

Replies and Comments:

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On the web

<http://www.ifhv.de/>

Focus

See generally, the link to the Eritrea-Ethiopia Claims Commission in the Permanent Court of Arbitration, Recent and Pending Cases web page

<http://www.pca-cpa.org/ENGLISH/RPC/>

Agreement between the Government of the Federal Democratic Republic of Ethiopia and the Government of the State of Eritrea, Algiers, 12 December 2000 (See Article 5)

Available at:  
<http://www.pca-cpa.org/ENGLISH/RPC/E-E%20Agreement.html>

Partial award – Prisoners of War - Eritrea's Claim 17, 1 July 2003 and

Partial award – Prisoners of War - Ethiopia's Claim 4, 1 July 2003  
<http://www.pca-cpa.org/ENGLISH/RPC/#Partial%20Awards>

Progress Report of the UN Secretary-General on Ethiopia and Eritrea:

UN Doc. S/2003/858, September 4, 2003, see paragraph 15.

Available at:  
[http://www.pca-cpa.org/ENGLISH/RPC/S\\_2003\\_858\\_10th%20Report.pdf](http://www.pca-cpa.org/ENGLISH/RPC/S_2003_858_10th%20Report.pdf)

Arbitrating Responsibility for Violations of IHL:  
The Eritrea-Ethiopia Claims Commission

The arbitration between Eritrea and Ethiopia to resolve questions of state responsibility for violations of international humanitarian law which occurred during the 1998-2000 conflict sets an interesting precedent. Established by the Eritrea-Ethiopia Peace Agreement signed in Algiers in December 2000, it presents yet another option, apart from tribunals, special courts, and truth and reconciliation commissions, for post-conflict measures. The first interim award, concerning the treatment of POWs, provides a window on what is otherwise a private process, and gives a useful insight on the remedies, the evidentiary processes, and the jurisdiction of the arbitral tribunal. The outcome of the award also indirectly raises the issue of what fact-finding processes are necessary for the proper investigation of violations of IHL. The Eritrea-Ethiopia Claims Commission is making rulings on the content of the obligations in customary international law or under the Geneva Conventions for each party and is making factual determinations on violations by either party. A feature of arbitral tribunals is that their rules may allow them to determine their own evidentiary standards. The Commission ruled that it required "clear and convincing" evidence or a *prima facie* case to establish violations of IHL. It also confined itself to making findings on frequent, widespread or systematic violations rather than specific incidents.

The arbitral rules which lend themselves to finality and the disposition of claims such as those arising out of the Iran-US Agreement or the "Nazi Gold" claims, may not be so useful for governing investigation of incidents such as coercive interrogation or sexual assaults. The Commission also got into difficulty where evidence supplied by each party was heavily controverted by the other or where very limited evidence was available. The Commission's job was easiest where there was objectively verifiable evidence, such as death rates and untreated bone fractures, on which to make determinations. However the Commission had no access to objective accounts of camp conditions. Although both parties to the conflict were willing to disclose the confidential reports on camp conditions supplied to them by the ICRC, the ICRC asserted confidentiality over those documents and denied disclosure on the basis that its ability to perform its mission was reliant on the maintenance of absolute confidentiality.

There should not only be compensation for loss, damage and injury, but also other remedies available for IHL violations. The partial awards show that access to such other remedies is limited. Any future agreements to arbitrate over IHL violations should explicitly provide for remedies such as the release of POWs, the return of personal property of POWs, and other measures, such as stopping the subjection of POWs to public view.

As emphasised by the Commission, both parties demonstrated a commitment to the most fundamental principles of international humanitarian law, troops were trained, POWs were generally taken rather than killed, and persons *hors de combat* were removed to safety. The parties have sought to resolve their disputes over the content of their IHL obligations by peaceful means, through arbitration. However States must not only ensure respect for the conventions, they must also search for and bring before the courts those criminally responsible for grave breaches. They should also suppress all other breaches. It is hoped that Ethiopia and Eritrea will also undertake criminal and disciplinary proceedings to punish those responsible for individual incidents and breaches, such as the killing of POWs and the assaults and mistreatment of POWs in the camps.

Responsibility

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