

THE WAR REPORT 2018 THE ERITREA-ETHIOPIA ARMED CONFLICT



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HISTORY OF THE CONFLICT

BACKGROUND

From the late 1880s, Italy consolidated its power around the coastal area at Assab and Massawa, and was able to settle in Eritrea without much difficulty.¹ Between 1889 and 1941, Eritrea remained an Italian colony until Italy joined the Axis powers during World War II, which caused British forces to attack Italian forces and take control of Eritrea in 1941.² Eritrea was then under British military administration until 1952. In 1950, the United Nations resolved to establish Eritrea as an autonomous entity federated with Ethiopia as a compromise between Ethiopian claims of sovereignty and Eritrean aspirations for independence.³ On 11 September 1952, with the ratification of the Federal Act by Emperor Haile Selassie of Ethiopia, the Eritrean Constitution entered into force and the Federation was formally established.⁴

However, 10 years later in 1962, the Federation was abrogated. For some, it was the Ethiopian parliament and Eritrean Assembly which unanimously passed the decision,⁵ while for others it was Emperor Haile Selassie who dissolved the Eritrean parliament and declared Eritrea's federal status void.⁶ The dissolution of the Federation resulted in the incorporation of Eritrea into Ethiopia as its fourteenth province.⁷ The dissolution is claimed to have triggered a 32-year armed struggle for the independent state of Eritrea. In fact, it was before the dissolution that the armed resistance groups (the Eritrean Liberation Movement (in Sudan) and Eritrean Liberation Front (in Cairo)) were started in exile by groups who were anti-federation (the Independence Bloc) and others who claimed a systematic erosion of Eritrean

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rights under the Federation.⁸ The establishment of a new Eritrean state, the boundary demarcation was not properly undertaken, and economic and social relations continued. Initial disputes on economic issues, however, soured the relationship.

The porous and undelimited border increasingly became an issue. In May 1998, one of the bloodiest conflicts in Africa broke out between Eritrea and Ethiopia around the town of Badme, which later expanded across all the boundaries.

THE ETHIOPIA-ERITREA WAR, 1998-2000

The referendum of 1993 and the ensuing secession of Eritrea left Ethiopia landlocked. Besides, little was done to develop institutions required to manage important interstate interests including trade, the use of ports and the question of citizenship.⁹ Following the reassertion of Ethiopian sovereignty over Eritrea in 1952 and unification in 1962, the colonial boundary was abolished and became an administrative division. Prior to the conflict, the border was poorly delimited.¹⁰ Generally, the border had 'an unusually



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1 Historyworld, 'History of Eritrea', <http://www.historyworld.net/wrldhis/PlainTextHistories.asp?historyid=ad18> (last accessed 2 December 2018).

2 'Eritrea Country Profile', BBC News, 15 November 2018, <https://www.bbc.com/news/world-africa-13349078>.

3 The details of Eritrea's association with Ethiopia were established by the UNGA Res 390A (V), 2 December 1950.

4 The United Nations and the Independence of Eritrea, The United Nations Blue Books Series, vol XII, 1996, p 42.

5 See J. Markakis and G. C. Last, 'Eritrea', last updated 29 November 2018, <https://www.britannica.com/place/Eritrea> (last accessed 2 December 2018); S. Haile, 'The Origins and Demise of the Ethiopia-Eritrea Federation', 15 African Issues, 15; Y. Ghebrehiwet, 'Eritrea: The Federal Arrangement Farce', Awate, 14 December 14 2013, at <http://awate.com/eritrea-the-federal-arrangement-farce/>.

6 See The United Nations and the Independence of Eritrea, pp 13, 42; International Crisis Group, Ethiopia and Eritrea: Preventing War, Africa Report no 101, 22 December 2005, p 2, <https://www.crisisgroup.org/africa/horn-africa/ethiopia/ethiopia-and-eritrea-preventing-war> (last accessed 2 December 2018); Eritrean Human Rights Electronic Archive (EHREA), <http://www.ehrea.org/1952.php> (last accessed 2 December 2018).

7 This occurrence was described by some as the Ethiopian 'annexation' of Eritrea. See, e.g., Crisis Group, Ethiopia and Eritrea: Preventing War, p 2.

8 See The United Nations and the Independence of Eritrea, p 13.

9 S. Healy and M. Plaut, Ethiopia and Eritrea: Allergic to Persuasion, Chatham House, Africa Programme, January 2007, p 2, <https://www.chathamhouse.org/sites/default/files/public/Research/Africa/bpethiopiaeritrea.pdf> (last accessed 2 December 2018).

10 Project Ploughshares, 'Ethiopia-Eritrea (1998-2001)', updated February 2002, http://ploughshares.ca/pl_armedconflict/ethiopia-eritrea-1998-2001/ (last accessed 2 December 2018).

troubled history'.¹¹

Gradually, the relationship between Eritrea and Ethiopia became tense, and at times relations deteriorated into open confrontation and clashes, which ruptured all informal channels of communication between the political elites of the two countries.¹² In 1998, relations worsened unexpectedly and border skirmishes spiralled into a full-fledged war around a border village of Badme. The Eritrea-Ethiopia Claims Commission (EECC) confirmed that, in May and June 1998, Eritrea started the war by forcefully occupying border areas – some contested, others not – in violation of Article 2(4) of the UN Charter.¹³ In February 1999, fighting between the two countries resumed with each deploying hundreds of thousands of troops in trenches along the contested border,¹⁴ backed by heavy artillery from massive armaments on both sides.¹⁵

Between May 1998 and 2000, the two countries were involved in a devastating large-scale IAC along their common frontier, which was described by many as being as pointless as 'two bald men fighting over a comb'.¹⁶ Though the figures given in different reports vary, the total number of deaths of both soldiers and civilians is estimated to be around 70,000.¹⁷

As per reports of international organizations, other war victims included an estimated 75,000 Ethiopians of Eritrean origin whom Ethiopia forcibly expelled on national security grounds without any hearing or appeal. Eritrea expelled and/or repatriated an estimated 70,000 Ethiopian residents, despite its claims that it had no official expulsion policy.¹⁸ The UN Secretary-General's (UNSG) report estimates that the Eritrean and Ethiopian war displaced at least 1.2 million people, 70 percent of whom were women, children and the elderly.¹⁹

11 Healy and Plaut, Ethiopia and Eritrea, p 3.

12 Ibid, p 2.

13 EECC, Partial Award, Jus Ad Bellum Ethiopia's Claims 1–8, 19 December 2005, para 16. The EECC ruled that since there had been no armed attack against Eritrea, its attack on Ethiopia and the settling of border disputes by the use of force could not be considered lawful self-defence.

14 Project Ploughshares, 'Ethiopia-Eritrea (1998–2001)'.

15 C. Pineau, 'Eritrea-Ethiopia Peace: Seismic Shifts Throughout a Strategic Zone', Center for Strategic and International Studies, 25 July 2018, <https://www.csis.org/analysis/eritrea-ethiopia-peace-seismic-shifts-throughout-strategic-zone> (last accessed 2 December 2018).

16 Crisis Group, Ethiopia and Eritrea: Preventing War, p 2.

17 Project Ploughshares, 'Ethiopia-Eritrea (1998–2001)'.

18 Crisis Group, Ethiopia and Eritrea: War or Peace?, Africa Report no 68, 24 September 2003, p 5.

19 UNSC, Report of the Secretary-General on Ethiopia and Eritrea, UN doc S/2000/643, 30 June 2000, para 11.

THE PEACE PROCESS AND THE FINAL ALGIERS AGREEMENT

THE ORGANIZATION OF AFRICAN UNITY FRAMEWORK AGREEMENT AND ITS MODALITIES

At the Algiers summit in July 1999, the Organization of African Unity (OAU) presented a Framework for Agreement based on the following principles: the resolution of the present crisis and any other dispute through peaceful and legal means in accordance with the principles enshrined in the Charter of the OAU; the rejection of the use of force as a means of imposing solutions to disputes; and respect for the borders existing at independence, as stated in Resolution AHG/Res16(1) adopted by the OAU summit in Cairo in 1964, and their being determined on the basis of pertinent colonial treaties and applicable international law.²⁰

In addition, both countries were required to redeploy their forces outside the territories they occupied after 6 May 1998. The Agreement also called for the demilitarization and delimitation of the entire common border between the two countries.²¹ This was also emphasized in the Modalities

for the Implementation of the OAU Framework Agreement on the Settlement of the Dispute between Ethiopia and Eritrea.²²

After further consultations with the parties concerned, Mr Ahmed Ouyahia, Special Envoy of the then Chairman of the OAU, Ambassador Mohamed Sahnoun and Mr Anthony Lake, representative of the President of the United States, reviewed and finalized the document Technical Arrangements for the Implementation of the OAU Framework Agreement and its Modalities.²³ The Technical Arrangements also called for the establishment of a neutral commission to determine the precise areas from which the two sides were to redeploy, the deployment of, inter alia, military observers to verify the envisaged redeployments and the demilitarization and delimitation of the entire

20 OAU High Level Delegation Proposals for a Framework Agreement for a Peaceful Settlement of the Dispute between Eritrea and Ethiopia, 8 November 8 1998, <http://www.dehai.org/conflict/oaou/oaou-framework-11-98.htm> (last accessed 2 December 2018).

21 Ibid, paras 3, 5.

22 See Modalities for the Implementation of the OAU Framework Agreement on the Settlement of the Dispute between Ethiopia and Eritrea, endorsed by the the 35th OAU Heads of State and Government Summit in Algiers on Wednesday, 14 July 1999.

23 United Nations Mission in Ethiopia and Eritrea (UNMEE), 'Background', <https://unmee.unmissions.org/background> (last accessed 2 December 2018).

common border between the two countries.²⁴ Both parties accepted the Framework Agreement and the Modalities of Implementation but Ethiopia expressed concern regarding the Technical Arrangements prepared by the OAU, the UN and the US.²⁵

Despite all the diplomatic efforts, on 12 May 2000, the fighting erupted again as Ethiopia launched another offensive. Then, the UN Security Council (UNSC) passed a resolution expressing concern over the renewed fighting and noted that the new outbreak of violence had serious humanitarian implications for the civilian populations of both countries.²⁶ On 17 May 2000, the UNSC imposed measures aimed at preventing the supply of weapons or arms-related assistance to the two countries.²⁷ It also demanded the earliest possible reconvening, without preconditions, of substantive peace talks, under the auspices of the OAU, on the basis of the Framework Agreement and its Modalities and the work conducted by the OAU so far, which would conclude a peaceful definitive settlement of the conflict.²⁸

THE AGREEMENT ON CESSATION OF HOSTILITIES

Ethiopia's massive offensive broke Eritrea's defensive line in numerous places, bombing ports and airports, and disrupting supply lines, including those through which humanitarian aid was flowing, necessitating urgent diplomatic measures.²⁹ The efforts culminated in the signing of a ceasefire agreement between Eritrea and Ethiopia on 18

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June 2000.³⁰

The agreement obliged the parties to immediately cease hostilities and redeploy forces to their positions before 6 May 1998. Eritrea was to maintain its forces at a distance of 25 kilometres from positions to which the Ethiopian forces were expected to be redeployed, creating a zone of separation called the 'temporary security zone'.³¹ The agreement specified that violations of the ceasefire could trigger sanctions against the offending party.³² As Ambassador Legwaila Joseph Legwaila, Special Representative of the UNSG, told the International Crisis Group in 2005, 'Ethiopia and Eritrea have been very faithful to their ceasefire'.³³

The parties also called upon the UN, in cooperation with the OAU, to establish a peacekeeping operation to assist in the implementation of the agreement. They guaranteed free movement and access for the peacekeeping mission and its supplies, as required, through their territories and promised to respect its members, installations and equipment.³⁴ On 31 June 2000, the UNSC decided to establish the UN Mission in Ethiopia and Eritrea (UNMEE), consisting of up to 100 military observers and the necessary civilian support staff in anticipation of a peacekeeping operation subject to future authorization.³⁵ On 15 September 2000, the UNSC authorized the deployment of 4,200 troops for the UNMEE. In general, this agreement paved the way for the signing of the Algiers Peace Agreement (Algiers Agreement) on 12 December 2000.

THE ALGIERS AGREEMENT OF DECEMBER 2000

Following the ceasefire and the initial UNMEE deployment, the representatives of the two countries met for a second time in Algiers and signed a comprehensive peace agreement on 12 December 2000.³⁶ Article 1 of the Algiers Agreement states that '[t]he parties shall permanently terminate military hostilities between themselves. Each party shall refrain from the threat or use of force against the other.' Thus, it formally ended the war between the two



24 Technical Arrangements for the Implementation of the OAU Framework Agreement and its Modalities, 31 August 1999, para 8, <http://www.peaceau.org/uploads/technical-arrangements-31-08-1999.pdf> (last accessed 2 December 2018).

25 Crisis Group, Ethiopia and Eritrea: War or Peace?, p 4.

26 Preamble, UNSC Res 1297, 12 May 2000, para 8.

27 UNSC Res 1298, 17 May 2000, para 6(a).

28 Ibid, para 4.

29 Crisis Group, Ethiopia and Eritrea: War or Peace?, p 4.

30 Agreement on Cessation of Hostilities between the Government of the Federal Democratic Republic of Ethiopia and the Government of the State of Eritrea, Algiers, 18 June 2000 (Agreement on Cessation of Hostilities), pp 86–88.

31 Ibid, para 12.

32 Ibid, para 14(a).

33 Cited in Crisis Group, Ethiopia and Eritrea: Preventing War, p 1.

34 Agreement on Cessation of Hostilities, para 1.

35 UNSC Res 1312, 31 July 2000.

36 Agreement between the Government of the State of Eritrea and the Government of the Federal Democratic Republic of Ethiopia (Algiers Agreement), Algiers, 12 December 2000, pp 94–99.

countries.

Building on the OAU Framework Agreement, the Algiers Agreement made provision for mechanisms to delimit and demarcate the border,³⁷ provided for a Claims Commission to address war reparations and compensation claims (Article 5) and an independent commission to determine the root cause of the conflict (Article 3, this part of the agreement was not operationalized).³⁸ The Algiers Agreement was a model of its kind, where parties involved in an armed conflict and their relationships already broken down were able to reach an agreement on setting up a commission to address an issue as sensitive as violations of IHL.³⁹

Interestingly, both parties also agreed that the decision on delimitation and demarcation would be final and binding.⁴⁰

The International Committee of the Red Cross (ICRC), which promotes the application of and compliance with the GCs, was entrusted

by the Algiers Agreement with the task of supervising the release and repatriation of prisoners of war (POWs) and other persons detained in connection with the conflict.⁴¹

THE DEPLOYMENT OF THE PEACEKEEPING OPERATION

Under the Cessation of Hostilities Agreement, Eritrea and Ethiopia requested the deployment of a UN peacekeeping mission to monitor the cessation of hostilities, the redeployment of Ethiopian forces and the temporary security zone, and to ensure observance of the security commitments agreed to by the two parties.⁴² Welcoming the report of the UNSG, the UNSC decided to establish the UNMEE consisting of up to 100 military observers and necessary civilian support staff in anticipation of a peacekeeping operation subject to future authorization.⁴³ Later, the UNSC authorized the deployment of up to 4,300 troops.⁴⁴

³⁷ Art 4, Algiers Agreement. Delimitation refers to the process of establishing the course of the border on maps, while demarcation is the physical identification of the border on the ground.

³⁸ Crisis Group, Ethiopia and Eritrea: War or Peace?, p 6.

³⁹ Healy and Plaut, Ethiopia and Eritrea, p 2.

⁴⁰ Art 4(15), Algiers Agreement.

⁴¹ Art 2(2), *ibid.*

⁴² Agreement on Cessation of Hostilities, para 3.

⁴³ UNSC Res 1312, para 1.

⁴⁴ UNSC Res 1320, 15 September 2000, para 2.

As outlined under UNSC Resolution 1320 (2000), the mandates of the UNMEE included, *inter alia*, the monitoring of the cessation of hostilities, the redeployment of Ethiopian and Eritrean forces and their positions once redeployed and the temporary security zone. Subsequent to the decision of the EEBC in April 2002, the UNSC decided to adjust the mandate of the UNMEE in order to assist the EEBC in the expeditious and orderly implementation of its delimitation decision, and included demining in key areas to support demarcation, and administrative and logistical support for the Field Offices.⁴⁵ The subsequent resolution urged the parties to assume their responsibilities, fulfil their

commitments under the Algiers Agreement and cooperate fully with the EEBC.⁴⁶

Although both countries did not formally withdraw their consent, the UNMEE's operational ability was gradually hamstrung due to the explicit and implicit withdrawal of

support, which eventually led to untenable restrictions on its ability to perform its core mandate.⁴⁷ As clearly pointed out in the report of the UNSG on 3 January 2006, there was a serious deterioration of the security and political situation in the UNMEE area as a result of 'an accumulation of unresolved issues', including the stalemate in the demarcation process caused by Ethiopia's refusal to fully accept, without preconditions, the decision of the EEBC and the increasing restrictions imposed on the UNMEE by the Eritrean authorities, including a ban on all its helicopter flights within Eritrean airspace.⁴⁸ Eritrea also expelled 180 UNMEE staff from the USA, Canada and Europe, including the Russian Federation, in December 2005.⁴⁹

On account of the crippling operational and administrative restrictions imposed on the UNMEE, the UNSC unanimously adopted Resolution 1827 and terminated its mandate in 2008. The Resolution also called on both countries 'to show maximum restraint and refrain from any threat or use of force ... and to avoid provocative military activities'.⁵⁰ The termination of the UNMEE

⁴⁵ UNSC Res 1430, 14 August 2002, para 1.

⁴⁶ See, e.g., UNSC Res 1466, 14 March 2003.

⁴⁷ See J. H. Sande Lie, UNMEE: Deterioration and Termination, Norwegian Institute of International Affairs, 2009, p 5, https://www.files.ethz.ch/isn/137322/19_2009.pdf (last accessed 2 December 2018); Healy and Plaut, Ethiopia and Eritrea, p 5.

⁴⁸ UNSC, Report of the Secretary-General on Ethiopia and Eritrea, UN doc S/2006/1, 3 January 2006, para 2.

⁴⁹ 'UN Relocates Expelled Staff from Eritrea to Ethiopia, IRIN, 15 December 2005, <http://www.irinnews.org/report/57575/horn-africa-un-relocates-expelled-staff-eritrea-ethiopia>.

⁵⁰ UNSC Res 1827, 30 July 2008, para 1.

mandate was contrary to what was contemplated in the Algiers Agreement, i.e. ‘the mandate of the Peacekeeping Mission shall terminate when the delimitation-demarcation process of the border has been completed’.⁵¹ The UNMEE did not meet its final goal and a study revealed that the ‘UNMEE’s lack of a political component ... and its structural detachment from other instruments deemed central to the peace process were detrimental not only to the mission and the perception of UN, but also to the conflict, by shifting the focus from a comprehensive solution to the conflict and border issue’.⁵²

The border area between Eritrea and Ethiopia had overlapping and competing influences and the border remains murky.

THE ERITREA-ETHIOPIA BOUNDARY COMMISSION (EEBC)

The establishment of a neutral boundary commission composed of five members was one of the core components of the Algiers Agreement. The EEBC was mandated to delimit and demarcate the colonial treaty border based on pertinent colonial treaties (1900, 1902 and 1908) and ‘applicable international law’, but not *ex aequo et bono* (on the basis of justice and equity).⁵³ The use of colonial treaties as the basis for determining borders is consistent with a regional customary law enshrined in Resolution AHG/Res.16(1) adopted by the OAU in Cairo in 1964. Notably, the Agreement stipulated that ‘the delimitation and demarcation determinations of the EEBC 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’.⁵⁴

The border area between Eritrea and Ethiopia had overlapping and competing influences and the border remains murky. Also, there was confusion over nomenclature, territorial reconfigurations and a variety of contradictory maps.⁵⁵ As noted by the EEBC, ‘[t]here is no generally agreed map of the area depicting place names with any degree of reliability’,⁵⁶ none of the boundaries were demarcated nor, to varying degrees, fully delimited.⁵⁷

After examining the merits of the territorial claims of both countries, the EEBC delivered its delimitation decision on 13 April 2002. Yet, the location of the flashpoint town of Badme was initially not manifest, as the ruling failed to indicate it either in its text or accompanying maps (they only gave the coordinates of the line along which the border would run), which led to confusion as both sides claimed victory. The EEBC soon clarified its decision by affirming that Badme belongs to Eritrea.⁵⁸ The manner in which the EEBC set aside the explicit text of the 1902 treaty by accepting River ‘Meeteb’⁵⁹ as a point of reference for border delimitation instead of River ‘Maiteb’, raised some questions about its treaty interpretation.⁶⁰

Eritrea accepted the decision. Invoking the language of the Algiers Agreement, Eritrea has always maintained that the EEBC’s ruling is final and binding and has to be implemented in full without any precondition.⁶¹ It has accordingly repeatedly called on the international community to enforce the Algiers Agreement and its ruling on the boundaries.⁶²

Yet, Ethiopia denied to honour the award and after some time only accepted the decision ‘in principle’. However, it backtracked from its commitment and insisted on the need for further deliberation before withdrawing troops from the disputed areas.⁶³ Ethiopia showed equivocation over a ‘final and binding’ delimitation by launching a subsequent legal and political campaign to reverse or alter the decision, and started a labyrinthine diplomatic brinkmanship to see if it could extract concessions at the demarcation stage.⁶⁴ First, it submitted a Request for Interpretation, Correction and Consultation, claiming that errors had been made and adjustments would be required during the demarcation phase.⁶⁵ Eritrea objected to the move, arguing that such

51 Agreement on Cessation of Hostilities, para 5. It was also against the recommendations proposed by the UNSG, see Security Council Report, ‘Update Report No. 8: Ethiopia-Eritrea’, 28 June 2008, https://www.securitycouncilreport.org/update-report/lookup_c_glkwlemtisg_b_4284791.php (last accessed 2 December 2018).

52 See Sande Lie, UNMEE.

53 Art 4.2, Algiers Accord/Agreement, 12 December 2000, Article 4.2.

54 Art 4.15, Algiers Agreement (emphasis added).

55 Crisis Group, Ethiopia and Eritrea: War or Peace?, p 2.

56 EEBC, Decision Regarding Delimitation of the Border, para 4.63.

57 EEBC, Decision Regarding Delimitation of the Border, para 2.7.

58 Crisis Group, Ethiopia and Eritrea: War or Peace?, p 6 (the area known as the Badme Plains was largely Ethiopian, but the village of Badme was inside Eritrea); Healy and Plaut, Ethiopia and Eritrea, p 3.

59 EEBC, Decision Regarding Delimitation of the Border, para 5.42.

60 See, e.g., L. Anebo, ‘The Fallacy of Virtual Demarcation as a Primary Scheme of International Land Boundary Setting: Why the Eritrea/Ethiopia Boundary Conflict Remains Unresolvable’, 24 *Willamette J. Int’l L. & Dis. Res.*, 2017, 268–271.

61 See, e.g., Eritrea Ministry of Information, ‘Ethiopia Must Unconditionally Withdraw from Sovereign Eritrean Territories Including the Town of Badme’, 11 April 2017, <http://www.shabait.com/categoryblog/23781> (last accessed 2 December 2018).

62 See, e.g., M. Plaut, ‘Are Ethiopia and Eritrea Heading Back to War?’, BBC News, 21 March 2012, <https://www.bbc.com/news/world-africa-17433871>.

63 Crisis Group, Ethiopia and Eritrea: Preventing War, p 14: ‘the gap between acceptance of the Decision “in principle” and in practice remains a significant obstacle to peace’.

64 Crisis Group, Ethiopia and Eritrea: War or Peace?, pp 1, 6.

65 The Federal Democratic Republic of Ethiopia, Eritrea/Ethiopia Boundary Arbitration: Request for Interpretation, Correction and Consultation, 13 May 2002, <http://www.aigaforum.com/ethio1.pdf> (last accessed 2 December 2018).

a claim was inconsistent with the Algiers Agreement.⁶⁶ The EEBC replied that ‘the provisions of Articles 28 and 29 of the Rules of Procedure neither allow substantive amendment nor affect the binding quality of the Decision as rendered on 13 April 2002. Re-argument of the case is not permitted’, and that Ethiopia’s request was inadmissible and no further action was taken upon it.⁶⁷

Second, on 24 January 2003, Ethiopia submitted a 141-page document to the EEBC explaining that it had only accepted the Commission’s Decision on the understanding that the ‘straight-line segment between Points 6 and 9 (Badme line) would be refined during demarcation’ so as to put Badme inside Ethiopia.⁶⁸ The Commission emphasized that in ‘a number of significant respects, the comments amounted to an attempt to reopen the substance of the April Decision’.⁶⁹ For the Commission, the ‘main thrust of the Ethiopian comments [was] that the boundary should be varied so as to take better account of human and physical geography’, but went beyond its power as it could not decide matters *ex aequo et bono*.⁷⁰

Third, Ethiopia suspended its cooperation with the EEBC and appealed instead to the UNSC on 19 September 2003. The letter from the Ethiopian Prime Minister, Meles Zenawai, to the UNSG referred to the EEBC’s ‘illegal, unjust and irresponsible decisions on Badme and parts of the Central Sector’ as ‘a blatant miscarriage of justice’. It requested ‘an alternative mechanism to demarcate the contested parts of the boundary in a just and legal manner so as to ensure lasting peace in the region’.⁷¹ The UNSC, however, indicated that ‘only the full implementation of the Algiers Agreements will lead to sustainable peace’, and called upon Ethiopia to cooperate promptly and in full and with the EEBC and its field officers so that demarcation could proceed in all sectors.⁷² The EEBC described Ethiopia’s letter as a repudiation of Ethiopia’s repeated acceptance of

the Commission’s decision.⁷³

Finally, on 25 November 2004, Ethiopia came up with a ‘five-point peace proposal’, which, *inter alia*, called for an immediate start of a dialogue with a view to implementing the Boundary Commission’s decision in a manner consistent

with the promotion of sustainable peace and brotherly ties between the two peoples.⁷⁴ Ethiopia also maintained that this ‘does not mean going back to the drawing board, and it does

not imply that we are introducing a precondition’.⁷⁵ The International Crisis Group observed that there was no ‘new substance’ in such a proposal, and quoted Eritrea’s view on it: ‘a public relations exercise designed to gain international support’.⁷⁶ The ‘reasonable-sounding plan’ brushed aside the exclusive mandate of the EEBC enshrined in the Algiers Agreement.⁷⁷ Sir Elihu Lauterpacht, the President of the EEBC, pointed out that ‘Ethiopia is dissatisfied with the substance of the Commission’s Delimitation Decisions and has been seeking, ever since April 2002, to find ways of changing it’.⁷⁸ It is worth mentioning that the UNSC passed numerous resolutions demanding that Ethiopia begin the implementation of demarcation by taking the necessary steps to enable the Commission to demarcate the border completely and promptly, without preconditions.⁷⁹

In general, Ethiopia’s failure to cooperate, contrary to the Algiers Agreement, and objection in particular to the transfer of Badme, as well as Eritrea’s obstinacy during the demarcation stage, set the stage for a stalemate.⁸⁰ When all avenues to progress were blocked, the EEBC, after giving notice to the parties about its intention to using ‘modern techniques of image processing and terrain modelling’, proceeded with virtual boundary demarcation, and ruled that the boundary described on the maps would automatically stand as demarcated and the mandate of the Commission would be regarded as fulfilled.⁸¹ On 30 November 2007,

The EEBC described Ethiopia’s letter as a repudiation of Ethiopia’s repeated acceptance of the Commission’s decision.

66 See A. Welde Giorgis, *Eritrea at a Crossroads: A Narrative of Triumph, Betrayal and Hope*, Strategic Book Publishing and Rights Co, 2014, p 584.

67 EEBC, Decision Regarding the ‘Request for Interpretation, Correction and Consultation’ Submitted by Federal Democratic Republic of Ethiopia Submitted on 13 May 2002, 24 June 2002, p 4, <http://pcacases.com/web/sendAttach/799> (last accessed 2 December 2018).

68 Cited in Giorgis, *Eritrea at a Crossroads*, p 588.

69 Annex I, Report of the Secretary-General on Ethiopia and Eritrea, Eighth Report of the Eritrea-Ethiopia Boundary Commission, UN Doc. S/2003/257, para 3, 6 March 2003.

70 *Ibid*, para 4.

71 Letter of Ethiopian Prime Minister Meles Zenawi to UN Secretary General Kofi Annan, 19 September 2003, UN doc S/2010/225, Attachment 2, <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Somalia%20S2010%20225.pdf> (last accessed 2 December 2018).

72 UNSC Res 1507, 12 September 2003.

73 Letter dated 7 October 2003 from the President of the Eritrea-Ethiopia Boundary Commission to the Secretary-General, UN doc S/2003/1186, Appendix 1, <http://dehai.org/demarcation-watch/articles/EEBC-Oct-7-2003-letter.pdf> (last accessed 2 December 2018).

74 The text of the five-point proposal is included in UNSC, Progress Report of the Secretary-General on Ethiopia and Eritrea, UN doc S/2004/973, 16 December 2004, para 14.

75 See Annex to the Letter Dated 31 October 2005 From the Chargé d’affaires a.i. of the Permanent Mission of Ethiopia to the United Nations addressed to the President of the Security Council, UN doc S/2005/690, 1 November 2005.

76 Crisis Group, *Ethiopia and Eritrea: Preventing War*, p 6.

77 Healy and Plaut, *Ethiopia and Eritrea*, p 5.

78 Letter dated 27 November 2006 from the President of the Commission to the Minister of Foreign Affairs of Ethiopia, UN Doc S/2007/33, Enclosure, <http://dehai.org/demarcation-watch/eebc/EEBC-Letter-Ethiopia-Nov-27-2006.pdf> (last accessed 2 December 2018).

79 See, e.g., UNSC Resolution 1586, 14 March 2005.

80 Crisis Group, *Ethiopia and Eritrea: Preventing War*, p 1. Note that Art 4(14) of the Algiers Agreement requires the parties to cooperate with the EEBC.

81 EEBC: Statement by the Commission, 27 November 2006, para 22.

the EEBC sent maps indicating the demarcated boundary points to the Permanent Missions of Ethiopia and Eritrea to the UN and said it had fulfilled its mandate.⁸² While Eritrea accepted the virtual demarcation, Ethiopia, for its part, rejected the decision calling it a 'legal fiction'.⁸³

Apart from the reluctance of the parties to cooperate on the demarcation of the boundary, the EEBC also admitted that there were indeed some anomalies in its decision, but stated that it was unable to correct them unless the parties gave it an additional mandate.⁸⁴

Meanwhile, the difficulties in the decision were also noted by Lloyd Axworthy, former Canadian Minister of Foreign Affairs and former UN Special Envoy to Eritrea and Ethiopia, who characterised the decision of the EEBC as 'something that has to be worked at' and 'needs to be developed'.⁸⁵ Jendayi Frazer also suggested that 'just and reasonable adjustments' be made to the EEBC's final and binding delimitation decision in demarcating the border.⁸⁶

THE ERITREA-ETHIOPIA CLAIMS COMMISSION (EECC)

Traditionally, claims commissions are rarely used for the disposition of war-related claims.⁸⁷ Nevertheless, contemporary politics, with the prominence of human rights and IHL, appears to favour greater means of accountability.⁸⁸ The Algiers Agreement of 2000, in an extraordinary move, included the creation of a Claims Commission with a mandate to 'decide through binding arbitration all claims for loss, damage or injury by one Government against the other and by nationals ... of one party against the Government of the other party' arising from the war, or violations of the GCs or international law.⁸⁹ In 2001, both countries filed claims relating to the conduct of military operations, the treatment of POWs and civilians and the impact of the hostilities on civilians and their property.

82 Twenty-Seventh Report of the Eritrea-Ethiopia Boundary Commission, UN doc S/2008/630, 3 October 2008, para 4.

83 African Union Peace and Security Council, Report of the Commission on Conflict Situations in Africa, PSC/HSG/2 (CXXXVIII), 29 June 2008, para 31. But Eritrea accepted it, see para 30.

84 EEBC, Observations of the Eritrea-Ethiopia Boundary Commission, 21 March 2003, para 4.

85 A. Al-Hilweh, 'Interview with UN Special Envoy-Designate Lloyd Axworthy, IRIN, 5 January 2004, <http://www.irinnews.org/q-and/2004/01/05/interview-un-special-envoy-designate-lloyd-axworthy>.

86 Cited in Welde Giorgis, Eritrea at a Crossroads, pp 597–598.

87 G. H. Aldrich, 'The Work of the Eritrea-Ethiopia Claims Commission', 6 Yearbook of International Humanitarian Law, 2003, 435.

88 S. D. Murphy, W. Kidane and T. R. Snider, *Litigating War: Mass Civil Injury and the Eritrea-Ethiopia Claims Commission*, Oxford University Press, 2013, p 398.

89 Art 5, Algiers Agreement.

The decisions of the EECC dealt with highly controversial matters and threw more 'light on the conduct of the war than had previously been available'.⁹⁰ The issues included the lawfulness of the initial resort to force, the treatment of POWs and civilian internees, the legality of means and methods of warfare used in various localities, the seizure and destruction of private property and the treatment by each side of the nationals of the other.⁹¹ The work of the EECC has been lauded as principled and pragmatic in its approach in interpreting and applying IHL.⁹² It only addressed acts which were frequent or pervasive and consequently affected significant numbers of victims,⁹³ but this approach is at variance with IHL stipulations that all violations shall result in responsibility and accountability.⁹⁴ This has also been criticized by some authors.⁹⁵

Importantly, the EECC brought to light that IHL rules were mostly respected by both parties to the conflict. It set a good precedent that 'third party establishment of the facts and impartial arbitration can show up wide-spread respect of IHL' and at the same time exonerate parties to an armed conflict from unwarranted accusations of violations of IHL.⁹⁶ The fact that the EECC had considered issues such as the economic constraints of the parties in assessing their liability is a practical and commendable effort.⁹⁷ Locating such commissions closer to the countries whose conduct is being judged, and allowing affected people to participate in the process to increase their sense of ownership, as well as improved media coverage of the proceedings, need to be

90 Healy and Plaut, *Ethiopia and Eritrea*, p 7.

91 All the rulings by the EECC can be found on the website of the Permanent Court of Arbitration, <https://pca-cpa.org/en/cases/71/> (last accessed 2 December 2018).

92 M. Sassoli, 'The Approach of the Eritrea-Ethiopia Claims Commission Towards the Treatment of Protected Persons in International Humanitarian Law', in A. de Guttry, H. H. G. Post and G. Venturini, *The 1998–2000 War Between Eritrea and Ethiopia*, T. M. C. Asser Press, 2009, p 350; S. Sanna, 'International Humanitarian Law and the Treatment of Protected Persons', in A. de Guttry, H. H. G. Post and Gabriella Venturini, *The 1998–2000 War Between Eritrea and Ethiopia*, T. M. C. Asser Press, 2009; R. Weeramantry, 'International Decisions: Prisoner of War (Eritrea v. Ethiopia), Eritrea's Claim 17/Ethiopia's Claim 4, Partial Awards: Central Front (Eritrea v. Ethiopia)', *Eritrea's Claims 2, 4, 6, 7, 8 & 22/Ethiopia's Claim 2, Partial Awards*, 99 AJIL 2, 2005, 471.

93 See EECC, Partial Award, Prisoners of War – Eritrea's Claim 17, 1 July 2003, para 56. The mandate of the EECC also covers 'all claims for loss, damage or injury ... related to the armed conflict'.

94 See Art 91, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 8 June 1977 (AP I); Rule 149: Responsibility for Violations of International Humanitarian Law, ICRC Customary IHL Database, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule149 (last accessed 2 December 2018). See also Sassoli, 'The Approach of the Eritrea-Ethiopia Claims Commission Towards the Treatment of Protected Persons in International Humanitarian Law', p 347.

95 See Weeramantry, 'International Decisions', 472; Sanna, 'International Humanitarian Law and the Treatment of Protected Persons', pp 313–316; Sassoli, 'The Approach of the Eritrea-Ethiopia Claims Commission Towards the Treatment of Protected Persons in International Humanitarian Law', p 347.

96 Sassoli, 'The Approach of the Eritrea-Ethiopia Claims Commission Towards the Treatment of Protected Persons in International Humanitarian Law', pp 341–342.

97 Sanna, 'International Humanitarian Law and the Treatment of Protected Persons', pp 317–319.

taken into consideration for the future.⁹⁸

ETHIOPIA'S REFUSAL TO WITHDRAW ITS TROOPS FROM BADME

As mentioned earlier, on 13 April 2002, the EEBC decided that one of the disputed areas and the flashpoint of the war, Badme and the surrounding area, belonged to Eritrea. Ethiopia rejected this decision and, consequently, refused to withdraw its troops from the area. Eritrea accuses Ethiopia of occupying the sovereign territory of Eritrea and has called on the international community to enforce the EEBC's ruling, while Ethiopia insists that further border talks are necessary before the decision is implemented. The EEBC instructed Ethiopia that it should 'remove from Eritrean territory persons of Ethiopian origin who have moved into that territory subsequent to the date of the Delimitation Decision'.⁹⁹

Under international law, for a territory to be considered occupied it must be under the authority of the hostile army.¹⁰⁰ It is also generally understood that IHL rules on occupied territories apply whenever, during an armed conflict, a territory comes under the control of the enemy of the power previously controlling that territory¹⁰¹ Occupation arises even when the occupier does not encounter armed resistance as such (Article 2(2) common to the GCs). In addition, the fact that the occupied territory is contested or its status is unclear does not have an impact on the test of whether or not it is under military occupation. What matters is that the state whose forces established effective control was not the rightful sovereign of the territory when the conflict broke out or an invasion took place.¹⁰²

For an occupation to exist, hostile foreign forces must exercise effective control. In this regard, three elements must be fulfilled.¹⁰³ First, the armed forces of a foreign state should be physically present in the territory and the territorial state did not consent to their presence. Second, the presence of the foreign forces prevents the effective local government in place at the time of invasion from

98 Murphy et al, *Litigating War*, p 401.

99 EEBC, Order of the Commission (Made Pursuant to Article 20 and Article 27(1) of the Commission's Rules of Procedure), 17 July 2002, p 5.

100 Art 42, The Hague Regulations, Annex to Hague Convention (IV) Respecting the Laws and Customs of War on Land, 18 October 1907. See also U. S. Department of Defense, *Law of War Manual*, p 748.

101 Art 42, Hague Regulations; Art 2(1) common to the Geneva Conventions of 1949.

102 In this regard, the EECC rightly stated that 'even territory to which Eritrea had a valid claim according to the Boundary Commission, was occupied for the purposes of IHL if it had been invaded during the war', EECC, *Partial Award, Central Front – Ethiopia's Claim 2*, 28 April 2004, paras 28 and 29.

103 T. Ferraro, 'Determining the Beginning and End of an Occupation Under International Humanitarian Law', 94 *International Review of the Red Cross* 885, 2012, 155.

exercising its powers. Third, the foreign forces establish their own authority.

Despite the EEBC's delimitation decision, Eritrea and Ethiopia remained locked in a stalemate for two decades marked by sporadic skirmishes. The EEBC did not demarcate the border (except the virtual demarcation), and in fact, no territory changed hands. The question is whether this raises the issue of belligerent occupation in the territories adjacent to the border between the two countries. The continued presence of Ethiopian troops in and around the Badme area satisfies the test for occupation, as long as the title to the territory belongs to Eritrea, and regardless of whether the border is demarcated, the law of belligerent occupation applies to territory that belongs to an enemy state.¹⁰⁴ It is worth noting that there is a contrary view to this conclusion, which maintains that as long as the portion of the territory was not individualized through physical demarcation, and defined as 'enemy territory', and for instance, allows the 'occupier' to know how far to pullback, the situation cannot really be qualified as an occupation (emphasizing that the area under Ethiopia's control was the same as that which existed before the war – no land changed hands).¹⁰⁵

KEY DEVELOPMENTS IN 2018

JOINT DECLARATION OF PEACE AND FRIENDSHIP, 9 JULY 2018

Following Ethiopia's refusal to accept the 'unconditional' implementation of the EEBC's decision, the two countries were locked in a state of 'no war, no peace'. Until very recently, the border dispute has rumbled on, with sporadic outbreaks of armed hostilities, including an attack on Eritrean military installations in 2012 and another on Tserona, the scene of one of the deadliest battles during the war, in June 2016.¹⁰⁶

With recent political developments and change of leaders in Ethiopia, the Ethiopian government made an announcement in June 2018 to fully implement the Algiers Agreement and the rulings of the EEBC, which could involve ceding the disputed town of Badme.¹⁰⁷ The Eritrean Minister of Information has said that 'peace will indeed be beneficial to the two peoples but obviously, this must be predicated on respect of international law, which Ethiopia

104 Crisis Group, *Ethiopia and Eritrea: Preventing War*, p 14.

105 Anebo, 'The Fallacy of Virtual Demarcation as a Primary Scheme of International Land Boundary Setting', 260–261.

106 Pineau, 'Eritrea-Ethiopia Peace'.

107 Ethiopian Peoples' Revolutionary Democratic Front, Statement of EPRDF's Executive Committee, <http://www.eprdf.org.et/web/en/-/statement-of-eprdf-s-executive-committee> (last accessed 2 December 2018).

continues to flout to-date'.¹⁰⁸ On 9 July, Eritrea and Ethiopia determined to close the very costly chapter of 'no war, no peace' and heralded a new era of rapprochement with the Joint Declaration of Peace and Friendship, which brings the state of war to an end.¹⁰⁹ The Joint Declaration also stipulates that 'the decision on the boundary between the two countries will be implemented.'¹¹⁰ This is an interesting development, but the scope of this commitment is not clear. Does it mean that the countries are ready to unconditionally withdraw their troops from the disputed areas? Will there be a release of and/or information provided about missing POWs?

In his historic visit to Asmera on 08 July 2018, the Ethiopian Prime Minister, Dr Abiy Ahmed, said 'we will demolish the wall and, with love, build a bridge between the two countries',¹¹¹ and that Ethiopia is 'keen to implement the terms laid out in the Joint Declaration to make up quickly for lost opportunities'.¹¹² The Ethiopian Foreign Minister, Dr Workneh Gebeyehu, provided further details on the agreements reached and indicated that the two sides had already established 'two commissions headed by the respective foreign ministers of both countries, and sub-committees which will work out in detail when and how each and every issue will be implemented'.¹¹³ He said a technical committee to be set up will 'resolve the border dispute and help implement the Algiers peace agreement signed in 2000' and 'follow-up the implementation of the border decision ... and related issues'.¹¹⁴

Recently, it was reported that Eritrea has started withdrawing its troops from the border lines for the first time in decades.¹¹⁵ However, there is no information about whether Ethiopia has followed suit and started to withdraw its troops from the contested areas. Hopefully, the declaration will result in implementation of the decision of the EECC and will end the confrontation over the disputed

108 T. Araia, 'Remembering Eritrea-Ethiopia border War: Africa's Unfinished Conflict', BBC News, 6 May 2018 <https://www.bbc.com/news/world-africa-44004212>.

109 Eritrea Ministry of Information, Joint Declaration of Peace and Friendship between Eritrea and Ethiopia, 9 July 2018, para 1, <http://www.shabait.com/news/local-news/26639> (last accessed 2 December 2018).

110 Ibid, para 4.

111 'Ethiopia and Eritrea Declare War "Has Come to an End"', Al Jazeera, <https://www.aljazeera.com/news/2018/07/ethiopia-eritrea-sign-declaration-peace-friendship-180709101214478.html>.

112 The Ministry of Foreign Affairs of the Federal Democratic Republic of Ethiopia, 'A Week in the Horn', 13 July 2018, <https://mfaethiopiablog.wordpress.com/2018/07/13/a-week-in-the-horn-13-07-2018/> (last accessed 2 December 2018).

113 Ibid.

114 Ibid.

115 E. Biryabarema and M. Fick, 'Eritrean Troops Withdraw from Ethiopian Border: Eritrean Press Agency', Reuters, 19 July 2018, <https://www.reuters.com/article/us-ethiopia-eritrea/eritrea-troops-withdraw-from-ethiopian-border-eritrea-press-agency-idUSKBN1K90QR>.

border areas.

In support of the Joint Declaration, the UN noted that this represents a historic and significant development with far-reaching positive consequences for the Horn of Africa and beyond, and expressed its readiness to facilitate the successful implementation of the five-point plan.¹¹⁶

THE ONGOING DISCUSSION RELATING TO PRISONERS OF WAR (POWS)

Under both treaty and customary IHL, the parties to an IAC are under unconditional obligation to release and repatriate POWs without delay upon the cessation of active hostilities.¹¹⁷ Though Eritrea and Ethiopia had signed the Cessation of Hostilities Agreement in June 2000, the EECC held that Article 118 of GC

III came into operation only in December 2000 following the Algiers Agreement, which formally ended the war.¹¹⁸ Article 2(1) of the December Algiers Agreement states that 'in fulfilling their obligations under international humanitarian law, ... and in cooperation with the International Committee of the Red Cross, the parties shall without delay release and repatriate all prisoners of war'.¹¹⁹ The position adopted by the EECC regarding the release and repatriation of POWs was subject to criticism.¹²⁰

One notable issue regarding POWs was the dispute on the missing Ethiopian pilot Colonel Bazbeh Petros. The EECC established that the pilot was captured and made a POW, but it did not receive any direct evidence concerning his fate (though Eritrea claimed that the pilot had died, without producing evidence of his death).¹²¹ Under IHL, when a POW dies, a state is under obligation to conduct an official inquiry and to take all measures for the prosecution of the person(s) responsible.¹²² Moreover, there are detailed procedures to be followed including the issue of a death certificate indicating the date and place of death, the cause

116 UN, Security Council Press Statement on Signing of Joint Declaration of Peace and Friendship Between Eritrea and Ethiopia on 9 July 2018, 10 July 2018, <https://www.un.org/press/en/2018/sc13416.doc.htm> (last accessed 2 December 2018).

117 Article 118, Geneva Convention (III) Relative to the Treatment of Prisoners of War, 12 August 1949 (GC III); ICRC Customary IHL Database, Rule 128: Release and Return of Persons Deprived of Their Liberty, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule128 (last accessed 2 December 2018).

118 EECC, Partial Award, Prisoners of War – Eritrea's Claim 17, para 145.

119 Art 2(2), Algiers Agreement.

120 Sassoli, 'The Approach of the Eritrea-Ethiopia Claims Commission towards the Treatment of Protected Persons in International Humanitarian Law', pp 342–344.

121 EECC, Partial Award, Prisoners of War – Eritrea's Claim 17, paras 154–155.

122 Art 121, GC III.

of the death, the date and place of burial and all particulars necessary to identify the grave, and a medical examination of the body before burial.¹²³

There are ongoing negotiations on the exchange of POWs¹²⁴ and the Ethiopian Foreign Minister was explicit when he stated that ‘one committee would also study and propose solutions over prisoners of war captured during the 1998–2000 war’.¹²⁵ It should be remembered that the EECC found Ethiopia in violation of its obligation to promptly repatriate the POWs it held, as required by law, for its delay of three months following Eritrea’s release of Ethiopian POWs in August 2002.¹²⁶ Accordingly, talking about ‘captured POWs’ after almost two decades after the end of the war is legally unjustifiable, and a clear violation of the obligation under IHL to release and repatriate POWs without delay. The POWs continue to benefit from protections under IHL until their final release and repatriation.

WAR CRIMES

IHL requires parties to an armed conflict to ensure respect and to conduct an effective investigation and punish serious violations thereof.¹²⁷ The EECC has established that both sides were liable for serious violations of IHL regarding material destruction, killings, rape, ill-treatment and expulsions of protected persons during the war.¹²⁸ To cite just one example, following Eritrea’s claim that Ethiopian troops committed numerous rapes of Eritrean civilian women, the Commission found Ethiopia liable for failure to take effective measures to prevent rape from occurring against innocent Eritrean civilian women.¹²⁹ Though these acts may amount to war crimes, there have been no official reports regarding the measures taken to investigate and prosecute these serious violations. Moreover, as indicated in the preceding section, there are POWs who

are not repatriated, and this unjustifiable delay to repatriate POWs is a serious violation of IHL.¹³⁰

In addition, in the report of the UNSG, it was indicated that ‘on 25 June 2001, a group of 704 persons of Eritrean descent, mostly long-term residents of the Tigray region in Ethiopia, were sent to Eritrea without the assistance of ICRC. The latter withdrew from the process when it became clear that the manner in which these repatriations were carried out was not in accordance with international humanitarian law’.¹³¹

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¹²³ Art 120, GC III; Rule 116: Accounting for the Dead, ICRC Customary IHL Database, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule116 (last accessed 2 December 2018).

¹²⁴ S. Gebrekidan, ‘Ethiopia and Eritrea Declare an End to Their War’, *The New York Times*, 9 July 2018, <https://www.nytimes.com/2018/07/09/world/africa/ethiopia-eritrea-war.html>.

¹²⁵ Ministry of Foreign Affairs of Ethiopia, ‘Prime Minister Dr Abiy’s Historic Visit to Asmara’, 13 July 2018, <https://mfaethiopiablog.wordpress.com/2018/07/13/a-week-in-the-horn-13-07-2018/> (last accessed 2 December 2018).

¹²⁶ EECC, Partial Award, Prisoners of War – Eritrea’s Claim 17, paras 156–158.

¹²⁷ Common Art 1 of the Four Geneva Conventions of August 1949; Art 129, GC III; Rule 144: Ensuring Respect for International Humanitarian Law Erga Omnes, ICRC Customary IHL Database, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule144 (last accessed 2 December 2018); Rule 158: Prosecution of War Crimes, ICRC Customary IHL Database, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule158 (last accessed 2 December 2018); Art 85, Protocol I (only Ethiopia is a party to the Protocol).

¹²⁸ See Amnesty International, *Amnesty International Report 2005*, 2005 pp 102&104, <https://www.amnesty.org/download/Documents/POL1000012005ENGLISH.PDF>, (last accessed 3 December 2018).

¹²⁹ EECC, Partial Award, Central Front – Eritrea’s Claims 2, 4, 6, 7, 8 & 22, 28 April 2004, paras 80–81.

¹³⁰ Art 85, Protocol I; Rule 156: Definition of War Crimes, ICRC Customary IHL Database, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule156 (last accessed 2 December 2018).

¹³¹ UNSC, Report of the Secretary-General on Ethiopia and Eritrea, UN doc S/2001/843, 5 September 2001, para 35.

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