Chapter 4
The 2000 Algiers Agreements

Edoardo Greppi and Ludovica Poli

Contents

Abstract The Algiers Agreement aimed at terminating a frontier war which had lasted more than two years. Previous international efforts to bring the armed conflict to an end were not successful and a great optimism surrounded its conclusion in December 2000. The Agreement provided for the establishment of three dispute settlement bodies: an independent and impartial body—to be appointed by the UN Secretary-General—with the task to carry out investigations on the beginning of the armed conflict; the Eritrea-Ethiopia Boundary Commission (EEBC) with the

Edoardo Greppi is Full Professor of International Law at the University of Turin, Department of Law. He authored Sects. 4.2, 4.3, 4.4, 4.5 and 4.6.

Ludovica Poli is Assistant Professor of International Law at the University of Turin, Department of Law. She authored Sects. 4.1 and 4.7.

E. Greppi (✉) · L. Poli
Dipartimento di Giurisprudenza, Università di Torino, Campus Luigi Einaudi, Lungo Dora Siena 100, 10153 Torino, Italy
e-mail: edoardo.greppi@unito.it

L. Poli
e-mail: ludovica.poli@unito.it

A. de Guttry et al. (eds.), *The 1998—2000 Eritrea-Ethiopia War and Its Aftermath in International Legal Perspective*, https://doi.org/10.1007/978-94-6265-439-6_4

mandate to delimit and demarcate the border between the two States; and the Eritrea-Ethiopia Claims Commission (EECC), called to decide all claims for loss, damage, or injury related to the conflict. While the first organ has never been implemented, the two Commissions were established and completed the tasks in due time. However, intrinsic limits of the Algiers Agreement—mainly focused at achieving the end of the hostilities, by means of separation of forces and demarcation of frontiers—explain the stalemate in the peace process between Eritrea and Ethiopia that lasted until 2018.

Keywords Algiers Agreement · OAU Framework Agreement · Modalities for the Implementation of the Framework Agreement · Technical Arrangements · Eritrea-Ethiopia Boundary Commission · Eritrea-Ethiopia Claims Commission

4.1 Introduction

The Algiers Agreement of December 2000, establishing the Eritrea-Ethiopia Boundary Commission (EEBC) and the Eritrea-Ethiopia Claims Commission (EECC), aimed at putting an end to a real—and in some way 'old fashioned'—frontier war which had lasted more than two years, with the belligerents fighting over 1100 km of rocks, sands and desert stones.[1]

The long lasting border dispute between these two States of the Horn of Africa, which followed the 30-year Eritrean war of independence, degenerated into open armed conflict in May 1998—'justement qualifié de guerre de type conventionnel puisque, dans un schéma classique, deux entités étatiques se sont affrontées'.[2]

The two States accused each other of aggression, initially making it very difficult to determine both the location and the starting-point of the 1998 outbreak.[3]

However, the Claims Commission has lately recognised that Eritrea, resorting to armed force and occupying Badme, had violated international law, as its military action was not justified under self-defence.[4] According to the UN Charter (Article 51) self-defence implies that an armed attack has occurred. At the same time, while Eritrea was awarded by the Boundary Commission most of the disputed territory, and in particular the city of Badme,[5] the delimitation ruling was rejected by Ethiopia and border skirmishes have continued for years.[6]

[1] Jouannet 2001, p. 849. On the controversial origin of the conflict see also: Zondi and Rejouis 2006.

[2] Lucchini 2004, p. 389.

[3] Gray 2006, p. 699. On the issue of aggression, see also Dekker and Werner, Chap. 13.

[4] Eritrea-Ethiopia Claims Commission, *Partial Award: Jus ad Bellum, Ethiopia's Claims— 1-8*, 19 December 2005, PCA Case No. 2001-02. See Weeramantry, Chap. 12; Murphy 2018, p. 562.

[5] Eritrea-Ethiopia Boundary Commission, *Decision regarding delimitation of the border between the State of Eritrea and the Federal Democratic Republic of Ethiopia*, 13 April 2002, PCA Case No. 20012-01.

[6] For an analysis of the claims and counterclaims of Ethiopia and Eritrea: Zegeye and Tegegn 2008.

Only in June 2018, when the Ethiopian Government announced its intention to accept and fully implement the ruling of the EEBC, calling for Eritrea to implement the peace agreement as well, the state of war was declared over.[7] Finally, in July 2018, the two countries have signed the Agreement on Peace, Friendship and Comprehensive Cooperation, with the declared intention to achieve and preserve a long-lasting peace in the region.[8]

In light of such developments, this chapter analyses the Algiers Agreement with the intention to stress the reasons that hampered its full implementation, also in light of prior attempts by the international community to facilitate the end of the armed conflict.

4.2 Early Diplomatic Efforts and the OAU Framework Agreement, the Modalities for Its Implementation and the Technical Arrangements (November 1998–August 1999)

In the years before the Algiers Agreements, both the UN Security Council and the Organisation of African Unity (OAU)[9] intervened to bring the armed conflict to an end.

After the adoption of the Security Council Resolution 1177 (1998)—expressing grave concern at the conflict, stating that the use of force was unacceptable as a means to solve territorial disputes or to change the situation on the ground and calling for the cessation of hostilities—the first step was the Framework Agreement, elaborated by an OAU High-Level Delegation in November 1998 and approved by the Central Organ Summit of the OAU Mechanism for Conflict Prevention, Management and Resolution on 17 December 1998.[10] The Framework Agreement incorporated a proposal detailed in June 1998 by US-Rwandan mediators, envisaging a cease-fire, the redeployment of Eritrean forces to positions held before 6 May 1998, the deployment in the area of an international observer mission, an investigation into the events of the hostilities outbreak and an agreement to delimitation and demarcation of the border between the two States.[11]

---

[7] Joint Declaration of Peace and Friendship Between Eritrea and Ethiopia, 9 July 2018 (the text is reproduced in Appendix A to this volume). See also Lyons 2019, pp. 237–239.

[8] Desta 2018; de Guttry, Chap. 32.

[9] In 2002 the Organization of African Unity was succeeded by the African Union.

[10] A report detailing the efforts made by the OAU High-level Delegation on the Dispute between Ethiopia and Eritrea and containing the recommendations for the Framework Agreement is in Letter dated 24 December 1998 from the Permanent Representative of Ethiopia to the United Nations addressed to the President of the Security Council, 28 December 1998, S/1998/1223, Annex. See also UNSC, Security Council demands immediate halt to hostilities between Ethiopia, Eritrea, 27 February 1999, Press Release SC/6652.

[11] Murphy 2018, pp. 555–556; US Press Statement on the US-Rwanda Peace Plan, 3 June 1998.

A few months later, the OAU Assembly of Heads of State and Government—during its 35th Ordinary Session, held at Algiers from 12 to 14 July 1999—endorsed the Modalities for the Implementation of the Framework Agreement proposed by the OAU High-Level Delegation.[12]

Finally, Technical Arrangements for the implementation of the OAU Framework Agreement and its Modalities have been adopted on August 1999.[13] With this instrument, the parties agreed to use the Framework Agreement, the Modalities and the Technical Arrangements as the sole basis for resolving the dispute, confirming the principle of respect for the borders existing at the independence of Eritrea in 1993, and accepted the Technical Arrangements as legally binding (Article 1).

The Technical Arrangements referred to the parties' agreement to put an end 'to all military activities' and even to 'all forms of expression likely to sustain and exacerbate the climate of hostility' (Article 2) and provide for the establishment of different organs to facilitate the process of pacification.

A Neutral Commission was to be established by the Chairman of the OAU (in consultation with the UN Secretary-General) to determine the positions which the parties held prior to 6 May 1998 and to facilitate the redeployment of the Eritrean forces outside the occupied territory, as specified in para 1 of the Modalities. This determination was envisaged as not having prejudice on the final status of the territories concerned, to be defined through a delimitation and demarcation process (Article 3). It was also understood to establish a peacekeeping mission under the authority of the Security Council and led by a Special Representative of the UN Secretary-General to monitor and assist with the implementation of the Framework Agreement and the Technical Arrangements and to verify compliance with all obligations (Article 4). Two further bodies, a Follow-up Commission and a Military Coordination Commission (respectively in charge of managing political issues and military matters) were intended to complete this multi-facet structure under the authority of a Special Representative (Article 5). Additionally, an independent and impartial body, appointed by the Chairman of the OAU, in consultation with the Secretaries-General of the UN and the OAU, was expected to conduct investigations on the incidents of May 1998 and 'any other incidents prior to that date which could have contributed to a misunderstanding between the Parties regarding their common border' (Article 10).

Finally, the Technical Arrangements addressed the delicate issue of the delimitation and demarcation process to be realised by the UN Cartographic Section (Article 13) on the basis of pertinent colonial treaties and applicable international law (Article 11). The same criteria were to be adopted by a Boundary Commission, to be established by the UN Secretary-General in consultation with the OAU Chairman, 'should the need arise for arbitration on delimitation' (Article 13). The Arrangements also precisely defined the delimitation work on the ground, based on an approach 'segment

[12] The text of the Modalities for the Implementation of the OAU Framework Agreement is reported in Letter dated 16 July 1999 from the Permanent Representative of Eritrea to the United Nations addressed to the President of the Security Council, 16 July 1999, S/1999/794, Annex III.

[13] See Sciacovelli 2004, p. 745.

by segment', firstly on the areas of redeployment, then, on other contested parts and, finally, on the residual common border (Article 11). Article 15 stated the 'binding' value of the demarcation of each segment, which would have implied, for each party, the exercise of full and sovereign jurisdiction over the part of territory recognised as being within its boundary.

Despite the support expressed by the UN Security Council on the Framework Agreement as a viable and sound basis for ending the conflict and peacefully settling the dispute[14] and although firstly Ethiopia[15] and later Eritrea[16] declared the intention to accept it, disagreements on sovereign rights were still strong and the hostilities continued.[17] Further diplomatic efforts were undertaken by various countries, as well as by the OAU, the European Union, and the United Nations, but by May 2000 the situation on the ground had further deteriorated, bringing the UN Security Council to condemn the renewal of hostilities[18] and declare an arms embargo.[19]

4.3 The Agreement on Cessation of Hostilities (18 June 2000)

A fierce exchange of accusations between the parties brought to a further outbreak of open hostilities, until the signing by the two Ministers of Foreign Affairs of a Ceasefire Agreement on 18 June 2000. At that time, the war had already lasted two years, with the death of about 70,000 combatants and over a million of displaced persons, 70 per cent of whom were women, children and the elderly.[20]

Under this Agreement, circulated as a document of the UN Security Council,[21] the parties committed themselves to resolve the crisis 'through peaceful and legal means', in accordance with the principles of both the OAU and the UN; to reject the use of force as a solution to disputes; to respect the borders existing at independence, determining them 'on the basis of the pertinent colonial treaties and applicable international law'; to make use of technical means to demarcate the borders; and to resort to arbitration, in case of controversy. Finally, the OAU Framework Agreement was formally accepted.

The Agreement bound the parties to accept the cessation of hostilities, as all land and air attacks were to stop at the signing of the treaty (Article 1).

---

[14] See UNSC Res 1227 (1999), 10 February 1999, S/RES/1227.

[15] UNSC Res 1226 (1999), 29 January 1999, S/RES/1226.

[16] Statement by the President of the Security Council, 27 February 1999, S/PRST/1999/9.

[17] Gray 2006, p. 702.

[18] UNSC Res 1297 (2000), 12 May 2000, S/RES/1297.

[19] UNSC Res 1298 (2000), 17 May 2000, S/RES/1298.

[20] Gray 2006, p. 703.

[21] The text is an annex to the Letter dated 19 June 2000 from the Permanent Representative of Algeria to the United Nations addressed to the President of the Security Council, 19 June 2000, S/2000/601.

In terms of this essentially military agreement, Ethiopia had the 'international guarantees' which it demanded as a precondition for withdrawal from Eritrean territory. A United Nations peacekeeping force, under the auspices of the OAU, was to be deployed in a 'temporary security zone': 25 kilometres (artillery range) inside Eritrea, along the border as it existed prior to 6 May 1998 (Article 12). The peacekeeping force was called to monitor the cease-fire, the re-deployment of Ethiopian forces, as well as to ensure the observance of the security commitments agreed by the parties, until the completion of the delimitation and demarcation processes by the UN Cartographic Unit (Articles 2, 3, 5).[22] Ethiopian forces were expected to withdraw from the territory they occupied inside Eritrea within two weeks after the peacekeeping force had been deployed (Article 9).

The Agreement also called for the United Nations and OAU to establish a Military Coordination Commission to be composed of representatives of the two parties under the chairmanship of the head of the peacekeeping mission, with the task to coordinate and resolve issues relating to the implementation of the mission's mandate (Articles 6, 7).

The Security Council, under the Agreement, was called to adopt 'appropriate measures' under Chapter VII of the Charter in case one or both parties violated their commitments (Article 14). Other measures were to be adopted to assist the deployment of the peacekeeping force and to encourage the return of civilian administration and of the population to their homes.

This interim ceasefire agreement was intended to lead to a final, comprehensive, and lasting agreement: in a report to the Security Council, the UN Secretary-General described it as a vital step towards the restoration of peace between Ethiopia and Eritrea.[23]

4.4 The Agreement of 12 December 2000 Between the Government of the Federal Democratic Republic of Ethiopia and the Government of the State of Eritrea: An Attempt for a Comprehensive Solution

Ethiopia and Eritrea, in the presence of the Algerian President, of the UN Secretary-General and of OAU, US and European Union representatives, finally signed a Comprehensive Peace Agreement in Algiers on 12 December 2000.

First of all, the parties declared their full acceptance of the OAU Framework Agreement and the Modalities for its Implementation of July 1999 and confirmed their commitment to the Agreement on Cessation of Hostilities, signed in June 2000,

[22] The United Nations Mission in Ethiopia and Eritrea (UNMEE) has been then established with UNSC Res 1312 (2000), 31 July 2000, S/RES/1312. See de Guttry, Chap. 5; Cellamare 2004, p. 1571.

[23] See the first Report of the Secretary-General on Ethiopia and Eritrea to the Security Council, 30 June 2000, S/2000/643; other Reports followed, offering a regular assessment of the situation.

which both 'shall respect and fully implement' (Article 1). The obligation to permanently terminate the hostilities and to refrain from the threat or use of force completed this general and preliminary commitment (Article 1).

A second provision was related to the fulfilment of the parties' obligations under international humanitarian law, in particular to release and repatriate all prisoners of war and 'all other persons detained as a result of the armed conflict' in co-operation with the International Committee of the Red Cross (Article 2). At that time, there were about 1.100 Ethiopian prisoners of war in Eritrea and 2600 Eritrean prisoners of war in Ethiopia. Additionally, both belligerents had arrested and detained enemy citizens during the hostilities.[24]

The heart of the Agreement was the establishment of the three dispute settlement bodies.

Under Article 3, an independent, impartial body appointed by the UN Secretary-General was envisaged to carry out investigations on the incidents of 6 May 1998 and all other incidents prior to that date (back to July and August 1997), in order to identify the elements which could have contributed to 'a misunderstanding' between the parties regarding their common border. This first body represented a kind of soft approach to the dispute and the following armed conflict. An investigation on 'misunderstandings' does not necessarily imply that elements of clear responsibility should appear. However, investigation is a classic procedure, going back to the Hague codification of 1899 and 1907, and should lead to the assessment and establishment of facts. This inquiry, in any case, did not occur, since the body charged with the task of carrying out the investigation was never established.

More ambitious and consistent with the need to solve the core of the matter was the provision of Article 4. Reaffirming the principle of respect for the borders existing at independence, it created a neutral Boundary Commission of five members with the mandate 'to delimit and demarcate the colonial treaty border based on permanent colonial treaties' (of 1900, 1902 and 1908) and 'applicable international law'. Each of the parties had to appoint two members of the Commission, and the President was to be selected by the four appointed Commissioners. A close institutional link with the UN Cartographic Unit was also established, as the UN Cartographer was called to 'serve as Secretary to the Commission'. A detailed procedure and timetable completed these provisions. The parties agreed to cooperate 'in all respect during the process of delimitation and demarcation, including the facilitation of access to territory they control'. They also decided that 'the delimitation and demarcation determinations of the Commission shall be final and binding' and that each of them 'shall respect the border so determined, as well as territorial integrity and sovereignty of the other party'. While arbitral awards are traditionally final and binding, the parties—here as generally in similar cases—included explicit reference to this in the text of the agreement, although enforcement was not granted. In general, States respect arbitral awards, as the result of a procedure established in the framework of

[24] In particular, several thousand Ethiopian civilians were arrested and detained in inhumane conditions by Eritrean authorities, in reaction to the May 2000 Ethiopian military offensive: Mancini 2018, pp. 1212–1213.

an agreement which they have freely negotiated and signed. These kinds of awards are supposed to be legally binding, but also to have a kind of moral and political force.

Last but not least, a third body was envisaged by the Agreement, a neutral Claims Commission of five members (Article 5). They had the mandate of deciding, once more 'through binding arbitration', all claims for loss, damage, or injury—by one government against the other and by nationals (including both natural and juridical persons) of one party against the government of the other party (or entities owned or controlled by the other party)—that are 'related to the conflict' and 'result from violations of international humanitarian law, including the 1949 Geneva Conventions, or other violations of international law'.[25] The procedure for the selection of the five arbitrators was the same adopted for the appointment of the members of the Boundary Commission. The rules of procedure which the Commission had to adopt were based on the 1992 Permanent Court of Arbitration 'Optional Rules for arbitrating disputes between two States'.[26] The decisions and awards of the Commission were deemed to be 'final and binding' and the parties agreed 'to honour all decisions and to pay any monetary awards rendered against them promptly'.

The role of the two Commissions was clearly conceived as complementary. On the one hand, the Boundary Commission was called to look at the very origin of the dispute and the armed conflict, to address the issue of their basic causes as a whole. On the other hand, the Claims Commission was supposed to address the consequences of the conflict.

A key element in the Algiers Agreement was the reference to the liberation of Eritrea in 1993, in line with the principle of respect for the borders existing at independence 'as stated in Resolution AHG 16 (I) adopted by the OAU Summit in Cairo in 1964' (Article 4).[27] Worth mentioning is also the choice of referring to the border as the 'colonial treaty border', which was traced in colonial treaties by the Kingdom of Italy—the coloniser of Eritrea—and the Empire of Ethiopia of 1900, 1902 and 1908. As it emerges from the reading of the Agreement, the parties rooted their respective claims on such instruments, thus qualifying the dispute as one concerning the interpretation of those agreements, to be solved with recourse to legal norms of international law (the same colonial treaties and other applicable international law), with the exclusion—for both the Commissions—of any possible solution *ex aequo et bono*.

---

[25] See Venturini, Chap. 15, and Sommario, Chap. 22.

[26] The Permanent Court of Arbitration was established by the first Hague Convention for the Pacific Settlement of Disputes (1899, amended 1907) to facilitate the recourse to arbitration in those cases in which diplomacy fails or is inadequate. It is not a judicial body, but an international bureau acting as a Registry and providing an administrative structure for arbitral tribunals. In the Eritrea-Ethiopia case, the PCA offered administrative structure, facilities and services. The Optional Rules are based on the UNCITRAL Arbitration Rules, designed for commercial arbitration, adapted to be applicable in public international law disputes. See Malintoppi 2006, p. 49.

[27] This reference to a principle which was stated in an OAU resolution is not unusual in African boundary disputes: Shaw 2007, p. 759.

4.5 The Boundary Commission and the Reaction to Its Decision on Delimitation

The Boundary Commission 'constitue l'organe central de règlement du conflit, la clef de voûte, puisque – dans le cas d'un litige de frontière – elle a précisément pour fonction de déterminer le tracé de celle-ci'.[28] As noted by a scholar, the name of this Commission 'was presumably chosen to reflect the fact that the mandate included the physical demarcation of the boundary'.[29] However, the process adopted in delimitation and the same nature of the Commission confirm that it was an arbitration tribunal, like others frequently created by States, as widely considered more efficient than diplomatic instruments and more flexible than adjudication by a permanent court.

This Commission was somewhat peculiar. In the first place, the Commission was asked to both delimit and demarcate, which is quite unusual. Secondly, unlike other arbitrations, it was granted the institutional support of political multilateral organisations, such as the United Nations and the Organisation for African Unity/African Union. A third character is that the Commission was involved in the implementation process, far beyond the traditional task of delimiting (and, in this case, demarcating) the boundary.[30] Finally, very demanding time limits were established: only sixteen months were to elapse between the arbitration compromise and the final decision.

The Boundary Commission was composed by Professor Elihu Lauterpacht as chairman, Sir Arthur Watts and Prince Bola Adesumba Ajibola (for Ethiopia), Professor Michael Reisman (who replaced Mr Jan Paulsson, challenged by Ethiopia)[31] and Judge Stephen M. Schwebel (for Eritrea) as arbitrators.[32] Therefore, as for the composition, the Agreement followed the five members model, which is rather frequent in this kind of bodies. Each party appointed two arbitrators and the four thus designated chose the fifth, the chairman. This solution has the obvious disadvantage of leaving the chairman, who is the only really neutral member of the organ, in a kind of difficult position *vis-à-vis* his Colleagues.[33]

Under Article 4 of the Algiers Agreement, relevant law for the arbitral award was rooted in the old colonial treaties and 'applicable international law'. The colonial treaties of 1900, 1902 and 1908 were therefore conceived to be taken as a basis

[28] Lucchini 2004, p. 393.

[29] Pratt 2006, p. 330.

[30] Gray 2006, p. 707, and Shaw 2007, p. 755.

[31] The Agreement did not envisage the possibility of a party lodging a challenge against one of the arbitrators appointed by the other party. Before the matter could be decided by the UN Secretary-General (in absence of a decision by the non-challenged remaining members of the Commission), the challenged member resigned.

[32] Shaw 2007, p. 757: 'Considerable judicial, arbitral and scholarly experience is thus reflected in the composition of the Commission'. As a matter of fact, they were a former president of the International Court of Justice, a former judge and a former ad hoc judge of the same ICJ, a former president of the Inter-American Commission on Human Rights and a former Legal Adviser to Her Majesty's Foreign and Commonwealth Office.

[33] Malintoppi 2006, p. 61.

for the reasoning of the Boundary Commission, even if they had been declared by Ethiopia to be 'null and void' when it annexed Eritrea in 1952 and even if relevant historical facts had taken place in the meantime (like the *debellatio* of Ethiopia by Italy in 1935 and the end of World War II, with the following 1947 Treaty by which Italy had renounced all its rights over former colonies in Africa). The *ratio* of this choice is clear: the intention was to avoid all possible doubts about the applicability of the principles of *uti possidetis* and effectiveness, despite the fact that both might partially appear controversial. As far as the *uti possidetis* principle is concerned, it should be noted that the situation was not a typical replacement of colonial power by a new State, arising from decolonisation. The colonial power—Italy—had renounced sovereignty after the end of the World War II and the signing of the 1947 Peace Treaty. A provisional administration by the United Kingdom had followed, being replaced by Ethiopian sovereignty in 1952. Effectiveness was not easy to apply either. Eritrea had been annexed to Ethiopia, and therefore effectiveness could have been considered applicable only for the period before annexation. Having chosen to refer to the moment of Eritrean independence as the one to be taken into account, there was a gap between the situation existing in 1952 (when Eritrea had been annexed by Ethiopia) and the one of 1993 (when Eritrea became independent). The Boundary Commission was thus called to base its finding on the treaties of one century before, considered suitable to offer solid roots for the delimitation of the boundary, even after decades of historical events which have essentially affected Eritrea.

In any case, the Algiers Agreements reflected the ICJ approach in the *Botswana/Namibia* case (in which the Court referred to the Anglo-German Treaty of 1 July 1890 and the rules and principles of international law) and the Commission made clear reference to this case adopting the method of going beyond the simple interpretation of the colonial treaties and relying on 'those rules of international law applicable generally to the determination of disputed borders including, in particular, the rules relating to the effect of conduct of the parties' (para 3.15). Therefore, it implicitly recognised that the terms of a boundary treaty might not be necessarily sufficient to determine territorial delimitation and that recourse to 'extra titular practice' could be sometimes necessary.[34]

Having identified the day of Eritrean independence—27 April 1993—as the moment against which to delimit the boundary, the Commission decided that the events which had occurred after that date should not be taken into account, unless they could be considered as a 'continuance or confirmation' of a line of conduct already clearly established or 'take the form of express agreements' between the parties (para 3.36). As a matter of fact, the Boundary Commission was charged with the mission of interpreting the treaties of one century before and evaluating the effect of the long and somewhat ambiguous practice of the following century.

The Commission issued its *Decision on delimitation* on 13 April 2002.[35] The Decision identified three zones of the boundary following the lines established by the three applicable colonial treaties (the 1900 treaty for the Central sector, the

[34] Shaw 2007, p. 759.

[35] See Kaikobad, Chap. 10.

1902 for the Western sector and the 1908 for the Eastern sector). In particular, the Commission decided that a relevant part of the Western section was to be recognised as under Eritrean sovereignty. This proved to be highly controversial.[36] While the Commission had taken into account, under the Algiers Agreements, the colonial treaties and the boundary they had established, Ethiopia claimed that effectiveness proved that it had exercised administrative activity in the field. According to the Boundary Commission, however, these administrative acts did not sufficiently prove that, over the years, going back to 1935, Ethiopia had established real governmental authority over the contested area.[37]

On 13 May 2002, only one month after the Commission had issued its Decision, the Ethiopian Government submitted a Request for Interpretation, Correction and Consultation, containing a number of issues which represented clear and open challenges to the results of the arbitrators' work. The Commission rendered its decision on these points very quickly. On 24 June 2002 it held that the concept of interpretation 'does not open up the possibility of appeal against a decision or the reopening of matters clearly settled by a decision'.[38] Recalling relevant cases before the International Court of Justice, the Commission underlined that interpretation 'is a process that is merely auxiliary, and may serve to explain and not to change'[39] what has already been established with binding force. The Commission therefore rejected the Ethiopian request and expressed its grave concern.[40]

Nonetheless, Ethiopia maintained its criticism on technical aspects, in particular concerning the adopted map. The most controversial issue concerned the position of Badme, which, on the last version of the map, appeared on the Eritrean side of the Western section of the border and represented the 'hot spot' of the dispute, as it was the site of the 1998 outbreak of open hostilities between the two States. In fact, Badme, while being no more than a small group of houses with no strategic or economic value, had a strong symbolic meaning for both parties to the conflict, which had sacrificed a significant number of soldiers to get and maintain control over it.[41] Therefore, in a letter to the UN Secretary-General of 19 September 2003, the Ethiopian Government rejected the decision regarding Badme (and some other parts on the Central sector of the boundary) as 'totally illegal, unjust and irresponsible', blaming it as a 'blatant miscarriage of justice'. The EEBC replied that the outcome was rather in line with what the International Court of Justice has decided in comparable circumstances (for

[36] Gray 2006, p. 707.

[37] 'These references represent the bulk of the items adduced by Ethiopia in support of its claim to have exercised administrative authority west of the Eritrean claim line. The Commission does not find in them evidence of administration of the area sufficiently clear in location, substantial in scope or extensive in time to displace the title of Eritrea that had crystallized as of 1935': *Decision regarding delimitation of the border* 2002 (above n 5) para 5.95.

[38] Eritrea-Ethiopia Boundary Commission, *Decision regarding the 'Request for interpretation, correction and consultation' submitted by the Federal Democratic Republic of Ethiopia on 13 May 2002*, 24 June 2002, PCA Case No. 2001-01, para 16.

[39] Ibid.

[40] Ibid., para 18.

[41] Nystuen and Tronvoll 2008, p. 16.

example in the *Cameroon v. Nigeria* case) and that the parties 'have long been aware that the result of the Commission's delimitation and consequent demarcation could be that the boundary could run through and divide some settlements'.[42]

This situation produced a stalemate to the demarcation process, since the Ethiopian Government did not allow the Commission to proceed with the activities in the field. Ethiopia proposed to proceed with the demarcation of the Eastern sector, but Eritrea refused, insisting that the activity was to be considered as a single one, to be carried out simultaneously in all sectors of the border. This stalemate situation led to the suspension of the demarcation process in March 2005.

Several UN Security Council Resolutions produced no significant step forward. In Resolutions 1531 (2004), 1586 (2005) and 1622 (2005), the Security Council expressed concern about the rejection of the Commission's Decision and urged Ethiopia to accept the continuation of the demarcation process in the field, refusing to accept the preconditions requested by the Government.

A further obstacle resulted from the refusal of Eritrea to continue its cooperation with the UN, namely the peacekeeping force (UNMEE) and the Secretary-General's Special Envoy, appointed in January 2004 to try and overcome the *impasse*. This led to UN Security Council Resolution 1640 (2005) demanding Eritrea to allow UNMEE helicopter flights and, at the same time, stressing that the Boundary Commission's Decision was to be considered as 'final and binding' as both parties had agreed. However, the UN Security Council language was somewhat 'twofold' and rather ambiguous, as it threatened to adopt sanctions against the Eritrea's refusal to allow UNMEE helicopter flights, but no threat of sanctions was formalised for the non-acceptance by Ethiopia of the EEBC Decision and of the subsequent demarcation activity in the field.

4.6 The Claims Commission Compared to Other Similar Bodies

Under the Algiers Agreement, arbitration was also chosen to address claims arising from the conflict. The Eritrea-Ethiopia Claims Commission was composed of Hans van Houtte (chairman), George H. Aldrich, John R. Crook, James C.N. Paul and Lucy Reed. As has already been mentioned, according to Article 5(1) of the Algiers Agreement of 12 December 2000, the Claims Commission had jurisdiction over

> all claims for loss, damage or injury by one Government against the other, and by nationals (including both natural and juridical persons) of one party against the Government of the other party … that are (a) related to the conflict that was the subject of the Framework

[42]The contents of the letter from the Ethiopian Government to the EEBC are recalled in the Letter dated 7 October 2003 from the President of the Eritrea-Ethiopia Boundary Commission to the Secretary-General, in Progress report of the Secretary-General on Ethiopia and Eritrea, 19 December 2003, S/2003/1186, Appendix I.

Agreement, the Modalities for its Implementation and the Cessation of Hostilities Agreement, and (b) result from violations of international humanitarian law, including the 1949 Geneva Conventions, or other violations of international law.

The Commission has delivered a number of partial and final awards on liability and completed its work on 17 August 2009, when it adopted its final awards on damages.[43]

The very origin of this form of international dispute settlement in contemporary international law can be placed when the Permanent Court of Arbitration was established by the Hague Conventions of 1899 and 1907. Although it is 'neither permanent nor a court',[44] it provided the international community with the first global mechanism for the settlement of disputes. Claims tribunals were created even before, after the Napoleonic Wars, and later, after the two World Wars, but they were traditional in their basic conception, and permitted only claims submitted by States.

The last part of the twentieth century and the beginning of the twenty-first have seen the proliferation of judicial and para-judicial bodies (courts, tribunals, commissions). They are called to address disputes between States but permit a growing involvement of non-State actors, in particular when claims of economic and financial nature are concerned. They have given origin to a body of authoritative decisions, which are relied upon by other tribunals, expanding the scope of international law. The inclusion of individuals (non-State actors) appears to be a significant new trend. Individuals having been injured in an international conflict are afforded recognition of the right to directly submit claims and they are entitled to compensation.

An interesting example of the new bodies recognising individual claimants is offered by the Iran-United States Claims Tribunal, established in 1981, within the framework of the measures taken to give a lasting solution to the crisis between the Islamic Republic of Iran and the United States of America. The Tribunal was given functions of a private arbitral body, created to solve private law disputes and to hear private claims. At the same time, it was basically conceived as an inter-State tribunal addressing responsibility issues under public international law. It was called to address disputes between two governments (with the need of interpretation and application of public international law) but, at the same time, most disputes involved a private party against a government (or government-controlled entity). The Tribunal itself stressed that it 'has jurisdiction over claims, not disputes, as do intergovernmental tribunals'.[45] The distinction between claims and disputes is not always clear, as claims are the consequence of a dispute. At the origin there is a contested position, a dispute, in relation to which the claim is judged by the tribunal.[46] In any case, there is no doubt that the Iran-US Claims Tribunal is an intergovernmental body. The Tribunal was established by an international treaty and

[43] See Capone, Chap. 26.

[44] Sands and Klein 2009, p. 353; see also Bodack 2005.

[45] Iran-Unites States Claims Tribunal, *Mobil Oil Iran Inc. and Mobil Sales and Supply Corporation v. Government of the Islamic Republic of Iran and National Iranian Oil Company*, Partial Award, 14 July 1987, IUSCT Case No. 74, para 46.

[46] Khan 1990, p. 80; Crook 1989.

has a proper international character and legal personality.[47] It is an arbitral tribunal in disputes between sovereign States, even when it has functions of settling claims of a financial nature and does not address political or territorial disputes as such: in fact, it 'constitutes a mixed model, combining elements of inter-state arbitration with elements of state-individual arbitration'.[48] This mixed nature is confirmed by Article V of the Claims Settlement Declaration which provides that the Tribunal shall apply 'such choice of law rules and principles of commercial and international law as the Tribunal determines to be applicable, taking into account relevant usages of the trade, contract provisions and changed circumstances'. Indeed, the Tribunal has quite a huge latitude in the determination of the applicable law.

Unlike the Iran-United States Claims Tribunal, private claims could not be directly addressed to the Eritrea-Ethiopia Claims Commission. As stressed under Article 1 para 3 of the Rules of Procedure adopted by the EECC itself, the Algiers Agreement constitutes 'an agreement in writing by Ethiopia and Eritrea, on their own behalf and on behalf of their nationals'. The Agreement establishing the Commission was therefore a proper act between States, governed by international law, and registered under Article 102 of the UN Charter (Article 6, para 2 Algiers Agreement). The 'parties' are States, and as such they may act also on behalf of individuals.[49] The Algiers Agreement reflected the will to fully respect State sovereignty. This was confirmed by Article 5, para 16, of the Algiers Agreement according to which 'the parties may agree at any time to settle outstanding claims, individually or by categories, through direct negotiation or by reference to another mutually agreed settlement mechanism'.

Another major difference with the Iran-United States Claims Tribunal is that while this latter was expressly authorised to decide disputes regarding the interpretation and application of the Claims Settlement Declaration, the EECC established that similar claims were not under its jurisdiction, as the Algiers Agreement had not provided it with such a supervisory role.[50]

In its first Decision, the Claims Commission stated that the reference point for determining the scope of its mandate, under Article 5 para 1 of the Agreement, was the conflict between Eritrea and Ethiopia and distinguished claims arising during the conflict from those associated with events occurred before May 1998 and after December 2000. In fact, adopting a broad and comprehensive approach, the Commission considered that the armed conflict began in May 1998 and was formally concluded by the Agreement of 12 December 2000. There was, thus, 'a presumption that claims arising during this period "relate to" the conflict and [were] within the Commission's jurisdiction'.[51] The Commission decided that claims associated with events after 12 December 2000 may also 'relate to' the conflict, 'if a party can demonstrate that those claims arose as a result of the armed conflict between the parties, or

[47] Amerasinghe 2005, pp, 13 and 73.

[48] Shaw 2008, p. 1043.

[49] See Castagnetti, Chap. 23.

[50] Eritrea-Ethiopia Claims Commission, *Decision Number 1: The Commission's Mandate/Temporal Scope of Jurisdiction,* August 2001, PCA Case No. 2001-02, para A.

[51] Ibid., para B.

occurred in the course of measures to disengage contending forces or otherwise to end the military confrontation between the two sides'.[52] In the Commission's view, 'these might include for example, claims by either party regarding alleged violations of international law occurring while armed forces are being withdrawn from occupied territory or otherwise disengaging in the period after December 12, 2000'.[53] On the contrary, claims referring to the period prior to May 1998 were considered 'of a different character': since such claims could not be related to a conflict that had not yet occurred, the Commission was expected to examine whether there were other ways to interpret the expression 'related to' that would be 'in harmony with the term's ordinary meaning and the purpose and structure of the December Agreement'.[54] The Commission feared that enlarging too much this notion would have generated a never-ending debate about the origins of the conflict itself. In addition, it was clear to the Claims Commission that an excessive broadening of the period taken into consideration would have had also consequences for the activity of the other bodies created by the Algiers Agreement, including the 'impartial body' called to investigate precisely on facts which occurred before May 1998. Similarly, the Claims Commission, possibly addressing claims affected by the clear definition of where the boundary was exactly located, would have interfered with the proceedings of the Boundary Commission. For these reasons, and believing to correctly interpret the will of the parties, the Claims Commission concluded that it would not address claims rooted in situations or facts that had taken place before the actual outbreak of hostilities of May 1998, even if, in a broad sense, they could have been considered 'related to' the conflict.[55]

As far as the applicable law is concerned, Article 19 of the Commission's Rules of Procedure—in line with Article 38, para 1, of the International Court of Justice's Statute—directed the Commission to apply international conventions, whether general or particular, to establish rules expressly recognised by the parties, to identify international custom (as evidence of a general practice accepted as law) and the general principles of law recognised by civilised nations, and to apply judicial and arbitral decisions as well as the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of the rules of law. In a very general approach, customary international humanitarian law was considered 'the most significant legal component in the Parties' relationship' when the major events took place.[56] In addition, Protocol I Additional to the Geneva Conventions was also relevant, since the parties considered its core provisions governing the protection of civilians as 'reflecting binding customary rules' and, in particular, Article 75

[52] Ibid., para C.

[53] Ibid.

[54] Ibid., para D.

[55] Ibid.

[56] Eritrea-Ethiopia Claims Commission, *Partial Award: Civilians Claims, Eritrea's Claims 15, 16, 23 & 27-32*, 17 December 2004, PCA Case No. 2001-02, para 28: according to the EECC, Ethiopia's treatment of Eritrean nationals was 'subject to the relevant principles articulated in Geneva Convention IV in addition to other potentially relevant norms': ibid.

which was considered acting 'as a "legal safety net" guaranteeing a minimum standard of human rights for all persons who do not have protection on other grounds'.[57] Difficulties on collection and evaluation of evidence about many events brought the Commission to focus on 'persistent and widespread patterns of misconduct, rather than individual acts'.[58]

In *Decision Number 8*, the Commission reminded that the parties had the responsibility to ensure that their nationals victims of armed conflict receive relief, within the scope of the resources available to them.[59] Since the parties had chosen to pursue inter-State claims, for the EECC, it was up to them (in their full authority) 'to determine the use and distribution of any damages awarded' to them.[60] However, the Commission, in a letter dated 2006, requested that each party provide information on how it intended to meet the legitimate expectations of the victims, 'in view of the humanitarian purposes' expressed in Article 5 of the Agreement.[61] Basically, besides the obvious respect of the principle of sovereignty and State domestic jurisdiction (which in this kind of matter the Commission could not overcome), there was also a very practical reason to support this choice. It would have been too complicated and also too expensive for the Claims Commission to directly proceed to identify victims or other individuals who had suffered damages in consequence of illegal acts. The Commission therefore invited the parties 'to consider further means' such as 'different kinds of relief programmes' to address situations of rape, physical abuse and intentional killings.[62]

This approach distinguishes the EECC from the United Nations Compensation Commission (UNCC), created in 1991 after the Gulf War. After the cease-fire, in April 1991 the Security Council adopted Resolution 687, stating Iraqi liability under international law for 'any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait'. The same resolution embodied a decision to create a Fund for compensation claims and to establish a Commission to administer it. These provisions were influenced by the estimations circulated as to the extent of the damage and 'the astonishing number of claims' which were likely to be raised.[63] The interesting element in this experience was properly the establishment of a fund (to correspond the amounts determined by the claims procedure) and a Commission to administer it.[64] Under the UNCC, a State may submit claims also on behalf of its nationals and, at its discretion, on behalf of

[57] Ibid., para 31. See also Sanna, Chap. 16.

[58] Ibid., para 35.

[59] Eritrea-Ethiopia Claims Commission, *Decision Number 8: Relief to War Victims*, 28 July 2007, PCA Case No. 2001-02, para 1.

[60] Ibid., para 3.

[61] Ibid., para 2.

[62] Ibid., para 6.

[63] Caron 2005, p. 221.

[64] The Secretary-General has submitted a report in which he described the characteristics of the reparation system, its functioning and the procedure. The Secretary-General's Report affirmed that the Commission is a subsidiary organ of the Security Council under Article 29 of the Charter, which

individuals resident in its territory. It may also act for corporations. Outside of its own claims, the State is considered to be an agent of the claimant, rather than a principal and this represents 'a radical and very important transformation'.[65] However, the system does not abandon the model of diplomatic protection, as it leaves the control of the various steps of the procedure in the hands of the State. The initiative does not rest on private entities or individuals, and States keep their right to withdraw a claim at their discretion. The eventual sum to be paid is even conferred to the State and not to the individual who is at the origin of the claim. The diplomatic protection model is partially overridden by the fact that the State is obliged to give the awarded sum to the individual on behalf of whom it had acted, and also by the possibility of starting the procedure on behalf of persons who are not citizens of the State but aliens resident on its territory (or even stateless persons). This may be considered a remarkable step in the humanisation of the international law of State responsibility .[66] In addition, corporations are entitled to be paid directly, without the obligation of going through the State, at least in principle although with limited application in practice. As it has been pointed out, 'governments are called upon to play a role halfway between representation and diplomatic protection'.[67] The UNCC commitment to non-State actors and its emphasis on individuals was underlined since its first decision, which was in the sense of giving precedence to the processing of individual claims, rather than to claims of governments or corporations. This attitude of granting a privileged position to the individual claimant in the UNCC system has been considered 'the most significant contribution of the UNCC to the development of international law in the field of claims settlement'.[68]

In comparison with the UNCC experience, the Eritrea-Ethiopia Claims Commission has shown a more traditional approach with individuals left under the diplomatic protection of their national authorities. At the same time, States are expected, as a kind of return for the overall attitude of the Commission to respect their sovereignty and domestic jurisdiction, to fully recognise the humanitarian spirit which underlies the claims procedures.[69]

---

stipulates that 'the Security Council may establish such subsidiary organs as it deems necessary for the performance of its functions'. The Commission does not represent the interest of a single State, such as Kuwait, or the military coalition which liberated it. In the Secretary-General's opinion it is supposed to represent 'the whole international community'. It is a plenary and not a restricted subsidiary organ being composed of fifteen individuals. Frigessi di Rattalma and Treves 1999, p. 3. See Caron 2005, p. 217, and Gattini 2002, pp. 1612–181. In his report, the Secretary-General underlines the fact that the Commission is not a court nor an arbitral tribunal: 'it is a political organ that performs an essentially fact-finding function of examining claims, verifying their validity, evaluating losses, assessing payments, and resolving dispute claims'. An emphasis on this element of political nature is in Klabbers 2009, p. 236.

[65] See Caron 2005, p. 230.

[66] See Frigessi di Rattalma and Treves 1999, p. 8.

[67] See Alzamora 1995, p. 9.

[68] See Gattini 2002, p. 170.

[69] See Castagnetti, Chap. 23.

Along with other bodies, such as the Iran-US Tribunal and the UN Compensation Commission, the Eritrea-Ethiopia Claims Commission represents an interesting institutional solution to the problem of granting adjudication of disputes arising from the expectations of individuals in the framework of conflicts or international crisis situations. Worth of mention is how the choice between an organ established by mutual agreement or one imposed by a unilateral decision may essentially affect the perception of its legitimacy. In the case of the United Nations Compensation Commission, a possible reason for criticism was the competence of the Security Council to establish such a body. The issue is a very general one, as it touches upon an established practice towards a broad interpretation of the Security Council's powers. Resolution 687 certainly was a kind of 'Diktat' by the international community. It was beyond any doubt an imposed peace treaty despite being formally accepted by the Iraqi Government. Its conditions were unilaterally imposed by the Security Council upon a United Nations Member State which had lost a war waged by a number of States under the authority provided by a Security Council resolution authorising them to use 'all necessary means' to end the illegal occupation of Kuwait. As a result—unlike what had happened in the Iran-US case—the relationship between the parties was greatly unbalanced. Iraq did not have an equal position in the matters falling under the provisions of the UNCC and was substantially kept 'out of the door' as far as the proceedings were concerned. This resulted at least initially in weak cooperation by the Iraqi Government, which felt that it had nothing to lose, and nothing to gain. This cooperation was nevertheless a necessary element, as the compensation fund of the Commission had to be financed by a percentage of the revenues coming from oil exports.[70]

This seems to strengthen the opinion that for these bodies to be effective and successful, the political will of all parties involved is needed.[71] In the case of the EECC, the acceptance by both the parties bode well for success of such a compensation regime potentially pointing 'beyond the mere ending of the war' and having 'a forward looking political impact'.[72]

[70] Saddam Hussein's very practical and effective 'vengeance' was to simply refuse to pump oil, rejecting any kind of interference in the sphere of Iraqi domestic jurisdiction affecting the major resource of the country: Alford 2000, p. 164. As a result of this kind of original boycott by the Government of Baghdad the Commission increased its efforts towards establishing a favourable environment for Iraqi claims. All claims against Iraq were carefully addressed and scrutinised and panels admitted that Iraq could present testimony: Bodack 2005, pp. 381–382.

[71] Guillaume 1995, p. 859.

[72] Nystuen and Tronvoll 2008, p. 21.

4.7 Concluding Remarks: Intrinsic Limits of the December 2000 Algiers Agreement and Its Failure to End the Conflict

When it was concluded in December 2000, the Algiers Agreement has been celebrated with strong optimism by the international community, trusting it as a major step forward in the achievement of peace between Ethiopia and Eritrea. However, soon it became evident that the process was destined to stall, 'as the parties apparently never truly committed themselves politically to fully implementing the subsequent decisions reached in the internationally driven border arbitration process'.[73]

It is no surprise that, for some Authors, 'the Algiers Agreement was little more than a ceasefire arrangement with a mechanism for border delimitation'.[74] The word 'peace' does not appear in the entire document, not even in the title.[75] As a matter of fact, the Agreement mainly aimed at creating a 'dissociative peace'[76] that is a situation of absence of hostilities by means of separation of forces and demarcation of frontiers, and gave up any ambition to found an 'associative peace', namely a 'cooperative system beyond "passive peaceful coexistence"'.[77]

It is also clear that, among the bodies that the Agreement established, the major role for the normalisation of the relation between the warring parties was attributed to the Boundary Commission, since the main aim of any peace agreement—beside stopping the hostilities—is to settle the reasons for fighting, in this case the border issue. As correctly stressed by some Authors, '[w]hen the fighting stops before one of the parties have won militarily, both parties have expectations of their military positions at the time being translated into a "fair" demarcation. The less "successful" the delimitation, the higher the risk of renewed war'.[78] Undoubtedly, therefore, the Boundary Commission had the task to settle the main issue at stake (defining the border), while setting the basis for the success of the peace process.

A number of procedural issues may have contributed to hamper the achievement of the desired result.

First, as already stressed, the choice to give the Boundary Commission the task of demarcation was quite unusual. Delimitation clearly implies a legal assessment, an evaluation of the applicable legal rules: a task corresponding with the expected role of a body of arbitrators. Demarcation, on the contrary, is an activity of a technical and even 'material' nature. In other words, if delimitation implies a major role for lawyers (even if assisted by technical advisors), demarcation is normally left to the military, assisted by geographers and other 'technicians'. Additionally, the choice to place delimitation and demarcation in the hands of the same body, 'may encourage

[73] Ibid., p. 17.

[74] Ibid., p. 37.

[75] Mancini 2018, pp. 1213–1214.

[76] Mancini 2018, p. 1213, quoting Röling 1973, p. 7.

[77] Galtung 1996, p. 61.

[78] Nystuen and Tronvoll 2008, p. 17.

ongoing efforts by the unsuccessful party to use the demarcation process in an effort to pressure the tribunal in question to modify its boundary delimitation decision'.[79] This is exactly what happened in the present case. After deciding the lines, these had to be the object of a 'demarcation' activity, which both parties had originally accepted as 'final and binding', being an integral part of the arbitration decision. In practice, however, Ethiopia did not allow the necessary preparatory work to be undertaken within the territory under its effective control.

Additionally, according to some commentators, the mandate of the Boundary Commission was extremely narrow,[80] as it was strictly limited to confirm an existing boundary, rather than including the possibility to explore flexible solutions and adopting *ex aequo et bono* decisions, which might have been useful to elaborate special solutions for challenging issue, such as the status of Badme.[81] Finally, the very short timetable accorded to the Commission for the completion of its activity has probably been counterproductive. A longer period might have enabled the Commission to argue the case in order to prevent Ethiopian frustration for the result.[82] Moreover, a more relaxed timeframe might have also contributed to a stronger support by the UN to soften tensions between the two States,[83] while the OAU was involved in the institutional mutation into the African Union.[84]

These are some of the elements that contribute to explain the stalemate of the peace process in the aftermath of the Algiers Agreement, which—in any case—can be truly understood only in view of the troubled political transitions and growing authoritarianism in both Addis Ababa and Asmara in those years, as well as in the complex dynamics of other conflicts in the Horn of Africa.[85]

References

Alford R P (2000) The Proliferation of International Courts and Tribunals: International Adjudication in Ascendance. ASIL Proceedings 94:160–165

[79] Shaw 2007, p. 794.

[80] '… while the institutional bundling of the delimitation and demarcation tasks should have underlined the relational nature of the boundary settlement process, the Commission's limited substantive discretion and its relative isolation from other international actors prevented it from benefiting from the combination of its powers': Duijzentkunst and Dawkins 2015, p. 159.

[81] Pratt 2006, pp. 334–335. The Author suggests: 'the village could have been designated as a condominium under the sovereignty of both Eritrea and Ethiopia, or it could have been placed under the sovereignty of one state with special rights granted to citizens of the other state who had owned land in the village prior to the war. A similar regime was successfully established by Ecuador and Peru': ibid., p. 335.

[82] Shaw 2007, p. 794, and Pratt 2006, pp. 335–336.

[83] Shaw 2007, p. 794.

[84] Duijzentkunst and Dawkins 2015, p. 157.

[85] Lyons 2009, pp. 170–173.

Alzamora C (1995) The UN Compensation Commission: an overview. In: Lillich R B (ed) The United Nations Compensation Commission, Thirteenth Sokol Colloquium. Transnational Publishers, Irvington NY, pp 3 ff

Amerasinghe C F (2005) Principles of the Institutional Law of International Organizations. Cambridge University Press, Cambridge

Bodack J (2005) International Law for the Masses. Duke Journal of Comparative & International Law 15:363–386

Caron D D (2005) The United Nations Compensation Commission for Claims Arising out of the Gulf War: the "arising prior to" decision. Journal of Transnational Law & Policy 14:217–242

Cellamare G (2004) Caratteri della missione delle Nazioni Unite in Etiopia ed Eritrea [Features of the United Nations mission in Ethiopia and Eritrea]. In: Studi di diritto internazionale in onore di Gaetano Arangio Ruiz. Editoriale Scientifica, Naples, pp 1571–1586

Crook J R (1989) Applicable Law in International Arbitration: The Iran-US Claims Tribunal Experience. AJIL 83:278–311

Desta M G (2018) Peace Agreements between Ethiopia and Eritrea: ending two decades of hostilities: an introductory note. In: Yihdego Z, Desta M G, Hailu M B (eds) Ethiopian Yearbook of International Law 2018: In Pursuit of Peace and Prosperity. Springer Nature Switzerland, pp 261–268

Duijzentkunst B L S, Dawkins S L R (2015) Arbitrary Peace? Consent Management in International Arbitration. EJIL 26(1):139–168

Frigessi di Rattalma M, Treves T (1999) The United Nations Compensation Commission. A Handbook. Kluwer Law International, The Hague/London/Boston

Galtung J (1996) Peace by Peaceful Means: Peace and Conflict, Development and Civilization. Sage Publications, London

Gattini A (2002) The UN Compensation Commission: Old Rules, New Procedures on War Reparations. European Journal of Human Rights 13:161–181

Gray C (2006) The Eritrea-Ethiopia Claims Commission Oversteps Its Boundaries: A Partial Award? European Journal of Human Rights 17:699–721

Guillaume G (1995) The Future of International Judicial Institutions. ICLQ 44:848–862

Jouannet E (2001) Le règlement de paix entre l'Ethiopie et l'Erythrée: un succès majeur pour l'ensemble de l'Afrique? [The peace settlement between Ethiopia and Eritrea: a major success for the whole of Africa?]. RGDIP 105:849–896

Khan R (1990) The Iran-United States Claims Tribunal: Controversies, Cases and Contribution. Martinus Nijhoff, Dordrecht/Boston/London

Klabbers J (2009) An Introduction to International Institutional Law. Cambridge University Press, Cambridge

Lucchini L (2004) Érythrée - Éthiopie: l'enlisement? Annuaire Français de Droit International 50:389–415

Lyons T (2009) The Ethiopia-Eritrea Conflict and the Search for Peace in the Horn of Africa. Review of African Political Economy 36(120):167–180

Lyons S W (2019) Joint Declaration of Peace and Friendship between Eritrea and Ethiopia. ILM 58:237–239

Malintoppi L (2006) Methods of Dispute Resolution in Intestate Litigation: When States go to Arbitration Rather Than Adjudication. In: Del Vecchio A (ed) New International Tribunals and New International Proceedings. Giuffrè, Milan, pp 47–80

Mancini M (2018) La fine dello stato di guerra e il ripristino della pace tra Eritrea ed Etiopia [The end of the state of war and the restoration of peace between Eritrea and Ethiopia]. RDI 101:1211–1220

Murphy S D (2018) The Eritrean-Ethiopian War (1998-2000). In: Corten O, Ruys T (eds) International Law and the Use of Force: A Case-Based Approach. Oxford University Press, Oxford, pp 552–574

Nystuen G, Tronvoll K (2008) The Eritrean-Ethiopian Peace Agreement: exploring the limits of law. Nordisk Tidsskrift for Menneskerettigheter 26(11):16–37

Pratt M (2006) A Terminal Crisis? Examining the Breakdown of the Eritrea-Ethiopia Boundary Dispute Resolution Process. Conflict Management and Peace Science 23:329–341
Röling B V A (1973) International Law and the Maintenance of Peace. Netherlands Yearbook of International Law 4:1–103
Sands P, Klein P (2009) Bowett's Law of International Institutions. Sweet & Maxwell, London
Sciacovelli A L (2004) La controversia confinaria tra Eritrea ed Etiopia [The border dispute between Eritrea and Ethiopia]. RDI 87:730–751
Shaw M N (2007) Title, control, and closure - the experience of the Eritrea-Ethiopia Boundary Commission. ICLQ 56(4):755–796
Shaw M N (2008) International Law. Cambridge University Press, Cambridge
Zegeye A, Tegegn M (2008) The Post-war Border Dispute between Ethiopia and Eritrea: On the Brink of Another War? Journal of Developing Societies 24:245–272
Zondi S, Rejouis E (2006) The Ethiopia-Eritrea border conflict and the role of the international community. African Journal on Conflict Resolution 6:69–83