

EGYPT - ISRAEL *

THE EGYPT - ISRAEL ARBITRATION TRIBUNAL

Established in Accordance with the
Compromis signed 11 September 1986

SUMMARY OF THE AWARD

OF

29 SEPTEMBER 1988

Composition of the Tribunal:

Gunnar Lagergren, President
Pierre Bellet
Dietrich Schindler
Hamed Sultan, and
Ruth Lapidoth

*[The text of this summary was provided by Mr. Ahron Yaar,
First Secretary, Embassy of Israel, Canberra].

Summary of the Award

I THE ARBITRAL PROCEEDINGS

A. Introduction

The Treaty of Peace of 26 March 1979 between the Arab Republic of Egypt and the State of Israel provides that the permanent boundary between Egypt and Israel is "the recognized international boundary between Egypt and the former mandated territory of Palestine". The Joint Commission established pursuant thereto reached agreement on the location of most of the nearly 100 pillars of the boundary. As to the disputed pillars, the Parties agreed on 25 April 1982 to submit the remaining technical questions concerning the international boundary "to an agreed procedure which will achieve a final and complete resolution, in conformity with ... the Treaty of Peace." Negotiations between the Parties remained without result. On 11 September 1986 the Parties agreed to submit to arbitration their differences regarding the location of fourteen of the boundary pillars.

Pursuant to the terms of the Arbitration Compromis, the Parties exchanged Memorials, Counter-Memorials, and, at their joint request, Rejoinders. A visit to certain of the disputed locations was conducted prior to the hearing. Oral arguments were heard in private in two rounds.

The Tribunal commends the Parties for the spirit of cooperation and courtesy which permeated the proceedings in general and which thereby rendered the hearing a constructive experience.

In parallel with the Tribunal's activities during the written phase of the proceedings, a Chamber was constituted pursuant to the Compromis to "explore the possibilities of a settlement of the dispute." On 1 March 1988, the Chairman of the Chamber informed the President of the Tribunal and the Agents of the Parties that the Chamber regretted not having been able to propose to the Parties any recommendation for a settlement of the dispute, despite their efforts to find a reasonable proposal which might be acceptable to both Parties.

The Tribunal notes that the international boundary between Egypt and Israel was originally defined by an Agreement of 1 October 1906 between the Turkish Sultanate and the Egyptian Khedivate and demarcated pursuant to that Agreement. No changes in this line were provided for, neither when Egypt became independent nor when Palestine, during the time of the League of Nations, became a mandated territory under British administration. Nor were any changes provided for during the period of the Mandate or thereafter.

II. REASONS FOR THE AWARD

A. Preliminary Issues

Among the preliminary issues, the Tribunal discusses the formula "the recognized international boundary between Egypt and the former mandated territory of Palestine", which originated in the 1978 Camp David Accords and was repeated, in a slightly revised form, in the 1979 Treaty of Peace and the 1986 Compromis.

Israel submits that both Great Britain, as mandatory power, and Egypt in 1926 explicitly recognized the line defined in 1906 as the boundary between Egypt and Palestine. By virtue of this renvoi to the 1906 Agreement, Israel contends, the Tribunal is referred to the line defined in the 1906 Agreement, not to the boundary pillars established pursuant thereto.

The Tribunal does not share this view. First of all, the expressions "defined in 1906" and "defined by the 1906 Agreement", which were used in British and Egyptian declarations in 1926, do not have a particular technical meaning in the sense that they refer only to the description of the boundary line in the Agreement to the exclusion of the demarcation of the boundary also expressly provided for by the 1906 Agreement. It can hardly have been the meaning of the declarations of Great Britain and Egypt in 1926 that the demarcation of the boundary, as it took place in 1906-07, could be disregarded. This seems all the more unlikely as both Great Britain and Egypt were well acquainted with the demarcated boundary. Both had had surveys and produced

maps of the region, including maps indicating the location of boundary pillars, before and during the time of the British mandate over Palestine. Neither State ever questioned the demarcated line. It would also hardly be understandable why the Treaty of Peace and the Compromis should refer to "the recognized international boundary between Egypt and the former mandated territory of Palestine" if reference could just as well have been made directly to the 1906 Agreement.

The Tribunal therefore decides the locations of the fourteen boundary pillars on the basis of the boundary between Egypt and the former mandated territory of Palestine as it was demarcated, consolidated, and commonly understood during the period of the Mandate (29 September 1923 - 14 May 1948, also referred to as "the critical period").

However, in so far as there are doubts as to where the boundary pillars stood during the period of the Mandate or for confirmation of its findings, the Tribunal also considers the terms of the 1906 Agreement, but merely as an indice among others, as to what was the situation on the ground during the critical period. In the same way, the Tribunal considers any relevant evolution with regard to the delimited and demarcated boundary prior to the critical period. Events subsequent to the critical period can in principle also be relevant, not in terms of a change of the situation, but only to the extent that they may reveal or

illustrate the understanding of the situation as it was during the critical period.

The Annex to the Compromis provides that the Tribunal is not authorized to establish a location of a boundary pillar other than a location advanced by Egypt or by Israel and recorded in Appendix A.

B. The Fourteen Pillar Locations

The Tribunal examines the fourteen disputed pillar locations in three groups: the nine northernmost pillars; the four pillars of the Ras el Naqb area; and pillar No. 91 at Taba.

1. The Nine Northernmost Pillars

The Tribunal notes that the Parties have neither in their written nor in their oral pleadings put much emphasis on the nine northernmost pillars. This is understandable in light of the fact that the distances between the disputed pillar locations are very small. In four instances the disputed pillar locations are less than six metres apart, in another four between 34 and 65 metres, and in one case 145 metres. In addition, the nine pillars are situated in an uninhabited desert region where apparently no essential interests of the Parties are involved and little evidence was available to assist the Parties or the Tribunal in the establishment of the pillar locations.

The indications given by the Parties as to alleged remnants of original boundary pillars or other types of

markers, map-based indications, the terms of the 1906 Agreement and the Owen and Wade Reports on the delimitation and demarcation of the boundary, intervisibility between boundary pillars, and survey information did not lead to any clear conclusions.

Where no other relevant evidence for a pillar location was produced by the Parties, the Tribunal, in a subsidiary way, considers which of the claimed locations is on or closest to a straight line extended through adjacent pillars, and decides on that basis. This subsidiary criterion seems legitimate in cases where the Joint Commission of 1906 intended to establish a straight line through a number of boundary pillars and in view of the fact that it was the aim of the parties to the 1906 Agreement that the boundary should run approximately straight from Rafah to a point on the Gulf of Aqaba.

After examination of all the evidence, the Tribunal in five cases decides for the locations advanced by Egypt and in four cases for the locations advanced by Israel.

2. Boundary Pillars 85, 86, 87, and 88

As to the four consecutive pillars in the Ras el Naqb area, the Tribunal notes that old pillars exist at the Egyptian locations for pillars 85, 86, and 87 and that no pillar previously existed at the location for pillar 88. Israel asserts that the origin of the existing pillars is uncertain and that their locations

do not correspond to the 1906 Agreement. On the basis of the evidence submitted, the Tribunal concludes that there is no doubt that boundary pillars have been at their present locations at least since 1915 and during the entire period of the British mandate over Palestine.

Israel asserts that three places mentioned in the 1906 Agreement - Jebel Fort, Jebel Fathi Pasha, and Wadi Taba - have been incorrectly identified on the ground by the persons who erected the pillars. As to Jebel Fort and Jebel Fathi Pasha, it maintains that three maps of the years 1906 to 1911 indicate these geographical features considerably to the west of the boundary line shown on all maps. Israel furthermore contends that Wadi Taba extends beyond the bifurcation north of BP 89 up the middle one of three tributaries. If Israel's contentions regarding these geographical features and its related interpretation of the terms of the 1906 Agreement were correct, the three existing pillars would not be in conformity with the Agreement.

The Tribunal considers that the few maps invoked by Israel, taken alone, do hardly furnish sufficient evidence against the correctness of the existing boundary pillar locations. The majority of the relevant maps submitted to the Tribunal, including maps from 1906 and 1907, indicate the names of Jebel Fort and Jebel Fathi Pasha next to the features on which the pillars presently can be found. Moreover, on all maps produced after the 1906 Agreement, including those on which Israel relies, the boundary line shows the same direction

tion and shape as the line formed by the existing pillars.

The Tribunal also does not see any incompatibility between Egypt's location of Jebel Fort and Article 1 of the 1906 Agreement. The wording of Article 1 does not require that Jebel Fort must be on the eastern ridge of Wadi Taba or a point not far from it. As to the denomination of the middle tributary of Wadi Taba, the Tribunal could not find any evidence that it was ever called Wadi Taba.

The Tribunal therefore concludes that the locations of the existing boundary pillars 85, 86, and 87 are not in contradiction with the 1906 Agreement.

With respect to the legal situation in case of contradictions between existing pillar locations and the 1906 Agreement, which, however, in the present case do not exist, the Tribunal notes that the demarcation took place in two phases: first, the erection of provisional telegraph poles during October 1906, and, secondly, the replacement of them by permanent masonry pillars between 31 December 1906 and 9 February 1907. Both operations were carried out jointly by Egypt and Turkey and no party to the 1906 Agreement ever claimed that the Agreement had not been properly executed.

The Tribunal considers that if a boundary line is once demarcated jointly by the parties concerned, the demarcation is considered as an authentic interpretation of the boundary agreement even if deviations may have occurred or if there are some inconsistencies with maps.

It therefore concludes that the demarcated boundary line would prevail over the Agreement if a contradiction could be detected. For these reasons, the Tribunal decides in favour of Egypt's locations BP 85(E), BP 86(E), and BP 87(E).

As to the newly erected pillar BP 88, the Parties' submissions proved to be inconclusive. The Tribunal therefore bases its decision on the straight line criterion and finds that Egypt's location is closer to the straight line between neighbouring pillars than Israel's.

3. Boundary Pillar 91

The Tribunal notes that the Annex to the Compromis contains a sentence dealing specifically with pillar 91:

"For the final pillar No. 91, which is at the point of Ras Taba on the western shore of the Gulf of Aqaba, Israel has indicated two alternative locations, at the granite knob and at Bir Taba, whereas Egypt has indicated its location, at the point where it maintains the remnants of the boundary pillar are to be found."

The Tribunal also notes that the positions of the Parties with regard to BP 91 were most strongly affected during the written and oral proceedings by the so-called Parker photographs, submitted by Egypt with its Memorial. These photographs show a pillar at a location on a cliff above the shoreline of Taba which does not correspond to any of the three locations advanced by the Parties for BP 91. The pillar had disappeared by the time Israel removed part of the

cliffs on which it was built when constructing a new road along the coast around 1970.

The Tribunal further notes that if the Parker pillar was correctly located as the first (or final, if one takes the opposite direction) pillar in 1906 and formed part of the international boundary line during the critical period, it excludes the two locations advanced by Israel for the final pillar location. On the other hand, if the Parker pillar existed during the critical period, the pillar at the Egyptian location of BP 91 was not the final pillar at that time.

The Tribunal first addresses Israel's two alternative locations for BP 91. One of them is situated on the westerly lower end of the granite knob, the other one at Bir Taba on the bottom of the wadi. The Tribunal considers that Israel's strongest argument is based on intervisibility, for its locations are intervisible with the preceding pillar (agreed pillar 90) while Egypt's location is not. Israel argues that intervisibility between boundary pillars is mandatory, because the 1906 Agreement provides that "[b]oundary pillars will be erected . . . at intervisible points". The Tribunal considers that the argument loses its weight if it can be shown that BP 91(E) - in spite of the lack of intervisibility - was a regular pillar of the recognized international boundary between Egypt and the former mandated territory of Palestine. The Tribunal later in the Award determines that BP 91(E) was such a regular pillar.

The Tribunal considers all the further arguments advanced in favour of the two alternative Israeli locations - arguments based on maps, on the boundary description in the Statistical Yearbook of Egypt for 1909, on a photograph from 1936 of an alleged cairn of stones, and on an alleged Turkish presence in the Wadi Taba in the years after 1906 - but considers that all of these indications are inconclusive.

The Tribunal also considers the arguments brought forward against Israel's locations. First of all, if the Parker pillar was in fact the first (or final) pillar of the boundary line as recognized during the critical period, it excludes both locations proposed by Israel for BP 91. Secondly, no evidence was produced showing that telegraph poles or boundary pillars had existed at either location at any time. Furthermore, the lines connecting the Israeli locations with the preceding pillar BP 90 do not follow "along the eastern ridge overlooking Wadi Taba" as stipulated in the 1906 Agreement.

Egypt's claim for BP 91(E) is closely related with the question of the Parker pillar. The evidence submitted demonstrates that the Parker pillar must have been in existence during most of the years between 1906 and 1967, including the period of the Mandate. As to the pillar at BP 91(E), the first evidence of its existence appears on a 1915 British map, which shows a boundary pillar at the elevation of 298 feet (91 metres) conforming to BP 91(E). It was furthermore established

by photographs, maps, and survey information that a pillar at the location of BP 91(E) remained there during the critical period and thereafter until at least 1967.

The Tribunal also examines Israel's arguments that these pillars were wrongly located and therefore cannot be considered as part of the boundary line.

As to the argument that Parker had no authority to take part in the work of the Joint Commission, no evidence was submitted relating to this point. The Tribunal bases its decision on the fact that Parker took part in the demarcation process as a representative of Egypt and was not contested in that function at that time nor at any later time and finds that there is no basis for Israel's submission. As to the site of the Parker pillar, the Tribunal finds no indication in any of the documents submitted to it that the first masonry pillar was placed at a site different from that on which a telegraph pole had been placed two-and-a-half months earlier. The Tribunal concludes that, even if Parker had no authority and even if the Parker pillar had not been placed at the same location as the telegraph pole - assumptions for which no evidence could be found - the parties to the Agreement of 1906 had, by their conduct, agreed to the boundary, as it was demarcated by masonry pillars in 1906-07, and to the location of the Parker pillar as the final pillar of the boundary line at that time.

Israel's argument that the pillar at BP 91(E) was erected in 1906-07 and rather was a mere trig point

later established at this location and mistakenly marked on the 1915 British map as a boundary pillar was not considered by the Tribunal as either proven or not proven. The Tribunal bases its decision on those facts on which no doubt exists, noting that it was not contested that at least from around 1917 and throughout the critical period until a time after 1967 there was a boundary pillar at the location of BP 91(E) which, during this whole period, was considered to be a boundary pillar. The Tribunal considers that where the States concerned have, over a period of more than fifty years, identified a marker as a boundary pillar and acted upon that basis, it is no longer open to one of the Parties or to third States to challenge that long-held assumption on the basis of an alleged error.

The fact that BP 91(E) is not intervisible with agreed pillar 90, despite the terms of the 1906 Agreement, did not affect the Tribunal's decision. Although the Agreement does not provide for any exceptions to intervisibility, the Tribunal considers that this principle may not have been complied with for the pillars to be located "along the eastern ridge overlooking Wadi Taba". Also the rapidity of the operations of the surveyors on the last day of their work may explain this exception. However, both the Parker pillar location and the location of BP 91(E) were recognized and accepted by the States concerned as forming part of the boundary line during the critical period, in spite of non-intervisibility.

The Tribunal finally considered the argument that if the Parker pillar existed throughout the period of the Mandate, BP 91(E) was not "the final pillar" during the critical period nor situated "at the point of Ras Taba on the western shore of the Gulf of Aqaba". Israel contends that if the Tribunal finds that Israel's case for BP 91(I) is not acceptable, then, as a result of the existence of the Parker pillar, the Tribunal cannot side in favour of Egypt either, because BP 91(E) is not the final pillar of the recognized international boundary between Egypt and the mandated territory of Palestine. Israel characterizes this as a situation of non licet that has nothing to do with the absence of applicable law leading to non liquet.

It is obvious that the words in the Annex "at the point of Ras Taba" and "on the western shore of the Gulf of Aqaba" were taken from Article 1 of the 1906 Agreement. Evidently, in 1906 they referred to the Parker pillar, not to BP 91(E). It must, however, be taken into consideration that paragraph 2 of the Annex to the Compromis states that "[e]ach party has indicated on the ground its position concerning the location of each boundary pillar listed above." BP 91(E) was also the final or last pillar in the series of fourteen pillars mentioned in the first sentence of paragraph 1 and cannot at the same time be considered to be the "penultimate" pillar in the context of the Compromis. It is clear that an indication on the ground in 1986 would not have been conceivable for the Parker pillar,

given the disappearance of its site around 1970. The location of BP 91(E) was the last pillar location along Egypt's claimed line which in 1986 could be indicated on the ground. It was therefore not incorrect to designate it as the "final pillar" at that moment.

As to the words "at the point of Ras Taba on the western shore of the Gulf of Aqaba" the decisive question is whether these words, in 1986, could reasonably be understood as applying to BP 91(E). After examination of this question, the Tribunal concludes that this description can apply to BP 91(E). Israel's plea of non licet is therefore not admitted and Egypt is not precluded from claiming BP 91(E).

On the basis of these considerations, the Tribunal decides that the location of boundary pillar No. 91 is at the location advanced by Egypt. The Tribunal is not authorized to decide on the line between BP 91(E) and the shore of the Gulf of Aqaba and beyond.

C. Execution of the Award

So far as execution of the Award is concerned, the Tribunal observes that Article XIV of the Compromis provides as follows:

"1. Egypt and Israel agree to accept as final and binding upon them the award of the Tribunal.

2. Both parties undertake to implement the award in accordance with the Treaty of Peace as quickly as possible and in good faith."

In conformity with views expressed by the Parties on this question, the Tribunal decides that the execution of its Award shall be entrusted to the

Liaison System described in Annex I to the Treaty of Peace between the Arab Republic of Egypt and the State of Israel. Agreed boundary pillar No. 90 may serve as an example as to type and style of pillars to be established.

DISPOSITIF

FOR THESE REASONS, AND AFTER DELIBERATION,
THE TRIBUNAL

1. Decides unanimously that Boundary Pillar No. 7 is situated at the location advanced by Egypt and recorded in Appendix A to the Arbitration Compromis of 11 September 1986;
2. Decides unanimously that Boundary Pillar No. 14 is situated at the location advanced by Israel and recorded in Appendix A to the Compromis;
3. Decides unanimously that Boundary Pillar No. 15 is situated at the location advanced by Israel and recorded in Appendix A to the Compromis;
4. Decides unanimously that Boundary Pillar No. 17 is situated at the location advanced by Egypt and recorded in Appendix A to the Compromis;
5. Decides unanimously that Boundary Pillar No. 27 is situated at the location advanced by Egypt and recorded in Appendix A to the Compromis;
6. Decides unanimously that Boundary Pillar No. 46 is situated at the location advanced by Israel and recorded in Appendix A to the Compromis;
7. Decides unanimously that Boundary Pillar No. 51 is situated at the location advanced by Egypt and recorded in Appendix A to the Compromis;
8. Decides unanimously that Boundary Pillar No. 52 is situated at the location advanced by Egypt and recorded in Appendix A to the Compromis;
9. Decides unanimously that Boundary Pillar No. 56 is situated at the location advanced by Israel and recorded in Appendix A to the Compromis;
10. Decides by four votes to one that Boundary Pillar No. 85 is situated at the location advanced by Egypt and recorded in Appendix A to the Compromis;
11. Decides by four votes to one that Boundary Pillar No. 86 is situated at the location advanced by Egypt and recorded in Appendix A to the Compromis;
12. Decides by four votes to one that Boundary Pillar No. 87 is situated at the location advanced by Egypt and recorded in Appendix A to the Compromis;

13. Decides by four votes to one that Boundary Pillar No. 88 is situated at the location advanced by Egypt and recorded in Appendix A to the Compromis;

14. Decides by four votes to one that Boundary Pillar No. 91 is situated at the location advanced by Egypt and recorded in Appendix A to the Compromis;

15. Decides unanimously that the execution of this Award shall be entrusted to the Liaison System described in Article VII of Annex I to the Treaty of Peace of 26 March 1979 between the Arab Republic of Egypt and the State of Israel.

Summary of Professor Ruth Lapidoth's Dissenting Opinion:

To my great regret, I must dissent from the conclusions of the majority and its views on many essential points, in particular with regard to the Taba area. With all due respect, I consider that the majority has sanctioned pillars erroneously erected at locations inconsistent with the lawfully recognized international boundary between Egypt and the former mandated territory of Palestine. Moreover, the majority has forced an artificial, illogical interpretation on the Compromis by asserting that two different locations, 284 metres apart, both can be considered to be the locations of the final pillar of the boundary at the point of Ras Taba.

I. Powers of the Tribunal

The Tribunal has been asked to decide, in accordance with the 1979 Treaty of Peace, the 1982 Agreement, and the 1986 Compromis, the location of certain boundary pillars of the recognized international boundary of the period of the Mandate which constitutes the boundary between Egypt and Israel.

The Compromis restricts the powers of the Tribunal to decide on pillar locations and to choose among specific locations claimed by the Parties. It is rare that the powers of an arbitral tribunal are limited in such a way, and nobody, in particular not Egypt, which insisted on this limitation, should be surprised if the award does not fully resolve the boundary dispute.

II. The Recognized International Boundary of the period of the Mandate

The Peace Treaty, instead of defining the boundary between Egypt and Israel in geographical terms, has referred to the boundary that was recognized during the period of the Mandate. This boundary, in turn, was based on the Separating Administrative Line established by a 1906 Agreement between Egypt and Turkey. We thus have a two-stage renvoi.

The 1906 Agreement defined the line and provided that it should be demarcated in the presence of a joint Turco-Egyptian Commission by intervisible telegraph poles which were later replaced by masonry pillars.

According to the generally followed practice, boundary demarcations are reported in detailed joint reports. Neither the erection of the telegraph poles nor the building of the masonry pillars have been the subject of a joint report, but the former has been reported in detail by two British officials. There is only very little information on the erection of the masonry pillars.

During the mandatory period the two neighbours - Egypt and Great Britain for Palestine - recognized the boundary which had been established in pursuance of the 1906 Agreement. My colleagues are of the opinion that the recognized boundary was the line represented by pillars which existed de facto on the ground in 1923, whether wrongly or rightly erected, and whenever erected.

A careful study of the relevant documents has led me to the conclusion that it is the line delimited by the 1906 Agreement and demarcated by the telegraph poles which was recognized. If the Parties had wished, as the majority opines, to recognize the pillars de facto on the ground in 1923, nothing would have prevented them from saying so expressly..

This distinction is of crucial importance since some of the pillars in dispute have been built after 1906-07. The pillar that existed at the location claimed by Egypt for BP 91 was probably erected after

1915, and the pillars in the Ras an-Naqb area could only have been built unilaterally by Great Britain at the end of World War I, since the original ones had most probably been destroyed in that war in which the parties were on opposite sides.

The principle that boundaries have to be stable and permanent, referred to in the Temple of Preah Vihear case (1962), applies to the lawfully established boundary, which in our case is the line of the 1906 Agreement, and not to the de facto markers.

III.: The Taba Area: Pillar 91

The proper location for this pillar has to fulfil three conditions:

- a) it must be intervisible with BP 90 (according ~~to the 1906 Agreement~~ to the 1906 Agreement)
- b) it must be the final pillar of the boundary (according to the 1986 Compromis);
- c) it must be at the point of Ras Taba on the western shore of the Gulf of Aqaba (according to both the 1906 Agreement and the 1986 Compromis).

The location which fulfils all these conditions is the site on the western slope of the Granite Knob, claimed by Israel, while the location claimed by Egypt, on the high cliffs east of Wadi Taba, does not conform to any of them.

Since my colleagues have ruled that the pillars which actually existed on the ground during the period of the Mandat, whatever be their origin, have to be

sanctioned, they have preferred 91(E) to the Granite Knob. As to the above three conditions, the majority assumes (in my opinion erroneously) that in the Taba area the 1906 Commissioners had not followed the requirement of intervisibility, and that in any case the situation on the ground during the mandatory period prevails over a requirement of the delimitation Agreement - an opinion which I cannot share, since it amounts to preferring fact to law.

Since de facto there existed during the period of the Mandate a pillar at the Parker location near the shore (although, in my opinion, not a valid one since it was not intervisible with the penultimate pillar), 91(E) could not be the final pillar nor be situated at the point of Ras Taba. My colleagues consider that the two locations can be considered to fulfil these conditions, whereas in my opinion they are mutually exclusive.

The location of the Granite Knob is also confirmed by various facts and pieces of evidence, i.e. the Statistical Yearbook of Egypt for 1909, a 1936 photograph of a cairn near the Granite Knob, various maps, and a Turkish presence in the area. I do not share the majority's doubts concerning these proofs.

The later (post 1915) maps support the location claimed by Egypt, but I consider that the earlier ones should be preferred since they were made closer to the period of the delimitation and of the demarcation.

The location on the Granite Knob conforms to the physical description of the boundary included in the

1906 Agreement and the two available reports.

It is regrettable that the majority has not decided for 91 (I) on the Granite Knob, which would have solved the dispute fully, but instead has decided for the location claimed by Egypt, which is not only the wrong one because it does not fulfil the criteria of the 1906 Agreement and the 1986 Compromis, but also leaves unresolved the course of the boundary line beyond 91 (E).

IV. The Ras an-Nagb Area: Pillars 85, 86, 87

In this area as well, the main disagreement between the majority's opinion and mine concerns the relative weight of the 1906 line, on the one hand, and the situation on the ground in critical period, on other hand. The majority considers that there is conformity between the pillars existing de facto and the line established by the 1906 Agreement, and that if there had been a contradiction, the former should prevail. With all due respect, I think that there is a discrepancy between the 1906 line and the actual pillars, and that the 1906 line should be preferred since this is the one that was recognized during the period of the Mandate.

The disagreement concerning this discrepancy depends mainly on the identification of certain geographical features in relation to which the Agreement defines the boundary: Wadi Taba, Jebel Fort and Jebel Fathi Pasha.

V. Boundary Pillar 88

This is a new pillar and thus no guidance can be sought in the old reports. The proper location for this pillar is at 88 (I) on the ridge that overlooks the adjoining Wadi, as do the neighbouring pillars. However, my colleagues have preferred to locate it at 88 (E) since this is closer to a straight line - a method which in my opinion is not applicable to this part of the boundary.

For all these reasons, I dissent.