ERITREA ETHIOPIA CLAIMS COMMISSION

PARTIAL AWARD

Prisoners of War
Eritrea's Claim 17

between

The State of Eritrea

and

The Federal Democratic Republic of Ethiopia

The Hague, July 1, 2003

ERITREA ETHIOPIA CLAIMS COMMISSION

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By the Claims Commission, composed of:
Hans van Houtte, President
George H. Aldrich
John R. Crook
James C.N. Paul
Lucy Reed

PARTIAL AWARD – Prisoners of War – Eritrea's Claim 17
between the Claimant,
The State of Eritrea, represented by:

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Professor Lea Brilmayer, Co-Agent for the Government of Eritrea

Counsel and Consultants

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and the Respondent,
The Federal Democratic Republic of Ethiopia, represented by:

Government of Ethiopia

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His Excellency Ambassador Fisseha Yimer, Permanent Representative of the Federal Democratic Republic of Ethiopia to the United Nations, Geneva, Co-Agent
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I. INTRODUCTION

A. Summary of the Positions of the Parties

1. This Claim ("Eritrea's Claim 17;" "ER17") has been brought to the Commission by the Claimant, the State of Eritrea ("Eritrea"), 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 Claim seeks a finding of the liability of the Respondent, the Federal Democratic Republic of Ethiopia ("Ethiopia"), for loss, damage and injury suffered by the Claimant as a result of the Respondent's alleged unlawful treatment of its Prisoners of War ("POWs") who were nationals of the Claimant. In its Statement of Claim, the Claimant requested monetary compensation, costs, and such other relief as is just and proper. In its Memorial, the Claimant requests additional relief in the form of orders: (a) that the Respondent cooperate with the International Committee of the Red Cross ("ICRC") in effecting an immediate release of all remaining POWs it holds; (b) that the Respondent return personal property of POWs confiscated by it; and (c) that the Respondent desist from displaying information and photographs of POWs to public view.

2. The Respondent asserts that it fully complied with international law in its treatment of POWs. The Respondent denies that the Commission has jurisdiction over claims relating to the repatriation of POWs and over several claims that it alleges were not filed by December 12, 2001, and consequently were extinguished by virtue of Article 5, paragraph 8, of the Agreement. The Respondent also objects to the Claimant's requests for the additional relief in the form of orders as inappropriate and unnecessary and, with respect to repatriation, as beyond the power of the Commission.

B. Ethiopian POW Camps

3. Ethiopia interned a total of approximately 2,600 Eritrean POWs between the start of the conflict in May 1998 and November 29, 2002,[1] when all remaining Eritrean POWs registered by the ICRC were released.

4. Ethiopia utilized six permanent camps, some only briefly: Fiche, Bilate, Feres Mai, Mai Chew, Mai Kenetal and Dedessa. Ethiopia closed each camp upon transfer of the POWs to their next camp.

5. Ethiopia also operated several transit camps, where POWs were held for several days or weeks upon evacuation from the various fronts, including: Shogolle, Sheraro, Biyara, Agebe, Adi Grat, Bishuka, Deda Lalay, Edaga Hamus, Shelalo and Sheshebit. Ethiopia used Shogolle, which is located on the outskirts of Addis Ababa, as a main transit camp from the beginning of the conflict until October 2001. POWs were typically held at Shogolle for one to two weeks before being transferred to permanent camps.

[1] The ICRC reported registering 2,600 Eritrean POWs at the time of the Agreement. ICRC, *ICRC repatriates 24 Ethiopian prisoners of war*, ICRC Press Release 01/40 (Geneva, October 10, 2001).

6. In 1998, Eritrean POWs taken in the early stages of the conflict were transferred from Shogolle to Fiche and Bilate. In June and July 1998, approximately 148 male and five female POWs were interned at Fiche, which was located in the highlands in the Oromia region approximately 120 kilometers north of Addis Ababa outside the town of Fiche. In July 1998, the Fiche POWs were transferred to Bilate where they, along with some sixty additional prisoners, remained until they were transferred to Dedessa in June 1999. Bilate was located on the floor of the Rift Valley area, 450 kilometers south of Addis Ababa.

7. From February to June 1999, Ethiopia interned new Eritrean POWs at Feres Mai, after evacuating them from the Deda Lalay or Sheraro transit camps. Feres Mai was located in the northwestern Tigray region, between the towns of Adwa and Enticho. Some 300 to 400 Eritrean POWs, including some forty women, were eventually interned at Feres Mai.

8. In June 1999, all of the Feres Mai POWs were relocated to the Mai Chew camp. Mai Chew was located in the Tigray region, north of Addis Ababa and about 120 kilometers south of Mekele just outside the town of Mai Chew. Approximately 360 male and forty female POWs were interned at Mai Chew until, in September 1999, they were transferred to Dedessa.

9. From May to June 2000, Eritrean POWs who were captured on the Western Front were first held in the Biyara and Sheraro transit camps and then transferred to Mai Kenetal. Mai Kenetal, which was in operation from May 2000 until January 2001, was located in the Tigray region, approximately thirty kilometers south of Adwa. Some 1,500 to 2,000 Eritrean prisoners, including eight to ten women, were interned at Mai Kenetal. In August 2000, the majority of the POWs were transferred to Dedessa; some of the sick and wounded remained until their repatriation in December 2000 and January 2001.

10. All of the remaining Eritrean POWs were eventually transferred to the Dedessa camp, which was opened in June 1999. Dedessa was originally constructed by the Derg, the prior Ethiopian government, as a military training base. When the Mai Kenetal prisoners were moved to Dedessa in August 2000, they joined other POWs formerly held at Bilate, Mai Chew and Feres Mai. Dedessa is located in the Oromia region in the valley of the Dedessa River, 300 kilometers west of Addis Ababa. Dedessa was used until November 29, 2002, when all remaining Eritrean POWs were released.

C. General Comment by the Commission

11. As the findings in this Award and in the related Award in Ethiopia's Claim 4 describe, there were significant difficulties in both Parties' performance of important legal obligations for the protection of POWs. Nevertheless, the Commission must record an important preliminary point that provides essential context for what follows. Based on the extensive evidence adduced during these proceedings, the Commission believes that both Parties had a commitment to the most fundamental principles bearing on prisoners of war. Both Parties conducted organized, official training programs to instruct their troops

on procedures to be followed when POWs are taken. In contrast to many other contemporary armed conflicts, both Eritrea and Ethiopia regularly and consistently took POWs. Enemy personnel who were *hors de combat* were moved away from the battlefield to conditions of greater safety. Further, although these cases involve two of the poorest countries in the world, both made significant efforts to provide for the sustenance and care of the POWs in their custody.

12. There were deficiencies of performance on both sides, sometimes significant, occasionally grave. Nevertheless, the evidence in these cases shows that both Eritrea and Ethiopia endeavored to observe their fundamental humanitarian obligations to collect and protect enemy soldiers unable to resist on the battlefield. The Awards in these cases, and the difficulties that they identify, must be read against this background.

II. PROCEEDINGS

13. 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. This Claim was filed on December 12, 2001. A Statement of Defense was filed on April 15, 2002. The Claimant's Memorial was filed on August 1, 2002, and the Respondent's Counter-Memorial was filed on November 1, 2002. A hearing on the issue of liability was held at the Peace Palace in December 2002 in conjunction with a hearing in the related Claim 4 of the Federal Democratic Republic of Ethiopia.

III. JURISDICTION

A. Jurisdiction over Claims Arising Subsequent to December 12, 2000

14. Article 5, paragraph 1, of the Agreement defines the jurisdiction of the Commission. 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."

15. In this Claim, as in Ethiopia's Claim 4, each Party contends that the other's treatment of POWs following the outbreak of hostilities in May 1998 did not meet governing standards of international law. Both Claims proceed from the premise, which the Commission fully shares, that the Agreement clearly establishes the Commission's jurisdiction over claims regarding the treatment of POWs in the period after hostilities began in May 1998 until the conclusion of the Agreement on December 12, 2000. Claims relating to the treatment of POWs during that period clearly relate to the conflict; are for loss, damage or injury by one Government against the other; and involve alleged violations of applicable international law.

16. The Parties do not agree, however, whether the Commission has jurisdiction over claims involving events after the Agreement was concluded. Eritrea has brought two types of claims involving events after December 12, 2000: (a) continued treatment of POWs that did not meet the standards required by international law, and (b) the failure of Ethiopia to repatriate POWs without delay after the cessation of hostilities as required by customary international law and by Article 118 of the Geneva Convention Relative to the Treatment of Prisoners of War, August 12, 1949 ("Geneva Convention III").[2] Ethiopia maintains in this Claim and in its related Claim 4, that the Agreement does not grant the Commission jurisdiction over claims based upon the treatment of POWs that arose subsequent to December 12, 2000, including claims for delays in their repatriation. Consequently, Ethiopia made no claims of that sort. However, in its Memorial in its Claim 4 and during the hearing, Ethiopia asserted that, should the Commission determine that it has jurisdiction over violations of the Geneva Convention III requirement of repatriation of POWs without delay after the cessation of active hostilities, "the Commission should also find that Eritrea failed to repatriate Ethiopian POWs with all due dispatch in accordance with the *jus in bello*."[3]

17. In its Counter-Memorial for this Claim, Ethiopia referred to Article 2 of the Agreement, which, in relevant part, provides:

> Article 2
>
> 1. In fulfilling their obligations under international humanitarian law, including the 1949 Geneva Conventions relative to the protection of victims of armed conflict ("1949 Geneva Conventions"), and in cooperation with the International Committee of the Red Cross, the parties shall without delay release and repatriate all prisoners of war.

18. Ethiopia pointed out that the Commission had earlier decided, in its Decision No. 1, that "claims regarding the interpretation or implementation of the Agreement as such are not within [its] grant of jurisdiction." Ethiopia asserts that repatriation of POWs is governed by Article 2 of the Agreement, rather than by Geneva Convention III, that the Commission could not decide Eritrea's claims with respect to repatriation of POWs without thereby deciding compliance with Article 2, and that these are additional reasons why the Commission has no jurisdiction over claims relating to repatriation.

19. Prior to the filing of claims, the Commission had addressed the temporal scope of its jurisdiction in its Decision No. 1, issued on July 24, 2001. That part of the decision, rendered following consultations with the Parties, was as follows:

> The Commission has concluded that certain claims associated with events after 12 December 2000 may also "relate to" the conflict, if a party can

[2] 75 U.N.T.S. p. 135; 6 U.S.T. p. 3316.
[3] Ethiopia's Claim 4, Prisoners of War, Memorial, filed by Ethiopia on August 1, 2002, p. 283 [hereinafter ET04 MEM].

> demonstrate that those claims arose as a result of the armed conflict between the parties, or occurred in the course of measures to disengage contending forces or otherwise to end the military confrontation between the two sides. These might include, for example, claims by either party regarding alleged violations of international law occurring while armed forces are being withdrawn from occupied territory or otherwise disengaging in the period after 12 December 2000. Any such claims must be filed within the filing period established by the Agreement. Moreover, as noted in Part A above, the Commission does not have jurisdiction over claims for alleged breaches of the Agreement.

20. It is beyond dispute that all the persons who are the subject of the present claims became POWs during the armed conflict that ended with the conclusion of the Agreement on December 12, 2000. The Commission believes that the timely release and repatriation of POWs is clearly among the types of measures associated with disengaging contending forces and ending the military confrontation between the two Parties that fall within the scope of its Decision No. 1. In that connection, international law and practice recognize the importance of the timely release and return of POWs, as demonstrated by Article 118 of Geneva Convention III which requires that such POWs "be released and repatriated without delay following the cessation of active hostilities."

21. The Commission holds that a claim based upon alleged mistreatment of such POWs subsequent to December 12, 2000, and a claim based upon an allegedly unjustified delay in their subsequent release and repatriation are claims that arose as a result of the armed conflict between the Parties and relate to that conflict within the meaning of its Decision No. 1. Consequently, the Commission finds that the mere fact that a claim relates to alleged mistreatment of POWs subsequent to December 12, 2000, does not deprive the Commission of jurisdiction over that claim.

22. The Commission finds unconvincing Ethiopia's further arguments that Article 2 of the Agreement effectively replaced Article 118 of Geneva Convention III as the governing law and that the Commission could not exercise jurisdiction over Eritrea's claim based on Article 118 without thereby deciding whether Ethiopia was in breach of its obligations under Article 2 of the Agreement. It frequently occurs in international law that a party finds itself subject to cumulative obligations arising independently from multiple sources.[4] Article 2 itself recognizes that the relevant repatriation obligations are obligations "under international humanitarian law, including the 1949 Geneva Conventions . . . ." Article 5 of the Agreement grants the Commission jurisdiction over all claims related to the conflict that result from violations of the 1949 Geneva Conventions or from other violations of international law. The Commission finds no basis in the text of either Article 2 or Article 5 for the conclusion that its jurisdiction over claims covered by Article 5 is repealed or impaired by the provisions of Article 2. Consequently, the Commission finds that it has jurisdiction over Eritrea's claims concerning the repatriation of POWs. Nevertheless, in dealing with those claims, the

[4] Case concerning Military and Paramilitary Activities In and Against Nicaragua (Nicar. v. U.S.), 1986 I.C.J. p. 14 paras. 174-178 (June 27).

Commission shall exercise care to avoid assuming or exercising jurisdiction over any claims concerning compliance with Article 2 of the Agreement.

B. Jurisdiction over Claims Not Filed by December 12, 2001

23. Ethiopia challenges the jurisdiction of the Commission over several claims asserted by Eritrea in its Memorial which, Ethiopia asserts, were not included in Eritrea's Statement of Claim on December 12, 2001, and consequently were extinguished by the terms of Article 5, paragraph 8, of the Agreement. The Parties agree that the Agreement extinguished any claims not filed with the Commission by that date. The question before the Commission, therefore, is to determine whether any claims asserted by Eritrea were not among the claims presented in its Statement of Claim.

24. The following claims asserted by Eritrea in its Memorial are subject to this challenge:

1. The claim that POWs were subjected to insults and public curiosity, contrary to Article 13 of Geneva Convention III, including the related request for an order;
2. The claim that female POWs were accorded inappropriate housing and sanitation conditions, contrary to Articles 25 and 29;
3. The claim the POWs were mistreated during transfers between camps, contrary to Article 46; and
4. The claim for mistreatment of non-POW civilians held in POW camps.

25. The Commission finds that the first three of these claims were not identified in Eritrea's Statement of Claim sufficiently to satisfy the jurisdictional requirements of the Agreement. The Commission's Rules of Procedure indicate the requirements for filing a claim. Under Article 24(3)(c) and (d) of the Rules, Statements of Claim must include "a statement of the facts supporting the claim or claims" and identify "the violation or violations of international law on the basis of which the claim or claims are alleged to have arisen." These requirements are not empty formalities. They serve the vital function of ensuring that Respondents are given a fair indication from the outset of what they must answer in the claims filed against them. This is particularly important in these proceedings, where each side has only two written pleadings and limited time to develop its defenses to a claim.

26. Most of the claims asserted in Eritrea's Memorial were indicated quite specifically in its Statement of Claim, in which both the nature of the alleged illegal act and the relevant specific provisions of Geneva Convention III were indicated. These first three challenged claims are of a different character. The claim that POWs were wrongly subjected to insults and public curiosity rests largely on allegations that Ethiopia placed photographs and personal information concerning numerous POWs on a website. However, these matters were not mentioned in the December 2001 Statement of Claim. Indeed, during the hearing, Eritrea acknowledged that it had only learned of the website

several months after the claims were filed.[5] Neither of the other two challenged claims (failure to provide female prisoners with proper housing and sanitary facilities and the abuse of prisoners during transfer) was identified with the degree of clarity required to permit balanced and informed proceedings. There are several general references to alleged mistreatment of female POWs, dealt with elsewhere in this Award, and generalized allegations of physical abuse of POWs in Eritrea's Statement of Claim, but these were not sufficient to give the Respondent fair warning of what it had to answer. Consequently, the first three claims listed above were extinguished pursuant to Article 5, paragraph 8, of the Agreement and cannot be considered by the Commission.

27. This ruling does not mean that the Statements of Claim freeze the issues before the Commission. The Commission understands that, during the proceedings, the Parties may wish to refine their legal theories or present more detailed or accurate portrayals of the underlying facts. Article 26 of the Commission's Rules of Procedure permits this within appropriate limits. The Commission also recognizes that certain evidence submitted in support of these extinguished claims is appropriate for consideration in the context of other properly filed claims, and it has considered such evidence in deciding those claims.

28. The Commission also agrees that the fourth of these challenged claims is not before it in the present claim, but that is for a different reason. All mistreatment of civilians is the subject of other claims by both Parties, which are to be heard and decided in a separate proceeding.

29. All other claims asserted by Eritrea in this proceeding are within the jurisdiction of the Commission.

C. Additional Relief

30. With respect to Ethiopia's objections to Eritrea's requests in this Claim for additional relief in the form of orders, the Commission reserves those issues to be dealt with as part of its decisions on the merits.

IV. THE MERITS

A. Applicable Law

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

> 1. International conventions, whether general or particular, establishing rules expressly recognized by the parties;

[5] Transcript of the Eritrea/Ethiopia Claims Commission Hearings of December 3-14, 2002, Peace Palace, The Hague, p. 44 [hereinafter Transcript].

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.

32. The most obviously relevant source of law for the present Award is Geneva Convention III. Both Parties refer extensively to the Convention in their pleadings, and the evidence demonstrates that both Parties relied upon it for the instruction of their armed forces and for the rules of the camps in which they held POWs. The Parties agree that the Convention was applicable from August 14, 2000, the date of Eritrea's accession, but they disagree as to its applicability prior to that date.

33. Ethiopia signed the four Geneva Conventions in 1949 and ratified them in 1969. Consequently, they were in force in Ethiopia in 1993 when Eritrea became an independent State. Successor States often seek to maintain stability of treaty relationships after emerging from within the borders of another State by announcing their succession to some or all of the treaties applicable prior to their independence. Indeed, treaty succession may happen automatically for certain types of treaties.[6] However, the Commission has not been shown evidence that would permit it to find that such automatic succession to the Geneva Conventions occurred in the exceptional circumstances here, desirable though such succession would be as a general matter. From the time of its independence from Ethiopia in 1993, senior Eritrean officials made clear that Eritrea did not consider itself bound by the Geneva Conventions.

34. During the period of the armed conflict and prior to these proceedings, Ethiopia likewise consistently maintained that Eritrea was not a party to the Geneva Conventions.[7] The ICRC, which has a special interest and responsibility for promoting compliance with the Geneva Conventions, likewise did not at that time regard Eritrea as a party to the Conventions.[8]

35. Thus, it is evident that when Eritrea separated from Ethiopia in 1993 it had a clear opportunity to make a statement affirming its succession to the Conventions, but the evidence shows that it refused to do so. It consistently refused to do so subsequently, and in 2000, when it decided to become a party to the Conventions, it did so by accession, not by succession. While it may be that continuity of treaty relationships often can be presumed, absent facts to the contrary, no such presumption could properly be made in

[6] Case concerning the Gabcíkovo-Nagymaros Project (Hung./Slov.), 1997 I.C.J. p. 7 para. 123 (Sept. 25).
[7] Both Parties referred to the Statement by Mr. Minelik Alemu, Observer for Ethiopia at the Fiftieth Session of the U.N. Sub-Commission on the Prevention of Discrimination and Protection of Minorities under Item 10 on "Freedom of Movement" in the Exercise of the Right of Reply (Geneva, August 24, 1998), *available at* <http://www.ethemb.se/s980824_2.htm>. *See* ET04 MEM p. 34 note 97, p. 57 note 241, p. 146 note 616; Professor Brilmayer, Transcript p. 62.
[8] ICRC, *Ethiopia-Eritrea: Aid for medical facilities and the displaced,* ICRC NEWS 98/23, June 12, 1998, *in* Eritrea's Claim 17, Prisoners of War, Memorial, filed by Eritrea on August 1, 2002, Documentary Annex p. 40 [hereinafter ER17 MEM].

the present case in view of these facts. These unusual circumstances render the present situation very different from that addressed in the Judgement by the Appeals Chamber of the International Tribunal for the Former Yugoslavia in the *Čelebići Case*.[9] It is clear here that neither Eritrea, Ethiopia nor the depository of the Conventions, the Swiss Federal Council, considered Eritrea a party to the Conventions until it acceded to them on August 14, 2000. Thus, from the outbreak of the conflict in May 1998 until August 14, 2000, Eritrea was not a party to Geneva Convention III. Ethiopia's argument to the contrary, in reliance upon Article 34 of the Vienna Convention on Succession of States in Respect of Treaties,[10] cannot prevail over these facts.

36. Although Eritrea was not a party to the Geneva Conventions prior to its accession to them, the Conventions might still have been applicable during the armed conflict with Ethiopia pursuant to the final provision of Article 2 common to all four Conventions, which states:

> Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.

37. However, the evidence referred to above clearly demonstrates that, prior to its accession, Eritrea had not accepted the Conventions. This non-acceptance was also demonstrated by Eritrea's refusal to allow the representatives of the ICRC to visit the POWs it held until after its accession to the Conventions.

38. Consequently, the Commission holds that, with respect to matters prior to August 14, 2000, the law applicable to the armed conflict between Eritrea and Ethiopia is customary international law. In its pleadings, Eritrea recognizes that, for most purposes, "the distinction between customary law regarding POWs and the Geneva Convention III is not significant."[11] It does, however, offer as examples of the more technical and detailed provisions of the Convention that it considers not applicable as customary law the right of the ICRC to visit POWs, the permission of the use of tobacco in Article 26, and the requirement of canteens in Article 28. It also suggests that payment of POWs for labor and certain burial requirements for deceased POWs should not be considered part of customary international law.[12] Eritrea cites the *von Leeb* decision of the Allied Military Tribunal in 1948 as supportive of its position on this question.[13]

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[9] Čelebići Case (The Prosecutor v. Delalic *et al*.), 2001 ICTY Appeals Chamber Judgement Case No. IT-96-21-A (Feb. 20).
[10] 1946 U.N.T.S. p. 3; 17 I.L.M. p. 1488.
[11] ER17 MEM p. 19.
[12] Eritrea's Claim 17, Prisoners of War, Counter-Memorial to ER17 MEM, filed by Ethiopia on November 1, 2002, pp. 27-28 [hereinafter ER17 CM].
[13] U.S. v. Wilhelm von Leeb, *et al*., *in* TRIALS OF WAR CRIMINALS BEFORE THE NUREMBERG MILITARY TRIBUNALS UNDER CONTROL COUNCIL LAW, NO. 10, VOLUME XI, p. 462 (United States Government Printing Office, Washington D.C. 1950).

39. Given the nearly universal acceptance of the four Geneva Conventions of 1949, the question of the extent to which their provisions have become part of customary international law arises today only rarely. The Commission notes that the *von Leeb* case (which found that numerous provisions at the core of the 1929 Convention had acquired customary status) addressed the extent to which the provisions of a convention concluded in 1929 had become part of customary international law during the Second World War, that is, a conflict that occurred ten to sixteen years later. In this Claim, the Commission faces the question of the extent to which the provisions of a convention concluded in 1949 and since adhered to by almost all States had become part of customary international law during a conflict that occurred fifty years later. Moreover, treaties, like the Geneva Conventions of 1949, that develop international humanitarian law are, by their nature, legal documents that build upon the foundation laid by earlier treaties and by customary international law.[14] These treaties are concluded for the purpose of creating a treaty law for the parties to the convention and for the related purpose of codifying and developing customary international law that is applicable to all nations. The Geneva Conventions of 1949 successfully accomplished both purposes.

40. Certainly, there are important modern authorities for the proposition that the Geneva Conventions of 1949 have largely become expressions of customary international law, and both Parties to this case agree.[15] The mere fact that they have obtained nearly universal acceptance supports this conclusion.[16] There are also similar authorities for the proposition that rules that commend themselves to the international community in general, such as rules of international humanitarian law, can more quickly become part of customary international law than other types of rules found in treaties.[17] The Commission agrees.

41. Consequently, the Commission holds that the law applicable to this Claim is customary international law, including customary international humanitarian law, as exemplified by the relevant parts of the four Geneva Conventions of 1949. The frequent invocation of provisions of Geneva Convention III by both Parties in support of their claims and defenses is fully consistent with this holding. Whenever either Party asserts that a particular relevant provision of those Conventions should not be considered part of customary international law at the relevant time, the Commission will decide that question, and the burden of proof will be on the asserting Party.

42. Contrary to the argument of Ethiopia, the Commission does not understand the reference to the Geneva Conventions of 1949 in Article 5, paragraph 1, of the Agreement

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[14] *See* Richard R. Baxter, *Multilateral Treaties as Evidence of Customary International Law,* 41 BRIT. Y.B. INT'L L. pp. 275, 286 (1965-66).
[15] *See, e.g.,* Legality of the Threat or Use of Nuclear Weapons, 1996 I.C.J. p. 226 para. 79 (July 8); Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (May 3, 1993), U.N. Doc. S/25704, para. 35; THE HANDBOOK OF HUMANITARIAN LAW IN ARMED CONFLICTS p. 24 (Dieter Fleck ed., Oxford University Press 1995); and THEODOR MERON, HUMAN RIGHTS AND HUMANITARIAN NORMS AS CUSTOMARY LAW p. 45 (Clarendon Press 1989).
[16] *See, e.g.,* Jonathan I. Charney, *International Agreements and the Development of Customary International Law,* 61 WASH. L. REV. p. 971 (1986).
[17] *See, e.g.,* MERON, *supra* note 15 at pp. 56-58.

as a choice of law provision meaning that the Conventions in all their details became binding as treaty law retroactively upon Eritrea once it acceded to them. That reference to the Conventions was appropriate simply because, prior to the conclusion of the Agreement on December 12, 2000, both nations had become Parties to the Conventions.

B. Evidentiary Issues

1. Quantum of Proof Required

43. The Commission's brief Rules of Procedure regarding evidence reflect common international practice. Articles 14.1 and 14.2 state:

> 14.1 Each party shall have the burden of proving the facts it relies on to support its claim or defense.
>
> 14.2 The Commission shall determine the admissibility, relevance, materiality and weight of the evidence offered.

44. Also reflecting common international practice, the Rules do not articulate the quantum or degree of proof that a party must present to meet this burden of proof.

45. At the hearing, counsel for both Parties carefully addressed the quantum or level of proof to be required, describing the appropriate quantum in very similar terms. Counsel for Ethiopia indicated that in assessing its requests for findings of systematic and widespread violations of international law by Eritrea, "the bar should be set very high," particularly given the seriousness of the violations alleged. Ethiopia accordingly proposed that the Commission should require evidence that is "very compelling, very credible, very convincing."[18] Counsel for Eritrea largely agreed, also noting the gravity of the violations alleged and urging the Commission to require "clear and convincing" evidence.[19] In their written or oral pleadings, both sides cited jurisprudence of the International Court of Justice indicating the need for a high degree of certainty in matters involving grave charges against a state.[20]

46. The Commission agrees with the essence of the position advocated by both Parties. Particularly in light of the gravity of some of the claims advanced, the Commission will require clear and convincing evidence in support of its findings.

47. The Commission does not accept any suggestion that, because some claims may involve allegations of potentially criminal individual conduct, it should apply an even higher standard of proof corresponding to that in individual criminal proceedings. The Commission is not a criminal tribunal assessing individual criminal responsibility. It must instead decide whether there have been breaches of international law based on normal principles of state responsibility. The possibility that particular findings may

[18] Professor Murphy, Transcript p. 185.
[19] Professor Crawford, Transcript pp. 333-334.
[20] *See, e.g.,* ET04 MEM p. 47; Transcript pp. 333-334.

involve very serious matters does not change the international law rules to be applied or fundamentally transform the quantum of evidence required.

2. Proof of Facts

48. Eritrea presented sixty-seven signed declarations with its Memorial and ten with its Counter-Memorial. Of the declarants whose declarations were submitted with the Memorial, forty-eight were former POWs and ten were former civilian internees. Most of these declarants were among the sick or wounded released after cessation of hostilities in December 2000 or in January or March 2001. Eritrea also submitted copies of newspaper articles and public statements, voluminous medical and hospital records, receipts for expenditures related to POWs, and other documents. At the hearing, Eritrea presented as a fact witness one former civilian internee, who had been interned at Fiche, Bilate and Dedessa; as a fact and expert witness, Dr. Haile Mehtsum, Health Officer for the Ministry of Defense, Surgeon General and former Minister of Health of Eritrea; and as a fact witness, Dr. Fetsumberhan Gebrenegus, a psychiatrist and the medical director of St. Mary's Psychiatric Hospital in Asmara. In defense, Ethiopia presented as a fact witness Major Tadege Yohala, deputy commander of Feres Mai and Mai Chew and commander of Dedessa; and as an expert witness, Dr. Michael Goodman, a medical doctor with a public health degree.

49. In evaluating the probative strength of a declaration to portray a violation (or several violations) of international law, the Commission has considered the clarity and detail of the relevant testimony, and whether this evidence is corroborated by testimony in other declarations or by other available evidence. The consistent and cumulative character of much of the Parties' evidence was of significant value to the Commission in making its factual judgements.[21] When the totality of the evidence offered by the Claimant provided clear and convincing evidence of a violation – *i.e.*, a *prima facie* case – the Commission carefully examined the evidence offered by the Respondent (usually in the form of a declaration or camp records) to determine whether it effectively rebutted the Claimant's proof.

3. Evidence under the Control of the ICRC

50. Throughout the conflict, representatives of the ICRC visited Ethiopia's camps. Beginning late in August 2000, the ICRC also began visiting Eritrea's Nakfa camp. Both Parties indicated that they possess ICRC reports regarding these camp visits, as well as other relevant ICRC communications.

51. The Commission hoped to benefit from the ICRC's experienced and objective assessment of conditions in both Parties' camps. It asked the Parties to include the ICRC reports on camp visits in their written submissions or to explain their inability to do so. Both responded that they wished to do so but that the ICRC opposed allowing the

[21] In that connection, *see* SYLVAIN VITÉ, LES PROCÉDURES INTERNATIONALES D'ÉTABLISSEMENT DES FAITS DANS LA MISE EN OEUVRE DU DROIT INTERNATIONAL HUMANITAIRE pp. 345-346 (Editions de l'Université de Bruxelles 1999).

Commission access to these materials. The ICRC maintained that they could not be provided without ICRC consent, which would not be given.

52. With the endorsement of the Parties, the Commission's President met with senior ICRC officials in Geneva in August 2002 to review the situation and to seek ICRC consent to Commission access, on a restricted or confidential basis if required.

53. The ICRC made available to the Commission and the Parties copies of all relevant public documents, but it concluded that it could not permit access to other information. That decision reflected the ICRC's deeply held belief that its ability to perform its mission requires strong assurances of confidentiality.[22] The Commission has great respect for the ICRC and understands the concerns underlying its general policies of confidentiality and non-disclosure. Nevertheless, the Commission believes that, in the unique situation here, where both parties to the armed conflict agreed that these documents should be provided to the Commission, the ICRC should not have forbidden them from doing so. Both the Commission and the ICRC share an interest in the proper and informed application of international humanitarian law. Accordingly, the Commission must record its disappointment that the ICRC was not prepared to allow it access to these materials.

C. Violations of the Law

1. Organizational Comment

54. As commentators frequently have observed, Geneva Convention III, with its 143 Articles and five Annexes, is an extremely detailed and comprehensive code for the treatment of POWs.[23] Given its length and complexity, the Convention mixes together, sometimes in a single paragraph, obligations of very different character and importance. Some obligations, such as Article 13's requirement of humane treatment, are absolutely fundamental to the protection of POWs' life and health. Other provisions address matters of procedure or detail that may help ease their burdens, but are not necessary to ensure their life and health.

55. Under customary international law, as reflected in Geneva Convention III, the requirement of treatment of POWs as human beings is the bedrock upon which all other obligations of the Detaining Power rest. At the core of the Convention regime are the legal obligations to keep POWs alive and in good heath.[24] The holdings made in this section are organized to emphasize these core obligations.

56. It should also be stated at the outset that 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

[22] *See* Gabor Rona, *The ICRC Privilege Not to Testify: Confidentiality in Action,* 84 INT'L REV. RED CROSS p. 207 (2002).
[23] *See, e.g.,* GEOFFREY BEST, WAR & LAW SINCE 1945 p. 135 (Clarendon Press 1994).
[24] *See* Yoram Dinstein, *Prisoners of War*, *in* ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW, VOLUME 4, pp. 146, 148 (Rudolf Bernhardt ed., North-Holland Publishing Company 1982).

law by the Parties, which are usually illegal acts or omissions that were frequent or pervasive and consequently affected significant numbers of victims. These parameters are dictated by the limit of what is feasible for the two Parties to brief and argue and for the Commission to determine in light of the time and resources made available by the Parties.

2. Mistreatment of POWs at Capture and its Immediate Aftermath

57. Of the forty-eight Eritrean POW declarants, thirty-one were already wounded at capture and nearly all testified to treatment of the sick or wounded by Ethiopian forces upon capture at the front and during evacuation. Consequently, in addition to the customary international law standards reflected in Geneva Convention III, the Commission also applies the standards reflected in the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field on August 12, 1949 ("Geneva Convention I").[25] For a wounded or sick POW, the provisions of Geneva Convention I apply along with Geneva Convention III. Among other provisions, Article 12 of Geneva Convention I demands respect and protection of wounded or sick members of the armed forces in "all circumstances."

58. A State's obligation to ensure humane treatment of enemy soldiers can be severely tested in the heated and confused moments immediately following capture or surrender and during evacuation from the battlefront to the rear. Nevertheless, customary international law as reflected in Geneva Conventions I and III absolutely prohibits the killing of POWs, requires the wounded and sick to be collected and cared for, and demands prompt and humane evacuation.[26]

a. Abusive Treatment

59. The forty-eight Eritrean POW declarations recount a few disquieting instances of Ethiopian soldiers deliberately killing POWs following capture. Three declarants gave eyewitness accounts alleging that wounded comrades were shot and abandoned to speed up evacuation.

60. The Commission received no evidence that Ethiopian authorities conducted inquiries into any such battlefield events or pursued discipline as required under Article 121 of Geneva Convention III. However, several Eritrean POW declarants described occasions when Ethiopian soldiers threatened to kill Eritrean POWs at the front or during evacuation, but either restrained themselves or were stopped by their comrades. Ethiopia presented substantial evidence regarding the international humanitarian law training given to its troops. The accounts of capture and its immediate aftermath presented to the Commission in this Claim suggest that this training generally was effective in preventing unlawful killing, even "in the heat of the moment" after capture and surrender.

[25] 75 U.N.T.S. p. 31; 6 U.S.T. p. 3114.
[26] *See* Common Article 3(1)(a), (2); Geneva Convention I, Articles 12, 15; Geneva Convention III, Articles 13, 20, 130.

61. On balance, and without in any way condoning isolated incidents of unlawful killing by Ethiopian soldiers, the Commission finds that there is not sufficient corroborated evidence to find Ethiopia liable for frequent or recurring killing of Eritrean POWs at capture or its aftermath.

62. In contrast, Eritrea did present clear and convincing evidence, in the form of cumulative and reinforcing accounts in the Eritrean POW declarations, of frequent physical abuse of Eritrean POWs by their captors both at the front and during evacuation. A significant number of the declarants reported that Ethiopian troops threatened and beat Eritrean prisoners, sometimes brutally and sometimes inflicting blows directly to wounds. In some cases, Ethiopian soldiers deliberately subjected Eritrean POWs to verbal and physical abuse, including beating and stoning from civilian crowds in the course of transit.

63. This evidence of frequent beatings and other unlawful physical abuse of Eritrean POWs at capture or shortly after capture is clear, convincing and essentially unrebutted. Although the Commission has no evidence that Ethiopia encouraged its soldiers to abuse POWs at capture, the conclusion is unavoidable that, at a minimum, Ethiopia failed to take effective measures, as required by international law, to prevent such abuse. Consequently, Ethiopia is liable for that failure.

b. Medical Care Immediately After Capture

64. The Commission turns next to Eritrea's allegations that Ethiopia failed to provide necessary medical attention to Eritrean POWs after capture and during evacuation, as required under customary international law as reflected in Geneva Conventions I (Article 12) and III (Articles 20 and 15). Some fourteen of the Eritrean declarants testified that their wounds or their comrades' wounds were not bandaged at the front or cleaned in the first days and weeks after capture, in at least one case apparently leading to death after a transit journey. In rebuttal, Ethiopia offered evidence that its soldiers carried bandages and had been trained to wrap wounds to stop bleeding, but not to wash wounds immediately at the front because of the scarcity of both water and time.

65. The Commission believes that the requirement to provide POWs with medical care during the initial period after capture must be assessed in light of the harsh conditions on the battlefield and the limited extent of medical training and equipment available to front line troops. On balance, and recognizing the logistical and resource limitations on the medical care Ethiopia could provide at the front, the evidence indicates that, on the whole, Ethiopian forces gave wounded Eritrean soldiers basic first aid treatment upon capture. Hence, Ethiopia is not liable for this alleged violation.

c. Evacuation Conditions

66. Eritrea also alleges that, in addition to poor medical care, Ethiopia failed to ensure humane evacuation conditions. As reflected in Articles 19 and 20 of Geneva Convention III, the Detaining Power is obliged to evacuate prisoners humanely, safely and as soon as

possible from combat zones; only if there is a greater risk in evacuation may the wounded or sick be temporarily kept in the combat zone, and they must not be unnecessarily exposed to danger. The measure of a humane evacuation is that, as set out in Article 20, POWs should be evacuated "in conditions similar to those for the forces of the Detaining Power."

67. The Eritrean declarants described extremely difficult evacuation conditions. The POWs were forced to walk from the front for hours or days over rough terrain, often in pain from their own wounds, often carrying wounded comrades, often in harsh weather, and often with little or no food and water. Ethiopia offered rebuttal evidence that its soldiers faced nearly the same unavoidably difficult conditions, that soldiers at the front could not be expected to carry extra food for prisoners, and that rations were provided at transit camps.[27]

68. On balance, and with one exception, the Commission finds that Ethiopian troops satisfied the legal requirements for evacuations from the battlefield under the harsh geographic, military and logistical circumstances. The exception is the frequent, but not invariable, Ethiopian practice of seizing footwear, testified to by several declarants. Although the harshness of the terrain and weather on the marches to the camps may have been out of Ethiopia's control, to force the POWs to walk barefoot in such conditions unnecessarily compounded their misery. Although Ethiopia suggested, in the context of transit camps, that it is permissible to restrict shoes to prevent escape,[28] the ICRC Commentary is to the contrary,[29] and Ethiopia has claimed against Eritrea for the same offense. The Commission finds Ethiopia liable for inhumane treatment during evacuations from the battlefield as a result of its forcing Eritrean POWs to go without footwear during evacuation marches.

69. Turning to the timing of evacuation, some of the Eritrean declarants described what they considered to be delayed evacuations. One recounted being beaten and left on the battlefield for three days. However, others described rapid, if often uncomfortable or frightening, movements from the battlefield. Ethiopia defended by arguing that the circumstances of the conflict often prevented immediate evacuation, particularly of the wounded.[30] The Commission need not address Ethiopia's contention that Eritrea must prove that evacuation delays after specific battles were avoidable,[31] because it finds that Eritrea did not submit clear and convincing evidence of systematic delay or unsafe conditions in evacuations.

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[27] *See* Ethiopia's Claim 4, Prisoners of War, Counter-Memorial to ET04 MEM, filed by Eritrea on November 1, 2002, pp. 196, 198 [hereinafter ET04 CM].
[28] *See id*. at p. 213.
[29] JEAN DE PREUX ET AL., COMMENTARY ON THE GENEVA CONVENTIONS OF 12 AUGUST 1949, VOLUME III, at p. 166 note 4 (Jean S. Pictet, ed., ICRC, Geneva 1960).
[30] *See, e.g.,* ET04 CM p. 56.
[31] *See, e.g., id*. at pp. 195, 197.

d. Coercive Interrogation

70. Eritrea alleges frequent abuse in Ethiopia's interrogation of POWs, commencing at capture and evacuation. International law does not prohibit the interrogation of POWs, but it does restrict the information they are obliged to reveal and prohibits torture or other measures of coercion, including threats and "unpleasant or disadvantageous treatment of any kind."[32]

71. However, only a very small number of Eritrean declarants testified that they were beaten or seriously threatened during interrogation. Without condoning any isolated incidents of abuse, the Commission finds that the evidence was insufficient to show a pattern of coercive interrogation of POWs at capture or thereafter.

3. Taking of the Personal Property of POWs

72. Eritrea alleges widespread confiscation by Ethiopian soldiers of POWs' money and other valuables, and of photographs and identity cards, either at the time of capture or thereafter. Eritrea accordingly asked the Commission to "order the return of all irreplaceable personal property to Eritrean POWs that was confiscated by Ethiopia . . . , and in particular that Ethiopia return identity documents and personal photographs displayed on the Internet."[33]

73. Article 18 of Geneva Convention III requires that POWs be allowed to retain their personal property. Cash and valuables may be impounded by order of an officer, subject to detailed registration and other safeguards. If prisoners' property is taken, it must be receipted and safely held for later return. Under Article 17, identity documents can be consulted by the Detaining Power, but must be returned to the prisoner. The Commission believes that these obligations reflect customary international law.

74. A significant proportion of Eritrea's witness declarations recount the taking of cash, watches and rings or other valuables, sometimes including identity cards, by Ethiopian military personnel, all without the applicable procedural safeguards. These declarations assert that property was sometimes taken by front line troops at capture, but it also happened regularly while prisoners were in transit to the rear, or after they arrived at established POW camps.

75. Ethiopia argues in its Counter-Memorial that Eritrea's request to order the return of property is outside the Commission's jurisdiction. It then parses Eritrea's evidence relating to each camp, alleging that it is insufficient.[34] For example, the Counter-Memorial identifies twenty witness statements alleging takings of money or valuables from POWs at, or during capture and evacuation to, Mai Kenetal.[35] The Counter-Memorial construes these as suggesting the existence of procedures for receipting and

[32] Geneva Convention III, Article 17.
[33] ER17 MEM p. 138.
[34] *See, e.g.,* ET04 CM pp. 64-65, 99.
[35] *Id*. at p. 219.

return of property,[36] or dismisses them as uncorroborated or as insufficient to show widespread and systematic violations of international law.[37] Ethiopia also submitted witness declarations contending that Ethiopian soldiers were forbidden to confiscate POWs' personal property; that POWs were generally permitted to keep such property; that all items Ethiopia took for safekeeping were registered; that POWs held at Dedessa had much of their property returned to them there; and, that all property was returned to POWs upon their repatriation.

76. Weighing the conflicting evidence, the Commission finds that it shows that personal property frequently was taken from Eritrean prisoners by Ethiopian military personnel, without receipts or any hope of return, all contrary to Articles 17 and 18 of Geneva Convention III. Sometimes this occurred at the front soon after capture, where such thefts have been all too common during war as the independent actions of rapacious individuals. However, the Commission is troubled by evidence of taking of personal property at transit facilities and after arrival at permanent camps and by evidence that property for which receipts were given was not returned or was partly or fully "lost." The conflicting evidence obviously cannot be fully reconciled.

77. The Commission concludes that Ethiopia made efforts to protect the rights of POWs to their personal property, but that these efforts fell short in practice of what was necessary to ensure compliance with the relevant requirements of Geneva Convention III. Consequently, Ethiopia is liable to Eritrea for the resulting losses suffered by Eritrean POWs.

78. The Commission cannot grant Eritrea's request for an order requiring the return of property unlawfully seized and held. Commission Decision No. 3, issued on July 24, 2001, established that the appropriate remedy for claims before the Commission was in principle monetary compensation. Decision No. 3 "did not foreclose" the possibility of other types of remedies, but only "if the particular remedy can be shown to be in accordance with international practice, and if the Tribunal determines that a particular remedy would be reasonable and appropriate in the circumstances." There was no attempt to show that the requested order was in accordance with international practice, nor would such an order, at this stage, appear to the Commission to be appropriate or likely to be effective.

79. Taking of prisoners' valuables and other property is a regrettable but recurring feature of their vulnerable state. The loss of photographs and other similar personal items is an indignity that weighs on prisoners' morale, but the loss of property otherwise seems to have rarely affected the basic requirements for prisoners' survival and well-being. Accordingly, while the Commission does not wish to minimize the importance of these violations, they loom less large than other matters considered elsewhere in this Award.

[36] *Id.* at p. 220.
[37] *Id.* at p. 221.

4. Physical and Mental Abuse of POWs in Camps

80. Both Parties have submitted substantial amounts of evidence on the subject of physical and mental abuse of POWs in the camps, including testimony at the hearing and signed declarations. Nevertheless, the Commission's task remains difficult, because the evidence submitted by the Claimant is often contradicted by the evidence submitted by the Respondent.

81. Even if one were to give full credibility to the evidence submitted by Eritrea, the evidence as a whole indicates that the Ethiopian POW camps were not characterized by a high level of physical abuse by the guards. The evidence does suggest that there were some incidents of beating and that disciplinary punishments were sometimes imposed contrary to Article 96 of Geneva Convention III in that they were decided by Ethiopian guards, rather than by camp commanders or officers to whom appropriate authority had been delegated or that the accused had been denied the benefit of the rights granted by that Article. The disciplinary punishments themselves appear to have been a mixture of clearly legitimate punishments, such as solitary confinement of less than one month and fatigue duties, such as digging, unloading cargo at the camp or carrying water to the camp, along with punishments of questionable legality, such as running, crawling and rolling on the ground. Moreover, there are allegations that some penalties, such as running, crawling or rolling on the ground in the hot sun, even if they could properly be considered fatigue duties, which seem doubtful, were painful and exceeded the limits permitted by Article 89 of Geneva Convention III. That Article permits fatigue duties not exceeding two hours daily as disciplinary punishments of POWs other than officers, but fatigue duties, as well as the other authorized punishments, become unlawful if they are "inhuman, brutal or dangerous to the health" of the POWs. The Commission lacks sufficient evidence to determine whether the punishments actually imposed upon Eritrean POWs violated that standard.

82. While there are allegations that guards occasionally beat POWs, very few of the declarations by former Eritrean POWs allege that the former POW was himself or herself the victim of a beating or that he or she saw the beating of another POW. Moreover, Ethiopia provided declarations from a number of camp commanders, legal experts and administrative officials who asserted that guards at Ethiopian POW camps were strictly forbidden to beat POWs. One camp commander stated that he disciplined one guard for hitting a POW on the foot. A former camp commander at Dedessa also testified that all disciplinary punishment was imposed by decision of a disciplinary committee composed of all camp administrators, and he asserted that: "Punishments at Dedessa consisted of cleaning quarters, military exercise, or close confinement, all of which are punishments normally imposed on Ethiopian soldiers for their infractions." He also acknowledged that, while military exercises usually consisted of sit-ups or running, for more serious offenses, they included rolling or crawling on the ground.[38] Considering all relevant evidence, the Commission holds that the Claimant has failed to prove by clear and convincing evidence that Ethiopia's POW camps, despite the likely inconsistencies, noted

[38] ET04 CM Tab 17.

above, with the requirements of Articles 89 and 96 of the Convention, were administered in such a way as to give rise to liability for frequent or pervasive physical abuse of POWs.

83. There is evidence that two POWs were confined for much longer than the thirty days permitted by the Convention. Ethiopia explained its action with respect to these two POWs by asserting that they had engaged persistently in such disruptive and dangerous activities (including attempts to damage some electrical systems and set a fire) that security considerations justified their segregation from other POWs. The Parties' evidence and arguments regarding the few instances of protracted detention conflicted sharply. Whatever the truth may have been, the evidence does not establish that protracted detention was a frequent or widespread occurrence sufficient to sustain a finding of liability in this part of the claim.

84. Regrettably, the Commission's finding regarding physical abuse does not apply as well to mental abuse. Ethiopia admits that its camps were organized in a manner that resulted in the segregation of various groups of POWs from each other. It is acknowledged that POWs who had been in the armed forces during the much earlier fighting against the Derg were kept isolated from POWs who began their military service later, and there is some evidence that other groups were also segregated depending upon the years in which the POWs began their military service. Such segregation is contrary to Article 22 of Geneva Convention III, which states that "prisoners shall not be separated from prisoners of war belonging to the armed forces with which they were serving at the time of their capture, except with their consent." Ethiopia argues that this segregation was done to reduce hostility between the groups, but the Commission finds that argument unpersuasive. It seems far more likely that these actions were taken to promote defections of POWs and to break down any sense of internal discipline and cohesion among the POWs.

85. In that connection, the Commission notes that Ethiopia conducted extensive indoctrination programs for the various groups of POWs in Bilate, Mai Chew, Mai Kenetal and Dedessa and encouraged the discussion among groups of POWs of questions raised in these programs, including the responsibility for starting the war and the nature of the Eritrean Government. While Ethiopia asserts that attendance at these indoctrination and discussion sessions was not compulsory, there is considerable evidence that, except for sick or wounded POWs, attendance was effectively made compulsory by Ethiopia, contrary to Article 38 of Geneva Convention III. Moreover, there is substantial evidence that POWs were sometimes put under considerable pressure to engage in self-criticism during the discussion sessions. While there are some allegations that those POWs who made statements that appealed to the Ethiopian authorities were subsequently accorded more favorable treatment than those who refused to make such statements, the Commission does not find sufficient evidence to prove such a violation of the fundamental requirement of Article 16 of Geneva Convention III that all POWs must be treated alike, "without any adverse distinction based on race, nationality, religious belief or political opinions, or any other distinction founded on similar criteria." Nevertheless, the Commission notes with concern the evidence of mental and emotional distress felt by

many Eritrean POWs and concludes that such distress was caused in substantial part by these actions by Ethiopia in violation of Articles 22 and 38 of the Convention.

86. Consequently, Ethiopia is liable for the mental and emotional distress caused to Eritrean POWs who were subjected to programs of enforced indoctrination from the date of the first indoctrination sessions at the Bilate camp in July 1998 until the release and repatriation of the last POWs in November 2002. The evidence indicates that this group includes essentially all of the POWs held by Ethiopia at the four named camps, except for those unable to attend the indoctrination sessions due to their medical conditions.

5. Unhealthy Conditions in Camps

a. The Issue

87. A fundamental principle of Geneva Convention III is that detention of POWs must not seriously endanger the health of those POWs.[39] This principle, which is also a principle of customary international law, is implemented by rules that mandate camp locations where the climate is not injurious; shelter that is adequate, with conditions as favorable as those for the forces of the Detaining Power who are billeted in the area, including protection from dampness and adequate heat and light, bedding and blankets; and sanitary facilities which are hygienic and are properly maintained. Food must be provided in a quantity and quality adequate to keep POWs in good health, and safe drinking water must be adequate. Soap and water must also be sufficient for the personal toilet and laundry of the POWs.

88. Geneva Convention III declares the principle that any "*unlawful act or omission by the Detaining Power . . . seriously endangering the health of a prisoner . . . will be regarded as a serious breach of the present Convention*."[40] The Commission believes this principle should guide its determination of the liability of the Parties for alleged violations of any of the obligations noted above. Rather than simply deciding whether there were violations, however minor or transitory, the Commission's task in the proceedings for this claim is to determine whether there were violations which warrant the imposition of damages because they clearly endangered the lives or health of POWs in contravention of the basic policy of the Convention and customary international law.

89. Indeed, the claims of both Parties are implicitly, if not explicitly, cast in terms of serious violations of the standards set out above. Neither Party has sought to avoid liability by arguing that its limited resources and the difficult environmental and logistical conditions confronting those charged with establishing and administering POW camps could justify any condition within them that did in fact endanger the health of prisoners. Rather, in defense against claims of serious violations, each Party has relied primarily on the declarations of officers charged with the administration of each of its camps. All of these officers have indicated their full awareness of the basic standards of Geneva

[39] *See* Articles 13, 21-29.
[40] Article 13 (emphasis added).

Convention III for camp conditions, have described the steps taken to meet them, and have denied that any conditions existed that seriously endangered the health of the POWs.

90. Faced with this conflicting evidence, the Commission has examined all of the claims of each Party relating to each camp that appear to allege a serious violation (as defined above) of each of the standards set out above at each camp. It has sought to determine whether there exists in the record clear and convincing evidence to support those claims. To sustain this burden in the context of camp conditions, the Commission believes that the Claimant must produce credible evidence that:

(a) portrays a serious violation;
(b) is cumulative and is reinforced by the similarity of the critical allegations;
(c) is detailed enough to portray the specific nature of the violation; and
(d) shows that the violation existed over a period of time long enough to justify the conclusion that it seriously endangered the health of at least some of the POWs in the camp.

b. Eritrea's Claims

91. In its Statement of Claim and Memorial, Eritrea asserted in general terms that Ethiopia had violated the basic health standards prescribed by Geneva Convention III. However, in its Prayer for Relief (submitted during oral argument), Eritrea asked the Commission to find that each of Ethiopia's internment camps was in violation of requisite standards. Ethiopia's defense to these claims is also organized on a camp-by-camp basis. The Commission agrees that a camp-by-camp analysis of the relevant evidence is appropriate in order to determine which, if any, of Eritrea's claims meet the standard of endangerment of health. Accordingly, the Commission has examined each of the declarations of former POWs submitted by Eritrea to find out what each had to say about health conditions in each of the camps in which he or she was interned during his or her captivity in order to determine whether the evidence warrants a finding that the conditions at any particular camp constituted a serious violation of the prescribed standards. However, a second task is to examine what the Commission understands to be a general claim by Eritrea that the food conditions at all of Ethiopia's internment camps combined over a period of time to produce serious malnutrition among a number of POWs, which in turn resulted in scurvy among some and rendered others more susceptible to diseases such as tuberculosis and malaria.

c. Analysis of Health-Related Conditions at Each of Ethiopia's POW Camps

92. While there is certainly some disturbing testimony to support Eritrea's claim that Ethiopia's northern, short term POW camps at Feres Mai and Mai Chew were in serious violation of one or more basic health standards, the Commission finds the evidence relating to these camps insufficient to justify a finding that conditions there seriously endangered the health of POWs.

93. Mai Kenetal presents a different picture. Its commander testified in writing that the site for the camp was selected because it was close to an arterial road linking the camp to Mekele and Addis Ababa to the south, and because the location included a number of administrative buildings which had been vacated by the Mai Kenetal wereda government. Despite these advantages, two circumstances combined to impose great difficulties on the camp's administrators: first, Mai Kenetal was put into operation at the onset of the winter season in Northern Ethiopia – a three-month period characterized, at times, by torrential rains, high winds and cold temperatures; second, in May 2000, Ethiopia launched a major offensive which produced, quite rapidly, an unanticipated camp population of around 2,000 POWs – a development which strained the resources of the camp during difficult climatic conditions.

94. The record contains the declarations of thirty-eight prisoners who were interned at Mai Kenetal for periods ranging from six weeks to about three months. They depict a combination of sub-standard conditions that seriously affected the health of some POWs and endangered that of others.

95. Nearly all POWs who were not wounded were housed in tents, of varying size, made up of plastic sheeting propped up by wooden poles. It is undisputed that there was no flooring; that prisoners slept on the damp ground; that prisoners were provided with only one or two blankets; that the plastic tents were inadequate to keep out the rain; that some tents blew down in the high winds; that during much of the time these quarters were quite cold and damp and even muddy; and, that they were seriously overcrowded.

96. The shoes of some prisoners had been taken from them upon capture, and at least fourteen asserted that, despite the rains and mud, they were never issued any footwear during their entire internment at Mai Kenetal or, in a few cases, that shoes were only provided near the end of their stay. Similarly, nine prisoners declared that, for at least two months, no clothing of any kind was issued. Many testified that their quarters or clothing became seriously infested with lice. Nearly all of the thirty-eight Mai Kenetal declarants assert that, for at least most of their internment there, the drinking water was both disgusting and unsafe, as its source was a nearby muddy river and, because the camp was downstream from the nearby village of Mai Kenetal, the river was sometimes polluted with human sewage.

97. At least twenty POWs testified regarding unsanitary toilet conditions. These facilities consisted of holes dug in the ground and covered by sheets of wood with holes cut into them, and sheltered from the rains by plastic tenting. The holes regularly became filled with rain water and mud, and there is also cumulative testimony that the ground under many of the toilet tents became muddy and contaminated and that these conditions exacerbated the hardships suffered by those POWs who lacked shoes. At least ten POWs testified that flooded toilets affected their conditions of shelter.

98. Many POWs testified that they had to use the river for bathing and laundering as well as drinking, that only one bar of soap per month was issued to each POW for these purposes, and that they found it difficult or impossible to stay clean.

99. There is little dispute about the content of the diet offered at Mai Kenetal. It consisted of bread and tea in the morning and bread and lentils for lunch and dinner. Overwhelmingly, the thirty-eight POWs who testified about conditions at Mai Kenetal complained about the inadequacy of this diet. Many say they were in a state of constant hunger. Many assert this diet produced serious malnutrition, which, combined with other conditions, facilitated contagious diseases, notably tuberculosis. Nearly all of the thirty-eight POWs also claim that the medical facilities provided were inadequate in terms of qualified personnel, medical supplies and other resources necessary to treat the many sick or wounded POWs at Mai Kenetal. While complaints regarding food and medical care were regularly leveled at the administration of all camps by POWs from both sides, it does appear from considerable cumulative testimony that there was serious hunger and sickness at Mai Kenetal. For example, at least twenty POWs claimed that they suffered from diarrhea. Many others complained that tuberculosis became widespread and that POWs suffering from this disease were housed in the overcrowded tents rather than isolated in facilities set up for medical care of that disease.

100. Ethiopia made extensive efforts to discredit and rebut this evidence, relying heavily on the declarations of the commander of Mai Kenetal and his two immediate subordinates. These officers assert that they and the camp guards and staff lived in essentially the same conditions as the POWs. They acknowledge that the tents consisted of plastic sheets and were hastily constructed as the camp's population rapidly expanded, but they assert that the shelter provided was adequate, that only a few tents were damaged by heavy winds, and that these were immediately reconstructed. They further testified that as the toilet pits began to fill with water, new ones were dug – along with surrounding drainage ditches. They testified that clothing in the form of coveralls, as well as shoes and a mat and two blankets, were issued to each POW. They assert that drinking water was at first piped from the wells at Mai Kenetal village into the camp, but then new wells were dug at the camp, and that the water from these wells – despite some complaints by POWs – was chlorinated, potable and plentiful. They also assert that showers were available for bathing. Each of these officers further stated that ICRC teams regularly visited the camps and made no serious complaints about its conditions. The Commission notes that this is a specific instance where access to the relevant ICRC reports would have been very helpful.

101. It is clear that these officers were aware of their duties, and the Commission may assume they did their best to maintain the health of the POWs under difficult circumstances. Much of their testimony can be credited if one assumes, as the evidence justifies, that the steps taken to improve the conditions of the POWs came towards the end of the relatively brief period in which the camp was in operation. But the cumulative, reinforcing, detailed testimony of so many POWs persuades the Commission that, despite the efforts of the camp's staff, a combination of serious, sub-standard health conditions did exist at Mai Kenetal for some time, that these conditions seriously and adversely affected the health of some POWs there and endangered the health of others, and that this situation constituted a violation of customary international law.

102. Three of the camps in central and southern Ethiopia – Fiche, Shogolle and Bilate – were used as facilities of internment of many Eritrean civilians (notably students), as well as POWs. Indeed, most of the testimony marshaled by Eritrea to portray health-related conditions at these camps comes from interned Eritrean students who had been attending Addis Ababa University. As noted earlier, their claims are not now before the Commission. Thus, their testimony is only relevant to the extent that it clearly describes, firsthand, the health-related conditions experienced by POWs.

103. Only one POW declarant testified regarding Shogolle, and his testimony failed to establish any basis for a claim. Three POW declarants testified about conditions at Fiche, but all were interned at that camp for only one month or less. In common with students, they complained that they lacked shoes during this period, that they often walked through mud to the toilets (holes in the ground covered by wooden planks), that the food provided consisted solely of bread and lentils, and that their quarters were overcrowded. However, these few POW declarations are insufficient in detail to establish clear and convincing evidence that, during their rather short period of confinement at Fiche, conditions at the camp constituted a serious threat to their health.

104. Similarly, there is only the testimony of three POW declarants regarding conditions at Bilate. Two were interned at this camp for a period of eight months and one year. Their most serious allegations relate to nutrition. They assert that the food provided was, again, only bread and lentils, and two POWs claim that this diet was inadequate in both nutritional and quantitative terms. While this testimony is disputed by the camp commander and cook, and would be insufficient without more support to warrant a finding that the food conditions at Bilate constituted a serious violation, the Commission finds it relevant to Eritrea's general claim regarding malnutrition, which is discussed below.

105. Nearly all of the Eritrean prisoners were ultimately interned at Dedessa. This camp had originally been constructed during the Derg era as a military training base. It was put into operation as a POW camp in June 1999 and remained so until all prisoners were finally repatriated in November 2002. There are thirty-eight declarations describing health-related conditions at this camp. While some allege serious deficiencies regarding sanitation, shelter and lack of shoes, these complaints are contradicted or mitigated by the testimony of others. Weighing the evidence, the Commission finds insufficient evidence to support a finding that the camp was in serious violation of health-related standards. Evidence regarding the food provided at Dedessa is discussed in the context of Eritrea's general claim regarding the insufficiency of the diet provided to prisoners during their entire captivity.

d. Eritrea's General Claim Regarding the Insufficiency of the Food Provided to Eritrean POWs During the Entire Period of their Captivity

106. In its Statement of Claim and Memorial, Eritrea appears to claim that, throughout their captivity, Eritrean POWs were provided food which was insufficient in "quantity,

quality, and variety to keep them in good health and prevent loss of weight."[41] This claim does not require a finding that the food provided by every internment camp was so inadequate in quantity or quality and variety that the health of POWs in each camp was endangered. Rather, the task of the Commission is to determine whether there is clear and convincing evidence that the food provided at all camps was such that, over time, the health of some POWs came to be seriously endangered because of an insufficiency of food in quantity, quality or variety.

107. The evidence is clear and convincing that the daily diet provided at all camps was bread and lentils. The Commission has found that at Mai Kenetal – with its large POW population of nearly 2,000 – there was hunger and sickness. There is similar evidence, although less persuasive because it is less cumulative, that the food provided at some other camps was inadequate to keep POWs in good health. However, since nearly all POWs were, sooner or later, transferred to Dedessa and since most of them spent most of their captivity there, all of the declarations which describe food-related conditions at that camp are relevant.

108. The declarations of nearly all POWs at Dedessa complained of the sameness of the diet provided. At this camp, POWs were furnished with flour and lentils (and spices) to prepare their food. Many complained the flour was "dirty" and the bread inedible. Others complained that the absence of other vegetables and fruit – specifically the lack of a sufficient amount of Vitamins A and C – produced malnutrition. Several complained of scurvy or symptoms of ill health arising from a diet lacking in variety and essential vitamins.

109. While it is true, as Ethiopia emphasizes, that bread and lentils are a regular part of the normal diet of most Eritreans, these staples of the civilian diet are supplemented by meat, fruit and vegetables. Most significant to the Commission, there was evidence from three Eritrean doctors that most of the seriously sick or wounded POWs who were released from Dedessa in December 2000 were malnourished. These doctors were on the team that examined the 359 POWs who were released at that time. Each doctor testified that most of them were seriously malnourished. One of the doctors, Dr. Haile Mehtsun, appeared as a witness in the hearings and testified that "115 out of the 354 [sic] had manifestations of scurvy." Dr. Berhane Kahsai Berhanu, by declaration, testified (without providing numbers) that patients he examined suffered from scurvy. Dr. Yosief Fissehaye Seyoum, by declaration, testified that virtually all of the repatriated POWs were severely malnourished.

110. Most of the POWs examined by these doctors had first been interned at Mai Kenetal, and all were sick or suffering from wounds (which is why they were chosen for early repatriation). However, on questioning, Dr. Haile asserted that "disease by itself – cannot create malnutrition." He ascribed the malnourished condition of the POWs to their diet while in captivity.

[41] Geneva Convention III, Article 26.

111. Ethiopia's rebuttal relies heavily on the testimony of the camp's commander, his deputy, one other officer and the camp's chief cook. They testified that the daily bread and lentils diet was supplemented at least once a week with meat and twice a week with vegetables. A Dedessa camp commander provided a written ration list consistent with that testimony, although the amounts of meat and vegetables were not indicated on that list. They also testified that, in each dormitory, the POWs prepared their own meals, from food provided to them, that representatives of each group of POWs were regularly allowed to visit the market at Nekemte (a large town) to purchase supplementary food stuffs at their own expense, and that there were no complaints from the POWs regarding food. The officers also testified that the ICRC visited the camp regularly and had unrestricted access to all POWs, and that groups of POWs were free to create gardens to grow vegetables (some of which were shown in photographic exhibits). It is unclear from this testimony whether these conditions were in existence prior to December 2000, or only after the conclusion of the Peace Agreement in December 2000. The Commission doubts their full applicability before December 2000. Records regarding food purchases by the camp have also been provided and this massive documentary material reflects significant periodic purchases of animals for meat, less frequently purchases of some vegetables (notably cabbage and potatoes), and still less frequently the purchases of limes.

112. On balance, the Commission concludes that the greatest weight should be given to the declarations of the many POWs complaining about a lack of variety of their diet and, most importantly, the evidence of scurvy and diet-related disorders, as presented in the uncontroverted testimony of the Eritrean doctors. That evidence shows that the food provided to many POWs, at least from 1998 through 2000, was qualitatively insufficient because it was lacking in essential vitamins. While the daily diet at Dedessa prior to then may have occasionally included vegetables, meat or even fruit, these supplements were insufficient to protect the health of a significant number of POWs during their captivity, as shown by the fact that many of the POWs repatriated in December 2000 evidenced malnutrition, which endangered their health.

113. The Commission lacks comparably clear and convincing evidence of a seriously inadequate diet at Dedessa after December 2000 until the final POW release in November 2002.

114. In conclusion, the Commission holds, first, that the health standards at the POW camp at Mai Kenetal seriously and adversely affected the health of a number of the POWs there and endangered the health of others in violation of applicable international humanitarian law; and, second, that the food provided by Ethiopia to POWs at all camps prior to December 2000 was sufficiently deficient in needed nutrition, over time, as to endanger seriously the health of Eritrean POWs in violation of applicable international humanitarian law. Consequently, Ethiopia is liable for the unlawful health standards at Mai Kenetal and, prior to December 2000, for providing food so inadequate in nutrition that, over time, it seriously endangered the health of all Eritrean POWs.

6. Inadequate Medical Care in Camps

115. A Detaining Power has the obligation to provide in its POW camps the medical assistance on which the POWs depend to heal their battle wounds and to prevent further damage to their health. This duty is particularly crucial in camps with a large population and a greater risk of transmission of contagious diseases.

116. The protections provided by Articles 15, 20, 29, 30, 31, 109 and 110 of Geneva Convention III are unconditional. These rules, which are based on similar rules in Articles 4, 13, 14, 15 and 68 of the Geneva Convention Relative to the Treatment of Prisoners of War of July 27, 1929,[42] are part of customary international law.

117. Many of these rules are broadly phrased and do not characterize precisely the quality or extent of medical care necessary for POWs. Article 15 speaks of the "medical attention *required* by their state of health;" Article 30 requires infirmaries to provide prisoners "the attention they *require*" (emphasis added). The lack of definition regarding the quality or extent of care "required" led to difficulties in assessing this claim. Indeed, standards of medical practice vary around the world, and there may be room for varying assessments of what is required in a specific situation. Moreover, the Commission is mindful that it is dealing here with two countries with very limited resources.

118. Nevertheless, the Commission believes certain principles can be applied in assessing the medical care provided to POWs. The Commission began by considering Article 15's concept of the maintenance of POWs, which it understands to mean that a Detaining Power must do those things required to prevent significant deterioration of a prisoner's health. Next, the Commission paid particular attention to measures that are specifically required by Geneva Convention III such as the requirements for segregation of prisoners with infectious diseases and for regular physical examinations.

a. Eritrea's Claims and Evidence

119. Eritrea claimed that Ethiopia did not provide the Eritrean POWs the medical care required under international humanitarian law, basing its claims on fifty-eight declarations of detainees repatriated soon after hostilities ended in December 2000, most because they needed medical care. Forty-eight of these came from POWs and ten from civilian internees who largely shared the same treatment in the camps. Eritrea also submitted the declarations of three medical doctors who examined the first groups of repatriated prisoners, and that of a military intelligence officer who debriefed them.

120. These declarations are largely consistent, but they provide only a partial view. The forty-eight POWs are a small fraction of the approximately 2,600 Eritrean POWs held in Ethiopia, or even of the 359 wounded and sick POWs repatriated soon after hostilities ended. Their declarations describe the medical care given to detainees clearly requiring significant medical attention, but it is difficult to generalize from them regarding the care given the general population of POWs.

[42] 118 L.N.T.S. pp. 343-411.

121. While some declarants indicate that POWs received adequate medical treatment, many criticize the quality of care. There are allegations that wounds were not treated at all in a given camp; that wounds were cleaned and bandaged but not further treated; that there was no care whatsoever in some camps; or that care was available but inadequate. There was written testimony that in some camps no medicines were distributed, for instance to treat frequent maladies such as diarrhea and malaria, and that shell fragments were not removed from wounds. Nearly all declarants who were there complained about insufficient medical care at Mai Kenetal and its transit camp, Biyara. Many likewise complained about the medical care at Dedessa.

122. The Eritrean doctors who examined the first 359 sick and wounded repatriated POWs referred to a few cases of allegedly inadequate treatment resulting in vascular injuries, collapsed lungs and sympathetic ophthalmia. The doctors testified that removal of shell fragments after repatriation could be more difficult than prompt removal. The doctors and the psychiatrist who testified at the hearing also stated that many POWs required serious psychological/ psychiatric care when repatriated.

123. Many declarants also complained about delays in medical treatment, said frequently to impair recovery from wounds or illnesses. One former POW alleged that he had to wait eight months before his wounded knee was operated upon; others complained of many weeks' delay before receiving thorough medical attention, and that untreated fractures were not properly cared for. The Eritrean doctors indicated that many POWs will have permanent abnormalities that could have been avoided with timely care.

124. Eritrea also claimed that Ethiopia did not provide adequate infirmaries, clinics and hospitals as required under Article 30 of Geneva Convention III. At Mai Kenetal (as discussed above), the sick and wounded did not even have proper quarters, and had to seek cover in leaky tents of plastic sheets.

125. Eritrea also raised questions relating to access to the medical facilities that existed. Under international humanitarian law, any POW has the right to seek medical examination on the POW's own initiative, and to obtain medical attention from qualified medical personnel so as to assess the existence of an ailment, its identity and the required treatment. If needed medical care cannot be given at the camp clinic, a POW must be treated at a more specialized hospital. One POW complained that he was not so referred and another considered the hospital's care inadequate.

126. Eritrea also complained about the lack of preventive care in the Ethiopian camps. Under Article 31 of Geneva Convention III, POWs must be medically examined at least once a month, for example, to check and record their weight and diagnosis contagious diseases. Numerous statements submitted by Eritrean POWs indicate that no such regular inspections took place at any of the camps, and that POWs with contagious diseases were not isolated.

b. Ethiopia's Defense

127. In response to Eritrea's claims, Ethiopia submitted extensive evidence, including declarations from military officers in charge of prisoners and from camp administrators and doctors. Ethiopia presented a camp commander as a witness at the hearing, as well as medical records from the various camps. These declarations, written documents and witness testimony depict a far more favorable view of the medical care provided than do the Eritrean POW declarants. To cite a few examples, Ethiopia submitted evidence that Eritrean POWs were indeed referred to specialized hospitals for treatment; Ethiopia's medical expert, Dr. Goodman, testified that removing shell fragments from wounds could be medically risky.

c. The Commission's Conclusions

128. Despite the substantial amount of evidence and hearing time devoted to medical care in Eritrea's claim, the Commission had difficulty in determining the availability and quality of medical care in the Ethiopian POW camps. Focusing on specifics did not prove necessarily helpful. For example, the evidence of psychological/psychiatric problems does not prove that Ethiopia failed to provide appropriate care; lengthy captivity can be psychologically very disturbing, and psychological care after repatriation is frequently indicated. The discussion of sympathetic ophthalmia was clearly very narrow. The hospital records submitted by Ethiopia do not establish that all POWs in need of specialized treatment were, in fact, referred to hospitals, but only that some were. Although a few Eritrean declarants complained about insufficient medical staffing, other evidence showed that camp infirmaries were staffed by one or more medical doctors and paramedics; a detained Eritrean doctor was involved in caring for the Eritrean POWs.

129. Faced with the Parties' often sharply conflicting portrayals of the availability and quality of medical care, the Commission sought some broader perspectives to assess the care provided. The Commission focused on the death rate in the camps as a possible indicator of the medical care provided, on the detailed testimony of the Eritrean doctors who examined the first POWs repatriated, and on evidence of preventative care.

130. First, in response to questioning, Ethiopia indicated that, to the best of its knowledge, twenty Eritrean POWs died while in captivity in Ethiopia. The Eritrean POW declarants frequently allege, especially with regard to Mai Kenetal (the seriously inadequate conditions of which the Commission discusses above), that deaths resulted from lack of medical attention. As regrettable as each and every death is, the Commission finds that a death ratio of less than one percent – in a total population of some 2,600 POWs, many seriously wounded – does not in itself indicate substandard medical care.

131. Second, the Commission was struck by the detailed testimony of the Eritrean doctors who examined the Eritrean POWs repatriated after hostilities ended in December 2000. They were of the firm opinion that these wounded and sick POWs could not have received required medical care. They testified that, of the 359 POWs they examined,

twenty-two had tuberculosis – a very high ratio. They also testified that the POWs showed signs of malnutrition, which had adversely affected their health, contributed to the development of tuberculosis and scurvy, and left many unready for necessary surgery until they could put on weight. The doctors also found that nearly one-half of the POWs they examined had fractures that had not been properly treated, evidenced by non-union or mal-union of the bones. Although Ethiopia responded that fractures sometimes could not heal properly for reasons beyond its control, for example, because of unavoidable delays in evacuation, the Eritrean doctors countered that many of the post-repatriation orthopedic operations have been successful; if those operations had been done earlier, while the patients were in Ethiopia's custody, they could have been even more successful.

132. Finally, preventive care is a matter of particular concern to the Commission. As evidenced by their prominence in Geneva Convention III, regular medical examinations of all POWs are vital to maintaining good health in a closed environment where diseases are easily spread. The Commission considers monthly examinations of the camp population to be a preventive measure forming part of the Detaining Power's obligations under international customary law.

133. The Commission must conclude that Ethiopia failed to take several important preventative care measures specifically mandated by international law. In assessing this issue, the Commission looked not just to Eritrea but also to Ethiopia, which administered the camps and had the best knowledge of its own practices.

134. Ethiopia neither contended that it conducted regular medical examinations nor attempted to justify the lack of such examinations. The record is unclear as to what extent Ethiopian officials maintained personal POW medical data. Ethiopia acknowledged that there were no monthly examinations at Fiche (which operated for less than two months) or at Feres Mai (which was open for some five months). The evidence indicates that, at the Dedessa clinic, medical personnel carried out 170 to 400 tests per month, but obviously does not prove that all POWs were checked monthly.

135. Nor does the evidence show that Ethiopia segregated certain infected prisoners, at least early in the war. POWs are particularly susceptible to contagious diseases such as tuberculosis, and customary international law (reflecting proper basic health care) requires that infected POWs be isolated from the general POW population. Several Eritrean POW declarants recount that, at least prior to December 2000, tuberculosis patients were lodged with the other POWs. Ethiopia's evidence indicates that isolation of contagious POWs began only at Mai Kenetal.

136. In conclusion, on the basis of clear and convincing evidence, including the essentially unrebutted evidence of the prevalence of malnutrition, tuberculosis and improperly treated fractures and the absence of required preventive care, the Commission finds that Ethiopia failed to provide Eritrean POWs with the required minimum standard of medical care prior to December 2000. Consequently, Ethiopia is liable for this violation of customary international law.

137. In comparison, Eritrea has failed to prove that the medical care provided to Eritrean POWs after December 2000 was less than required by applicable law. In response to Eritrea's allegations, Ethiopia submitted considerable rebuttal evidence of the increased medical care it provided at Mai Kenetal and Dedessa from December 2000 through repatriation of the remaining POWs in November 2002. The evidence indicated that approximately forty medical personnel staffed the Mai Kenetal clinic and that some POW patients were taken to a local hospital. The evidence also indicated that POWs with tuberculosis or other contagious diseases were isolated at Mai Kenetal and Dedessa and that, contrary to Eritrea's allegation, medical equipment was sterilized before each use.[43] With respect to medical care at Dedessa, Ethiopia presented medical records rebutting the specific complaints made in a number of the Eritrean declarations.[44]

138. In closing, the Commission notes its recognition that Eritrea and Ethiopia cannot, at least at present, be required to have the same standards for medical treatment as developed countries. However, scarcity of finances and infrastructure cannot excuse a failure to grant the minimum standard of medical care required by international humanitarian law. The cost of such care is not, in any event, substantial in comparison with the other costs imposed by the armed conflict.

7. Unlawful Assault on Female POWs

139. Eritrea brings a discrete claim for the alleged unlawful assault of female POWs, alleging in its Statement of Claim that Ethiopian soldiers raped female POWs and, in one case, raped and killed a female prisoner at Sheshebit on the Western Front. The Parties agree that Article 14 of Geneva Convention III, which provides that POWs are "entitled in all circumstances to respect for their person and their honor" and that women "shall be treated with all the regard due to their sex," prohibits sexual assault of female POWs.

140. The Commission takes this claim, like all claims of grievous physical abuse, extremely seriously. The Commission has carefully reviewed the three declarations of female Eritrean POWs; the declarations of male POWs addressing treatment of the women; the declaration of an Eritrean colonel who debriefed returning Eritrean POWs; and the documentary medical evidence. Although the Commission is sensitive to Eritrea's representation that "[t]he female former POWs declined to discuss this topic and a decision was made to respect their wishes,"[45] the burden of proof cannot fairly be lowered for this claim.

141. The Commission finds that Eritrea has not presented clear and convincing evidence of rape, killing or other assault aimed at female POWs. Given the small number of female Eritrean POWs, the Commission has not looked for systematic or widespread abuse of women. The fact remains, however, that not one of the female Eritrean declarants stated explicitly or – more importantly, given the sensitivities – even implicitly that she was sexually assaulted, or that any other female prisoner she knew was assaulted.

[43] *See* ET04 CM pp. 259-261.
[44] *Id.* at pp. 331-338.
[45] ER17 MEM p. 65 note 235.

Some male Eritrean declarants described occasional or frequent screaming from the women's quarters, but did not (and perhaps could not) observe Ethiopian guards entering or leaving. Several declarants described abuse of women that, although serious in its own right, was unrelated to their gender. Eritrea failed to submit evidence documenting the one rape and murder alleged in the Statement of Claim. Ethiopia defended these claims, in large part, by presenting detailed evidence that there were separate quarters for women in the camps, which were inspected only by senior camp officials in pairs.

142. Accordingly, and without in any way undermining its recognition of the particular vulnerability of female POWs, the Commission does not find Ethiopia liable for breaching customary international law obligations to protect the person and honor of female Eritrean POWs.

8. Delayed Repatriation of POWs

143. The Commission has determined in this Award that Eritrea's claims regarding the timely release and repatriation of POWs are within its jurisdiction under the Agreement and Commission Decision No. 1.[46]

144. In its Statement of Claim, Eritrea alleged that Ethiopia failed to release and repatriate POWs without delay after December 12, 2000. In its Memorial, Eritrea asked the Commission to "order Ethiopia to cooperate with the International Committee of the Red Cross in effecting an immediate release and repatriation of all POWs. . . ."[47] However, on November 29, 2002, shortly before the hearing in this claim, Ethiopia released all POWs registered by the ICRC remaining in its custody. While some chose to remain in Ethiopia for family or other reasons, 1,287 returned to Eritrea. During the hearing, counsel for Eritrea expressed Eritrea's great pleasure at this action.[48] The Commission too welcomes this important and positive step by Ethiopia, which rendered moot Eritrea's request for an order regarding repatriation. Nevertheless, Eritrea's claim that Ethiopia failed to repatriate the POWs it held as promptly as required by law remains.

145. As noted above, Eritrea acceded to the four Geneva Conventions of 1949 effective August 14, 2000, so they were in force between the Parties after that date. Article 118 of Geneva Convention III states that "[p]risoners of war shall be released and repatriated without delay after the cessation of active hostilities." The Parties concluded an Agreement on the Cessation of Hostilities on June 18, 2000. However, the Commission received no evidence regarding implementation of that agreement and could not assess whether it marked an end to active hostilities sufficiently definitive for purposes of Article 118.[49]

[46] *See* Section IIIA *supra.*
[47] ER17 MEM p. 138.
[48] Transcript p. 4.
[49] *See* Yoram Dinstein, *The Release of Prisoners of War, in* STUDIES AND ESSAYS ON INTERNATIONAL HUMANITARIAN LAW AND RED CROSS PRINCIPLES IN HONOR OF JEAN PICTET p. 44 (C. Swinarski ed., Martinus Nijhoff Publishers 1984).

146. By contrast, Article 1 of the December 12, 2000, Agreement states that "[t]he parties shall permanently terminate military hostilities between themselves." Given the terms of this Agreement and the ensuing evolution of the Parties' relationship, including the establishment and work of this Commission, the Commission concludes that as of December 12, 2000, hostilities ceased and the Article 118 obligation to repatriate "without delay" came into operation.

147. Applying this obligation raises some issues that were not thoroughly addressed during the proceedings, in part because Eritrea focused on the return of POWs still detained, which was mooted on the eve of the hearing, while Ethiopia consistently relied on the argument that these claims were outside the Commission's jurisdiction, a defense that the Commission has now rejected. Nevertheless, given their everyday meaning and the humanitarian object and purpose of Geneva Convention III, these words indicate that repatriation should occur at an early time and without unreasonable or unjustifiable restrictions or delays. At the same time, repatriation cannot be instantaneous. Preparing and coordinating adequate arrangements for safe and orderly movement and reception, especially of sick or wounded prisoners, may be time-consuming. Further, there must be adequate procedures to ensure that individuals are not repatriated against their will.[50]

148. There is also a fundamental question whether and to what extent each Party's obligation to repatriate depends upon the other's compliance with its repatriation obligations. The language of Article 118 is absolute. Nevertheless, as a practical matter, and as indicated by state practice,[51] any state that has not been totally defeated is unlikely to release all the POWs it holds without assurance that its own personnel held by its enemy will also be released, and it is unreasonable to expect otherwise. At the hearing, distinguished counsel for Eritrea suggested that the obligation to repatriate should be seen as unconditional but acknowledged the difficulty of the question and the contrary arguments under general law.[52]

149. The Commission finds that, given the character of the repatriation obligation and state practice, it is appropriate to consider the behavior of both Parties in assessing whether or when Ethiopia failed to meet its obligations under Article 118. In the Commission's view, Article 118 does not require precisely equivalent behavior by each Party. However, it is proper to expect that each Party's conduct with respect to the repatriation of POWs will be reasonable and broadly commensurate with the conduct of the other. Moreover, both Parties must continue to strive to ensure compliance with the basic objective of Article 118 – the release and repatriation of POWs as promptly as possible following the cessation of active hostilities. Neither Party may unilaterally abandon the release and repatriation process or refuse to work in good faith with the ICRC to resolve any impediments.

[50] *See* Howard S. Levie, PRISONERS OF WAR IN INTERNATIONAL ARMED CONFLICT, in INTERNATIONAL LAW STUDIES, VOLUME 59, pp. 421-429 (U.S. Naval War College Press 1977).
[51] *Id.* at pp. 417-418.
[52] Professor Crawford, Transcript pp. 472-475.

150. The Parties submitted limited evidence regarding this claim, a fact that complicates some key judgements by the Commission. As noted, until the eve of the hearing, Eritrea's emphasis was on the release of POWs still being held, while Ethiopia argued that the whole matter was outside the jurisdiction of the Commission. A chart submitted by Eritrea but apparently reflecting both Parties' understanding of the sequence of repatriations is reproduced below. It shows that the Parties, acting with the assistance of the ICRC, began a substantial process of repatriation in both directions promptly after December 12, 2000. Between December 2000 and March 2001, Ethiopia repatriated 855 Eritrean POWs, 38 percent of the total number it eventually repatriated. Eritrea repatriated a smaller number of Ethiopian POWs (628), but they constituted 65 percent of the total eventually repatriated by Eritrea.

151. After March 2001, the process halted for a substantial period. It then resumed in October 2001 with two small repatriations by each Party. Eritrea repatriated all remaining Ethiopian POWs in August 2002. This was followed by the November 2002 Ethiopian repatriation noted above. (The only repatriation of POWs prior to December 2000 was in August 1998 when Eritrea repatriated seventy sick or wounded POWs to Ethiopia.)

152. The chart below shows all repatriations subsequent to the Agreement of December 12, 2000.

DATE	POWs Repatriated by Ethiopia	POWs Repatriated by Eritrea
December 2000	359	360
January 2001	254	50
February 2001		218
March 2001	242	
October 2001		24
November 2001	23	
February 2002	58	25
August 2002		294
November 2002	1,287	

153. The record is unclear regarding the circumstances of the interruption and eventual resumption of repatriations. The record includes an August 3, 2001, press report that the Ethiopian Ministry of Foreign Affairs had stated that Ethiopia was suspending the exchange of POWs with Eritrea until Eritrea clarified the situation of an Ethiopian pilot and thirty-six militia and police officers who it understood had been captured by Eritrea in 1998, but whose names were not included in the lists of POWs held by Eritrea that it had received from the ICRC.[53] Eritrea responded that it would also halt further repatriation of Ethiopian POWs but that it was willing to resume repatriations when Ethiopia did so.[54] As the above chart indicates, there were several small repatriations of POWs in October

[53] *Ethiopia Conditionally Halts POWs Exchange with Eritrea,* ETHIOPIAN NEWS AGENCY (ENA), August 3, 2001, *in* ER17 MEM, Documentary Annex p. 32.
[54] *Asmara Accuses Ethiopia of Violating Ceasefire Deal over POWs,* AGENCE FRANCE PRESSE, August 3, 2001, *in* ER17 MEM, Documentary Annex p. 34.

and November 2001 and in February 2002, but it seems clear that the repatriation of the bulk of the remaining POWs was held up for twelve months or more by a dispute over the accounting for these missing persons or other matters not in the record before this Commission.

154. There was conflicting evidence regarding the details of the pilot's capture, but it was common ground that he had been captured and made a POW. The Commission received no direct evidence concerning his fate. Eritrea's Memorial states that "Ethiopia was repeatedly informed about the death of the individual in question by the facilitators in the peace process."[55] The Memorial does not indicate when Eritrea believes that may have occurred, nor does it provide evidence that it, in fact, did occur. Ethiopia's Counter-Memorial does not respond to that statement or directly address the fate of the pilot and other personnel. Neither Party offered documentary or testimonial evidence on this point.

155. Communications between the Parties concerning the delay in repatriations were presumably transmitted through the ICRC but, unfortunately, they have not been made available to the Commission. However, press reports in the record suggest that, at some point, the dispute may have been narrowed to the missing pilot. In particular, documents introduced by Eritrea indicate that, on May 8, 2002, Professor Jacques Forster, Vice President of the ICRC, stated at a press conference at the end of a visit in Ethiopia that the ICRC was concerned by a "slowdown on the part of both countries" in the repatriation of POWs. However, as of that time, in the ICRC's view, "Ethiopia was not in violation of the four Geneva Conventions by failing to repatriate POWs."[56]

156. On July 16, 2002, the Prime Minister of Ethiopia confirmed in a press conference that the "stumbling block" to the completion of the exchange of POWs was the lack of response by Eritrea to what happened to the pilot.[57] The next month, the dispute was evidently resolved. An ICRC press release, dated August 23, 2002, states the following:

> Geneva (ICRC) – The President of the International Committee of the Red Cross (ICRC), Mr Jakob Kellenberger, has today completed his first visit to the region since the end of the international armed conflict between the two countries in 2000.
>
> During his official visits to Eritrea and Ethiopia, Mr Kellenberger met Eritrean President Isaias Afewerki in Asmara on 20 August, and Ethiopian President Girma Wolde Georgis and Prime Minister Meles Zenawi in Addis Ababa on 22 August.
>
> The ICRC President's main objective in both capitals was to ensure the release and repatriation of all remaining Prisoners of War (POWs) in accordance with the Third Geneva Convention and the peace agreement signed in Algiers on 12 December 2000.

[55] ER17 MEM p. 41.
[56] *ICRC Expresses Concern over Delay of POWs Repatriation in Ethiopia, Eritrea,* BBC WORLDWIDE MONITORING, May 9, 2002, *in* ER17 CM, Documentary Annex, Annex 2, No. 4.
[57] *Ethiopia: Interview with Ethiopian Prime Minister Meles Zenawi,* UNITED NATIONS INTEGRATED REGIONAL INFORMATION NETWORK, July 17, 2002, *in* ER17 MEM, Documentary Annex p. 46.

> During his meeting with Eritrean President Isaias Afewerki, Mr Kellenberger took note of Mr Afewerki's commitment to release and repatriate the Ethiopian POWs held in Eritrea. The release and repatriation of the POWs, registered and visited by the ICRC, will take place next week.
>
> During his meeting with Mr Kellenberger, Ethiopian Prime Minister Meles Zenawi expressed his government's commitment to release and repatriate the Eritrean POWs held in Ethiopia and other persons interned as a result of the conflict. Release and repatriation will take place upon completion of internal procedures to be worked out with the ICRC.
>
> In both capitals, Mr Kellenberger reiterated the ICRC's strong commitment to helping resolve all remaining issues related to persons captured or allegedly captured during the conflict.
>
> The ICRC welcomes the decisive steps taken towards the prompt return of the POWs to their home country and to their families, and looks forward to facilitating the release and repatriation they have been so anxiously awaiting for close to eighteen months.[58]

157. While Eritrea promptly released and repatriated its remaining POWs in late August 2002, Ethiopia waited three months, until November 29, 2002, to release the remainder of its POWs and to repatriate those desiring repatriation. This three-month delay was not explained.

158. In these circumstances, the Commission concludes that Ethiopia did not meet its obligation promptly to repatriate the POWs it held, as required by law. However, the problem remains to determine the date on which this failure of compliance began, an issue on which Eritrea has the burden of proof. Eritrea did not clearly explain the specific point at which it regarded Ethiopia as having first violated its repatriation obligation, and Ethiopia did not join the issue, in both cases for reasons previously explained. The lack of discussion by the Parties has complicated the Commission's present task.

159. Eritrea apparently dates the breach from Ethiopia's decision in August 2001 to suspend further repatriation of POWs until Eritrea clarified the fate of a few persons who Ethiopia believed to have been captured by Eritrea in 1998 but who were not listed among POWs held by Eritrea. Eritrea argues that concerns about the fate of a relatively few missing persons cannot justify delaying for a year or more the release and repatriation of nearly 1,300 POWs. It also asserts that Ethiopia's suspension of POW exchanges cannot be justified as a non-forcible counter-measure under the law of state responsibility because, as Article 50 of the International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts emphasizes, such measures may not affect "obligations for the protection of fundamental human rights," or "obligations of a humanitarian character prohibiting reprisals." Likewise, Eritrea points out that this conduct cannot be a permitted reprisal under the law of armed conflict; Article 13 of

[58] ICRC, *ICRC President Visits Eritrea and Ethiopia: decisive progress in the release and repatriation of POWs,* Press Release 02/48 (August 23, 2002), *available at* <http://www.icrc.org/web/Eng/siteengo.nsf/iwpList279/>.

Geneva Convention III emphasizes that "measures of reprisal against prisoners of war are prohibited." As noted, Ethiopia defended this claim on jurisdictional grounds and consequently has not responded to these legal arguments.

160. Eritrea's arguments are well founded in law. Nevertheless, they are not sufficient to establish that Ethiopia violated its repatriation obligation as of August 2001. In particular, the Commission is not prepared to conclude that Ethiopia violated its obligation under Article 118 of Geneva Convention III by suspending temporarily further repatriations pending a response to a seemingly reasonable request for clarification of the fate of a number of missing combatants it believed captured by Eritrea who were not listed as POWs. Eritrea presented no evidence indicating that it sought to respond to these requests, or to establish that they were unreasonable or inappropriate.

161. In this connection, the Commission must give careful attention and appropriate weight to the position of the ICRC. As noted above, ICRC Vice-President Forster stated in May 2002 that, as of that time, the ICRC did not regard Ethiopia as being in breach of its repatriation obligation.[59] Eritrea did not address that statement. The ICRC's conclusion is particularly worthy of respect because the ICRC was in communication with both Parties and apparently had been the channel for communications between them on POW matters. Consequently, the ICRC presumably had a much fuller appreciation of the reasons for the delay in repatriations than is provided by the limited record before the Commission.

162. While the length of time apparently required to resolve this matter is certainly troubling, on the record before it the Commission is not in a position to disagree with the conclusion of the ICRC or to conclude that Ethiopia alone was responsible for the long delay in the repatriations that ended when Eritrea repatriated its remaining Ethiopian POWs in August 2002. Consequently, the claim that Ethiopia violated its repatriation obligation under Article 118 of Geneva Convention III by suspending repatriation of POWs in August 2001 must be dismissed for failure of proof.

163. However, in view of the ICRC press release of August 23, 2002, and the repatriation of all remaining Ethiopian POWs in that same month, the Commission sees no legal justification for the continued prolonged detention by Ethiopia of the remaining Eritrean POWs. Ethiopia waited until November 29, 2002, to release and repatriate the remaining Eritrean POWs. Ethiopia has not explained this further delay, and the Commission sees no justification for its length. While several weeks might understandably have been needed to make the necessary arrangements with the ICRC and, in particular, to verify that those who refused to be repatriated made their decision freely, the Commission estimates that this process should not have required more than three weeks at the most. Consequently, the Commission holds that Ethiopia violated its obligations under Article 118 of Geneva Convention III by failing to repatriate 1,287 POWs by September 13, 2002, and that it is responsible to Eritrea for the resulting delay of seventy-seven days.

[59] *ICRC Expresses Concern*, *supra* note 56.

V. AWARD

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

A. Jurisdiction

1. The Commission has jurisdiction over the Claimant's claims concerning the treatment of its POWs by the Respondent during the period December 12, 2000, until their final release or repatriation, including a claim for unjustified delay in the release and repatriation of some of those POWs.

2. The Commission lacks jurisdiction over claims that were not filed by December 12, 2001. Consequently, the claim that POWs were subjected to insults and public curiosity, contrary to Article 13 of Geneva Convention III, including the related request for an order; the claim that female POWs were accorded inappropriate housing and sanitary conditions, contrary to Article 25 of that Convention; and the claim that POWs were mistreated during transfers between camps, contrary to Article 46 of that Convention, are hereby dismissed for lack of jurisdiction.

3. All other claims asserted in this proceeding are within the jurisdiction of the Commission.

B. Applicable Law

1. With respect to matters prior to Eritrea's accession to the Geneva Conventions of 1949 on August 14, 2000, the international law applicable to this claim is customary international law, including customary international humanitarian law as exemplified by relevant parts of the four Geneva Conventions of 1949.

2. Whenever either Party asserts that a particular relevant provision of those Conventions was not part of customary international law at the relevant time, the burden of proof will be on the asserting Party.

3. With respect to matters subsequent to August 14, 2000, the international humanitarian law applicable to this claim is relevant parts of the four Geneva Conventions of 1949, as well as customary international law.

C. Evidentiary Issues

The Commission requires clear and convincing evidence to establish the liability of a Party for a violation of applicable international law.

D. Findings of Liability for Violation of International Law

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

1. For failing to take effective measures to prevent incidents of beating or other unlawful abuse of Eritrean POWs at capture or its immediate aftermath;

2. For frequently depriving Eritrean POWs of footwear during long walks from the place of capture to the first place of detention;

3. For failing to protect the personal property of Eritrean POWs;

4. For subjecting Eritrean POWs to enforced indoctrination from July 1998 to November 2002 in the camps at Bilate, Mai Chew, Mai Kenetal and Dedessa;

5. For permitting health conditions at Mai Kenetal to be such as seriously and adversely to affect or endanger the health of the Eritrean POWs confined there;

6. For providing all Eritrean POWs prior to December 2000 a diet that was seriously deficient in nutrition;

7. For failing to provide the standard of medical care required for Eritrean POWs, particularly at Mai Kenetal, and for failing to provide required preventive care by segregating from the outset prisoners with infectious diseases and by conducting regular physical examinations, from May 1998 until December 2000; and

8. For delaying the repatriation of 1,287 Eritrean POWs in 2002 for seventy-seven days longer than was reasonably required.

E. Other Findings

1. The Claimant's request that the Commission order the return of personal property of Eritrean POWs that was taken by the Respondent or its personnel is denied.

2. All other claims presented in this case are dismissed.

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PARTIAL AWARD – PRISONERS OF WAR
ERITREA'S CLAIM 17

Done at The Hague, this 1st day of July 2003,

President Hans van Houtte

George H. Aldrich

John R. Crook

James Paul

Lucy Reed