

A. Eritrea's Claims 2, 4, 6, 7, 8 & 22

N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

[Source: Eritrea-Ethiopia Claims Commission, Partial Award Central Front, Eritrea's Claims 2, 4, 6, 7, 8 & 22, Between the State of Eritrea and the Federal democratic Republic of Ethiopia. The Hague, April 28, 2004. The Permanent Court of Arbitration, the Hague. Footnotes omitted.]

PARTIAL AWARD

Central Front

Eritrea's Claims 2, 4, 6, 7, 8 & 22

Between the State of Eritrea and the Federal democratic Republic of Ethiopia

I. INTRODUCTION

[...]

B. Background and Territorial Scope of the Claims

3. Between 1998 and 2000, the Parties waged a costly, large-scale international armed conflict along several areas of their common frontier. This Partial Award, like the corresponding Partial Award in Ethiopia's Claim 2, addresses allegations of illegal conduct related to military operations on the Central Front of that conflict.

4. For purposes of these Claims, the Central Front encompassed the area of five Sub- Zobas in Southern Eritrea, that is Adi Quala, Senafe, Areza, Tserona and Mai Mene.

IV. THE MERITS

[...]

C. Summary of Events on the Central Front Relevant to these Claims

30. After the armed conflict began on the Western Front in May 1998, both Eritrea and Ethiopia began to strengthen their armed forces along what would become the Central Front. From mid-May to early June, Eritrean armed forces attacked at a number of points, first in Ahferom and Mereb Lekhe Weredas, then in Irob and Gulomakheda Weredas. In Gulomakheda Wereda, the significant border town of Zalambessa (with a pre-war population estimated at between 7,000 and 10,000) was also taken. In all four weredas, Eritrean forces moved into areas administered prior to the conflict by Ethiopia, occupied territory, and established field fortifications and trench lines, sometimes permanently and sometimes only for a brief period before returning to adjacent territory administered prior to the conflict by Eritrea. In all cases, they carried out intermittent operations that extended beyond the occupied areas. These operations included artillery fire, intermittent ground patrols, and the placement of defensive fields of land mines.

31. In response to these military operations, many residents of those areas fled and sought refuge in caves or displaced persons camps established by Ethiopia. Some civilians nevertheless remained in the occupied areas. Some who remained, including those who stayed in Zalambessa, were later moved by Eritrea to internally displaced persons ("IDP") camps within Eritrea.

32. When Ethiopia later introduced substantial numbers of its armed forces into the four weredas, a static, although not fully contiguous, front was created that remained largely the same for nearly two years. Hostilities varied in intensity during that period and included some instances of intense combat during 1999. However, in May of 2000, Ethiopia launched a general offensive that drove all Eritrean armed forces out of the territory previously administered by Ethiopia and took Ethiopian forces deep into Eritrea. Eritrea's claims in the present case arose only in the period beginning in May 2000, when Ethiopian armed forces entered Eritrean territory on the Central Front. In Eritrea, the Central Front extended from Areza and Mai Mene Sub-Zobas in the west, through Adi Quala and Tserona Sub-Zobas to Senafe Sub-Zoba in the east.

33. On May 12, 2000, Ethiopian troops crossed the Mereb River in the Western Front area and moved northeast to Molki. From there, they advanced eastward toward Areza, engaging in combat at several places, including the village of Adi Nifas and the town of Mai Dima. Ethiopian troops then moved south towards Mai Mene. After about ten days, Ethiopian forces in Areza and Mai Mene Sub-Zobas moved east and southeast and returned to Ethiopia through Adi Quala Sub-Zoba.

34. On May 23, Ethiopian forces launched a separate offensive in the Tserona area and captured the town of Tserona on May 25. On May 24, Ethiopian forces also attacked in the vicinity of Zalambessa. They quickly took Zalambessa and, on May 26, moved north into Eritrea, through the town of Senafe to high positions beyond at Keshe'at and Emba Soira, where the advance stopped and the front stabilized. The Ethiopian forces remained in occupation of parts of Tserona and Senafe Sub-Zobas until February and March 2001 when they withdrew to territory administered by Ethiopia prior to the conflict, pursuant to the December 12, 2000 Peace Agreement.

35. Eritrea's claims are based upon actions within the five Sub-Zobas of the Central Front for which Ethiopia was responsible that allegedly were unlawful and resulted in the looting and destruction of public and private property, destruction of infrastructure, personal injury to civilians and desecration of places of worship, graves and monuments. Following a general comment on the evidence of rape on the Central Front, the Commission shall consider these claims sub-zoba by sub-zoba. [...]

G. Adi Quala Sub-Zoba

52. Adi Quala Sub-Zoba, which also lies on the south-central section of the Central Front, has twenty kebabis in total and approximately 10,900 families. It was a developing agricultural area and a center of cross-border trade before the war, with a new immigration, customs and police center near the Mereb River in Kisad Ika.

53. The Ethiopian forces that had been in Areza and Mai Mene Sub-Zobas transited Enda Giorgis and Kisad Ika in Adi Quala Sub-Zoba on their return to Ethiopia from Areza and Mai Mene Sub-Zobas. As Eritrean armed forces were also in Adi Quala Sub-Zoba, there was recurring combat there before the last Ethiopian forces left the sub-zoba.

54. Eritrea submitted evidence relating only to four towns or villages that were controlled by Ethiopian forces for periods ranging from a week or ten days to six weeks and all of which had largely been evacuated before the Ethiopian troops arrived. That evidence included a small number of accounts of individual civilians being shot by Ethiopian soldiers, in two of which other Ethiopian soldiers intervened to assist the Eritrean victim. The evidence also included a few troubling accounts of arrests and deportations of civilians to Ethiopia. One Eritrean priest and group leader for the Peoples Front for Democracy and Justice (the governing political party in Eritrea) described being taken to Rama in Ethiopia, where he was detained in a cell for a month and interrogated by police, and then imprisoned in Aksum with political prisoners and subjected to two weeks of political re-education. However, the evidence was not sufficient to indicate a pattern of such events. [...]

56. Considering the evidence as a whole, and in view of the brief period of time during which Ethiopia controlled the locations concerned, the Commission holds that the evidence is not sufficient to establish a pattern of misconduct attributable to Ethiopian forces. All claims relating to Adi Quala Sub-Zoba are dismissed for failure of proof.

57. The Parties disagreed on an issue that arose not just in Adi Quala Sub-Zoba but in all three Eritrean sub-zobas in which Ethiopian armed forces were present only for limited periods, particularly in areas where the troops were passing through on their way to other locations. That issue was whether the provisions of the Geneva Conventions applicable to occupied territory were applicable to parts or all of those three sub-zobas. On the one hand, clearly an area where combat is ongoing and the attacking forces have not yet established control cannot normally be considered occupied within the meaning of the Geneva Conventions of 1949. On the other hand, where combat is not occurring in an area controlled even for just a few days by the armed forces of a hostile Power, the Commission believes that the legal rules applicable to occupied territory should

apply. Nevertheless, given the Commission's dismissal of all claims arising in those three subzobas, the Commission need not decide whether any areas within them that were, at any time, under the control of Ethiopian armed forces were occupied territory.

B. Ethiopia's Claim 2

[Source: Eritrea-Ethiopia Claims Commission, Partial Award Central Front, Ethiopia's Claim 2, Between the Federal democratic Republic of Ethiopia and the State of Eritrea. The Hague, April 28, 2004. The Permanent Court of Arbitration, the Hague. Footnotes omitted. Full Awards available on http://www.pca-cpa.org/showpage.asp?pag_id=1151].

PARTIAL AWARD

Central Front

Ethiopia's Claim 2

Between the Federal democratic Republic of Ethiopia and the State of Eritrea

I. INTRODUCTION

[...]

B. Background and Territorial Scope of the Claims

3. Between 1998 and 2000, the Parties waged a costly, large-scale international armed conflict along several areas of their common frontier. This Partial Award, like the corresponding Partial Award in Eritrea's Claims 2, 4, 6, 7, 8 and 22, addresses allegations of illegal conduct related to military operations on the Central Front of that conflict. [...]

5. For purposes of these Claims, the Central Front encompassed the area of military operations extending between Ethiopia's Mereb Lekhe Wereda on the west and Irob Wereda on the east and the corresponding areas to the north in Eritrea. The Central Front in Ethiopia included (from west to east) parts of the border weredas of Mereb Lekhe, Ahferom, Gulomakheda and Irob. Relevant events are also alleged in Genta Afeshum Wereda, which is located to the south of Gulomakheda Wereda and does not adjoin the boundary.

C. Summary of Events on the Central Front Relevant to these Claims

24. After the armed conflict began on the Western Front in May 1998, both Eritrea and Ethiopia began to strengthen their armed forces along what would become the Central Front. From mid-May to early June, Eritrean armed forces attacked at a number of points, first in Ahferom and Mereb Lekhe Weredas, then in Irob and Gulomakheda Weredas. In Gulomakheda Wereda, the significant border town of Zalambessa (with a pre-war population estimated at between 7,000 and 10,000) was also taken. In all four weredas, Eritrean forces moved into areas administered prior to the conflict by Ethiopia, occupied territory, and established field fortifications and trench lines, sometimes permanently and sometimes only for a brief period before returning

to adjacent territory administered prior to the conflict by Eritrea. In all cases, they carried out intermittent operations that extended beyond the occupied areas. These operations included artillery fire, intermittent ground patrols, and the placement of defensive fields of land mines.

25. In response to these military operations, many residents of those areas fled and sought refuge in caves or displaced persons camps established by Ethiopia. Some civilians nevertheless remained in the occupied areas. Some who remained, including those who stayed in Zalambessa, were later moved by Eritrea to internally displaced persons (“IDP”) camps within Eritrea.

26. When Ethiopia later introduced substantial numbers of its armed forces into the four weredas, a static, although not fully contiguous, front was created that remained largely the same for nearly two years. Hostilities varied in intensity during that period and included some instances of intense combat during 1999. However, in May of 2000, Ethiopia launched a general offensive that drove all Eritrean armed forces out of the territory previously administered by Ethiopia and took Ethiopian forces deep into Eritrea. Ethiopian armed forces remained in Eritrean territory until late February 2001, when they returned to the pre-war line of administrative control pursuant to the Cessation of Hostilities Agreement of June 2000 and the Peace Agreement of December 12, 2000.

27. The Commission wishes to emphasize that its description of territories administered by one Party or the other prior to the conflict and the conclusions reached in this Partial Award are not intended to, and indeed cannot, have any effect on the lawful boundary between the two nations. The determination of that boundary is the task of the Boundary Commission established by Article 4 of the Peace Agreement of December 12, 2000. That boundary is not relevant to the work of the Claims Commission. Our task under Article 5 of that Agreement is to determine the validity of each Party’s claims against the other for violations of international law arising out of the armed conflict for which that other Party is responsible and which caused damage to the Claimant Party, including its nationals. The Commission considers that, under customary international humanitarian law, damage unlawfully caused by one Party to an international armed conflict to persons or property within territory that was peacefully administered by the other Party to that conflict prior to the outbreak of the conflict is damage for which the Party causing the damage should be responsible, and that such responsibility is not affected by where the boundary between them may subsequently be determined to be.

28. The alternative could deny vulnerable persons in disputed areas the important protections provided by international humanitarian law. These protections should not be cast into doubt because the belligerents dispute the status of territory. The alternative would frustrate essential humanitarian principles and create an *ex post facto* nightmare. Moreover, respecting international protections in such situations does not prejudice the status of the territory. As Protocol I states, “Neither the occupation of a territory nor the application of the Conventions and this Protocol shall affect the legal status of the territory in question.”

29. The responsibility of a State for all acts contrary to international humanitarian law committed by members

of its armed forces is clear wherever those acts take place. The Hague Regulations considered occupied territory to be territory of a hostile State actually placed under the authority of a hostile army, and the 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War ("Geneva Convention IV") applies to "all cases of partial or total occupation of the territory of a High Contracting Party." However, neither text suggests that only territory the title to which is clear and uncontested can be occupied territory.

[...]

Discussion A

1. According to IHL, when is a territory considered occupied? Does Convention IV define occupation? Is the definition of "occupied territory" the same under Convention IV and under the Hague Regulations (HR, Art. 42)? Why could it be broader?,
2.
 - a. When is a territory considered occupied according to the Claims Commission? Does it make a difference whether combat is ongoing?
 - b. Considering the legal findings and the factual elements of this case, are Eritreans who were arrested by Ethiopia while combat was ongoing "protected persons" under Convention IV? (GC IV, Art. 4) If combat was ongoing in some of the Eritrean villages referred to in para. 54 and those villages were, according to the Commission, not covered by GC IV, Part III, Section III on occupied territories, were Eritrean civilians arrested by Ethiopia still protected civilians? Were they covered by Section II? At least by Section I? Can there be protected civilians covered by neither Section II nor Section III but only by Section I? By none of the provisions of Part III? (GC IV, Arts 4, 27-78 and 126)
 - c. If the village where the Eritrean priest was arrested was not occupied territory, was it unlawful under IHL to deport him to Ethiopia? (GC IV, Art. 49(1))

Discussion B

1. How does the Commission establish the responsibility of Eritrea and Ethiopia for violations of IHL whilst the boundary between them has subsequently been determined? Is the concept of "occupied territory" of any relevance? Why does the Claims Commission firmly insist on the fact that the boundary determined by the Boundary Commission is not relevant to its work? What is at stake? (P I, Preamble para. 5)
2. Would the reasoning of the Commission also be valid if GC IV did not apply because there was an armed conflict, but because there was belligerent occupation without armed resistance?
3. To which extent is it important for the Commission to have a clear idea of which Party administered which territory prior to the war? When would territory found to belong to a party and over which that party gains control during an international armed conflict not be occupied?
4. Can the finding of a territory being occupied prejudice the legal status of the said territory?