

Map 1

CHAPTER II – SUBSTANTIVE INTRODUCTION

- 2.1 The present Decision will be developed in eight Chapters.
- 2.2 Following this substantive introduction, the Commission will, in Chapter III, present its understanding of its task and of the law to be applied to it.
- 2.3 In Chapters IV, V and VI, the Commission will examine the border in the three sectors – central, western and eastern – corresponding to the portions initially defined by the three Treaties of 1900, 1902 and 1908 respectively.
- 2.4 Chapter VII will consider the question of the boundary within the relevant rivers.
- 2.5 Lastly, Chapter VIII will contain the *Dispositif* of the present Decision.

A. BACKGROUND

- 2.6 There is little need to present any detailed account of the history of the Parties or their relations outside the events that are immediately relevant to the issues before the Commission and which will be treated at appropriate points in this Decision. However, a few introductory historical notes are in order.
- 2.7 Ethiopia has for long been an independent member of the international community. Apart from the period following its annexation by Italy in 1935 (see below), there has been no relevant discontinuity or change in its status. The position of Eritrea is different. Prior to the 1880s, large parts of it had been subject to Ottoman and Egyptian authority. During that decade, 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, Ethiopia and Italy established the boundary between the Empire of 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. 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. None of the boundaries thus agreed was demarcated. Indeed, as will be seen, each of these boundaries was, to varying degrees, not fully delimited.
- 2.8 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 Ethiopia 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.

- 2.9 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 Ethiopia was accordingly established on 11 September 1952.
- 2.10 On 11 September 1952, Ethiopia declared null and void the Treaties of 1900, 1902 and 1908.¹ 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.
- 2.11 Shortly after the incorporation of Eritrea into Ethiopia, an armed Eritrean resistance developed. In 1974, 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 of 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 recognised. 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 favoured independence. The United Nations Special Representative announced that the referendum process had been free and fair.
- 2.12 On 27 April 1993, Eritrea became independent and was admitted as a member of the United Nations. On 29 April 1993, Ethiopia recognised Eritrea’s

¹ Order No. 6 of 1952.

sovereignty and independence and on 30 July 1993, the two Governments concluded an Agreement of Friendship and Co-operation.

- 2.13 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 above, providing for the establishment of the present Commission.

B. THE SUBJECT OF THE DISPUTE – GEOGRAPHICAL DESCRIPTION OF THE BOUNDARY

- 2.14 The dispute relates to the precise location of extensive parts of the boundary between Eritrea and Ethiopia.
- 2.15 It will be convenient to begin by describing geographically the areas in which the location of the boundary is contested, without referring, for the moment, to the chronological order of the treaties mentioned in Article 4 of the December Agreement.
- 2.16 For convenience, maps of each sector are provided on the pages following. A number of points on these maps have, for ease of reference, been given numbers. A complete list of all the points to which numbers have been given will be found in Chapter VIII, paragraph 8.3 (see p. 101), together with their coordinates. These coordinates are not necessarily final and the Commission may have to adjust or vary them in the course of demarcation. Only the final demarcation map will be definitive.

1) The termini

- 2.17 The boundary runs from the border with the Sudan in the west to the border with Djibouti in the east. At each end, there is a tripoint between the three relevant States.
- 2.18 The tripoint in the west was stated by the 1902 Treaty to be at Khor Um Hagar (Point 2). However, by subsequent agreement among Eritrea, Ethiopia and Sudan, the tripoint was moved to the confluence of the Khor Royan with the Setit (Point 1), a short distance west of Khor Um Hagar.
- 2.19 The tripoint at the eastern end has never been agreed, but, as a result of the delimitation established in the present decision, will be where the Eritrea/Ethiopia boundary meets the western boundary of Djibouti (Point 41).

Map 3

Map 4

Map 1

2) The three sectors of the boundary

- 2.20 The boundary divides into three sectors, to each of which a different treaty is addressed: the western sector by a treaty of 1902 (the “1902 Treaty” – see Chapter V, below); the central sector by a treaty of 1900 (the “1900 Treaty” – see Chapter IV, below); and the eastern sector by a treaty of 1908 (the “1908 Treaty” – see Chapter VI, below). The boundaries laid down in the Treaties have never been implemented by demarcation.

3) The western sector

- 2.21 The boundary in the western sector was originally part of the subject of the 1900 Treaty but was amended by the 1902 Treaty (see Map 2, p. 14). This Treaty is written in three languages, all of which are official: Amharic, English and Italian. All three texts prescribe that the boundary shall run eastwards along the Setit to the point where it is met by a named river. In the English and Italian texts, this river is called the Maiteb. In the Amharic text, it is called the Maiten. This difference between the Amharic and the other language texts is one aspect of a confused nomenclature and has been a source of major contention between the Parties. A river called Maiteb meets the Setit at Point 3 (see Map 2, p. 14), about 20 km east of Khor Um Hagar (Point 2). Another river, flowing into the Setit about 89 km east of Khor Um Hagar, is on some maps also identified as “Maetebbe”/“Maeeteb” (Point 4). On some maps, another river, identified as the Maiten (sometimes “Mai Ten” or “Maitenne”), meets the Setit 25 km further to the east (Point 8). Once the point on the Setit where it is met by the correct river is identified, both Parties are agreed that the boundary runs in a generally northeastwards direction to the confluence of the Mareb and the Mai Ambessa (Point 9); however, Ethiopia contends that the boundary runs first to the headwaters of the Maiteb and only from there does the boundary run in a straight line to the northeast.
- 2.22 Although there are considerable disparities between the maps that show this part of the Setit, the line of the river runs from the western terminus of the boundary in a generally west-east direction. At about 37° 04' E longitude, however, there is a long northwards-pointing hump or curve in the river that extends as far as 37° 26' E, at which point, having reached the same latitude at which the curve started, the line of the river continues in a southeasterly direction.
- 2.23 Between the western terminus (Point 1, at about 36° 34' E longitude) and 37° 40' E longitude, the right bank of the Setit is joined by a number of tributaries of which the following (going from west to east) may be mentioned: the Maiteb (Point 3), the Sittona (Point 4), the Meeteb (Point 5), the Tomsa (Point 6) and the Maiten (Point 8). The locations of the confluences of each of these rivers with the Setit varies in the earlier maps, but has been stabilized in cartographic representations for some ninety years. The name Meeteb, for example, appeared on an 1894 map somewhat to the east of where it appears on later maps, but on

that same map there is no river named the Maiteb. In a sketch of 1900 limited to a short stretch of the Setit, the Meeteb again appeared, in approximately the same location. In later maps of, for example, 1902, 1913 and 1922, there is both a river Maiteb (in the west) and a river Meeteb (in the east).

- 2.24 The determination of the river to which the Treaty refers as joining the Setit and as marking the point at which the boundary turns towards the northeast is to be decided in accordance with the 1902 Treaty and applicable international law. This will be considered in Chapter V, below.

4) The central sector

- 2.25 Once the boundary reaches the Mareb at Point 9, it is defined by the 1900 Treaty, which takes the boundary eastwards along the Mareb until Point 11 at which that river is joined by another, the Belesa, flowing from the east, thus following the first part of a line described in the 1900 Treaty as the line “Mareb-Belesa-Muna.”² There is no dispute between the Parties about the line in this section. Their differences begin as the line moves upstream the Belesa.
- 2.26 As already stated, the 1900 line was traced on a map annexed to the Treaty. Both Parties agree that that map, being “annexed” to the Treaty, is a visual or linear exposition of its content and has the same force as the Treaty. One would expect, therefore, to look first to that map for assistance in defining the line in this section. The difficulties, recognised to differing degrees by both Parties, are that the Treaty map was drawn on a very small scale, 1:1,000,000, and the features marked on it do not correspond exactly with the topography and toponymy appearing in modern maps.
- 2.27 Nevertheless, Eritrea contends that the Treaty map provides sufficient guidance to enable the Commission to identify each of the disputed components of the Mareb-Belesa-Muna line. Thus, Eritrea points to the fact that the branch of the Belesa that the Treaty map shows as being connected by a land link to the Muna corresponds with the western branch of that river as it appears on the 1894 map that formed the basis of the Treaty map, that that line turns to run southwards and then leaves the Belesa by a small unnamed stream to run almost due eastwards over the watershed to join the Muna as it rises on the eastern side of the watershed (Point 20). It then continues again in a roughly easterly direction until it meets the Endeli at Massolae (Point 27).

² The part of the 1900 Treaty line that runs from Tomat to Todluc on the Mareb can for all practical purposes be disregarded, because in the 1902 Treaty the reference to that part was dropped and was replaced by the line to the Mareb along the Setit and Maiteb that has already been mentioned. The Commission’s task in this sector is limited to identifying the line of the “Mareb-Belesa-Muna.”

- 2.28 In marked contrast, Ethiopia's interpretation of this part of the 1900 Treaty involves three elements.
- 2.29 The first contention in the Ethiopian approach is that the formula Mareb-Belesa-Muna is to be taken as intended to reflect the *de facto* administrative division between the districts of Acchele Guzai in the north, under Italian control, and Agame in the south, under Abyssinian control. Thus, for Ethiopia, the task of the Commission is not so much to interpret and apply in a geographical sense the Treaty's Mareb-Belesa-Muna formula as it is to determine the actual division at the time between Acchele Guzai and Agame.
- 2.30 The second element in the Ethiopian approach involves a comparison between the map annexed to the 1900 Treaty and a modern map based on satellite imaging. Ethiopia contends that the former does not accurately represent the relevant geography. In particular, the depiction of the rivers on the 1900 map is not consistent with the rivers as they appear on the modern map.
- 2.31 The third element involves the assertion that the names "Belesa" and "Muna" do not describe relevant rivers in the region. Ethiopia names the western branch of the "Belesa" the "Rubai Daro" and the eastern "the Mestai Mes," the latter being joined by the "Sur." The name "Berbero Gado" is given to the river that the 1900 map calls the "Muna." Indeed, Ethiopia maintains that there was no "Muna" identifiable in 1900 at the location at which the 1900 Treaty map places it or, indeed, at all. Ethiopia further contends that the Berbero Gado really forms part of a larger river system, the Endeli, whose source lies somewhat further to the north; that that river formed the boundary between Acchele Guzai and Agame; and, therefore, that it was really along the line of that river that the boundary marked "Muna" on the 1900 Treaty map was meant to run.
- 2.32 This sector, the "Mareb-Belesa-Muna" line, will be considered in Chapter IV, below.

5) The eastern sector

- 2.33 From the terminus of the central sector defined in the 1900 Treaty the boundary continues southeastwards to the tripoint with Djibouti. This sector is the subject of the 1908 Treaty, which prescribes that the boundary shall run parallel to the coast but sixty kilometres inland from it. The Parties disagree not only as to its starting point but also as to the proper way of drawing such a line and, therefore, as to its eastern terminus. This sector will be considered in Chapter VI, below.

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