

ETHIOPIA AND ERITREA: PREVENTING WAR

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ETHIOPIA AND ERITREA: PREVENTING WAR

EXECUTIVE SUMMARY AND RECOMMENDATIONS

The fragile peace maintained by Ethiopia and Eritrea since they signed a comprehensive agreement at Algiers in December 2000 is fraying dangerously. With a costly two-year war now followed by nearly five years of stalemate, patience on both sides of the border has worn thin, and there are worrying signs that the countdown to renewed conflict may have begun. Neither side appears eager for war, but to dismiss the tensions as mere sabre-rattling could mean missing the last chance to preserve peace in the Horn of Africa. The two parties need help urgently from the Algiers Group – the African Union (AU), European Union (EU), UN and U.S. – who witnessed the original accords. Its members need to work together urgently to forge a “3-Ds” parallel process of de-escalation, border demarcation and bilateral dialogue, using both intensive diplomacy and the credible threat (and employment as necessary) of punitive measures.

The stakes could hardly be higher. The last war cost scores of thousands of lives, severed the economic lifeline between the two countries and ended in a way that confronted both governments with unprecedented domestic challenges. Resumption would destabilise the entire Horn, fuelling flows of weapons to armed groups throughout the region, rekindling a proxy war in Somalia and undermining the fragile peace process in southern and eastern Sudan.

At the heart of the problem is the ruling of the independent Boundary Commission established to delimit and demarcate the contested border. Both sides agreed in advance that its decision would be final and binding, but the ruling produced a stalemate that has brought them back to the brink of war. The primary bone of contention is the small, dusty border settlement of Badme, where the 1998-2000 war started. Having initially welcomed the boundary decision, Ethiopia reversed itself upon learning (after closer examination of the less than clear documentation) that this town – against the expectations of both sides – had been awarded to Eritrea.

After more than two years of seeking revision, Ethiopia appears to have made at least a partial shift toward accepting a judgement it considers “unjust and illegal”, with Foreign Minister Seyoum Mesfin, in a letter to the

Security Council on 31 October 2005, not only repeating his government’s earlier acceptance of the decision “in principle”, but adding specifically that this “does not mean going back to the drawing board, and it does not imply that we are introducing a precondition”. In a subsequent letter on 9 December, he emphasised Ethiopia’s eagerness to engage Eritrea in a dialogue looking for a “win-win outcome which is consistent with sustainable peace”.

Promising as this may appear, Badme still remains under Ethiopian control, and Ethiopia has not been prepared to clearly separate the issue of dialogue from that of demarcation: Mesfin’s 31 October letter says that it committed to dialogue not only “to achieve normalisation and to address all issues that have been at the root of the crisis”, but also “for the implementation of demarcation”. Eritrea’s position is that Ethiopia has violated the peace accords through refusal over nearly three years to implement the border ruling and its continuing occupation of sovereign Eritrean territory. Having conceded defeat in a similar territorial dispute with Yemen in 1999, it has little patience with what it perceives as Ethiopia’s delaying tactics and demands full demarcation of the border before any dialogue.

Eritrea’s frustration found an immediate target in the United Nations Mission in Eritrea and Ethiopia (UNMEE), which monitors the long strip of demilitarised territory along the border – almost all of it inside Eritrea – known as the Temporary Security Zone (TSZ). Asmara increasingly resents the continuing existence of the TSZ as a derogation of its sovereignty, and in October 2005, it banned UNMEE helicopter flights, reducing the blue helmets’ capacity to monitor the TSZ by more than half and prompting major troop contributing countries to contemplate withdrawing their forces entirely. In early December, following a Security Council demand that it lift the flight ban, it upped the ante by demanding that UNMEE staff from eighteen Western countries leave. In the meantime, small units from both sides have infiltrated the border area, greatly increasing the risks of a clash.

It is highly unlikely that progress can be made on any single issue in isolation from the others. Eritrea rejects

dialogue unless it sees concrete progress on demarcation. Demarcation is practically impossible in the absence of Ethiopian consent, which means a degree of flexibility is needed from Asmara on dialogue. De-escalation of political and military tensions is essential for an environment in which both demarcation and dialogue can proceed, which requires both countries to comply with Security Council Resolution 1640 (23 November 2005): Ethiopia by removing from the border seven divisions it deployed there in December 2004 (it seems to be in the process of doing this) and Eritrea lifting its restrictions on UNMEE. If these things happen, the UN will have an opportunity to review the structure of the peacekeeping mission and, as the peace process moves into its implementation phase, resume the reduction of force levels it actually began more than a year ago.

Reengagement by the Algiers Group is required urgently to calm the immediate crisis and move the peace process into its final, implementation phase. The next decision point will be early in January 2006, when the Security Council will again address the situation. Before then, the Algiers Group should consult together, *commit* to reengage individually and collectively, and make clear publicly both what it is prepared to do and what is expected of the parties. Defusing the present crisis and addressing the root causes of the problem have to proceed in tandem if peace in the Horn is to be preserved.

RECOMMENDATIONS

To the Algiers Group (AU, EU, UN and U.S.):

1. Consult, reengage and recommit to the peace process in a high-profile way before the UN Security Council meets early in January 2006 by:
 - (a) issuing a collective statement calling for the peace process to enter its final “implementation phase”, for Ethiopia to drop any preconditions to demarcation and for both parties to comply with Resolution 1640; and expressing readiness not only to facilitate implementation through intensive diplomacy but to support punitive measures, as necessary, against a party that frustrates the process; and
 - (b) agreeing to a mechanism – preferably including a senior U.S. special envoy – to coordinate its efforts and to obtain implementation of the Algiers accords on the basis of a “3-Ds” formula of concurrent de-escalation, demarcation and dialogue.

To Achieve De-Escalation

2. In accordance with Security Council Resolution 1640, Ethiopia should pull back to its old positions the seven divisions it moved up to the border in December 2004, and Eritrea should lift all restrictions on UNMEE operations.
3. The Security Council at its meeting early in January 2006 should:
 - (a) advise Ethiopia and Eritrea that if they have not complied with their obligations under UNSCR 1640 within 30 days, it will apply appropriate sanctions to the non-complying party or parties, to include at least restrictions on the travel of senior officials (for all purposes except implementation of the peace accords), and a mandatory arms embargo;
 - (b) state that it will be prepared to impose appropriate mandatory sanctions against either party in case of non-compliance with the Algiers agreements or obstruction of the peace process, and request all UN member states to refrain from destabilising the situation further through arms exports to either country; and
 - (c) instruct UNMEE, on the basis of Eritrea indicating readiness to lift all restrictions on its operations, to prepare plans for an early substantial reduction in size and conversion to a lighter, more mobile observation force, such plans to be reviewed by the Council when it considers UNMEE’s mandate in March 2006.

To Achieve Demarcation:

4. The Algiers Group should act to:
 - (a) secure Ethiopia’s unambiguous acceptance of the Boundary Commission ruling and agreement to proceed with demarcation; and
 - (b) consult with the Boundary Commission on practical steps required in order for demarcation to proceed (including security, logistics, transportation, funding), with a view to ensuring that these elements are put in place with minimum delay.
5. The Boundary Commission should:
 - (a) conduct separate liaison meetings with both sides with a view to reviving the demarcation phase;

- (b) invite both parties to a joint meeting on modalities of demarcation; and
 - (c) proceed with field assessment of pillar sites envisioned in the April 2002 decision and mark the final positions of the pillar sites on the 1:25,000 map drawn up for that purpose.
6. Ethiopia should drop any preconditions to demarcation, invite the Boundary Commission to proceed with demarcation of the border, resume payment of dues to the Boundary Commission and assign liaison officers for the purposes of demarcation.
8. Eritrea should accept and participate in such a dialogue under a mechanism developed by the Algiers Group, while reserving the right to suspend its participation in the event that demarcation is suspended.
- relating to normalisation of relations except the border, including:
- (a) cross-border trade and access to the port of Assab;
 - (b) trade relations; and
 - (c) cessation of support for opposition and rebel groups.

To Achieve a Bilateral Dialogue Between Ethiopia and Eritrea:

Nairobi/Brussels, 22 December 2005

7. The Algiers Group should act to secure Eritrea's acceptance of a dialogue with Ethiopia, concurrently with demarcation, on all issues

ETHIOPIA AND ERITREA: PREVENTING WAR

I. INTRODUCTION: BACK TO THE BRINK

Ethiopia and Eritrea are again inching dangerously close to war along their common border.¹ Some 200,000 troops are arrayed along the frontier, which is the most militarised on the continent. By most estimates, upwards of 70,000 soldiers died in the 1998-2000 war; a second round would almost certainly be even more destructive as both sides have been building up in the interim and would aim for total victory. The prospects for a quick and decisive victory by either are not promising: there is little doubt that a second round of conflict would not only be disastrous for both countries but destabilising for the region as a whole.

Between June 2000 and November 2004 the situation remained militarily stable. This was due in part to the interposition of nearly 4,000 UN peacekeepers (UNMEE)² between the two sides, but even more importantly to the restraint and discipline of the opposing armies. As Ambassador Legwaila Joseph Legwaila, Special Representative of the UN Secretary General (SRSG), told Crisis Group earlier in 2005, “Ethiopia and Eritrea have been very faithful to their ceasefire”.³ But the situation has gradually and steadily deteriorated since December 2004 when Ethiopia deployed an additional seven divisions to the western sector of the border. Eritrea responded with quiet military preparations of its own. In March 2005, the Boundary Commission announced the suspension of its work, citing Ethiopian non-cooperation on demarcation, and all progress towards resolution of the conflict ceased.

In October 2005, Eritrea banned UNMEE helicopter flights, obliging the force to consolidate its observation posts and reducing its capacity to monitor the Temporary Security Zone (TSZ) by close to 60 per cent. The ban also resulted in suspension of UNMEE mine clearance activities since rapid medical evacuation would not be

available. When the UN Security Council called on Eritrea to lift the restrictions (Resolution 1640, 23 November 2005), Asmara upped the ante by expelling 87 peacekeepers from eighteen countries.⁴

Neither country is anxious for war. Eritrea’s recent provocations have been aimed at the UN, not Ethiopia, which has helped to cool the political temperature by agreeing to a Security Council demand that it move its forces back from the border to their pre-December 2004 positions.⁵ Nevertheless, with UNMEE currently able to observe less than half the border area, and small military units from both sides now routinely infiltrating the TSZ, the risks of a miscalculation have increased dramatically. To dismiss the tensions as mere posturing is to underestimate the seriousness of the situation; as a U.S. diplomat in the region told Crisis Group, “people ask: ‘Is it sabre rattling or are they preparing for war?’ Well, it is sabre-rattling, and they are preparing for war”.⁶

Resolution 1640 was a necessary affirmation of Charter principles and international law but it shifted international pressure away from the root causes of the dispute to what is essentially an ancillary issue. The challenge for the international community is to respond to those root causes before sabre-rattling gives way to overt aggression. That requires remaining focused on the core issues – demarcation of the border and normalisation of relations – and not being distracted by wrangles over UNMEE.

¹ For a detailed history of the conflict and peace process, see Crisis Group Africa Report N°68, *Ethiopia and Eritrea: War or Peace?*, 24 September 2003.

² United Nations Mission in Ethiopia and Eritrea.

³ Crisis Group interview, Ambassador Legwaila J. Legwaila, April 2005

⁴ See Section II D 2 below.

⁵ The redeployment is underway and is expected to be completed by 23 December. Crisis Group source, 20 December 2005.

⁶ Crisis Group interview, November 2005.

II. FROM COLD PEACE TO COLD WAR

The 1998-2000 war has frequently been described by pundits as being as pointless as “two bald men fighting over a comb”, but for the belligerents the issues are deadly serious. Ironically, it is the peace process itself that has produced a stalemate from which renewed fighting is now feared.

The disputed border was the proximate cause of the war. Arguably, however, the root causes went deeper, including to the legacy of friction between the two former allies from their struggle against the regime (1977-1991) of Ethiopian dictator Mengistu Haile Mariam and the overdependence on relations between leaders and parties rather than institutions in managing bilateral relations. Furthermore, as Crisis Group has described:

Many differences arose between the neighbours over migration, labour, and trade. Particularly controversial was Eritrea's introduction of its own currency in November 1997, despite Ethiopia's strong protest. Tension also developed over the use of the port of Assab, which Ethiopia had ceded to Eritrea at independence. Its loss cost a suddenly landlocked Ethiopia significant revenues, and resentment smouldered.⁷

On both sides, however, the dusty border village of Badme, where the war began, has now acquired a symbolic importance entirely out of proportion to its size and population.

The delimitation of the border by an independent Ethiopia-Eritrea Boundary Commission (hereafter “Boundary Commission”) was expected to provide an immediate, if partial, resolution of the dispute and allow for gradual normalisation of relations. Instead, its ruling of 13 April 2002, which failed to indicate either in its text or accompanying maps the location of Badme, led initially to confusion as both sides claimed victory; one year later, when the Boundary Commission clarified its decision by affirming that Badme belonged to Eritrea, the peace process degenerated into deadlock.

Notwithstanding the Boundary Commission's ruling, Ethiopia has declined to allow demarcation of the border and to cede Badme to Eritrean jurisdiction. Eritrea refuses to discuss any other issue with Ethiopia until this happens. “We signed on to a Temporary Security Zone in Algiers five years ago on the understanding there would be an expedited demarcation of the border”, a senior

Eritrean official told Crisis Group. “I don't know if you can talk about ‘temporary’ five years after the event”.⁸ As patience frays and posturing persists on both sides, the risk of escalation grows greater with each passing day.

A. THE BORDER DISPUTE

When Eritrea gained independence from Ethiopia in 1993, the border was undemarcated, but it had been defined in successive colonial treaties between Ethiopia and Italy, the colonial power in Eritrea. Ethiopia's unilateral annexation of Eritrea in 1962 made that border an internal administrative boundary, which – at least in practice – slightly shifted over time, leading to some local frictions in the mid-1990s. In view of the friendly relations between the two countries, neither considered this a priority, and contacts were pursued at various levels to resolve the issue. Between 1993 and 1998, relations were shaped predominantly by trade and citizenship issues and regional security policy. The escalation of a minor border dispute into full-scale war took both countries by surprise.

Within weeks of the outbreak of war, the U.S. and Rwanda jointly advanced a peace plan whose central recommendations included that “both parties should agree to the swift and binding delimitation and demarcation of the Eritrea-Ethiopian border.”⁹ In so doing, the plan placed the boundary question at the centre of the conflict and the peace process.

Although the U.S.-Rwanda proposals failed to arrest the conflict, they helped to shape subsequent efforts, starting with the “Framework Agreement” put forward by the Organisation of African Unity (OAU) on 7 November 1998.¹⁰ Ethiopia initially accepted the OAU framework, as well as the accompanying “Modalities of Implementation”, but Eritrea had grave reservations and refused to accept either. Heavy fighting resumed in February 1999, in which Ethiopia retook Badme – a victory that was greeted with spontaneous celebrations in Addis Ababa.

⁸ Crisis Group interview, December 2005.

⁹ James P. Rubin, “U.S. Press Statement on the U.S.-Rwanda Peace Plan”, U.S. Department of State, Office of the Spokesman, 3 June 1998. In this context, delimitation refers to the establishment of the boundary on paper, through reference to geographical co-ordinates; demarcation refers to the physical indication of that boundary on the ground.

¹⁰ The African Union (AU) is the successor to the Organisation of African Unity, and witnesses the Algiers Agreement through its representative, Salim Ahmed Salim.

⁷ Crisis Group Report, *Ethiopia and Eritrea*, op. cit., p. 3.

As fighting again diminished, Eritrea indicated its acceptance of the Framework Agreement. However, Ethiopia balked at a third element of the OAU proposal – the Technical Arrangements – and as the peace process stalled, became increasingly frustrated with the international community's failure to convince Eritrea to return areas occupied in 1998 that it considered Ethiopian. In May 2000 Ethiopia launched a major offensive on multiple fronts and after bitter fighting penetrated deep into Eritrean territory in several areas, including some that it had never claimed. Although it quickly withdrew from Barentu and Tessene in the west, it continued to occupy Om Hager on the Eritrean side of the Mereb River, San'afe in the centre and areas east of Bure on the road to the port of Assab.

B. THE CESSATION OF HOSTILITIES AGREEMENT

The Ethiopian offensive spurred renewed diplomatic efforts to resolve the conflict, and in June 2000 the belligerents signed a Cessation of Hostilities Agreement in Algiers. Fighting died down almost immediately, and even though there were no international observers along the border, both sides respected the ceasefire.

The central pillar of the ceasefire agreement was establishment of the 25-kilometre deep and demilitarised TSZ, to be monitored by a UN peacekeeping force. The TSZ lies within Eritrea, since its southern boundary was officially designated as the extent of Ethiopian administration prior to the outbreak of hostilities.¹¹ By September 2000 the first military observers were in position, and by November UNMEE had established two headquarters: one in Asmara, the other in Addis Ababa.

UNMEE's mandate was outlined in Security Council Resolution 1320 (September 2000) and included monitoring the redeployment of Ethiopian forces beyond the TSG's southern boundary and of Eritrean forces to positions 25 kilometres further north, the TSG's northern boundary. UNMEE was also responsible for chairing a Military Coordination Commission, with representatives from both sides, and coordinating mine clearance in the TSZ. The agreement specified that violations of the ceasefire could trigger sanctions against the offending party.

UNMEE eventually comprised over 4,000 military personnel divided into three contingents: Jordanian in the

western sector, Indian in the central sector and Kenyan in the eastern sector. In addition, there were just over 200 military observers, a demining contingent, military support personnel and several hundred international and local civilian personnel.

Although the mission went relatively well, it was costly to maintain, and as time passed there was increasing pressure on the UN to downsize. In his March 2004 report to the Security Council, the Secretary-General acknowledged that UNMEE was never meant to support the status quo but said that the benchmarks for any reduction of the peacekeeping operation "should be based on an easing rather than a heightening of tension on the ground and must be driven by change for the better in mutual trust and confidence".¹² In spite of his reservations, Security Council Resolution 1531 (March 2004) requested UNMEE to review how the force structure might be adjusted and streamlined. Consequently, UNMEE cut civilian personnel, replaced the military demining contingent with a more modest commercial arrangement and made fairly major adjustments to the contingents, most significantly withdrawing in January 2005 the 556-member Kenyan contingent and leaving the Jordanians and Indians to cover for it in the eastern sector.

These adjustments stretched UNMEE, since it lacked sufficient mobility assets (i.e. helicopters) to compensate fully for the loss of ground forces. However, in spite of bitter complaints of incursions and incidents by both sides, Ethiopia and Eritrea continued to respect the ceasefire and – at least until November 2005 – the TSZ's integrity.

C. THE FRAMEWORK AGREEMENT

In December 2000, following the ceasefire and the initial UNMEE deployment, Prime Minister Meles Zenawi of Ethiopia and President Issaias Afewerki of Eritrea met for a second time in Algiers to sign a comprehensive Peace Agreement. Building on the previous U.S.-Rwandan proposals and the OAU Framework Agreement, the Algiers accords set out a mechanism to delimit and demarcate the border, provided for a claims commission to address war reparations and compensation claims and a commission to determine the root cause of the conflict. The agreement was witnessed by the Algerian President, the UN Secretary-General and representatives of the OAU, the European Union (EU) and the U.S.

¹¹ While the TSZ is entirely in Eritrea, UNMEE is also allowed access to the adjacent areas – strips of territory fifteen kilometres deep on either side of the TSZ.

¹² UN Security Council, "Progress report of the Secretary-General on Ethiopia and Eritrea" (S/2004/180), 5 March 2004, p. 9.

1. The Boundary Commission

Under Article 4.2 of the Algiers Peace Agreement, a neutral, five-member Boundary Commission was established:

with a mandate to delimit and demarcate the colonial treaty boundary based on pertinent colonial treaties (1900, 1902 and 1908) and applicable international law.¹³ The Commission shall not have the power to make decision *ex aequo et bono*.¹⁴

Remaining faithful to the original U.S.-Rwanda proposal, Article 4.15 further stated:

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

Over the next two years the Commission was established and heard arguments from both sides. Its decision, issued in April 2002, clearly awarded to Ethiopia the town of Zala Ambassa and much of the Irob area, but in the western sector it indicated only the coordinates of the boundary, without specifying the disposition of Badme. An OAU official in The Hague (where the Boundary Commission was based), however, reported to his headquarters that Ethiopia retained Badme. The communication was apparently leaked to the Ethiopian government, since Foreign Minister Seyoum Mesfin immediately held a press conference at which he affirmed that “Badme and its surrounding belong to Ethiopia”.¹⁵

It soon became apparent that this interpretation was mistaken and that the Delimitation Decision had found

Badme to be within Eritrea. This appeared at least technically to vindicate Asmara’s claims that it had gone to war in defence of its territory and Ethiopia had been the aggressor. Since tens of thousands of Ethiopians died fighting for what they believed to be Ethiopian soil, this has been a bitter pill for the Ethiopian government to swallow. The fact that Badme has been administered as part of Tigray – the home region of the Tigrean People’s Liberation Front (TPLF), the dominant element in the ruling government coalition¹⁶ – is a further complication.

Ethiopia attempted both in discussions and writing to challenge the Delimitation Decision on various grounds. In January 2003 it submitted a comment to the Boundary Commission requesting a review, implying that its earlier acceptance had been conditional upon adjustments during the demarcation process:

Ethiopia has understood that this line would be subject to refinement during the demarcation process when the effective administration of the Parties could be determined in the field. It was on this basis that the Government accepted the April Decision and it is on this basis only that the Government continues to do so.¹⁷

The “refinement” referred to pertains to the degree of precision in the coordinates of the boundary. According to the Boundary Commission, its Delimitation Decision is accurate only to approximately 0.18 kilometres, and would, therefore, be “recalculated and made more precise during the demarcation”. At most, this would appear to permit adjustment of the line by 180 metres in any given direction and could not reasonably be interpreted as grounds for significant adjustments to the boundary.¹⁸

The Ethiopian submission of January 2003 also requested that the boundary be altered to take account of human and physical geography.¹⁹ In substantially rejecting this, the Boundary Commission stated that the Algiers Agreement had denied it the power to adjust the boundary in any significant way on the basis of such considerations:

In particular, the December 2000 Agreement expressly precluded the Commission from deciding matters *ex aequo et bono*: it did not confer on the Commission, as it could have done and as has

¹³ The Commission is a distinguished one composed of two members nominated by Ethiopia (Prince Bola Adesumbo Ajibola, a Nigerian and former judge on the International Court of Justice, and Sir Arthur Watts, former legal adviser of the UK Foreign and Commonwealth Office); two members nominated by Eritrea (W. Michael Reisman, a U.S. citizen and professor of international law at Yale University, and Stephen M. Schwebel, a U.S. citizen and former president of the International Court of Justice); and a president selected by the other four commissioners (Sir Elihu Lauterpacht, director of the Research Centre for International Law at Cambridge University and former legal adviser of the Australian Department of Foreign Affairs).

¹⁴ A decision “*ex aequo et bono*” is one guided by more subjective principles of what is fair and just, rather than by interpretation of treaty or other international law.

¹⁵ This account is drawn from Martin Plaut, “The Conflict and Its Aftermath” in Dominique Jacquin-Berdal and Martin Plaut (eds.) *Unfinished Business: Ethiopia and Eritrea at War* (Trenton/Asmara, 2004), pp. 113-114.

¹⁶ The TPLF is the dominant partner in the ruling Ethiopian People’s Revolutionary Democratic Front (EPRDF).

¹⁷ Cited in United Nations Security Council, “Progress report of the Secretary-General on Ethiopia and Eritrea” (S/2003/257), 6 March 2003, Annex I, p. 11.

¹⁸ Ethiopia-Eritrea Boundary Commission, “Observations”, 21 March 2003, published as an addendum to the “Progress Report of the Secretary-General”, op. cit.

¹⁹ “Progress report of the Secretary-General”, March 2003, op. cit., pp. 10-11.

been done in the demarcation arrangements for many other boundaries, the power to vary the boundary in the process of demarcation for the purpose of meeting local human needs. Absent such authority, the hands of the Commission are in large measure tied.²⁰

Moreover, the Boundary Commission observed:

[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 [and that] any ensuing problems were for resolution by the UN rather than by the Commission....[The Parties] knew in advance, and agreed, that the boundary as delimited by the Commission's Delimitation Decision would be final...i.e., not subject to amendment....²¹

The Boundary Commission was precise in suggesting the very limited circumstances and manner in which the demarcation process could alter the boundary:

In the Commission's view a demarcator must demarcate the boundary as it has been laid down in the delimitation instrument, but with a limited margin of appreciation enabling it to take account of any flexibility in the terms of the delimitation itself or of the scale and accuracy of maps used in the delimitation process, and to avoid establishing a boundary which is manifestly impracticable.²²

The Boundary Commission thus went some way toward addressing Ethiopian concerns about "human geography" (i.e. that the border should not divide homesteads or separate communities from vital water sources or roads), but it also clearly stated that, even through application of this principle, "the scope for any clarification or deviation from the boundary...is very limited".²³ In other words, although the principle could be applied so as to reflect "human geography" along the border, it could not be exploited to reverse the decision that Badme was within Eritrea.

Having failed to persuade the Boundary Commission that it could and should accommodate Ethiopia's concerns, Prime Minister Meles wrote to the Security Council on 19

September 2003 to say of the award of Badme to Eritrea that "it is unimaginable for the Ethiopian people to accept such a blatant miscarriage of justice".²⁴ Instead, he proposed, the Security Council should 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" – in effect a demand to return large parts of the boundary decision to the drawing board.²⁵

Ethiopia's rejection of parts of the Delimitation Decision cast into question the "final and binding" nature of the arbitral process. "Both parties accepted in advance the decision of the [Boundary Commission]", SRS Legwaila told Crisis Group. "That was the height of wisdom, the height of statesmanship. It was to be a one-stop process".²⁶ But there has since been no progress on demarcation, no resumption of diplomatic relations, and no dialogue on bilateral issues. Instead, Addis Ababa has continued to argue that the Boundary Commission decision was flawed, illegal and unjust, and has insisted that it be adjusted in accordance with "local reality".²⁷ It gave substance to the protest by discontinuing payment of its dues to the Boundary Commission and not appointing liaison officers to participate in demarcation.

In an attempt to resolve the impasse, UN Secretary General Kofi Annan in December 2003 appointed former Canadian foreign minister Lloyd Axworthy as his Special Envoy.²⁸ Ethiopia welcomed the appointment but Eritrea refused to receive him on the grounds that the appointment undermined the Boundary Commission's decision and clouded what it considered a clear issue: Ethiopia's failure to implement demarcation. In a February 2004 letter to the Security Council in, President Issaias wrote:

...the Commission long ago issued detailed demarcation directions and specific time frames for implementation. The whole process should have been completed successfully in November 2003. Accordingly, there are no new issues that warrant a new round of discussions or which require a special envoy.... The problem lies in the violation of the Algiers Agreements by Ethiopia, its rejection

²⁰ Ibid, p.11.

²¹ Ethiopia-Eritrea Boundary Commission, "Observations", op. cit.

²² Ibid. Under the terms of the demarcation procedures, such very minor adjustments as might be made by the demarcator require the consent of both parties. Of course, Ethiopia and Eritrea are entitled as sovereign states to make more substantial adjustments of their border through fair negotiation and mutual agreement at any time, though this is very unlikely in the present environment.

²³ Ibid.

²⁴ Letter from the Ethiopian Prime Minister, Meles Zinawi, to the President of the UN Security Council, 19 September 2003.

²⁵ Ibid.

²⁶ Crisis Group interview, Ambassador Legwaila J. Legwaila, April 2005.

²⁷ "Report on the New Ethiopia-Eritrea peace initiative submitted to the House of Peoples' Representatives by H.E. PM Meles Zenawi and Decision on the Five-Point Peace Proposal for Resolving the Dispute Between Ethiopia and Eritrea", Addis Ababa, 27 November 2004.

²⁸ Mr. Axworthy was nominated for the Nobel Peace Prize for his prominent role as foreign minister in obtaining the global treaty to ban land mines.

of the decision of the Boundary Commission and its wilful obstruction of the implementation of the decision. In the circumstances, we expect your good offices to be directed towards Ethiopia with the aim of ensuring the respect of the rule of law and securing Ethiopia's compliance with the provisions of the Algiers Agreements and the decision of the Boundary Commission.²⁹

He went on to argue that any departure from this position risked triggering "a public relations controversy concerning whether 'we accept or reject' your special envoy" and entangle the process "in a web of intractable complications".³⁰ Axworthy completed his tenure as Special Envoy in August 2005, never having met the Eritrean leadership.

2. The Ethiopian five-point peace proposal

On 25 November 2004, the Ethiopian prime minister tabled an initiative of his own. While denouncing the Boundary Commission decision as "manifestly unjust and illegal" and arguing that Ethiopia should not be considered "to be violating the decision of a court and not...to be defying international law", he put forward a new position comprising the following five points:

- ❑ resolution of the dispute between Ethiopia and Eritrea only through peaceful means;
- ❑ resolution of the root causes of the conflict through dialogue with the view to normalising relations;
- ❑ acceptance by Ethiopia, in principle, of the Boundary Commission decision;
- ❑ agreement by Ethiopia to pay its dues to the Boundary Commission and to appoint field liaison officers; and
- ❑ immediate start of dialogue with the 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.³¹

The "five-point peace proposal", as it became known, remained entirely vague on the substance of each of these points, however, and its terminology engendered additional confusion on a number of them. Ethiopia's acceptance "in principle" of the Boundary Commission ruling

appeared to envisage significant adjustments in the course of demarcation, since – as the proposal put it – "implementation of the decision of the Boundary Commission, as is, might lead to a serious escalation of the tension between the two countries and thereby undermine the peace".³² Likewise, the five-point proposal appeared to make negotiations over the boundary a precondition for demarcation:

In the course of the dialogue it is critical that the negotiations take into account and the resulting agreement be based on two key considerations: the acceptance by Ethiopia, in principle, of the decision of the Commission, on one hand, and *adherence to the principle of give and take in the course of implementing the decision*, on the other. [emphasis added]³³

Notwithstanding these many qualifications, Ethiopian opposition parties were quick to denounce the proposal as too generous. The handling of the entire border conflict, including the "infamous" Boundary Commission decision, was high on the opposition's list of government failures and thought to make the Ethiopian People's Revolutionary Democratic Front (EPRDF) particularly vulnerable in the lead-up to the May 2005 parliamentary elections. The vice chairman of the Coalition for Unity and Democracy (CUD), for instance, said that the border ruling violated the country's sovereignty, and lasting peace could not be achieved by giving up Badme, Irob and areas around Bure.

The five-point proposal received a warmer reception abroad. Many of Ethiopia's partners were pleased that, after a year-long hiatus, Addis Ababa appeared to be renewing its commitment to the peace process and was prepared to resume cooperation with the Boundary Commission. The Security Council issued a statement welcoming any initiative that could lead to peace. The U.S., however, was conspicuously silent – a regional analyst gauged its reaction as "totally unsympathetic".³⁴ According to a U.S. diplomat in the region, Washington essentially shared Eritrea's critique that, notwithstanding acceptance "in principle" of the Boundary Commission decision, the five-point proposal had little substance. "Dialogue" had been at the top of the Ethiopian agenda for almost two years, so "Eritrea and the United States looked at it and said: 'What in here is new?'"³⁵

Eritrea rejected the Ethiopian initiative. It had already dismissed Ethiopia's call for dialogue many times and saw readiness to pay dues and appoint field liaison officers

²⁹ Annex III to the letter dated 13 February 2004 from the Permanent Representative of Eritrea to the United Nations addressed to the President of the Security Council.

³⁰ Ibid.

³¹ From an English translation of the proposal, posted on the website of the embassy of Ethiopia, Washington DC, www.ethiopianembassy.org/pr113004.shtml.

³² Ibid.

³³ Ibid.

³⁴ Crisis Group interview, P. Gilkes, April 2005.

³⁵ Crisis Group interview, April 2005.

as mere window dressing. When President Issaias, in an interview on Eritrean television in early January 2005, called the five-point proposal a public relations exercise designed to gain international support, it appeared to be virtually dead on arrival.

D. UNMAKING THE PEACE

The tabling of the five-point proposal and its subsequent rejection were a turning point in the peace process. Almost immediately, the situation began to deteriorate. On 16 December 2004, Ethiopia moved seven additional divisions, including a considerable component of armour, to within 25 to 45 kilometres of the southern border of the TSZ in the western sector. It described the deployment as “defensive”, while some international observers assessed it as an attempt at “dissuasive deterrence” – to prevent Eritrea from unilaterally “implementing” the Boundary Commission’s ruling by moving its own troops into the TSZ.³⁶

In response to what it termed an “aggressive deployment”, Eritrea stepped up its own military readiness.³⁷ Despite the ceasefire, Eritrea has remained mobilised for war: roughly 320,000 troops are under arms, and all adults between seventeen and 65 are eligible for conscription.³⁸ Defence expenditure is estimated at roughly 9 per cent of GDP.³⁹ International sources in Asmara told Crisis Group that air force training flights have been stepped up, small arms have been distributed to units along the border and new trenches have been dug in key defensive positions. Officials, including Foreign Minister Ali Sa’id Abdella, travelled abroad seeking financial and military assistance, and in April 2005 were reported in the Russian media to have struck a deal with Moscow for new fighter aircraft and anti-tank weapons.⁴⁰

In February 2005, the Boundary Commission invited both parties to London to discuss the stalled demarcation process. Eritrea accepted but Ethiopia said a meeting would be:

premature...would be unproductive and could have an adverse impact on the demarcation process. The first priority for success in the demarcation process is to bring about good faith dialogue

between the Parties. The Eritrean letter indicates no willingness on Eritrea’s part in this regard.⁴¹

Ethiopia’s refusal to attend cast doubt upon the five-point proposal’s call for immediate dialogue “with the view to implementing the Ethiopia-Eritrea Boundary Commission’s decision” and seemed to confirm that Addis Ababa regarded dialogue as a precondition for demarcation – a position Eritrea categorically rejected. “Demarcation of the border must not be held hostage to discussion of other issues”, an Eritrean businessman told Crisis Group, echoing the views of his government.⁴²

In his March 2005 report to the Security Council, the Secretary General noted the deteriorating situation and expressed concern “about a possible rise in tensions along the border”. He appealed “to the Government of Ethiopia to redeploy its troops away from the vicinity of the southern boundary of the Zone, in order to reinstate the situation that pertained before 16 December 2004”.⁴³

Attached to the Secretary-General’s report was the March 2005 submission of the Boundary Commission, which dealt another blow to Ethiopia: its previous submissions had typically been a single page, but its sixteenth report was a lengthy document which showed increasing frustration with the failure to begin demarcation. It said the failure to attend the February 2005 meeting was “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”.⁴⁴

The Boundary Commission report concluded by stating that the deadlock left no alternative but to take immediate steps to close down the field offices, though they could be reactivated “...if Ethiopia abandons its present insistence on preconditions for the implementation of the demarcation”. Finally, the Boundary Commission reminded the parties unambiguously 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”.⁴⁵

³⁶ Crisis Group interviews, Addis Ababa and Asmara, April 2005.

³⁷ Crisis Group interview, Yemane Gebre-Ab, April 2005.

³⁸ Of these, an estimated 200,000 are regulars and 120,000 reserves. From International Institute for Strategic Studies, *The Military Balance 2005-2006* (London, 2005), p.378.

³⁹ Ibid.

⁴⁰ Leonid Gankin and Konstantin Lantratov, “Prepackaged war: Eritrea is getting ready for another war”, *Kommersant Daily*, 15 April 2005.

⁴¹ “Sixteenth Report of the Boundary Commission made to the UN Secretary-General”, Annex I of the Secretary-General’s report to the Security Council, S/2005/142, March 2005.

⁴² Crisis Group interviews, April 2004.

⁴³ United Nations Security Council, “Report of the Secretary-General on Ethiopia and Eritrea” (S/2005/142), 7 March 2005, p.1.

⁴⁴ Ibid, p.3.

⁴⁵ “Sixteenth Report of the Boundary Commission”, op. cit., p. 17.

Axworthy gave a similarly discouraging briefing to the Security Council in March 2005 on his mission. In addition to the “untenable positions of the two parties”, the special envoy cited “a deep disagreement among the international players” and “signals sent by some of [the] international players, which are not consistent with the approach of the Security Council” – apparently a reference to arms deals involving some of the five permanent members of the Council.⁴⁶

1. Eritrea clips UNMEE's wings

Despite these disturbing developments, the situation along the border remained stable for most of 2005. Then, effective 5 October, Eritrea unexpectedly banned all flights by UNMEE helicopters.

Relations between UNMEE and the government had never been without friction. Although the mission has headquarters in both capitals, its military operations are almost exclusively on Eritrean soil. When it accepted this arrangement in the OAU Framework Agreement and Modalities for Implementation, Eritrea had stipulated that demarcation should “be carried out expeditiously in order to bring the dispute to a quick end”.⁴⁷ Five years later, it perceives UNMEE's presence as an imposition on its sovereignty and an unwelcome reminder of Ethiopia's intransigence over the border. Relations have not been helped by the involvement of some UNMEE troops in unsavoury incidents.⁴⁸ Early in 2005, the government requested that UNMEE's Italian *Carabinieri* contingent cease patrols in Asmara, leading to its withdrawal in July.

The helicopter flight ban came without warning or explanation. “They told us it was a non-issue”, a UN military source told Crisis Group, “that we could continue to function with land transport”.⁴⁹ In reality, the ban has a dramatic operational impact. Unable to sustain remote outposts along 1,800 kilometres of border, UNMEE has reduced the number of outposts from 40 to 18, cutting operational effectiveness to between 40 and 50 per cent.⁵⁰ “At this level”, a senior UNMEE military source told

Crisis Group, “I can't say whether [one side or the other] is building up for war. I just don't know”.⁵¹

Although the Eritrean government dismisses UNMEE's reaction as exaggerated, the commanders have genuine concerns for the safety of their soldiers. The potential complication for demining casualties has been mentioned above but because air evacuation was not available, several UNMEE vehicle accident casualties have had to wait hours before reaching an aid station or hospital. If Eritrea intended to give troop-contributing countries a reason to withdraw their forces, it could hardly have done so more effectively.

On the ground, the gaps left by UNMEE's enforced consolidation have quickly been exploited by patrols from both sides. “Small groups are taking... terrain and using it as observation and listening posts”, a diplomatic observer told Crisis Group. Though he added that this is so far “militarily insignificant”,⁵² occasional incidents, such as deployment of an Ethiopian patrol to a strategic peak in the eastern sector vacated by UNMEE, underscore the risk posed by an unmonitored TSZ. As UNMEE Force Commander, Major General Rajender Singh, emphasised to Crisis Group, “if you want to retain peace, the sanctity of the TSZ must be preserved”.⁵³

2. UNSC Resolution 1640

The Security Council's response to the flight ban, Resolution 1640 (23 November 2005), demanded that Eritrean restrictions on UNMEE be reversed and both parties return to their pre-16 December 2004 positions (the latter addressed principally to Ethiopia). The Council also raised the threat of sanctions if there was no compliance within 30 days. Such demands were inevitable and necessary, but the resolution was poorly received in Asmara, further escalating the crisis. From Eritrea's perspective, Resolution 1640 appeared to confirm a Security Council bias in favour of Ethiopia: “Ethiopia refused the [Boundary Commission] decision, calling it illegal and unjust”, a senior Eritrean official told Crisis Group, “but the Council did nothing.... If the Council had pressured Ethiopia to accept, we wouldn't be in this situation today”.⁵⁴

Resolution 1640 demands Ethiopia “accept fully and without further delay the final and binding decision of the Eritrea-Ethiopia Boundary Commission and take immediately concrete steps to enable [demarcation], without preconditions”, but on this key issue it does not

⁴⁶ Dr Lloyd Axworthy, “Briefing of the Security Council on the Peace Process Between Ethiopia and Eritrea”, 11 March 2005.

⁴⁷ Letter dated 14 July 1999 from the President of Eritrea addressed to the President of Algeria, Chairman of the Organisation of African Unity.

⁴⁸ Some peacekeepers have been involved with Eritrean sex workers, and an Irish peacekeeper was repatriated in 2002 for making pornographic films with a local girl in an Asmara hotel.

⁴⁹ Crisis Group interview, November 2005.

⁵⁰ UNMEE, “UNMEE vacates 18 out of the 40 posts in the temporary security zone”, press release, UNMEE/PIO/PR 118, 17 October 2005 and UNMEE media briefing transcript, 10 November 2005.

⁵¹ Crisis Group interview, Asmara, November 2005.

⁵² Crisis Group interview, November 2005.

⁵³ Crisis Group interview, Asmara, November 2005.

⁵⁴ Crisis Group interview, Asmara, November 2005.

threaten sanctions for non-compliance, unlike with respect to the helicopter and deployment issues. The Security Council considers that the enforcement powers it assumed under the Algiers accords relate only to the Cessation of Hostilities element – including establishment of the TSZ and UNMEE but not operation of the Boundary Commission, which is dealt with in the later Framework Agreement. While Crisis Group is not persuaded by Eritrea's argument that the latter was equally covered by the Security Council's undertakings in 2000, the issue is not necessarily controlled by legal interpretation of the agreements reached five years ago. If the Council determines, as circumstances appear to justify, that continued Ethiopian refusal to comply with the Boundary Commission decision and to cooperate in demarcation would be a threat to peace and security, it would be well within its competence to impose sanctions under its Charter authority.

Eritrea responded by raising the stakes again, demanding in early December that UNMEE personnel from eighteen North American and European countries leave the country.⁵⁵ It offered no explanation for either the expulsion or its selective nature. When the Security Council and Secretary-General condemned the measure, a government press release accused the latter of "unwarranted political meddling" and snubbed a high-level Secretariat delegation sent to Asmara in an attempt to resolve the crisis.⁵⁶ The UN reluctantly complied with the order, citing security reasons and describing the staff relocation as temporary.

Eritrea's brinksmanship has restored the bilateral dispute to the international agenda but has failed to place the focus where Asmara wants it most – on the border. Instead, UNMEE's status has overshadowed the root causes of the crisis: the need for both border demarcation and dialogue on normalisation of relations to begin without delay.

3. Some movement by Ethiopia, but not enough

Just weeks after Eritrea banned UNMEE helicopter flights, Ethiopia appeared to make at least a partial shift toward acceptance of a judgement it considers "unjust and illegal". In a letter to the Security Council on 31

October 2005, in which he accused Eritrea of violating the integrity of the TSZ and breach of the June 2000 ceasefire, Foreign Minister Seyoum Mesfin repeated his government's earlier acceptance of the Delimitation Decision "in principle" in the November 2004 five-point peace proposal, and specifically added that this "does not mean going back to the drawing board, and it does not imply that we are introducing a precondition".⁵⁷ Less than two weeks later, on 9 December, he emphasised in a subsequent letter Ethiopia's eagerness to engage Eritrea in a dialogue looking for a "win-win outcome which is consistent with sustainable peace".⁵⁸

Promising as this may appear, Ethiopia's positive gestures do not go far enough. The 9 December letter in certain respects seemed to backtrack. It highlighted the suspect old five-point proposal: "Ethiopia...has no interest in keeping the crisis between the two countries going. That is why we came up with the five-point peace proposal". And it failed to repeat the more positive formulation of Mesfin's 31 October letter. Even that 31 October letter clearly showed that it continues to couple the issue of dialogue to that of demarcation:

Ethiopia is committed to dialogue between our two countries for the implementation of demarcation, to achieve normalisation and to address all issues that have been at the root of the crisis and which will not go away with demarcation of the boundary only. [emphasis added]

At the same time, Ethiopia remains in control of Badme and has failed to comply with the Boundary Commission's instruction that it "remove from Eritrean territory persons of Ethiopian origin who have moved into that territory subsequent to the date of the Delimitation Decision".⁵⁹ The declared intent to comply with UNSCR 1640, while welcome, is of only limited significance: the seven divisions that it appears to be in the process of withdrawing were deployed to the border area only in December 2004, and will leave in place eleven divisions more or less permanently stationed along the southern boundary of the TSZ.⁶⁰

⁵⁵ The order affects UNMEE nationals from eighteen of the 44 countries that contribute to the mission, namely those from North America and Europe, including Russia; according to UNMEE, the mission includes 180 such personnel but only 87 of these were stationed in Eritrea prior to the expulsion order and thus affected by it. UNMEE is authorized a maximum of 4,200 troops, including 220 military observers. Its most recently reported deployed strength (31 October 2005) was 3,080 troops and 205 military observers, 191 international civilians, 244 local civilians and 74 United Nations Volunteers, <http://www.unmeeonline.org>.

⁵⁶ Shabait.com, 12 December 2005. The Delegation was from the Department of Peacekeeping Operations.

⁵⁷ 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 (S/2005/690), 1 November 2005.

⁵⁸ Annex to the letter dated 9 December 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 (S/2005/774), 9 December 2005.

⁵⁹ Ethiopia-Eritrea Boundary Commission, "Observations", op. cit.

⁶⁰ Ethiopian military sources have indicated to Crisis Group that a division should contain up to 11,000 soldiers, but Western

In light of the facts on the ground, Eritrea still has understandable doubts about the sincerity of Addis Ababa's claim that it seeks neither to renegotiate the boundary, nor to impose preconditions to demarcation. If the mutual suspicion between the two countries is to be overcome, demarcation and dialogue must be decoupled, even as they proceed in parallel. In other words, Ethiopia must commit itself unambiguously to implementation of the Delimitation Decision, while Eritrea agrees to a dialogue on all other aspects of the relationship.

4. Internal dynamics: An accident waiting to happen

Despite mutual accusations that the other wants to provoke war, both sides are careful to deny they intend to start one. Assessing the intentions and calculations is complicated by the opaque nature of decision-making within the governments, the torrents of rhetoric emanating from both capitals and the routine use of disinformation as a form of propaganda.

Ethiopian Motivations. Speculation about Ethiopia's attitude toward war hinges on the ruling EPRDF's need to shore up its authority – and to a lesser extent its popularity – following the May 2005 parliamentary elections, which left the country politically fractured and undermined the government's standing at home and abroad.⁶¹ During the campaign, opposition leaders from the Coalition for Unity and Democracy (CUD) had blamed the EPRDF for allowing Eritrea to secede and surrendering control of the port of Assab, echoing the bitter rifts that erupted in 2001 within the TPLF, the governing coalition's dominant partner, and threatened Prime Minister Meles' leadership. Some observers believe that the EPRDF, by reviving hostilities with Eritrea, could redeem its alleged failure to prosecute the last war with sufficient determination and silence critics within both the TPLF and the CUD.⁶²

Those who follow this line suggest Ethiopia might be tempted to wage a short, sharp campaign to achieve regime change in Asmara. However, an Ethiopian official noted to Crisis Group that "there is no government in exile able to step in and take power. It is not in our interest to have another collapsed state on our borders. We have learned the lesson of Somalia".⁶³

The Eritrean government apparently believes that Ethiopia's internal problems could indeed lead it to welcome at least a war-threatening crisis, and it accuses the Security Council of complicity in such a strategy. "The Security Council's talk today about the probability of war and its impact is only meant...to save the TPLF regime from its current crises", President Issaias asserted in a rare interview with local media.⁶⁴

Other analysts take issue with this kind of reasoning. In the words of one Ethiopian commentator interviewed by Crisis Group, a war with Eritrea "would not help to rally support for the government in Addis [where the CUD won all 23 seats]. Maybe from other regions, but not from Addis itself".⁶⁵ On the contrary, some believe that a second round of fighting would spell the end of Meles Zenawi's government: "The army and the TPLF would never forgive Meles for needing to fight the same war twice, and for leading the party to such a setback in the [parliamentary] elections".⁶⁶ Instead, they argue that the border issue is an unwelcome distraction from Ethiopia's internal political and developmental problems, and that the EPRDF's interest lies in playing down tensions with Eritrea. "Meles has bigger problems", a Western diplomat told Crisis Group. "He doesn't care [about the border]".⁶⁷

The Ethiopian prime minister appeared to vindicate this line of reasoning when he told a session of parliament that his government would maintain "proportional force" along the border until lasting peace is secured: "If the Eritrean government believes that it can ensure victory, there is no doubt it will do what it can to wage a war.... The only alternative is to show the Eritrean government they will not win anything if a war is started".⁶⁸ Such pronouncements, however, may amount to little more than posturing. According to a senior Ethiopian official, his government's intelligence assessments indicate that Eritrea does not truly intend to fight and is merely taking a calculated risk.⁶⁹

Eritrean Motivations. Attitudes in Asmara towards the border dispute are no less ambiguous. Eritrea has single-mindedly pursued demarcation and Ethiopian withdrawal at the expense of other foreign and domestic priorities. By some interpretations, a sense of permanent crisis may suit a government which faces formidable domestic problems: since the 1998-2000 war, constitutional rule has been suspended, conscription and national service have drained

military analysts set the figure lower, at between 5,000 to 7,000. Eritrean divisions tend to be smaller, although estimates vary as to how much.

⁶¹ The Ethiopian People's Revolutionary Democratic Front (EPRDF) is the coalition headed by Prime Minister Meles Zenawi, which has governed Ethiopia since 1991.

⁶² One Western diplomat went so far as to speculate to Crisis Group that "Ethiopia could do with a war".

⁶³ Crisis Group interviews, April and November 2005.

⁶⁴ From part III of the interview, carried in *Eritrea Profile*, 30 November 2005.

⁶⁵ Crisis Group interview, Addis Ababa, November 2005.

⁶⁶ Crisis Group interview, Addis Ababa, November 2005.

⁶⁷ Crisis Group interview, Addis Ababa, November 2005.

⁶⁸ "Ethiopia's PM says Eritrea girding for new war", Agence France-Presse, in *Sudan Tribune*, 14 December 2005.

⁶⁹ Crisis Group interview, Addis Ababa, November 2005.

the labour force, and remittances from Eritreans living abroad – once the economy's lifeline – have reportedly dwindled to less than half their war-time levels.⁷⁰ Demands for political reform have been suppressed, and the situation of some prominent critics remains unknown. When the dispute with Ethiopia ends, Eritrea will have no choice but to confront these domestic issues, something that President Issaias's critics say he is keen to avoid. Ethiopia's foreign minister, Seyoum Mesfin, accuses Eritrea of "feigned indignation" and escalating tensions along the border as a tactic for putting pressure on the Security Council.⁷¹

Nevertheless, it seems unlikely that Eritrea can sustain its current levels of mobilisation indefinitely. The leadership is acutely aware of the difficulties in maintaining a "cold war" footing, and may have decided that the cost of indefinite stalemate is intolerable. Such a realisation, of course, could as well lead to decisions to take risks for peace and normalisation of relations with its neighbour as to court war. A scenario of the latter type suggested by a number of diplomats involves a unilateral Eritrean attempt to "implement" the Boundary Commission's decision by retaking Badme and other areas awarded to it but still held by Ethiopia. "What if Issaias moves up to the border and not a step further?", a Western diplomat asked.⁷² A variation involves Eritrea beginning to erect stone markers along the border.

In either scenario Asmara could probably anticipate that significant international pressure would be applied to persuade Addis Ababa to surrender what is legally Eritrean territory, but an Ethiopian response to any such move would seem almost certain. An Eritrean official interviewed by Crisis Group laughed off such speculation: "We have no plans to [retake Badme] any time soon...no plans to demarcate the border either. How can we do that?"⁷³

Other analysts believe that Eritrea may seek to provoke a political crisis in Ethiopia, and to assert itself as a regional power while fomenting instability across its border. But the Eritrean government is dismissive of suggestions that it seeks to challenge Ethiopia's status as a regional power: "We are a poor country; we are not contestants. We don't seek regional hegemony or dominance. If the Ethiopians want to dominate the region, they can do it as long as they respect everyone else's rights".⁷⁴

Risks of Miscalculation. Uncertainties about the motivations and calculations of the two countries are compounded by the lack of clarity about whether either side could actually hope to win a war. The military balance suggests that a "short, sharp" victory is in any event an illusion. Over the long term, Ethiopia's far larger military establishment, population and economy may constitute a decisive military advantage but the Eritrean army is a formidable fighting force and both sides have been stocking up on new weapons. "There's a real arms race going on", a Western diplomat said. "A lot of people are making a lot of money".⁷⁵

Ethiopia's numerical superiority in ground troops is probably sufficient to prevent Eritrea from sustaining an offensive but not to ensure victory against disciplined, well dug-in Eritrean troops. Ethiopia's nearly 2:1 superiority in tanks would be of little help in the Eritrean highlands or the volcanic desert around Assab, and Eritrea has reportedly acquired the Kornet-E anti-tank missile system – an asset it lacked in the previous war.⁷⁶ Likewise, Ethiopia's air force is more than double Eritrea's but military analysts doubt that it is in a higher state of readiness.⁷⁷ Both sides have reportedly acquired new Su-27s together with Eastern European pilots/training teams, while Eritrea has beefed up its air defences with as many as three new fixed sites and man-portable systems. Lastly, Eritrea's terrain and the fact that its soldiers would be fighting on home ground make a rapid Ethiopian advance improbable. "It's not so easy to go all the way to Asmara", an observer told Crisis Group. "You can't get up the escarpment".⁷⁸

"We fought a very defensive war last time", a senior Eritrean official told Crisis Group. "It won't be the same next time. We waited in our trench lines. We were under diplomatic pressure. Next time we will be within our rights".⁷⁹

Nevertheless, the growing tension and the lack of an effective UNMEE presence in the TSZ increase the likelihood that a miscalculation could lead to war. "They are taking a calculated risk here", a U.S. diplomat in the region told Crisis Group, "but it may also be a miscalculated risk".⁸⁰ More pessimistically another Western diplomat said, "both sides are getting to the stage where they need a war but they can't afford to be seen starting one".⁸¹

⁷⁰ Crisis Group interview, Asmara, December 2005.

⁷¹ Annex to the letter dated 31 October 2005 from the Chargé d'affaires a.i. of the Permanent Mission of Ethiopia, op. cit.

⁷² Crisis Group interview, November 2005.

⁷³ Crisis Group interview, Asmara, December 2005.

⁷⁴ Crisis Group interview, Asmara, December 2005.

⁷⁵ Crisis Group interview, November 2005.

⁷⁶ Crisis Group interview, November 2005.

⁷⁷ Crisis Group interviews, November 2005.

⁷⁸ Crisis Group interview, November 2005.

⁷⁹ Crisis Group interview, December 2005.

⁸⁰ Crisis Group interview, November 2005.

⁸¹ Crisis Group interview, November 2005.

III. KICK-STARTING IMPLEMENTATION

If peace is to be preserved, the challenge facing the international community – and especially the Algiers witnesses – is to kick-start implementation of the Algiers accords without further delay.

Eritrea is determined that demarcation should proceed in accordance with the Boundary Commission decision and has international law on its side. Failure to uphold that ruling, however unexpected it might have been and whatever might be thought of its intrinsic merits, risks undermining binding arbitration everywhere. As both Eritrea and the Boundary Commission have repeatedly asserted, as far as this point is concerned, there is nothing to negotiate. The delimitation decision was final and can be varied in the demarcation process only for very minor adjustments such as might be required for reasons of “manifest impracticability”.⁸²

Ethiopia’s request for bilateral dialogue on “normalisation” and to address all issues that have been at the root of the crisis, is both reasonable and responsible as long as it is not a precondition to implementation of the border decision. Ethiopia needs to be much more precise about what it seeks to achieve through such a dialogue, however, in order to lay to rest suspicions that it is simply trying to delay demarcation. As long as demarcation is allowed to proceed, however, Eritrea has no reasonable grounds upon which to object to talks on the normalisation of relations with its neighbour.

The stalemate has become so bitter and intractable that the parties cannot be expected to take the steps necessary to break it on their own. External support is needed. The responsibility for providing this support lies collectively with the Algiers witnesses, several of whom were architects of the peace process. The U.S. bears special responsibility because it framed the original proposal upon which the Algiers accords were based – notably swift delimitation and demarcation of the border.

As tensions escalate, a second war can best be avoided through prompt implementation of the Boundary Commission’s ruling and parallel, though not pre-conditioned, dialogue. It is time for all parties to agree

that the peace process has entered its final implementation phase.

A. THE ALGIERS GROUP

The AU, the EU, the UN and the U.S. all signed the June 2002 Algiers agreement as witnesses to the commitments of the two belligerents, but the signing ceremony was their first and last formal meeting in that capacity. The members of the Algiers Group have never since lent their collective weight to resolution of the dispute. “After they [Ethiopia and Eritrea] accepted the decision, everybody went to bed”, SRS Legwaila told Crisis Group.

Of course, implementation of the Algiers accords is first and foremost the responsibility of the two parties, but even if they do not accept Eritrea’s assertion that they are formal guarantors, the Algiers Group combines legitimacy and leverage that are essential for resolution of a major threat to international peace and security. The Algiers process was concluded under the auspices of the AU; the agreement is registered with the UN, which is also entrusted with the “resolution of problems which may arise due to the transfer of territorial control” linked to implementation of the agreement. EU member states are among the key partners of both administrations, and the U.S. is considered by both countries to be indispensable to the peace process.

The role of the Algiers Group was recognised in the penultimate draft of Security Council Resolution 1640, which urged “the parties to engage in a constructive dialogue under the auspices of the witnesses of the Algiers Agreements for the implementation of both agreements”. While the reference was removed from the final document, restoring the Algiers Group to the indispensable supporting role it played in securing the peace agreement is the best – perhaps only – way to ensure that the agreement is finally implemented.

B. THE WAY FORWARD: DE-ESCALATION, DEMARCATON & DIALOGUE

No initiative will make progress unless it addresses the principle demands of both parties: namely Eritrea’s preoccupation with demarcation and Ethiopia’s demand for dialogue. However, in order for either to proceed it will also be necessary to de-escalate the current tensions.

It is highly unlikely that progress on any of these issues can be made in isolation from the others. Eritrea will not accept dialogue – even with its international partners – and may continue to escalate its confrontation with the UN unless it sees concrete progress on demarcation. Demarcation, however, is practically impossible in the

⁸² See Section II C 1 above, including fn. 22, and Section III B 2 below. Such changes as the demarcation process itself permits are very small and of a technical nature. It is hardly likely in the present environment that Ethiopia and Eritrea would exercise their sovereign right to make a significant change to their border through fair negotiation and mutual agreement.

absence of Ethiopian consent, which means a degree of flexibility is needed from Asmara on dialogue. De-escalation of political and military tensions is essential for an environment in which both demarcation and dialogue can proceed: as the Security Council has demanded in Resolution 1640. This requires Ethiopia to complete removal from the border of the troops it moved up in December 2004 and Eritrea to lift its restrictions on UNMEE. At the same time – assuming that Eritrea resumes cooperation with UNMEE – it provides an opportunity for the UN to review the structure of the peacekeeping mission and, as the peace process moves into its implementation phase, resume the draw-down of force levels it actually began more than a year ago.

1. De-escalation

The first step in achieving de-escalation of the current crisis is implementation of Resolution 1640: the redeployment of Ethiopian forces and lifting of Eritrean restrictions on UNMEE movements.

The expulsion of selected UNMEE staff is not covered by Resolution 1640 since it was imposed as an unhelpful response to that resolution. The personnel concerned have been temporarily withdrawn, so the issue should not be allowed to become an impediment to a comprehensive solution. Nevertheless, like Ethiopia's flouting of a binding arbitral ruling, Eritrea's selective expulsion of UN peacekeepers sets a dangerous international precedent, one which stirs memory of Egypt's demands at Sharm El-Sheikh on the eve of the six-day Arab-Israeli war in 1967. The Security Council should not engage in a tit-for-tat escalation with Asmara but rather make clear that it reserves the right to penalise it in an appropriate way. Whether it does take such action, and what kind, should be influenced by the degree to which Eritrea now cooperates in de-escalating the crisis for which it is partly responsible and takes other steps to achieve peace.

Total withdrawal of UNMEE – an option that some members of the Security Council and troop contributing nations are no doubt already contemplating – would probably re-ignite the war. Ethiopian redeployment would almost certainly be suspended. An orderly UN handover of its positions to Eritrean forces might prevent an immediate clash in the TSZ but would leave the two armies face-to-face and the ceasefire agreement in tatters.

A better option would be for the Security Council to state that if one or another party has failed to comply with the demands of Resolution 1640 within 30 days of its January 2006 meeting, it will impose appropriate sanctions on the guilty party; but if there has been compliance, a reduction in tension and steps to conduct demarcation and begin talks between the parties, it will take advantage of its scheduled March 2006 review of UNMEE's mandate

to restructure the force in accordance with new realities on the ground and the acknowledgement that the Algiers process is entering its final, implementation stage. UNMEE's troop contingents could be incrementally withdrawn, leaving (possibly augmented) military observers in place, with a minimal degree of force protection. Assuming the Eritrean flight ban is lifted, this arrangement would allow UNMEE to continue monitoring the TSZ, while sending a clear signal to both parties that the peace process was no longer frozen and was moving towards closure.

At the same time, UNMEE should act to minimise the risk that small incidents could escalate or be manipulated to worsen an already delicate situation. Meetings of the Military Coordination Committees (MCCs) should continue, and their rhythm should increase during the lead-up to demarcation and through the demarcation phase. As UNMEE Force Commander, Major General Rajender Singh, told Crisis Group, "every meeting of the MCCs lessens the chances of a miscalculation".⁸³

Eritrea could be expected to welcome an UNMEE reduction, but only in the context of progress towards demarcation. Unless demarcation is assured, it might well insist upon total withdrawal of the peacekeeping force, which it has come to perceive as an impediment to implementation of the Boundary Commission decision. Ethiopia, on the other hand, would probably resist any UNMEE reduction unless it could see the prospect of a dialogue on normalisation of relations. It is essential, therefore, that these three elements – de-escalation, demarcation and dialogue – be addressed concurrently and synergistically.

2. Demarcation

Eritrea's demand for immediate demarcation is unassailable on a number of counts. First, the Boundary Commission's ruling may be flawed (an issue about which there is profound disagreement among diplomats, scholars and analysts), but it is nevertheless broadly consistent with the instructions contained in Article 4 of the Comprehensive Peace Agreement, which placed consideration of pertinent colonial treaties ahead of other applicable international law and denied the Commission power to make decisions *ex aequo et bono*. Such flaws as there may be in the resulting decision stem from the terms of reference which the parties accepted; had the parties sought a determination based primarily upon other considerations, such as military facts on the ground or the desires of local communities, those terms of reference should have been differently framed. Instead, as the Boundary Commission pointed out in March 2003, any

⁸³ Crisis Group interview, April 2005.

“anomalies” resulting from the boundary delimitation are “essentially a matter for the Parties to deal with by agreement between themselves, or by agreeing to empower the Commission to vary the boundary, or by turning to the United Nations as contemplated in Article 4.16 of the December 2000 Agreement”.⁸⁴

Eritrea’s position is reinforced by the inviolability of final and binding arbitration as a fundamental tenet of international law. Whether or not one views the Boundary Commission ruling as flawed, allowing Ethiopia to challenge it would set a dangerous precedent. Some observers argue that even by allowing Ethiopia to delay demarcation as long as it has, the international community risks weakening the force of arbitration: “We the people who say that international law matters have connived with Ethiopia to undermine it”, a Western diplomat told Crisis Group. “We need [to be seen upholding] international law all over the world...”⁸⁵

Failure to demarcate the border with stone pillars does not lessen the significance of the fact that the Boundary Commission has delimited it. Legally speaking, this places Ethiopia in the position of occupying sovereign Eritrean territory, notably at Badme. “The issue is no longer the border”, a senior Eritrean official told Crisis Group. “It is the illegal occupation of the border”.⁸⁶

Against this background, the tabling of the five-point proposal in November 2004 appeared little more than a tactic for reopening the Delimiting Decision. However, Foreign Minister Mesfin’s subsequent letter to the Security Council in October 2005 gave some sign of a shift towards acceptance. A senior official reinforced this message when he told Crisis Group that Ethiopia could accept the loss of territory in the context of a broader dialogue that would reduce the symbolic importance of Badme and other areas: “Badme and the Algiers accords should not be used as a stick to beat Ethiopia with”.⁸⁷ If such declarations can be taken at face value, the kind of dialogue Ethiopia now seeks would not be inconsistent with the terms set out by the Boundary Commission in its “Observations of March 2003”, which permit only such small variations to its decision that would prevent establishment of “a boundary which is manifestly impracticable”.⁸⁸

On the other hand, Ethiopia’s failure to distinguish with absolute clarity between its request for dialogue on broader issues and its obligation to implement the

border ruling casts doubts upon its willingness to proceed with demarcation. The gap between acceptance of the Delimitation Decision “in principle” and in practice remains a significant obstacle to peace. Despite Eritrea’s understandable scepticism, the Boundary Commission should put Ethiopia’s declared acceptance of the border decision and its professed willingness to proceed without preconditions to the test by once again inviting the parties to meet on demarcation.

3. Dialogue

Ethiopia has consistently argued that implementation of the Boundary Commission’s decision “should be done in a manner consistent with the promotion of sustainable peace and brotherly ties between the two peoples”.⁸⁹ Despite its recent attempts to assure the international community that this does not involve any kind of precondition on demarcation, it has as yet failed to specify publicly the nature of the dialogue it seeks with Eritrea, limiting itself to vague calls for normalisation of relations. Eritrean officials have repeatedly told Crisis Group that “full and immediate” normalisation of relations will take place as soon as demarcation of the border is complete.⁹⁰ From Addis Ababa’s perspective, this appears to be precisely the kind of “stick” that it refuses to be beaten with.

Nevertheless, Addis Ababa has made clear privately the kinds of issue it would like to see addressed through a dialogue on normalisation, including:

- ❑ **Cross-border trade and access to the port of Assab.** Since the war, the border has been officially closed, although smuggling continues – mainly of Ethiopian *tef*⁹¹ and coffee into Eritrea. Assab had been Ethiopia’s primary port until the war, and despite new reliance on Djibouti and Berbera, it remains a preferred option. Many Eritreans believe Ethiopia wants to annex Assab and so intends to provoke a war. More realistically, Assab’s prosperity is inextricably linked to access to the Ethiopian market. Reviving this ancient trading route should be no less a priority for Eritrea than for Ethiopia. As Crisis Group has previously argued, international guarantees such as allowing the UN to “blue flag” any Ethiopian goods in order to ensure safe passage and delivery would help to build confidence and prevent new tensions from interrupting the trade.⁹²

⁸⁴ Ethiopia-Eritrea Boundary Commission, “Observations”, op. cit.

⁸⁵ Crisis Group interview, November 2005.

⁸⁶ Crisis Group interview, Asmara, December 2005.

⁸⁷ Crisis Group interview, Addis Ababa, November 2005.

⁸⁸ “Progress report of the Secretary-General”, op. cit., p.13.

⁸⁹ Report on the New Ethiopia-Eritrea peace initiative”, op. cit.

⁹⁰ Crisis Group interviews, Asmara, April and November 2005.

⁹¹ Tef is an import food grain in both Ethiopia and Eritrea.

⁹² Crisis Group Report, *Ethiopia and Eritrea*, op. cit., p.14.

- ❑ **Trade Relations.** Until late 1997, both countries had the same currency – the Ethiopian birr – which meant that monetary policy was determined unilaterally by Addis Ababa; the introduction of the Eritrean nakfa was received unfavourably in Addis Ababa and led to strained economic relations between the trading partners. The nakfa is here to stay but trade relations could be eased by working towards understanding on a range of issues including exchange rates, letters of credit and customs regulations.
- ❑ **Cessation of support for opposition and rebel groups.** Both sides have taken to supporting the other's opposition and rebel groups. Since 1998, Eritrea has provided assistance to various Ethiopian rebel groups, including the Oromo Liberation Front (OLF) and the Ogaden National Liberation Front (ONLF). Addis Ababa also accuses Asmara of having a hand in the turmoil surrounding the May 2005 parliamentary elections – a charge Eritrea denies. "Many in the leadership are very upset about Asmara's role", a senior Ethiopian official told Crisis Group.⁹³ For its part, Ethiopia hosts the Alliance of Eritrean National Forces (AENF). Although the AENF is less effective than either the ONLF or OLF, reciprocal cessation of support for such groups would go far to mitigate tensions.

Eritrea has insisted that any dialogue with Ethiopia could only begin once demarcation is complete. But opening talks on such mutually beneficial issues would be a small price to pay for a comprehensive and durable peace: that dialogue should proceed in parallel with demarcation, under the auspices of a government or body to be determined by the Algiers Group.

IV. CONCLUSION

Kick-starting the implementation phase is necessary to reduce the very real risk of a new war but it will require engagement from the Algiers Group that is both robust and very carefully calibrated, so that progress on all three components – de-escalation, demarcation and dialogue – proceeds in a concurrent and mutually reinforcing way. If any single element is pushed too far to the fore, the entire process is likely to collapse.

The first step should be for the Algiers Group to renew its collective commitment to the peace process in a high profile way by consulting together immediately and issuing a statement before the Security Council next convenes on the subject, early in January 2006.⁹⁴ This should call for the peace process to enter its final, "implementation phase", for Ethiopia to drop any preconditions to demarcation and for both parties to comply with Resolution 1640, as well as indicate the group's readiness to engage actively, including by designating a point person, country or institution to conduct shuttle diplomacy.

If the Algiers Group is to act proactively in this fashion, its members will need to agree on a mechanism with which to facilitate implementation of the Algiers accords through diplomatic engagement with both parties. As a first task, this mechanism (and the senior lead envoy that would likely be necessary to conduct the initiative) will have to pin down Ethiopia's unambiguous acceptance of the Boundary Commission ruling and agreement to proceed with demarcation, as well as Eritrea's acceptance of a parallel dialogue on issues relating to normalisation, with the exception of the boundary. It must be clearly understood by both parties that any adjustments to the Delimitation Decision – and very small ones at that – can only be addressed in the course of the demarcation process, in accordance with the very specific guidance provided by the Boundary Commission regarding refinement of boundary pillar coordinates and "manifest impracticability".

The Algiers Group also has a role to play in urging the Security Council and troop contributing countries not to withdraw UNMEE and to explore instead – provided tensions have relaxed and demarcation and dialogue

⁹³ Crisis Group interview, Addis Ababa, November 2005.

⁹⁴ Security Council Resolution 1640 of 23 November 2005 requested the Secretary-General to monitor the parties' compliance and report on it after 40 days. This period will elapse on 2 January 2006. The expectation is that the Secretary-General will report to the Council on or about 3 January, and the Council will convene to consider that report shortly thereafter, likely around 9 January.

are in train – options for restructuring (reducing) the peacekeeping mission to accommodate realities on the ground. This would include ensuring protection requirements for demarcation teams as they begin laying boundary pillars, especially in areas where the local population may prove resistant, as well as the ability to meet logistical and financial requirements for the demarcation exercise.

Perhaps most importantly, the Algiers Group must likewise consider the incentives and pressures available if either party fails to comply with UNSCR 1640 or otherwise obstructs the implementation phase.

Among the Algiers Group members, the U.S. has a special role to play. It crafted the original proposals that ultimately shaped the Algiers accords, including the need for a swift, final and binding demarcation of the border. Both Ethiopia and Eritrea consider themselves friends and allies of Washington and have expressed confidence in the potential for its engagement to bring about a durable settlement. This has led some diplomats to suggest that a U.S. special envoy should take the lead in defusing the current crisis. But the unilateral appointment of such a representative might well appear to Eritrea as an attempt to establish an alternative process to the Algiers accords and thus be unacceptable. Instead, the Algiers witnesses should request the U.S. government to appoint and provide an envoy with a clear mandate to work for implementation of the accords within the coordinated efforts of the Algiers Group.

Nairobi/Brussels, 22 December 2005

APPENDIX A

MAP OF ERITREAN-ETHIOPIAN AREAS OF CONFLICT



Source: Country Profile, Eritrea 2003, Economist Intelligence Unit.

APPENDIX B

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Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international decision-takers. Crisis Group also publishes *CrisisWatch*, a twelve-page monthly bulletin, providing a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world.

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