

# **BORDERS**

## **INTRODUCTION**

This chapter identifies the core elements of border agreements through comparative state practice. This chapter also outlines the provisions of the Darfur Peace Agreement demarcating borders and provides sample language parties may wish to consider when drafting provisions of a border agreement.

Border agreements typically take into account factors specific to the disputed area. These factors may include ethnic divides, geographic considerations, traditional borders, trade routes, and access to natural resources. While there is no universal remedy for border disputes, six basic elements can help ensure the effectiveness of border provisions in peace agreements. These elements include: (1) border demarcation; (2) border monitoring systems; (3) dispute resolution mechanisms; (4) natural resources; and (5) financial arrangements.

The 2006 Darfur Peace Agreement (DPA) reestablished the borders of Darfur, demarcating the border of Darfur as the border that existed as of 1956.<sup>1</sup>

## **CORE ELEMENTS**

### **Demarcating the Border**

The majority of peace agreements contain provisions demarcating the borders in dispute. The provisions often detail the location of the border or address which party, organization, or person (often in the form of a special commission) is responsible for establishing the border at a future point in time. In South Africa<sup>2</sup> and the Ecuador-Peru dispute,<sup>3</sup> border agreements assigned boundaries simply by referencing their original status in an earlier agreement or constitution. States may also include fallback provisions to prevent a revival of hostilities in case the

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<sup>1</sup> Darfur Peace Agreement, art. 6, para. 61 (May 5, 2006) *available at* [http://www.unmis.org/english/2006Docs/DPA\\_ABUJA-5-05-06-withSignatures.pdf](http://www.unmis.org/english/2006Docs/DPA_ABUJA-5-05-06-withSignatures.pdf) (last accessed, Sept 19, 2007).

<sup>2</sup> SOUTH AFRICA CONST. ch. 6, sec. 103, para 2 (1996). Feb. 4, 1997. *available at* <http://www.info.gov.za/documents/constitution/index.htm>, (last accessed Sept. 24, 2007).

<sup>3</sup> Rio Protocol, art. 8. Jan. 29, 1942, art. 8, *available at* [http://www.usip.org/library/pa/ep/ep\\_rio.html](http://www.usip.org/library/pa/ep/ep_rio.html) (last accessed Sept. 19, 2007).

demarcation provisions, established by a border commission or within the peace agreement itself, are impractical or contentious.

### **Border Monitoring Mechanisms**

States often establish monitoring organizations or border commissions to determine a border and to facilitate negotiations between parties when a border has not been determined. In these agreements, the language establishing a border commission often addresses the composition of the commission, the leader of the commission, the powers of the commission, and a tentative timeframe for the commission to reach decisions on issues with the commission's authority. Border agreements generally designate either an international third party organization or a domestic agency comprised of both local and national representatives to implement the decisions of the border commission, monitor and secure the border.

### **Dispute Resolution Systems**

Most peace agreements contain a dispute resolution system, such as arbitration or mediation, for problems that may arise from provisions within the agreement. In agreements that establish a mechanism to monitor the implementation of the agreement, the dispute resolution provisions tend to involve this mechanism. For instance, the Rio Protocol, which demarcated the disputed border between Peru and Ecuador, called for the governments of the United States, Argentina, Brazil, and Chile to ensure the peaceful resolution of disputes by presiding over any disagreement between the parties. The Rio Protocol also provided the third party states with oversight authority regarding any reciprocal concessions that Ecuador and Peru agreed upon during the demarcation process.<sup>4</sup> In agreements without a monitoring system, the state may enlist an international organization to serve as a neutral arbiter or mediator.

### **Natural Resources**

If natural resources, such as rivers, minerals, or petroleum deposits are an issue near the border, border agreements typically contain provisions addressing the resource. These provisions range from regulations of the resource to provisions dictating a course of action if the resource physically changes over time. For instance, a border agreement between Russia and the Ukraine required the states to

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<sup>4</sup> Rio Protocol , Jan. 29, 1942, art. 5.

protect and fund the reconstruction of existing oil pipelines and to comply with the 2003 agreement on the joint use of waterways on the border.<sup>5</sup>

## **Financial Arrangements**

Border agreements can provide for the disbursement or allocation of funds for the border commission established by the agreement. Funding can be used to support security and monitoring activities along the border, and the allocation of funds may often facilitate a resolution to the border dispute. State practice illustrates that the international community or the parties to the agreement may supply these funds. Some border agreements, like the International Border Treaty between the Republic of Yemen and the Kingdom of Saudi Arabia (Treaty of Jeddah), simply requires the parties to the agreement to be responsible for financial obligations relating to demarcation efforts.<sup>6</sup> Alternatively, border agreements may contain extensive provisions regarding the financial arrangements related to a border dispute.

## **DARFUR PEACE AGREEMENT**

The Darfur Peace Agreement (DPA) provides that the borders of Darfur cannot interfere with any previous agreements made between the Republic of the Sudan and Southern Sudan or Sudan's neighboring states. Further, the DPA provided that the boundaries of Darfur "shall return to the positions as at 1 January 1956."<sup>7</sup> The DPA further provided for the establishment of a "technical ad hoc team" to demarcate the border in accordance with the 1956 boundary lines.<sup>8</sup>

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<sup>5</sup> *Russia, Ukraine Fail to Settle Border, Kerch Straight Dispute*, RUSSIA NEWS & INFORMATION AGENCY NOVOSTI, June 6, 2006. *available at* <http://en.rian.ru/russia/20060606/49132528.html> (last accessed Sept. 24, 2007).

<sup>6</sup> Treaty of Taif, art. 3(ii), May 20, 1934, *available at* <http://www.al-bab.com/yemen/pol/intl.htm> (last accessed Sept. 24, 2007).

<sup>7</sup> Darfur Peace Agreement, art. 6, para. 61.

<sup>8</sup> Darfur Peace Agreement, art. 6, para. 61.

## SAMPLE LANGUAGE

### Article XXX

#### **Border Definition**

- (1) The boundary line which defines the province(s) of Darfur in its/their relation to the greater Republic of the Sudan shall follow the points named below. [This line is considered as a fixed dividing boundary between the provinces subject to each]:<sup>9</sup>
- (a) In the west:
    - (i) [geographical landmark];
    - (ii) [geographical landmark].
  - (b) In the east:
    - (i) [geographical landmark];
    - (ii) [geographical landmark].
  - (c) In the north:
    - (i) [geographical landmark];
    - (ii) [geographical landmark].
  - (d) In the south:
    - (i) [geographical landmark];
    - (ii) [geographical landmark].

**OR**

The boundaries of Darfur shall be.... [those that existed when the Constitution took effect<sup>10</sup>].

**OR**

The borders of the Darfur Region are [geographic description of boundaries]. Borders may only be altered in accordance with international law, by peaceful means, and by agreement.

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<sup>9</sup> This language is drawn from the Rio Protocol, Jan. 29, of 1942, art. 8. Similar language can be found in article 4 (1934), of the Treaty of Taif, between Saudi Arabia and Yemen which provides: "The frontier line which divides ..[the region].. is explained in sufficient detail hereunder. This line is considered as a fixed dividing boundary between the [territories] subject to each."

<sup>10</sup> This language is drawn from the SOUTH AFRICA CONST. chap. 6, sec. 103, para. 2 (1996).

## **Article XXX** **Demarcation**

- (1) For the purpose of demarcating borders, desiring to set markers on the line of the border, the contracting parties will commission [an international company/ad hoc commission] to undertake the project. The specialized [international company/ad hoc commission] carrying out the work and the contracting parties must follow absolutely the distances and directions between each point and the next one, and the other specifications which appear in the border reports attached to the positions as they were defined on 1 January 1956. These provisions are binding on the two parties.
- (2) The specialized [international company/ad hoc commission] shall undertake preparation of detailed maps of the line of the land border surrounding the region. These maps, when signed by representatives of the region of Darfur and the government of the Republic of Sudan, will be considered, for all future purposes, as official maps demarcating the border of the region and will become an integral part of this agreement.<sup>11</sup>
- (3) The contracting parties will sign an agreement to cover the cost of work by the [international company/ad hoc commission] commissioned to erect the markers along the land border between the provinces in question.<sup>12</sup>

## **Article XXX** **Future Allowance**

It is understood that the line above described shall be accepted by [all parties] for the demarcation of the border of the Darfur Region[s], by technical experts, on the ground. The parties may, however, when the line is being laid out on the ground, grant such reciprocal concessions, as they may consider advisable in order to adjust the previously mentioned line to geographical realities. These rectifications shall be made with the collaboration of the representatives of the [African Union, the United Nations, and all participating parties].<sup>13</sup>

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<sup>11</sup> This language is drawn from the Treaty of Jeddah between Saudi Arabia and Yemen and referred back to the borders as delineated in the previous Treaty of Taif. Treaty of Jeddah, art. 3(i) and (ii) (1934).

<sup>12</sup> Treaty of Jeddah, art. 3(ii) (1934).

<sup>13</sup> This language is drawn from the Rio Protocol, Jan. 29, 1942, art. 9.

### **Article XXX**

#### **Dispute Resolution**

Any doubt or disagreement which may arise in the execution of this [agreement] shall be settled by the parties concerned, with the assistance of the representatives of the [African Union and United Nations], in the shortest possible time.<sup>14</sup>

**OR**

Any alteration to boundaries between provinces may be made by resolutions of the national legislature and of the provincial legislature of each province to which the alteration applies.<sup>15</sup>

### **Article XXX**

#### **Border Villages**

The [regional] identity of the villages lying on the course of this border will be defined according to what was stipulated by the [January 1956 demarcation (and its appendices)].<sup>16</sup>

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<sup>14</sup> This language is drawn from the Rio Protocol, Jan. 29, 1942, art. 7.

<sup>15</sup> This language is drawn from Canada's Constitutional Act of 1982, art. 43, *available at* [http://www.solon.org/Constitutions/Canada/English/ca\\_1982.html](http://www.solon.org/Constitutions/Canada/English/ca_1982.html) (last accessed Sept. 24, 2007).

<sup>16</sup> This language is drawn from the Treaty of TaifJeddah, art. 2(a) (1934).