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Commentary: Securing the Peace between Eritrea and Ethiopia

The recent assertion of the new prime minister of Ethiopia, Dr. Abiy Ahmed, of his readiness to engage in peace talks to resolve the “no peace, no war” situation and normalise bilateral relations with Eritrea has drawn renewed international attention on the frozen conflict and spurred a flurry of discussions in the social media. Furthermore, it has rekindled fresh diplomatic initiatives to explore and widen a possible window of opportunity, encourage the parties to reengage, and facilitate a resolution of the Ethio-Eritrean conflict. This commentary, essentially a reproduction of *Chapter 17: Securing the Peace between Eritrea and Ethiopia* of Ambassador Andebrhan Welde Giorgis’ book, **Eritrea at a Crossroads: A Narrative of Triumph, Betrayal and Hope** ([link](#)), seeks to enrich the ongoing discussion, shed light on the underlying cause of the war and the stalled peace process, and contribute to a durable resolution of the unfinished boundary conflict as a crucial step towards the normalisation of bilateral relations.

Eri-Platform serialises the book’s Chapter 17 in four successive weekly parts: 1. General Introduction (*released 10.04.2018*); 2. The Delimitation of the Boundary (*released 16.04.2018*); 3. Virtual Demarcation of the Boundary (*released 24.04.2018*); and 4. Imperative of Durable Peace.

Part 2 *The Delimitation of the Boundary* deals with the delimitation process of the boundary by the Eritrea-Ethiopia Boundary Commission (EEBC), on the basis of three colonial treaties and applicable international law, as well as the respective initial reactions of the two governments to the EEBC’s final and binding delimitation decision.

Part 3 **The Virtual Demarcation of the Boundary** follows.

The following section is the third serialisation of Chapter 17 which recounts the attempt to implement the Algiers Agreements.

[continued...]

17.2 The Virtual Demarcation of the Boundary

Article 4(13) of the Algiers Agreement required the “expeditious demarcation” of the boundary. Upon delivery of its Delimitation Decision, the EEBC set out to demarcate the boundary in consultation with and the cooperation of the Secretary General of the United Nations. Just as it did with the delimitation process, the Boundary Commission approached the task in three sectors based on the colonial treaties. It had, in anticipation of the emplacement of pillars as boundary

markers along the delimitation line, already appointed a Chief Surveyor in October 2001 and established Field Offices in Addis Ababa and Asmera in November 2001. The Chief Surveyor, with a staff of assistant surveyors hired by the Commission, set up residence in Asmera on 15 November 2001. Furthermore, the EEBC appointed a Special Consultant to provide it with technical advice and assistance in May 2002 and established a third Field Office in Adigrat, northern Ethiopia, in July 2002.¹

However, there were obstacles and ominous signs of contention on the horizon right from the start of the demarcation process. On 27 April 2002, Ethiopia forbade “further work within the territory under its control”, and interrupted the work of aerial photography and ground survey to construct a 1:25,000 map of the border to serve as a basis for demarcation.² Furthermore, a month after issuing its clear acceptance of the Delimitation Decision, Ethiopia submitted a long Request for Interpretation, Correction and Consultation regarding the Decision.³

Ethiopia filed a request for comments within the 30-day period allowed in the Commission’s Rules of Procedure. Eritrea characterised the Ethiopian request as an attempt at “a wholesale revision of the 13 April 2002 Decision” and called for its dismissal as “inadmissible under the Commission’s Rules of Procedure” and “inconsistent with the 12 December 2000 Algiers Peace Agreement”.⁴ After due consideration of the Ethiopian request and the Eritrean submission in the context of its mandate, the Boundary Commission decided that, “the Ethiopian request is inadmissible and no further action will be taken upon it”.⁵

The Commission also received, and duly responded to, a letter from the President of Eritrea on 17 May 2002 raising, “rather unusually in relation to an arbitral proceeding” in its view, four questions regarding the basis used, the procedures followed or any political pressures exerted in reaching the Decision and whether the Decision was final and binding.⁶ The Commission replied to the Eritrean President’s letter on 21 May 2002. The same day, it met with the Parties to discuss the modalities and technical aspects of the demarcation process, the role of the UN Mission in Eritrea and Ethiopia (UNMEE) and the Mine Action Coordinating Centre (MACC), and the establishment and role of field offices within Ethiopia. It also urged Ethiopia to resume cooperation immediately with the Boundary Commission in the demarcation process.⁷

¹ Eritrea-Ethiopia Boundary Commission: Order Pursuant to Article 27(1) of the Commission’s Rules of Procedure, 17 July 2002.

² Eritrea-Ethiopia Boundary Commission: Fifth Report on the Work of the Commission, 30 May 2002, p. 5.

³ The Federal Democratic Republic of Ethiopia: Eritrea/Ethiopia Boundary Arbitration, Request for Interpretation, Correction and Consultation, 13 May 2002.

⁴ Eritrea’s Response to the Request of the Federal Democratic Republic of Ethiopia for Interpretation, Correction and Consultation (13 May 2002), 14 June 2002, p. 1 & 23.

⁵ Eritrea-Ethiopia Boundary Commission: Decision Regarding the “Request for Request for Interpretation, Correction and Consultation” Submitted by Federal Democratic Republic of Ethiopia on 13 May 2002, p. 4.

⁶ Exchange of Letters between the Presidents of Eritrea (17 May 2002) and the EEBC (21 May 2002).

⁷ Fifth Report of the Eritrea-Ethiopia Boundary Commission to the Secretary-General of the United Nations (S/2002/744), 30 May 2002, p. 5-6.

Reminding it of its treaty obligation to cooperate without conditions, the Commission requested Ethiopia to allow the completion of the work before the start of the rainy season. Nevertheless, Ethiopia continued to prohibit fieldwork in the border areas under its control. Its refusal to lift the ban was followed by a letter, dated 15 May 2002, to the Boundary Commission from the Ethiopian foreign minister criticising UNMEE's logistical assistance to the Chief Surveyor and casting doubt about the neutrality of the Boundary Commission's Field Office".⁸

Meanwhile, Eritrea accused Ethiopia of settling its nationals in Eritrean sovereign territory around Badme as of July 2002 and requested the Commission to instruct Ethiopia to undo the new settlements.⁹ The Commission, acting on a report of the findings of a Field Investigation Team¹⁰ sent to visit the places in question, ordered Ethiopia to dismantle its new settlements by "no later than 30 September 2002" and instructed each Party to ensure that "no further population settlement takes place across the delimitation line established by the Decision of 13 April 2002".¹¹ When Ethiopia ignored the *Order*, the Commission reiterated that, "the Delimitation Decision of 13 April 2002 is final and binding in respect of the whole of the boundary between the Parties". Further, it ruled that, "Ethiopia, in failing to remove from Eritrean territory persons of Ethiopian origin who have moved into that territory subsequent to the date of the Delimitation Decision, has not complied with its obligations."¹²

In continuation of its preparatory steps and extensive consultation with the Parties, the Boundary Commission issued detailed *Demarcation Directions* on 8 July 2002, subsequently revised in November 2002 and in March and July 2003. The *Demarcation Directions* defined the objective of demarcation as the construction of ground pillars along the delimitation line. They indicated that the work of demarcation would be carried out through the Field Offices by the UN Cartographer, the Special Consultant of the Commission, the Chief Surveyor, and any other persons appointed for the purpose under the authority of the Commission. They also provided for each Party's nomination of a high level Liaison Representative, Deputy Liaison Representative, and two Field Liaison Officers and required each Party to allow unrestricted freedom of movement for the demarcation personnel within its territory.

Further, the *Demarcation Directions* specified that the demarcation would take place on the basis of a "1:25,000 scale map"; that "pillar emplacements shall begin in the Eastern Sector, without prejudice to the continuance of preparatory steps for pillar emplacement in the Western and Central Sectors"; that the construction of the pillars "shall be done by contractors hired by the United Nations on behalf of the Commission"; and that "the Commission has no authority to vary the boundary line. If it runs through and divides a town or village, the line may be varied only on the basis of an express request agreed between and made by both parties".¹³

⁸ Seyoum Mesfin, Minister of Foreign Affairs and Agent of Ethiopia, 15 May 2002 (3-1/234/19/02).

⁹ The State of Eritrea, Letter to the Eritrea-Ethiopia Boundary Commission, 7 June 2002.

¹⁰ Eritrea-Ethiopia Boundary Commission: Report of the Field Investigation Team, Field Visit of 9-14 July 2002.

¹¹ Eritrea-Ethiopia Boundary Commission: 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.

¹² Eritrea-Ethiopia Boundary Commission: Determinations, 7 November 2002, p 2.

¹³ Eritrea-Ethiopia Boundary Commission: Demarcation Directions, 8 July 2002, p. 10.

Based on the Boundary Commission's initial Schedule of Activities, revised on 19 February 2003, demarcation started in the Eastern Sector in March 2003. In a final revision of the Schedule of Activities on 16 July 2003, pillar emplacement was set to begin in October and finish in December 2003 in the Eastern Sector; begin in January and finish in March 2003 in the Central Sector; and begin in March and finish in June 2004 in the Western Sector.¹⁴ Pillar sites were determined through field assessment with the cooperation of the Parties by August 2003. The Parties received a set of marked maps indicating the location of proposed boundary pillars, stretching from the border with Djibouti in the east to the Salt Lake in the northwest, for comment. Eritrea endorsed the marked maps while Ethiopia did not reply.

When the 30-day period allowed under the Rules of Procedure for comment on the marked maps expired, "the Commission adopted specific boundary points that could serve as locations for the emplacement of pillars in that Sector". Once the Commission was set to emplace pillars in the Eastern Sector and start demarcation in the Central and Western Sectors, however, Ethiopia refused "to allow demarcation to begin in the Central and Western Sectors" while Eritrea objected "to pillar emplacement in the Eastern Sector unless demarcation work was begun simultaneously in the Central and Western Sectors". In addition, Eritrea informed the Chief Surveyor that it would "withdraw its arrangements for the provision of security in the Eastern Sector if the contract then under negotiation for the emplacement of pillars did not cover the entire boundary as determined in the Delimitation Decision".¹⁵

Further, on 24 January 2003, Ethiopia submitted Comments stating that it had accepted the EEBC's Decision on the understanding that the "straight-line segment between Points 6 and 9 (Badme line) would be refined during demarcation" to put Badme inside Ethiopia.¹⁶ In the view of the EEBC, Ethiopia's Comments "amounted to an attempt to reopen the substance of the April Decision". It added that: "Notwithstanding the clarity with which the Commission has stated the limits upon its authority, Ethiopia has continued to seek variations to the boundary line delimited in the April Decision, and has done so in terms that appear, despite protestations to the contrary, to undermine not only the April Decision but also the peace process as a whole." In these comments, "the Commission sees an intimation that Ethiopia will not adhere to the April Decision if its claim to 'refinement' of the April delimitation Decision is not accepted".¹⁷

Ethiopia provided additional signals of its intention not to follow the EEBC's Demarcation Directions. The UN Secretary General's 6 March 2003 Progress Report on Ethiopia and Eritrea stated that Prime Minister Meles Zenawi has intimated to his Special Representative that "if its concerns were not properly addressed, Ethiopia might eventually reject the demarcation-related decisions of the Commission" and that his "Special Representative immediately consulted with

¹⁴ Eritrea-Ethiopia Boundary Commission: Schedule of the Order of Activities Ahead as at 16 July 2003, 16 July 2003.

¹⁵ Eritrea-Ethiopia Boundary Commission: Statement by the Commission, 27 November 2006, p. 3-5.

¹⁶ Submission by the Federal Democratic Republic of Ethiopia, 24 January 2003, Comments Pursuant to the December 2000 Agreement, the Commission's Rules of Procedure, the Commission's Demarcation Directions and Instructions provided at the Boundary Commission's Meeting on 6 and 7 November 2002, p. 61-74.

¹⁷ Eighth Report of the Eritrea-Ethiopia Boundary Commission, 21 February 2003, p. 10-11.

the representatives of the Guarantors and Facilitators of the peace process, as well as the group of Friends of UNMEE, in Addis Ababa and in Asmara regarding Ethiopia's position".¹⁸

In its Observations issued in consideration of the comments advanced by the Parties on 24 January 2003, the Boundary Commission concluded that *the Parties knew in advance, and agreed*: "that the result of the Commission's delimitation of the boundary might not be identical with previous areas of territorial administration"; "that it was not open to the Commission to make its decisions on the basis of *ex aequo et bono* considerations"; "that the boundary as delimited by the Commission's Delimitation Decision would be final"; and that the Commission is "obliged to reject the assertion that it must adjust the coordinates to take into account the human and physical geography in the border region. Moreover, the Commission firmly rejects the contention that if such adjustments are not made the Commission's work would be devoid of adequate legal basis".¹⁹

These contentious exchanges were capped off by a turnaround. In a complete reversal and absolute contradiction of its declaration of 13 April 2002, Ethiopia informed the UN Security Council that the Commission's Decision is "totally illegal, unjust and irresponsible". The Prime Minister's letter of 19 September 2003 went on to state that "It is unimaginable for the Ethiopian people to accept such a blatant miscarriage of justice. The decision is thus a recipe for continued instability, and even recurring wars". It further asserted that "Nothing worthwhile can therefore be expected from the Commission to salvage the peace process". Finally, the letter called on the Security Council to "set up 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".²⁰

In a detailed and direct response, the EEBC described Ethiopia's letter as "a repudiation of its repeated acceptance of the Commission's decision since it was rendered".²¹ Similarly, the UN Security Council responded that "only the full implementation of the Algiers Agreements will lead to sustainable peace" and "that Ethiopia has committed itself under the Algiers Agreements to accept the Boundary Decision as final and binding". The Security Council urged Eritrea and Ethiopia to abide by their commitments under the Algiers Agreements and to fully cooperate with the Boundary Commission in the implementation of its decisions.²² It specifically called on "Ethiopia to provide its full and prompt cooperation to the Boundary commission and its field officers in order that demarcation can proceed in all sectors as directed by the Boundary Commission".²³

The UN Secretary General welcomed Eritrea's continued cooperation with the Boundary Commission while criticising Ethiopia's failure to extend the necessary cooperation in the exercise of its mandated functions.²⁴ In an attempt to resolve the impasse, he appointed, on 30

¹⁸ Progress Report of the Secretary-General on Ethiopia and Eritrea (S/2003/257), 6 March 2003, p.3.

¹⁹ Eritrea-Ethiopia Boundary Commission: Observations, 21 March 2003, p. 3-5.

²⁰ Letter of Ethiopian Prime Minister Meles Zenawi to UN Secretary General Kofi Annan, 19 September 2003.

²¹ Eritrea-Ethiopia Boundary Commission: Letter to the Secretary General, 7 October 2003.

²² United Nations Security Council Resolution 1507 (2003), 12 September 2003.

²³ President of the Security Council: Letter to the Prime Minister of the Federal Democratic Republic of Ethiopia, 3 October 2003.

²⁴ Progress report of the Secretary-General on Ethiopia and Eritrea (S/2003/1186), 19 December 2003.

January 2004, Lloyd Axworthy, former Canadian Minister of Foreign Affairs, as his Special Envoy to Eritrea and Ethiopia. In direct contradiction to its *final and binding* character, Axworthy had characterised the decision of the Boundary Commission under the Algiers Agreement as “something that has to be worked at” and “needs to be developed.”²⁵ Lacking an explicit statement of his mandate from the Secretary General to allay its suspicion, Eritrea refused to accept his good offices as an “alternative mechanism”.

Meanwhile, Ethiopia declared its acceptance of the EEBC Decision “in principle” and proposed a “five point peace plan” that, in the main, called for dialogue with Eritrea to amend the 13 April 2002 Delimitation Decision as a condition for the demarcation of the boundary. The ‘initiative’ was announced by the prime minister in an address to the Ethiopian parliament on 25 November 2004.²⁶ On the same day the proposal was presented in the 8th Session of the ACP-EU Joint Parliamentary Assembly, in The Hague, as a ‘major breakthrough’. In addition to my position as ambassador to the EU, I also served as the chief delegate of the Eritrean National Assembly to the ACP-EU Joint Parliamentary Assembly. I took the floor to comment on the new Ethiopian initiative in exercise of my right of response as the representative of Eritrea.

I stated that I have taken note of the announcement by the Delegate of Ethiopia; reminded the Joint Assembly that the Decision of the Boundary Commission is *final and binding*, to be implemented as is, as per the Algiers Peace Agreement; that the border would have long been demarcated were it not for Ethiopia’s persistent obstructions; and recapped that Ethiopia had accepted the EEBC Decision in April 2002, rejected it in September 2003, and says that it has accepted it ‘in principle’ now in November 2005, whatever that means? I asserted that the way forward is simple and straight: Ethiopia’s unequivocal acceptance of the Decision and full cooperation with the Boundary Commission to enable the physical demarcation of the boundary. Hence, time will tell whether this is a serious new ‘development’ leading to a real breakthrough or a mere public relations stunt. Finally, I assured the ACP-EU Joint Parliamentary Assembly that Eritrea will study the text of the proposal and declare its position in due course.²⁷

In an attempt to end the impasse and “secure the resumption of the demarcation process”, the EEBC invited Eritrea and Ethiopia, on 4 February 2005, to a meeting in London on 22 February 2005 and urged them to enable it to complete its mission. Eritrea accepted the invitation and affirmed its willingness “to meet with the Commission and Ethiopia to discuss the unconditional renewal of the demarcation process.” On the other hand, Ethiopia declined the invitation to meet with the Commission and Eritrea without preconditions. In declining the invitation, Ethiopia claimed that meeting without prior “dialogue between the Parties” would be “premature”, “unproductive” and could have “an adverse impact on the demarcation process”.

Eritrea’s insistence on “adherence to the April 2002 Delimitation Decision” as final and binding was consistent with the terms of the Algiers Peace Agreement. Ethiopia’s demand for the modification of the Decision flouted the Agreement. Ethiopia’s inadmissible preconditions and

²⁵ United Nations Integrated Regional Information Networks (IRIN), 2 January 2004.

²⁶ Speech by HE Meles Zenawi, Prime Minister of the Federal Democratic Republic of Ethiopia to Members of the House of Peoples Representatives on the Ethiopia - Eritrea Border Issue, 25th November 2004.

²⁷ Welde Giorgis, Andebrhan, Response by the Delegate of Eritrea on Ethiopia’s Announcement of Acceptance of the EEBC Decision, 8th Session of the ACP-EU JPA, The Hague, 25 November 2004.

demand, faced with Eritrea's legitimate insistence, created an impasse and continued to disable the Boundary Commission from proceeding with the demarcation process.

The situation forced the Boundary Commission to overcome its previous reluctance "to express any legal assessment of the circumstances" which led to the "impasse" and "identify the conduct" that "prevented [it] from completing its mandate" to demarcate the border as delimited by the 13 April 2002 Decision:

Ethiopia is not prepared to allow demarcation to continue in the manner laid down by the Commission. It now insists on prior 'dialogue' but has rejected the opportunity for such 'dialogue' within the framework of the demarcation process provided by the Commission's proposal to meet with the Parties on 22 February. This is the latest in a series of obstructive actions taken since the summer of 2002 and belies the frequently professed acceptance by Ethiopia of the Delimitation Decision. ... In view of the refusal of Ethiopia to attend the 22 February meeting, the Commission had no alternative but to cancel it.²⁸

In exasperation, the EEBC conceded that it "does not see any immediate or short term prospect of the renewal of the demarcation process" and started taking immediate steps to close down its Field Offices. At the same time, it reaffirmed its readiness to reactivate them and resume its ground work if the deadlock is resolved:

These [Field Offices] can be reactivated (though subject to some months of lead time) if Ethiopia abandons its present insistence on preconditions for the implementation of the demarcation. As for the Commission, it remains ready to proceed with and complete the process of demarcation whenever circumstances permit.

The Commission must conclude by recalling that the line of the boundary was legally and finally determined by its Delimitation Decision of 13 April 2002. Though undemarcated, this line is binding upon both Parties, subject only to the minor qualifications expressed in the Delimitation Decision, unless they agree otherwise. Conduct inconsistent with this boundary line is unlawful.²⁹

Subsequently, the UN Security Council called on Ethiopia "without preconditions, to start the implementation of demarcation, by taking the necessary steps to enable the Commission to demarcate the border completely and promptly".³⁰ Yet, Ethiopia remained unwilling to accept the Delimitation Decision without equivocation, enable the physical demarcation of the boundary or meet its financial obligations to the Boundary Commission. Faced with Ethiopia's refusal to budge and persistent reluctance to cooperate, an exasperated Boundary Commission announced, on 30 May 2005, that it had suspended all its activities, closed its Field Offices, and placed its field assets in the custody of UNMEE due to Ethiopia's refusal to cooperate with its efforts to

²⁸ Sixteenth Report of the Eritrea-Ethiopia Boundary Commission (S/2005/142), 24 February 2005, p. 10.

²⁹ Ibid., p. 16-17.

³⁰ UN Security Council Resolution 1586 (2005), 14 March 2005.

demarcate the boundary.³¹ The situation remained unchanged and no demarcation activity was conducted during the rest of the year.

In an effort to break the impasse, the witnesses to the Algiers Agreement and the President of the Security Council issued similar statements on 22 February 2006 and 24 February 2006 (S/PRST/2006/10), respectively. The witnesses and the President reminded Eritrea and Ethiopia of their agreement to accept the delimitation and demarcation decisions of the Eritrea-Ethiopia Boundary Commission as final and binding and called on them to respect their commitments and cooperate with the Boundary Commission to implement its decision without further delay. In addition, they urged the Commission to convene a meeting of the Parties for technical discussions, and the Parties to attend the meeting and abide by the decisions of the Boundary Commission, in order to successfully conclude the demarcation process.

In the context of *realpolitik*, however, the scores of resolutions of the UN Security Council and the numerous statements of its rotating Presidency, underlining “unwavering commitment” to the peace process, to the full and expeditious implementation of the Algiers Agreements, and to the final and binding delimitation and demarcation determinations of the Eritrea-Ethiopia Boundary Commission, lacked coherent internal support and substantive authority to effectively persuade Ethiopia to cooperate with the Boundary Commission.³² The UN Security Council lacked the convergence of interest, the unity of purpose, and the political will to honour its commitment and enforce its resolutions vis-à-vis the Eritrea-Ethiopia peace process.

The US, as the principal architect of the Algiers Peace Agreement, one of its witnesses, and the predominant actor of the Permanent Members (P5) of the UN Security Council, had initially supported the physical demarcation of the boundary on the basis of the Delimitation Decision. Caught up in the mix of a close regional alliance with Ethiopia in the ‘war on terror’ and tense relations obtaining with Eritrea originating basically in the latter’s refusal to address the issue of the continued detention of two Eritrean employees of the US embassy in Asmera, the US reversed its position, instructed Ethiopia not to allow the demarcation of the boundary,³³ and used its dominant position and enormous clout to abet Ethiopia’s non-compliance with its treaty obligations under international law.

It seems that the policy reversal was not without its sceptics within the administration. For instance, the then US Permanent Representative to the United Nations, Ambassador John Bolton stated, that “For reasons I never understood, Frazer [US Assistant Secretary for African Affairs] reversed course and asked in early February [2006] to reopen the 2002 EEBC decision, which

³¹ Eritrea-Ethiopia Boundary Commission: Seventeenth Report on the Work of the Commission, 30 May 2005.

³² S/RES/1398 (15 March 2002), S/RES/1430 (14 August 2002), S/RES/1466 (14 March 2003), S/RES/1507 (12 September 2003), S/RES/1531 (12 March 2004), S/RES/1560 (14 September 2004), S/RES/1586 (14 March 2005), S/RES/1622 (13 September 2005), S/RES/1640 (23 November 2005), S/RES/1661 (14 March 2006), S/RES/1670 (13 April 2006), S/RES/1678 (15 May 2006), S/RES/1681 (31 May 2006), S/RES/1710 (29 September 2006), S/RES/1741 (30 January 2007), S/RES/1767 (30 July 2007), S/RES/1798 (30 January 2008) and S/RES/1827 (30 July 2008).

³³ Conversations of the author with senior EU officials in Brussels privy to the dossier revealed that Meles had agreed to allow the physical demarcation of the boundary until Jendayi Frazer told him otherwise, to spite Isaias.

she had concluded was wrong, and award a major piece of disputed territory to Ethiopia. I was at a loss to explain that to the Security Council, so I didn't".³⁴ Having persuaded Ethiopia not to implement demarcation and issued her internal directive referred to by the ambassador, Jendayi Frazer publicly suggested that 'just and reasonable adjustments' be made to the EEBC's *final and binding* delimitation decision in demarcating the border.³⁵

In any case, the Commission sought, in consideration of the advice of the witnesses of the Algiers Agreement and the President of the Security Council, to arrange a meeting with the Parties to try to secure their consent to the resumption of the demarcation process, interrupted in 2003, in early March 2006.³⁶ The meetings took place on 10 March and on 17 May 2006. At both meetings, the Boundary Commission operated on the premise that both states were "committed without condition or qualification to the full implementation of the Boundary Commission's delimitation decision of 13 April 2002".³⁷ At the March meeting, the Boundary Commission stressed the need to resume and complete the demarcation process without further delay to prevent the possible deterioration in the situation due to the deadlock. At the May meeting, the Commission advised the Parties of its intention to reopen immediately its field offices in Addis Ababa and Asmera as a first step to resume the demarcation process.

At the political level, the resumption of the demarcation process would require the full cooperation of the Parties with the Boundary Commission and their assurance of security for its field personnel. At the technical level, it would require re-staffing the offices, rehiring the surveyors, concluding contracts for the construction of the boundary pillars, and re-establishing the security arrangements to ensure the safety of the Commission's field personnel, surveyors and contractors. Since Eritrea had submitted its security plan on 14 October 2003, the Commission repeated its request to Ethiopia to submit its security plan by 19 May 2006.

Further, at the 17 May 2006 meeting, the Commission proposed to resume demarcation once:

*(a) The Commission can be assured that UNMEE will be retained in the area at a level sufficient to enable it to continue to provide the services to the field staff on at least the same scale that it has hitherto; (b) The parties can provide or, if already provided, confirm their proposed security arrangements; (c) Contracts can be concluded with the surveyors and the on-site contractors; (d) And most important of all, both the parties should cooperate fully with the Boundary Commission's representatives in the field; (e) The Boundary Commission has set 15 June 2006 for a further meeting with the parties in the hope that this will help to develop the momentum.*³⁸

³⁴ Bolton, John, *Surrender Is Not an Option: Defending America at the United Nations*, Threshold Editions, November 2007, p. 347.

³⁵ Jendayi Frazer, US Assistant Secretary for African Affairs, the Voice of America, 1 February 2006.

³⁶ Eritrea-Ethiopia Boundary Commission: Twentieth Report on the Work of the Commission, 27 February 2006.

³⁷ Eritrea-Ethiopia Boundary Commission: Letter from the President to the Secretary-General, 21 May 2006.

³⁸ *Ibid.*

There was, however, no momentum. The Commission had to cancel the proposed 15 June 2006 meeting because Eritrea declined to attend it on the grounds that “Ethiopia still had not accepted the delimitation decision without qualification”.³⁹ On the same day, the Commission held an internal meeting, discussed the next steps, decided to reopen the field offices in Asmera and Addis Ababa as soon as possible, invited Eritrea and Ethiopia to a meeting on 24 August 2006, and asked them to reply by 10 August 2006.

The Commission sent teams in early August 2006 to reopen the field offices in the respective capitals. The team in Addis Ababa was denied formal reception and the team to Asmera was refused entry visa. Nevertheless, the field office in Addis Ababa was reopened with UNMEE’s assistance while that in Asmera remained closed.

Both Eritrea and Ethiopia failed to respond to the Commission’s invitation to meet on 24 August 2006. The lack of real progress in the demarcation process caused growing exasperation. Eritrea informed the Commission that Ethiopia’s public and unequivocal acceptance of the final and binding Delimitation Decision was necessary to work out the procedures of and arrangements for demarcation and avoid “another round of fruitless meetings”.⁴⁰ The Commission held an internal meeting from 22 to 24 August 2006 and scheduled another one in November 2006 to examine the situation and consider the best way forward to demarcate the boundary and conclude its mandate. Its efforts to resume the demarcation process were frustrated as Eritrea persisted in its demand for the demarcation of the boundary as delimited and Ethiopia stuck to its insistence for the modification of the Delimitation Decision prior to demarcation.

Under the circumstances, the UN Security Council adopted, on 29 September 2006, resolution 1710 (2006) calling on the Parties to “cooperate fully with the EEBC” and “to implement completely and without further delay or preconditions the decision of the EEBC and to take concrete steps to resume the demarcation process”. Specifically, the resolution demanded that “Eritrea reverse, without further delay or preconditions, all restrictions on UNMEE’s movement and operations” and that Ethiopia “accept fully and without delay the final and binding decision of the Eritrea-Ethiopia Boundary Commission and take immediately concrete steps to enable, without preconditions, the Commission to demarcate the border completely and promptly”.⁴¹

Further, the President of the Security Council issued a Press Statement, on 17 October 2006, expressing the Council’s “unwavering commitment to the peace process, including the full and expeditious implementation of the Algiers Agreements and implementation of the final and binding decision of the EEBC”.⁴²

Subsequently, the Commission, in a letter dated 6 October 2006, asked the Parties “of the actions which each proposes to take to comply with the Council’s specific requests” and to respond by 22 October 2006. Ethiopia gave no reply while Eritrea’s reply on 22 October restated its previous position that Ethiopia’s unqualified acceptance of the EEBC’s Decision of 13 April 2002 was

³⁹ Twenty-first Report of the Eritrea-Ethiopia Boundary Commission, 8 September 2006.

⁴⁰ Letter from President Isaias Afwerki to the President of the Eritrea-Ethiopia Boundary Commission, 21 August 2006.

⁴¹ United Nations Security Council Resolution 1710 (2006), 29 September 2006.

⁴² President of the UN Security Council: Press Release on Eritrea- Ethiopia, 17 October 2006.

necessary for progress and insisted on the expeditious execution of the Award on the basis of the Commission's Demarcation Directions. Again, both sides refused, Ethiopia in a letter dated 13 November 2006 and Eritrea in a letter dated 16 November 2006, the Commission's 8 November 2006 invitation to meet on 20 November 2006 "to consider the further procedures to be followed in connection with the demarcation of the boundary between Eritrea and Ethiopia".⁴³ Ethiopia's letter contained criticisms which the Commission deemed necessary to answer.

In a direct response to Ethiopia's letter of 13 November 2006 on 27 November 2006, the President of the Boundary Commission provided conclusive assessment of Ethiopia's conduct in the demarcation process:

It is a matter of regret that Ethiopia has so persistently maintained a position of non-compliance with its obligations in relation to the Commission. ... Ethiopia has by its conduct on many occasions repeatedly obstructed the Commission's field personnel and prevented them from carrying out the necessary investigations in the field and made a 'cooperative process' impossible.⁴⁴

With its work frustrated by Ethiopia's persistent non-cooperation, the Boundary Commission, by November 2006, abandoned its original plan to emplace boundary markers on the ground and decided to demarcate the boundary by a list of precise coordinates representing "the locations at which, if the Commission were so enabled by the Parties, it would construct permanent pillars" along the entire length of the boundary. Applying the concept of 'institutional effectiveness', relying on the authority of 'international law', and 'guided by significant authority in State practice', the Boundary Commission adopted 'virtual demarcation' as a viable legal option to circumvent the deadlock caused by persistent non-cooperation and effect the demarcation of the boundary. Having affirmed the legal basis of virtual demarcation as a technique, the Commission asserted its terrestrial accuracy as follows:

Modern techniques of image processing and terrain modelling make it possible, in conjunction with the use of high resolution aerial photography, to demarcate the course of the boundary by identifying the location of turning points (hereinafter called "boundary points") by both grid and geographical coordinates with a degree of accuracy that does not differ significantly from pillar site assessment and emplacement undertaken in the field. The Commission has therefore identified by these means the location of points for the emplacement of pillars as a physical manifestation of the boundary on the ground.⁴⁵

The Commission provided the Parties with the list of the boundary turning points accompanied by forty-five 1:25,000 scale maps illustrating the boundary points; gave the Parties 12 months up to the end of November 2007 to demarcate the border; and advised that:

⁴³ Twenty-second Report of the Eritrea-Ethiopia Boundary Commission, 21 December 2006.

⁴⁴ Letter from the President of the Boundary Commission to the Foreign Minister of Ethiopia, 27 November 2006.

⁴⁵ Eritrea-Ethiopia Boundary Commission: Statement by the Commission, 27 November 2006, p. 8-10.

If, by the end of the period, the Parties have not by themselves reached the necessary agreement and proceeded significantly to implement it, or have not requested or enabled the Commission to resume its activity, the Commission hereby determines that the boundary will automatically stand as demarcated by the boundary points listed in the Annex hereto and that the mandate of the Commission can then be regarded as fulfilled. Until that time, however, it must be emphasised that the Commission remains in existence and its mandate to demarcate has not been discharged. Until such time as the boundary is finally demarcated, the Delimitation Decision of 13 April 2002 continues as the only valid legal description of the boundary.⁴⁶

In the definitive assessment of the Boundary Commission, Ethiopia's conduct in the demarcation process, both at the political and technical levels and particularly, its systematic and persistent non-cooperation, obstructed the physical demarcation of the boundary. Its non-cooperation constituted a clear violation of its commitment to accept the delimitation and demarcation decisions of the Boundary Commission as final and binding under the Algiers Agreement.

For its part, Eritrea initially cooperated fully with the Boundary Commission. It later started to raise obstacles mainly in reaction to Ethiopia's conduct and in protest of the Security Council's failure to address effectively Ethiopia's obstructions. In response to Ethiopia's refusal to allow fieldwork in the Central and Western Sectors, Eritrea objected to demarcation in the Eastern Sector unless it continued in tandem with the work planned along the entire boundary. It also imposed restrictions on UNMEE's freedom of movement that affected the Mission's ability to provide necessary assistance to the Commission's field staff.⁴⁷

Given the character and impact of the comparative obstructions, the Boundary Commission put the blame for its inability to demarcate the boundary by emplacing permanent pillars on the ground squarely on Ethiopia's conduct. In indirectly conceding its non-compliance with the terms of the Algiers Agreement, Ethiopia complained that Eritrea was also guilty of the same obstruction. In the matter of appraising the actual conduct of the Parties and apportioning blame for disabling the Boundary Commission to demarcate the boundary on the ground as delimited by the 13 April 2002 Decision, it is illustrative to quote at length from the commission's letter responding to Ethiopia's complaints:

One of the elements in Ethiopia's complaints is that Eritrea is guilty of the same obstruction. Eritrea's non-cooperation with the Commission only really developed after Ethiopia insisted that the boundary should be altered to meet with what Ethiopia chose to call 'anomalies and impracticalities', despite the clear statements of the Commission that this could not be done. When asked to confirm its continuing acceptance of the delimitation Decision, Ethiopia repeatedly qualified its position by saying that it wished negotiations to take place regarding such 'anomalies and impracticalities'. Eritrea's insistence on strict adherence to the terms of the Delimitation Decision was a position which it was entitled to adopt in accordance with the Algiers Agreement.

⁴⁶ Ibid., p. 10.

⁴⁷ Eritrea-Ethiopia Boundary Commission: Statement by the Commission, 27 November 2006, p. 5-6.

You place great emphasis on the ‘need for dialogue and support by neutral bodies to help the two Parties make progress in demarcation and normalisation of their relations’. Of course, ‘the normalisation of relations’ is a desirable objective but that is a matter that falls outside the scope of the Commission’s mandate, which is solely to delimit and demarcate the border. The scope for ‘dialogue’ is limited to what is necessary between the Commission and the Parties to further the actual process of demarcation on the ground. There is no room within the framework of the Algiers Agreement for the introduction of ‘neutral bodies’ into the demarcation process.

You ask ‘Why has the Commission abruptly and without notice chosen to abandon the process for demarcation embodied in its rules, instructions and decisions?’ The answer is that the Commission has been unable to make progress, initially, because of Ethiopia’s obstruction and, more recently, because Eritrea has followed a similar course.

Your letter seeks to blame the Commission for Ethiopia’s failure to meet its obligations under the Algiers Agreement. Such blame is entirely misplaced. The truth of the matter appears to be that Ethiopia is dissatisfied with the substance of the Commission’s Delimitation Decision and has been seeking, ever since April 2002, to find ways of changing it. This is not an approach which the Commission was empowered to adopt and is not one to which the Commission can lend itself.⁴⁸

The UN Secretary General fully shared the assessment of the EEBC of Ethiopia’s singular failure to respect its commitments under the Algiers Agreement and cooperate with the Commission in the demarcation process in accordance with the Delimitation Decision:

Ethiopia’s refusal to implement - fully and without preconditions - the final and binding decision of the Boundary Commission remains at the core of the continuing deadlock”. I therefore strongly urge the Government of Ethiopia to comply with the demand of the Security Council, expressed in resolution 1640 (2005) and reiterated in resolution 1710 (2006). Full implementation of the latter resolution remains key to moving forward the demarcation process and to concluding the peace process.⁴⁹

The EEBC made a final attempt to revive the demarcation process by convening a meeting with the Parties on 6-7 September 2007 “to consider how pillars may be erected along” the *boundary points* of the November 2006 line of virtual demarcation.⁵⁰ In preparation for the meeting, the Commission had, on 27 August 2007, circulated to the Parties an Agenda specifying the conditions each Party was required to satisfy in order to enable it to resume its activities.

⁴⁸ Letter from the President of the Boundary Commission to the Foreign Minister of Ethiopia, 27 November 2006.

⁴⁹ Report of the Secretary-General on Ethiopia and Eritrea (S/2007/33), January 22, 2007, p. 7.

⁵⁰ Letter from the President of the Commission inviting the Parties to meet in New York, 10 July 2007.

Eritrea was required “to lift restrictions on UNMEE insofar as they affect the EEBC; to withdraw from the Temporary Security Zone (TSZ) insofar as the present position impinges on EEBC operations; to provide security assurances; to allow free access to pillar locations.” For its part, Ethiopia was required “to indicate its unqualified acceptance of the 2002 Delimitation Decision without requiring broader ranging negotiations between the Parties; to lift restrictions on movement of EEBC personnel; to provide security assurances; to meet payment arrears; to allow free access to pillar locations.”⁵¹

In his opening statement, the President of the Commission reminded the Parties of “the list of locations identified by the Commission for boundary pillars using coordinates accurate to within one metre, which took into account the observations of the Parties”; observed that had the Commission “been able to go on the ground in the way originally planned, this is where the pillars would have been fixed, subject to the processes outlined in the Demarcation Directions”; expressed “hope that this indication of the adjusted line would enable the Parties to take a more positive approach to demarcation on the ground as they would see what [we] had in mind”; noted that the Parties had “less than three months now” left out of the previously given “twelve months to consider their positions and seek to reach agreement on the emplacement of pillars;” and acknowledged that Eritrea’s letters of 5 September 2007 “contain significant indications of willingness to see the process of demarcation resumed.”

In the trilateral exchanges during the meeting, Eritrea affirmed its readiness to meet the stated conditions required to enable the Commission to resume its activities while Ethiopia failed to do so and presented, instead, a series of observations which did not directly respond to the specified agenda items.⁵² The meeting ended without progress. In his concluding remarks, the President of the Commission reminded the Parties that “the demarcation by coordinates identifying with precision the locations where pillars should be in place will become effective at the end of November unless in the interval the Parties act so as to produce a new situation” and stated that “we greatly regret that we could not take our work through to its full conclusion, but at least we leave you with a line that is operable”.⁵³

The 30 November 2007 deadline arrived with no progress attained towards the construction of boundary pillars in the manner anticipated by the Commission. Ethiopia declined the EEBC’s request to appoint a substitute for Sir Arthur Watts, one of the EEBC’s Commissioners originally appointed by Ethiopia, who died on 16 November 2006, as required by the Commission’s Rules of Procedure. It also remained, in defiance of repeated requests by the Commission to meet its financial obligations, in arrears in payment of its share of the Commission’s expenses in breach of the Algiers Agreement.

The Commission was “obliged to reaffirm the considerations of fact and the statements of law set out in its Statement of 27 November 2006. The Delimitation Decision of 13 April 2002 and the Statement of 27 November 2006 remain binding on the Parties”. In conclusion, the Boundary Commission reiterated that the boundary automatically stood as demarcated by the boundary points given on 27 November 2006, officially sent signed copies of the maps illustrating the

⁵¹ Twenty-fifth report of the Eritrea-Ethiopia Boundary Commission(S/2007/645), 28 September 2007.

⁵² Ibid.

⁵³ Ibid.

points identified in the annex to the 27 November 2006 Statement to the Parties, considered its mandate fulfilled and decided to disband itself on 30 November 2007.⁵⁴

Eritrea accepted the virtual demarcation of the border; Ethiopia rejected it as “legal nonsense”. Despite the failure to expedite the physical demarcation of the boundary, the Boundary Commission’s validation of virtual demarcation rendered UNMEE’s continued presence in the TSZ untenable, as its mandate was coterminous with the demarcation of the boundary. Under pressure of incremental restrictions of free movement and support facilities from Eritrea, UNMEE’s activities and size steadily diminished until it was officially disbanded by the UN Security Council on 30 July 2008.

In its twenty-seventh and final report, the EEBC declared the end of its activities and the termination of its mandate. The report also noted that Ethiopia had refused, and the UN Secretary General had not exercised his power, to appoint a substitute Commissioner for the deceased Sir Arthur Watts; that Ethiopia continued to be in arrears of its share of the Commission’s expenses; and that the EEBC has deposited on 17 January 2008 a copy of the maps illustrating the boundary points of the demarcation with the UN Secretary General and a copy for public reference with the UN Cartographer. Further, the Commission stated that it had communicated to the Parties on 18 June 2008 that the boundary stands demarcated in accordance with the coordinates annexed to its Statement of 27 November 2006.⁵⁵

The next section underscores the imperative to complete the peace process so as to end the prevailing state of *cold war* between Eritrea and Ethiopia, help create the conditions necessary to normalise their bilateral relations, and contribute to regional peace, stability and security in the strategic but volatile Horn of Africa.

Part 4 will deal with the *The Imperative of Durable Peace...*

⁵⁴ Twenty-sixth report of the Eritrea-Ethiopia Boundary Commission, 7 January 2008.

⁵⁵ Twenty-seventh report of the Eritrea-Ethiopia Boundary Commission, 25 August 2008.