

APPENDIX A

**The Subsequent Conduct of the Parties
in the Sector Covered by the 1900 Treaty**

This Appendix examines some items which, though presented at length by the Parties, have been found by the Commission not to affect the delimitation established by the interpretation of the 1900 Treaty.

THE 1904 BOUNDARY COMMISSION

- A1. In 1904 Italy appointed a Commission of four officers to examine part of the Belesa-Muna boundary. Its operation had been discussed with Ethiopia. Ethiopia, while not formally a member of the Commission, despatched a delegate to it, Degiasmac Garasellassie, chief of the Northern Tigray. The Commission thus appears not to have been formally a joint body, although much of its work was conducted by the Italian Commissioners and the Ethiopian delegate working together. They did not, however, agree on all matters, and in particular did not reach agreement on the product of the Commission's work. The report of the Commission was a unilateral, internal Italian document, signed only by the Italian Commissioners. It was addressed to the Italian Government alone rather than to both Governments jointly.
- A2. The Commission did not have agreed terms of reference, each Party apparently having given its personnel their separate – and seemingly differing – instructions. The task of the Italian members was to “determine in the field the actual and legal border of the colony between Belesa and Muna, as resulting from the treaty between Italy and Ethiopia of 10 July 1900, Art. 1 and, more specifically, from the sketch appended to the above treaty.” The Ethiopian delegate's mandate was somewhat different, namely, “to identify non-controversial points concerning the border . . . and to find out points in which his opinion may be difficult to reconcile with that of the Italians.” Any “points of contention” were to be left for the Emperor to negotiate with the Italian Government – a power in effect to deal with matters *ad referendum*. Unspecific though these references may be, it is clear that the Emperor instructed Garasellassie at least to accompany the Italian Commission and to participate to some extent in its work. Indeed, delegates of both sides were involved in the reconnaissance:

. . . the delegates of the two parties carried out reconnaissance along all the course of the frontier, thus giving the Italian delegates the opportunity of indicating in situ to the repre-

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sentatives of HM the Emperor of Ethiopia, the entireties of the territories that the Treaty above mentioned placed in our possession.

- A3. The Commissioners started their journey at Mai Anqual on the Belesa identified in the present Decision as the Belesa A. They walked upstream to the headwaters and across to the headwaters of the river they identified as the Muna, and then down towards the confluence of that river and the Endeli at Massolae. The Commission's report was accompanied by a detailed map of the region prepared by one of its members, Checchi. The report's recommendations were in part as to positions which Italy might adopt in future regarding the boundary alignment. The report and map appear to be undated (other than by "April 1904" on the title page of the report); they were not published until 1912.
- A4. The Commission followed the route which took the boundary around the perimeter of what the present Commission calls the Belesa projection. The map annexed to the Commission's report depicts a simplified course of the Belesa A as flowing directly into the Mareb and without showing the junction with the Belesa A of either the Belesa B (although upper reaches of the Mestai Mes, which is what the Commission refers to as Belesa B, are shown) or the other tributary flowing into the Belesa from the northeast near its junction with the Mareb and known as the Tserona. The Italian Commission's terminal point at Massolae was apparently chosen because it was the end of the Muna, where it joins and becomes part of the Endeli.
- A5. The Commission's report stated that in reaching Massolae it had completed its task, "i.e. it followed the geographical border that the Treaty of 1900 intended to establish for the Eritrean colony" The present Commission observes that this view of the Italian 1904 Commission does not necessarily imply that the Treaty boundary ended at Massolae. The Treaty boundary was delimited in terms not just of the "Muna" but also of the depiction of the river so named on the Treaty map. The Italian Commission's remit was to consider the Treaty boundary "between Belesa and Muna," which, particularly since the boundary eastwards of Massolae followed clearly identified rivers, was consistent with an internal requirement to go to the end of the geographical Muna, rather than the end of the Treaty "Muna" which was, by the Treaty and its map, given a more extended meaning.
- A6. The report contains a number of features that must be noted.
- A7. First, note must be taken of the absence of any agreed terms of reference for the Commission's work (para. A2, above). Despite the task of the Italian Commission being described in terms relating to the border resulting from the 1900 Treaty, its report carried as its principal title "The Border between the Scimezana, which forms the southern part of Acchele Guzai, and the Agame."

As appears from a map produced by Ethiopia, published in or around 1902 by the Italian Directorate of Colonial Affairs (the same department which published the 1904 Commission report) and prepared by Checchi, Giardi and Mori (“the 1902 Checchi map”) the “Residenza dello Scimezana” is a substantial district in the southern part of Eritrea extending from the Residenza del Mareb in the west to the Missione Dancali in the east. Its southern limits as marked on this map follow, from the west, the Belesa and, via its southern channel (Belesa A), wind round, across land, eventually to join a river that clearly bears the name “Mai Muna.” This in turn flows into the “F. Endeli,” flowing from the northwest, and thence onto Rendacoma. Though not marked on this map, the area to the south is Agame.

- A8. Secondly, the report repeatedly refers¹ to the Muna and at no point expresses any doubt as to its existence or identity and location. Indeed, at more than one point the report is so worded as to indicate that specific reference was made to the Muna in the instructions given to Garasallesie as well as the Italian Commissioners.
- A9. Third, various places that would, on the Ethiopian approach to the matter fall, within Agame (Ethiopia) are clearly recognised as falling within Acchele Guzai (Eritrea), e.g., Alitena, which lies a short distance north of the Muna.
- A10. Fourth, the report records that certain places in the Belesa projection which, on the Eritrean approach, would be in Eritrea were in fact under the control of Ethiopia.
- A11. Fifth, in referring to the territories of Sebao and Kelloberda as being “located on the right hand side of that section of the River Belesa which according to the Treaty of 1900 was part of the border line between Ethiopia and Eritrea,” the 1904 Commission was referring to places located on the map just to the east of the Belesa A and to the west of the Belesa B. It is clear from the passage just quoted that the 1904 Commission took the view that the Belesa A was the river that bore the name “Belesa” on the maps.
- A12. Sixth, while the 1904 Commission considered that the “question of the Belesa territories is much less complex and susceptible to discussion,” it clearly found the question of identifying the “Muna” referred to in the 1900 Treaty more uncertain and open to argument.
- A13. Seventh, the map annexed to the Commission’s report and illustrating the route taken by the Commission depicts three different border lines, designated as

¹ In its paras. 7, 8, 11, 12.

“limite dell’attuale occupazione nei tratti da modificare” (“outer limit of current occupation to be modified”), “limite di confine che non subisce modificazioni” (“limit of the border that is not to be modified”) and “confine secondo il trattato del 1900” (“border according to the Treaty of 1900”). It is noteworthy that, even in 1904 (and as reprinted in 1912), this map delineates as the limits of actual occupation a line very close to that which is claimed by Ethiopia to the north of the Endeli projection. As a further observation, the Commission notes that on two maps published in January and February 1904, two members of the Italian Commission, Checchi and Garelli, show very similar “limits of actual occupation,” while the second of these maps (dated after the conclusion of the 1904 Commission’s work) shows the line encompassing the Belesa projection as only a claim line (“confine da rivendicare”).

- A14. Eighth, the Commission clearly followed the course of the Belesa A, apparently without any suggestion from the Ethiopian delegate that that was the wrong river or that it lay wholly within Ethiopia, as would have been the case if the Belesa B were the boundary.
- A15. Ninth, it must be observed that the 1904 Commission’s view, like that of Eritrea, as to both the initial sector along Belesa A and across to the Muna, is inconsistent with the depiction of the boundary line on the Treaty map. Moreover, the Commission’s report noted that at least some locations within the Belesa projection were under the control of Ethiopia, particularly Kelloberda and Sebao.
- A16. Taking all these elements into account, the present Commission is not satisfied that it may treat the activities and report of the 1904 Commission as an agreed interpretation or variation of the 1900 Treaty, or as evidencing Ethiopian acquiescence in any interpretation or variation such as to attribute the Belesa projection to Eritrea. Nonetheless, the present Commission accepts that in tracing the Muna upstream from its confluence with the Endeli towards its headwaters south of Barachit, the 1904 Commission’s report fairly represented that part of the boundary established by the 1900 Treaty. It is the line followed and described in its report by the 1904 Commission, that extends westwards beyond the longitude of Barachit so as to encompass the Belesa projection, as well as the alleged termination of the boundary at Massolae in the east, which the present Commission finds unsupported by the 1900 Treaty and its annexed map.

THE LEAGUE OF NATIONS

Ethiopia’s admission to the League of Nations, 1922

- A17. Eritrea asserts that “Ethiopia’s first affirmation of respect for the established boundary occurred in 1922, when it applied for admission to the League,” that

admission being conditional upon a determination by the League that Ethiopia had well established borders. Ethiopia notes that its request for admission contained no reference to the question of boundaries, that the League's documentation was essentially of a "standard form" variety with no singular conditionality being insisted upon, and that some measure of uncertainty regarding frontiers was an accepted part of the League's practice.

- A18. The Commission observes that Ethiopia's admission to the League of Nations in 1922 was conditional upon a determination by the League that Ethiopia had well established boundaries. Such a requirement was, following precedent established by the first three League Assemblies, covered in a questionnaire used for the admission of new Members. That questionnaire included, as the third question: "Does the country possess a stable government and well-defined frontiers?" The Sub-Committee appointed to consider Ethiopia's admission simply stated that "[t]he reply to the third question is in the affirmative." The Commission cannot draw from that terse statement any particular conclusion as to the agreed line of the Eritrea-Ethiopia frontier.

Events in 1935

– The WalWal incident

- A19. In connection with the WalWal incident in the Ethiopia-Italian Somaliland region, there were proceedings before the Council of the League of Nations in 1935. Both Ethiopia and Italy presented maps which, according to Eritrea, depicted the colonial boundary in its "classical" contour. Ethiopia notes that the League's concern with the WalWal incident was irrelevant to Ethiopia's northern boundary, with Eritrea.
- A20. So far as concerns the boundary in the Belesa-Muna sector, the Commission observes that this Italian map is drawn on a scale of 1:4,000,000. At this scale, and with a virtually complete lack of detail of the surrounding areas and, despite a broad southward sweep in the line which might (or might not) be intended to represent the Belesa projection, no useful or detailed conclusions can be drawn about the course which Italy (or Ethiopia) understood was followed by the Belesa-Muna line.
- A21. Eritrea refers also to four maps supplied by Ethiopia, but admits that two of them "are vague" and that the third did not deal with the Eritrea-Ethiopia frontier. The fourth map was that published in 1909, in Carlo Rosetti's "Storia Diplomatica dell'Etiofia", 3rd edition. Although Eritrea asserts that this map shows the "classic signature of the colonial treaty boundary," the Commission notes that at least in the Belesa-Muna sector it too, at a scale of 1:5,000,000 and with virtually no surrounding detail, cannot support any useful or detailed

conclusions about the route which Italy (or Ethiopia) understood was taken by the Belesa-Muna line.

– Tigrayan incursions, 1935

- A22. As part of its response to Ethiopia's complaint about the WalWal incident, Italy in 1935 drew attention to incursions by Tigrayan elements across the Belesa-Muna line into Eritrean territory.
- A23. The Commission notes that although Italy did indeed make such a complaint, and although Ethiopia's response did not expressly deny Italy's assertions as to the location of the frontier, Ethiopia's principal concern with this incident was to deny responsibility for the actions of what it portrayed as local Tigrayan warlords and bandits. Moreover, these exchanges in 1935 took place immediately before Italy's invasion of Ethiopia on 3 October 1935. It is in the Commission's view also significant that the Italian complaint in effect admitted as a fact that 35 years after the 1900 Treaty Ethiopia was still in occupation of certain territories "including" (and therefore not limited to) those specifically mentioned, which on the Italian view had become part of Eritrea.

– Italy's complaint to the League of Nations, 1935

- A24. Relations between Italy and Ethiopia became increasingly strained. In a memorandum dated 11 September 1935, less than a month before its invasion of Ethiopia, Italy stated that, given the 1900 Treaty, even by 1935 Ethiopia "had taken no steps to evacuate certain territories, including two posts on the right bank of the Belesa² (Kolo Burdo and Addi Gulti), one on the north bank of the Muna (Alitiena), which are quite indisputably in Italian territory." While Italy presented this as demonstrating Ethiopian intransigence, it is also evidence of Ethiopia's continued presence in those areas 35 years after the conclusion of the 1900 Treaty. Apart from that clear admission that Ethiopia had a continuing presence in the places mentioned (which was in line with other Italian statements to a similar effect), the Commission is unable to draw from Italy's statement in 1935 any conclusion as to the disputed question of title.
- A25. In its 1935 Memorandum to the League of Nations Italy also cited Ethiopian attacks at Rendacoma, Cabuia and Colulli. These three alleged attacks do not seem to be directly in point in relation to the course of the disputed boundary, other than by constituting evidence that Italy considered the boundary to lie somewhere to the south of those three locations.

² What the Commission is calling Belesa A.

THE UNITED NATIONS*Consideration of Eritrea, 1950*

- A26. The Parties also devoted considerable attention to developments in the United Nations during the period in 1950 in which the United Nations was considering the future of the former Italian colony of Eritrea. Eritrea noted that United Nations reports all treated the Muna as the boundary, and placed it in its historic location (i.e., as the Muna/Berbero Gado). Thus Eritrea drew attention to the work of the United Nations Commission for Eritrea (UNCE), and in particular to maps produced by UNCE to illustrate its work. Eritrea also attached particular weight to the United Nations Secretariat memorandum prepared in 1950 in the context of consideration at the United Nations of Eritrea's colonial boundaries. The memorandum, with its accompanying illustrative map, identified the Belesa and Muna as the boundary deriving from the 1900 Treaty. Eritrea notes that during the various United Nations debates on the question of Eritrea's future, Ethiopia knew of all these United Nations materials, but raised no objection.
- A27. Ethiopia points out that United Nations organs in the period 1948-1952 were never specifically addressing the interpretation of the boundary treaties or their application, while the Secretariat memorandum was purely advisory, and identified no boundary dispute and proposed no settlement. Ethiopia adds that the United Nations discussions were concerned essentially with the future status of Eritrea rather than its boundaries, and that the United Nations memorandum implicitly acknowledged that questions or claims had arisen with regard to the Eritrea-Ethiopia boundary, including the Belesa-Muna sector. Ethiopia also notes that since the ultimate result, which was the outcome Ethiopia sought, was a form of union of Eritrea with Ethiopia, the question of boundaries was irrelevant and there was no need for Ethiopia to pay close regard to boundary depictions, particularly those of a very general nature. Eritrea responded that at the time such an outcome was not assured, and that in any event the territorial division was still important within the federation.
- A28. The Commission observes that the UNCE maps referred to all appear to have used the same base-graphic, and were produced at a small (but unstated) scale and contained only limited detail of the boundary area. No relevant location to the south of Senafe is identified, nor are any rivers named. The depiction of the boundary, nevertheless, appears to show the Belesa projection as appertaining to Eritrea (and may even indicate a small northward variation in the boundary intended to represent the Endeli projection), but is otherwise too unclear to allow for the drawing of specific conclusions as to the course of the boundary. In particular, even if (which is unclear) the course of the Belesa A is suggested as the boundary, the UNCE maps are wholly indistinct as to the way in which this comes about or as to the route by which a Belesa boundary joins up with the

Muna and Endeli (neither of which is depicted). Moreover, the maps differ slightly from each other in the outline of the boundary they depict in this sector. It is also clear from the UNCE map depicting the places visited by UNCE, that that body did not visit any part of the now-disputed area in the Belesa-Muna region.

- A29. As for the Secretariat memorandum, it simply made the incontrovertible statement that this part of the boundary was fixed by the 1900 Treaty, without going into details beyond stating that it provided for the boundary to run “eastward along the Mareb River to the Belesa River, eastward along the Belesa to the Muna River, and again eastward along the Muna.” The map annexed to the Secretariat memorandum, although indicating by name the Mareb, Belesa and Muna, was at too small a scale (unstated) to support for that area any specific conclusions as to the details which are missing from the memorandum itself. While the various United Nations reports treated the border as fixed by the earlier treaties, none of them appears to have involved any serious investigation into what specifically had been agreed and what the Parties’ attitudes were. In comparison with other boundaries where there had been no earlier treaty fixing them, it was understandable for the United Nations to have regarded them as ‘settled’ without enquiring into possible differences which might exist regarding their interpretation or application. In relation to the Belesa-Muna sector of the boundary the Commission has not been made aware of any specific aspect of the various United Nations materials which clearly and reasonably called for some objection by Ethiopia.

General Assembly Resolution 390(V)A, 1950 and the Federal Constitution, 1952

- A30. The outcome of this United Nations activity in 1950 was the adoption by the General Assembly of Res. 390(V)A(1950), which led to a federation between Ethiopia and Eritrea. Article 2 of the 1952 Eritrean Constitution provided that “The territory of Eritrea, including the islands, is that of the former Italian colony of Eritrea.” Ethiopia ratified this Constitution in August 1952, and in September the Emperor issued an Order providing for the federation of Ethiopia and Eritrea. As a federation, the territorial division of authority between the constituent units continued to be important. Eritrea contends that these constitutional arrangements, which were based on various UN decisions which in turn followed numerous UN reports accompanied by UN maps depicting, *inter alia*, the boundaries of Eritrea with Ethiopia, showed that “Ethiopia . . . accepted the boundaries of Eritrea as they were defined in the Eritrean Constitution and depicted by the United Nations.”
- A31. Ethiopia considers that, in accordance with the applicable principles of general international law, the change in Eritrea’s status to that of federation with Ethiopia could have no effect on the original colonial boundaries of Eritrea: the

entity known as Eritrea remained within the same boundaries after the change as it had had before the change.

- A32. The Commission observes that the definition of Eritrea in Article 2 of the Eritrean Constitution is neutral as to what were the boundaries of the former Italian colony of Eritrea. As for the United Nations maps to which Eritrea refers, they were not made part of the constitutional arrangements. In any event, in so far as they depict the Belesa-Muna sector of the boundary they were, as already noted, drawn at such small scales and were so devoid of accompanying detail that they cannot safely be used as a basis for drawing clear conclusions as to what Ethiopia must be taken to have acknowledged the boundary in that sector to be. The Commission thus finds it impossible to find in Ethiopia's omission to comment on these maps any acquiescence in any specific United Nations-depicted boundary in the Belesa-Muna sector.

MAPS

General

- A33. The map evidence has been invoked in two different contexts. The first concerns the extent to which maps established a boundary outline that can be regarded as so clear and distinctive that its reproduction on later maps can be taken to represent a particular boundary line, even if the details of that line are not apparent on the later maps. The second concerns the impact of the map evidence, by reference to the individual merits of the maps as maps. The Commission will consider at this point the question of the boundary outlines. The more specific impact of the map evidence on the various boundary sections has already been considered in Chapters IV and V of the Decision.
- A34. Eritrea maintains, generally, that with the conclusion of the 1908 Treaty, the colonial boundary was completed, and that it gave rise to a distinctive cartographic outline (which it refers to *inter alia* as “the classical signature of the boundary”). Eritrea maintains that that “classical” outline was consistently recognised by all concerned from 1908 onwards.
- A35. So far as that “classical” outline relates to the 1902 and 1908 Treaties, the Commission has addressed the matter in the context of those Treaties. Here the Commission will only concern itself with the outline of the boundary in the stretch covered by the reference to the Mareb-Belesa-Muna line. In practice, since there is no dispute about the Mareb-Belesa section, the relevant section in the present context is the Belesa-Muna section. In that context Ethiopia denies the existence of any such generally recognised “classical outline.”

- A36. There are four elements to a possibly distinctive general outline for this section of the boundary:
- (i) The Treaty outline is that created by the map annexed to the 1900 Treaty. The Commission has already examined the Treaty map in detail.
 - (ii) The Belesa projection outline is the outline created, in the western part of the Belesa-Muna line, by its extension southwards so as to encompass the Belesa projection, i.e., principally the land between Belesa A and Belesa B together with an area of land running eastwards along the northern bank of the Muna/Berbero Gado. This is the outline established by the boundary claimed by Eritrea. The Commission notes that the distinctive silhouette of the Belesa projection has two elements: first, a broad curve in the north as the river flows up from the south and swings round to flow in a westerly direction towards the Mareb; and, second, a southward prolongation of the boundary as it follows the Belesa A into its southernmost reaches before swinging back up to the northeast to join the Muna/Berbero Gado. The claim lines of both Parties share a curve in the north, and a southward line which at some point turns to the east. At the level of general silhouette the difference between them is essentially one of degree, particularly as to the extent of the southward projection. This broad similarity of silhouettes makes it difficult on small scale maps to be sure which, if either, claim line is being depicted.
 - (iii) The Endeli projection outline is the outline created, in the central sector of the Treaty line, by extending the area of the Ethiopian claim northwards so as to encompass the Endeli projection, i.e., principally the land bounded on the northeast by the Endeli, on the south by the Muna/Berbero Gado, and on the west by a line dropping down southwards from the neighbourhood of Senafe and then curving round to the west until it joins the Belesa C headwaters near Zalambessa. This is the outline established by the boundary claimed by Ethiopia.
 - (iv) The “eastern terminus” outline is the outline created by the choice of the eastern terminus for the boundary established by the 1900 Treaty, in particular whether that terminus is at the Salt Lake (as indicated on the Treaty map), at Ragali (as claimed by Ethiopia), or at Massolae (as claimed by Eritrea, which has also suggested Rendacoma as in practice an alternative).
- A37. In reviewing the voluminous map evidence presented to it relating to the Belesa-Muna sector of the boundary, the Commission notes that a number of the maps submitted are on such a small scale, or at a such a minimal level of detail, as to make it impossible to attribute to them a clear depiction of one outline or the other. These maps do little more than show a more or less wavy line joining the

northern curve of what is clearly intended to be the Belesa system to a point somewhere in the vicinity of the Salt Lake. It is difficult to attribute to these maps any clear and consistent depiction of a distinctive boundary outline in the Belesa-Muna sector.

A38. Those maps which are at a scale and level of detail allowing conclusions to be drawn from their depictions of the boundary enable the Commission to make the following observations:

- (i) The outlines created by the Belesa projection and by the Endeli projection are recognisable departures from the Treaty line.
- (ii) Those outlines as shown on many maps are often precise enough to allow specific conclusions to be drawn as regards the placement of the boundary along the Belesa A or Belesa B, or the upper reaches of the Endeli, or the Muna/Berbero Gado.
- (iii) Those outlines, however, are often not precise enough to enable specific conclusions to be drawn as to the course being followed by the link between whichever of the Belesas is in question and the Muna/Berbero Gado, or of linking the Belesa B with the upper reaches of the Endeli.
- (iv) A number of maps depict a boundary which may be classified as depicting the 1900 Treaty line, in particular the Italian “Carta Dimostrativa” of 1902, prepared by the Ministry of Foreign Affairs (the “Prinetti map”). This map was submitted to the Italian Parliament, apparently as part of the procedures for the ratification of the 1902 Treaty. That Treaty amended the boundary prescribed by the 1900 Treaty. The map accordingly indicated the original course of the boundary as in the 1900 Treaty, and the course of the new boundary being prescribed by the 1902 Treaty. The 1900 Treaty boundary which it depicts is in essence the boundary which the Commission has determined was the boundary laid down by that Treaty. It follows a generally sloping line from the northern shoulder or curve of the Belesa in the west, along the Muna/Berbero Gado, and down to the Salt Lake. It gives no indication of either the Belesa projection or the Endeli projection. Given the map’s provenance, its apparent purpose (specifically to illustrate boundaries, as part of the State’s ratification procedure), and its contemporaneity, the Commission considers this map to have considerable weight.
- (v) While many of the maps produced in evidence show quite clearly a boundary outline which is equivalent to that of the Belesa projection, it cannot be said that that outline has been adopted with clearly preponderant consistency. There are a significant number of maps, of a

provenance which requires that they be given weight, which do not depict a Belesa projection.

- (vi) Few of the maps produced in evidence depict the outline of the Endeli projection as a boundary, and none emanating from Ethiopian sources (apart from the recent 1998 Atlas of Tigray) do so. Particularly noteworthy is the absence of any Endeli projection from Ethiopia's map of 1923 (the 'Haile Selassie map'). This map, produced for the Emperor Haile Selassie in 1923, appears to have been prepared as a single presentation map and not to have been intended for publication. It is now in the Library of Congress. It shows the boundary in the Belesa-Muna sector as a line closely following that of the 1900 Treaty map: it identifies the boundary by (in Amharic) "Mai Muna" and depicts the boundary as following a course to the south of Barachit. In particular the map appears to show no trace of either a Belesa projection or an Endeli projection. The map is not a model of clarity and is on a fairly small scale (1:1,000,000). Moreover, it appears to depict the boundary beyond each end of the Belesa-Muna sector in a manner which differs from its depiction in that sector, namely by a dash-dotted line in the former case but without that marking in the Belesa-Muna sector. The map is of some significance because it is invoked by Ethiopia in other contexts, particularly in relation to the 1902 Treaty, as being an "official map" of "official Ethiopian government provenance." This map's apparent original purpose was more in the nature of a private production destined for presentation to the Head of State of Ethiopia.
- (vii) There are however, maps, especially from Italian sources, which depict something very close to the Endeli projection as an express or implicit limit of actual Italian possession both in the early years after the conclusion of the 1900 Treaty and some decades later and which appear to indicate (by an absence of boundary marking) a degree of doubt as to any boundary cutting Irob off from Ethiopia.
- (viii) As regards the eastern terminus of the 1900 Treaty boundary, the Commission has been unable to determine a consistency of practice in the depiction of the boundary on maps sufficient to constitute a generally accepted outline or silhouette for the boundary in that area.

A39. The Commission thus concludes that it has not been established in the Mareb-Belesa-Muna sector that there is a generally accepted outline or silhouette for the boundary which can serve as evidence of the Parties' agreement as to the course of the boundary. This is not, of course, to deny to maps which depict the boundary following one or other of the distinctive shapes, or any other boundary line, a significance on their own particular merits. This is a matter which the Commission has considered in Chapter IV, above.

APPENDIX B

The Location of the Cunama

CONTEMPORARY KNOWLEDGE

- B1. At the time of the negotiation of the 1902 Treaty, there was little publicly available information regarding the location of the Cunama and few pertinent maps. Although there is no evidence of whether Menelik and Ciccodicola were aware of this material, the Commission refers to it here to indicate its limited value:
- B2. One of the earliest investigations resulted in a “Report of the German Expedition to East Africa, 1861 and 1862” (published in 1864) which contains statements by Munzinger identifying the eastern extension of the Cunama, e.g., that “the Bazen around the Takeze are rather exposed to attacks coming from the Wolkait” (the names “Baze” and “Basé” were also used for the Cunama at that time). As shown on the map illustrating the expedition’s travels, the Wolkait is an area lying to the south of the Setit and east of the confluence with it of the western Maiteb. Therefore, if the Bazen were being attacked by the Wolkait, they must have been present at least in the area just north of the Setit. In that location, they would have been living in Ethiopian territory, southeast of the line that Ethiopia has subsequently come to claim as the boundary – a position which is not in accord with the principle that the Cunama are to be enfolded in Eritrean territory. Their extension further to the north and east is evidenced by the statement in the German report that their easternmost locality along the Mareb is the Mai Mai-Daro.
- B3. The British explorer, Sir Samuel Baker, writing in 1867 of “The Nile Tributaries of Abyssinia”, mentioned “the hostile Basé, through which country the River Gash or Mareb descends I was anxious to procure all the information possible concerning the Basé, as it would be necessary to traverse the greater portion in exploring the Settite river.” This is of little help beyond indicating that the Cunama inhabited the area between the Mareb and the Setit and that for purposes of exploring the Setit it would be necessary “to traverse the greater portion” of their country.
- B4. A few years later Munzinger¹ again described the eastern border of the Cunama by reference to the hills around the Godgodo Torrent (east of the Ethiopian claim line) but within the area embraced as Eritrea within the Eritrean line. His description even extends south of the Setit, in an area which is not disputed as

¹ *Studies on Eastern Africa* (circa 1875).

being in Ethiopia, but is still east of the southern starting point of the Ethiopian claim line; and it seems improbable that the tribe would have been east of that point south of the river, but not east of it north of the river. At that time, Munzinger estimated the Cunama population as being approximately between one and two hundred thousand inhabitants.² (By 1913, however, an Italian scholar, Alberto Pollera, reported a 1905 census estimating a population of 19,000 and stated that many Cunama villages had been destroyed.³) Renisch, who wrote “Die Kunama-Sprache in Nordost-Afrika” in 1881 indicated that the “Kunama” people lived between 36° and 38° E and between 14° and 15° 30' N – an eastwards extension that would have taken them well east of the Ethiopian claim line.

- B5. As to the available maps, though not identical they generally so place the name “Cunama” that the region thus indicated stretches over the whole or most of the area that falls within Eritrea as delimited by the Eritrean line. In other words, the Cunama area would be cut in two by the recognition of the Ethiopian line, thus contradicting the principal object of the 1902 Treaty.
- B6. In the map that illustrates the “German Expedition in East Africa”, Munzinger placed the name “Bazen” across that area so that it appears clearly related to a stretch of country that extends eastward as far as the hills that mark the western limits of Adiabo. Having mentioned the extension of the Cunama to the hills around the Godgodo Torrent and, it seems, Tsada Mudri, he marked those places on his map as being at 38° E and 38° 10' E respectively. De Chaurand’s map extends the name “Cunama” as far east as 37° 50' and marks the general area of their occupation by a line of dashes which, according to the legend on the map, indicates a tribal division.
- B7. A map of the Catholic Missions of North-East Africa published in 1899 shows the Baza as occupying a wide swathe of territory between the Setit and the Mareb extending, on the Mareb, considerably to the east of Mai Daro and, on the Setit, as far as a river called “Manatape” which appears to approximate to the Sittona.
- B8. A map of the region given by the Italian Ambassador in London to the British Foreign Secretary in July 1900 carries the names “Baza o Cunana” extending in large print over the area between the Mareb and the Setit. Assuming that the names were placed central to the area to which they were meant to apply, it would appear that the area thus indicated by them extended in the east as far as 38° of longitude E, thus covering the whole of the area subsequently claimed by Eritrea as falling within its line.

² *Ibid.*, at pp. 341 and 373.

³ *I Baria e I Cunama*, p. 76 (1913).

POLLERA REPORT

- B9. On 17 May 1904, the Resident of the Government Seat of Gasc, Pollera, reported on the eastern border of the Cunama region as follows:

Under the 1902 Italian-Abyssinian Convention for the cessation of the territory between the Gasc and the Setit, it was established that the border between these two rivers would be the Mai Teb, from its source, then continuing a little to the east of Hai Derg.

Your Excellency's visit to the region made it clear that the contracting parties had been misled by the erroneous graphic representation of the maps, and that everything that referred to the Mai Teb Hovevasi actually must be attributed to the Sittona stream. In any case, since the course of said river was not recognised by anyone, the border could not be considered established in a final and binding manner, at least under the treaty in question, leaving it, at the time, up to the special delegates to make this delimitation, with the purpose, established in the treaty, of leaving the entire region of the Kunama in Italian territory.

Consequently, we decided to consider for now that the border line between the Gasc and the Setit is the Ducambia Mittona [*sic*] road, which was quickly built in order to affirm the possession of that region.

But, from what I learned later, the Kunama country is much more to the east, and therefore I believe it is appropriate to visit this vast area, never before explored by any European, in order to find out its structure and obtain the data necessary for the subsequent delimitation of the border, if considered necessary.

In the enclosed sketch, I marked the line which, according to Kunama tradition, would constitute the border with the Adiabo. It includes the entire territory still roamed by the Kunama, and which was originally inhabited by them, used to harvest honey and rubber from the banks of the Setit and of the Gasc.

However, since there was never any pact between Kunama and Adiabo, the border is not acknowledged by the latter, who have always considered the region of Afrà as their own hunting territory. Moreover, it is marked by the particularity of the land distant from it, and is often not clearly marked,

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and therefore there is the need for a line which will be difficult to make well known. The official acknowledgment of that line, in any manner, is of little advantage. The regions established at the time on the bank of Setit from the Sittone mountain to the Ab Onú mountain have been destroyed, and for the few remaining inhabitants, now living on the Gasc, there is no advantage to returning to their original places, because this would require distant supervision, difficult and of little interest.

The left bank of the Gasc, however, will be gradually repopulated, and the Kunama groups currently living east of the Gongomà stream, in Abyssinian territory, will be attracted again to their old place, namely in the region ranging between the concave part of the arc formed by the Gasc and Hai itself.

Although there is, therefore, an interest in acknowledging their the right to the entire left bank of the Gasc up to the Gongomà stream, this interest wanes as they go towards the south, where perhaps it would be sufficient if the tribes under our supervision would recognise their right to seek honey and rubber.

Consequently, in my opinion, I do not think that it is possible to make a true and suitable delimitation of the border. However, by an additional convention besides that of 1902, it would be possible to establish:

1. That, in accordance with the preceding agreement, I will ask that all Kunama tribes be left in Eritrean territory, under the administration and command of the Italian Government, including all those groups which are still in Abyssinian territory; except in the case of evacuation of this territory and return within Eritrean borders within a period of two years;
2. That the entire valley of the Gasc, and its tributaries downstream from the juncture of the Gongomà stream, is considered Italian territory.
3. That the zone west of the Mesegà, which covers the western slopes of the Adiabo mountains, delimited by the juncture of the Gongomà stream to the north and the source of the Tonsa stream to the south, down to the Sittona Ducambia road, is considered neutral zone, with prohibition of hunting for each of the contracting parties, and under the supervision of the Italian government,

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except for the rights to seek honey and rubber, granted to the Baza tribes.

Since the convention can be discussed and signed between the two Governments, it would avoid the biased influence of Tigrai chiefs and especially Adiabo, who would certainly obstruct as much as they could the tracing of a border that takes away their freedom to hunt in a territory they consider their own by occupancy rights, and the last Kunama villages which they consider slaves, and therefore, almost private property.

If, later, there is an absolute intention to establish a de facto border, the only one that offers better advantages is that which I have indicated in the sketch, and which, starting from the source of the Tonsa stream in Setit, goes up its course and, through its tributaries Nebi Ualà and Gual Sohei reaches Roccia Cassona: then, passing through M. Aiculità, the hill of Guzulà and the baobab known by the Kunama by the name of Bedumà Asà and by the Abyssinians by the name of Ababà [illegible], crosses the great Mezzegà and reaches the Gongomà stream, whose source is in fact the Mezzegà.

However, the region of Ulcutta will remain beyond the border, for which it will be desirable to obtain what I proposed above, since it does not seem appropriate to me to include it within the new border because it is located in territory that is actually and incontestably Abyssinian

APPENDIX C

Technical Note Relating to Maps

- C1. Because it was agreed with the Parties at an early stage in the Commission's work that the fieldwork necessary to prepare a large scale map for demarcation, on a scale of 1:25,000, should not commence until after the delimitation Decision, the Commission has for the time being been obliged to use other sources of maps and images. These sources include:
- (i) 1:100,000 Soviet Union Topographic Mapping Series.
 - (ii) 1:1,000,000 Vector Map Level 0.
 - (iii) SPOT 10-metre resolution, panchromatic, ortho-rectified imagery.
 - (iv) ASTER/TERRA 15-metre resolution, multi-spectral, ortho-rectified imagery.
- (i) The 1:100,000 Topographic Mapping series was produced by the Soviet Union in the 1970s, has been the largest scale set of maps available to the Commission. Both Parties used these maps in their pleadings and submissions.
 - (ii) The 1:1,000,000 Vector Map Level 0 (VMAP0), produced by the United States National and Imagery and Mapping Agency in the early 1990s, has been used to generate the small-scale illustrative maps attached to the Decision. River tributaries that may be relevant to the Decision, but are omitted from the VMAP0 data, have been copied to the small-scale maps in the Decision from the Soviet 1:100,000 series or from the satellite imagery. Both Parties used VMAP0 to generate their small-scale maps in their pleadings and submissions.
 - (iii) Satellite imagery acquired from the French SPOT satellite, which has a resolution of 10 metres per pixel and is panchromatic, has been ortho-rectified using ground control points collected by the Field Offices of the Secretary of the Commission to produce a series of satellite maps on the scale of 1:50,000. These maps have been used to verify so far as possible the existence of towns and natural features on the ground, including rivers and their tributaries. These maps also serve as the base for illustrating the Decision in the Central Sector. Measurements in the Decision have been based on this series.

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- (iv) Satellite imagery acquired from the Japanese ASTER/TERRA satellite, which has a resolution of 15 metres per pixel and multi-spectral bands, has been ortho-rectified to provide images for the interpretation of terrain features.

- C2. Towns shown in this Decision have been compiled from the 1:100,000 series and verified against the satellite imagery of SPOT and ASTER/TERRA. If a town is not shown on the Soviet maps, its approximate location has been determined on the basis of the submissions of the Parties.

- C3. The reference system of the measurements and maps used in this Decision is the World Geodetic System 1984 (WGS-84). For all practical purposes related to this Decision, the WGS-84 datum is the same as the Eritrea Ethiopia Boundary Datum 2002 (EEBD-2002) that is being developed for the demarcation of the boundary. In the *Dispositif*, Chapter VIII, all coordinates have been computed in latitude (N) and longitude (E) to the nearest one-tenth of a minute in terms of the WGS-84 datum except as otherwise indicated. This produces a resolution of approximately 0.18 km on the ground. The coordinates will be made more precise by the new mapping to be made during the demarcation phase.

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