
PREFACE

The aim of this book is to contribute to the understanding of the complex peace process following the 1998-2000 war between two African States, which in terms of per capita income are among the poorest in the world. The war raged from 1998 to 2000 with great cost of life and devastation. The hostilities have since flared up again in 2003. So far the two conflicting parties have not been able to reach a permanent solution. International efforts did lead to a cease-fire in 2000 and eventually to the 2000 Algiers Peace Agreement. However, as yet, the Agreement and successive international efforts have not solved the tension between both States and in 2008 their relations are still qualified as potentially explosive.

The nature and the state of the border dispute preceding the actual armed conflict, the military actions themselves, the developments in the aftermath of the actual military activities, like the role of the UN and the Organisation of African Unity (now the African Union), and UN peace-keeping deployment, have all raised important issues on the state of the relevant international law. They concern questions pertaining to the law on the use of force (the *jus ad bellum*), a diversity of issues of the law applicable during armed conflict (the *jus in bello*) and 'borderline' issues regarding situations where the law of armed conflict and the (successive) international law of peace meet (now often called the *jus post bellum*).

Primarily the war between Eritrea and Ethiopia will be examined here in the light of existing international law. However, the purely legal analysis will be preceded by a thorough introduction and critical assessment of the complex history, as well as of the modern state of Eritrean-Ethiopian relations from the perspective of history, geography and political science. This is done in Part I. Eritrea has been an Italian colony and Ethiopia was occupied by Italian forces in 1936 and regained independence after 1941. The importance of Italian colonial history in understanding essential aspects of the tensions between both States, especially regarding their common border, is inescapable.

The law regarding cease-fires and peace agreements and the developing law on peace-keeping operations in the context of the Eritrea Ethiopia War will be dealt with in Part II of the book, while Part III will analyze the historical and legal aspects of the boundary dispute between the two countries.

In December 2000 as part of the efforts by the United Nations, Eritrea and Ethiopia agreed to the establishment of two arbitral commissions: the Eritrea-Ethiopia Claims Commission (EECC) and the Eritrea-Ethiopia Boundary Commission (EEBC). Both Commissions were established to solve the conflict or at least to help solve some of the problems between the two countries. On 13 April 2002, the Boundary Commission issued its basic decision on the definition of the Eritrean-Ethiopian boundary. Since then, the Commission has been working on the actual demarcation process. In 2003 due to further divergences between the Parties, the

process of demarcation stalled. Later it was resumed, but since November 2008 the activities of the EEBC have stopped without a final solution. Since July 2003, the Eritrea-Ethiopia Claims Commission has issued a considerable number of decisions on claims by either Party on a wide variety of subjects, *e.g.*, the treatment and exchange of prisoners of war, aerial bombardments, claims of civilians, liability issues, etc. In 2005 and 2007, the Commission issued further partial and final awards on issues of diplomatic law, economic relations during armed conflict (including on the taking and destruction of property) and on various claims regarding violations of International Humanitarian Law. These will be discussed and examined in Part V, in light of the current legal framework. Undoubtedly, the Commission has brought considerable innovations to the state of the law. Its decision on the *jus ad bellum* is particularly striking. The EECC found that in 1998 Eritrea had launched armed attacks on Ethiopia in violation of the prohibition on the threat and the use of force. In Part IV this ‘central’ decision is extensively discussed and commented upon.

In the next and final phase of its activities the Claims Commission will assess damages and award compensation for the successful claims. In Part VI the framework of the law of state responsibility and of compensation and damages as it stands now is examined and explained taking into account important modern armed conflicts such as the Gulf Wars.*

The decisions of both Commissions and particularly of the Claims Commission have added significantly to the body of case law on a wide and varied number of issues in the law of international armed conflict. So far discussion and examination in academic literature was rather limited. We hope that this book will contribute to the further study and analysis of the multiple issues that have led to the war between Eritrea and Ethiopia and help to prevent such devastating events in the future. We think that a further explanation and thus understanding of the subjects dealt with in this book may help avoid further use of force in this part of Africa which certainly has enough other concerns.

This book is the outcome of a joint research project carried on by the University of Milan and the Scuola Superiore Sant’Anna in Pisa, financed by the Italian Ministry of University and Research and directed by Gabriella Venturini. The study was carried on between 2006 and 2008 by two groups of scholars in Milan and in Pisa (under the responsibility of Gabriella Venturini and Andrea de Guttry, respectively) in close cooperation with Harry Post, who first proposed the topic as an area of research. On 19-20 October 2007, an international Conference was organized at the premises of the Scuola Superiore Sant’Anna, aimed at discussing the main aspects of the study with an outstanding group of Italian and foreign scholars and experts. This book is to quite some extent the result and the fruit of the reports and com-

* Finally, in this last Part, the book will be concluded with a discussion of some important aspects of the management of human rights risks in this conflict and the state of the law in respect of the huge quantities of explosive remnants of war in both Eritrea and Ethiopia.

ments provided by the participants at the Pisa Conference. The Editors wish to express their gratitude to them and in particular to the authors of this volume for their great co-operation and efforts.

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