF interpreted the revolution within a Marxist - Leninist framework, blaming the economic, social and political problems of Ethiopia on the suppression of "nationalities." The main contradiction they identified was . . . the ethnic domination of Amhara ruling elite, which suppressed and exploited Ethiopia's other nationalities. The TPLF program (1976), therefore, called for an independent republic of Tigray and defined its struggle as a war of independence. The EPLF reacted negatively to this position, maintaining that only Eritrea had historical and political legitimacy to fight for independence. The EPLF view was that the TPLF should define its struggle as the establishment of a democratic Ethiopia, without developing its ideology to justify an independent Tigray or the independence of other nationalities for that matter.

EPLF places great emphasis upon creating a national, homogeneous, and all embracing nation with an Eritrean identity. But, since many of the ethnic groups in Eritrea are represented on both sides of the Eritrean /Ethiopian border (Afar, Saho, Kunama, Tigrinya) the Ethiopian ethnic policy may directly jeopardize the Eritrean nation-building process (Tekeste, 2000:16).

Other issues of ideological dispute between the two fronts involved differences in military strategy and the difference in the Soviet Union's role as the vanguard of communism. These

differences in ideology, politics and military strategy led to a total breach of relations between the two fronts in 1985 (Tekeste:19).

For tactical reasons, however, both sides tried to portray their post-Dergue relationship as amicable. Both needed each other. EPLF needed support from TPLF in its claim for national independence, while TPLF depended on EPLF's support against other Ethiopian movements opposed to its hegemonic position.

But, how could these relationships be explained in the light of the 1998 conflict?

Vaughan (1998:64) argues that:

The ideological intransigence of both sides became significant because it struck at the heart of the legitimacy of the political project of the other. Had the debate been taken to its logical conclusion, the fundamental theoretical incompatibility of the two positions must have emerged. It is noteworthy that the Eritrean government has since 1991 expressed public concern and criticism regarding the establishment of the Federal system in Ethiopia, and the inclusion of the right of secession within the Federal Constitution. In view of the constant interaction between the population of both countries, and the existence of such complicating factors as Afar irredentism affecting them both, diverging conceptions of statehood clearly have immediate policy and governance implications.

Commentators have, however, sought additional explanations for the break, which came after years of co-existence. One explanation appears to be the relative shift in the balance of power between TPLF and EPLF. In this regard, Mesfin (1999:180) cites transformation of positions between EPLF and TPLF.

EPLF, as a creator of TPLF, demands homage. But the EPLF seems to forget or to ignore that TPLF, after its assumption of power, is in a much bigger Ethiopia and transformed itself from the created to the creator by at least being the mid-wife in the birth of the new state of Eritrea. Such transformed relationships are bound to cause strain.

We have already noted that individual-level theories trace international conflict to individual political leaders, the content of their beliefs, the psychological processes through which they acquire information and make decisions. Foreign policy behavior can be affected by the psychological processes involved in individual judgment and decision-making. With respect to Ethio-Eritrean conflict, psychological processes such as misperceptions of the capabilities and intentions of each other, exaggeration of the hostility of the other side, underestimation of the others capabilities and intentions have played a great role. Such processes were witnessed on both sides. Perhaps the role of psychology may have been important in the Eritrean miscalculation concerning the reaction in Ethiopia to the invasion (Dagmawi, 1997:119). The

Eritrean expectation of the likely response to the invasion was secret negotiation in which Ethiopia would succumb to the Eritrean bargaining advantage.

Ethiopia's foreign policy during the first few years after EPRDF's assumption of state power had its own problems. The problem lies in the fact that the measures taken internally were not apt to the promotion of national interest. One means of promoting and protecting national interest is the development of different capabilities, which includes the development of armed forces. Rather than building new capabilities in terms of armed forces, EPRDF demobilized the existing ones. While condemning previous regimes of intervening in the domestic affairs of Ethiopia's neighbors, EPRDF allowed a foreign government-Eritrean- a free hand in all affairs of Ethiopia. EPRDF pursued an economic and trade policy that was seen by many observers as favoring Eritrea (Tecolla, 1995:167). When EPRDF began to become realistic in its foreign policy (including-trade policy) around 1997, especially towards Eritrea, the response was armed aggression by Eritrea. Thus, Ethiopia's misconceived foreign policy (it was unrealistic) has indirectly contributed to the Ethio-Eritrean conflict. It gave an appearance of a government, which does not know its national interests.

So far, we have been discussing the theoretical framework-conflict and causes of conflict. Before embarking upon analysis of treaties, conventions and boundary delimitations, a few words shall be said about conflict and their types in the context of Africa.

Apart from theoretical analysis causes and types of conflicts can also be discerned in the following manner. Societal interaction may give rise to conflicts in two principal ways: the first is the existence of "differences on values, needs and interests among individuals or group of individuals" and the second relates with "the limited amount of resources and the fight for the access of those resources" (Toure 1999).

Africa has seen both intra-state and inter-state conflicts in its history. Intra-state conflicts have become serious threats to the very survival of the states today. These conflicts are not just limited to the state in conflict, but they have become serious threats to regional and continental security as well (Keller and Roth Child, 1996:11).

Hence, one can find domestic conflicts in Angola, Burundi, Central Africa, Congo (both Brazzaville and Kinshasa), Eritrea, Ethiopia, Guinea, Kenya, Somalia, Lesotho, Liberia., Rwanda, Senegal, Sierra Leone, Sudan, Chad and Uganda (Adedeji, 1999).

The second kind of conflict, which is the focus of this paper, inter-state conflict, can also arise on different factors. The main ones in Africa in terms of their frequency and area coverage include: boundary and territorial disputes, charge of subversion, intervention and structural rivalries.

The states in Africa are the results of the doctrine of the *uti possedetis juris* of the Organization of African Unity (OAU), which states boundaries inherited from colonial rule to be inviolable. This doctrine was, however, adopted in the absence of colonial boundaries in some countries (Morocco) and unmarked in others (Ethio-Somalia) (Zartman, 2000:36-38), and despite these boundaries were formed according to administrative convenience rather than pre-colonial, social or political arrangements during the Berlin conference in the late 1800s (Keller and Roth Child: 4).

Boundary and territorial disputes become engines of conflict when there is an extension of national territory or when there exists a regrouping of tribal, religious or cultural entities irrespective of present boundaries (Cervenka, 1977:69).

Those extension of territories and regroupings of nations were imminent in the following years of the OAU as the boundaries were not made on "*African criteria of geography, ethnic unity and even history*" (Zartman:55). But, the founding fathers of the OAU preferred the doctrine of *uti possedetis juris* to re-arranging boundaries on those African criteria.

Their preference was based on a number of factors: first, there was difficulty at the early years of independence to secure internal stability and cohesion that could be further disturbed by boundary revisions. Second, it would halt the dreams of secessionist movements and help to preserve the state as a political unit (OAU's failure to recognize Biafra and Eritrea during their struggle was the result of this belief) and third; it would keep the "tribal balance", that any changes of the frontiers might disturb this balance and ultimately lead to internal conflict. Thus, Nigerian Government's opposition to incorporate the Yoruba populated area of Benin (Dahomey) was due to this factor (Cervenka: 7).

Consecutively, African leaders declared a resolution at the Cairo summit in 1964 which states that "all member-states pledge themselves to respect the borders existing on their achievement of national independence." The declaration made Africa "more or less to manage to preserve its colonially inspired boundaries without breaking into numerous full-blown secessionist wars like those that occurred in much of Western Europe". Nevertheless, it does not mean that no

secessionist or border dispute had occurred in Africa, infact the continent had seen “fifteen separate border disputes involving thirty countries developed into military confrontations (Gambari, 1996:32).”

2.2. Treaties, Conventions and Boundary Delimitations

2.2.1. International Treaties and Conventions

The absence of a legislative body in the international sphere, to make laws as it is done in the States, is remedied by means of international treaties. Bilateral and multilateral treaties have provided the basis of inter-state relations and have furthered the process of international co-operation, friendship and understanding (Hari Hara Das, 1994:146).

According to Oppenheim, international treaties are agreements of a contractual character, between States or organizations of States, creating legal rights and obligations between the parties (Shaw, 1997:632).

The Harvard Draft Convention on the Law of Treaties provides that a treaty has been limited to mean “*a formal instrument of agreement by which two or more States establish or seek to establish a relation under International Law between themselves*” (Hari Hara Das, 146).

Starke has defined a treaty, “as an agreement whereby two or more States establish or seek to establish a relationship under International Law between them” (Ibid.).

There is no formal classification of treaties in International Law. Like the contracts of municipal law, treaties are of widest variety, dealing with the whole gamut of international life. However, various methods of classification have been suggested by publicists for the purpose of better understanding of the nature of the various kinds of treaties.

The distinction between unilateral and bilateral treaties indicates whether the obligation for fulfilling the conditions is upon one or upon both countries.

Oppenheim has classified the treaties into two categories such as law-making treaties and other treaties. Treaties classified according to subject are the following: treaties of international boundaries, treaties of alliance, treaties of guarantee, treaties of commerce, treaties neutralizing a State, etc.

According to their objects treaties may be classified as political, social, commercial, treaties of guarantee, neutrality, border demarcation and/or delimitation, secession or extradition.

Treaties may also be transitory or permanent according to the period of time for which its provisions shall be binding on the parties.

The object of a treaty is to impose binding obligations on the States who are parties to it. States are bound to carry out in good faith the obligations they have assumed by treaty. This view was expressed by Anzilotti about treaties. In the words of Fenwick, "Philosophers, theologians and jurists have recognized with unanimity that unless the pledged word of State could be relied upon, the relations of the entire international community would be imperiled and law itself would disappear" (Hari Hara Das: 150).

This is the essence of the doctrine of '*Pacta Sunt Servanda*' which means that the pledged words must be followed. Referring to this doctrine Cordell Hull observes that "The observance of understandings, agreements and treaties between nations constitutes the foundations of International Order."

Treaties may be terminated on any one of many grounds. Some of the grounds that have relevance to the case at hand, to terminate treaties are:

- (i) **Dissolution by Agreement:** The parties to a treaty are its creators and as such they have the powers to terminate it by mutual consent. They could also provide a statement that may have the effect of terminating all or some of their objects of their agreement.
- (ii) **Outbreak of War between the Parties:** Treaties are terminated when war breaks out between the parties of the treaty. The 1935 invasion of Ethiopia by Italy is a case in point that has had the effect of terminating all the Agreements between Ethiopia, during Menelike II, and Italy. However, the modern view is that war does not necessarily bring a treaty to an end. Justice Cordozo observed in *Tech. v. Hughes* that provision compatible with the State of hostilities, unless expressly terminated, will be enforced, and those incompatible will be rejected (Hari Hara Das:152).
- (iii) **Extinction of One of the Parties by Annexation:** When one of the contracting parties is extinguished by annexation or merger, the treaty is terminated. For example, the treaty between the U.S.A. and Tripoli was terminated when the latter was annexed by Italy in 1912 (Hari Hara Das: 164). The Treaty of 1900, the Note of 1902, and the Convention of 1908 between Ethiopia and Italy are terminated when the former was invaded and annexed by Italy in 1935. The termination of these Agreements could also be witnessed not only by the

annexation but also some of the conditions provided in the Agreements were not completed. For instance, Article III of 2nd May, 1889 stipulated "In order to remove any doubt as to the limits of the territory of which the two Contracting Parties exercise sovereign rights, a Special Commission, composed of two Italian and two Ethiopian Delegates, shall trace with permanent land marks a boundary-line . . .".

- (iv) The Doctrine of *Rebus sic Stantibus*: This doctrine means the vital change of circumstances. Treaty may be terminated if there is a vital change of circumstances as a result of which it becomes dangerous to the independence and territorial integrity of the concerned State.

Prof. Hall accepting the doctrine points out that, "A treaty, therefore, becomes voidable as soon as it is dangerous to the life or incompatible with the independence of the State, provided that its injurious effects are not intended by the two contracting parties at the time of its conclusion" (Hari Hara Das:164). True the treaties of 1900, 1902 and 1908 helped Italy to stay in Eritrea to invade and annex Ethiopia at a later time. Thus; this was in fact dangerous to the independence and territorial integrity of Ethiopia. Furthermore under Article 23 of the 1947 Agreement Italy denounces its right over its former occupations.

2.2.2. Boundary Treaties

Demarcation is the process done by surveying the actual terrain itself and erecting marking-posts on the ground. Defining a boundary in words in a treaty is delimitation. Delimitation is a diplomatic procedure, the business of statesmen. Demarcation is a technical procedure, usually the function of a mixed commission of the contracting parties or of third States appointed by each side (Kapil 1966: 744).

Demarcation is perhaps the most sensitive stage in the boundary-making process. As Holdich (1916:208), quoted in Kapil, has stated that boundaries of state territory are, it was said in earlier editions of this work, the imaginary lines on the surface of the earth which separate the territory of one state from that of another, or from unappropriated territory, or from the open sea. International boundaries are sometimes called 'frontiers'; though that may also refer to a frontier zone, possibly a disputed zone, rather than to an established line (Kapil: 661-662).

[I]t is in this process that disputes usually arise, and weak elements in the treaties or agreement are apt to be discovered. Important features are found in unexpected positions, and a thousand points of local importance crop up which could never have been taken into account by the delimiters, whose definition leave them unconcerned and unadjusted.

There are to distinct function of demarcation. The political and ethnographical side of the inquiry has to be maintained, as well as the geographical map-making work, which has to be carried through simultaneously with the collection of information of scientific and political relevance (Jones:1941).

It is provided in Article 11 of the Convention on Succession of States in respect of Treaties 1978 that a succession of states does not as such affect a boundary established by a treaty, or obligations and rights established by a treaty and relating to the regime of a boundary. Also Article 62 of the Vienna Convention on the Law of Treaties 1969 accepts a boundary treaty from the operation of the rule of *rebus sic stantibus*. Furthermore Article 62 of the Convention on the Law of Treaties between States and International Organizations or between International Organizations 1986, provides likewise that a fundamental change of circumstances 'may not be invoked as a ground for terminating or withdrawing from a treaty between two or more States and one or more international organizations if the treaty establishes a boundary'. Nevertheless, although it is clear in law that a boundary established by treaty is not to be called in question by the mere fact of a succession of states, or by a fundamental change in circumstances since the treaty was made, it does not follow that boundaries established by treaties are never to be questioned; or that boundaries established by treaty are necessarily more permanent in law than those established in other ways (Kapil: 663).

In this connection D. P. O'Connell (quoted in Tyranowski:118), writes that:

If a boundary treaty merely defines a frontier, then it is instantly executed, and what is inherited is not the treaty, while defining the boundary in general terms, leaves its actual delimitation to a boundary commission and this delimitation has not been achieved on the date of a change of sovereignty; or when it contains provisions involving continuous and reciprocal rights and duties, or provides for future activity. The problem then raised is one of severance of dispositive from non-dispositive provisions.

In 1968, the International Law Association adopted a text of resolution submitted by the Committee on the Succession of New States to the Treaties and Certain Other Obligations of their Predecessors. Rapporteur of the Committee was D. P. Connell. Section 8 of the Resolution states the following:

When a treaty which provides for the delimitation of a national boundary between two States has been executed in the sense that the boundary has been delimited and no further action needs to be taken, the treaty has spent its force and what is succeeded to is not the treaty but the extent of national territory so delimited; but where a boundary treaty provides for future action to delimit it, or provides for future reciprocal rights in relation to the boundary, the question whether the

treaty is succeeded to or not is a question to be answered by reference to the principles in Section 1 above where these are applicable, and where they are not applicable it is to be answered by reference to such other legal principles as may prove to be relevant.

Section 1 of the ILA Resolution envisages the succession of the newly independent States in relation to all treaties, failing a statement to the contrary (in case of a bilateral treaty, such a statement may be also made by the other party to the treaty and not only by the new State).

The practice of States explicitly shows that with regard to traditional cases of succession of States (annexation, cession, uniting and dissolution of States) a customary rule of international law has been developed according to which the successor inherits *ipso jure* boundary treaties of the predecessor (Tyranowski:123).

What was the effect of such treaties upon the territorial settlements that resulted from the territorial scramble? Only when a European power decided to do so were earlier treaties taken into consideration. Sometimes, a decision by a European state to take into account or invoke a treaty between itself and some African ruler was prompted or influenced by an appeal from the Africans concerned, yet the decision as to whether a treaty should be taken into consideration was ultimately a European one (Kapil:656).

The 1935 Italian invasion of the whole of Ethiopia is a vivid example in other words, in evaluating the effect of prior treaties upon territorial settlements, only territories that were disputed between European governments will be considered. However, treaties involving territories not in dispute probably helped to win general recognition of the primacy of the European power which had made the treaties. This is one manner in which treaties played a role in determining territorial allocations.

In situations of dispute, when a European government bolstered territorial claims by referring to treaties concluded with African rulers, its argument was usually twofold: that it had acquired rights through the treaty, and that it had entered into obligations toward an African society which it could not honorably relinquish. Both arguments can, of course, be questioned, and can be regarded as hypocritical. But it is important to remember that in disputes the treaties were often used to justify territorial claims (Ibid).

Thus, treaties providing for procedures of binding settlement tend to elaborate rules for the resolution of disputes. But this is only possible to do in detail in ad hoc compromise. Consequently general treaties of pacific settlement employ vaguer terms: for example, 'on the basis of respect for law', 'in accordance with the principles of law and equity', 'the principles of international law', 'the rules of international law', 'in accordance with considerations of equity' or '*ex aequo et bono*', 'in accordance with the principles of justice and equity' or confer '*the powers of an amiable compositeur*' - 'special umpire' or 'friendly arbitrator' or 'special referee' or 'friendly mediators'. More elaborate formulae are to be found in the Statute of the Permanent Court and of the International Court of Justice, and these and similar formulae are to be found in other multilateral and bilateral treaties.

CHAPTER 3

HISTORICAL ASPECTS OF THE PROBLEM

3.1. The Advent of Italian Colonial Power in the Sub-Region

The modern history of Eritrea begins in 1882 with the Italian occupation of Assab. On the eve of 1890, Italy had three distinct possessions along the African Red Sea coast, the first was the Afar coastline, stretching from the southern part of Massawa up to Djibouti border. In 1885 the Italians occupied Massawa and shortly they began to move to the high lands (Tekeste and Kjetil, 2000:5).

The major factor for the rapid advance of the Italians to the highlands was the death of emperor Yohannes and the subsequent disintegration of the Tigrean army in 1889. - - - Once the Tigray military establishment crumbled, the Italians were free to occupy highland Eritrea. Indeed, the transfer of political power to Shewa, the subsequent civil war in Tigray and Alula's failure to create a Tigrean front against both Menelik and the Italians created a power vacuum in Northern Ethiopia (Bahru, 1992:113-114).

The Ethiopian/Abyssinian highland region of Eritrea had formed part of the Ethiopian state at least since the early years of the fourteenth century. For most of its history Ethiopia was made up essentially of two closely related ethnic groups, the Tigreans/Tigrinya and the Amhara. The Amhara were more numerous and appear to have had the capacity to assimilate neighbouring peoples, whereas the Tigreans/Tigrinya remained rather confined by the Amhara to the south and the adjoining lowlands to the north and east. Furthermore, the resource base of the Amhara regions was more plentiful than that of the Tigrean/Tigrinya areas. The Ethiopian state was highly decentralized, with the king of kings at the top. Though the Amhara had produced most of the kings, the Tigreans/Tigrinya remained powerful contenders and their sacred city of Aksum was recognized as the ancient seat of the Ethiopian kingdom. Towards the close of the nineteenth century a Tigrean, Emperor Yohannes IV, ruled Ethiopia for eighteen years (1872-9) (Tekeste and Kjetil:6).

The second took in the vast rugged hills north of Massawa and the Western lowlands stretching up to kassala in the Sudan. The third and most important possession was a small part of the Ethiopian/Abyssinian highlands ceded by the Ethiopian Emperor in May 1889. On the first of

January 1890 these three possessions were consolidated into a single entity and given the name of Eritrea (Henze, 2001:222).

The name Eritrea came onto the map to Africa only at the end of the nineteenth century. Until then "Eritrean history" as far back as it extends, was Ethiopian history. In this connection Kinfe (2004:13) writes:

It is difficult to split or apportion the Axumite history and much of the history of the north and that of the rest of Ethiopia which followed it for centuries on the basis of the logic of independence. The question is also asked: does Eritrea have separate emperors, Kings, and Barons with titles such as (Ras, Dejazmach, Grazmach, Kengnazmach, Fitawarari etc . . .). Other than those appointed by the Italians or the Emperor.

During the 1980s when it fought the Dergue. Isaias Afewerki's Marxist Eritrean popular Liberation Front (EPLF) encouraged the nation that Eritrea had always been a separate polity with little connection with Ethiopia. This idea has been spread by EPLF propagandists ever since. It has gained wide acceptance abroad among journalists and other with scant knowledge of history of the Horn of Africa and has become dogma among many Eritreans in the Diaspora. It is mythology. The real history of the region begins force thousand years ago, but much remains still to be discovered by archeological research (Henze: 222).

In the Italian colonial framework, Eritrea was useful to Italy for three reasons. Its first importance was as a conduit for the export and import trade with northern Ethiopia. Throughout the colonial period, Eritrea remained a resource - poor country and did not, therefore, attract Italian or foreign capital investment by operating the port of Massawa and the trade routes within Eritrea, however, Italy managed to siphon off 25 percent of the Ethiopian import/export trade. Its presence in Eritrea enabled Italy to include some parts of Ethiopia in its sphere of influence and even eventually to launch its invasion of Ethiopia in 1935 (Tekeste and Kjetil:7-9).

The second value of Eritrea for Italy was as a source of soldiers for Italian colonial adventures elsewhere. The 'pacification' of Somalia was to a great extent facilitated by the use of Eritrean soldiers. It was, however, especially during the Italian invasion and occupation of Libya that Eritrea and its soldiers proved their usefulness to Italy. Between 1912 and 1932, a permanent force of up to 6,000 Eritrean soldiers was deployed in Libya on behalf of the Italian colonial administration (Ibid).

The third advantage of Eritrea was its strategic location as a command post for the invasion of Ethiopia, and later, as the main economic and communications center for the running of Italy's East African empire, 1936-1941. Ethiopia was colonized from Eritrea, and the Italians, building on their earlier appreciation of the value of Eritrean soldiers, managed to turn the colony into a reservoir for its colonial army (Ibid).

The period between 1947 and 1950 is important in gauging the impact of Italian colonialism on Eritrean society. The British, who administered Eritrea on behalf of the Allies, were mandated to prepare the ground for the visit of a Commission of Enquiry made up of the big powers (France, the United States, Great Britain and the Soviet Union). The wind of change had begun to blow and the days of European colonialism in Africa were numbered. The big powers had to dispose of Eritrea after taking into account the wishes of the Eritrean people. The Commission of Enquiry found that 44 percent of the population (virtually the entire Tigrinya community) preferred unconditional union with Ethiopia (Henze:236-239). As the big powers could not agree on the disposal of Eritrea, the question was passed on to the United Nations General Assembly in 1948. Slightly more than a year later, the United Nations sent its own Commission of Enquiry to better assess the wishes of the Eritrean population. This Commission presented a majority report in which it recommended the union of Eritrea with Ethiopia. The minority report, on the other hand, urged the granting of independence after a number of years of trusteeship. After numerous diplomatic negotiations, the UN resolved in 1950 that Eritrea be federated with Ethiopia as an autonomous entity under the sovereignty of the Ethiopian Emperor. The act of attaching Eritrea to Ethiopia was known as the Federal Act, but this was partly a misnomer as little federal structure was envisaged in the Act itself.

3.2. The Reunification of Eritrea with Ethiopia

The Paris peace conference in 1946, which concluded World War II, while it forced Italy to renounce its former colonies, had postponed the question of their disposal. That proved fertile ground for the growth of competing groups vying for attention and consideration. The demands were polarized into union with Ethiopia versus independence. The unionists constituted the single largest political group in Eritrea. The independence Bloc, as it was known, was a conglomeration of different groups united only by their opposition to union. It included the Muslim league, which had its stronghold in the Muslim inhabited lowlands; the liberal progressive party, which campaigned for the independence of an Eritrea united with Tigre; and a group of Italian settlers,

ex-askaris and people of mixed race who opted for independence as a camouflage for the continuation of Italian influence (Zewdie, 2000:44-50).

The unionists were understandably supported by the Ethiopian government. The liberal progressive party was very much a creation of the British, who, had advocated a policy of partitioning Eritrea by attaching the lowlands to Sudan and Uniting the Tigregua - speaking highlands. The pro-Italian faction was likewise generously subsidized by Italy, who, her bid for trusteeship rebuffed, sought to retain indirect control by supporting Eritrean independence. As a matter of fact, the Italians became chief sponsor of the Independence Bloc as a whole (Ibid).

Unable to resolve the Eritrean question, the four powers (Britain, France, the Soviet Union and the United States) finally passed it on to the United Nations in 1948. The UN appointed a commission of five men, respectively from Burma, Guatemala, Norway, Pakistan and South Africa, to ascertain the wishes of the Eritrean people. Although four of the five members of the commission (Norway being the exception) came from countries with an anti-Ethiopian stand, the strongly pro-Ethiopian sentiments that they countered in Eritrea forced at least two of them to modify their positions. Unanimity could not be achieved however. Two members recommended granting independence (Guatemala) representing the strong pro-Italian Latin American lobby in the United Nations, and Pakistan, championing the Muslim cause in Eritrea) two others (South Africa and Burma) recommended federation, while the fifth member (Norway) was for union. UN Resolution 390V, adopted on 2 December 1950, endorsed the federation formula for Eritrea and Ethiopia as the golden mean between two conflicting options. Designed to satisfy everybody, it ended up pleasing no one (Asrat, 1993:15).

Why did Eritrea not achieve its independence right after the end of the Second World War? What was the basis of the UN Resolution of 1950 uniting Eritrea to Ethiopia? What role did the big powers in general and the United States in particular play in the UN Resolution of 1950? What was the political climate of Eritrea in the late 1940s? How effective were Ethiopian strategies as regards Eritrea? These and several more questions were widely studied and debated during the 30-years war of independence. As might be expected, there exist two diametrically opposed interpretations of these issues. The Eritrean liberation movements and their sympathizers stressed the unifying impact of Italian colonialism on Eritrean society (Tekeste and Kjetil:9).

It is possible, albeit difficult, to analyze relations between Eritrea and Ethiopia without subscribing to or excluding either of the opposed interpretations. Various authors have been able to look into parts of this topic with varying degrees of success. The most notable of these authors are Markakis (1993), Ellingson (1986), Killion (1985), Amare (1964), Eyassu (1993), Tekeste (1987; 1997) and Kjetil (1998b).

In so far as a common language and a common faith coexisting over a contiguously connected space are the basis for the definition of a 'nationality', as many scholars define it, the Tigrinya in Eritrea and the Tigreans in Ethiopia belong to the same 'national identity'. The Italians who ruled Eritrea until 1941 and the British who administered the area until 1952 believed and acted on the assumption that the Tigrinya-speaking population (who straddle both Eritrea and Ethiopia) are one and the same people. The Ethiopian state and people also maintained the view that all or most of Eritrea had always been part of Ethiopia, and that the impact of Italian colonialism was minimal. Moreover, the area where Tigrinya is spoken formed, according to Ethiopians, the cradle of Ethiopian Christian civilization stretching back to the early years of the first millennium. Although the Tigrayan Peoples Liberation Front (TPLF) which emerged victorious over the Dergue in 1991 supported the Eritrean struggle for independence, it did not put into doubt the unity of the Tigrinya-speaking peoples of Eritrea and Ethiopia.

Such a view was contested by the Eritrean liberation movements during the 1960s, however, and since 1991 by the present Eritrean government. The main argument of the Eritrean government can be summarized as follows: indeed there is a major Tigrinya ethnic group in Eritrea, but the ethnic identity of this group is superseded by a new and more inclusive Eritrean identity. The Eritrean government believes that Italian colonialism laid the grounds for the emergence of a pan-ethnic identity (Eritrean identity as opposed to Tigrinya identity) in the country. In other words, the Tigrinya in Eritrea may speak the same political views and objectives (see, for instance, Iyob 1995).

The view of the Eritrean liberation fronts have been challenged and continue to be challenged (cf. Tekeste, 1997). A recent study on the divergent Eritrean and Tigrean nationalist paths affirmed clearly that the Tigrinya in Eritrea and the Tigreans in Ethiopia still share a common sense of identity (Alemseged, 1998:251). It is worth mentioning, however, that the research, essentially based on structured and deep interviews, was conducted in 1994. Another important insight of the recent research is that the government of Eritrea has yet to succeed in creating a new basis of

identity to supplant that which already exists among the Tigrinya/Tigreans who straddle Eritrea and Ethiopia. Even more recently, ongoing research being conducted by Kjetil (1998a) strongly suggests the existence of multiple layers of identities that are both contextual and fluid.

3.3. The Struggle for Secession

The separatist movement in Eritrea first expressed itself in 1958 with the founding of the Eritrean Liberation Movement (ELM). The ELM was a movement which sought to achieve its objective by political and diplomatic means, in chiding intervention from the UN. It was soon eclipsed by the Muslim-dominated Eritrean Liberation Front (ELF). Formed in 1961 by Eritrean exiles in the Middle East, the ELF launched armed attacks in September of the same year, under the leadership of a veteran "*Shifta*", Indris Awate. The ELF cast its struggle for Eritrean independence within a pan-Arab mould. This factor attracted much sympathy and supports both for it in the Arab world (Araya, 1988:74-75).

The armed struggle in Eritrea began in 1961. The formulas for federation had few friends. Both unionists and the partisans of independence were unhappy with it. It could be argued that neither group was ready to give the federal scheme a chance. In spite of some expansion of facilities in Eritrea during the federation, its opponents alleged that the Ethiopian economy was expanding at the expense of Eritrea, and continued to portray the federal association in the darkest of colors. Nor was the Ethiopian government particularly keen to honor the federal arrangement (Assefa, 2002:106-109).

Consequently, the history of Ethiopia and its well-known Red Sea province of Bahr Negash was subjected to a barrage of critiques and reappraisals, not to say revisions, to bring out supporting evidence for the allegation that Eritrea had suffered colonial occupation by Ethiopia, that Eritrean Muslims had been subjected to ruthless rule under Christian Ethiopia, that the struggle in Eritrea was a continuation of previous struggles elsewhere in Ethiopia. Each approach was adopted and fashioned in response to expected audiences and supporters abroad and at home (Ibid).

In pursuance of this proposition, all national groups have been increasingly treated as a fictitious, homogenous nationality, 'Eritrean', rather than as what they really are: Baria, Mensa, Billen, Afar, Tigre, Kunama, Saho, Tigrayan and Beni Amer. A change was introduced in the propaganda literature and in other media so that national groups which had kinsmen beyond the



for any of the Eritrean fronts to rethink their positions in the interests of their people. During the time when the Dergue was introducing an array of reforms, the fronts merely looked on dumb-founded but stayed clear of crediting it in any way. The peaceful overtures of the Ethiopian government at various stages, prompted by internal weakness or the rise of new factions in power which sought to try non-violent means, were never taken up in good faith with a view to exploring the possibilities of ending the war of incalculable destruction to the people and the environment. It was only when both fronts were in alliance with the same superpower, the Soviet Union, that also backed the Dergue that some progress was made in that direction.

The EPLF and the ideologues who had attempted to rewrite many aspects of Ethiopian history should have adduced, but failed to come up with, relevant economic or political evidence to sustain their resolve that Eritrea must 'secede' and become independent. They did not indicate, for instance, why the Tigrayans should be carved up once again although each half, north or south of the Mereb River, is currently wielding state power. They also failed to see the distinction between using every means at their disposal (including fabrication of notions of an Eritrean 'nation' and 'history') to gain freedom from oppression (before 1991) and establishing a mini-state that has no chance of surviving the critical shifts in the world economy, especially after the Cold War. By clinging on to the fetish of an independent state in spite of all circumstances militating against such a policy in this day and age, they expressed a disregard for the best interests of the people they claimed to represent. And as if this blunder of theirs could be undone by having Ethiopia pay the economic costs of Eritrean independence, they belatedly came out unreservedly in favor of 'cooperation', 'confederation' or similar schemes (Assefa:115).

The strange thing is that the EPLF was hasty about declaring independence, although it chose to govern by decree for a further four years. The speed with which EPLF manipulated the Eritrean people to push through the referendum for independence revealed that the aspiring governing elite would not bother to consider calmly the prospects for the welfare and economic progress of the Eritrean people. So long as they could establish a domain for themselves in the economic and political affairs of Eritrea, it did not matter to them that such a domain might not be in the best interests of the people (Ibid).

3.4. The Eritrean Independence and Referendum

At a conference on Peace and Democracy held in Addis Ababa in 1991, the right of the people of Eritrea to determine their own political future by an internationally supervised referendum was

recognized. In April 1993, the referendum was held in Eritrea, supervised by international observers. Eritreans abroad were also enabled to vote. Over 99% of the voters favored independence. The United Nations Special Representative announced that the referendum process had been free and fair (Henze: 263).

On 27 April 1993, Eritrea became independent and was admitted as a member of the United Nations. On 29 April 1993, Ethiopia recognized Eritrea's sovereignty and independence and on 30 July 1993, the two governments concluded an Agreement of Friendship and co-operation (Ibid).

Many if not most Ethiopians in and out of Eritrea continue to feel some sense of connectedness. The decision about Eritrea's status arguably belongs not to the Eritreans alone but to all of the people of historic Ethiopia, including the hundreds of thousands of Eritreans long resident throughout Ethiopia. What is more, although Eritreans have suffered much over the past three decades, especially during the Dergue regime, it was after all Eritreans who initiated the combat with their armed insurgences – started by small bands of dissidents lacking popular support. The objectives that they sought, short of secession, could have been obtained by other means. The aspirations of all Eritreans but for a few extremists could have been satisfied through negotiations. Remember that in spite of Haile Selassie's mismanagement of the federation and the brutal search and destroy tactics against insurgents in the early 1970s, some 20,000 to 30,000 Eritrean citizens rallied in October 1974 to support a peaceful settlement, and the 19 – point plan of General Aman Andom offered a workable basis for such a settlement (Levine, 1993:36).

What is more, immediate secession after the overthrow of the Dergue would have been enormously disruptive for the entire region, and it was constructive to arrange for the decision to be made by Eritrean citizens in a peaceful and orderly manner. Given that, it was good the referendum was delayed for two years, since so important and complex a decision requires much time to think through. It might have been better to have waited even longer, since it takes time to organize and communicate facts and considerations about the advantages and disadvantages of each option. One can only hope that the deliberations and voting take place with a minimum of harassment and intimidation (Ibid).

Eritrea was not only a part of Ethiopia; but a part of the core area of Ethiopia. It is important to remember, however, that historical, cultural and political arguments are totally irrelevant now. In

so far as the referendum in Eritrea is concerned, one may opt unity. But a wish is only a wish. I, as an Ethiopian, have not been given the political right by either the Provisional Government in Eritrea or by the Transitional Government in the rest of Ethiopia to express my view in any meaningful way (Mesfin, 1993:21).

Ato Meles Zenawi, on behalf of all Ethiopian, has written to the Secretary General of the United Nations asking him to send observers for the referendum in Eritrea. The Secretary General has seen it fit to accept the credentials of Ato Meles to represent the Ethiopian people. In the New World Order who is to say that is illegal? For the record, Ato Meles has more than once stated that neither he nor anybody in the so-called "*Representative Council*" represents any people (Ibid). Not only for Ato Meles, who wrote a book on the struggle of Eritreans for independence from Ethiopian "*colonialism*", but also for TPLF, as a political organ, Eritrea was a "*colony*" of Ethiopia. And it won't be a surprise to witness such a letter to the Secretary General.

However, the decision to separate Eritrea from Ethiopia was accomplished in the battle ground. It is, therefore, not a political question any longer for both comrades in arms, the EPLF which rules Eritrea and for EPRDF which rules the rest of Ethiopia. Unitarians in both Eritrea and the rest of Ethiopia were not having and have no political voice. As it was taboo to talk of separation before May 1991. It has become taboo to talk of unity after that. Dictatorships characteristically loath debate and moderation. The cantankerous problem of Eritrea has its origin in a dictatorial system; and to seek its solution in two dictatorial systems is irrational. Whatever the decision of the people in Eritrea, the researcher sincerely hope Eritrea will cease to be a problem of Ethiopia.

In this connection, Mesfin (Ibid.) correctly stated that:

The referendum will not be handled fairly and freely. Everyone knows this; even members of the EPLF and of the TPLF know this. All countries which are preparing for the celebration of the Eritreans' decision not to be part of Ethiopia know this. I see no difference between the East - West German problem and the North - South Ethiopian problem. The insult to Ethiopia is that Germany was allowed to be united as soon as the opportunity for it arose, while a phony referendum was concocted for Ethiopia. Erich Honecker, leader of the former East Germany, was brought to a tribunal and his party to naught while the EPLF and its leadership were given the assignment of conducting the Ethiopian referendum. A front that boasts of fighting for thirty years to separate Eritrea from Ethiopia -- "and has won the war" -- cannot be asked to be in charge of a referendum. You can not with all honesty ask the cat to ask the mouse it caught if it wants to be eaten or not!

Tsegaye (1993:27) also have the following to say in the same manner:

Even though the "referendum" is not born out of the people's will, they (the people) are not even given the necessary time to digest or consider with a calm mind, with a cool head. On the contrary, they are being intentionally rushed into it, like a swarm of fish that loses its swimming direction when caught by a sudden storming sea. Because, giving the people more time to think more carefully, (say one or two more years), to decide more cautiously on their own future and on the future of their own Country, is unthinkable to our power men, since the people's cool headed timing to reconsider their own fate, may be considered politically ineffective timing by the power men themselves, who in the first place designed the "referendum" without the people's will.

Pertaining to the format, the referendum was set up in a "Yes" – "No" formula. Many people I have spoken to, including Eritreans feel that this formulation has certain limitations. They feel that, whatever the outcome, the referendum would have been more democratic, credible and impressive for the Eritrean people if the choices were set up in a formula: *Independence – Federation – Unity – Other* (Ephraim, 1993:29).

In this connection Ephraim also writes that the question was not whether Eritrea should remain united with Ethiopia or be independent. That is for our Eritrean brothers and sisters to determine. He farther stated that:

I am an Ethiopian who believes strongly in unity; but I am also a person who believes strongly in objectivity. Personally, I prefer federation (or unity), because I think united we can be strong, divided we would be weak. We are tied historically and culturally. We share common economic destiny. But, federation (or unity) is not a one way question. It is like matrimony. If one wants to unite with another, the other must also want it. It cannot and must not be forced. Force has already resulted in too much bloodshed, economic and ecological catastrophe, and unspeakable human tragedy. We must never go back that route (ibid).

Be that as it may, any future relations between Ethiopia and Eritrea, however, require a period of healing and a process of reconciliation. Overcome by emotional tempest, bitterness, and anger which resulted from the long overdrawn years of war and political bickering, we all have justifiably lost patience to exercise objectivity in judging one another. We all now need to promote and nurture love, respect, and mutual sensitivity and understanding. A famous ancient Jewish Rabbi once thought that a judge should come down from the bench before passing a verdict and stand in the place of the judged to feel the seriousness of his judgment. The day Ethiopians and Eritreans with strong feelings of anger exchange their feelings on behalf of each other, no matter who is right, a new sun will rise upon our relationship and upon our peoples (Ibid).

The timing of the referendum was no less questionable. It appears designed to exploit emotions produced by the brutality of the seventeen-year-old war. In effect, what the leaders of EPLF are saying to their population is: vote for independence while your emotions, anger and hostility are alive, for your settled judgment may be unpredictable. The intention behind the timing could not be more manipulative (Mesfin A., 1993:34).

The authenticity of the referendum is also questionable given the obvious absence of democracy within Eritrea. Despite the long history of political and ethnic conflicts within Eritrea, the EPLF has not called for a National Reconciliation Conference. Eritrean opposition force have legitimately criticized the process of the referendum as blatantly authoritarian and a fake exercise of democracy (Ibid.).

Despite the distorted claims of the leaders of EPLF, the real grievance of Eritreans lies in the dismantlement of the 'federation' and in the repression by the government of Mengistu Haile Mariam. Correspondingly, the real solution, I believe, is the establishment of an autonomous Eritrea within the larger framework of a democratic Ethiopia. Three rationals to justify democratic union rather than the separation of Eritrea can be briefly outlined.

Mesfin A. (P. 35) has stated that:

The first is political. By correcting the original injustice, democratic union restores a long over due justice to Eritrea.

The second is historical and cultural. Democratic union restores the natural ties of the Eritrean highlanders and Afars with their kin in Ethiopia. Historically, the Amharas and Tigreans have developed a supra-regional identity. The separation of Eritrea is likely to inflict permanent psychological damage to that identity with unforeseen consequences. As to the Eritrean lowlanders, we need to recall that, despite their historical status as 'imperial periphery', they were willing to live peacefully as citizens of Ethiopia rather than having Eritrea partitioned between the Anglo-Egyptian Sudan and Ethiopia, as their acceptance of the 1952 'federation' clearly indicates.

The third is an economic justification for the desirability of a democratic union. Taking Ethiopia and Eritrea as a whole, we discern two historical trends. On one hand, we see the modern political history as producing disintegrating effects on the region. On the other hand, we see the economic history as having a tendency towards integration. Apart from past economic history, in recent times no one has done a greater job than the Eritrean nationalists themselves to reinforce the tendency toward integration. Since their inception the nationalists have continued to use the Ethiopian currency, thereby spreading it further into the countryside – an interesting contrast between their political practice and economic practice. Democratic union, therefore, is a natural expression of the economic history of the region.

There are four reasons that would justify Eritreans' voting to remain with Ethiopia. First, both populations represent the same mix of peoples and have been part and parcel of the same

Spencer (1993:41) indignantly states:

Turning to the military occupation of Ethiopia, it was only after the U.S. had called (1) for a referendum on secession by Eritrea and (2) for the military occupation of Ethiopia by the EPRDF, that its leader, Meles Zenawi, sought the intervention of the UN in the proposed referendum. He did so in a letter dated December 13, 1991, addressed to UN Secretary-General.

It is at this point that the reader's attention is directed to the EPRDF role as military occupying authority. Having been called by the U.S. to a military occupation of Ethiopia, the EPRDF as military occupant had no authority to issue such an invitation to the UN. That is the situation today: a military regime relying on armed force, executions and imprisonments, carried out by officials none of whom have been popularly elected and without a constitution. The EPRDF - led transitional government has no authority to alter the identity geographically or otherwise of the state under military occupation. It is in no position to authorize a secession of Eritrea (Ibid). The depth of their confusion of 'self-determination' has been shown in their support for Eritrean independence though this represented at the same time enslavement of the various constituent nationalities as well as the partition of those which extended beyond the colonial borders (Assefa, 2001).

their choice. It was decided, however, that the implementation of this agreement should await the decision granting freedom of trade and investment in either country to nationals of both Ethiopia and Eritrea (Medhane: 144).

By 1996 the implementation of most of the 25 protocols signed between the two countries was greatly hampered by the lack of progress in substantial agreements on trade and investment. Eritrea felt that it was effectively shut out of the Ethiopian economy. Eritrea could neither import Ethiopia's exportable goods nor re-export to Ethiopia goods imported from a third country, Eritrean enterprises were not allowed to invest in certain sectors of the Ethiopian economy and, further more, the Ethiopian government was setting investment restrictions on Eritrean resident nationals. Eritrea thus argued that Ethiopia was implementing a protectionist policy, and therefore proposed that the entire agreement of 1993 be reviewed to seek solutions to the operational difficulties encountered in the process of implementation (Tekeste and Kjetil:31).

The parties agreed to set up a joint review committee - which, it appears was immediately established - to resolve this and related issues. Throughout the years 1991 - 1998, many an ordinary Ethiopian had called for an 'iron wall' to be erected on the Mereb River out of disgust for the attitudes of the EPLF towards Ethiopia and the choice for independence from the alleged 'colonial Ethiopia'. Ordinary Tigray people on the border with Eritrea (Zalanbessa) repeatedly attempted to stop the movement of goods to Eritrea on the pretext that the EPLF had maltreated their kinsmen when it entered Asmara. Such staple food items as *Teff* and cereals which have traditionally been supplied from central Ethiopia would have been in danger of being in short supply had the TPLF not persuaded and coerced the population to let goods pass through 'for the sake of future friendship with the Eritrean people' (Assefa:124).

The result of such favorable treatment of the former province of Eritrea was, on the one hand, a redirection of Ethiopian export commodities such as coffee and cereals, leather and skins into Eritrea as a first stage for re-export into traditional markets in Western Europe and the US. This inevitably led to a siphoning off, into Eritrean coffers, of what otherwise would have been Ethiopian government revenues. Moreover, the absence of taxes on 'imports' from Eritrea meant that Eritrean industries were being subsidized at the expense of Ethiopian government revenue and of equivalent goods produced in Ethiopia. With the deliberate lapse of Ethiopian government control over counterfeit and contraband goods entering the Ethiopian market through Eritrea

(whether or not with Eritrean official connivance) added to this, the picture of an economy left to the devouring designs of the EPLF emerged (Medhane:143).

It did not require extraordinary imagination to perceive the consequences of such a state of affairs in Ethiopia. The absence of mutuality in economic relations between the two governments justifiably alarmed the population and triggered further resentment and opposition to the EPRDF/TPLF.

The grim prospects for the supposed friendly relations between Ethiopia and Eritrea were exacerbated by the EPLF's underestimation of the possible backlash that Eritrea's independence could create. This was revealed by the fact that, instead of pronouncing clearly its desire for economic union straight away and working towards meeting the political preconditions for such a union, it chose to rely on clever stratagems.

4.2. The May 1998 Conflict and Its Immediate Causes

After three decades of struggle, Eritrea emerged in 1993 as Africa's newest independent state. Its position on the Red Sea coast made it the target of various invaders over the centuries and was one factor that generated superpower interest in the Horn during the Cold War. Carved out as a distinct territory by Italian colonialism in the nineteenth century, Eritrea was federated with Ethiopia in 1951 by the UN after a decade of British administration. Nationalist aspirations were strengthened by Ethiopian violations of the federation and by outright annexation in 1962 (Sorenson, 1995:10).

Two years before the incident the two governments set up a secret committee to decide what was to be done about the disputed areas. It was able to achieve very little apart from noting the contentious points.

On 16 August 1997 the President of Eritrea wrote a letter to the Prime Minister of Ethiopia on the grave situation in the border areas. The previous month, according to the President, Ethiopian force had forcibly occupied the village of Adi Murug. He deplored this action and urged his Ethiopian counterpart to take measures that would head off unnecessary conflict. The letter of 16 August is quite revealing of Eritrean government policy on border/boundary issues. The President noted that the border area had not been delimited (demarcated) but asserted the existence of traditional knowledge on where the border lay. He further stated that the Eritrean government accorded border demarcation a low priority in view of Eritrea's present and future

ties with Ethiopia. Finally, the Eritrean President pointed out that there was no justification for Ethiopia's resort to force, as it would not have been difficult to settle the matter amicably (Tekesete and Kjetil, 2000:26).

Ten days later, the Eritrean President wrote yet another letter, stating that Adi Murug was inside Eritrea and that the Ethiopian forces had expelled Eritrean officials and dismantled the existing Eritrean administration. The letter further mentioned that the Ethiopian forces in the Badme area had taken similar action. Stressing the unjustified nature of Ethiopian aggression, the President informed the Ethiopian Prime Minister that the Eritrean government has assigned a committee to look into the matter. The President suggested that the Prime Minister also assign officials so that committees from both sides could meet and look into the issues (Kinfe, 2004:121)

The two letters cited above, together with a reply from the Ethiopian Prime Minister, were made public by the Eritrean government in the course of August 1998. The Ethiopian Prime Minister's letter is not dated, but it appears that it was written in reply to the second letter from the President of Eritrea. The Prime Minister stated that the areas controlled/occupied by the Ethiopian forces were not within the disputed localities and that his understanding was that prior consultation was required only in disputed localities. He further wrote that both countries needed to follow the agreement reached earlier by both states (Ibid).

There are at least two conclusions that can be drawn from the exchange of letters. First, it reveals that border negotiations had started earlier than August 1997. This much is revealed by the Ethiopian Prime Minister's letter. Furthermore, there appears to exist a framework of understanding on how to resolve border disputes, as mention is made of the existence of an earlier agreement. It is unfortunate that the letter does not reveal more information. Did the parties reach an agreement after they had come to power, or are they referring to the 1984 agreement? Or was the Ethiopian government referring to an agreement from 1993? The Ethiopian Foreign Minister revealed a week after the outbreak of the conflict (19 May 1998) that an agreement was reached between the two countries on the eve of the Eritrean declaration of independence. According to his account, both countries acknowledged the existence of disputes regarding various localities along their common borders and therefore agreed to resolve these disputes through bilateral negotiations. He further stated that, in the event of failure to resolve such issues bilaterally, the two countries would resort to third-party involvement, up to and including arbitration.

An important outcome of the exchange of letters was the creation of a Joint Border Commission that met for the first time in November 1997. Eritrea took the initiative to the commission. No minutes have been made available, although it is rumored that high military officials from both countries were present. The joint commission agreed, according to Yemane Ghebreab (Eritrean member of the commission), to meet within two months to settle the dispute, but the Ethiopia's repeatedly postponed the meeting. According to both Ethiopian and Eritrean accounts, the second meeting was duly held in Addis Ababa on 8 May 1998. When the joint border commission was in session, the Ethiopian government was informed that a limited number of Eritrean forces had crossed the border and occupied the areas around Badme.

4.3. The 1998 - 2000 War between Ethiopia and Eritrea

The friends and allies of the two movements that had headed the respective governments in Addis Ababa and Asmara were never prepared to consider that their erstwhile relations could come to an abrupt end and easily turn into a bloody confrontation. Even after the unthinkable happened, the particular escapade of the Eritrean ruling elite was never taken seriously by their friends. Some were fooled into thinking that the 'former colonial power, Ethiopia' was once again the culprit. To yet other people, it had seemed that the EPLF was making noise only to extract some concessions from Addis Ababa.

However, it did not seem to many that the matter would blow up into a war of such magnitude or that the EPLF would jeopardize the position of influence and unfettered gain it had in Ethiopia through the TPLF.

Paradoxically, in as much as each slid into war without assessing the devastating consequences it might trigger, they had either to win it or perish at the hand of the population whom they had galvanized into frenetic activity. The fact that the attack came against Ethiopia, and not the other way round, meant, of course that, the TPLF/EPRDF would have the ready ears of a population which had witnessed enough of the rapacious drive of the EPLF to transport every conceivable resource to Asmara. Hence, although, in theory, the plea for defense of the sovereignty of Ethiopia did not make much sense to a broader section of the population - considering the widespread disappointment with the Eritrean 'referendum' process - the response to ward off the affront was extensive.

The 'two bald men fighting over a comb' eventually turned into a war where the balance would only be tipped through a contest of resources and manpower, of having better allies and

endurance. The potentially disastrous confrontation that would have befallen the Ethiopian army had the war been prosecuted against it early on transformed in its favor by the long time it took to supply and equip it! The world was taken by surprise when violent hostilities erupted between Ethiopia and Eritrea in May 1998.

The hostilities were accompanied by an ugly war of propaganda. Around 65,000.00 Ethiopian citizens of Eritrean background have been expelled from Ethiopia for no other reason than their Eritrean origin. Around 25,000.00 Ethiopians have been forced to leave Eritrea. How could this happen? What caused the two apparently friendly governments to turn in hatred on each other over a small piece of land? And how could it be that even close friends and observers of Ethiopia and Eritrea were taken by surprise? This writing takes a look at the causes behind these tragic developments and guides us through the historical background which enables us to see the conflict in its context, not just as a border conflict but a much deeper and complex conflict, where a complicated historical legacy is contributing to a culture of war, where conflicts are solved through violence and arms rather than dialogue and negotiation.

What has caused this puzzling and vicious war? Most observers seem to agree that it is not the issue of land. Beyond territory, there must be deeper causes. Why it had to erupt into such disastrous war again is nevertheless unclear.

As the conflict erupted the changes came quickly. No more was there a need to keep up an image of friendship and cooperation. The suppressed tensions broke through and there seemed to be no way of containing them.

By way of concluding this part of the writing the following could be said. The introduction of a new Eritrean currency (the *Nakfa*) and Ethiopia's response in terms of its trade policy were the main event of 1997. In the aftermath of the defeat of the Dergue in May 1991, the victorious fronts (EPLF and EPRDF/TPLF) had reached an agreement on three essential points. These were: (1) the application of a common currency until such time as Eritrea issued its own currency; (2) that Assab and Massawa would be free ports for Ethiopia; and (3) that Ethiopia would run and maintain the Assab oil refinery (Ibid).

Some of the major historical and immediate causes of the Ethio-Eritrean conflict, *inter alia*, include (Kinfe: 99-100):

- The colonization of Eritrea in 1889 and its separation from Ethiopia;

- The hiatus which developed because of the separation of Eritrea while it was under Italian colonial rule (1889-1941), British rule (1941-1952) and federation (1952-1961);
- Colonial rule and its effect on the drive for secession;
- The tendency to capitalize on territorial nationalism as engendered in the slogans of the liberation struggle; and
- The persistent tendency to express the sense of nationalism of the new Eritrean state in territorial terms as evidenced by claims over swathes of land in Djibouti, Yemen and Ethiopia.
- The introduction of the *Nakfa* and the changed economic relation between the two countries resulting from it, i.e., Eritrea's desire to establish parity between the *Nakfa* and the Birr.
- Ethiopia's wish to regulate the relation between the two economies through an intermediary international currency.
- Displeasure of Eritrea over the new economic arrangement proposed by Ethiopia and vice versa.
- A new turn in the assertion of Eritrea's territorial claims.
- Exacerbation of the conflict because of Ethiopia's refusal to use Eritrean ports and its suspension of trade with Eritrea which according to some economists accounted for close to EB 2bn, including invisible trade, transfers and remittances.
- The 'trust-gap' between the leaderships of the EPLF and EPRDF steaming from the benign assumption that the era of peace was ushered in.

CHAPTER 5

ETHIO-ERITREAN BORDER ISSUE: THE DECISION OF THE COMMISSION

5.1. Boundary Problems in General

In this study border and boundary are used interchangeably to refer to the line separating sovereign states, while frontier refers to a zone near the boundary. Dispute and conflict, for reason of avoiding confusing conceptual differences, are also used interchangeably.

The word "treaties" is also put in a quote mark for two reasons: (i) the "treaties" made between Italy and Ethiopia were not treaties concluded between a colonial power and a colonized territory, which could not thus be considered as colonial treaties *per se*; and (ii) the 1900, 1902 and 1908 "treaties" were not "treaties" in the real and legal sense, for one thing, they were being voided and annulled subsequently, for another, they were subject to many conditionality that were not fulfilled to be considered as binding agreements.

It is suggested that (Menon, 1978:740-742), since boundaries were imposed recently, African boundaries did not crystallize "naturally" under the impact and influence of slow social, economic, and political developments. That is certainly true, yet many of the "respectable" European boundaries are also the result of a specific decision and of a very tender age, dating from 1913, 1919, or 1945. In fact, the majority of African borders were drawn before 1910 (Ibid).

In colonial Africa the ultimate decisions on the allocation of territories and the delimitation of borders were always made by Europeans. That is why there are two ways in which boundaries can be considered arbitrary and unreasonable: (1) because they were imposed upon Africans by outside powers; and (2) drawn in total disregard of local circumstances. Nevertheless one may ask whether Ethiopian leaders were completely passive and whether the so - called international borders between Ethiopia and Eritrea differ in this respect from borders elsewhere. The image of Emperor Menelik II as passive victim in the cutting off Eritrea is widely held but I would suggest that it would be more accurate to describe him as wise, for Italy signed the Treaty of 1896 in which it agreed not to cede to any other power any part of Ethiopia that they will administrate. The 1900, 1902 and 1908 Convention are related to the root treaty of 1896 (Hertslet, 1967:433-460). Menelik II had predicted that the colonialists will leave. Indeed, the Italian left, and actually in 1947 The Paris Peace Accord abrogated any treaties that empowered Italy to have possessions

over Ethiopia. Thus, it could give sense to conclude that Menelik did foresee not only the consequences of the coming of the Europeans, but also their outgoing in near future. This was evident from the Agreements He made with Italy which stipulated that "Italy binds itself not to cede or sell any part of Ethiopia to any other power" (Ibid).

What was the effect of such "*Treaties*" upon the territorial settlements that resulted from the territorial scramble? Only when a European power decided to do so were earlier treaties taken into consideration. Sometimes, a decision by a European state to take into account or invoke a treaty between itself and some African ruler was prompted or influenced by an appeal from the Africans concerned, yet the decision as to whether a treaty should be taken into consideration ultimately a European one (Brownlie, 1966:740-752).

The 1935 Italian invasion of the whole of Ethiopia is a vivid example in other words, in evaluating the effect of prior treaties upon territorial settlements, only territories that were disputed between European governments will be considered. However, treaties involving territories not in dispute probably helped to win general recognition of the primacy of the European power which had made the treaties. This is one manner in which treaties played a role in determining territorial allocations.

In situations of dispute, when a European government bolstered territorial claims by referring to treaties concluded with African rulers, its argument was usually twofold: that it had acquired rights through the treaty, and that it had entered into obligations toward an African society which it could not honorably relinquish. Both arguments can, of course, be questioned, and can be regarded as hypocritical. But it is important to remember that in disputes the treaties were often used to justify territorial claims, in line with the principle of respect for the borders existing at the moment of independence, and on the basis of the doctrine of *uti possidetis* (Kapil: 656).

5.2. Colonial Treaties and Their Effects

The settlement of boundary issues is governed based on mutual consent, by the application of either of the three regimes -i.e., (i) by treaties-international agreements regarding frontiers; (ii) by acquiescence-taking into consideration of states practices without opposition from any other side; and (iii) by the principle of estoppels-whereby a given tribunal may take consideration of silent acceptance as conclusive admission, which can not be denied by the other party, whom it affects (Shaw:356-360).

Be that as it may, the parties after making an agreement on the modalities and technical arrangements as to dispute settlement, what comes next is the issue of who is to decide and what mandate to be given to a kind of tribunal.

There is a lack of consensus in theory on the scope the powers international tribunals appointed to decide on cases of border disputes. But the general picture is as follows: by far the largest group of arbitrations relate to the interpretation of treaties - usually a boundary treaty; a few require the interpretation of a previous award, and one of a unilateral declaration of annexation. The next largest category makes, in the compromise, no stipulation as to the criteria to be applied by the arbitrator; a few refer simply to 'principles' of international law. More interesting are those which lay down some specific criteria - either to be applied on their own, or to modify the terms of a treaty. These may be broken down into historical, strategic, ethnographical and social, economic, and geographical criteria; possession; convenience; necessity; political and State interests; and equity. The following are examples of the formulae used (Munkman, 1975:21-27).

According to Munkman (p.22), first:

Historical criteria- was the most familiar of the specific, agreed criteria is that applied in boundary disputes amongst South and Central American States - the line of uti possidetis of 1810 and 1821 respectively. This principle had the useful function of excluding possible acquisition of territory by reliance on a concept of 'effective occupation': it excluded the status of territorium nullius in South and Central America. But it frequently proved inadequate to determine precise boundaries: documents defining the territories of the old Spanish and Portuguese provinces were frequently ambiguous, the border areas unexplored and unadministered and the de jure and de facto jurisdiction of these provinces did not always coincide. To draw precise boundaries, therefore, tribunals frequently had to have recourse to other criteria. They were sometimes explicitly authorized to apply considerations of equity, and they sometimes inferred such authority from the terms of the compromise.

Another example of the criterion of historic possession is to be found in the first of the rules which the arbitral tribunal adjudicating on the British Guiana - Venezuela boundary was required to apply:- i.e. Adverse holding or prescription during a period of fifty years shall make a good title . . . General mention of 'historical principles', amongst others, was made in the agreements for the settlement of boundary questions by Mixed Commissions by Latvia, Lithuania and Estonia (Ibid).

Second, apart from historical possession in the form of *uti possidetis* and prescription, some agreements explicitly exclude actual present possession from consideration unless it fulfils

certain conditions. For example, the Guatemala - Honduras Convention of 1895 provides that possession shall only be considered valid so far as it is just, legal, and well founded, in conformity with general principles of equity, and with the rules of justice sanctioned by the law of nations (Ibid).

Munkman (p. 23) further states that:

Other agreements expressly require that present occupation by subjects of either party, and acquired interests in general, be taken into consideration. The Great Britain - Venezuela Convention of 1897, amongst the rules which it set out for the determination of the British Guiana boundary, provides that some other agreements refer to 'equity' as a basis for deviating for reasons of 'necessity' or 'convenience' from a boundary determined on other criteria.

Assab could have been claimed thus either by historic possession or for reasons of necessity and convenience as an outlet to Ethiopia rather than to Eritrea. Equity could have been referred to in the Algiers Agreement to secure such necessary interests. But for a reason unknown, except some speculations that TPLF, the core of EPRDF, always stands against the permanent interest of Ethiopia, EPRDF Consented to Algiers Agreement by stipulating a hard and fast criteria that preclude the Commission the power to make decisions *exaequo et bono* (EEBC:21).

In this connection, other important factors are also taken in to account (Munkman:22):

. . . ethnographical and social criteria are stipulated - The Conventions between Latvia, Lithuania and Estonia required 'ethnographic' principles to be taken into consideration, as well as, in general terms, 'the interests of the local population'. An early example of the application of interests of the local population is to be found in the treaty between Nassau and Prussia of 1815. This provides for delimitation of the boundary by Commissioners (Ibid).

. . . economic factors- are considered where reference is made to 'economic and transit interests' in the Conventions between Latvia, Lithuania and Estonia.

As per this account Ethiopian economic and transit interests should have been given also due and serious concern to have a right at least on port of Assab.

It is also further elaborated that:

. . . geographic factors are taken into consideration as specific requirements this is found in the Conventions between Latvia, Lithuania and Estonia, reference is made to 'transit' and 'communicational' interests.

. . . strategic factors.- are also highly important. These are explicitly mentioned ('military, strategical' interests) in the Conventions between Latvia, Lithuania and Estonia. Seventh, political and State Interests - are

also other factors to be taken into consideration in boundary determination. The Latvia, Lithuania and Estonia Conventions provide that '... the Commission shall take into consideration ... the political and State interests of each country (such as military, strategic, economic and transit interests) ... '.

... a number of arbitration agreements on boundary disputes require account to be taken of 'convenience' and 'necessity'. For example, the Colombia - Ecuador Convention of 1907 provides that the arbiters ... may, leaving to one side strict law, adopt an equitable line in accordance with the necessities and convenience of the two countries. The Guatemala - Honduras Convention of 1895 provides that the respective Governments may, if they hold it to be necessary or convenient, adopt the system of equitable compensation, bearing in mind the rules and usages established in international practice (Munkman:23-25).

Some conventions also authorize the tribunal, in case it is unable to decide wholly in favor of either claim to decide on the basis of *equity* or some more detailed criteria. Thus, the Great Britain - Portugal Convention of 1872 regarding claims to Delagoa Bay provided that should the Arbiter be unable to decide wholly in favor of either of the respective claims, he shall be requested to give such a decision as will, in his opinion, furnish an equitable solution of the difficulty (Ibid).

The Bolivia - Peru Treaty of 1902 provided that the tribunal should decide on the basis of the *uti possidetis* of 1810, but added, whenever the royal acts and dispositions do not define the domination of a territory in clear terms, the Arbitrator shall decide the question according to equity, keeping as near as possible to the meaning of those documents and the spirit which inspired them (Ibid).

This criteria and principles, applied and tested effective for many border problems, could have helped Ethiopia, had it not been devoid of from being referred to by the Commission in its decision. It is a surprise to many why EPRDF cries for the split of villages and "houses" if the Border Commission's decision has to be effected without taking into consideration of settlement of members of families and ethnic groups. It is EPRDF itself which signed an Agreement having clear terms of reference to the effect that "... the Commission shall not have the power to make decisions *exaequo et bono*". This position is really below the rational or reasons offered 50 years ago by the UN General Assembly Resolution on the disposal of the former of Italian territory of Eritrea. The resolution states as follows (Munkman: 25-26):

Taking in to consideration:

- (a) The wishes and welfare of the inhabitants of Eritrea, including the views of the various racial, religious and political groups of the provinces of the territory and the capacity of the people for self-government,*
- (b) The interests of peace and security in East Africa,*
- (c) The rights and claims of Ethiopia based on geographical, historical, ethnic or economic reasons, including in particular Ethiopia's legitimate need for adequate access to the sea.*

Taking into account the importance of assuring the continuing collaboration of the foreign communities in the economic development of Eritrea,

Recognizing that the disposal of Eritrea should be based on its close political and economic association with Ethiopia, and

Desiring that this association assure to the inhabitants of Eritrea the fullest respect and safeguards for their institutions, traditions, religions and languages, as well as the widest possible measure of self-government, while at the same time respecting the Constitution, institutions, traditions and the international status and identity of the Empire of Ethiopia, . . .

The Resolution goes on to recommend a complex regime for the territory; it is an likely that a judicial tribunal would be required to do that. But the essential consideration outlined-the 'wishes and welfare of the inhabitants', the regional 'interests of peace and security', and the 'geographical, historical ethnic or economic links of territory – are amongst those referred to in the bilateral agreements analyzed for pacific settlement of dispute by a decision of a boundary commission-a non-judicial authority'.

For EPRDF the wishes and welfare of the inhabitants of Ethiopia, including the views of various racial, religious and political groups, the interests of peace and security of the two countries worth nothing.

5.3. The Relevance of Colonial "Treaties"

The 1998 senseless war that resulted in the killing of tens of thousands of Ethiopians was used by Ato Meles and Ato Isaiyas to arrive at the 2000 Algiers Agreement that is claimed to have offered a framework for establishing an international Boundary Commission, though that agreement unjustly resuscitated defunct and voided conventions. Those 1900, 1902, and 1908 defunct and voided conventions were used by a five man EEBC to deliver an unjust but legal-sounding international boundary between a state called Eritrea that did not exist before 1889, and Ethiopia within which the region, that Italy called Eritrea, was a part for thousands of years (Haile, 2000).

Discussions and disagreements as to the exact borders of Eritrea arose for the first time in 1976. The main contenders in this issue were ELF and the newly established TPLF. It surfaced again in 1984, this time between TPLF and EPLF. The issue was postponed to a later time based on the argument of the TPLF that it did not have mandate to delimit and demarcate the Ethio-Eritrean border. The TPLF is reported to have proposed that the borders should remain as they were and that border negotiations could be held at the end of the struggle (Tekeste and Kjetil:25). The principles of cooperation between the Transitional Government of Ethiopia and the Provisional Government of Eritrea, adopted by the Peace and Democracy Conference in July 1991, did not provide for border issues. During the two years preceding formal independences of Eritrea in 1993, no attempt was made to negotiate border issues. It was only in 1997 that the border issue captured the attention of the Eritrean Government, but then relations between the two countries had reached a low level due to the basic disagreements on economic relations. Despite the fact that the border between Ethiopia and Eritrea was not demarcated, both governments have declared their willingness to be bound by the colonial treaties.

It has been said that Eritrea's international borders were negotiated and delineated in 1900, 1902 and 1908. The Eritrean government has insistently maintained that these treaties are clear enough. It is uncertain how cognizant Eritrean leaders are of the ambiguity of the treaties, and of the role of the principle of *uti possidetis or actual possession*. Admittedly, there were no armed border clashes between the Italian colony of Eritrea and Ethiopia during the colonial period. The Italian policy of good neighborliness vis-à-vis Ethiopia, the military inability of the Ethiopian state to challenge the Italian colonial army, and the possibility that Italy would have used border incidents as a *casus belli* may have been the main reasons for the apparently peaceful coexistence observed during most of the colonial period (Tekeste and Kjetil:23).

Recent studies, however, have brought to light aspects of these borders and treaties that could take decades to disentangle if rival nationalisms remain intransigent. According to an exhaustive study of the colonial cartography by the geographer Ciampi (2000:302):

None of the border treaties between Eritrea and Ethiopia (1900, 1902 and 1908) were properly delimited or demarcated. Citing the first Italo-Ethiopian treaty of 10 July 1900 Ciampi noted that the map attached to the treaty was a highly simplified sketch that was entirely unreadable. If one were to go by the letter of the treaty of July 1900, a great part of what is now Eritrea would revert to Ethiopia.

The map that the Eritrean government believes to be the product of the treaty of 10 July 1900 is actually a map produced by Italian cartographers in 1906. The colonial map produced prior to 1906 was different from that produced thereafter.

According to Ciampi's (p.303) reconstruction:

Italian cartographers changed the vaguely delimited boundaries. Thus it is only after 1906 that the present unilaterally delimited but never demarcated boundary, later to be the basis for the position of the Eritrean government, came into effect. There can however be no doubt that the changes introduced by the Italian government were in violation of the treaty of 1900, although one can discuss the motives that inspired the changes.

A similar interpretation was also made by the historian Federica Guazzini in her recent book on the making of Eritrea's borders. According to Guazzini, the Italian colonial authorities deliberately refused to demarcate the borders between Eritrea and Ethiopia agreed in 1900, 1902 and 1908. Instead, Italy chose to manipulate the colonial map so as to include the larger part of the Badme plains under its territory. In pursuing this line of action Italy resorted to what geographers describe as the 'persuasive functions' of maps. In plain language this means that Italy unilaterally interpreted the treaty of 10 July 1900 and proceeded to present a new map as a true interpretation. Both Guazzini and Ciampi express their surprise that the Ethiopian government went along with this map, as is evidenced by the National Atlas of Ethiopia of 1985. One of Ciampi's conclusions is that someone has to be prepared to explain how the border was changed between 1900 and 1906. It is worth mentioning that it was not at all a question of cartographic error. The decision to move the lines of the delimited boundary was deliberate and was taken by high-ranking officers within the Ministry of Foreign Affairs. Neither is there any uncertainty as to when this took place (Ibid).

In actual fact the Ethiopian government was not altogether unaware of the Italian machinations. As late as 1916, according to Guazzini (Haile, 2000), Ethiopia protested against Italian presence in areas well beyond those delineated by the treaty of 1900, but to no avail. It was only during the governorship of Corrado Zoli (1928-30) that Italy established some sort of control along the Badme border. From the late 1920s, however, Ethiopia was in no position to engage Italy on such trivial issues; in a few years the whole of the country was to fall prey to the revanchist aggression of Italian Fascism (Ibid).

The Commission has rightly stated this when it describes the text of the December Agreement regarding Article 4:

In the light of the manner in which the text of the provision in the December Agreement developed, the Commission does not read the terms of Article 4, Paragraph 1 as altering the general direction given to it in paragraph 2 of the same Article and examined above. However, the Commission does see the provision as having one particular consequence. It is that the Parties have thereby accepted that the date as at which the borders between them are to be determined is that of the independence of Eritrea, that is to say, on 27 April 1993 . . .

- By referring to applicable international law. Applicable international law is nothing more than international customary law, where the principle of *uti possidetis, ita possidetis* - as you possess, so you may possess is applied. This principle has been formulated as a basis of territorial demarcation in relations between the Latin American States which emerged on the territory of former Spanish America. It has been thus described as the principle of colonial *uti possidetis*. The Algiers Agreement, in a mockery manner, disregards this principle of effective possession of Ethiopian territories up until the year 1993, which are both subjected to dispute and territories not claimed, like Assab, be adjudicated by "treaties" of 1900, 1902 and 1908 which Ethiopia declared null and void.

The norm *uti possidetis juris* posits that boundaries established and existing at the moment of independence cannot be altered unless the relevant parties consent to change. It is supported by international instruments and by judicial pronouncement. In the Burkina Faso/Mali case, the Chamber of the International Court of Justice emphasized that *uti possidetis* constituted a general principle, whose purpose was to prevent the independence and stability of new states from being endangered by fratricidal struggles provoked by the challenging of frontiers. The Arbitration Commission of the European Conference on Yugoslavia emphasized in Opinion No. 2 that 'it is well established that, whatever the circumstances, the right to self-determination must not involve changes to existing frontiers at the time of independence (*uti possidetis juris*) except where the states concerned agree otherwise'. The principle of self-determination, therefore, applies beyond the colonial context, within the territorial framework of independent states (Shaw: 216).

If one is to be taken by more surprise, what EPRDF has done wrong to the interests of Ethiopia is not only its willingness to be adjudicated by the null and void "Treaties" but also it does not want to invoke provisions of these "Treaties" which favor Ethiopia's interest. To cite but a few, Article

5 of the 1896 and Article 2 of the 1900 treaties provided *that the Italian government binds itself not to cede or sell to any other power the territory of Ethiopia, and in the event the Italian Government wishes to relinquish the territory under its position, it shall hand over the same to Ethiopia* (Paulos, 1992:231).

Even in the 1908 Convention, as in the 1902 Note, it was expected that delegates from the two parties would by mutual consent both delimit and demarcate the border line in the field. In both cases disagreement hindered their implementation (Ciampi:333).

It has been argued before the Commission that in interpreting the Treaties it should apply the doctrine of "contemporaneity". By this the Commission understands that a treaty should be interpreted by reference to the circumstances prevailing when the treaty was concluded. This involves giving expressions (including names) used in the treaty the meaning that they would have possessed at that time. The Commission agrees with this approach and has borne it in mind in construing the Treaties (EEBC: 21).

The Commission in its decision stated that the role of the subsequent practice or conduct of the Parties has also played a major part in the arguments of both sides. The function of such practice is not, it must be emphasized, relevant exclusively to the interpretation of the Treaties. It is quite possible that practice or conduct may affect the legal relations of the Parties even though it cannot be said to be practice in the application of the treaty or to constitute an agreement between them. As the Permanent Court of International Justice said in relation to loan agreements which, for present purposes, are analogous to treaties: "*If the subsequent conduct of the Parties is to be considered, it must be not to ascertain the terms of the loans, but whether the Parties by their conduct have altered or impaired their rights*" (EEBC:22).

A more recent illustration of the same point is that found in the Namibia Advisory Opinion of the International Court of Justice, given in 1971 is also taken into account as pertinent precedent to dispose Ethio-Eritrea case. There, the South African Government contended that the resolution of the UN Security Council requesting the Court to give an Advisory Opinion was invalid because two permanent members of the Council had abstained in the vote, and that therefore the requirements of Article 27 (3) of the UN Charter that a resolution should be adopted by the affirmative vote of nine members including the concurring votes of the permanent members had not been met. The Court rejected this contention, stating that:

the proceedings of the Security Council extending over a long period supply abundant evidence that presidential rulings and the positions taken by members of the Council, in particular its permanent members, have consistently and uniformly interpreted the practice of voluntary abstention by a permanent member as not constituting a bar to the adoption of resolutions . . . This procedure followed by the Security Council, which has continued unchanged after the amendment in 1965 of Article 27 of the Charter, has been generally accepted by Members of the United Nations and evidences a general practice of that Organization(Ibid).

Thus, the effect of subsequent conduct may be so clear in relation to matters that appear to be the subject of a given treaty that the application of an otherwise pertinent treaty provision may be varied, or may even cease to control the situation, regardless of its original meaning. The Commission has also concluded that the nature and extent of the conduct effective to produce a variation of the treaty is, of course, a matter of appreciation by the tribunal in each case.

The Commission also recalls the observations, generally pertinent to the interpretation of a boundary treaty, in the Palena case:

The Court is of the view that it is proper to apply stricter rules to the interpretation of an Award determined by an Arbitrator than to a treaty which results from negotiation between two or more Parties, where the process of interpretation may involve endeavoring to ascertain the common will of those Parties. In such cases it may be helpful to seek evidence of that common will in preparatory documents or even in subsequent action of the Parties (Quoted in EEBC: 24).

In this connection though there were ample possibilities to defend Ethiopia's interest by invoking defenses like prescription, for the treaty is as old as hundred years, Ethiopia's possession over claimed territories is more than fifty years and borders should be delimited and demarcated as per the OAU Cairo Summit in 1964, whose effect could be that the border between Ethiopia and Eritrea has to be delimited and demarcated by reaffirming the principle of respect for border existing at independence, and on the basis of the principle of *utis possidities*, EPRDF failed to raise such valid defenses. Had such valid defenses been raised the disposition of Ethio-Eritrean case, on the bases of these defenses, could have been very easy for EPRDF with its firm position that Eritrea was a "colony" of Ethiopia until 1993.

According to the decision of the Commission, in the present case, the conduct of the Parties falls into three broad categories: since the parties have confined and limited the commission's mandate as to its reference, maps; activity on the ground tending to show the exercise of sovereign authority by the Party engaging in that activity (effectivities); and a range of diplomatic

and other similar exchanges and records, including admissions before the Commission, constituting assertions of sovereignty, or acquiescence in or opposition to such assertions, by the other Party.

Furthermore, the argument forwarded by EPRDF that the principle of effectivity be applied in disposing the border dispute is repugnant to the Algiers Agreement that decision should be given on the basis of colonial "treaties" of 1900, 1902 and 1908.

5.5. Subsequent Conducts of the Parties

On April 13, 2002 EPRDF, in 4 hours time of EEBC Decision, announced that EEBC has given fair and just decision, and decides for Ethiopia, which she does not claim". A week later EPRDF requested clarification from EEBC. In fact, in October 2003, and in response to the Alternative Mechanism the Ethiopian government rejected the decision of the Boundary Commission.

On 29th October, 2003 IRIN News or the UN Office for the Coordination of Humanitarian Affairs interviewed Meles Zenawi. One of the questions directed to him, and relevant to our present discussion, was "when the border decision was announced in April 2002 Ethiopia was very quick to say it had got everything it wanted. Why are you rejecting parts of the agreement at this moment in time?" Meles' response was as follows:

They [Boundary Commission] made their decision on the basis of the established practice of the parties. If they had followed the colonial treaty, Badme would have been say 40, 50, 60 km within the Ethiopian boundary. They issued map coordinates which they said are provisional and not final, and that they could be adjusted by checking the facts on the ground. We assumed that the map coordinates would be adjusted, so we said their decision was acceptable to us. But at some stage in the process this Boundary Commission said the coordinates are final, they are not going to be adjusted unless the Security Council says so or unless the parties give us a new mandate. That is changing the rules of the game in the midst of the game. And that is what created the whole problem. They said they base their decision not on colonial treaties, but on established practice. And we assumed they would check what the established practice on the ground was before demarcating the final boundary.

Most Ethiopians were caught by surprise when the Ethiopian government announced that it is ready to accept the Boundary Commission decision. Even the members of the Ethiopian parliament were caught by surprise; some even think the move on the part of the government was some sort of ambush on the overall political process.

In order to help us deconstruct the new peace initiative, let us further examine other parts of IRIN News interview: "But in the interest of peace, as you say it [Badme] is a godforsaken place – isn't it better to let it go and move on?" Meles Zenawi: "Sure, if injustice was the mother of peace, we would do that." IRIN News: "So for Ethiopia, what's the bottom line?" Meles Zenawi: "The bottom line is peace; we don't want any mess-ups here."

So, now, with some retrospective re-examination of the political stance of Meles' government, we can't find ourselves altogether surprised.

If the Decision of the Boundary Commission were flawed, why then accepted it? Meles Zenawi addressing the Ethiopian parliament on November 25 emphasized the significance of peace and even implied that Ethiopia must accept the Boundary Commission rulings for the sake of peace. I don't exactly understand what he really meant. One cannot simply trade or bargain land for peace even if the latter is likely to take place. And in the rationale of the five-point proposal, it is reiterated several times that Ethiopians want (or demand) peace. Of course they want peace, but I have yet to witness an Ethiopian or Ethiopians advancing thoughts such as 'let bygones be bygones,' 'lets forget our sacrifice,' 'lets simply implement the "flawed" Boundary Commission decision,' and 'lets simply settle down for peace.'

On the other hand, Ato Meles, in his address to the parliament implied that his government would not accept "*unjust and illegal decision that would effectively dissect certain villages in the disputed territories*".

Therefore, no one can be optimistic as to a peaceful settlement of Ethio-Eritrean conflict given the current regime's wavering, unpolished and unprincipled political stances.

Be it as it may, the Government of Eritrea still insists that commitment to the Algiers Agreement is "*final and binding*"; no more, no less. This complexification of the problem makes it too intractable to be resolved. The EEBC too reiterated its position by declaring that if either party disagrees to the modification proposed by the other party, then demarcation must proceed as per the ruling of the EEBC.

5.6. Prospects for Ethio-Eritrean Relations

Normalization of relations or conflict transformation is a term used to indicate the establishment of new, positive relationship among the formerly conflicting parties (Zartman, 2000:36). Conflict transformation is a long and evolutionary process.

According to Ruth (2000:676), *"the story of the life and death of Eritrean-Ethiopian Alliance offers a variety of lessons. One of the lessons demonstrated repeatedly during the twentieth century is that comrades in war do not necessarily transform into partners in peace"*.

For any one who thoroughly investigates the causes of the war it does not seem that hostilities and conflicts between the two countries are caused by border disputes. However, as the saying goes. No one is in a position to know more than the beholder. The international Community and researchers believed the assertions of the belligerent countries which said the causes of stating that border dispute between the two countries caused the war. The international community exerted efforts to resolve the conflict taking the words of the belligerent countries into consideration.

The two governments presented colonial treaties and agreements with neighboring countries as evidences to resolve their dispute in sustainable manners. And the international community, accepting the evidences, has tried to find solution to the dispute.

Even though the two Governments tried to convince that the colonialist treaties and decision would resolve the conflict in sustainable manners, the colonial treaties give only little support to resolving the border conflict. Ethiopians who believe that the treaties could only assist the Eritrea's position and who aware that the endorsement of the colonial treaties by EPRDF government was without due deliberations, have lost confidence on the government of Ato Meles Zenawi and his government is accused, of crimes of reason.

Secondly, the 1971/72 OAU decision in Cairo that endorsed colonial borders was also another reference to resolve the border dispute.

In the opinion of the writer, the colonial treaties and the OAU Cairo decision will not bring solution to the Ethio-Eritrean border dispute. Thus, these references should not have been submitted as instruments for it did not have any relevance at all. There is neither legal nor historical support in referring these documents as a legal instrument in resolving the border conflict.

Although the border issue was the event that triggered armed conflict between Ethiopia and Eritrea there is little reason to believe it was the root cause. The military build-up, the mobilization, the support to the opposition groups of the other side indicates that there is more to it. As one Ethiopian politician has remarked it: 'It is absurd first to let an entire province become

independent and then conduct a war at tremendous cost and consequences over a small piece of 400 square kilometers devoid even of an economic value.'

In fact, the historical legacy of solving all conflicts through the use weapons and violence is another factor that certainly influences current developments. Thirty years of experience in warfare and having successfully achieved their previous goal(s) through the gun will make it difficult to see and acknowledge other options for resolving conflicts. The concept of 'independence' in an era of globalization growing economic, cultural and social inter-dependence has to be revisited. We live in a world where mutual inter-dependence becomes increasingly important, whether we want it or not.

Whatever the reasons for the conflict may be, it seems clear that peace efforts that are focusing exclusively on the border issue will not result in lasting peace. As long as these two economically destitute countries are using all their resources to arm themselves to the teeth, any little issue can make a new war erupt. Only a genuine process of normalization that lead to federation can make a change. But for that to happen there has to be a 'demilitarization of the mindset' so that a society can develop which does not resort to weapons as the preferred means to solve conflicts but rather chooses to manage conflicts between the countries and in the region in a non-violent, peaceful way.

As most observers agree, the conflict is not based on the issue of border. There are deeper cause's historical, cultural and economic cases. Therefore, solutions to the conflict must be sought by addressing the real source of the conflict.

There are several grounds that may serve as the basis for friendly cooperation between Ethiopia and Eritrea. This argument is based on the assumption that the current conflict between the two will be resolved, and relations between the two will be normalized. The conviction that both resolution of conflict and normalization of relations should be seen as long-term processes.

The need for normalization between Ethiopia and Eritrea is vividly seen on political and economic grounds. Economically, the most salient features Ethiopia and Eritrea share is the extent to which their economies are interdependent (Tekie, 1993:18).

Both Ethiopia and Eritrea have vested interest in working together to achieve important economic and political objectives. Key elements of the interdependence of the two economies include

Ethiopia's need for reassurance regarding access to the sea ports, and the expectation each country has relating to the rights of its nationals residing in the other country would always be respected (Tekie, 1993:19).

Henze (1994:21), stressing the need for cooperation between the two countries that geographic and economic realities all argue in favor of an extremely close relationship between Ethiopia and Eritrea. Eritrea, he further contends, would appear to gain more from close association with Ethiopia than Ethiopia would lose from the reverse case.

Kinfe (2001:252) states that: "*the historical, ethnic, national and cultural consanguinity between the peoples of both countries go far back in time*". According to Kinfe, both countries do not have separate histories except for the period of Italian colonial administration. As a separate territorial unit, Eritrea had been formally created by the Italians in 1890 by an act of surgery (Trevaskis, 1960:34). The population in the highlands of Hamassein, Seraye, and Akele Guzai were separated from their Tigrigna speaking kinsmen to the south of the Mareb River, with whom they shared a very high degree of material culture. This was also true of the mainly pastoral population of eastern Eritrea, the Saho and Afar, of whom the majority reside in Ethiopia (Shumet, 1993:43).

Similarly, Spencer (1993:39) asserts that "*for 3000 years, Eritrea has been an integral part of Ethiopia, and those 3000 years had made ethnic, cultural and religious patterns of Eritrea and the rest of Ethiopia the same*". Kinfe (2001:526) concurs with Spencer on this point. He states that:

The people of the two countries share the same life style. Sedentary agriculturalists and relatively small urbanized populations engaged in very rudimentary industrial, trade and service sectors inhabit the densely populated highlands of both countries while a largely pastoral and less urbanized population dominates the lowlands.

For Medhane Tadesse, the socio-cultural and historical ties between Ethiopia and Eritrea are stronger than any other bond bringing the two countries together. Therefore, the historical ties between the two are an asset that can be capitalized upon in fostering cooperation that leads to federation in the long-run. However, the historical ties between the two countries have been denied for political convenience. 'Federalism by stealth' is collapsed by the 1998 conflict and through the war that followed (Assefa: 103). Marcus (1992:20) also observes that "*through rigorous repetition, the present leadership of both countries and their fellow travelers have created a new history turning logical facts on their heads to prove a political message*".

Regarding the distortion of historical ties between Ethiopia and Eritrea, both the leaders of EPLF and TPLF have played negative roles regarding historical ties. Eritrean insurgents used to interpret history in a manner that served their aspirations to political independence.

Yet another common feature that unites Ethiopia and Eritrea is the common language of Tigrigna, Afar, Kunama, Agew and Erob whose people inhabit both Ethiopia and Eritrea (Kinfu, 2001:527).

It is true that the OAU has attempted to settle the Ethio-Eritrean conflict. When the US/Rwandan peace initiative failed, the OAU took over the case and tried to settle the conflict. But the Algiers Agreement sponsored by the OAU was signed only after the dispute was decided in the battlefield. Thus, it cannot be said that it was OAU's effort that ended the conflict (Tekeste, 1997:82). The UN role was also minimal in the resolution of the Ethio-Eritrean conflict. But save the adage that every internal war creates a demand for foreign intervention.

The foregoing suggests that the external actors may not be expected to play greater role in the normalization. Their failure to resolve the dispute may force one to doubt their capacity to contribute to the normalization.

Although normalization of relations and cooperation between Ethiopia and Eritrea is not likely in the foreseeable future, the fact that historical and cultural commonalities exist between the peoples of the two countries cannot be denied. It is an asset that future generations in both countries may capitalize on.

According to Haile (2000), since Eritrea claims that Ethiopia is the last 'colonial' power of Eritrea, the demarcation based on post-1960 line would have caused little dispute to both Ethiopia and Eritrea and it would have also fitted OAU's charter that demands that boundary left by the "last colonial power" should be respected. In this case Eritrea will concede Assab to Ethiopia, the alleged last colonial power, and Ethiopia would denounce any claim of its rights to any part of the Eritrean interior, such as Debra Bizen and its dependencies, and yet reserve its right to the lands annexed by Zolli. I am sure Eritrean government may not be happy with this outcome even if it seems to be the most satisfactory one.

Yacob (2000), Tollosa (2000:3) and many other scholars approach the problem by saying that any attempt at normalization must address the Assab issue. From the point of view of not only

economic interests but also from the point of necessity Assab and Massawa were to be used by Ethiopia as prior agreements between the two Fronts. This position is shared by many other Ethiopians.

Reversal to being landlocked, as it was before integration, is a condition that the coming generation of Ethiopians cannot easily accept. If this condition is imposed on Ethiopia permanently, this will be a source of renewed conflict in future. Consequently, the issue of Assab must figure prominently in the future normalization process.

As indicated earlier, it is noted that there is a possibility of normalizing relations at state levels (at the level of the people, there is a long way to go). However, normalization is meant normalizations between Ethiopian and Eritrean people, not only between the leaders. Accordingly, the concerns of the peoples must be addressed in considering normalization. It should be normalization stemming from the grass root, not a normalization imposed from above. Regarding the speed of normalization between Ethiopia and Eritrea, there are doubts and fears expressed by some informed personalities. Tekeste (1999:52) expresses his fear that the intensity of mutual hatred and suspicion among the leaders of both governments would have a negative impact on the speed of normalization. He states that the border dispute which could have been resolved peacefully led to long drawn out conflict in which the politics of destabilization assumed the upper hand. In the process, the populations of both countries were drawn into a conflict basically created by a small group of political leaders in the two countries. A similar doubt is expressed by Professor Mesfin (2003). He contends that as long as the two regimes are in power, normalization may not begin.

This is confirmed by the outright rejection of the five point peace initiating proposed by Abto Meles – though the proposal seems fine and acceptable. In fact the proposal was considered from Eritrean side to hijack the Algiers Peace Treaty, which undermine the role of the Commission and its legal statue and turn it into the political issue for the UN and other actors to turn into a ‘give and take’ deal (Embaie Ferrow, 2004).

In sum, I argue that the prospect for normalization of relations in the foreseeable future is not likely. Both governments are not as yet ready to think in terms of normalization.



CHAPTER 6

CONCLUSION AND RECOMMENDATIONS

It is amazing how the Eritrean question has remained as one of the thorniest issues for Ethiopia, for generations. Eritrea is thus a problem child of colonialism. It is no less a problem today than it was when the Italians left and it became a British protectorate. What makes the situation worse today is the fact that the EPLF and TPLF have opted to revive that colonial past despite the greatly altered circumstances in Ethiopia and in the world. It seemed 1991, with Eritrea's separation from Ethiopia, would bring the issue to rest once and for all. But, the realities that have taken place since then indicate the Eritrean problem will remain at the top of the Ethiopian political agenda for years to come, if not for generation.

The independence of Eritrea from Ethiopia is an issue that will bring more problems for both countries rather than solutions. Putting aside the issues of the right to self-determination, the legality of the referendum for independence and the subsequent recognition and acceptance of Eritrea as a sovereign nation by the United Nations and by its Members, I believe the independence of Eritrea from Ethiopia was a political mistake, as the dissolution of the federation in 1962 was. There was no need for such action after the collapse of Mengistu's military dictatorship in 1991. The liberation struggle whether it was in Eritrea or elsewhere in Ethiopia was against despotic rulers and not against ordinary citizens. Thus, once Mengistu's dictatorial government had collapsed there was no political reason not to reformulate the goals and political programs of the liberation movements. A great statesman would have foreseen the inherent problem of bottling up over seventy million people (Ethiopians) with tremendous economic and military potential by less than four million people (Eritreans) with a modest development future.

The post-1991 relations of friendship between Ethiopia and Eritrea began with the TGE's acceptance and endorsement of the right of Eritreans to independence. The Peace and Democracy Conference held in Addis Ababa from 1-5 July 1991 recognized the right of the Eritrean people to determine their political future by an internationally supervised referendum. In April 1993, a UN-OAU sponsored referendum was conducted, and Eritrea formally became a sovereign independent state. This came to pass with a full cooperation of the Transitional Government of Ethiopia. In fact the relations between the two countries following Eritrea's independence, was also informal and non-reciprocal, which later on proves to be one of the main causes of the conflict.

The world was taken by surprise when violent hostilities erupted between Ethiopia and Eritrea in May 1998.

The end of the war that resulted in the dismemberment of Ethiopia did not prevent the senseless and costly border war of 1998-2000 that claimed more than 70 thousand lives; it did not bring prosperity and democracy to the historically, culturally, biologically bound peoples of the two countries; it did not prevent the threat of the impending war over demarcation of the border. Normalization of relations is unthinkable while dictators, Esayas and Meles (respectively ranked as number 13 and 18 among the top twenty dictators in the world according to The Washington Post of 21 January 2006) are at the helm of power over the two brotherly populations. The African Union has belatedly cited the two among one of the worst African dictators. The struggle for regional supremacy between the two stubborn dictators will continue to be the driving force for economic depravity, political upheaval and violation of human rights and regional instability in the Horn of Africa.

On 12 May 1998, the Ethio-Eritrea conflict out broken. The conflict is said to be created due to border issue; but break in historical ties. Ethiopians, and others interested in peace have been asking why the close relationship between the two comrades-in -arms of the two countries suddenly went wrong, and why EPRDF signed the “suicidal” Algiers Agreement that endorse the defunct and void colonial treaties against Ethiopia’s interest, and a bonanza to EPLF, which does not and may not bring peace and security between the two countries. This is the major question sought to be answered in this study. With the objective in mind, different causes of the conflict, the contents of the colonial “*treaties*”, the Algiers Agreement and the decision of EEBC are analyzed; and thus the stated objectives of the study are said to be met.

The status of the Colonial “Treaties” as discussed hereinbefore, were not without problems:

First, delimitation on the paper was not always followed by demarcation on the ground;

Secondly, the absence of effective administration in the frontier regions made the boundary delimitation a cartographic exercise;

Thirdly, boundary agreements were concluded without taking cognizant of seasonal movements and ethnic unity, and settlement of the frontier peoples. None of the boundaries thus agreed was demarcated;

The 1935 invasion of Ethiopia by Italy nullified all the previous “treaties”;

The Treaty of Peace with the Allied powers of 1947 where Italy, by Article 23 of same Treaty, renounced "all rights and title to the Italian territorial possessions in Africa", made the Colonial "treaties" null and void;

The UN Commission Report which was submitted on 2 December 1950, and the Resolution 390A (V), adopted by the General Assembly of UN, which recommended that "Eritrea shall constitute an autonomous unit federated with Ethiopia under the sovereignty of the Ethiopian Crown", resulted in the defunct Colonial "Treaties"; and

The Federation of Eritrea with Ethiopia was accordingly established on 11 September 1952; and after the federation and reunification of Eritrea with Ethiopia in 1952 and 1962 respectively, boundaries delineated during colonial period became administrative lines with some variations.

In any legal and binding Agreement, be it domestic or international the contracting parties must have capacity to enter into a contract. Menelik was the King of Shoa and not Emperor of Ethiopia, when he signed the 1889, Wuchale Treaty and He was not having capacity to conclude an Agreement with a foreign power to serve part of Ethiopia, i.e., Eritrea, to a foreign power.

Prospects for lasting peace are also explored. In exploring possible areas of normalization and integration, it was meant to use it not only as a means of preventing future conflicts but also as a means of prosperity for the brotherly populations of the two countries.

Gauging the political and emotional climate as best one can, I hold the opinion that the definition of the conflict as arising from a border dispute misses the essential point: economic and historical relations between the two peoples. The two countries share a complementary economic basis. Eritrea needs access to the Ethiopian market and resources, while Ethiopia, stands to benefit from active economic interaction with Eritrea, and the usefulness of Massawa and Assab for the latter remains of great importance. Were the Port of Assab to be left to die out as no one other than Ethiopia uses it, it is beneficial neither to Ethiopia nor Eritrea. Hence, I argue that this is another reason why Assab should have been and should be a part of negotiation between Ethiopia and Eritrea.

My humble suggestion is that let there be '*dual sovereignty*' over Assab, shared between Ethiopia and Eritrea. Assab could be left nominally as an 'entity' within Eritrean State's jurisdiction while Ethiopia retains an exclusive right of the port's use. What this means is that Assab becomes useful to both countries and indirectly serves as the symbol of continuity and the bridge of hope between the brotherly and sisterly people of Ethiopia and Eritrea.

In fact, the war has created hard feelings between the brotherly populations, but I do not share the view that all is lost. Both governments still stress the cultural, historical and economic links that bind the Eritrean and Ethiopian peoples, in spite of the recorded violations of human rights in connection with the deportations. I believe that it is important to capitalize on the existing fund of shared culture and history, and to use this fund to explore the landscape of post-conflict relations.

Recently, a year before, EPRDF has boasted of coming with a “*new peace initiative*” aiming at creating “*durable and sustainable peace*” between Eritrea and Ethiopia. The regime has called upon the international community to support its proposal, and it had even launched a diplomatic campaign to that end but with no avail. By now that proposal is thrown in to a pigeon-hole where no body is to look at it or care of it since it fails to address the root causes of the problem and the panacea. A number of questions can be asked with respect to this so-called “*peace initiative*”. What is new about it? What is the predominant idea or theme of the proposal? Does the proposal address the key issues?

A grave mistake is once again committed when EPRDF initiates and agrees to the Algiers Agreement. Rather than giving life to buried colonial “*treaties*”, there were ample possibilities to promote Ethiopia’s interest by invoking defenses like prescription, for the treaty is as old as hundred years, Ethiopia’s possession over claimed territories is more than fifty years and borders should be delimited and demarcated as per the OAU Cairo Summit in 1964, whose effect could be that the border between Ethiopia and Eritrea has to be delimited and demarcated by reaffirming the principle of respect for border existing at independence, and on the basis of the principle of *utis possidities*, EPRDF failed to raise such valid defenses. Had such valid defenses been raised the disposition of Ethio-Eritrean case, on the bases of these defenses, could have been very easy for EPRDF with its firm position that Eritrea was a “*colony*” of Ethiopia until 1993.

That is why the Algiers Agreement to delimit and demarcate Ethio-Eritrean border is said to be, by many scholars, the continuation of the all-round struggle by TPLF not only for the independence of Eritrea but also for its interest (Yacob, 2002). Has TPLF been worried of Ethiopian sovereignty, peace and security, it could have submitted, in its claim to the EEBC, and proposed in its Peace Initiative, Ethiopia’s right to have an out let – the Port of Assab. Sixty years before, U.S. Secretary of State, John Rostre Dales (Quoted by Yacob, 2002) clearly states that “*To avert the possibility of Eritrea being used at any time in the future as a base against Ethiopia, and to give that state (Ethiopia) access to the sea, the Eastern part of Eritrea, including*

Massawa should be incorporated in to Ethiopia". Maclin (Ibid) also said that "*The Territory ceded to Ethiopia should include Danakil coast and the Port of Assab*". This is a vivid reality which EPRDF fails to observe after half a century.

Furthermore, since Assab was found in the very territory of Ethiopia, i.e. in the Afar Autonomous Region, Ethiopia was in a better position to claim the possession of the port – as an out let to Sea, on the basis of the principles of *uti possidetis* or actual possession, for reasons of 'necessity' or 'convenience', and 'equity', as norms of customary international law.

Hence, if the Ethiopian authorities are sincere in their deliberations and have now regrets on their past mistakes, they must do two things: (1) testify before the Ethiopian people of the egregious mistakes they have committed and request the Legislature to re-examine Algiers, Hague, and the Boundary Commission decisions, and come up with its own decision to encounter the so-called "*final and binding*" Algiers proposition that empowered the Commission. The Ethiopian parliament, in turn must incorporate in all its deliberations the wish, desire and sentiment (pertaining to the demarcation) of the Ethiopian people in general, and the citizenry in Shire, Gulo Mekeda, Irob, and Afar in particular; (2) the Ethiopian Government must further underscore the illegality of Algiers and subsequent Boundary Commission decision by first admitting its own mistakes. The Ethiopian authorities must have the courage to take such initiative, not in the manner of being courteous, but in endorsing the inherent right of Ethiopia to reject a priori decisions and international agreements that potentially undermine Ethiopia's national interest. For that matter, the decision by the Boundary Commission may not entail a sanction as that of a decision by International Court of Justice, which functions under the auspice of the UNSC.

The writer of this paper also believes that the dispute that led to the Ethio-Eritrean war and the situation that ensued to the current stalemate is not a border dispute. Had it been a border dispute it would have been easy to resolve it through negotiation and ultimately through arbitration.

According to Levine (1993:36), both populations represent the same mix of peoples and have been part and parcel of the same extended cultural community for more than 2000 years. Afars and Sahos, Tigrawi's and Jabartis, Christians and Muslims, are the same on either side of the border. Levine argues that the Belens are the first cousins to the Qemant (Ibid). Thus, sparkling history of Eritrea has to be seen in intrinsic relationship to its mother country-Ethiopia, and the idea of "*liberation of Eritrea before Eritrea*", by some Eritrean and pro Eritrea writers, including TPLF officials, has to think once again if at all ever lasting Peace is to come.

The UN Assembly in its Resolution of 1952, fifty years before, offered that the disposal of Eritrea should be based on its close political and economic association with Ethiopia and the interests of peace and security in East Africa. Since this holds true even after fifty years, EPRDF should have observed this vehement reality. Thus, if peace is to prevail and normal relations are to be re-established between the two brotherly populations, the buffer zone under UNMEE's control, whose period of stay is actually dwindling, or the delimitating and demarcating of the border by putting of marks even like that of a "*China wall*", could not serve the purpose. Short of taking into account the historical ties, close cultural and economic relationships, and the multi faceted interests of the peoples of the two countries durable peace and mutual prosperity could not be secured.

Hence, seen in light of the analysis forwarded in concomitant with the present stalemate even after Algiers Agreement, Boundary Commission Decision on the basis of pertinent Colonial "Treaties", and the outright rejection, by EPLF, of the five point peace plan initiated by EPRDF, the hypothesis formulated at the beginning of this writing, that Ethio-Eritrean conflict is caused not only by border dispute and that colonial "treaties" have no relevance to settle Ethio-Eritrean conflict, and could not bring durable peace is proved to be true.

Finally, the problem between Ethiopia and Eritrea, be it border, economic, and what have you, is realistic and practical. It needs overt and powerful suggestion as a way out of the impasse. First, EPRDF must ask apology for the Ethiopian people; second EPRDF must underscore the illegality of the Algiers Agreement; third Re-negotiate with a workable proposal; fourth, since there is no wrong to go for extreme negotiations, and claim for the whole of Afar areas and a right to an outlet to the Sea – port of Assab. What is more, for many scholars, including this writer, therefore, even after a successful normalization, federation, a structure already in practice in Ethiopia, could serve as a nucleus around which to build, for the two countries share a complementary economic basis: Eritrea needs access to the Ethiopian market and resources, while Ethiopia stands to benefit from active economic interaction with Eritrea, and the usefulness of Massawa and Assab for the latter remains of great importance.

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CONVENTIONS, TREATIES, AGREEMENTS

Additional Convention To Treaty between Italy and Ethiopia, 2nd May, 1889

Algiers Agreement of between EFDR and the State of Eritrea, December 12, 2000,

Annex to Treaty of 10th July, 1900 and 1902 (Amharic version)

Annex to Treaty of 10th July, 1900 and 1902 (English version - Translation)

Convention of May 16, 1908 between Italy and Ethiopia (Amharic version)

Convention of May 16, 1908 between Italy and Ethiopia (Italian version)

Convention of May 16, 1908 between Italy and Ethiopia (English version-Translation)

Treaty of Treaty of Friendship and Commerce between Ethiopia and Italy, 2nd May, 1889,

Treaty of 26th October 1896 (Italian version)

Treaty of 26th October 1896 (Amharic version)

Treaty of 26th October 1896 (English version-Translation)

Treaty of 10th July, 1900 (Amharic version)

Treaty of 10th July, 1900 (English version - Translation)

Appendix 1

Additional Convention to Treaty Ethiopia and Italy 2nd May, 1889 (Translation)

His Majesty Humbert I, King of Italy, and His Majesty Menelek II, King of Kings of Ethiopia, in order to render profitable and secure the peace between the two Kingdoms of Italy and Ethiopia, have decided to conclude a Treaty of Friendship and Commerce:

And His Majesty the King of Italy, having sent as his Representative and Envoy Extraordinary to His Majesty King Menelek Count Antonelli, &c., whose powers have been duly recognized, and His Majesty King Menelek negotiating in his own name as King of Kings of Ethiopia, have concluded and do conclude the following Articles:-

Art. I. – Perpetual Peace and Friendship.

Art. II. – Appointment of Diplomatic and Consular Officers.

[Boundary between Italy and Ethiopia]

Art. III. – In order to remove any doubt as to the limits of the territory over which the two Contracting Parties exercise sovereign rights, a Special Commission,* composed of two Italian and two Ethiopian Delegates, shall trace with permanent landmarks a boundary-line,** the leading features of which shall be as follows:-

- (a) The boundary between Italy and Ethiopia shall follow the high table-land.
- (b) Starting from the country of Afrafali, the villages of Halai, Soganeiti, and Asmara shall be within the Italian boundary.
- (c) Adi Nefas and Adi Johannes, in the direction of the Bogos tribe, shall be within the Italian boundary.
- (d) From Adi Johannes the boundary between Italy and Ethiopia shall be marked by a straight line running east and west.
- (e)

[Convent of Debra Bizen]

Art. IV – The Convent of Debra Bizen, with all its property, shall remain in the possession of the Ethiopian Government, who shall not however, be able to make use of it for military purposes.

Art. V. – Customs Dues payable by Caravans. 8 percent ad valorem.

Freedom of Commerce in Arms and Ammunition through Massowah for King Menelek.

Art. VI. – Commerce in arms and ammunition to and from Ethiopia shall be free to pass through Massowah only for King Menelek, who will be bound to make a regular application to that effect to the Italian authorities, furnished with the Royal seal.

The caravans, arms, and ammunition will travel under the protection and with the escort of Italian soldiers as far as the Ethiopian frontier.

Art. VII. Freedom of Travel and Commerce. Armed Men prohibited from crossing Frontier to intimidate or molest Inhabitants.

Source:- Hertslet, Sir E. 1967 The Map of Africa by Treaty. Third edition. Vol. II, Nos. 95-250.

N.P.: Frank Cass & Co. Ltd.

Remark:- * Neither special nor ordinary Commission was composed of as per this agreement.

** Neither permanent nor temporary land marks and boundary-line were traced.

Appendix 2

ABYSSINIA, GREAT BRITAIN, AND ITALY Amharic Version በ1902 ዓ.ም የተዘጋጀ ስባሪ

ኢትዮጵያ * ታላቋ ብሪታንያ እና ማሪያን

ግንቦት 15/1902 (እ.ኤ.አ.)

ስለ ኢትዮጵያና ኢፍትራ ወሰን በ1900 ዓ.ም (እ.ኤ.አ.) በወርሃ ሐምሌ በ10 ቀን ስተፎረመው ውስ ስባሪ ** የሚሆን በኢትዮጵያ፣ በሱዳንና ኢፍትራ መካከል ስላለው ወሰን በ1902 (እ.ኤ.አ.) በወርሃ ግንቦት፣ በ15 ቀን የተደረገ ስምምነት፡፡

የኢትዮጵያ ንጉሠ ነገሥት ዳግማዊ ምኒልክ ሻስቃ ችኮ ዲኮሳ በኢትዮጵያ የጣሲያን ሚኒስትር ሴተና ኮሎኔል ሃሪንግተን፣ በኢትዮጵያ የብሪታንያ ንጉሠ ነገሥት ወኪል በጋራ ተስማምተው፡፡

[በኢትዮጵያና በኢፍትራ መካከል ያለ ወሰን]

ስንቀጽ 1 ቀደም ሲል በኢትዮጵያና በኢፍትራ መካከል በተደረገው የድንበር ውስ ከችማት ችድሱክ በተዘረጋው መስመር የተወሰነው የሁለቱ ሃገር ድንበር በሚከተለው ሁኔታ ተሻሽሏል፡፡

ኮፎ ስምህጃርና ሰቲት ወንዞች ከሚገናኙበት ስፍራ ተነስቶ ስዲሶ ድንበር የሴቲትን ወንዝ ፈሰስ ተከትሎ፣ ከማይቱብ ወንዝ ጋር እስከሚገናኝበት ቦታ ድረስ ይዘሰቃል፡፡ ማይነብንም ተከትሎ የሰታታኩራ ተራራን ወደ ኢፍትራ በመተው የመረብ ወንዝ ከማይ ስምበሳ ከሚገኘውበት ቦታ ሂዶ ይገናኛል፡፡

ሰቲትና ማይቱብ ከሚገናኙበት ቦታ ተነስቶ መረብና ማይ ስንበሳ ከሚገናኙበት ቦታ ድረስ የሚዘሰቀው መስመር የኩናማ ጎሳ ወደ ኢፍትራ እንዲሆኑ በማድረግ በኢትዮጵያና በጣሲያን ሰባራን ድንበሩ ይወሰናል (shall be delimited). ***

[በሱዳንና በኢፍትራ መካከል ያለ ወሰን]

ስንቀጽ 2 በሱዳንና በኢፍትራ መካከል ያለው ወሰን በእንግሊዝና በጣሲያን ሰባራን ስማካኝነት በ1901 ዓ.ም በወርሃ ሚያዝያ፣ በ16 ቀን በተደረገው ውስ ሳይ የሚመሰረት ሳይሆን ከሰብደራት ተነስቶ በሰቡ ጃማል በኩል ያደርገና ስር ስምህጃርና ሰቲት ወንዞች ከሚገናኙበት ነጥብ ድረስ የሚዘረጋው መስመር ይሆናል፡፡ ይህ ስምምነት በእንግሊዝና በጣሲያ መንግስታት እንደፀደቀና በኢትዮጵያ ንጉስ እንደተገለጸበት**** ተፈፃሚ ይሆናል፡፡

ይህንን በማመን የኢትዮጵያው ንጉስ ነገስት ግርማዊ ዳግማዊ ምኒልክ በስማቸውና በወራሾቻቸው ስም ሻስቃ ችኮዲኮሳ በጣሲያን ንጉስ በግርማዊ ቪክቶር ሲማኑኤል ሶስተኛ ስም፣ እንዲሁም ሴተና ኮሎኔል ሃሪንግተን በተባበሩት የታላቋ ብሪታኒያ ግዛት በስዋሪንድ እንዲሁም በባሕር ማዶ ያሉ የእንግሊዝ ተዳዳሪ ግዛቶች፣ በሕንድ ንጉስ ይህንን የሕንድ ሰነድ ቅጂ ሆኖ በሶስት ቋንቋ ማሰትም በጣሲያን፣ በእንግሊዝኛና በስማርኛ የተፃፈ ሰነድ በሶስትዮሽ እየፈረመ (ሁሉም ቅጂዎች ሶፌሴሳዊ ናቸው) ስልድቀው እዚህ ሳይ ማሕተሞቻቸውን ስሰፍረዋል፡፡

በ1902 (እ.ኤ.አ.) በወርሃ ግንቦት በ15 ቀን በስዲሶ ስበባ ተከናወነ፣

(ሳ.መ) ጆን ራኔ ሃሪንግተን (ሴተና ኮሎኔል)

(ሳ.መ) ማጃር ፌዴሪክ ችኮዲኮሳ

ምንጭ:- ጦቢያ መፅሄት ቅፅ 3፣ ቁጥር 36 ግንቦት 1994 ዓ.ም

ማስታወሻ:- * ኢትዮጵያን ጨምሮ ሶስቱ መንግስታት የፈረመበት ስለመሆኑ ማስረጃ የለም፡፡

** ይህ የ1902 ሰነድ የ1900 ዓ.ም (እ.ኤ.አ.) ስባሪ እንጂ እራሱን የቻለ ውስ ስይደሰም፡፡

*** በኢትዮጵያና በጣሲያን ሰባራን ድንበሩ ይወሰናል ቢሰም በዚሁ መሠረት የተወሰነ ድንበር የለም፡፡

**** ይህ ስባሪ ሰነድ በእንግሊዝ እና በጣሲያን ስለመፅደቁ እና በኢትዮጵያ ንጉሥ ስለመገለፁ ማረጋገጫ የለም፡፡

Appendix 3

Abyssinia, Great Britain, And Italy *[Frontiers. Soudan and Ethiopia. Soudan and Eritrea]*

Annex to the Treaty of 10th July, 1900 regarding the frontier between Ethiopia and Eritrea, and the Treaty of 15th May, 1902, regarding the frontier between the Soudan and Ethiopia.

His Majesty the Emperor of Ethiopia, Menelek II, Major Ciccodi-cola, Italian Minister in Ethiopia, and Lieutenant-Colonel Harrington. His Britannic Majesty's Agent in Ethiopia, have mutually agreed that:-

[Frontier between Ethiopia and Eritrea]

Art. I. – The frontier Treaty between Ethiopia and Eritrea, previously determined by the line Tomat-Todluc, is mutually modified in the following manner:-

Commencing from the junction of the Khor Um Hagar with the Setit, the new frontier follows this river to its junction with the Maïeteb, following the latter's course so as to leave Mount Ala Tacura to Eritrea, and joins the Mareb at its junction with the Mai Abmessa.

The line from the Junction of the Setit and Maïeteb to the junction of the Mareb and Mai Ambessa shall be delimited by Italian and Ethiopian delegates, so that the Canama tribe belong to Eritrea.

[Frontier between Soudan and Eritrea]

Art. II. – The frontier between the Soudan and Eritrea, instead of that delimited by the English and Italian delegates by the Convention of the 16th April, 1901 shall be the line which, from Sab-derat, is traced via Abu Jamal to the junction of the Khor Um Hagar with the Setit.

The present Agreement shall come into force as soon as its ratification by the British and Italian Governments* shall have been notified to the Emperor of Ethiopia. **

In faith of which His Majesty the Emperor of Ethiopia, Menelek II, in his own name and that of his successors; Major Ciccodicola, in the name of His Majesty Victor Emmanuel III, King of Italy, and his successors; and Lieutenant-Colonel Harrington, in the name of His Majesty Edward VII, King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, and his successors, have signed the present Note in triplicate, written in the Italian, English, and Amharic languages identically, all texts being official, and have thereto affixed their seals.

(L.S.) JOHN LANE HARRINGTON,

Lieutenant-Colonel.

(L.N.) MAGGIORE FEDERICO CICCODICOLA.

(Seal of His Majesty the Emperor Menelek II.)

Source:- Hertslet, Sir E. 1967 *The Map of Africa by Treaty*. Third edition. Vol. II, Nos. 95-250. N.P.: Frank Cass & Co. Ltd.

Remark:- * There is no any evidence that verify this document was ratified by British and Italian Governments and notified to the Emperor of Ethiopia.

** By this Agreement concluded between British and Italian Governments, Italy had violated the treaty of 1900 with Ethiopia, which stipulated that the Italian Government has committed itself not to cede or sell any of the territories left to it by the emperor to any other power.

Appendix 4

Undersigned by the Emperor of Ethiopia & the Representative of the King of Italy to align the frontier between Eritrea & the Provinces of the Ethiopian Empire Amharic version

(እ.ኤ.አ.) የ1908 ዓ.ም ውሰ

በኢትዮጵያ ንጉሥ ነገስት ግዛት አውራጃዎችና በኢርትራ መካከል ያለውን ድንበር ስመለየት በ1908 ዓ.ም በወርሃ ግንቦት በ16 ቀን በኢትዮጵያ ንጉሥ ነገሥት እና በጣሊያ ንጉሥ ወኪል አዲስ አበባ ውስጥ የተፈረመ ውሰ።

የጣሊያን ንጉሥ ግርማዊ ቪቶሪዮ ኢማኑኤል፣ አዲስ አበባ በሚገኘው ወኪላቸው በካብሰየር ካፒቴን ጉሴፒ ኮሲ ዲ ፌሲዛኖ እና የኢትዮጵያ ንጉሥ ነገሥት ግርማዊ ዳግማዊ ምኒልክ በስማቸውና በወራሾቻቸው መካከል ያለውን ድንበር ስዘሰቁታው ስመወሰን ሲሉ ከዚህ በታች ያለውን ውሰ ስመፈረም ተስማምተዋል።

እንቀጽ 1/ በ1900 ዓ.ም በወርሃ ሐምሌ፣ በ10 ቀን በተፈረመው ውሰ መሠረት በቀኝ ሃገር ኢርትራና በትግራይ መሐል የፀናውን ድንበር ከምስራቃዊ ድንፍ አቅጣጫ ስንመሰከተው ድንበሩ ከባሕር ዳርቻው በትይዩ በ60 ኪ.ሜ ርቀት በደቡብ ምስራቅ አቅጣጫ የሚሳድና በሱማሌ የፈረንሳይ ቀኝ (ጅቡቲ) እስከሆነው ቦታ ይዘስቃል።

እንቀጽ 2/ መንግስት በጋራ ስምምነትና በተቻለ መጠን በአጭር ጊዜ ውስጥ ከፍ ሲል የተመሰከተውን የድንበር መስመር ከመሰከዝ ምድራዊ አቅማመጡ ጋር በማጣጣም ወሰኑን ስመለየት* ኃሳፊነት ወስደዋል። **

እንቀጽ 3/ ሁለቱ መንግስታት በሁለቱም ወገን በድንበሩ አካባቢ ያሉት ጎሳዎች ቀደም ሲል በሰማዳዊ አሰፋፈር ያላቸው መደጋገፍ እንዲከበርላቸው ይህንንም በአስቸኳይ ተፈጻሚ ሰማድረግ በጋራ ተስማምተዋል።

እንቀጽ 4/ በድንበር አካባቢ የሚኖሩት ጎሳዎች፣ በየትኛው መንግስት ስር ይተዳደሩሉ የሚሰውን ሳይመሰክቱ ከጥንት ጀምሮ የነበረውን መብትና ጥቅም ሰማክበር፣ በተለይም የጨው ማምረትን በተመሰከተ ሳሰው የግብር እና የግጥሽ መብት ተገዢ በመሆን እንዲንቀሳቀሱ ሁለቱ መንግስታት ተስማምተዋል።

እንቀጽ 5/ ሁለቱ መንግስታት የሰንደን ድንበር አሰፈው በመሄድ ማናቸውንም ዓደነት የማስቃ ገብነት ተግባር እንዳይፈፅሙ፣* * * እንዲሁም በየወገናቸው ያሉት ጎሳዎች ድንበር በመሻገር ማናቸውንም ዓደነት የሁከት እርምጃ እንዳይወስዱ የማድረግ፣ ሆኖም ውዝግብ ወይም ችግር ቢነሳ ወይም በድንበሩ አካባቢ ባሉ ጎሳዎች የተነሳ ችግር ቢከሰት መንግስታቱ በጋራ ስምምነት ሰጉዳዩ እስከባት ይፈጥራሉ።

እንቀጽ 6/ ሁለቱ መንግስታት፣ በየወገናቸው ያሉት ሰዎች ሁከት ወይም ችግር ሲፈጥር የሚችሉ ወይም በድንበር አካባቢ ያሉትን ጎሳዎች ሰላም የሚረብሽ አደነት ድርጊት እንዳይፈጽሙ የመጠበቅ የጋራ ኃሳፊነት ወስደዋል።

እንቀጽ 7/ ጣሊያንን በተመሰከተ! ይህ ስምምነት በሀገሪቱ ፓርላማና በግርማዊ ጃንሆይ ታይቶ ሲፀድቅ ይገባዋል።

ይህ ስምምነት ተመሳሳይ ይዘት ባላቸው የጣሊያንና አማርኛ ቋንቋዎች በሁለት ቀጂዎች ተጽፎ እንደኛው ቀጂ በጣሊያን እጅ እንዲኖር፣ ሲላኛው ቀጂ በኢትዮጵያ እጅ እንዲቀመጥ ተወስኗል።

በ1908 ዓ.ም (እ.ኤ.አ.) በግንቦት 6 አዲስ አበባ ውስጥ ተፃፈ

(የንጉሥ ምኒልክ ማህተም)

ጉሴፒ ኮሲ ዲ ፌሲዛኖ

ምንጭ:- ጦበያ መሰረት ቀጽ 3፣ ቁጥር 36 ግንቦት 1994 ዓ.ም

ማስታወሻ:- * በዚህ ውሰ መሠረት ከመሰከዝ ምድራዊ አቅማመጥ ጋር ተጣጥሞ፣ ተሰይቶ የተወሰነ የድንበር መስመር የሰሞ።

* * በዚህ ስምምነት መሠረት ተዋዋይ ወገኖች የወሰዱትን ኃሳፊነት አሰፈፀሙም።

* * * የጣሊያን መንግስት ይህን ስምምነት በመሰፍ በ1935 እ.ኤ.አ. ኢትዮጵያን ስለወረረች ይህ ስምምነት ቀፊ ሆኗል።

Appendix 5

CONVENZIONE

sottoscritta dall'Imperatore d'Etiopia e dal Rappresentante del Re d'Italia per regolare la frontiera fra l'Eritrea e le provincie dell'Impero etiopico.

Addis Abeba, 16 maggio 1908

Sua Maestà Vittorio Emanuele III Re d'Italia, in nome Suo ed in nome dei Suoi Successori, per mezzo del Suo Rappresentante in Addis Abeba, cavaliere Giuseppe Colli di Felizzano, Capitano di cavalleria, e Sua Maestà Menelik II, Re dei Re d'Etiopia, in nome Suo e dei Suoi Successori, volendo regolare in modo definitivo la frontiera tra la Colonia italiana dell'Eritrea e le Provincie dell'Impero etiopico, hanno stabilito di firmare la seguente convenzione.

ART. 1. — Dal punto più orientale della frontiera stabilita tra la Colonia Eritrea ed il Tigrè colla convenzione del 10 luglio 1900, la linea di confine continua verso sud-est parallelamente alla costa ed alla distanza di 60 chilometri da essa fino a raggiungere la frontiera dei Possedimenti francesi di Somalia.

ART. 2. — I due Governi si impegnano a fissare di comune accordo e nel più breve tempo sul terreno la suddetta linea di frontiera adattandola alle accidentalità del suolo.

ART. 3. — I due Governi si impegnano a stabilire di comune accordo e nel più breve tempo la rispettiva dipendenza delle tribù limitrofe alla frontiera in base alla loro residenza tradizionale e ordinaria.

ART. 4. — I due Governi si impegnano a riconoscere reciprocamente gli antichi diritti e le prerogative delle tribù limitrofe alla frontiera, indipendentemente dalla loro dipendenza politica, special-

1908
16 maggio

mente per quanto riguarda la lavorazione del Piano del Sale, che sarà però soggetta alle tasse esistenti ed ai diritti di pascolo.

ART. 5. — I due Governi si impegnano formalmente a non esercitare alcuna ingerenza oltre la linea di frontiera e a non permettere alle tribù loro dipendenti di passare la frontiera per commettere delle violenze a danno delle tribù che si trovano dall'altra parte della medesima; ma se sorgessero delle questioni o degli incidenti tra od a causa delle tribù limitrofe alla frontiera, i due Governi di comune accordo li risolveranno.

ART. 6. — I due Governi si impegnano reciprocamente a non fare e a non permettere da parte dei loro dipendenti alcuna azione che possa essere causa di questioni o di incidenti, o possa turbare la tranquillità delle tribù di frontiera.

ART. 7. — La presente convenzione sarà, per quanto riguarda l'Italia, sottoposta all'approvazione del Parlamento del Regno e ratificata da Sua Maestà il Re.

Fatta in duplice copia e di identico tenore nelle due lingue italiana ed amarica; una delle copie resta nelle mani del Governo italiano e l'altra nelle mani del Governo etiopico.

Scritto nella città di Addis Abeba, il giorno sedici del mese di maggio millenovecentotto.

(Sigillo del Negus Menelik)

GIUSEPPE COLLI DI FELIZZANO

Appendix 6

CONVENTION

*Undersigned by the Emperor of Ethiopia & the Representative of the King of Italy
, to align the frontier between Eritrea & the Provinces of the Ethiopian Empire.*

Addis Ababa, May 16, 1908

His majesty Vittorio Emanuele III, King of Italy, in His name and the name of His successors, delegated through His Representative in Addis Ababa, Knight Giuseppe Colli di Felizzano, Captain of the Knights & His majesty Menelik II, King of Kings of Ethiopia, in His name and the name of His successors, established to sign up this convention, in order to align definitely once & for all the frontier between Eritrea & the Provinces of the Ethiopian Empire.

Art. 1 – The frontier line starts from the western point established from the Colony of Eritrea and Tigray with the convention of July 10, 1900, and continues towards south east parallel to the coast up to a distance of 60 Km, till reaching the border line of the French possession in Somalia

Art. 2 The two Governments will be engaged on fixing practically on their lands & in a short period of time align this border adopting it on the situation of the surface.

Art. 3 – The two Governments will be engaged in establishing in common agreement & in a short period of time the respect of dependence of the tribes found along the border line according to their traditional and ordinary behaviors.

Art. 4 – The two Governments will be engaged reciprocally to recognize the ancient rights and the privileges of the tribes along the border line, independently from their political dependence, specially concerning the works of the Salt plane, that will be subjected to the existing tax and rights of pasturage.

Art. 5 – The two Governments will be engaged formally not to exercise any interference besides the border line and not permitting to the tribes that are dependent to one or another government to pass the border line to commit violence damaging the tribes located on the other governments territory; if there is any question or intervention between or because of the border line tribes, the two Governments will resolve them in common agreement.

Art. 6 – The two Governments will be engaged reciprocally not to make or permit their dependent tribes execute any action that can raise questions or incidents, or disturb the peaceful situation of the tribes on the other side of the border.

Art. 7 – This Convention, on the part of Italy, subjected to the approval of the Empire Parliament and ratified by His Majesty the King.

Prepared in double copy with identical content in the two languages that are Italian & Amhari. One of the copies remain in the hand of the Italian Government & the other will stay in the hands of the Ethiopian Government.

Prepared in Addis Ababa, on the Sixteenth day of May, 1908.

Seal of King Menelik

GIUSEPPE COLLI DI FELIZZANO

Appendix 7

Additional Convention to Treaty between Italy and Ethiopia of 2nd May, 1889 (Translations.)

*Naples, 1 October, 1889 **

In the name of the Most Holy Trinity.

His Majesty the King of Italy and His Majesty the Emperor of Ethiopia, being desirous of concluding a convention in addition to the Treaty of Friendship and Commerce signed at the Camp of Ucciali on the 2nd May, 1889 (25 Mazzia, 1881, of the Ethiopian Calendar) (No. 120), have named as their Plenipotentiaries:

His Majesty the King of Italy, Cavaliere Francesco Crispi, President of the Council of Ministers, and his Minister Secretary of State ad interim for Foreign Affairs; and

His Majesty the Emperor of Ethiopia, the Degiasmac Makonnen, his Ambassador to His Majesty the King of Italy;

Who, furnished with full powers, have agreed as follows:

[Recognition by Italy of King Menelek as Emperor of Ethiopia]

Art. I. – The King of Italy recognizes King Menelek as Emperor of Ethiopia.

[Recognition by King Menelek of Italian Possessions in the Red Sea]

Art. II. King Menelek recognizes the sovereignty of the King of Italy in the Colonies which go under the name of Italian possessions in the Red Sea.

Rectification of respective Possessions

Art. III. – In virtue of the preceding Articles, a **rectification of the territories** shall be made, taking as a basis the actual state of possession, by the **means of Delegates** who shall be nominated by the King** of Italy and by the Emperor of Ethiopia, **according to the terms of Article III of the Treaty of the 2nd May, 1889 (25 Mazzia, 1881).** ***

Art. IV. – Coinage to be struck in Italy for currency in Ethiopia.

Art. V. – Loan of 4,000,000 Lire to be contracted by Emperor of Ethiopia with an Italian Bank, under guarantee of Italian Government, on security of receipts of Harrar Custom House.

Art. VI. – Right of Italy to take over Administration of the Harrar Custom House in event of non-repayment of the Loan regularly.

Art. VII. – Half of Loan to be paid in Silver and the remainder to be deposited in Italy to meet purchases by Ethiopia in Italy.

Art. VIII. – Application of Customs Duties referred to in Article V to all Caravans passing over Ethiopian Roads.

Italian Jurisdiction

Art. IX. – The Ethiopians who commit a crime on Italian territory will always be judged by Italian authorities.*

Art. X. – Application of Convention to all Territory within King Menelek's dominions.

Art. XI. – Convention to be ratified.

Source:- Hertslet, Sir E. 1967 *The Map of Africa by Treaty*. Third edition. Vol. II, Nos. 95-250.

N.P.: Frank Cass & Co. Ltd.

Remark:- * The Treaty of the 2nd May, 1889 to which this Additional Convention was made, was annulled by the treaty of the 26th.

** No Delegates were nominated.

*** Article III of the Treaty of the 2nd May, 1889 was carried out as agreed.

Appendix 9

-TREATY. *Italy and Abyssinia. Signed at Adis Ababa, 26th October, 1896.*

Au nom de la Très-Sainte Trinité.

SA Majesté Humbert I, Roi d'Italie, et Sa Majesté Ménélek II, Empereur d'Éthiopie, désireux de mettre fin à la guerre et de faire revivre leur ancienne amitié, ont stipulé le Traité suivant :—

Pour conclure ce Traité, Sa Majesté le Roi d'Italie a délégué, comme son Envoyé Plénipotentiaire, le Major Docteur César Nerazzini, Chevalier des Saints-Maurice et Lazare, Officier de la Couronne d'Italie. Les pleins pouvoirs du Major Nerazzini ayant été reconnus en bonne et due forme, son Excellence le Major Nerazzini, au nom de Sa Majesté le Roi d'Italie, et Sa Majesté Ménélek II, Empereur d'Éthiopie et des



Art. I.—*End of State of War. Perpetual Peace and Friendship.*

Art. II.—*Treaty of 2nd May, 1856 annulled.*

Art. III.—*Recognition by Italy of Ethiopia as a Sovereign and Independent State.*

Frontiers.

Art. IV.—Les deux Puissances Contractantes n'ayant pu se mettre d'accord sur la question des frontières, et désireuses cependant de conclure la paix sans délai et d'assurer ainsi à leurs pays les bienfaits de la paix, il a été convenu que dans le délai d'un an, à dater de ce jour, des Délégués de confiance de Sa Majesté le Roi d'Italie et de Sa Majesté l'Empereur d'Éthiopie établiront, par une entente amicale, les frontières définitives. Jusqu'à ce que ces frontières aient été ainsi fixées, les deux Parties Contractantes conviennent d'observer le *statu quo ante*, s'interdisant strictement de part et d'autre de franchir la frontière provisoire, déterminée par le cours des Rivières Mareb, Belessa, et Mouna.*

Non-cession of Territory by Italy to any other Power.

Art. V.—Jusqu'à ce que le Gouvernement Italien et le Gouvernement Éthiopien aient d'un commun accord fixé leurs frontières définitives, le Gouvernement Italien s'engage à ne faire de cession quelconque de territoire à aucune autre Puissance. Au cas où il voudrait abandonner de sa propre volonté une partie du territoire qu'il détient, il en ferait remise à l'Éthiopie.

Art. VI.—*Commercial Agreements to be concluded.*

Art. VII.—*Treaty to be brought to notice of other Powers.*

Art. VIII.—*Ratification of Treaty.*

Le présent Traité devra être ratifié par le Gouvernement Italien dans le délai de trois mois à dater de ce jour.†

Art. IX.—Le présent Traité de Paix conclu ce jour sera écrit en Amharinga et en Français, les deux textes absolument conformes, et fait en deux exemplaires, signés des deux Parties, dont un restera entre les mains de Sa Majesté le Roi d'Italie et l'autre entre les mains de Sa Majesté l'Empereur d'Éthiopie.

Étant bien d'accord sur les termes de ce Traité, Sa Majesté Ménilek II, Empereur d'Éthiopie, en son propre nom, et son Excellence le Major Docteur Nerazzini, au nom de Sa Majesté le Roi d'Italie, l'ont approuvé et revêtu de leurs sceaux.

Fait à Adis Abbaba, le 17 Tekemt, 1889 (correspondant au 26 Octobre, 1896).

(L.S.) Maggiore CESARE NERAZZINI,
*Inviato Plenipotenziario di Sua
Maestà il Rè d'Italia.*

(Sigillo di Sua Maestà l'Imperatore Menilek II.)



Source: - Hertslet, Sir E. 1967 *The Map of Africa by Treaty*
Third edition. Vol II, NOS 95-250. N.P.: Frank Cass & Co. Ltd

[illegible][illegible][illegible][illegible][illegible]

∴ ሆከቀተ ሃገሪኛ ሊገባው ተጠ/ፌረድም ከህ ህክ ህጽና ሊሆንሃ ተላክ ሊጸቆላቀህ ተጠ/ፌረድም ጽህገሠህ

ህጽና ሊሆንሃ

[illegible][illegible][illegible]

∴ ቢቆጠብን ትቶጠ/ሪ ኋላም ጭናብም ትቶጠ/ሪ ሂሳብና ትቶጠ/ሪ ስራዎችን ሆኖ ወረኞችና ሌሎች በሆኑ ሰዎች ስር ይገኛሉ።

∴ የአጠቃላይ ስራዎች ተጠናቀቀው ስለሆነ በሀገሪቱ ውስጥ የሚኖሩ የሀገሪቱ ሕገመንግሥት አንቀጽ 100 መሰረት የሚከተሉትን ስራዎች ያከናውናሉ፡

ጋዜከ 7043 ናሪዋግ ሪዋጋጋ ተጠሪ ጠረ ምዕተኛ ሃሳብ ሕክሙ ምዕተኛ ሕዝብ
ጋዜከ 7043 ናሪዋግ ሪዋጋጋ ተጠሪ ጠረ ምዕተኛ ሃሳብ ሕክሙ ምዕተኛ ሕዝብ

ቲህ ያኸውታሪው ህሀ ከሀሃ ሆኑሃ ፡፡ዛሂኒጤ ሠሃ ሰፍኑ ተፃፀ ሆህጋዊ ፡፡፲፭፻፲፱
ጠፍኑ ሸ።፱፻፶፯ ከጠቀሱ ከሀሃ ሆኑሃ ግዙፉ ሊቀ ንግሥት ተጠፋቀሰ

፡፡ ሆኖም ያታተመው ያጽፋቸዋል ሲሆን ይህም ቀላሉን ጋራ ይገልጻል ፡፡

፡፡ ለሌላው ደጋፊ ጥያቄ ይቀርባል ፡፡

Appendix 11

Agreement made between Italy and Abyssinia, signed at Addis Ababa. 26th October, 1896

In the name of the Most Holy St. Trinity His Majesty Humber I, king of Italy, and His Imperial Majesty Menelik II, Emperor of Ethiopia, with the interest they have to stop the war and in order to strengthen and continue their long standing friendship, have made the following agreement.

In order to fully carry out the agreement, His Majesty the king of Italy has appointed Major Doctor Cezar Nerazzini, who holds the rank of St. Moris and St. Alazar, whose powers have been duly recognized, His Excellency major Nerazzini in the name of the king of Italy and His Majesty Menelik II, king of kings of Ethiopia, have agreed upon all these written in this section, herein below.

Article 1 – End of the Sate of war. Perpetual peace and friendship.

Article 2 – Treaty of 2nd May 1889 annulled.

Article 3 – Recognition by Italy of Ethiopia as a Sovereign and Independent State.

Frontiers

Article 4 – Since both Contracting Parties has to reach to an agreement regarding boundaries and due to the interests they have to create peace within a short time, with the understanding that peace is good to both countries, His Majesty the king of Italy and His Imperial Majesty of Ethiopia have agreed to carry out a binding boundary agreement.

That both Parties will observe the provisional boundaries previously determined in Mereb, Belesa and Muna rivers and that it is strictly forbidden for both Parties to violate this boundary, till the boundaries are clearly determined.

Non –cession of Territory by Italy to any other Power

Article 5 – *The Italian Government binds itself not to transfer* the lands (domain) to any other power, until the Governments of Italy and Ethiopia shall specifically demarcate their boundaries under joint agreement.

In the event the Italian Government wishes to relinquish the territory under its possession, it shall hand over the same to Ethiopia.

Article 6 – Commercial Agreements to be concluded.

Article 7 – Treaty to be brought to notice of other Powers.

Article 8 – Ratification of Treaty.

This Treaty has to be ratified by the Italian Government within three months as of this day.

Article 9 – This Treaty shall be written in the Amharic and versions. After the texts are prepared in two corresponding copies, they have to be signed by both Contracting Parties.

One copy shall be deposited in the hands of His Majesty the king of Italy and the other copy in he hands of His Imperial Majesty of Ethiopia. Based on the main points contained in the treaty, His Imperial Majesty Menelik II has on his behalf and his successors; and his Excellency Major Doctor Nerazzini on behalf of His Majesty king of Italy, ratified the treaty and affixed their respected seals.

Made in Addis Ababa on this day of Tekemt, 1889 E.C. (26th October, 1896).

(Read and signed) Major Cezare Nerazzini of His Majesty king of Italy.

(His Seal affixed Imperial Majesty Menelik II)

Source:-Hertslet, Sir E. 1967 The Map of Africa by Treaty. Third edition. Vol. II, Nos. 95-250.
N.P.: Frank Cass & Co. Ltd.

Remark:- * Translation in English is attached here with.

** The territory of Eritrea is given back to Ethiopia by Paris Peace Conference of 1947 for Italy had denounced its right over the territory of the former when it signed same.

Appendix 13

*Treaty between Italy and Ethiopia, for the Delimitation of the Frontier between Eritrea and Ethiopia. Signed at Addis Ababa, 10th July, 1900**

(Ratified by the King of Italy, 13th April, 1901.)

(Translation.)

In the name of the Holy Trinity

His Majesty Humbert I, King of Italy, and His Majesty Menelek II, King of Kings of Ethiopia; in the desire to regulate the question of the frontier between one Colony of Eritrea and Ethiopia which has remained open since the conclusion of the Treaty of Peace of Addis Ababa of the 26th October, 1896 (17 Tekemt, 1889), have agreed on and concluded the following Convention:-

Art. I. – The line Tomat – Todluc – Mareb – Belesa – Muna, traced on the map annexed, is recognized by the two Contracting Parties as the boundary between Eritrea and Ethiopia.

Art.II. The Italian Government binds itself not to cede or sell to any other Power the territory** comprised between the line Tomat, Todluc, Mareb – Mai, Ambessa – Mai, Feccia – Mai, Mareta – Mai, Ha - Mahio, Piano galline faraone, and the line Tomat, Todluc, Mareb, Belesa, Muna, left by His Majesty Menelek II, King of Kings of Ethiopia, to Italy.

His Majesty Menelek II, King of Kings of Ethiopia, in his own name, for himself and for his successors, and Captain Federico Ciccodicola, in the name of His Majesty Humbert I, King of Italy, for himself and his successors, in mutual agreement, have written this convention, in the Italian and Amharic languages, both to be considered official save that in case of error in writing the Emperor Menelek will rely on the Amharic version, and in witness of their approval have sealed it with their seals.

Written in the city of Addis Ababa, the 10th July, 1900 (3 Hamlie, 1892, year of Pardon).

(Seal of the Emperor Menelek.)

(L.S.) CAPITANO FEDERICO CICCODICOLA,

Representative of His Majesty the King of Italy in Ethiopia

Source:-Hertslet, Sir E. 1967 The Map of Africa by Treaty. Third edition. Vol. II, Nos. 95-250.
N.P.: Frank Cass & Co. Ltd.

Remark * Though this Agreement provided for, Delimitation had never been effected.

** Italy had denounced its right over her possessions by the 1947 Paris peace Agreement

Appendix 14

Letter dated 13 December 1991 from the President of the Transitional Government of Ethiopia to the Secretary-General of the United Nations concerning the results of the Conference on Peace and Democracy held in Ethiopia in July 1991.

A/C.3/47/15, Annex II, 29 October 1992

As your Excellency is well aware, the transitional period in Ethiopia highlights the task of redressing the causes of the 30-year civil war in Eritrea and of establishing the basis of permanent peace and stability.

It is to be recalled that the conference on Peace and Democracy in Ethiopia, held at Addis Ababa from 1 to 5 July 1991, adopted a Charter affirming that freedom, equal rights and self-determination of all peoples are the cardinal principles governing State affairs in the new Ethiopia. In the light of this, the Conference formally recognized that the people of Eritrea have the right to determine their own future by themselves, and accepted that the future status of Eritrea should be decided by the Eritrean people in a referendum to be conducted in the presence of international observers. The Provisional Government of Eritrea set up by the Eritrean People's Liberation Front (EPLF), on its part, decided to defer the referendum for two years which, we believe, contributes to the maintenance of peace and stability in our sub-region. At the same time, agreement was reached on the modalities of the relationship between the Transitional Government of Ethiopia and the Provisional Government of Eritrea for the interim period.

Both the Transitional Government of Ethiopia and the Provisional Government of Eritrea have registered their commitment to respect the results of the referendum in Eritrea as the genuine choice of the people concerned, expressed in an exercise of self-determination.

The Transitional Government of Ethiopia, as an interested party in the outcome of the referendum, has the firm conviction that the referendum will be free and fair, and believes that the United Nations should play an active role in verifying that the referendum is, indeed, free and fair.

In this regard the Transitional Government of Ethiopia wishes to bring to the attention of Your Excellency the need to initiate appropriate measures to enable the United Nations to play this role and make the necessary arrangements with the Provisional Government of Eritrea to facilitate the ways and means for United Nations supervision of the referendum. The Transitional Government of Ethiopia also wishes to point out the time available for preparation in this regard is very short.

(Signed) Meles Zenawi

President of the Transitional
Government of Ethiopia

Source: *The United Nations and Independence of Eritrea*.
The UN Blue Book Series, Vol. 12

Appendix 15

Letter dated 15 January 1992 from the Secretary-General of the United Nations to the President of the Transitional Government of Ethiopia concerning United Nations involvement in the referendum process in Eritrea.

Not issued as a United Nations document

I have the honour to refer to Your Excellency's letter dated 13 December 1991 addressed to my predecessor, Mr. Javier Perez de Cuellar, regarding United Nations involvement in the referendum to be held in Eritrea.

In this connection, I wish to inform your Excellency that the Secretariat is currently considering the appropriate role for the United Nations in the referendum with a view to facilitating the initiation of necessary measures by the United Nations. Under-Secretary-General James O.C. Jonah has had preliminary discussions on the matter with officials of your Government and those of the Provisional Government of Eritrea. We will continue these consultations in order to clarify further the role of the United Nations in the referendum and to help expedite the process.

Accept, Mr. President, the assurances of my highest consideration and my warmest regards.

(Signed) Boutros BOUTROS-GHALI

SOURCE: *THE UNITED NATIONS AND INDEPENDENCE OF ERITREA. The UN Blue Book Series Volume 12, 1996*

Appendix 16

Letter dated 19 February 1992 from the Secretary-General of the United Nations to the President of the Transitional Government of Ethiopia concerning United Nations involvement in the referendum process in Eritrea

Not Issued as a United Nations document

I wish to refer to my letter of 15 January 1992 addressed to your Excellency regarding the request of your Government for United Nations involvement in the referendum, and continuing its consultations with all concerned to seek further clarification on the matter. Following these consultations, I would like as the next step to bring to your attention certain considerations, including the options, which could be pursued in regard to your request.

As your Excellency is aware, the involvement of the United Nations in national referenda depends on a number of prerequisites. Above all, there must be a clear mandate by the competent organ and an international dimension to the referendum. There must also be proper financing and the agreement of all concerned in particular the country, which represents in the United Nations the region where the referendum is to be held.

United Nations involvement in a referendum could include a broad range of tasks and responsibilities, from providing only technical assistance without assessment of the referendum process, to organization and conduct of the entire referendum, including the drafting of laws and regulations.

Several other options fall in between those two categories. They include passive observation which will not involve investigation of complaints and public pronouncement; active observation which implies interaction with the electoral authorities and the public; observation with independent verification of the results; and organization of the electoral process in cooperation with the appropriate authorities.

All these options, which by no means are exhaustive, require the appropriate authorities to assume corresponding responsibilities-organizational, financial and otherwise-to augment the particular role that the United Nations may be called upon to undertake in the referendum.

The operation could be designed, in consultation with your Government, to fit the particular circumstances of the referendum. Such an approach would take into account your needs as assessed by your Government and the United Nations; the political and financial support of Member States; the principles governing United Nations involvement in the referendum; and the commitment of the appropriate authorities to ensure a free and democratic referendum.

Appendix 19

Response of Prime Minister Meles to the Letter of President Issaias Afwerki of 16 August 1997 (the letter also addresses other bilateral issues which are not included here)

Comrade Issaias.

Greetings.

I have seen the letter you sent me. I had also heard that the situation in the border area does not look good. I was also informed that the matter was discussed between your colleagues (*Yemane*), who had come here, and ours (*Tewolde*). We did not imagine that what happened in Bada could create problems, because the area our comrades are controlling were not controversial before and we believed that prior consultation was only necessary for disputed areas. We moved to the area to pursue the remnants of Ougugumc (*Afar opposition*) who were obstructing our peace efforts from positions there. We believe we can ease the tension concerning the borders on the basis of the understanding reached previously between your team and our colleagues (*Tewolde*). Perhaps, it is also necessary to settle the border demarcation issue after the necessary preparations are carried out by both sides.

Source: Tekeste Negash and Kjetil Tromvoll 2000 Brothers at War: Making Sense of the Eritrean – Ethiopian War. Athens: Ohio University Press.

APPENDIX- 20

Recommendations from the Facilitators 1 June 1998

Noting that we have observed that there is a basis for both reducing current tensions and resolving the underlying problem between the Governments of the States of Eritrea and the Federal Democratic Republic of Ethiopia, the Facilitators (the Governments of Rwanda and the United States,) hereby submit the following recommendations.

1. The Facilitators note that both parties accept the following principles and commit themselves to:-

- Resolving the present crisis and any other dispute between them through peaceful and legal means;
- Honouring the principle that force must not be used as a means of imposing a solution,
- Undertaking measures which will reduce current tensions;
- Seeking the final disposition of their common border, determined on the basis of established colonial treaties and international law applicable to such treaties; and
- Honouring that the acceptance of those recommendations is fully binding

2. So as to reduce current tension and facilitate the process resolving the underlying problem, the Facilitators recommend:-

- that an observer Mission, organized by the Government of Rwanda and supported by the United States, be deployed to Badme as soon as possible;
- That both parties agree with the Facilitators on the mission and mandate of the Observer Mission;
- That within 24 hours of the arrival of the Observer Team, Eritrean forces begin to redeploy to positions held before May 6, 1998, and that, immediately following, the civilian administration in place before May 6, 1998, return, and
- That there be an investigation into the events of May 6, 1998.

3. So that the underlying problem may be lastingly resolved, the Facilitators recommend:-

- That the entire common border between Eritrea and Ethiopia be delimited and demarcated, in a manner as follows:
- The delimitation/demarcation process shall be undertaken on the basis of established colonial treaties and international law applicable to such treaties;
- The delimitation/demarcation process shall be undertaken, with the involvement of the UN Cartography Office, by Technical Team, having the requisite expertise and mandate required to make a full and final determination of the delimitation and demarcation of the entire border shared by Eritrea and Ethiopia;
- In the process of delimitation/demarcation, both parties shall have the right to present, in written and/or oral form, appropriate information and documentation to the Technical Team;
- The process of delimitation of the border shall be completed as quickly as possible and based upon the advice of the Technical Team;
- Both parties shall agree to delegate responsibility for determining the common border to the Technical Team and accept its final determination as binding. Upon completion of the delimitation of the border both parties shall sign the delimitation documents and deposit them at the United Nations and OAU as an indication of their recognition and support for the new border;
- The entire common border shall be delimited by the Technical Team the above-mentioned signed documents deposited with the United Nations and OAU, and the demarcation undertaken with the United Nations and OAU, and then demarcation undertaken with Badme demarcated first and to be followed by the demarcation of Bada and then the entire common border, and
- The demarcated border shall be accepted and adhered to by both parties. Upon the completion of the demarcation of border segments,

the legitimate authorities shall assume jurisdiction over their respective sovereign territories.

4. So that the process of delimitation/demarcation might be undertaken effectively, the Facilitators recommend that;

- Both parties agree to demilitarize the entire common border as soon as possible, and in accordance with the General Implementation plan, as a means of reducing tensions and facilitating the delimitation/demarcation process; and
- Both parties agree on modalities for the demilitarization of the common border and provide details of this plan to the facilitators and the Observer Mission.

5. So that the process of reducing current tensions and resolving the underlying problem might be undertaken swiftly and practically, the Facilitators recommend that:-

- Both parties proceed on the basis of the "General Implementation Plan, and;
- Both parties accept that the General Implementation Plan has been designed on the basis of what constitutes the most practical means of sequencing various actions so as to render implementation, including the Observer Mission, as efficient and effective as possible.

6. So that the acceptance of these recommendations may be considered binding, the Facilitators recommend that;

- Both parties convey, in an official and legally binding manner, their acceptance of the recommendations to the Facilitators.

SOURCE Chronology of the Ethio-Eritrean Conflict and Basic Documents, published by Walta Information Center.

Appendix- 21

**O.A.U Framework Agreement For a Peaceful
Settlement of The Dispute Between
Eritrea and Ethiopia
8 November 1998**

We, the Heads of State and Government, mandated by the 34th Ordinary session of the Assembly of Heads of State and Government of the Organization of African Unity, held in Ouagadougou, Burkina Faso, from 8 to 10 June 1998, to contribute towards the search for a peaceful and lasting solution to the unfortunate conflict which erupted between the brotherly countries, the State of Eritrea and the Federal Democratic Republic of Ethiopia;

Deeply affected by the outbreak of the conflict between the two countries that are united by historic links of brotherhood and a common culture;

Saddened by this conflict, which occurred at a time when the Federal Democratic Republic of Ethiopia and the State of Eritrea had launched a new era of relations built on a partnership and a common vision and ideals as regards the future of their peoples, the region and the whole continent;

Noting, however, that differences had emerged between the two countries relating particularly to their common border, differences which the two countries endeavored to resolve peacefully;

Deploring the fact that, notwithstanding those efforts, an open conflict broke out between the two brotherly countries, with which our 34th summit was seized;

Paying tribute to the commendable effort made by friendly countries aimed at finding a peaceful solution to the conflict;

Conscious of the fact that resorting to the use of force results in loss of human lives, the destruction of property and socio-economic infrastructures as well as creating a

division between the peoples, all the things which the two brotherly countries and our continent cannot afford at a time when all efforts must be channeled towards the promotion of peace and development which we greatly owe to our peoples;

Encouraged by the commitment made by the two Parties to the OAU High-Level Delegation to settle the conflict peacefully and by their positive response to its appeal to continue to observe the moratorium on air strikes and to maintain the present situation on non-hostilities;

Having considered and endorsed the Report and Recommendation of the Committee of Ambassadors, as submitted by the Ministerial Committee to the Parties on 1 August 1998 in Ouagadougou, Burkina Faso;

Having listened to the two Parties and made an in-depth analysis of their respective position, taking into account their legitimate concern and after having thought deeply about the ways and means likely to contribute to the peaceful settlement of the crisis in a fair and objective manner.

MAKE on behalf of Africa, its peoples and leaders, a solemn and brotherly appeal to the Leaders of the State of Eritrea and the Federal Democratic Republic of Ethiopia to do everything in their power to opt for a peaceful settlement of the dispute and find a just and lasting solution to the conflict;

SUBMIT, hereunder, for the consideration of the two parties, the elements of a Framework Agreement based on the following principles;

- Resolution of the present crisis and any other dispute between them through peaceful and legal means in accordance with the principles enshrined in the Charter of the Organization of Africa Unity;
- Rejection of the use of force as a means of imposing solutions to disputes;
- Respect for the borders existing at independence as stated in Resolution AHG/Res. 16(1) adopted by the OAU Summit in Cairo in 1964 and, in this regard, determine them on the basis of pertinent colonial Treaties and applicable international law, making use, to that end, of technical means to demarcate the borders and, in the case of controversy, resort to the appropriate mechanism of arbitration.

We recommend that:

1. The two Parties commit themselves to an immediate cessation of hostilities
2. In order to defuse tension and build confidence, the two Parties commit themselves to put an immediate end to any action and any form of expansion likely to perpetrate or exacerbate the climate of hostility and peaceful solution to the conflict;
3. In order to create condition conducive to a comprehensive and lasting settlement of the conflict through the delimitation and demarcation of the border, the armed forces presently in Badme Town and its environs, should be redeployed to the positions they held before 6 May 1998 as a mark of goodwill and consideration for our continental Organization, it being understood that this redeployment will not prejudice the final status of the area concerned, which will be determined at the end of the delimitation and demarcation of the border and if need be, through an appropriate mechanism of arbitration;
4. This redeployment be supervised by a Group of Military Observers which will be deployed by the OAU with the support of the United Nations. The Group of Military Observers will also assist the reinstated Civilian Administration in the maintenance of law and order during the interim period.
- 5a) The redeployment be subsequently extended to all other contested areas along the common border within the framework of demilitarization of the entire common border and as a measure for defusing the tension and facilitating the delimitation and demarcation process. In effect, the demilitarization which will begin with the Mareb Setit segment will then extend to the Bada area and the border as a whole.
 - b) The demilitarization process be supervised by the Group of Military Observers;
- 6.a) The two Parties commit themselves to make use of the services of experts of the UN Cartographic Unit, in collaboration with OAU and other experts agreed upon by the two parties; to carry out the delimitation and demarcation of the border between the two countries within a time-frame of 6 months which could be extended on the recommendation of the cartographic experts.

b) Once the entire border has been delimited and demarcated, the legitimate authority will immediately exercise full and sovereign jurisdiction over the territory which will have been recognized as belonging to them.

7. In order to determine the origins of the conflict, an investigation be carried out 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 two Parties regarding their common border, including the incidents of July-August 1997.

8.a) At the humanitarian level, the two Parties commit themselves to put an end to measures directed against the civilian population and refrain from any action which can cause hardship and suffering to each other's nationals;

b) The two Parties also commit themselves to addressing the negative socio-economic impact of the crisis of the civilian population, particularly those persons who had been deported;

c) In order to contribute to the establishment of a climate of confidence, the OAU, in collaboration with United Nations, deploy a team of Human Rights Monitors in both countries.

9.a) In order to determine the modalities for the implementation of the Framework Agreement, a Follow-up Committee of the two Parties be established under the auspices of the OAU High-Level Delegation with the active participation and assistance of the United Nations.

b) The committee begins its work as soon as the Framework Agreement is signed;

10. The OAU and the UN working closely with the international community, particularly, the European Union, endeavor to mobilize resources for the resettlement of displaced person and the demobilization of troops currently deployed along the common border of both countries.

The Organization of African Unity, in close cooperation with the United Nations, will be the guarantor for the scrupulous implementation of all the provisions of the Framework Agreement, in the shortest possible time.

SOURCE: Chronology of the Ethio-Eritrean Conflict and Basic Documents Published by Walta Information Center.

Appendix 22

OAU Framework Agreement for a Peaceful Settlement of the Dispute Between Eritrea And Ethiopia

We, the Heads of State and Government, mandated by the 34th Ordinary Session of the Assembly of Heads of State and Government of the Organization of African Unity, held in Ouagadougou, Burkina Faso, from 8 to 10 June 1998, to contribute towards the search for a peaceful and lasting solution to the unfortunate conflict which erupted between the brotherly countries, the State of Eritrea and the Federal Democratic Republic of Ethiopia:

Deeply affected by the outbreak of the conflict between the two countries that are united by historic links of brotherhood and a common culture;

Saddened by this conflict which occurred at a time when the Federal Democratic Republic of Ethiopia and the State of Eritrea had launched a new era of relations built on a partnership and a common vision and ideas as regards the future of their people, the region and the whole continent;

Nothing, however, that differences had emerged between the two countries relating particularly to their common border, differences which the two countries endeavored to resolve peacefully;

Deploring the fact that, notwithstanding those efforts, an open conflict broke out between the two brotherly countries, with which our 34th summit was seized; paying tribute to the commendable efforts made by friendly countries aimed at finding a peaceful solution to the conflict;

Conscious of the fact that resorting to the use of force results in loss of human lives, the destruction of property and socio-economic infrastructures as well as creating a division between the peoples, all the things which the two brotherly countries and our continent cannot afford at a time when all efforts must be channeled towards the promotion of peace and development which we greatly owe to our people;

Encouraged by the commitment made by the two Parties to the OAU High-Level Delegation to settle the conflict peacefully and by their positive response to its appeal to continue to observe the moratorium on air strikes and to maintain the present situation of non-hostilities;

Having considered and endorsed the Report and Recommendation of the Committee of Ambassadors, as submitted by the Ministerial Committee to the parties on 1 August 1998 in Ouagadougou, Burkina Faso;

Having listened to the two Parties and made an in-depth analysis of their respective positions, taking into account their legitimate concerns and after having thought deeply about the ways and means likely to contribute to the peaceful settlement of the crisis in a fair and objective manner;

MAKE on behalf of Africa, its peoples and leaders, a solemn and brotherly appeal to the Leaders of the State of Eritrea and the Federal Democratic Republic of Ethiopia to do everything in their power to opt for a peaceful settlement of the dispute and find a just and lasting solution to the conflict;

Submit, hereunder, for the consideration of the two Parties, the elements of a Framework Agreement based on the following principles:

- resolution of the present crisis and any other dispute between them through peaceful and legal means in accordance with the principles enshrined in the Charter of the Organization of African Unity;
- rejection of the use of force as a means of imposing solutions to disputes;
- respect for the borders existing at independence as stated in Resolution AHG/Res. 16 (1) adopted by the OAU Summit in Cairo in 1964 and, in this regard, determine them on the basis of pertinent colonial Treaties and applicable international law, making use, to that end, of technical means to demarcate the borders and, in the case of the controversy, resort to the appropriate mechanism of arbitration.

We recommend that:

1. The two Parties commit themselves to an immediate cessation of hostilities;
2. In order to defuse tension and build confidence, the two parties commit themselves to put an immediate end to any action and any form of expression likely to perpetrate or exacerbate the climate of hostility and tension between them thereby jeopardizing the efforts aimed at finding a peaceful solution to the conflict;
3. In order to create conditions conducive to a comprehensive and lasting settlement of the conflict through the delimitation and demarcation of the border, the armed forces presently in Badme Town and its environs, should be redeployed to the positions they held before 6 May 1998 as a mark of goodwill and consideration for our continental Organization, it being understood that this redeployment will not prejudice the final status of the area concerned, which will be determined at the end of the delimitation and demarcation of the border and, if need be, through an appropriate mechanism of arbitration;
4. This redeployment be supervised by a Group of Military Observers which will be deployed by the OAU with the support of the United Nations. The Group of Military Observers will also assist the reinstated Civilian Administration in the maintenance of law and order during the interim period;
5. a. The redeployment be subsequently extended to all other contested areas along the common border within the framework of demilitarization of the entire common border and as a measure for defusing the tension and facilitation the delimitation and demarcation process. In effect, the demilitarization which will begin with the Mereb Setit segment will then extend to the Badem area and the border as a whole;
b. The demilitarization process be supervised by the Group of Military Observers;
6. a. The two Parties commit themselves to make use of the services of experts of the UN Cartographic Unit, in collaboration with OAU and other experts agreed upon by the two Parties, to carry out the delimitation and demarcation of the border between the two countries within a time-frame of 6 months which could be extended on the recommendation of the cartographic experts;



- b. Once the entire border has been delimited and demarcated, the legitimate authority will immediately exercise full and sovereign jurisdiction over the territory which will have been recognized as belonging to them;
7. In order to determine the origins of the conflict, an investigation be carried out on the incidents of 6 May 1998 and on any other incident prior to that date which could have contributed to a misunderstanding between the two Parties regarding their common border, including the incidents of July - August 1997.
8. a. At the humanitarian level, the two Parties commit themselves to put an end to measures directed against the civilian population and refrain from any action which can cause further hardship and suffering to each other's nationals;
b. The two Parties also commit themselves to addressing the negative socio-economic impact of the crisis on the civilian population, particularly those persons who had been deported;
c. In order to contribute to the establishment of a climate of confidence, the OAU, in collaboration with the United Nations, deploy a team of Human Rights Monitors in both countries;
9. a. In order to determine the modalities for the implementation of the Framework Agreement, a Follow-up Committee of the two Parties be established under the auspices of the OAU High-Level Delegation with the active participation and assistance of the United Nations;
b. The committee begin its work as soon as the Framework Agreement is signed;
The OAU and the UN working closely with the international community, particularly the European Union, endeavor to mobilize resources for the resettlement of displaced persons and the demobilization of troops currently deployed along the common border of both countries;
10. The Organization of African Unity, in close cooperation with the United Nations, will be the guarantor for the scrupulous implementation of all the provisions of the Framework Agreement, in the shortest possible time.

Source:- Kinfe Abraham 2004 Ethio-Eritrean History and the Ethio-Eritrean War: Liberation Struggle Statehood and Bilateral Political Economic Social and Diplomatic Relations.
London: The Ethiopian International Institute for Peace and Development.

Appendix 23

US Press Statement on the US-Rwanda Peace Plan

US Department of State, Office of the Spokesman, Press Statement

Press Statement by James P. Rubin, Spokesman

June 3, 1998

The Dispute Between Ethiopia and Eritrea

At the request of both parties, for more than two weeks the Governments of the United States and Rwanda have been engaged in intensive efforts to facilitate a peaceful resolution of the dispute between Eritrea and Ethiopia.

The objective of the joint American – Rwandan facilitation effort has been to promote a peaceful and durable settlement of this dispute and to prevent a war, which would cost many lives and undermine regional stability. Having excellent relations with the Governments of both Eritrea and Ethiopia, the United States and Rwanda have sought to encourage both parties to protect the peace that has taken root in the Horn of Africa since 1991. Throughout our facilitation efforts, we urged both parties to exercise restraint.

The facilitation team listened carefully to the detailed positions of both parties and attempted to take full account of their respective perspectives and interests without making any judgment as to where the disputed border lies or what actions may have precipitated the crisis that began with the border skirmish on May 6.

Based on our consultations, it is clear to the United States and Rwanda that there are many areas of commonality between the two parties and that there exists a practical, principled basis for peaceful resolution of this conflict. Thus, the facilitators presented recommendations to both parties on May 30-31 and asked each party to confirm their acceptance of these recommendations.

The US-Rwandan recommendations are summarized as follows:

1. Both parties should commit themselves to the following principles: resolving this and any other dispute between them by peaceful means; renouncing force as a means of imposing solutions; agreeing to undertake measures to reduce current tensions; and seeking the final disposition of their common border, on the basis of established colonial treaties and international law applicable to such treaties.
2. To reduce current tensions, and without prejudice to the territorial claims of either party: a small observer mission should be deployed to Badme; Eritrean forces should redeploy from Badme to positions held before May, 1998; the previous civilian administration should return; and there should be an investigation into the events of May 6, 1998.
3. To achieve lasting resolution of the underlying border dispute, both parties should agree to the swift and binding delimitation and demarcation of the Eritrea – Ethiopia border. Border delimitation should be determined on the basis of established colonial treaties and international law applicable to such treaties, and the delimitation and demarcation process should be completed by a qualified technical team as soon as possible. The demarcated border should be accepted and adhered to by both parties, and, upon completion of demarcation, the legitimate authorities assume jurisdiction over their respective sovereign territories.
4. Both parties should demilitarize the entire common border as soon as possible. Finally, the facilitators presented both sides with a detailed implementation plan and recommended that each party convey, in a legal and binding manner, their acceptance of the above recommendations and implementation plan to the facilitators.

The United States and Rwanda regret that these recommendations have not yet been accepted by both sides as the basis for a peaceful resolution of this dispute. We are gravely concerned by the resumption of hostilities in recent days, which will render more difficult efforts to achieve a peaceful outcome.

As friends of the Government of Eritrea, the United States and Rwanda call on both sides to avoid an escalation of the conflict, to reaffirm their commitment to a peaceful resolution of this dispute, to halt the fighting and to accept without delay the facilitators' recommendations as the basis for a peaceful resolution of this conflict. We remain committed to helping both sides achieve a peaceful settlement and avoid wider conflict through pursuit of further diplomatic efforts.

The Rwandan Government is issuing a statement on this important matter as well.

Source:- Tekeste Negash and Kjetil Tronvoll 2000 *Brother at War: Making Sense of the Eritrean – Ethiopian War*. Athens: Ohio University Press.

Appendix 24

OAU High – Level Delegation Proposals for a Framework Agreement for a Peaceful Settlement of the Dispute between Eritrea and Ethiopia 7-8 November 1998

We, the Heads of State and Government, mandated by the 34th Ordinary Session of the Assembly of Heads of State and Government of the Organization of African Unity, held in Ouagadougou, Burkina Faso, from 8 to 10 June 1998, to contribute towards the search for a peaceful and lasting solution to the unfortunate conflict which erupted between the brotherly countries, the State of Eritrea and the Federal Democratic Republic of Ethiopia;

Deeply affected by the outbreak of the conflict between the two countries that are united by historic links of brotherhood and a common culture;

Saddened by this conflict which occurred at a time when the Federal Democratic Republic of Ethiopia and the State of Eritrea had launched a new era of relations built on a partnership and a common vision and ideals as regards the future of their peoples, the region and the whole continent;

Noting, however, that differences had emerged between the two countries relating particularly to their common border, differences which the two countries endeavored to resolve peacefully;

Deploping the fact that, notwithstanding those efforts, an open conflict broke out between the two brotherly countries, with which our 34th summit was seized;

Paying tribute to the commendable efforts made by friendly countries aimed at finding a peaceful solution to the conflict;

Conscious of the fact that resorting to the use of force results in loss of human lives, the destruction of property and socio-economic infrastructures as well as creating a division between the peoples, all the things which the two brotherly countries and our continent cannot afford at a time when all efforts must be channeled towards the promotion of peace and development which we greatly owe to our peoples;

Encouraged by the commitment made by the two Parties to the OAU High-Level Delegation to settle the conflict peacefully and by their positive response to its appeal to continue to observe the moratorium on air strikes and to maintain the present situation of non-hostilities;

Having considered and endorsed the Report and Recommendations of the Committee of Ambassadors, as submitted by the Ministerial Committee to the parties on 1 August 1998 in Ouagadougou, Burkina Faso;

Having listened to the two Parties and made an in-depth analysis of their respective positions, taking into account their legitimate concerns and after having thought deeply about the ways and means likely to contribute to the peaceful settlement of the crisis in a fair and objective manner;

MAKE on behalf of Africa, its peoples and leaders, a solemn and brotherly appeal to the Leaders of the State of Eritrea and the Federal Democratic Republic of Ethiopia to do everything in their power to opt for a peaceful settlement of the dispute and find a just and lasting solution to the conflict;

SUBMIT, hereunder, for the consideration of the two Parties, the elements of a Framework Agreement based on the following principles:

- resolution of the present crisis and any other dispute between them through peaceful and legal means in accordance with the principles enshrined in the Charter of the Organization of African Unity;

- rejection of the use of force as a means of imposing solutions to disputes;
- respect for the borders existing at independence as stated in Resolution AHG/Res. 16 (1) adopted by the OAU Summit in Cairo in 1964 and, in this regard, determine them on the basis of pertinent colonial Treaties and applicable international law, making use, to that end, of technical means to demarcate the borders and, in the case of controversy, resort to the appropriate mechanism of arbitration.

We recommend that:

1. The two Parties commit themselves to an immediate cessation of hostilities;
2. In order to defuse tension and build confidence, the two Parties commit themselves to put an immediate end to any action and any form of expression likely to perpetrate or exacerbate the climate of hostility and tension between them thereby jeopardizing the efforts aimed at finding a peaceful solution to the conflict;
3. In order to create conditions conducive to a comprehensive and lasting settlement of the conflict through the delimitation and demarcation of the border, the armed forces presently in Badme Town and its environs, should be redeployed to the positions they held before 6 May 1998 as a mark of goodwill and consideration for our continental Organization, it being understood that this redeployment will not prejudice the final status of the area concerned, which will be determined at the end of the delimitation and demarcation of the border and, if need be, through an appropriate mechanism of arbitration;
4. This redeployment be supervised by a Group of Military Observers which will be deployed by the OAU with the support of the United Nations. The Group of Military Observers will also assist the reinstated Civilian Administration in the maintenance of law and order during the interim period;
5. a) The redeployment be subsequently extended to all other contested areas along the common border within the framework of demilitarization of the entire common border and as a measure for defusing the tension and facilitating the delimitation and demarcation process. In effect, the demilitarization which will begin with the Mereb Setit segment will then extend to the Bada area and the border as a whole;
- b) The demilitarization process be supervised by the Group of Military Observers;
6. a) The two Parties commit themselves to make use of the services of experts of the UN Cartographic Unit, in collaboration with the OAU and other experts agreed upon by the two Parties, to carry out the delimitation and demarcation of the border between the two countries within a time-frame of 6 months which could be extended on the recommendation of the cartographic experts;
- b) Once the entire border has been delimited and demarcated, the legitimate authority will immediately exercise full and sovereign jurisdiction over the territory which will have been recognized as belonging to them;
7. In order to determine the origins of the conflict, an investigation be carried out on the incidents of 6 May 1998 and on any other incident prior to that date which could have contributed to a misunderstanding between the two Parties regarding their common border, including the incidents of July – August 1997.
8. a) At the humanitarian level, the two Parties commit themselves to put an end to measures directed against the civilian population and refrain from any action which can cause further hardship and suffering to each other's nationals;
- b) The two Parties also commit themselves to addressing the negative socio-economic impact of the crisis on the civilian population, particularly, those persons who had been deported;

- c) In order to contribute to the establishment of a climate of confidence, the OAU, in collaboration with the United Nations, deploy a team of Human Rights Monitors in both countries;
- 9. a) In order to determine the modalities for the implementation of the Framework Agreement, a Follow-up Committee of the two Parties be established under the auspices of the OAU High-Level Delegation with the active participation and assistance of the United Nations;
b) The committee begin its work as soon as the Framework Agreement is signed;
- 10. The OAU and the UN, working closely with the international community, particularly the European Union, endeavor to mobilize resources for the resettlement of displaced persons and the demobilization of troops currently deployed along the common border of both countries;
- 11. The Organization of African Unity, in close cooperation with the United Nations, will be the guarantor for the scrupulous implementation of all the provisions of the Framework Agreement, in the shortest possible time.

Source:- Tekeste Negash and Kjetil Tronvoll 2000 *Brother at War: Making Sense of the Eritrean – Ethiopian War*. Athens: Ohio University Press.

Appendix 25

Modalities for the Implementation of The OAU Framework Agreement on the Settlement of The Dispute between Ethiopia and Eritrea, July 12, 1999

The two Parties reaffirm their commitment to the principle of the on-use of force to settle disputes.

The two Parties reaffirm their acceptance of the Framework Agreement and commit themselves to implement it in good faith.

There shall be a return to positions held prior to 6 May 1998.

On the basis of these principles, the two Parties agree on the following modalities for the implementation of the Framework Agreement:

1. The Eritrean Government commits itself to redeploy its forces outside the territories they occupied after 6 May 1998.
2. The Ethiopian Government commits itself to redeploy, thereafter, its forces from positions taken after 6 February 1999 and which were not under Ethiopian administration before May 6, 1998.
3. The two Parties agree to put an end to all military activities and all forms of expression likely to sustain and exacerbate the climate of hostility and thus compromise the implementation of the Framework Agreement.
4. The redeployment of troops shall commence immediately after the cessation of hostilities. This redeployment shall not, in any way, prejudice the final status of the territories concerned, it being understood that this status will be determined at the end of the border delimitation and demarcation.
5. The modalities for the re-establishment of the civilian Administration and population in the concerned territories shall be worked out after the cessation of hostilities.
6. The two Parties accept the deployment of Military Observers by the OAU in cooperation with the United Nations. The Group of Military Observers will supervise the redeployment of troops as stipulated in the present modalities and carry out all other duties that are entrusted to it, in conformity with the relevant provisions of the Framework Agreement.

The two Parties commit themselves to sign a formal Cease-fire Agreement which provides for the detailed modalities for the implementation of the Framework Agreement.

Source:- Tekeste Negash and Kjetil Tronvoll 2000 *Brother at War: Making Sense of the Eritrean – Ethiopian War*. Athens: Ohio University Press.

Appendix 26

Questions Submitted by Ethiopia to the OAU for Clarification of the Technical Arrangements for Implementation of the OAU Framework Agreement and its Modalities

1. Colonial treaties and applicable international law

The Framework Agreement makes reference to pertinent colonial treaties and applicable international law in addition to resolution AH G/Res. 16 (I) adopted by the OAU Summit at Cairo in 1964. However, paragraph 5 of the preamble to the Technical Arrangements makes reference only to the Cairo Resolution. What is the reason for this omission of 'colonial treaties and applicable international law'? Does this omission have any implications for delimitation and demarcation of the boundary?

2. Cessation of hostilities and redeployment

- 2.1. The Modalities in paragraph 4 provide that the deployment of troops shall 'commence immediately after the cessation of hostilities'. In this connection, in my letter of July 29, 1999 to Your Excellency I had suggested that the OAU establish a team of verifiers through consultation with the parties. The team would then collect evidence and undertake consultations with them in order to arrive at an agreed list of areas from which redeployment is to take place on the basis of paragraphs 1 and 2 of the Modalities.

In my discussions with your Special Envoy I had indicated that verification of lines of redeployment can take place before cessation of hostilities. In fact, the process followed by the Committee of Ambassadors of the OAU High-Level Delegation to determine who administered Badme and its environs before May 6, 1998 can easily be followed. It will be recalled that the Committee visited both capitals, heard from both sides; collected evidence including from relevant third parties and arrived at the conclusion that Badme and its environs was administered by Ethiopia before May 6, 1998 in less than two weeks.

In my discussions with your Special Envoy I had also suggested that if the verifiers need to go to the area, full security guarantee can be obtained from both parties. Why was the option I put forth not preferred? Instead, under Annex IV to the Technical Arrangements redeployment of Eritrean troops will commence 50 days after D-day. Is this not contrary to paragraph 4 of the Modalities which provides for 'immediate' commencement of redeployment following cessation of hostilities?

- 2.2. The Modalities for the implementation of the Framework Agreement treats cessation of hostilities and cease-fire in paragraphs 4 and 7 respectively, the latter providing for a cease-fire agreement as the final step in the peace process. However, the Technical Arrangements deal only with cessation of hostilities. Why was the change made? What is the scope of cessation of hostilities under the Technical Arrangements?
- 2.3. On usage of important terms, the Technical Arrangements in article 2 use different terms like 'Cessation of all military activities', 'Cessation of any other action', 'cessation of all armed air and land attacks' and 'cessation of hostilities' (Annex IV). Does this add or detract from a normal cessation of hostilities? Why is there no uniform usage of terms?

3. Restoration of Civilian Administration

- 3.1. Article 9 (a) (2.1) provides for the prohibition of deportation from the areas where civilian administration has been restored. How does this square with the sovereign right of a state to take measures to remove any national security threat to the nation?

6. Delimitation and Demarcation

Article 11 of the Technical Arrangements provide for delimitation of the boundary segment by segment. It is further provided that disputes over delimitation will be submitted to arbitration. Will the disputes also be submitted to arbitration segment by segment? Will the parties have the right to submit their case and evidence to the Cartographic Unit and the Boundary Commission?

7. Demilitarization (Annex III)

The Peace-keeping Mission is envisaged to 'approve the demilitarization plans'. What will it be deciding or approving? Is it going to do it in consultation with the parties? What criteria will it use in approving the demilitarization plans. What is meant by the term 'original positions' in paragraph 3 of Annex III.

8. Consultations on the establishment and operations of various bodies

The Technical Arrangements provide for the establishment of various bodies for the implementation of the Framework Agreement and Modalities. These are:

- 1) The Neutral Commission
- 2) The Follow-up Commission comprising the Political follow-up Commission and the Military Coordination Commission.
- 3) The Verification Mission (Peace-keeping Mission).
- 4) The independent impartial body to carry out investigation into the origins of the conflict.
- 5) The Boundary Commission.
- 6) The arbitration mechanism for the settlement of humanitarian issues and the socio-economic consequences of the conflict.

Will there be consultations with the parties on the establishment of the above bodies? What will the scope of the consultations be? Once established will these bodies carry out their duties through full consultation with the parties? What will the scope of such consultations be?

9. Investigation into the incidents of 6 May 1998 as well as those of July/August 1997 (article 10)

Article 10 of the Technical Arrangements provides for the establishment of an independent impartial body to determine the origins of the conflict between Ethiopia and Eritrea.

What will be the scope of the determination by this body? Will the mandate of this body be limited to factual determination?

Source:- Kinfe Abraham 2004 Ethio-Eritrean History and the Ethio-Eritrean War: Liberation Struggle Statehood and Bilateral Political Economic Social and Diplomatic Relations.
London: The Ethiopian International Institute for Peace and Development.



Appendix 27

Technical Arrangements for the Implementation of the OAU Framework Agreement and Its Modalities

Recalling that the Government of the State of Eritrea and the Government of the Federal Democratic Republic of Ethiopia, hereinafter referred to as the Parties, have accepted the OAU Framework Agreement and the Modalities for its implementation;

Underlining that the OAU Framework Agreement and the Modalities have been endorsed by the 35th Ordinary Session of the Assembly of Heads of State and Government, held in Algiers, Algeria, from 12 to 14 July, 1999, as well as strongly supported by the United Nations Secretary Council and accepted as they are by the Parties;

Having carefully examined the views submitted by the Parties;

Recalling the acceptance by the Parties that any interpretation of the OAU Framework Agreement and the Modalities is the sole responsibility of the OAU and its Current Chairman;

Noting that the present Technical Arrangements have been elaborated on the basis of the letter and spirit of the principles contained in the OAU Framework Agreement and the Modalities, in particular the respect for the borders existing at independence, as stated in Resolution AHG/Res. 16 (1) adopted by the OAU summit in Cairo in 1964, the resolution of disputed through peaceful and legal means, in accordance with the principles enshrined in the Charters of the Organization of African Unity and the United Nations, and the non use of force to settle disputes;

Further recalling that the present Technical Arrangements are the result of collective work of the OAU, the United Nations, the United Nations, the United States and other interested partners;

Stressing that the ultimate goal of the process is to find a peaceful and lasting solution to the conflict:

1. The Parties agree on the principles and other provisions contained in the Framework Agreement and the Modalities and accept the Framework Agreements (which includes its four Annexes) as binding. In that regard, the Parties agree to use the Framework Agreement, the Modalities and the Technical Arrangements as the sole basis for resolving the dispute.

The Parties will initiate separate requests to the Secretaries General of the United Nations and the OAU as necessary for assistance to implement the Framework Agreement, the Modalities and the Technical Arrangements.

2. In order to facilitate the process of implementing the Framework Agreement, the Modalities and the Technical Arrangements, including the work of the Commission which will be charged with determining the redeployment positions (referred to as the Neutral Commission in paragraph 3) and the establishment of a peacekeeping mission, the Parties agree to put an end to all military activities and all forms of expression likely to sustain and exacerbate the climate of hostility.

In particular, the Parties agree to the following:

- a. cessation of all armed air and land attacks;
- b. cessation of any other action that may impede the implementation of the Framework Agreement, the Modalities and the Technical Arrangements;
- c. guarantee of the free movement of the peacekeeping mission and its supplies as required through and between the territories of the Parties,
- d. respect and protection of the members of the peacekeeping mission, its installations and equipment;
- e. respect for international humanitarian law. (for the rest of the technical arrangement please refer to Walta Information Center).

Source:- Tekeste Negash and Kjetil Tronvol 2000 Brother at War: Making Sense of the Eritrean – Ethiopian War. Athens: Ohio University Press.



ORGANIZATION OF AFRICAN
UNITY

ORGANISATION DE L'UNITE
AFRICAINNE

AGREEMENT

BETWEEN

**THE GOVERNMENT OF THE FEDERAL
DEMOCRATIC REPUBLIC OF ETHIOPIA**

AND

**THE GOVERNMENT OF THE
STATE OF ERITREA**

Source:- Ministry of Foreign Affairs, E.F.D.R
12 December, 2000

**Agreement between the Government
of the Federal Democratic Republic
of Ethiopia and the Government of
the State of Eritrea**

12 December 2000

The Government of the State of Eritrea and the Government of the Federal Democratic Republic of Ethiopia (the “parties”),

Reaffirming their acceptance of the Organization of African Unity (“OAU”) Framework Agreement and the Modalities for its Implementation, which have been endorsed by the 35th ordinary session of the Assembly of heads of State and Government, held in Algiers, Algeria, from 12 to 14 July 1999,

Recommitting themselves to the Agreement on Cessation of Hostilities, signed in Algiers on 18 June 2000,

Welcoming the commitment of the OAU and United Nations, through their endorsement of the Framework Agreement and Agreement on Cessation of Hostilities, to work closely with the international community to mobilize resources for the resettlement of displaced persons, as well as rehabilitation and peacebuilding in both countries,

Have agreed as follows:

Article 1

1. The parties shall permanently terminate military hostilities between themselves. Each party shall refrain from the threat or use of force against

of respect for the borders existing at independence as stated in resolution AHG/Res. 16(1) adopted by the OAU Summit in Cairo in 1964, and, in this regard, that they shall be determined on the basis of pertinent colonial treaties and applicable international law.

2. The parties agree that a neutral Boundary Commission composed of five members shall be established with a mandate to delimit and demarcate the colonial treaty border based on pertinent colonial treaties (1900, 1902 and 1908) and applicable international law. The Commission shall not have the power to make decisions *ex aequo et bono*.

3. The Commission shall be located in The Hague.

4. Each party shall, by written notice to the United Nations Secretary General, appoint two commissioners within 45 days from the effective date of this Agreement, neither of whom shall be nationals or permanent residents of the party making the appointment. In the event that a party fails to name one or both of its party-appointed commissioners within the specified time, the Secretary-General of the United Nations shall make the appointment.

5. The president of the Commission shall be selected by the party-appointed commissioners or, failing their agreement within 30 days of the date of appointment of the latest party-appointed commissioner, by the Secretary General of the United Nations after consultation with the parties. The president shall be neither a national nor permanent resident of either party.

6. In the event of the death or resignation of a commissioner in the course of the proceedings, a substitute commissioner shall be appointed or chosen pursuant to the procedure set forth in this article that was applicable to the appointment or choice of the commissioner being replaced.

7. The UN Cartographer shall serve as Secretary to the Commission and undertake such tasks as assigned to him by the Commission, making use of the technical expertise of the UN Cartographic Unit. The Commission may also engage the services of additional experts as it deems necessary.

8. Within 45 days after the effective date of this Agreement, each party shall provide to the Secretary its claims and evidence relevant to the mandate of the Commission. These shall be provided to the other party by the Secretary.

9. After reviewing such evidence and within 45 days of its receipt, but not earlier than 15 days after the Commission is constituted, the Secretary

or chosen pursuant to the procedure set forth in this article that was applicable to the appointment or choice of the arbitrator being replaced.

5. The Commission shall be located in The Hague. At its discretion it may hold hearings and conduct investigations in the territory of either party, or at such other location as it deems expedient.

6. The Commission shall be empowered to employ such professional, administrative and clerical staff as it deems necessary to accomplish its work, including establishment of a Registry. The Commission may also retain consultants and experts to facilitate the expeditious completion of its work.

7. The Commission shall adopt its own rules of procedure based upon the 1992 Permanent Court of Arbitration Optional Rules for Arbitrating Disputes Between Two States. All decisions of the Commission shall be made by a majority of the commissioners.

8. Claims shall be submitted to the Commission by each of the parties on its own behalf and on behalf of its nationals, including both natural and juridical persons. All claims submitted to the Commission shall be filed no later than one year from the effective date of this Agreement. Except for claims submitted to another mutually agreed settlement mechanism in accordance with paragraph 16 or filed in another forum prior to the effective date of this Agreement, the Commission shall be the sole forum for adjudicating claims described in paragraph 1 or filed under paragraph 9 of this article, and any such claims which could have been and were not submitted by that deadline shall be extinguished, in accordance with international law.

9. In appropriate cases, each party may file claims on behalf of persons of Eritrean or Ethiopian origin who may not be its nationals. Such claims shall be considered by the Commission on the same basis as claims submitted on behalf of that party's nationals.

10. In order to facilitate the expeditious resolution of these disputes, the Commission shall be authorized to adopt such methods of efficient case management and mass claims processing as it deems appropriate, such as expedited procedures for processing claims and checking claims on a sample basis for further verification only if circumstances warrant.

11. Upon application of either of the parties, the Commission may decide to consider specific claims, or categories of claims, on a priority basis.

12. The Commission shall commence its work not more than 15 days after it is constituted and shall endeavor to complete its work within three years of the date when the period for filing claims closes pursuant to para-

shall transmit to the Commission and the parties any materials relevant to the mandate of the Commission as well as his findings identifying those portions of the border as to which there appears to be no dispute between the parties. The Secretary shall also transmit to the Commission all the claims and evidence presented by the parties.

10. With regard to those portions of the border about which there appears to be controversy, as well as any portions of the border identified pursuant to paragraph 9 with respect to which either party believes there to be controversy, the parties shall present their written and oral submissions and any additional evidence directly to the Commission, in accordance with its procedures.

11. The Commission shall adopt its own rules of procedure based upon the 1992 Permanent Court of Arbitration Optional Rules for Arbitrating Disputes Between Two States. Filing deadlines for the parties' written submissions shall be simultaneous rather than consecutive. All decisions of the Commission shall be made by a majority of the commissioners.

12. The Commission shall commence its work not more than 15 days after it is constituted and shall endeavor to make its decision concerning delimitation of the border within six months of its first meeting. The Commission shall take this objective into consideration when establishing its schedule. At its discretion, the Commission may extend this deadline.

13. Upon reaching a final decision regarding delimitation of the borders, the Commission shall transmit its decision to the parties and Secretaries General of the OAU and the United Nations for publication, and the Commission shall arrange for expeditious demarcation.

14. The parties agree to cooperate with the Commission, its experts and other staff in all respects during the process of delimitation and demarcation, including the facilitation of access to territory they control. Each party shall accord to the Commission and its employees the same privileges and immunities as are accorded to diplomatic agents under the Vienna Convention on Diplomatic Relations.

15. The parties agree that the delimitation and demarcation determinations of the Commission shall be final and binding. Each party shall respect the border so determined, as well as territorial integrity and sovereignty of the other party.

16. Recognizing that the results of the delimitation and demarcation process are not yet known, the parties request the United Nations to facilitate resolution of problems which may arise due to the transfer of territorial

puted territory.

17. The expenses of the Commission shall be borne equally by the two parties. To defray its expenses, the Commission may accept donations from the United Nations Trust Fund established under paragraph 8 of Security Council Resolution 1177 of 26 June 1998.

Article 5

1. Consistent with the Framework Agreement, in which the parties commit themselves to addressing the negative socio-economic impact of the crisis on the civilian population, including the impact on those persons who have been deported, a neutral Claims Commission shall be established. The mandate of the Commission is to 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 or entities owned or controlled by 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. The Commission shall not hear claims arising from the cost of military operations, preparing for military operations, or the use of force except to the extent that such claims involve violations of international humanitarian law.

2. The Commission shall consist of five arbitrators. Each party shall, by written notice to the United Nations Secretary General, appoint two members within 45 days from the effective date of this Agreement, neither of whom shall be nationals or permanent residents of the party making the appointment. In the event that a party fails to name one or both of its party-appointed arbitrators within the specified time, the Secretary-General of the United Nations shall make the appointment.

3. The president of the Commission shall be selected by the party-appointed arbitrators or failing their agreement within 30 days of the date of appointment of the latest party-appointed arbitrator, by the Secretary-General of the United Nations after consultation with the parties. The president shall be neither a national nor permanent resident of either party.

4. In the event of the death or resignation of a member of the Commission in the course of the proceedings, substitute member shall be appointed

graph 8.

13. In considering claims, the Commission shall apply relevant rules of international law. The Commission shall not have the power to make decisions *ex aequo et bono*.

14. Interest, costs and fees may be awarded.

15. The expenses of the Commission shall be borne equally by the parties. Each party shall pay any invoice for the Commission within 30 days of its receipt.

16. The parties may agree at any time to settle outstanding claims, individually or by categories, through direct negotiation or by reference to another mutually agreed settlement mechanism.

17. Decisions and awards of the Commission shall be final and binding. The parties agree to honor all decisions and to pay any monetary awards rendered against them promptly.

18. Each party shall accord to members of the Commission and its employees the privileges and immunities that are accorded to diplomatic agents under the Vienna Convention on Diplomatic Relations.

Article 6

1. This Agreement shall enter into force on the date of signature.

2. The parties authorize the Secretary General of the OAU to register this Agreement with the Secretariat of the United Nations in accordance with Article 102(1) of the Charter of the United Nations.

DONE at Algiers on the Twelfth Day of December 2000, in duplicate, in the English language.

FOR THE GOVERNMENT OF
THE STATE OF ERITREA:

FOR THE GOVERNMENT OF
THE FEDERAL DEMOCRATIC
REPUBLIC OF ETHIOPIA:


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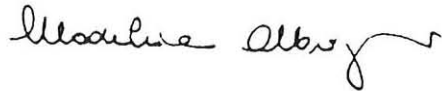

Meles ZENAWI
Prime Minister

WITNESSED BY:

For the People's Democratic Republic of Algeria
Abdelaziz BOUTEFLIKA, President of the Republic



For the United States of America
Mme Madeleine K. ALBRIGHT, Secretary of State



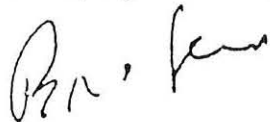
For the United Nations
M. Kofi ANNAN, Secretary General



For the Organization of African Unity
M. Salim Ahmed Salim, Secretary General



For the European Union
M. Rino SERRI, Special Representative of the Presidency.



Appendix 29

Excerpts from the Observation of the Border Commission The Three Boundary Sectors

As the Commission indicated in its Delimitation Decision, its approach to the task of delimiting the boundary between Eritrea and Ethiopia was dictated by the December 2000 Agreement, in which the Parties stipulated that the Commission's mandate was to determine the boundary on the basis of the three Treaties and applicable international law. Accordingly, the Commission dealt with the boundary in three sectors corresponding to the three Treaties. As they were not identical in content, the interpretation and application of each by the Commission required different approaches in each of the sectors to which they related.

a. The Western Sector

The boundary in the Western Sector, governed by the 1902 Treaty, was never completely laid down prior to the dispute between the Parties. It was, therefore, a principal task of the Commission to complete the delimitation of that boundary.

The Commission concluded that the boundary in the uncompleted section had crystallized by 1935 so as to follow a straight line between points 6 and 9 as depicted on the map accompanying its Delimitation Decision. That straight line had been represented on many maps, including maps published by Ethiopia as well as Eritrea.

The Commission also examined developments after 1935, and concluded that it could "perceive nothing in that chain of developments that has had the effect of altering the boundary between the Parties" (para 5.91). The Commission observes that its finding that the boundary under the 1902 Treaty had by 1935 crystallized along the line of the traditional signature means that the burden rested upon Ethiopia to substantiate any claimed departure from that line on the basis of conduct that would serve to show that Badme village (which lies close to the line) was subject to Ethiopian control.

The Commission referred specifically in the Delimitation Decision (paras 5.92-5.95) to the evidence produced by Ethiopia. It noted in particular that Ethiopia had introduced no evidence in its opening pleading (its Memorial) of governmental activities west of that straight line; although it produced some evidence in its Counter Memorial, it did not add to or develop this in its Reply. Moreover, maps submitted by Ethiopia were inconsistent as to the location of Badme village. Overall, the evidence was nothing like what might have been expected had Ethiopia's presence there in the period before the case been as significant as Ethiopia now alleges. The Commission would note that what is relevant here is government and not private activity. The references to Ethiopian governmental control of Badme and its environs were insufficient to persuade the Commission that an Ethiopian presence west of the line from Points 6 to 9 would support a departure from the line that had crystallized by 1935.

This conclusion followed from the inadequacy of Ethiopia's evidence. Since Badme village (as opposed to some other parts of the Badme region) lay on what was found to be the Eritrean side of the treaty line, there was no need for the Commission to consider any evidence of Eritrean governmental presence there, although Eritrea did in fact submit such evidence. Moreover, even some maps submitted by Ethiopia not only showed the distinctive straight line between the Setit and Mareb Rivers, but also marked Badme village as being on the Eritrea side of that line.

The Commission must also observe that the Ethiopian invocation of the findings of the OAU in respect of Badme in 1998 (comment, para. 1.4, footnote 4) failed to mention the OAU's express statement that

those findings did not "prejudge the final status of that area which will be determined at the end of the delimitation and demarcation process and, if necessary, through arbitration."

b. The Central Sector

In the Central Sector the boundary was decided by reference, in the first place, to the Treaty of 1900. The subsequent conduct of the Parties was then examined with a view to determining whether any such conduct required the Commission to depart from the Treaty line as so determined. The Commission found that on the evidence placed before it such departure was required at a number of locations which were clearly described. However, at two points determination was left to be made more precise later, namely, at Tserona and Zalambessa. The Delimitation Decision contained no indication that the demarcation would involve any change or completion of the boundary at any other locations.

Nonetheless, in the light of further work done in the exercise of its demarcation function, the Commission has identified two areas in the Central Sector where a strict application of the line as delimited in its Delimitation Decision would be manifestly impracticable, namely, certain plateau lands in the vicinity of Point 18 on the boundary, and the area of the delta-like formation where the Ragali River flows into the Salt Lake. Demarcation instructions relating to these areas will be issued later.

In addition, the Commission is aware that there may be technical demarcation issues in part of the stretch between Points 17 and 18, where the boundary runs along what it referred to in the Delimitation Decision simply as the "Eritrean claim line." These issues will be addressed in future instructions to the demarcation team.

In two additional respects the Commission's delimitation of the boundary in the Central Sector may call for some clarification. Although it now appears that the Commission may have been provided with insufficient information concerning the Precise Location of Fort Cadorna, this does not affect the delimitation of the boundary in the region that the Commission has identified as "Acran", that is, the area in the southern part of the Belesa Projection defined by the Commission as extending over the relevant part of the boundary line joining Points 14-18. The Commission found that the evidence of Eritrean activity was "sufficient . . . to justify treating the Acran region as part of Eritrea." That conclusion is not brought into question by the possible misplacement of Fort Cadorna, and accordingly there is no reason for the Commission to vary the boundary in the southern section of the Belesa Projection as delimited by it.

The other respect in which the Delimitation Decision calls for some clarification concerns the course of the boundary between points 20 and 21, immediately to the southeast of Zalambessa. In that area there is a discrepancy between, on the one hand, the Commission's reasoning (at para. 4.42) and, on the other hand, its summary of the Treaty boundary (para. 4.59 (6) and (7)) and the operative part of the Commission's dispositif, as shown on Map 11 of the Delimitation Decision. It is accepted as a matter of international law that it is the dispositif which is operative and binding, and which prevails if there is any discrepancy between it and the body of a tribunal's award.

There is a further issue in that the Commission, based upon map evidence submitted by both Parties, placed Point 20 at the source of a headwater stream of the Muna/Berbera Gado. From the aerial photo

survey that the Commission was only recently permitted to conduct, it is apparent that that map evidence was inaccurate. There may therefore be some uncertainty regarding the boundary line around Zalambessa and the commencement of the line passing down the Muna until it meets the Enda Dashim at Point 21. The Commission will give the demarcation team appropriate instructions in due course.

c. The Eastern Sector

The boundary in the Eastern Sector was governed by a third Treaty, that of 1908, which used the formula that the boundary should proceed parallel to the coast and at a distance of 60 kilometers from it, adding that the two Governments would fix the line on the ground by common accord, "adapting it to the nature and variation of the terrain." The Commission accordingly sought the views of the Parties as to what adaptations might be called for in accordance with that provision. In their comments of 24 January 2003, both Parties gave their views on this matter. The Commission has carefully considered those views, and has reached conclusions which it has embodied in the demarcation instructions which it has today given to the demarcation team.

Rivers and Islands

The Commission also acknowledged in its Delimitation Decision¹ that there could be certain practical difficulties in the demarcation of the boundary in those stretches where it follows the course of a river. It therefore asked both Parties for their views on these questions, which Parties duly gave in their comments of January 24, 2003. The Commission is considering those views.

Source:- Kinfu Abraham 2004 Ethio-Eritrean History and the Ethio-Eritrean War: Liberation Struggle Statehood and Bilateral Political Economic Social and Diplomatic Relations. London: The Ethiopian International Institute for Peace and Development.

Appendix 30

Excerpts from Eritrea/Ethiopia Boundary Arbitration Counter Memorial Areas Administered by Ethiopia

- 3.206 Eritrea argues that Ethiopia, Britain and Italy all recognized what Eritrea calls “the boundary’s classical contour”. In the previous sections, Ethiopia has shown that this is manifestly incorrect. At the time the Treaty of 1902 was signed, all three parties agreed that the boundary followed the course set out in Ethiopia’s Memorial. Moreover, following the conclusion of the Treaty, Ethiopia repeatedly protested Italian attempts to encroach on areas lying east of the agreed-upon line.
- 3.207 Further evidence that contradicts the existence of a boundary running north from the Tomsa to the junction of the Mareb with the Mai Ambessa provided by the various administrative activities that Ethiopia, Tigray and Tigray’s territorial units engaged in to the west of Italy’s so-called “classical boundary”. Although the area lying between the Maiteb/Mount Ala Tcura region and the Italian claim line is very sparsely populated - and thus not subject to the intensity of administrative activities that that one finds in more heavily populated regions such as Gulomakheda, there is still a substantial body of Ethiopian effectives which disproves any notion of Ethiopian “acquiescence” in the Italian claim line. That evidence is discussed below with respect to locations depicted on Map 3.2 on the facing page.

a) Civil Administration

1. Election, Appointment and Payment of Local Officials

- 3.208 Documents surrounding the election, appointment and remuneration of local officials make clear that Ethiopia, Tigray and Tigray’s territorial units administered areas west of Eritrea’s claim line.

a. Appointment and payment of Officials in Areas West of Eritrea’s Claim Line

- 3.209 Documentary evidence demonstrates that Tigray and its territorial units paid the salaries of local officials in areas of Eritrea’s claim line. For example, in a 1969 letter, the Ethiopian Ministry of Finance wrote to the Finance Office of the Tigray Province to instruct it to pay two months salary to the governor of Badme, a town depicted on Map No. 3.2, from the “budget of the officials and workers of the Shire Awrajja”. The same letter mentioned that the Badme governor was “traveling to Eritrea Province to discuss the security of the border areas between Shire and Eritrea.”
- 3.210 Documents show that Ethiopia, Tigray and Tigray’s territorial units elected representatives and operated polling stations in areas west of Eritrea’s claim line. A 1969 document bearing the seal of the Shire Awrajja Election Administration listed workers assigned to register voters in electoral weredas in the Awrajja, including in the electoral weredas of Badme. In 1969, the Shire Awrajja Administration of Tigray Province produced a list of the numbers of voters registered in various communities. The list indicated that 2,160 voters had been registered in Badme administrative wereda.

2. Licenses of Business and Trade

- 3.211 Documentary evidence demonstrates that since the fall of the military regime in 1991, the Ministry of Trade of Ethiopia has granted retail trade licenses to businesspersons in areas west of Eritrea's claim line. For example, in 1994, the Ethiopian Ministry of Trade issued a businessman a license to trade in coffee in Badme Town. In another example, in 1996, the Ethiopian Ministry of Trade granted a businessman a license to operate a flourmill in Badme Town. Each of the licenses described above lists Badme Town as being in Tigray. Licenses such as these further demonstrate Ethiopia's administration of areas west of Eritrea's claim line.

3. Land Distribution and Management

- 3.212 Tigray's administration of areas west of Eritrea's claim line is confirmed by its distribution and management of lands in these areas. For example in a 1951 letter to the Shire Awraja Administration, the Head Office of the Province of Tigray granted Major General Gabrekal Debessay's application of the Chiqinet (local Chieftaincy) of places such as Sheshebit, Shelalo and Dmebe Guangul (Dembe Bengul) which are depicted on Map No. 3.2. The Tigray government's land grant identified each of these places as parts of Adiabo Wereda. Tigray's grant of lands lying well to the west of Eritrea's claim line clearly demonstrates its administration of area.

4. Administration of Mineral Resources

- 3.213 Tigray and its territorial units have also managed the mineral resources of areas well to the west of Eritrea's claim line. A recent document prepared by local officials in Tigray summarizes activities conducted during the 1990s at a marble quarry in Dichinama, a place forty kilometer west of shiraro, which is found on Map No. 3.2. These activities included exploration, quarry activity, a geological study and site visits by European companies. Local Tigrayan officials' management of these mineral resources demonstrates plainly that these areas were under the administration of Ethiopia, Tigray and Tigray's territorial units.

5. Administration of Forests

- 3.214 Tigray's administration of areas west of Eritrea's claim line is also evident in its administration of forest in these areas. For example, in 1970, the assistant governor of the Seyemt Adiabo wereda reported to the Shire Awraja Administration on the destruction of incense trees in the wereda. His letter listed figures on the number of trees cut down in badme town and its environs and in the Badme Deba environs. This document is further confirmation of Tigray's administration of areas west of Eritrea's claim line.

6. Government surveys

- 3.215 Government surveys further illustrate the administration of areas west of Eritrea's claim line by Ethiopia, Tigray and Tigray's territorial subdivisions. For example, a series of tables apparently produced in 1969 reported statistics about the Adiabo area. One table, entitled "Table showing the population of Lowland People" listed the populations of places including Badme/Damba Dima. Another table listed the yields for various crops grown in Badme from 1965 to 1969. In other example, a census report of Shire Awraja listed Badme as a village in the Awraja. The report included information on Badme's population, the gender and religion of its inhabitants and its local judges.

b. Collection of Taxes

- 3.216 Documents also demonstrate that Tigray and its territorial units collected taxes in areas west of Eritrea's claim line. For example, in a 1958 letter, the chairman of the Kebeles of Badme and Waela Nihbi provided tax statistics and forms of the Adiabo Wereda Treasury. In 1968, the chairman of Yirga and Biyara kebeles reported to the Adiabo wereda Treasury on agricultural tax allocation for Wudesso, which is depicted on Map 3.2, and other villages. In another 1968 letter, the secretary General of Shire Awrajja instructed the provisional Cashier of Badme on the collection of arrears in tax revenue. In a 1970 letter, the Governor of Shire Awrajja asked the Governor General of Tigray for permission to assess a sales tax on Badme and other communities in order to pay for the paying of roads in Endasillassie, the seat of Shire Awrajja. In another example, a document listing tax statistics by Chequa Shum listed Badme as a locality in Laye Adiabo. The fact that Tigray and its territorial units collected taxes in areas west of Eritrea's claim line shows clearly that these areas were under Tigray's administration.

c) Administration Justice and Maintenance of Public Order.

1. Policing activities

Documents demonstrate that Ethiopia, Tigray and Tigray's territorial units policed and exercised criminal jurisdiction in areas lying well to the west of Eritrea's claim line.

a) Operation of Police Station

- 3.217. Tigray government documents from the reign of Emperor Haile Sellassie demonstrate that Tigray provided supplies for police stations in Badme and Shelalo, which are found on Map 3.2. A document summarizing the camel, mule and donkey needs of police sub-weredas and posts in Tigray indicated that the police posts at Badme and Shelalo each needed two mules. Another table listed police stations in Tigray at which radios were necessary. Stations listed included the Shire Awrajja police checkpoints at Badme and Shelalo.

b) Investigation and Prosecution of Crimes

- 3.218 Tigray and Shire Awarajja also investigated and prosecuted crimes in Badme Wereda. For example, in a 1972 letter to the Governor General of Tigray, a Tigray police force official reported on an incident of attempted homicide in Badme Wereda. A suspect was apprehended and the victim was taken to the Badme clinic. The police official told the Governor General that the Tigray Police had instructed the police commander of Shire Awrajja to investigate the charge and to pass the case on to the court.
- 3.219. Correspondence from 1973 between Ethiopia, Tigray and Shire Awrajja further demonstrates that they investigated and persecuted crimes in Badme wereda. In one letter, the Head of Crime Investigation and Identification of the Tigray Police Force discussed an attempted homicide in Badme Wereda, which was reported by the Shire Awarajja police Force. He instructed the Shire Awrajja Police Force to arrest the perpetrators, take them to court and submit a report on the proceedings. In another letter, Tigray's Head of Crime Investigation and Identification discussed a homicide in Badme reported by the Shire Awarajja Police Force. He ordered the Shire Awrajja Police Force to arrest the killer and pass the charge on to the court. In a letter to the Governor General of Tigray, a Tigray Police official commented on an attempt homicide in Badme Wereda and told the Governor General that the Tigray Police had instructed the Shire Awrajja Police Force to pursue the assailants. In another letter, the Director of Tigray Province instructed the Tigray Police Force to identify and arrest the perpetrator of a crime that took place in Badme wreda. In a letter to the Shire Awrajja

Appendix 31

Excerpts from Eritrea-Ethiopia Boundary Commission Decision Regarding the town of Badme it's environs.

3. Assessment of the situation as at 1935-

- 5.82. Having regard to the history of the relations between Italy (Eritrea) and Ethiopia in and after 1935 and to the nature of the evidence available both before and after that date, the Commission considers that an assessment of the legal position should properly be made as it stood on the eve of the Italian invasion of Ethiopia in 1935.
- 5.83. On the basis of its consideration of the evidence recalled above, the Commission has reached the following findings:
- (i) Although Article I of the 1902 Treaty refers to a river called the Maiteb, the explicit object and purpose of the Treaty, namely, the assignment to Eritrea of the Cunama tribe, clearly indicates the intention and "common will" of the Parties that the boundary river should not be the western Maiteb.
 - (ii) The evidence, though inexact, indicates that the territory of the Cunama extended far to the east and southeast of the Ethiopian claim line, which runs from Point 3 to Point 9.
 - (iii) The negotiators had sufficient knowledge to identify the general limits on the sole map that the evidence indicates was before them during their discussions, the so-called "Mai Daro" map. This map, showing the area between approximately $37^{\circ} 17'$ in the west and $37^{\circ} 59'$ in the east, identified by name certain features, the names of which were then used in the Treaty. In the south they were the Tacazze-Setit; one of its tributaries, named "Meeteb"; and a mountain named "Ala Tacura" lying to the north west of that river. In the north, the relevant features were the Mareb, joined by its tributary, the Mai Ambessa. In addition, giving its name to the map, was marked a locality called "Mai Daro" inside, and just to the south of, a distinctive broad inverted U-shape bend in the Mareb, northwest of the Mareb/Mai Ambessa confluence.
 - (iv) Thus, the river named "Meeteb" on the "Mai Daro" map is not the western Maiteb, used by Ethiopia as the southern end of its claim line. The misnaming of the river on the map is demonstrated by the following features:
 - (a) The stretch of Setit shown on the map lies between approximately $37^{\circ} 17'$ and $37^{\circ} 41'$. The map shows the eastern sector of a major bend in the river that lies a significant distance east of the junction of the Setit and the western Maiteb at Point 3.
 - (b) The river named as the Meeteb has a different and longer east-west course than the western Maiteb.
 - (c) The relative location of the place named Mai Daro, its bend in the Mareb, and the confluence to the southwest of the named "Meeteb" with the Setit do not correspond with the relative location of Mai Daro and the western Maiteb as drawn on other maps available in 1902.
 - (d) The angle of the pecked line joining the "Meeteb" and the Mareb is approximately 45° from true north, whereas the angle of the Ethiopian claim line is 68° .
 - (e) There was in existence in 1902 a map, the de Chaurand map of 1894, which was used as the basis for the map annexed to the 1900 Treaty. That shows a river similarly located and shaped like the "Meeteb" but does not show any other Maiteb to the west.
- 5.84. The Commission is satisfied that the negotiators did not have in mind as the boundary the Ethiopian claim line running from Point 3 to Point 9.



- 5.85. The Commission considers that the river named "Meeteb" in the Mai Daro map is really the Sittona, which flows into the Setit from the northeast at Point 4 along a primarily east-west course and that the name "Meeteb" was wrongly attached to it. The Commission therefore interprets the name "Maiteb" in the 1902 Treaty as being the present-day "Sittona."
- 5.86. The line running from the river "Meeteb" on the Mai Daro map northeast to the Mareb/Mai Ambessa confluence is a pecked line that reflects the indication in the Treaty that the line from the Setit to the Mareb was yet to be delimited, thus evidencing the uncertainty of the negotiators regarding the limits to be attributed to the Cunama.
- 5.87. That delimitation was not effected. Reading together the provision of the 1902 Treaty and Article 4, paragraph 2, of the December Agreement, the Commission considers that it must produce a final delimitation of the whole border between Ethiopia and Eritrea. In carrying out this task, the Commission has had regard to the colonial treaties and factors that are relevant according to applicable international law.
- 5.88. The Commission has taken into account the many maps presented to it in evidence, but has only given weight in relation to this sector to maps produced by the Parties themselves in the period prior to 1935. It has noted that three early Italian maps show the Ethiopian claim line, as does one Ethiopian map of 1923. However, all the other relevant maps show the Eritrean claim line in accordance with what has, in the present proceedings, come to be called the "classical" or "traditional" signature characterized by a straight line from the confluence of the Tomsa with the Setit (Point 6) to Point 9 at an angle of about 28° from true north. There is no record of any timely Ethiopian objection to these maps and there is, moreover, a consistent record of Ethiopian maps showing the same boundary. These maps amount to subsequent conduct or practice of the Parties evidencing their mutual acceptance of a boundary corresponding to the Eritrean claim line.
- 5.89. Another way of viewing the line so consistently shown on these maps is that it also serves to evidence the acceptance by the Parties of that line as the eastern limit of Cunama territory transferred to Eritrea by the 1902 Treaty. Though some of the evidence suggests that the classical line accords more territory to Eritrea than the Cunama actually occupied, some of it also indicates that the classical line leaves part of the Cunama territory in Ethiopia. This being so, the Commission determines that the eastern border of Cunama territory between the Setit and the Mareb coincides with the classical signature of the border as marked on the maps. There is no evidence sufficiently clear or cogent to lead the Commission to a different conclusion.
- 5.90. In short, the Commission concludes that as at 1935 the boundary between the Setit and the Mareb had crystallized and was binding on the Parties along the line from Point 6 to Point 9. The question that remains for consideration is whether any developments since that date affect the above conclusion.

4. The Position after 1935

- 5.91. The Commission has examined the major elements in the course of events since 1935: the Italian invasion of Ethiopia; the outbreak of the Second World War; the British military occupation of Eritrea; the post-war developments including the treatment of the political future of Eritrea; the creation of the federation between Ethiopia and Eritrea; and the eventual termination of that federation. However, the Commission can perceive nothing in that chain of developments that has had the effect of altering the boundary between the Parties. The boundary of 1935 remains the boundary of today.
- 5.92. However, there is one specific body of material to which the Commission has given careful consideration, namely, the Ethiopian evidence of its activities in the area west of Eritrea's claim line. The Commission notes that no evidence of such activities was

Appendix 33

Excerpts from The Comments of the FDRE on the Eritrea-Ethiopia Boundary Commission

SUBMITTED ON MAY 2, 2003

For the Introduction, Summary, Cross References, please refer To Ethiopian Online Publication [Www.Geocities.Com/Ethonlinepublication]

III. The Authority and Obligation of the Commission

As observed in Ethiopia's 24 January Comments, Ethiopia is firmly committed to the peace process established by the Algiers Agreements and accepts the April 2002 Decision. The 24 January Comments noted, however, that in order for the final demarcation to be accepted by the Parties and their citizens, demarcation must be conducted in a manner consistent with the April 2002 Decision itself; the constitutional agreements signed and reaffirmed in Algiers ("Algiers Agreements"); and conventional international demarcation practice. Certainly, the fundamental object and purpose of the Algiers Agreements, achievement of a sustainable peace and prevention of further suffering of the Parties's people, must inform the Commission's demarcation of the boundary.

A. Constitutional Agreements

The Algiers Agreements were not imposed upon the Parties by measures of the Security Council under Article VII of the Charter, but were freely negotiated through the facilitation of the United Nations Secretary General under Article VI of the Charter, the Organization of African Unity and friendly states. The Government of Ethiopia bears a solemn responsibility to its citizens, as a party to the Algiers Agreements, to ensure that the obligations and commitments undertaken by Ethiopia and Eritrea to secure a lasting peace and prevent further suffering of their people, will be honored. Given the role of a correctly demarcated border in securing these objectives, it is the duty of the Government to see that demarcation is carried out in a manner consistent with applicable legal standards.

B. Problem and Anomalies to be addressed

In this regard, Ethiopia notes the conclusion of the Commission in Paragraph 4 of the President's Report that there would be "certain likely problems" resulting from the demarcation envisaged by the Commission. Similarly, the Commission notes in its Observations at Paragraph 28 that it anticipates "anomalies on the ground." These problem and anomalies pose very serious threats to the fundamental objectives of the Algiers Agreements and include those identified in the President's Report that result from ignoring the human and physical geography in the border region, and others resulting from, inter alia, misidentification of locations and geographical features. Such grave problems could not be ignored without undermining the Algiers Agreements, destroying the integrity of the April 2002 Decision itself, and threatening the peace process. The Commission's Observations have clarified some aspects of the upcoming demarcation work in this regard. Ethiopia welcomes the Commission's intention to address locations where the delimitation line of the April 2002 Decision might result in a manifestly impracticable boundary and the Commission's intention to have its staff examine certain other locations in order to revise the coordinates in the Dispositif on the basis of information now available from more accurate maps and the staff's on-the-ground inspection. Such activities will build confidence in the demarcation process. For a full account please refer to (Ethiopian Online Publication Wwww.Geocities.Com/Ethonlinepublication)]

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- 5.92. However, there is one specific body of material to which the Commission has given careful consideration, namely, the Ethiopian evidence of its activities in the area west of Eritrea's claim line. The Commission notes that no evidence of such activities was

- introduced in the Ethiopian Memorial. The evidence to be examined appeared only in the Ethiopian Counter-Memorial. It was not added to or developed in the Ethiopian Reply.
- 5.93. The places in which Ethiopia claimed to have exercised authority west of the Eritrean claim line are all, with two exceptions, clustered in the northeast corner of the disputed triangle of territory. The most westerly location is Shelalo. The Commission observes that the area of claimed Ethiopian administrative activity comprises, at the most, one-fifth of the disputed area. The area of claimed administration does not extend in any significant way towards the Ethiopian claim line.
- 5.94. The Commission observes, secondly, that the dates of Ethiopian conduct relate to only a small part of the period that has elapsed since the 1902 Treaty. There are some references to sporadic friction in 1929-1932 at Acqua Morchiti. Apart from those, the material introduced by Ethiopia dates no further back than, at the earliest, 1951 – a grant of a local chieftaincy to an Ethiopian general. Even this grant, in specifying the places sought by the general, namely, Afra, Sheshebit, Shelalo, from Jerba up to Tokomlia, Dembe Dina and Dembe Guangul, described them as “uninhabited places” which the general wanted to develop. The evidence of collection of taxes is limited to 1958 and 1968. In 1969 there is a reference to a table of statistics about the Adiabo area, but of the places mentioned in the table only two appear to be marked on the Ethiopian illustrative figure of the claimed region. One item dating from 1970 refers to the destruction of incense trees. There is some evidence of policing activities in the Badme Wereda in 1972-1973 and of the evaluation of an elementary school at Badme town. There are, in addition, a few items dating from 1991 and 1994.
- 5.95. 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.
- 5.96. The Commission’s conclusions regarding the 1902 Treaty line as a whole will be found in Chapter VIII, paragraph 8.1, sub-paragraph A.

Source:- Eritrea-Ethiopia Boundary Commission Decision 2000: The Hague



Appendix 33

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SUBMITTED ON MAY 2, 2003

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A. Constitutional Agreements

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B. Problem and Anomalies to be addressed

In this regard, Ethiopia notes the conclusion of the Commission in Paragraph 4 of the President's Report that there would be "certain likely problems" resulting from the demarcation envisaged by the Commission. Similarly, the Commission notes in its Observations at Paragraph 28 that it anticipates "anomalies on the ground." These problem and anomalies pose very serious threats to the fundamental objectives of the Algiers Agreements and include those identified in the President's Report that result from ignoring the human and physical geography in the border region, and others resulting from, inter alia, misidentification of locations and geographical features. Such grave problems could not be ignored without undermining the Algiers Agreements, destroying the integrity of the April 2002 Decision itself, and threatening the peace process. The Commission's Observations have clarified some aspects of the upcoming demarcation work in this regard. Ethiopia welcomes the Commission's intention to address locations where the delimitation line of the April 2002 Decision might result in a manifestly impracticable boundary and the Commission's intention to have its staff examine certain other locations in order to revise the coordinates in the Dispositif on the basis of information now available from more accurate maps and the staff's on-the-ground inspection. Such activities will build confidence in the demarcation process. For a full account please refer to (Ethiopian Online Publication Wwww.Geocities.Com/Ethonlinepublication)

C. Adjustments Needed are Few and of Limited Geographical Scope

The problems and anomalies remaining to be addressed during demarcation, while of extreme importance, are relatively few in number and relatively small in geographical scope. While Ethiopia considers that such attention to such problems and anomalies is fully within the power of this tribunal, the President's Report and the Observations suggest there may be serious problems which the Commission will not address. Because no final demarcation can be consistent with the constitutional agreements until such problems are resolved, the Commission has properly commented upon the availability of paragraph 4 (16) of the December Agreement as discussed further in Section VI below.

IV. Misstatements in the Observations

Unfortunately, the Observations include a series of significant misstatements relevant to Ethiopia's 24 January Comments and the demarcation. As the Commission decided to make its Observations public, Ethiopia feels it necessary to set forth here the relevant facts. These relate primarily to Badme and the Western Sector, Fort Cadorna, Acran, the controlling nature of the Dispositif, the division of border communities, and the Endeli projection (Irob). It is the obligation of the Commission to correct these misstatements to ensure that they do not adversely affect the demarcation. Each of these will be dealt with in turn.

A. Badme and Western Sector

Several misstatements regarding Ethiopia's evidence of its administration of Badme are included in the Observations.

- Quantity and Quality of Evidence Submitted By Ethiopia
- Alleged Evidence of Eritrean Governmental Activity
- Maps Depicting Badme's Location

B. Fort Cadorna

The Commission notes in its Observations that the location of Fort Cadorna as set forth in the April 2002 Decision was incorrect, saying "it now appears that the Commission may have been provided with insufficient information concerning the precise location of Fort Cadorna." CF During the delimitation phase, Ethiopia provided the Commission with the location of Fort Cadorna on a detailed, large-scale historical map and, in its January 4, 2002 Response brought to the Commission's attention the gross inaccuracy of, and lack of support for, the location claimed by Eritrea. The Commission adopted in the April 2002 Decision the unsupported location found on Eritrea's illustrative maps. For a full account please refer to (Ethiopian Online Publication [www.Geocities.Com/Ethonlinepublication]).

C. Definition of Acran

The Observations refer to Acran as "the area in the southern part of the Belesa Projection defined by the Commission as extending over the relevant part of the boundary line joining Points 14-18." CF The Commission has never before defined Acran in this way.

The description of the line in the Dispositif between Points 17 and 18 makes no reference to Acran. Rather, with respect to the line between these two points, Paragraph 8.1 (B) (VI) provides: [From Point 17] [i]t then continues up the Belesa A to follow the Eritrean claim line to Point 18 so as to leave Fort Cadorna and its environs with 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 meters west of the center of the road running from Adigrat to Zalambessa. For a full account please refer to (Ethiopian Online Publication [www.Geocities.Com/Ethonlinepublication]).

D. The Controlling Nature of the Dispositif (Points 20 to 21)

In its Observations, the Commission notes that Ethiopia is correct in noting that there is a discrepancy between, "on the one hand, the Commission's reasoning (at para. 4.42) and, on the other hand, its summary of the Treaty boundary (para. 4.59 (6) and (7)) and the operative part of the Commission's Dispositif . . . " CF Nonetheless, the Commission has so far declined to make the correction necessary to give full effect to the award, stating, "It is accepted as a matter of international law that it is the Dispositif which is operative and binding, and which prevails if there is any discrepancy between it and the body of a tribunal's award." CF For a full account please refer to (Ethiopian Online Publication) [Www.Geocities.Com/Ethonlinepublication]).

E. The Division of Border Communities

Ethiopia must also address the Commission's position that it is incapable of averting the division of villages and towns by a literal application of the line depicted on the small scale maps of the April 2002 Decision. Although the Commission failed to express this view in the Decision itself, in its Demarcation Directions of 8 July 2002, the Commission took the position that "[i]f [the line] runs through and divides a town or village, the line may be varied only on the basis of an express request agreed between and made by both Parties." CF The Commission upheld this view more recently in its Observations.

F. The Endeli Projection (Irob)

In its 24 January Comments, Ethiopia explained the need for the Commission to conduct field work in order to implement the Commission's finding that Ethiopia had established its effective sovereignty to the required degree over all but the "northern and western fringes" of the Endeli projection. The Commission in its Observations stated that the delimitation line in the Endeli Projection was not "subject to further consideration by the Commission of new evidence of State practice in those areas." CF For a full account please refer to (Ethiopian Online Publication) [Www.Geocities.Com/Ethonlinepublication]).

V. The Commission's Standard Set Forth in the Observations

In the Observations, the Commission set forth its views regarding its "flexibility" in applying the April 2002 Decision line to situations on the ground during demarcation. The Commission stated: In the Commission's view a demarcator must demarcate the boundary as it has been laid down in the delimitation instrument, but with a limited margin of appreciation enabling it to take account of any flexibility in the terms of the delimitation itself or of the scale and accuracy of maps used in the delimitation process, and to avoid establishing a boundary which is manifestly impracticable. CF

A. Careful Fieldwork is Required to Apply the Commission's Standard Accurately and Consistently

Without careful fieldwork, it will be impossible to apply the Commission's standard accurately and consistently. CF In this regard, Ethiopia notes that it was "in light of further work done in the exercise of its demarcation function, the Commission has identified two areas in the Central Sector where a strict application of the line as delimited in its Delimitation Decision would be manifestly impracticable . . ." CF For a full account please refer to (Ethiopian Online Publication) [Www.Geocities.Com/Ethonlinepublication]).

B. The Standard Enables the Commission "to avoid establishing a boundary which is manifestly impracticable"

According to the Observations, the Commission will “avoid establishing a boundary which is manifestly impracticable.” In applying this standard, the Commission has so far “identified two areas in the Central Sector where a strict application of the line as delimited in its April 2002 Decision would be manifestly impracticable, namely, certain plateau lands in the vicinity of Point 18 on the boundary, and the area of the delta-like formation where the Ragali River flows into the salt Lake.” CF

1. The Meaning of “Manifestly Impracticable”

The two examples provided by the Commission illuminate the meaning of this element of the standard. In the case of the area near Point 18, Ethiopia in its 24 January Comments alerted the Commission to the fact that a mechanical application of the delimitation line would cut through the community of Addis Tesfa, separating such settlements as Ura, Kershebti, and Mikuyam from their water sources, fields, schools, medical clinics and other necessities of life. CF This division, Ethiopia explained, was exacerbated by the physical setting of these settlements, which made alternative sources of sustenance inaccessible. In the case of the Ragali Delta area, Ethiopia’s 24 January Comments showed that Point 30 lies in the middle of fields in a settlement on the north side of the Ragali. CF Because of this settlement from the rest of its community on the north side of the Regali. For a full account please refer to (Ethiopian Online Publication [[Www.Geocities.Com/Ethonlinepublication](http://www.geocities.com/Ethonlinepublication)]).

2. Application of the Standard of “Manifestly Impracticable” to Certain Other Areas

There are a few other areas along the boundary region that appear to meet the “manifestly impracticable” standard. These include, in the Central Sector, the area between Points 20 and 21, including the Z alambessa-Alitena Road and in the Western Sector, Badme, Sembel, and Adi Tsetser. These areas are:

- a. Area Between Points 20 and 21
- b. Badme
- c. Sembel
- d. Adi Tsetser For a full account please refer to (Ethiopian Online Publication [[Www.Geocities.Com/Ethonlinepublication](http://www.geocities.com/Ethonlinepublication)]).

C. The standard enables the Commission “to take account of any flexibility in the terms of the delimitation itself or of the scale and accuracy of maps used in the delimitation process”

According to the Observations, the Commission is also enabled “to take account of any flexibility in the terms of the delimitation itself or of the scale and accuracy of maps used in the delimitation process.” CF The Commission in its Observations identified two places in which further fieldwork is required because of inadequacies in the mapping available to the Commission at the time of the April 2002 Decision. These are Point 20 and the area of the Eritrean claim line between Point 17 and 18. CF Fieldwork and subsequent adjustment are required in these areas and in other places in which the coordinates or lines provided in the April 2002 Decision are in conflict with their actual locations or are otherwise inadequate for demarcation. For a full account please refer to (Ethiopian Online Publication [[Www.geocities.Com/Ethonlinepublication](http://www.geocities.com/Ethonlinepublication)]).

1. The Commission’s Comments Regarding the Scope of Its Authority

The Commission in its April 2002 Decision indicated that not all of the maps it relied on in the delimitation phase were of a sufficient scale or accuracy. For example, the Decision stated: The Commission is also aware that maps, however informative they may appear to be, are not necessarily accurate or objective representations of the realities on the ground. Topography is dependent upon the state of knowledge at the time the maps were made, and particularly with

older maps this may have been inadequate. CF For a full account please refer to (Ethiopian Online Publication [Www.geocities.Com/Ethonlinepublication]).

2. Places Identified in the Observations as Requiring Further Fieldwork and Subsequent Adjustment

The Observations also gave two examples of places in which further field work is required because of inadequacies in the maps available to the Commission at the time of the Decision. The Observations commented on the need for further work in correcting the location of Point 20 and addressing issues related to the segment between Point 17 and 18.

3. The Necessity of Taking into Account the Scale and Accuracy of Maps in Other Areas

In addition to the two places identified in the April 2002 Decision, Ethiopia has identified other areas in which maps available to the Commission at the time of the Decision were lacking and further fieldwork should be undertaken to determine appropriate recalculations of coordinates to take into account the accurate location information. For a full account please refer to (Ethiopian Online Publication [Www.geocities.Com/Ethonlinepublication]).

VI. Section 4 (16) of the December 2000 Algiers Agreement

Ethiopia maintains that the Commission has the authority and obligation to make adjustments and variations to the April 2002 Decision line and to address the serious “problems” and “anomalies” identified by Ethiopia and the Commission. In addition, the Commission has pointed to paragraph 4 (16) of the December 2000 Agreement. Resolving such problems and anomalies is essential to finalizing a boundary capable of supporting a sustainable peace. Thus, the United Nations’ work to address problems and anomalies that the Commission will not resolve, must begin immediately. Ethiopia believes the Observations and the President’s Report have provided sufficient guidance as to what problems must be addressed under Paragraph 4 (16) to allow this work to proceed simultaneously with the Commission’s work though, of course, separately. For a full account please refer to (Ethiopian Online Publication [Www.geocities.Com/Ethonlinepublication]).

Source:- Kinfe Abraham 2004 Ethio-Eritrean History and the Ethio-Eritrean War: Liberation Struggle Statehood and Bilateral Political Economic Social and Diplomatic Relations.
London: The Ethiopian International Institute for Peace and Development.

DECLARATION

The thesis is my original work, has not been presented for a degree in any other University and that all sources of material used for the thesis have been duly acknowledged

By  Assefa A. Beskir

Advisor _____