

Annex II

Eritrea-Ethiopia Boundary Commission: twenty-first report on the work of the Commission

1. The last report submitted by the Commission was the twentieth report, covering the period from 1 December 2005 to 28 February 2006. The next report should have covered the period from 1 March to 30 May 2006. However, on 21 May 2006 the President of the Commission addressed a detailed letter to the Secretary-General setting out the position as it then stood, which obviated a further report covering the period to 30 May 2006. Hence, the present report covers the period from 21 May to 31 August 2006.
2. At its meeting with the parties on 17 May 2006, the Commission invited the parties to a further meeting in The Hague on 15 June 2006. This was with a view to considering the procedural changes that the Commission had proposed in the May 2006 meeting and to check the progress made by the parties in taking the necessary steps to enable the Commission to resume its field activities in accordance with the schedule that the Commission had presented to the parties. By a letter dated 13 June 2006, Eritrea declined to attend that meeting because of its view that Ethiopia still had not accepted the delimitation decision without qualification. The Commission therefore saw no practical alternative but to cancel the June meeting with the parties.
3. Eritrea's position was further expressed in a letter dated 15 June 2006 from President Isaias to the President of the Commission, in which he said:

“... I wish to inform you that we are not prepared to entertain such futile acts or continue our engagements until the Agreements and the rule of law are respected and implementation of the ‘final and binding’ award pursued through a transparent process that is devoid of impediments and machinations.”
4. The Commission held an internal meeting on 15 June to discuss the next steps and, believing that it might be helpful to reopen the field offices in Asmara and Addis Ababa, decided to do so as soon as possible. It invited the parties to a rescheduled meeting on 24 August 2006, requesting their replies by 10 August 2006.
5. In early August 2006, the Commission sent to Addis Ababa its Deputy Secretary and the field office staff who had been recruited for the purpose of reopening the field offices and requested meetings with officials of the parties in their respective capitals. Despite repeated attempts, the Commission's team was unable to make direct contact with the relevant Ethiopian officials. Eritrea refused entry visas to the team and appeared unwilling to treat as valid the entry visa already issued to the Deputy Secretary by its embassy in Washington, D.C.
6. Notwithstanding this lack of cooperation by the parties, on 7 August 2006, the Commission was able, with the assistance of UNMEE, to reopen its field office in Addis Ababa and has installed its staff there for the time being. The Commission has not been able to make any further progress in reopening its field office in Asmara.

7. On 21 August 2006, President Isaias of Eritrea sent to the President of the Commission a further letter in which he said:

“The fundamental and primary issues that need to be settled prior to addressing all other aspects of the process are the following:

“1. The Award that is ‘final and binding’ in accordance with the Algiers Agreement has not been accepted to date by the Ethiopian Government. To discuss other matters when this fundamental issue is not resolved has no legal significance and procedural or practical utility. Ethiopia’s acceptance of the decision must therefore be ascertained publicly and unequivocally.

“2. The details and modalities of demarcation and the ‘Demarcation Directions’ must be worked out in an environment that is (i) free from political interference; (ii) unlawful and compounding mechanisms; and (iii) loopholes susceptible to distortion.

“In the event, I wish to reassure you that unless and until these preliminary ground rules are guaranteed, we have no legal or moral obligation to entertain or accept procedures and arrangements that compromise legality and the ‘integrity’ of the Agreements, or to engage, through intimidation and pressure, in another round of fruitless meetings.”

8. The Commission received no other response from the parties. The attempts of the Registrar to obtain a response on and after 10 August 2006 were unsuccessful.

9. The Commission met from 22 to 24 August 2006 without the participation of the parties to review the situation and consider how best to advance its work. It has scheduled a further internal meeting in November to examine the situation as it then stands and, in particular, how in the circumstances it may best carry forward the demarcation of the boundary.

10. As regards the financing by the parties of the Commission’s work, Ethiopia remains in arrears despite an assurance in a letter to the Commission dated 21 May 2006 that it will “soon” receive the requisite funds.

(Signed) Sir Elihu **Lauterpacht**
President of the Eritrea-Ethiopia Boundary Commission
8 September 2006