

## COMMENTARY

### Eritrea Ethiopia Claims Commission Awards

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In its seven partial awards and two final awards issued on 19 December 2005, the Eritrea Ethiopia Claims Commission<sup>1</sup> has produced a significant body of case-law on the subject of international armed conflict. The Commission was established to determine claims for breaches of international law resulting from the 1998-2000 war between Eritrea and Ethiopia. Set out in this note is a very basic summary of each of the 19 December awards. The note is intended to provide the reader with an overview of the wide range of issues in international law that were examined by the Commission.

1. Partial Award, *Jus Ad Bellum* (Ethiopia's Claims 1-8): This partial award dealt with Ethiopia's assertion that Eritrea acted in violation of the *jus ad bellum*—notably Article 2(4) of the UN Charter prohibiting the threat or use of force against the territorial integrity or political independence of any State. The Commission found in favour of Ethiopia, holding Eritrea responsible for carrying out a series of unlawful armed attacks against Ethiopia. Such attacks were not considered instances of self-defence under Article 51 of the UN Charter.

2. Partial Award, Diplomatic Claim (Ethiopia's Claim 8): The Commission here found Eritrea responsible for violating Articles 24 and 29 of the 1961 Vienna Convention on Diplomatic Relations.<sup>2</sup> The violations included arresting and detaining the Ethiopian Chargé d'Affaires and retaining Ethiopian Embassy correspondence. An interesting feature of this decision was the Commission's observation that a State must have greater latitude in wartime to limit the activities of a diplomatic mission of an enemy.

3. Partial Award, Diplomatic Claim (Eritrea's Claim 20): In this partial award, Ethiopia was found liable for violating Articles 29 and 36 of the Vienna Convention on Diplomatic Protection by attempting to search the Eritrean Ambassador when he was departing Ethiopia, searching his hand luggage, confiscating papers from

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<sup>1</sup> The Commission was established pursuant to the Agreement between the Government of the Federal Democratic Republic of Ethiopia and the Government of the State of Eritrea, 12 Dec. 2000, reprinted in 40 ILM 260 (2001). The International Bureau of the Permanent Court of Arbitration at The Hague serves as the registry for the Commission.

<sup>2</sup> 500 UNTS 95.

his briefcase, interfering with his checked-in luggage and searching other departing diplomats and their luggage. Article 22 of the Vienna Convention was also held to have been breached, namely, entering, ransacking, searching and seizing the Eritrean Embassy Residence as well as official vehicles and other property.

4. Partial Award, Economic Loss Throughout Ethiopia (Ethiopia's Claim 7): A large portion of this partial award related to an array of economic damages allegedly suffered as the legal consequence of Eritrea's violation of the *jus ad bellum*. While finding that these claims were not admissible for determination in the partial award, the Commission noted that the potential scope of the liability for these claims would be considered during the subsequent damages phase of the proceedings. Another section of the partial award addressed the allegation that five bilateral agreements were violated by Ethiopia. In this connection, the Commission noted that although it was unsettled whether bilateral agreements were terminated as a result of the outbreak of armed conflict, at the very least, the treaties were suspended in such situations.

5. Partial Award, Western and Eastern Fronts (Ethiopia's Claims 1 & 3): This partial award dealt with various international law violations alleged by Ethiopia to have occurred on the eastern and western fronts of the armed conflict. Successful claims included those for unlawful killings, beating and abduction of civilians, looting, forced labour, conscription, and failure to take effective measures to prevent the rape of women.

6. Partial Award, Loss of Property in Ethiopia Owned by Non-Residents (Eritrea's Claim 24): In this partial award, Ethiopia was held responsible for failing to pay full compensation for Eritrean-owned trucks and buses that were requisitioned by Ethiopia during the conflict and which were not returned to their owners. In so holding, the Commission observed that during armed conflict, while latitude existed to freeze or control property belonging to enemy nationals, the basic rules regulating the expropriation of property nevertheless applied. It also held that Ethiopia breached its duty to ensure the protection of aliens' assets by creating and facilitating a network of measures, both lawful and unlawful, which collectively resulted in the loss of virtually all businesses and immovable property in Ethiopia of non-resident Eritreans.

7. Partial Award, Western Front, Aerial Bombardment and Related Claims (Eritrea's Claims 1, 3, 5, 9-13, 14, 21, 25 & 26): This was by far the largest of the 19 December partial awards in terms of length. Ethiopia was held responsible for looting, burning, and destroying private and public buildings (including police stations) and livestock. Ethiopia's displacement of all the residents in a town occupied by its forces and the failure to take measures to prevent the rape of women were also held to be in violation of international law for which it was responsible. Further, aerial bombing attacks by Ethiopia against a water reservoir considered indispensable to the survival of the civilian population were held to be in violation of customary international law. The Commission's decisions were unanimous, except for its majority decision that a certain power station in Eritrea was a military objective as defined in Article 52(2) of Additional Protocol

I<sup>3</sup> (i.e., its destruction ‘offered a definite military advantage’) and, as such, the aerial bombing of it was lawful. The President of the Commission expressed his disagreement with this determination in a Separate Opinion. He considered that the potential military advantage resulting from the power station bombing was disproportionate to the damage caused to civilian objects and the civilian population.

8. Final Award, Ports (Ethiopia’s Claim 6): Ethiopia’s contention in this final award was that a taking of property had resulted from the termination of (1) Ethiopia’s access to the Eritrean port of Assab and (2) the movement of Ethiopian cargo from Assab to Ethiopia. The Commission dismissed this claim observing that a party to an international armed conflict was permitted to restrict or terminate trade between it and an opposing party. It also noted as part of its decision that a significant amount of the property stranded as a consequence of closing the port still remained available for delivery to Ethiopia, should the parties agree on terms enabling the delivery to take place.

9. Final Award, Pensions (Eritrea’s Claims 15, 19 & 23): This final award concerned pensions of former Ethiopian state employees, who resided in Eritrea after it became independent in 1993. Eritrea made claims relating to these pensions on different legal theories. The Commission essentially found that no taking within its temporal jurisdiction had occurred in relation to the pensions.

The above awards, along with six other partial awards issued prior to December 2005, have completed the Commission’s merits phase. It now faces the equally arduous task of assessing damages and awarding monetary compensation for claims that have succeeded on the merits. The methodology to be used by the Commission in carrying out this massive valuation process and how compensation will eventually be paid will no doubt be a subject of great interest to international lawyers.

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<sup>3</sup> Protocol Additional to the Geneva Conventions of 12 Aug. 1949, and Relating to the Protection of Victims of International Armed Conflicts, 8 June 1977, 1125 UNTS 3.