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**Eritrea-Ethiopia Claims Commission - Partial Award: Western and Eastern
Fronts - Ethiopia's Claims 1 & 3**

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PART IX

Partial Award Western and Eastern Fronts—Ethiopia's Claims 1 & 3

Decision of 19 December 2005

Sentence partielle Fronts oriental et occidental— Réclamations de l'Éthiopie N^{os} 1 & 3

Décision du 19 décembre 2005

PARTIAL AWARD, WESTERN AND EASTERN FRONTS—ETHIOPIA'S
CLAIMS 1 & 3, DECISION OF 19 DECEMBER 2005

SENTENCE PARTIELLE, FRONTS ORIENTAL ET OCCIDENTAL—
RÉCLAMATIONS DE L'ÉTHIOPIE N^{os} 1 & 3
DÉCISION DU 19 DÉCEMBRE 2005

Question of evidence—difficult assessment of credibility of conflicting evidence—requirement of clear and convincing evidence—sworn witness declarations considered as a more trustworthy form of written testimony than sworn claims forms—limited weight given to ambiguous intercepts of Eritrean military communications—lowered standard of evidence for rape claims—difficulty to evaluate description of events passed through multiple layers of translation.

Applicable law—customary international law as expressed in Geneva Conventions—burden of proof on the Party denying customary status to a specific provision.

International humanitarian law principles—“feasible precaution to spare civilians” considered as meaning practicable or practically possible measures in the given circumstances—no liability arising from the flight of civilians fearing the fighting or destruction resulting from the hostilities—no liability arising from the shooting of civilians mixed with militia while fleeing enemy combatants—liability for permitting looting, frequent beatings, abductions and unexplained disappearances of civilians—liability for permitting intentional and indiscriminate killings of civilians—liability for failing to effectively prevent rape of civilians by troops—liability for abduction, forced labour and conscription of civilians.

Question de preuves—difficulté d'évaluer la crédibilité de preuves contradictoires—exigence de preuves claires et convaincantes—les déclarations sous serment de témoins sont considérées comme une forme de témoignage écrit plus fiable que celui contenu dans les formulaires de soumission de réclamations établies sous-serment—importance limitée accordée aux interceptions ambiguës de communications militaires érythréennes—critères d'établissement des preuves rabaissés pour les plaintes pour viol—difficulté d'évaluer la description d'événements soumise à plusieurs niveaux de traduction.

Droit applicable—droit coutumier international tel qu'exprimé dans les Conventions de Genève—charge de la preuve reposant sur la Partie réfutant le statut coutumier d'une disposition particulière.

Principes du droit international humanitaire—« toutes précautions possibles pour épargner les civils » considéré comme signifiant la prise de mesures réalisables ou pratiquement possibles dans les circonstances de l'espèce—pas de responsabilité engagée par la fuite de civils redoutant les combats ou les destructions résultant des hostilités—pas de responsabilité engagée par les tirs sur des civils mêlés à la milice lors de la fuite devant les combattants ennemis—responsabilité engagée pour l'autorisation de pillages, de violences fréquentes, d'enlèvements et de disparition inexplicables de

civils—responsabilité engagée par l'échec de la prévention de viols de civils par les troupes—responsabilité engagée pour les enlèvements, le travail forcé et la conscription de civils.

ERITREA-ETHIOPIA CLAIMS COMMISSION

PARTIAL AWARD

Western and Eastern Fronts Ethiopia's Claims 1 & 3

between

The Federal Democratic Republic of Ethiopia

and

The State of Eritrea

By the Claims Commission, composed of:

Hans van Houtte, President
George H. Aldrich
John R. Crook
James C.N. Paul
Lucy Reed

The Hague, December 19, 2005

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I. INTRODUCTION

A. Summary of the Positions of the Parties

1. These Claims (“Ethiopia’s Claims 1 and 3”) have been brought to the Commission by the Claimant, the Federal Democratic Republic of Ethiopia (“Ethiopia”), pursuant to Article 5 of the Agreement between the Government of the Federal Democratic Republic of Ethiopia and the Government of the State of Eritrea of December 12, 2000 (“the Agreement”). The Claimant asks the Commission to find the Respondent, the State of Eritrea (“Eritrea”), liable for loss, damage and injury suffered by the Claimant, including loss, damage and injury suffered by the Claimant’s nationals, as a result of alleged infractions of international law occurring on the Western and Eastern Fronts of the 1998-2000 international armed conflict between the Parties. The Claimant requests monetary compensation. These Claims do not include any claims set forth in separate claims by the Claimant, such as those for mistreatment of prisoners of war (Ethiopia’s Claim 4), for mistreatment of other Ethiopian nationals in areas of Eritrea not directly affected by the armed conflict (Ethiopia’s Claim 5), or for loss, damage and injury suffered by the Claimant or its nationals on the Central Front (Ethiopia’s Claim 2).

2. The Respondent asserts that it fully complied with international law in its conduct of military operations on the Western and Eastern Fronts.

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 addresses allegations of illegal conduct related to military operations on both the Eastern Front of that conflict and, like the corresponding Partial Award issued today in Eritrea's Claims 1,3,5 and 9-13 ("Eritrea's Western Front Claims"), on the Western Front.

4. Claims based on alleged breaches by the Respondent of the *jus ad bellum* are addressed in the Commission's Partial Award of December 19, 2005 on that issue.¹

5. For the purposes of these Claims, the area administered by Ethiopia that became the Western Front during the war encompassed the area of military operations in Kafta Humera Wereda, Tahtay Adiabo Wereda and Laelay Adiabo Wereda. The Eastern Front encompassed much of the Afar region of northeastern Ethiopia, in the Elidar, Dalul and Afdera Weredas.

C. General Comment

6. As the findings in this Partial Award and in the related Partial Award in Eritrea's Western Front Claims describe, the allegations and the supporting evidence presented by the Parties frequently set out diametrically opposed accounts of the same events. Such clashing views of the relevant facts may not be surprising in light of the fog of war accompanying military operations, intensified by the polarizing effects of warfare. As the Commission has noted in its earlier Partial Awards, these effects have long been seen in warfare and they create obvious difficulties for the Commission, which is confronted with large numbers of sworn declarations by witnesses on each side asserting facts that are mutually contradictory.

7. In these unhappy circumstances, in seeking to determine the truth, the Commission has done its best to assess the credibility of much conflicting evidence. Considerations of time and expense have prevented the Parties from bringing more than a few witnesses to The Hague to testify before the Commission. The Commission thus has had to judge the credibility of particular declarations, not by observing and questioning the declarants, but rather on the basis of all the relevant evidence before it, which may or may not include evidence from persons or parties not directly involved in the conflict. In that connection, the Commission recalls its holding in its earlier Partial Awards on the required standard of proof: "Particularly in light of the gravity of some of the claims advanced, the Commission will require clear

¹ See Partial Award, *Jus Ad Bellum*, Ethiopia's Claims 1-8 Between the Federal Democratic Republic of Ethiopia and the State of Eritrea (December 19, 2005).

and convincing evidence in support of its findings.”² The Commission applies the same standard in the Claims addressed in this Partial Award.

8. As in its earlier Partial Awards, the Commission recognizes that the standard of proof it must apply to the volume of sharply conflicting evidence likely results in fewer findings of liability than either Party anticipated. The Partial Awards on these Claims must be understood in that unavoidable context.

D. Award Sections

9. As Ethiopia's Western Front and Eastern Front Claims are both decided in this Partial Award, the Commission has included an Award section at the end of each Claim and repeated those sections at the end of the Partial Award.

II. PROCEEDINGS

10. The Commission informed the Parties on August 29, 2001 that it intended to conduct proceedings in Government-to-Government claims in two stages, first concerning liability and, second, if liability is found, concerning damages. Ethiopia filed these claims on December 12, 2001, Eritrea filed its Statement of Defense to Claim 1 on June 17, 2002, and to Claim 3 on August 15, 2002, Ethiopia filed its Memorial on November 1, 2004, and Eritrea its Counter-Memorial on January 17, 2005. Both Parties filed Replies on March 10, 2005. A hearing on liability was held at the Peace Palace during the week of April 11-15, 2005, in conjunction with a hearing on several other claims by both Parties, including Eritrea's related Claims 1, 3, 5 and 9-13, which was heard during the week of April 4-8, 2005.

III. JURISDICTION

11. Article 5, paragraph 1, of the Agreement establishes the Commission's jurisdiction. It provides, *inter alia*, that the Commission is to decide through binding arbitration claims for all loss, damage or injury by one Government against the other that are related to the earlier conflict between them and that result from “violations of international humanitarian law, including the 1949 Geneva Conventions, or other violations of international law.”

12. In these Claims, as in Eritrea's Western Front Claims, the Claimant alleges that the Respondent's conduct related to military operations on the Western Front violated numerous rules of international humanitarian

² Partial Award, Prisoners of War, Eritrea's Claim 17 Between the State of Eritrea and The Federal Democratic Republic of Ethiopia, para. 46 (July 1, 2003) [hereinafter Partial Award in Eritrea's POW Claims]; Partial Award, Prisoners of War, Ethiopia's Claim 4 Between The Federal Democratic Republic of Ethiopia and The State of Eritrea, para. 37 (July 1, 2003) [hereinafter Partial Award in Ethiopia's POW Claims].

law. Eritrea has not contested the Commission's jurisdiction over the claims asserted by Ethiopia and the Commission is aware of no jurisdictional impediments. Thus, the claims fall directly within the scope of the Commission's jurisdiction.

13. The Respondent did raise several jurisdictional and admissibility objections to Ethiopian claims relating to certain areas on the Eastern Front that Eritrea considers to have been within its own territory. The Commission addresses these objections below in its consideration of the Eastern Front Claims.

IV. APPLICABLE LAW

14. Under Article 5, paragraph 13, of the Agreement, "in considering claims, the Commission shall apply relevant rules of international law." Article 19 of the Commission's Rules of Procedure defines the relevant rules in the familiar language of Article 38, paragraph 1, of the International Court of Justice's Statute. It directs the Commission to look to:

1. International conventions, whether general or particular, establishing rules expressly recognized by the parties;
2. International custom, as evidence of a general practice accepted as law;
3. The general principles of law recognized by civilized nations;
4. Judicial and arbitral decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

15. Both Parties' discussions of the applicable law reflect the premise, which the Commission shares, that the 1998-2000 conflict between them was an international armed conflict subject to the international law of armed conflict. However, the Parties disagree as to whether certain rules apply by operation of conventions or under customary law.

16. In its Partial Awards in the Parties' Prisoners of War, Central Front and Civilians Claims, the Commission held that the law applicable to those claims prior to August 14, 2000, when Eritrea acceded to the four Geneva Conventions of 1949,³ was customary international humanitarian

³ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 6 U.S.T. p. 3114, 75 U.N.T.S. p. 31; Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Aug. 12, 1949, 6 U.S.T. p. 3217, 75 U.N.T.S. p. 85; Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. p. 3316, 75 U.N.T.S. p. 135; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. p. 3516, 75 U.N.T.S. p. 287 [hereinafter Geneva Convention IV].

law.⁴ In those same Partial Awards, the Commission also held that those Conventions have largely become expressions of customary international humanitarian law and, consequently, that the law applicable to those Claims was customary international humanitarian law as exemplified by the relevant parts of those Conventions.⁵ Those holdings apply as well to the Western and Eastern Front Claims addressed in this Partial Award and, indeed, to all the claims submitted to the Commission.

17. The Parties have identified no other potentially relevant treaties to which both Eritrea and Ethiopia were parties during their armed conflict. As the claims presented for decision in the present Partial Award arise from military combat and from belligerent occupation of territory, the Commission recalls its earlier holdings with respect to the customary status of the Hague Convention (IV) Respecting the Laws and Customs of War on Land of 1907 and its annexed Regulations ("Hague Regulations")⁶ as well as those it has made with respect to the Geneva Conventions of 1949.⁷ The customary law status of the Hague Regulations has been recognized generally for more than 50 years.⁸ Had either Party asserted that a particular provision of those Conventions or Regulations should not be considered part of customary

⁴ Partial Award in Eritrea's POW Claims, *supra* note 2, at para. 38; Partial Award in Ethiopia's POW Claims, *supra* note 2, at para. 29; 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, para. 21 (April 28, 2004) [hereinafter Partial Award in Eritrea's Central Front Claims]; Partial Award, Central Front, Ethiopia's Claim 2 Between the Federal Democratic Republic of Ethiopia and the State of Eritrea, para. 15 (April 28, 2004) [hereinafter Partial Award in Ethiopia's Central Front Claims]; Partial Award in Eritrea's Claims 15, 16, 23 & 27-32 Between the State of Eritrea and the Federal Democratic Republic of Ethiopia, para. 28 (December 17, 2004) [hereinafter Partial Award in Eritrea's Civilians Claims]; Partial Award in Ethiopia's Claim 5 Between the Federal Democratic Republic of Ethiopia and the State of Eritrea, para. 24 (December 17, 2004) [hereinafter Partial Award in Ethiopia's Civilians Claims].

⁵ Partial Award in Eritrea's POW Claims, *supra* note 2, at paras. 40-41; Partial Award in Ethiopia's POW Claims, *supra* note 2, at paras. 31-32; Partial Award in Eritrea's Central Front Claims, *supra* note 4 at para. 21; Partial Award in Ethiopia's Central Front Claims, *supra* note 4, at para. 15; Partial Award in Eritrea's Civilians Claims, *supra* note 4, at para. 28; Partial Award in Ethiopia's Civilians Claims, *supra* note 4, at para. 24.

⁶ Hague Convention (IV) Respecting the Laws and Customs of War on Land and Annexed Regulations, Oct. 18, 1907, 36 Stat. p. 2277, 1 Bevans p. 631.

⁷ See Partial Award in Eritrea's Central Front Claims, *supra* note 4, at para. 22; Partial Award in Ethiopia's Central Front Claims, *supra* note 4, at para. 16.

⁸ International Military Tribunal, Trial of the Major War Criminals by the International Military Tribunal pp. 253-254 (1947); *United States v. Von Leeb* [High Command Case], 11 *Trials of War Criminals Before the Nuernberg Military Tribunal Under Control Council Law No. 10*, at p. 462 (1950); Report of the Secretary-General Pursuant to Paragraph 2 of the Security Council Resolution 808, Annex, at 9, U.N. Doc. S/25704 (1993); see also Vol. II, *Oppenheim's International Law* pp. 234-236 (Hersch Lauterpacht ed., Longmans, 7th ed. 1952); Jonathan I. Charney, *International Agreements and the Development of Customary International Law*, 61 Wash. L. Rev. p. 971 (1986).

international humanitarian law at the relevant time, the Commission would have decided that question, with the burden of proof on the asserting Party. In the event, however, neither Party contested their status as accurate reflections of customary law.

18. Both Parties also relied extensively in their written and oral pleadings on provisions contained in Additional Protocol I to the Geneva Conventions of 1977 ("Geneva Protocol I").⁹ Although portions of Geneva Protocol I involve elements of progressive development of the law, both Parties treated key provisions governing the conduct of attacks and other relevant matters in the claims decided by this Partial Award as reflecting customary rules binding between them. The Commission agrees and further holds that, during the armed conflict between the Parties, most of the provisions of Geneva Protocol I were expressions of customary international humanitarian law. Again, had either Party asserted that a particular provision of Geneva Protocol I should not be considered part of customary international humanitarian law at the relevant time, the Commission would have decided that question, but the need to do so did not arise.

19. Both Parties presented numerous claims alleging improper use of anti-personnel landmines and booby traps, but there was limited discussion of the law relevant to the use of those weapons in international armed conflict. The Commission notes that the efforts to develop law dealing specifically with such weapons have resulted in the following treaties: the Convention on Prohibition or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects,¹⁰ the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices ("Protocol II of 1980"),¹¹ that Protocol as amended on May 3, 1996,¹² and the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction.¹³ None of these instruments, however, was in force between the Parties during the conflict. The Commission holds that customary international humanitarian law is the law applicable to these claims. In that connection, the Commission

⁹ Protocol Additional to the Geneva Conventions of Aug. 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts, June 8, 1977, 1125 U.N.T.S. p. 3 [hereinafter Geneva Protocol I].

¹⁰ U.N. Convention on Prohibition or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, Oct. 10, 1980, 1342 U.N.T.S. p. 137, *reprinted in* 19 I.L.M. p. 1523 (1980).

¹¹ Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices, Oct. 10, 1980, 1342 U.N.T.S. p. 168, *reprinted in* 19 I.L.M. p. 1529 (1980).

¹² *Id.*, as amended at Geneva, May 3, 1996, *reprinted in* 35 I.L.M. p. 1209 (1996).

¹³ Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, Sept. 18, 1997, *reprinted in* 36 I.L.M. p. 1507 (1997).

considers that the treaties just listed have been concluded so recently and the practice of States has been so varied and episodic that it is impossible to hold that any of the resulting treaties in and of itself constituted an expression of customary international humanitarian law applicable during the armed conflict between the Parties. Nevertheless, there are elements in Protocol II of 1980, such as those concerning recording of mine fields and prohibition of indiscriminate use, that express customary international law. Those rules reflect fundamental humanitarian law obligations of discrimination and protection of civilians.

V. EVIDENTIARY ISSUES

A. Question of Proof Required

20. As discussed above, the Commission requires clear and convincing evidence in support of its findings.

B. Evidence Presented

21. In support of these Claims, in addition to maps and photographs, Ethiopia presented 197 sworn declarations from civilians, 18 sworn declarations from Ethiopian military officers, 10 sworn civilians' claims forms and 31 summary translations of claims forms (filed with the Statement of Claim) for the Western Front; and 144 civilians' declarations, nine military officer declarations, six sworn civilians' claims forms, four sworn claims forms from government agencies, and 65 summary translations of claims forms (filed with the Statement of Claim) for the Eastern Front. Having noted in the Partial Award in Ethiopia's Central Front Claim that sworn claims forms may have probative value,¹⁴ the Commission has considered them here only as supplementary to the sworn witness declarations, which remain the most trustworthy form of written testimony.

22. Ethiopia filed a group of alleged intercepts of Eritrean military communications with its Reply of March 10, 2005, to which Eritrea objected on grounds that they were not responsive to points made in Eritrea's Counter-Memorial and were untimely as they could have been filed with Ethiopia's Memorial. The Commission agrees that these documents were filed unduly late and so Eritrea was not able fully to analyze or respond to them before or at the hearing. In light of this, but also noting that these intercepts were often ambiguous and could be interpreted to support certain positions of both Parties, the Commission has given appropriately limited weight to these documents.

¹⁴ Partial Award in Ethiopia's Central Front Claims, *supra* note 4, at para. 21.

23. In its defense to both the Western and Eastern Front Claims, Eritrea submitted 13 sworn witness declarations and one expert report, as well as photographs and satellite images.

24. At the hearing, Ethiopia presented no witnesses and Eritrea presented Colonel Rezene Seium Tesfatsium in its defense of the Eastern Front Claim.

VI. THE WESTERN FRONT (ETHIOPIA'S CLAIM 1)

A. Introduction

25. The area administered by Ethiopia that became the Western Front during the war was comprised of three weredas: moving from west to east, Kafta Humera Wereda, Tahtay Adiabo Wereda and Laelay Adiabo Wereda. As described in the Commission's Partial Award in Ethiopia's *Jus Ad Bellum* Claims, the armed conflict began on May 12, 1998 when at least two brigades of Eritrean soldiers, supported by tanks and artillery, invaded and captured the town of Badme and several other border areas in Ethiopia's Tahtay Adiabo Wereda. On the same day, Eritrean armed forces also entered several other parts of that wereda, as well as Laelay Adiabo Wereda.

26. The evidence indicates that Ethiopian armed resistance was offered initially only by local militia and police, who were quickly forced to flee. Ethiopia stated that, by May 13, 1998, Eritrean forces were in Badme town and the following kebeles of Tahtay Adiabo Wereda: Badme, Gemhalo, Shimbilina, Aditsetser, Adimeyti Lemlem and Adi Awala. Ethiopia responded quickly to Eritrea's attacks, moving elements of its army into defensive positions in the wereda, and the contact between the two armies solidified along those lines. During the following months of 1998, the conflict spread to other areas of the border between the two countries, including Humera and Laelay Adiabo Weredas on the Western Front, the Eastern Front (discussed below), and the Central Front.¹⁵

27. In February 1999, Ethiopia launched a successful offensive named "Operation Sunset" on the Western Front, restoring control over virtually all of the territory that Eritrea had occupied for the preceding nine months. Thus, the bulk of Ethiopia's Western Front Claims arose during the nine-month period between May 1998 and February 1999. Some claims also involve alleged incursions and shelling after February 1999 and before the conclusion of the Agreement in December 2000.

28. Ethiopia presented its claims that Eritrea violated international humanitarian law on the Western Front in four categories:

1. Physical abuse of Ethiopian civilians;

¹⁵ See Partial Award in Ethiopia's Central Front Claims, *supra* note 4.

2. Property loss through looting or deliberate and unlawful destruction;
3. Indiscriminate aerial bombing, shelling, and use of landmines; and
4. Displacement of Ethiopian civilians.

In light of the balance of the evidence submitted, the Commission will first address the third and fourth categories for the Western Front as a whole. It will then evaluate the first two categories, physical abuse and property loss, on a wereda-by-wereda basis, followed by a separate section for rape allegations.

B. Indiscriminate Aerial Bombing, Shelling and Use of Landmines

29. The evidence presented by Ethiopia shows that by far the largest number of civilians killed and injured during the war on the Western Front were victims either of shelling or of landmines. Tragic as this reality is, Ethiopia was unable to demonstrate that the shelling and use of landmines were indiscriminate or otherwise unlawful.

30. Turning first to shelling, Ethiopia asserted that Eritrean shelling of the town of Sheraro, which the Claimant selected and emphasized as an example, resulted in injuries and property damage throughout the entire town. It contended that this wide spread of shell impacts demonstrated that Eritrea made an indiscriminate attack in violation of the rule set forth in Article 51, paragraph 5, of Geneva Protocol 1 and failed to take all feasible precautions to spare civilians and civilian objects as required by Article 57 of that Protocol. Article 51, paragraph 1, which the Commission agrees reflects a rule of customary international humanitarian law, states:

Among others, the following types of attacks are to be considered as indiscriminate:

- a. an attack by bombardment by any methods or means which treats as a single objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a concentration of civilians or civilian objects; and
- b. an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.

31. Ethiopia further complained that Sheraro town was hit with a total of between 130 and 165 long-range Eritrean artillery rounds over the course of six separate shelling attacks in May and June 1998 and again in October and November 1998. While mindful of the damage and loss of life that may have resulted from this shelling, the Commission notes that this seems

a comparatively modest volume of fire in relation to that reported at other times and places during the conflict.

32. Overall, the evidence does not permit the Commission to conclude that the military objectives of the Eritrean shelling in Sheraro town, or the other towns and villages referred to by Ethiopia, were clearly separate and distinct so as to permit their being targeted separately, or that the information and weapons available to the Eritrean forces would have permitted more discriminate targeting than in fact occurred. Clearly it is inadequate for Eritrea to argue, as it has in this case, that Ethiopian troops were everywhere. Equally, it is inadequate for Ethiopia to argue, as it has, that there were no legitimate military objectives whatsoever in the relevant towns and villages. Those towns and villages were close to the front, sometimes squarely between the opposing armies. In an area with limited roads, many were located on the communication and supply lines upon which soldiers in combat depend. Moreover, the evidentiary burden is on Ethiopia, as the Claimant, to prove that Eritrea shelled Sheraro and other towns and villages indiscriminately in violation of the customary rules reflected in Article 51. The Commission finds that Ethiopia failed in this.

33. Presumably, it was recognition of the difficulties of proving indiscriminate shelling that caused Ethiopia in its Memorial to emphasize Article 57 of Geneva Protocol I rather than Article 51. Article 57, a more general provision found in a Chapter of the Protocol entitled "Precautionary Measures," generally requires the parties to an armed conflict to take "all feasible precautions" to spare civilians and civilian objects. By "feasible," Article 57 means those measures that are practicable or practically possible, taking into account all circumstances ruling at the time.¹⁶ Article 57 does not change the substantive rule of Article 51. Moreover, Article 57 is coupled with Article 58, which imposes precautionary measures on a defender, including an obligation to remove civilians and civilian objects from the vicinity of military objectives "to the maximum extent feasible." On the basis of the evidence, the Commission is unable to find violations of those Articles by Eritrea or, indeed, by either Party.

34. Consequently, all claims for unlawful shelling by Eritrea on the Western Front fail for lack of proof.

35. With respect to landmines, there is abundant evidence that both Parties used them widely and that they killed and wounded many civilians, as well as domestic animals, in the years after Operation Sunset restored the areas at issue to Ethiopian control. However, there is little or no evidence as to the circumstances in which mines were laid or, indeed, as to which Party laid them. Particularly given that both Parties dug trenches and placed landmines to defend those positions, and that forces in retreat often lack the

¹⁶ See, e.g., the Statement of Interpretation (b) made by the United Kingdom upon ratification of Geneva Protocol I, and similar statements by others.

time and the incentive to remove such mines, the Commission has not been given evidence that would permit it to impose liability. Consequently, all claims based on Eritrea's use of landmines on the Western Front fail for lack of proof. Nonetheless, the Commission notes again, as it did in the Partial Award in Ethiopia's Central Front Claims,¹⁷ that the serious risk posed by landmines to civilians demonstrates the importance of the recent, rapid progress toward prohibiting their use.

36. Ethiopia's evidence also contains occasional complaints about aerial bombing, but that evidence is insufficient to enable the Commission to evaluate the legality of any particular bombing. While such evidence admittedly is difficult for one party to a conflict to produce, the evidence that exists indicates that Eritrean bombings were so infrequent and limited in scope that their consequences were unlikely to be either severe or pervasive, even if individual attacks could be shown to have been unlawful. Consequently, Ethiopia's claims based on Eritrean aerial bombing on the Western Front fail for lack of proof.

C. Displacement of Ethiopian Civilians

37. As the Commission recognized in its Partial Award in Ethiopia's Central Front Claims, the flight of civilians from armed hostilities and the destruction incidental to such hostilities do not, as such, give rise to liability under international humanitarian law.¹⁸ The evidence for the Western Front does not warrant a different conclusion. Ethiopia's claims for the displacement of civilians on the Western Front are dismissed for failure to establish a violation of international law.¹⁹

D. Physical Abuse and Property Loss

1. Tahtay Adiabo Wereda

38. Physical Abuse of Civilians: The evidence indicates that Eritrean soldiers shot a number of persons who were trying to flee attacks. This claim faces difficulties, however, because it is clear that the armed Ethiopian militia members who were defending the area were frequently dressed in civilian clothes. In the Central Front proceedings, Ethiopia stated that its militia members generally did not have standard uniforms,²⁰ and Eritrea here asserted that militia members often wore civilian clothes. One may assume

¹⁷ Partial Award in Ethiopia's Central Front Claims, *supra* note 4, at para. 51.

¹⁸ *Id.* at para. 53.

¹⁹ Questions of possible liability for violation of the *jus ad bellum* are not considered in this Partial Award.

²⁰ Transcript of the Eritrea-Ethiopia Claims Commission Hearings of November 2003, Peace Palace, The Hague, at pp. 936-937 (Nov. 18, 2003).

that militia members responding to a surprise attack on a town or village were particularly likely to be dressed only in civilian attire and, in those circumstances, their only militia identification would have been the weapons they carried. Militia who ceased firing at the invaders and turned to flee remained enemy combatants and, therefore, legitimate targets; there can be no liability for their deaths. If civilians who were non-combatants were fleeing at the same time, as seems certain, one cannot assume that any who were hit by Eritrean bullets had been recognized as non-combatants or that the Eritrean fire was indiscriminate. Indeed, there is no proof that such fire under the circumstances was indiscriminate.²¹ Consequently, Ethiopia's claim for injury to civilians who were shot while fleeing Eritrean attacks in Tahtay Adiabo Wereda fails for lack of proof.

39. Nor is there evidence that Eritrea permitted frequent or pervasive shootings of civilians in other circumstances, and so the Commission also dismisses that claim for lack of proof. However, one shooting demands special attention. There are three eyewitnesses to one shooting of an Ethiopian civilian in Badme that can only be described as murder: on May 12, 1998, Eritrean soldiers shot a 28-year-old one-armed man who was not trying to flee and, therefore, was in their power. He was executed on the street in front of his parents. The witnesses speculated that he was executed because he had been a fighter against the Derg and that the Eritrean soldiers so assumed from his age and loss of an arm. This execution was so flagrant a violation of international humanitarian law that the Commission expresses its sincere hope that those responsible either have been or will be punished for that patently criminal act.

40. With respect to other forms of physical abuse, there is considerable un rebutted evidence that Ethiopian civilians were frequently subjected to beatings, particularly civilians who resisted looting, were suspected of spying or of being supporters of the Ethiopian Government, or were being questioned. Consequently, Eritrea is liable for permitting frequent beatings of civilians in Tahtay Adiabo Wereda.

41. There is also considerable evidence of Ethiopian civilians being abducted to Eritrea, with only about half of the abductees eventually returning to Ethiopia by way of release or escape. The record reflects that Ethiopian individuals being questioned by Eritrean authorities often were taken to

²¹ While Article 44 of Geneva Protocol I reduced, in certain limited situations, the visible sign requirement of Geneva Convention III of 1949 to a requirement that combatants carry their arms openly, the questions of whether that change is now a part of customary international humanitarian law, and whether that change would have any application to a situation where the combatants are not operating in occupied territory, are questions the Commission need not decide. In any event, the modification made by Geneva Protocol I affects only the rights of the combatants to be lawful combatants and, if captured, prisoners of war, not the risk of injury to noncombatants caused by combatants failing to wear uniforms or having some other distinctive sign.

Shambuko or Tokambia in Eritrea for prolonged detention and interrogation. The un rebutted evidence that about half of these individuals had not been accounted for by the time the witness declarations were collected indicates a pattern of abuse. The Commission finds Eritrea liable for permitting the frequent abduction of Ethiopian civilians from Tahtay Adiabo Wereda to Eritrea and for unexplained disappearances.

42. Property Loss: There is sufficient eyewitness evidence of looting by Eritrean soldiers to hold Eritrea liable for permitting such looting to occur in areas occupied by its armed forces. In comparison, there is very little evidence of deliberate destruction of property by Eritrean soldiers. There is no doubt that Ethiopia found houses and buildings in ruin when it retook occupied towns and villages in February 1999. Considering, however, that those areas had been the scene of intense fighting and many months of shelling, the Commission cannot find Eritrea liable for deliberate and unlawful property destruction.

2. Laelay Adiabo Wereda

43. The evidence reflects that most of the claims for Laelay Adiabo Wereda were based on injuries and property losses resulting from Eritrean raids across the Mereb River into border areas and from shelling from Eritrea. The evidence also reflects that these claims arose almost entirely during 1998 and 1999. Egub Kebele allegedly was occupied by Eritrean soldiers for two years from May 12, 1998, but there is no evidence that other areas were occupied for more than very brief periods.

44. Physical Abuse of Civilians: As in Tahtay Adiabo Wereda, there is some evidence of shooting of civilians, but virtually all relates to civilians who were fleeing along with militia members. In only one place, Deguale Kebele, did two witnesses assert that they saw two men shot and killed for no apparent reason. On balance, the Commission cannot find that Eritrea permitted frequent or pervasive shootings of civilians in Tahtay Adiabo Wereda and so dismisses that claim for lack of proof.

45. With respect to other forms of physical abuse, there is again considerable evidence of the abduction of Ethiopian civilians to Eritrea, only some of whom have since been accounted for. There is some evidence of beatings in conjunction with abductions and looting, but the Commission finds it insufficient to prove frequent or pervasive beatings of civilians. Eritrea is liable for permitting the frequent abduction of Ethiopian civilians from Laelay Adiabo Wereda to Eritrea and for unexplained disappearances.

46. Property Loss: There is sufficient eyewitness evidence of looting by Eritrean soldiers, particularly looting of livestock, to hold Eritrea liable for permitting such looting to occur while Eritrean soldiers were present in Laelay Adiabo Wereda. However, as with Tahtay Adiabo Wereda, there is

insufficient evidence to sustain Ethiopia's claim for deliberate and unlawful property destruction in Laelay Adiabo Wereda.

3. Kafta Humera Wereda

47. Physical Abuse of Civilians: Eritrea occupied no part of Kafta Humera Wereda, but the evidence shows that Eritrea shelled many places near the border from time to time and that civilian casualties resulted. There is also clear and convincing evidence that, on occasion, Eritrean soldiers crossed the border and looted livestock and other property. At least one kebele was raided three times to obtain animals. During those raids, civilians and militia members generally fled together, apparently resulting in the shooting of both. Absent significant eyewitness evidence of physical abuse, Ethiopia's claims for frequent or pervasive shooting, beating, or other types of physical abuse of civilians in the wereda fail for lack of proof. However, in the face of clear and convincing evidence of abduction of Ethiopian civilians, some of whom have not been heard from, the Commission holds Eritrea liable for permitting the frequent abduction of Ethiopian civilians from Kafta Humera Wereda and for unexplained disappearances.

48. Property Loss: As in Laelay Adiabo Wereda, where most claims arose from raids rather than from occupation, there is sufficient eyewitness evidence of looting of property and livestock by Eritrean soldiers to hold Eritrea liable for permitting such looting to occur in Kafta Humera Wereda. In fact, looting appears to have been the primary purpose of at least some of the raids. As in the other two Western Front weredas, Ethiopia's claim for deliberate and unlawful property destruction in Kafta Humera Wereda has very little evidentiary support and consequently fails for lack of proof.

E. Allegations of Rape

49. As in the Partial Awards in the Parties' Central Front Claims, the Commission considers that allegations of rape deserve separate treatment. Despite the great suffering inflicted upon Ethiopian and Eritrean civilians alike in the course of this armed conflict, the Commission is gratified that there was no suggestion, much less evidence, that either Eritrea or Ethiopia used rape, forced pregnancy or other sexual violence as an instrument of war. Neither side alleged strategically systematic sexual violence against civilians in the course of the armed conflict in the Western Front areas. Each side did, however, allege some degree of rape of its women civilians by the other's soldiers.

50. The Parties agree that rape of civilians by opposing or occupying forces is a violation of customary international law, as reflected in the Geneva Conventions. Under Common Article 3, paragraph 1, States are obliged to ensure that women civilians are granted fundamental guar-

antees, including the prohibition against “violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture outrages on personal dignity, in particular humiliating and degrading treatment.” Article 27 of Geneva Convention IV provides (emphasis added):

Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity. *Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution or any form of indecent assault.*

51. Article 76, paragraph 1, of Geneva Protocol I adds: “Women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault.”

52. Both Parties have explained in the course of the proceedings that rape is such a sensitive matter in their culture that victims are extremely unlikely to come forward, and when they or other witnesses do present testimony, the evidence available is likely to be far less detailed and explicit than for non-sexual offenses. The Commission accepts this, and has taken it into account in evaluating the evidence.²² To do otherwise would be to subscribe to the school of thought, now fortunately eroding, that rape is inevitable collateral damage in armed conflict.

53. Given these heightened cultural sensitivities, in addition to the typically secretive and hence unwitnessed nature of rape, the Commission has not required evidence of a pattern of frequent or pervasive rapes. The Commission reminds the Parties that, in its Partial Awards in the POW Claims, it did not establish an invariable requirement of evidence of frequent or pervasive violations to prove liability. The relevant standard bears repeating, with emphasis added:

The Commission does not see its task to be the determination of liability of a Party for each individual incident of illegality suggested by the evidence. Rather, it is to determine liability for serious violations of the law by the Parties, which are *usually* illegal acts or omissions that were frequent or pervasive and consequently affected significant numbers of victims.²³

54. Rape, which by definition involves intentional and grievous harm to an individual civilian victim, is an illegal act that need not be frequent to support State responsibility. This is not to say that the Commission, which is not a criminal tribunal, could or has assessed government liability for

²² See Partial Award in Eritrea's POW Claims, *supra* note 2, at paras. 139-142; Partial Award in Eritrea's Central Front Claims, *supra* note 4, at paras. 36-41; Partial Award in Ethiopia's Central Front Claims, *supra* note 4, at paras. 34-40.

²³ Partial Award in Ethiopia's POW Claims, *supra* note 2, at para. 54; Partial Award in Eritrea's POW Claims, *supra* note 2, at para. 56.

isolated individual rapes or on the basis of entirely hearsay accounts. What the Commission has done is look for clear and convincing evidence of several rapes in specific geographic areas under specific circumstances.

55. Ethiopia's evidence of alleged rape in the Western Front areas consists of five witness declarations (out of the total of almost 200 declarations filed with the Claim), all extremely spare in their mention of or allusion to rape. One was from an alleged eyewitness to rape in Laeley Adiabo Wereda: the declarant stated that he personally "saw Eritrean soldiers rape two [named] females who were fleeing with us to Adi Asgedom" in March 1999. A second declarant from Laeley Adiabo Wereda stated that Eritrean soldiers abducted two young teenaged girls and "[t]heir family told me what happened to them." A third declarant, from Shiraro Wereda, stated that he saw Eritrean soldiers "drag some women into the bushes." A fourth, from Badme town, stated that his wife was not raped or abducted "but many other younger women were taken to the Eritrean trenches and raped." The last declarant, from Kafta Humera Wereda, named a 45-year-old woman who was abducted by Eritrean troops in March-April 2000 and reported on her return three years later that she had been held for six months in sexual slavery in Eritrea.

56. It is the task of the Commission to take this evidence into account, in particular to balance the obvious difficulties posed by third-party testimony against the natural disinclination of victims (and even witnesses) to speak about rape. Considering the very small number of declarations and the very limited detail in the declarations—but noting that even the apparently isolated instances of rape of Ethiopian women by Eritrean troops in Laeley Adiabo Wereda deserve at least criminal investigation—the Commission dismisses this claim for lack of proof.

F. Award

In view of the foregoing, the Commission determines as follows:

1. Jurisdiction

All claims asserted in this case are within the jurisdiction of the Commission.

2. Findings of Liability for Violations of International Law

The Respondent is liable to the Claimant for the following violations of international law committed by its military personnel or by other officials of the State of Eritrea:

- a. For permitting frequent beatings of civilians in Tahtay Adiabo Wereda;

- b. For permitting the frequent abduction of Ethiopian civilians from Tahtay Adiabo Wereda to Eritrea and for unexplained disappearances;
- c. For permitting the looting of property in areas in Tahtay Adiabo Wereda occupied by Eritrean armed forces;
- d. For permitting the frequent abduction of Ethiopian civilians from Laeley Adiabo Wereda to Eritrea and for unexplained disappearances;
- e. For permitting the looting of property, in particular livestock, in areas in Laeley Adiabo Wereda occupied by Eritrean armed forces;
- f. For permitting the frequent abduction of Ethiopian civilians from Kafta Humera Wereda to Eritrea and for unexplained disappearances; and
- g. For permitting the looting of property and livestock in areas in Kafta Humera Adiabo Wereda where Eritrean armed forces were present.
- h. All other claims presented in the Western Front Claim are dismissed.

VII. EASTERN FRONT (ETHIOPIA'S CLAIM 3)

A. Introduction

57. For the purpose of these Claims, the Eastern Front encompassed much of the Afar region of northeastern Ethiopia. The Afar region is an extremely harsh and dry environment, thinly peopled largely by pastoral nomads. The nomadic Afar people have a distinctive language and culture and apparently a largely oral tradition. They have a history of difficult relations with outsiders and Afar men often carry arms. The Commission's assessment of events during the armed conflict, never easy, has been further complicated here by the difficulties of evaluating Afar witnesses' descriptions of events after their words have passed through multiple layers of translation (from Afar to Amharic to English), by the potential of oral history resulting in varying accounts of a single event, and by uncertainties of geography and chronology.

58. The Commission also notes at the outset that, reflecting the sparse population in the region, encounters between Eritrean soldiers and local populations on the Eastern Front appear to have been less extensive and frequent than on the Western Front and Central Front. The overall scope of allegations and the universe of evidence were smaller for the Eastern Front than for the other fronts. In light of this, the Commission will address Ethiopia's claims for the Eastern Front as a whole.

59. In this region, the Elidar, Dalul and Afdera Weredas were most seriously affected by the Eritrean-Ethiopian conflict. Dalul Wereda, the most westerly of the three weredas, includes the kebeles of Leasgedi, Garset and Aynedeb-Daieseale. Adjacent to Dalul Wereda is Afdera Wereda, which includes the kebeles of Bidu, Fura, Grifo, Ad'ella, Namoguba and Algada. Elidar Wereda, which is located in the northeastern corner of Ethiopia near the country's tripoint with Djibouti and Eritrea, includes the kebeles of Adigeno and Tembokle, Aleb and Agum, Dabu and Wahan, Mussa Ali and Manda, Megorse and Akulie and Andeba. The main town of Elidar Wereda is Bure, a small town located at the border on the main road between Ethiopia and the Eritrean port of Assab and, not surprisingly, the focal point of heavy fighting.

60. Ethiopian witness declarations credibly dated the outbreak of hostilities on the Eastern Front to June 11, 1998 at around 3 o'clock a.m., approximately one month after the armed conflict began on May 12, 1998. The evidence indicated that artillery fire was directed against Bure town, with the Parties disagreeing as to which one fired first.

61. Ethiopia's Eastern Front claims are based on allegations that Eritrean forces engaged in a systematic pattern of abuse against civilians in Elidar, Dalul and Afdera Weredas, including intentional killings and a massacre in Dabu and Wahan; beatings and rapes; rampant looting; forcible conscription and forced labor; indiscriminate shelling; and indiscriminate planting of land mines. Ethiopia submitted sufficient witness declarations for Elidar and Dalul Weredas to establish a *prima facie* case of frequent or systematic violations of international humanitarian law by Eritrean armed forces, but there was too little evidence relating to Afdera Wereda to constitute even a *prima facie* case for liability for actions there.

62. Other than 13 witness declarations and one expert report, Eritrea presented largely conclusory arguments in its defense. First, as a general rebuttal to Ethiopia's overall claims, Eritrea argued that its troops could not have breached Ethiopian trench lines and, therefore, could not have physically reached the alleged victims to commit the depredations alleged. Ethiopia presented convincing testimony that it was not impossible to move small units across the lines dividing the Parties' forces in the expansive mountain and desert regions of the Eastern Front and that such movement did indeed occur. The Commission notes that the evidence submitted with respect to the Central and Western Fronts, which were in many places more densely populated, showed that the "trench lines" often were not continuous and contained large gaps, except in certain heavily fortified and fought-over areas. The Commission is satisfied that Eritrean troops could have reached most if not all of the locations where Ethiopia alleges that abuses occurred.

63. Second, in response to Ethiopia's specific allegations and evidence, Eritrea presented declarations and arguments consisting at certain times of

wholesale denials and at others of attacks on the credibility of certain Ethiopian declarants. Although counsel for Eritrea rightly called into question the verifiability, if not veracity, of some of Ethiopia's claims, the Commission concludes that Eritrea failed to produce sufficient factual evidence to overcome Ethiopia's evidence showing certain frequent or systematic violations of international humanitarian law by Eritrean armed forces.

B. Physical Abuse of Civilians

64. The most serious of Ethiopia's claims for physical abuse on the Eastern Front, and the one to which counsel for both parties devoted the most time at the hearing, was an alleged massacre or massacres of civilians at or near a place called Dabu in Elidar Wereda. Given the gravity of the alleged event, the Commission has studied the witness declarations presented by Ethiopia and Eritrea, as well as all other evidence and argument, with particular care. Some 15 Ethiopian declarants, most of whom claimed to be eyewitnesses, gave detailed but also contradictory accounts. The dates of the alleged massacres range from 1997 to 2001; certain declarants pinpoint October 31, 1999 and others the date of the initial heavy fighting in June 1998. The number of alleged victims ranges from 18 to 65. All of the declarations provide a more or less long list of names, but the very limited number of names used by the Afar (and those in various permutations of two or three names for each individual) magnifies the confusion. Most perplexingly, the declarants place the confrontation at Dabu, Dabu/Wahan, Ahbetecoma or Songoyda village.

65. The most the Commission can say is that two main accounts of massacres at Dabu seem to emerge from the evidence: one dated to 1998 or 1999 in which between 20 and 40 Ethiopian civilians were shot, as compared to a second dated to 1999 or 2000 involving some 18 or 19 victims. Neither version includes a clear geographical reference; perhaps such uncertainty is inevitable given the area's uncharted character and the Afar people's nomadic way of life. Despite repeated questioning from the Commission during the hearing, counsel for Ethiopia—who have presented and used maps expertly from the earliest proceedings—were unable to point with any certainty to the location on the maps in evidence where the alleged Dabu massacre occurred. Based on the testimony and exchanges among counsel at the hearing, the Commission is at least satisfied that the Ethiopian declarants were not referring to two small skirmishes at another village called Dabu near the border that Eritrea addressed in its defense.

66. Having weighed all the evidence before it, including three press accounts submitted by Ethiopia that report a mass murder in the region but without identifying detail, the Commission is of the view that a serious and deadly incident did occur somewhere in the region but that Ethiopia has failed to

present clear and convincing evidence of a massacre on which the Commission can found liability. This claim must be dismissed for lack of proof.

67. In comparison, other accounts from the Ethiopian declarations regarding the Eastern Front are sufficiently detailed and consistent to support a *prima facie* case of a pattern of intentional and indiscriminate killings of civilians by Eritrean forces elsewhere in the area. Eleven declarations, not including those regarding Dabu, offer accounts of civilian killings that were unambiguously intentional. Most egregious among these are the eyewitness accounts presented in three declarations of Eritrean forces shooting civilians notwithstanding pleas that their lives be spared. Similarly alarming are accounts of civilians in Songoyda and Mogorse being shot in their homes. As noted, this evidence went effectively un rebutted by Eritrea. Accordingly, the Commission finds that Eritrea is liable for permitting intentional and indiscriminate killings of civilians in Dalul and Elidar Weredas.

68. As noted in connection with the discussion of rape allegations in the Western Front Claim above, the Commission is gratified that there was no evidence that Eritrea used rape or other forms of sexual violence as an instrument of war on the Eastern Front. Nonetheless, there was more evidence of rape on the Eastern Front than on the Western Front, despite the comparatively smaller universe of declarations and evidence in general for the former. Ethiopia submitted ten declarations alleging rapes in Elidar and Dalul Weredas; there were no allegations for Afdera Wereda. There was one eyewitness account of a gang rape that was both credible and particularly troubling. The declarant, a villager from Elidar Wereda, described how he stood on one side of a river and saw three Eritrean soldiers raping a named woman while approximately 25 others watched; the woman came to him for help. Another declarant, a herdsman from Elidar Wereda, told of seeing Eritrean soldiers beat two women and order them to take off their clothes as they were forced into the fields; the women told him later that they had been raped. A third declarant from Elidar Wereda stated that he saw, from a distance, Eritrean soldiers rape a named woman in his village. Four of the five Dalul Wereda declarants described learning of rapes from close family members of the alleged victims, almost all of whom were named. Again, Eritrea effectively left this evidence un rebutted.

69. Applying the particularly careful balance necessary for rape allegations, the Commission is satisfied that there is clear and convincing evidence of several incidents of rape of Ethiopian women by Eritrean soldiers in Elidar and Dalul Weredas. The Commission finds that Ethiopia failed to impose effective measures on its troops, as required by international humanitarian law, to prevent rape of women in Elidar and Dalul Weredas.

70. Turning from claims of sexual violence, Eritrea's failure to rebut the detailed and cumulative allegations that its forces engaged in a pattern of general physical abuse of Ethiopian citizens during encounters between Eritrean forces and local populations is likewise unsatisfactory. Ethiopia presented the state-

ments of civilians who were beaten during interrogations by Eritrean troops or for denying that they were Eritrean nationals, or who witnessed Eritrean soldiers brutalize other Ethiopian civilians. In light of the prevalence and pervasiveness of this evidence, which went essentially unrebutted, the Commission finds Eritrea liable for permitting beatings by Eritrean forces in Elidar and Dalul Weredas on the Eastern Front.

C. Property Loss

71. This failure of the Eritrean military to enforce discipline presumably explains Ethiopia's clear and convincing evidence of a pattern of looting and deliberate property damage committed by Eritrean soldiers. Ethiopia presented scores of statements detailing widespread looting of personal property, and in particular livestock, by Eritrean forces in Dalul and Elidar Weredas. As camels and other livestock are the primary livelihood and form of wealth for many in the region, losses of livestock were extremely serious for those affected. Most alarming is the level of violence that frequently attended the looting. In some cases, herders were killed for refusing readily to hand over their livestock. In one case, a herder watched as Eritrean soldiers shot his camels in the head. Eritrean troops deliberately burned down homes. In Dalul Wereda, one Ethiopian civilian watched as soldiers poured kerosene over a school and police station and set them afire. Eritrea denied these claims out of hand, without declarations or other evidence to refute them. Consequently, the Commission finds Eritrea liable for permitting looting and wilful property destruction to occur in Dalul and Elidar Weredas.

D. Forced Labor and Conscription

72. Ethiopia presented clear and convincing evidence of forced labor and conscription, mostly in Dalul Wereda. Several of the Ethiopian declarations contained firsthand accounts by Ethiopian prisoners from Dalul Wereda of months spent digging trenches and clearing roads for the Eritrean army. Many prisoners were taken to Eritrea, where they were moved from camp to camp as their labor was needed. Likewise Ethiopians were abducted from their villages in Dalul Wereda and conscripted against their will into the Eritrean army. There was correspondingly little evidence of forced labor and conscription of civilians from Elidar and Afdera Weredas.

73. In its Counter-Memorial, Eritrea asserted that such claims were not admissible in this proceeding and that the Commission lacked jurisdiction over certain of them, because the individuals concerned were Eritrean nationals resident in Eritrean territory. The Commission recognizes that there were conflicting claims to certain border areas, but Eritrea has not proved that these claims related to its nationals or to acts in its territory.

Consequently, Eritrea is liable for abduction, forced labor and conscription of Ethiopian civilians in Dalul Wereda in violation of international humanitarian law.

E. Indiscriminate Shelling and Planting of Landmines

74. For the reasons set out in the first section of this Partial Award relating to shelling and landmines on the Western Front, Ethiopia's claims for indiscriminate or otherwise unlawful shelling and planting of landmines fail for lack of proof. Although there is considerable evidence of the destruction of civilian property by Eritrean shelling, particularly in the Bure area, as well as of civilian deaths caused by shelling and landmines, the evidence adduced does not suggest an intention by Eritrea to target Ethiopian civilians or other unlawful conduct. For example, several Ethiopian declarants agree on the scope of destruction incurred during the shelling of Bure town, where several hundred homes and water tanks, along with public buildings, were destroyed in June 1998. However, there is no evidence that Eritrea targeted these sites *per se* or that it fired indiscriminately or without appropriate precautions. On the contrary, Bure town was in a strategic location where the two sides' forces came into direct contact. Eritrea credibly claims that Ethiopian military forces were using the town on and after June 11, 1998 and that both regular and irregular forces indistinguishable from local civilians were located there. Hence the Commission does not question whether this damage did in fact occur, but rather whether it was the result of unlawful acts by Eritrean forces, such as the deliberate targeting of civilian objects or indiscriminate attacks. The Commission finds the limited evidence before it insufficient to prove that the civilian deaths, injury and property damage incurred by landmines and shelling, although deplorable, resulted from violations of international humanitarian law.

F. Award

In view of the foregoing, the Commission determines as follows:

1. Jurisdiction

- a. All claims asserted in this case are within the jurisdiction of the Commission.
- b. Ethiopia's claims for abduction, forced labor and conscription are admissible and within the jurisdiction of the Commission.

2. Findings of Liability for Violations of International Law

The Respondent is liable to the Claimant for the following violations of international law committed by its military personnel or by other officials of the State of Eritrea:

- a. For permitting intentional and indiscriminate killings of civilians in Dalul and Elidar Weredas from June 11, 1998 to December 12, 2000;
- b. For failure to take effective measures to prevent the rape of women in Dalul and Elidar Weredas;
- c. For permitting beatings of civilians in Dalul and Elidar Weredas;
- d. For permitting the looting and destruction of property in Dalul and Elidar Weredas; and
- e. For abduction, forced labor and conscription of civilians in Dalul Wereda.
- f. All other claims presented in the Eastern Front Claim are dismissed.

VIII. COMBINED AWARD SECTIONS

A. Award in Ethiopia's Claim 1: Western Front

1. Jurisdiction

All claims asserted in this case are within the jurisdiction of the Commission.

2. Findings of Liability for Violations of International Law

The Respondent is liable to the Claimant for the following violations of international law committed by its military personnel or by other officials of the State of Eritrea:

- a. For permitting frequent beatings of civilians in Tahtay Adiabo Wereda;
- b. For permitting the frequent abduction of Ethiopian civilians from Tahtay Adiabo Wereda to Eritrea and for unexplained disappearances;
- c. For permitting the looting of property in areas in Tahtay Adiabo Wereda occupied by Eritrean armed forces;
- d. For permitting the frequent abduction of Ethiopian civilians from Laeley Adiabo Wereda to Eritrea and for unexplained disappearances;
- e. For permitting the looting of property, in particular livestock, in areas in Laeley Adiabo Wereda occupied by Eritrean armed forces;
- f. For permitting the frequent abduction of Ethiopian civilians from Kafta Humera Wereda to Eritrea and for unexplained disap-

- pearances; and
- g. For permitting the looting of property and livestock in areas in Kafta Humera Adiabo Wereda where Eritrean armed forces were present.
- h. All other claims presented in the Western Front Claim are dismissed.

B. Award in Ethiopia's Claim 3: Eastern Front

1. Jurisdiction

- a. All claims asserted in this case are within the jurisdiction of the Commission.
- b. Ethiopia's claims for abduction, forced labor and conscription are admissible and within the jurisdiction of the Commission.

2. Findings of Liability for Violations of International Law

- a. For permitting intentional and indiscriminate killings of civilians in Dalul and Elidar Weredas from June 11, 1998 to December 12, 2000;
- b. For failure to take effective measures to prevent the rape of women in Dalul and Elidar Weredas;
- c. For permitting beatings of civilians in Dalul and Elidar Weredas;
- d. For permitting the looting and destruction of property in Dalul and Elidar Weredas; and
- e. For abduction, forced labor and conscription of civilians in Dalul Wereda.
- f. All other claims presented in the Eastern Front Claim are dismissed.

Done at The Hague, this 19th day of December 2005

[Signed] PRESIDENT HANS VAN HOUTTE

[Signed] GEORGE H. ALDRICH

[Signed] JOHN R. CROOK

[Signed] JAMES C.N. PAUL

[Signed] LUCY REED