

ERITREA-ETHIOPIA BOUNDARY COMMISSION RULES OF PROCEDURE

(as at 11 April 2002)

SECTION I – INTRODUCTORY RULES

Scope of Application

Article 1

1. These Rules of Procedure are adopted pursuant to Article 4, paragraph 11 of the Agreement signed in Algiers on 12 December 2000 between the Governments of the State of Eritrea and the Federal Democratic Republic of Ethiopia (the “Agreement”). As provided therein, they are based on the 1992 Permanent Court of Arbitration Optional Rules for Arbitrating Disputes between Two States.¹

2. These Rules are supplementary to the Agreement and must be read therewith. In the event of a conflict between the provisions of the Agreement and the provisions of these Rules, the provisions of the Agreement shall prevail. Any differences or uncertainties regarding these Rules will, upon application by the interested Party, be determined by the Commission.

Notice, Calculation of Periods of Time

Article 2

1. For the purposes of these Rules, any notice, including a notification, communication or proposal, is deemed to have been received when it has been delivered to the addressee. Notice shall be deemed to have been received on the day it is so delivered.

2. For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice, notification, communication or proposal is received. If the last day of such period is an official holiday or a non-work day in the Party addressed, the period is extended until the first work day which follows. Official holidays or non-work days occurring during the running of the period of time are included in calculating the period.

¹ The words “him” or “his” shall, as appropriate, also mean “her” or “hers”.

Support and Assistance

Article 3

1. The Commission may engage such staff and secure such services and equipment as it deems necessary in order to perform its functions.

2. As provided in Article 4, paragraph 7 of the Agreement, the United Nations Cartographer shall serve as Secretary to the Commission. The Secretary shall perform those tasks that the Commission may assign to him, as well as those set out in paragraphs 8 and 9 of Article 4 of the Agreement. These may include the following:

- a) preparation or acquisition of, or arrangements for the preparation of, such maps, aerial and satellite photographs and aerial and ground surveys as the Commission may request;
- b) preparation of such reports as the Commission may request in connection with the technical aspects of the delimitation and demarcation of the border;
- c) provision of assistance to the Commission, and conclusion of such arrangements as the Commission may direct, in relation to the demarcation on the ground of the border, including demining and other necessary measures related thereto.

3. The Registrar of the Commission shall be the Principal Legal Counsel of the Permanent Court of Arbitration. The Registrar shall perform such tasks as shall be assigned to him by the Commission, which may include the following:

- a) acting as the sole channel for communications between the Commission and the Parties and vice versa and, to the extent that such assistance may be requested, between the Parties, and amongst the Members of the Commission;
- b) assisting the Commission in making arrangements for hearings, giving such advance notice thereof to the Parties as the Commission may determine, and arranging for all hearing facilities;
- c) making arrangements for stenographic transcripts and/or tape recordings of hearings, and for any necessary translations or interpretation;
- d) assisting the Commission in the organisation of its deliberations and drafting activities;

- e) receiving, holding and disbursing deposits from the Parties for costs of the Commission, as well as any donations from the United Nations Trust Fund established pursuant to paragraph 8 of Security Council Resolution 1177 of 26 June 1998 (the “Trust Fund”), and accounting for the same;
- f) maintaining the archives of the Commission, including copies of all communications passing between the Secretary of the Commission and other persons relating to the work of the Commission.

4. The Secretary and the Registrar shall keep each other fully informed of all aspects of their work, in particular by the transmission to each other of copies of all documents and correspondence that either produces or receives.

Representation and Assistance

Article 4

Each Party shall appoint an Agent. The Parties may also be assisted by persons of their choice. The name and address of the Agent must be communicated in writing to the other Party, and to the Secretary and Registrar. The Agent, or someone duly authorised by him, shall be the sole representative of a Party for the purpose of all communication with the Commission or the other Party, save for hearings before, or meetings with, the Commission, at which the Agent may be assisted by Counsel or other representatives.

SECTION II – COMPOSITION OF THE COMMISSION

Number of Commissioners

Article 5

As provided in Article 4, paragraph 2 of the Agreement, the Commission shall be composed of five Commissioners.

Appointment of Commissioners

Article 6

1. The Commissioners shall be appointed by the Parties as provided in Article 4, paragraph 4 of the Agreement.

2. The President of the Commission shall be appointed as provided in Article 4, paragraph 5 of the Agreement.

Challenge to Commissioners

Article 7

A prospective Commissioner shall disclose to those who approach him on behalf of a Party in connection with his possible appointment any circumstances that may give rise to justifiable doubts as to his impartiality or independence. A Commissioner, once appointed or chosen, shall disclose such circumstances to the Parties unless they have already received such disclosure.

Article 8

1. Any Commissioner may be challenged if circumstances exist that give rise to justifiable doubts as to his impartiality or independence.
2. A Party may challenge a Commissioner appointed by it only for reasons of which it becomes aware after the appointment has been made.

Article 9

1. Challenge to a Commissioner shall be made by notice sent to the Registrar, who shall communicate it forthwith to the other members of the Commission, to the Commissioner who is challenged, to the Secretary and to the other Party. The notice shall be in writing and shall state the reasons for the challenge.
2. When a Commissioner has been challenged by one Party, the other Party may agree to the challenge. The Commissioner may also, after the challenge, withdraw from his office. In neither case does this imply acceptance of the validity of the grounds for the challenge. In such cases, a substitute Commissioner shall be appointed pursuant to the procedure applicable to the original appointment of the Commissioner being replaced.
3. A Commissioner who has been challenged remains a Commissioner unless and until the challenge is upheld or the Commissioner resigns.

Article 10

1. If, within thirty days of the date of the dispatch of the notice of challenge referred to in Article 9, paragraph 1, above, the other Party does not agree to the challenge and the challenged Commissioner does not withdraw, the challenge shall be decided by those Commissioners whose appointments are not challenged; provided that there are at least three of them. If there are less than three, the President shall refer the challenge to the Secretary-General of the United Nations for decision. The Commissioners shall endeavour to render such decision within thirty days following a request thereof.
2. Both Parties, as well as the challenged Commissioner, may, without delay, submit comments or furnish explanations to the remaining Commissioners who are not challenged concerning the challenge, provided that there are at least three of them.
3. If the remaining Commissioners uphold the challenge, a substitute Commissioner shall be appointed pursuant to the procedure that was applicable to the original appointment of the Commissioner being replaced.
4. If for any reason the remaining Commissioners are unable to reach a decision on the challenge within the period of thirty days mentioned in paragraph 1 of this Article, the President shall immediately refer the challenge to the Secretary-General of the United Nations with a request that he should decide thereon, if possible within thirty days, and communicate his decision to the President of the Commission (or, in the case of a challenge to the President, to the Registrar). If the Secretary-General upholds the challenge, the Commissioner shall cease to be a Commissioner from the date of the Secretary-General's decision and the procedure prescribed in paragraph 3 of this Article shall be followed and completed within thirty days.
5. The Interim Rule of Procedure adopted by the Commission on 5 April 2001 is withdrawn.

Replacement of a Commissioner

Article 11

As provided in Article 4, paragraph 6 of the Agreement, in the event of the death or resignation of a Commissioner in the course of the proceedings, a substitute Commissioner shall be appointed pursuant to the procedure that was applicable to the original appointment of the Commissioner being replaced. Any resignation by a Commissioner shall be addressed to the President of the Commission and shall not be effective unless the Commission determines that there are sufficient reasons to accept the resignation. If the Commission so determines, the resignation shall become effective on the date designated by the Commission.

Repetition of Hearings in the Event of the Replacement of a Commissioner

Article 12

1. If the President of the Commission is replaced, any hearings held previously relating to matters still unresolved shall be repeated; if any other Commissioner is replaced, such prior hearings may be repeated at the discretion of the Commission.
2. The Parties may jointly or separately take out insurance to cover the additional cost of any proceedings in respect of the possible application of the proceeding paragraph.

SECTION III – PROCEEDINGS BEFORE THE COMMISSION

General Provisions

Article 13

1. Subject to these Rules and the provisions of the Agreement, the Commission may conduct its proceedings in such manner as it considers appropriate, provided that the Parties are treated with equality and that, at every stage of the proceedings, each Party is given a full opportunity of presenting its case.
2. The proceedings shall consist of both a written and an oral phase, as further set forth below.

3. All documents or information to be sent to the Commission by a Party shall be communicated by that Party's Agent to the Commission through the Registrar who will send a copy to the other Party.

Location of Commission

Article 14

1. As provided in Article 4, paragraph 3 of the Agreement, the Commission shall be located in The Hague.

2. The Commission will meet in The Hague at the seat of the Permanent Court of Arbitration. The Commissioners may hold meetings amongst themselves at any place they deem appropriate or by telephone consultation.

3. After inviting the views of the Parties, the Commission may meet with them for any purpose at any place it deems appropriate. The Parties shall be given sufficient notice to enable them to be present at such meetings.

4. The decisions of the Commission delimiting the border and the subsequent formal promulgation of the demarcation thereof shall be made at The Hague.

Language

Article 15

1. Both the written and the oral phase of the proceedings shall be conducted in English.

2. Any documents annexed to the written pleadings, and any supplementary documents or exhibits submitted in the course of the proceedings, delivered in their original language, shall be accompanied by a translation into English.

Written phase

Article 16

1. As provided in Article 4, paragraph 11 of the Agreement, the written submissions of the Parties shall be filed simultaneously.

2. The written submissions shall consist of:
 - a) a Memorial to be filed by each Party by 30 June 2001;
 - b) a Counter-Memorial to be filed by each Party not later than 22 September 2001;
 - c) any other pleading that the Commission deems necessary after consulting the Parties, such pleading to be filed not later than one month after filing of the Counter-Memorials.
3. Each stage of the written submissions shall be filed with the Registrar for onward transmission, after the submissions of both Parties have been received, to the Commissioners and the other Party.
4. Upon the filing of the last of the written submissions directed by the Commission, the written phase of the proceedings will close.
5. The written submissions shall be confidential until such time as the Commission, after consultation with the Parties, may decide otherwise.

Pleas as to the Jurisdiction of the Commission

Article 17

1. The Commission shall have the power to rule on any questions relating to its own jurisdiction.
2. The Commission shall rule on a plea concerning its jurisdiction as a preliminary question unless the Commission decides to defer such ruling until its final decision.

Evidence and Hearings

Article 18

1. Each Party shall have the burden of proving the facts it relies on to support its claims.
2. The Commission shall determine the admissibility, relevance, materiality and weight of the evidence offered.

3. At any time during the proceedings, the Commission may call upon the Parties to produce documents, exhibits or other evidence within such a period of time as the Commission shall determine. The Commission shall take note of any refusal to do so as well as the reasons that must be given for such refusal.

Article 19

1. Upon the closure of the written phase of the proceedings, the Commission shall give the Parties adequate advance notice of the date, time and place of the hearings.

2. With a view to the expeditious and efficient conduct of the hearings, not less than twenty-eight days before the date set for their opening, the Commission or, if all the Commissioners cannot be present and so request, the President alone, will hold a pre-hearing consultation with the Parties at which the following matters will be considered:

- a) the order of speaking and the allocation of time at the hearings;
- b) the number and names of any witnesses that either Party may wish to call at the hearings and the subjects upon, and the languages in which, such witnesses will give their evidence;
- c) the manner in which any such evidence would be presented at the hearings;
- d) the indication by the Commission of any points or issues to which it would like the Parties, or either of them, specially to address themselves, or on which it considers that there has been sufficient argument.

3. The Registrar shall make arrangements for the translation of statements made at a hearing and for a record of the hearing if either is deemed necessary by the Commission under the circumstances of the case, or if the Parties have agreed thereto and have communicated such agreement to the Commission at least thirty days before the hearing or such longer period before the hearing as the Commission may determine.

4. Hearings shall be held *in camera* unless the Parties agree otherwise.

Interim Measures of Protection

Article 20

1. Unless the Parties otherwise agree, the Commission may, at the request of either Party, prescribe any interim measures it deems necessary to preserve the respective rights of either Party.
2. Such interim measures may be prescribed in the form of an interim decision, which shall be binding on the Parties.

Experts

Article 21

As provided in Article 4, paragraph 7 of the Agreement, the Secretary to the Commission shall make use of the technical expertise of the United Nations Cartographic Unit. The Commission may also engage the services of additional experts as it deems necessary.

Failure to Appear or to Make Submissions

Article 22

1. If a Party, duly notified under these Rules, fails to file any of its written submissions in a timely manner or to appear at a hearing, without showing sufficient cause for such failure, the Commission may continue with the proceedings.
2. If a Party, duly invited to produce documentary evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the Commission may make its decision on the evidence before it.

Closure of Hearings

Article 23

1. At the end of the hearings, the Commission will declare the hearings closed.
2. The Commission may, if it considers it necessary, decide, on its own motion or upon application of a Party, to re-open the hearings at any time before its decision is rendered.

Waiver of Rules

Article 24

A Party which knows that any provision of, or requirement under, these Rules has not been complied with and yet proceeds without promptly stating its objection to such non-compliance shall be deemed to have waived its right to object.

SECTION IV – DECISIONS OF THE COMMISSION

Applicable Law

Article 25

As provided in Article 4, paragraph 2 of the Agreement, the Commission's decision on delimitation shall be based on pertinent colonial treaties (1900, 1902 and 1908) and applicable international law. The Commission shall not have the power to make a decision *ex aequo et bono*.

Decisions

Article 26

1. As provided in Article 4, paragraph 11 of the Agreement, all decisions of the Commission shall be made by a majority of the Commissioners.
2. In the case of an even division of votes, the President shall have the casting vote.
3. In the case of questions of procedure, when there is no majority or when the Commission so authorises, the President may decide on his own, subject to revision, if any, by the Commission.

Form and effect of the Decision Delimiting the Border

Article 27

1. In addition to making a final decision regarding the delimitation of the border, the Commission shall be entitled to make any necessary interim, interlocutory, or partial decisions.

2. All decisions shall be made in writing and shall be final and binding on the Parties.
3. The Commission shall state the reasons upon which any decision is based.
4. All decisions shall be signed by the President, the Secretary and the Registrar, and shall contain the date on which, and the place where, the decision was made.
5. Any Commissioner may attach to the decision a concurring or dissenting opinion.
6. The border delimitation shall be accompanied by maps drawn to such scale as is necessary to illustrate the line described in the decision. In the central sector, this map shall be on a scale of 1:50,000; in the western and eastern sectors this map shall be on a scale no smaller than 1:1,000,000. The Commission shall state in its decision whether the line on the map is illustrative or definitive.
7. As provided in Article 4, paragraph 13 of the Agreement, the Commission shall transmit its final decision regarding delimitation of the borders to the Parties and Secretaries-General of the Organization of African Unity and the United Nations for publication.

Interpretation of the Decision

Article 28

1. Within thirty days after the receipt of the decision on delimitation or the decision promulgating the demarcation, either Party, with notice to the other Party, may request the Commission to give an interpretation of the decision.
2. The interpretation shall be given in writing within forty-five days after the receipt of the request. The interpretation shall form part of the decision and the provisions of Article 27, paragraphs 2 to 6, shall apply.

Correction of the Decision

Article 29

1. Within thirty days after the receipt of the decision, either Party, with notice to the other Party, may request the Commission to correct in the decision any errors in computation, any clerical or typographical errors, or any errors of similar nature. The Commission may within thirty days after the communication of the decision make such corrections on its own initiative.
2. Such corrections shall be in writing, and the provisions of Article 28, paragraphs 2 to 6, shall apply.

Demarcation of the Border

Article 30

1. In consultation with, and with the co-operation of, the Secretary-General of the United Nations, the Commission shall arrange for the expeditious demarcation of the border as delimited. Without prejudice to paragraph 2 hereof, the procedure relating thereto shall be adopted by the Commission at an appropriate moment after consultation with the Parties. If the circumstances so permit, the border may be demarcated in such stages as the Commission may from time to time determine.
2. The Commission may, at any time, take, or direct the taking of, such preparatory steps as it considers desirable to expedite completion of its task and the prompt demarcation of the border. If any such steps are taken or prescribed before the delimitation decision is given, they shall be strictly without prejudice to that decision and may be disregarded, overridden, or discounted in such decision. The Parties shall, to such extent as the Commission may direct, co-operate fully with the Secretary or any other personnel involved in such preparatory steps.
3. Upon the conclusion of the demarcation, the Commission will render a decision formally promulgating the boundary as demarcated. The Parties will ensure the prompt implementation of the decision and will render all assistance required by the United Nations in carrying out paragraph 16 of Article 4 of the Agreement.

Costs

Article 31

1. (a) As provided in Article 4, paragraph 17 of the Agreement, the costs of the Commission shall be borne equally by the Parties.

(b) With a view to reducing as much as possible the costs to be borne by the Parties, the Commission shall enter into arrangements with the United Nations regarding the manner in which the Trust Fund shall be used to meet the costs of the delimitation and demarcation phases of the task of the Commission.

2. The costs of the Commission shall include the remuneration of the members of the Commission and of the Registrar, as well as their expenses and those of the Secretary, together with such expenses of demarcation as are not borne by the United Nations.

3. Each Party shall bear all the expenses incurred by it in the preparation and conduct of its case.

Deposit of Costs

Article 32

1. The Commission may request each Party to deposit an equal amount as an advance for the costs referred to in Article 32, paragraph 2. All amounts deposited by the Parties pursuant to this paragraph and paragraph 2 of this Article shall be paid to the Registrar, and shall be disbursed by him for such expenses.

2. During the course of the proceedings, the Commission may request supplementary deposits from the Parties.

3. If the requested deposits are not paid in full within sixty days after the receipt of the request, the Commission shall so inform the Parties in order that one or another of them may make the required payment. If such payment is not made, the Commission may suspend or terminate the proceedings.

4. After the demarcation has been concluded, the Registrar shall render an accounting to the Parties and to the Trust Fund of the deposits and contributions received and return any unexpended balance to the Parties and to the Trust Fund in proportion to the amounts of their respective contributions.