INTERNATIONAL COURT OF JUSTICE

Maritime Delimitation in the Indian Ocean (Somalia v Kenya)

COUNTER-MEMORIAL OF THE REPUBLIC OF KENYA

VOLUME III

18 DECEMBER 2017

Annex 77 United Nations General Assembly draft resolutions sponsored by Somalia, 1991





Distr.

A/46/L.9 14 October 1991 ENGLISH ORIGINAL: FRENCH

Forty-sixth session Agenda item 28

QUESTION OF THE COMORIAN ISLAND OF MAYOTTE

Algeria, Bahrain, Benin, Botswana, Burkina Faso, Comoros, Cuba, Equatorial Guinea, Gabon, Gambia, Guinea, Guinea, Guinea-Bissau, Guyana, Kenya, Lesotho, Libyan Arab Jamahiriya, Madagascar, Mauritius, Morocco, Oman, Oatar, Sao Tome and Principe, Senegal, Somalia, Sudan, Uganda, United Arab Emirates, United Republic of Tanzania, Yemen and Zambia: draft resolution

The General Assembly,

Recalling its resolutions 1514 (XV) of 14 December 1960, containing the Declaration on the Granting of Independence to Colonial Countries and Peoples, and 2621 (XXV) of 12 October 1970, containing the programme of action for the full implementation of the Declaration,

Recalling also its previous resolutions, in particular resolutions 3161 (XXVIII) of 14 December 1973, 3291 (XXIX) of 13 December 1974, 31/4 of 21 October 1976, 32/7 of 1 November 1977, 34/69 of 6 December 1979, 35/43 of 28 November 1980, 36/105 of 10 December 1981, 37/65 of 3 December 1982, 38/13 of 21 November 1983, 39/48 of 11 December 1984, 40/62 of 9 December 1985, 41/30 of 3 November 1986, 42/17 of 11 November 1987, 43/14 of 26 October 1988, 44/9 of 18 October 1989 and 45/11 of 1 November 1990, in which, inter alia, it affirmed the unity and territorial integrity of the Comoros,

Recalling, in particular, its resolution 3385 (XXY) of 12 November 1975 on the admission of the Comoros to membership in the United Pations, in which it reaffirmed the necessity of respecting the unity and territorial integrity of the Comoro Archipelago, composed of the islands of Anjouan, Grande-Comore, Mayotte and Mohéli,

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Recalling further that, in accordance with the agreements between the Comoros and France, signed on 15 June 1973, concerning the accession of the Comoros to independence, the results of the referendum of 22 December 1974 were to be considered on a global basis and not island by island,

<u>Convinced</u> that a just and lasting solution to the question of Mayotte is to be found in respect for the sovereignty, unity and territorial integrity of the Comoro Archipelago,

Convinced also that a speedy solution of the problem is essential for the preservation of the peace and security which prevail in the region,

Bearing in mind the wish expressed by the President of the French Republic to seek actively a just solution to that problem,

Taking note of the repeated wish of the Government of the Comoros to initiate as soon as possible a frank and serious dialogue with the French Government with a view to accelerating the return of the Comorian island of Mayotte to the Islamic Federal Republic of the Comoros,

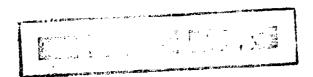
Taking note of the report of the Secretary-General,

Bearing in mind also the decisions of the Organization of African Unity, the Movement of Non-Aligned Countries and the Organization of the Islamic Conference on this question,

- 1. Reaffirms the sovereignty of the Islamic Federal Republic of the Comoros over the island of Mayotte;
- 2. <u>Invites</u> the Government of France to honour the commitments entered into prior to the referendum on the self-determination of the Comoro Archipelago of 22 December 1974 concerning respect for the unity and territorial integrity of the Comoros;
- 3. <u>Calls</u> for the translation into practice of the wish expressed by the President of the French Republic to seek actively a just solution to the question of Mayotte;
- 4. <u>Urges</u> the Government of France to accelerate the process of negotiations with the Government of the Comoros with a view to ensuring the effective and prompt return of the island of Mayotte to the Comoros;
- 5. Requests the Secretary-General of the United Nations to maintain continuous contact with the Secretary-General of the Organization of African Unity with regard to this problem and to make available his good offices in the search for a peaceful negotiated solution to the problem;
- 6. Also requests the Secretary-General to report on this matter to the General Assembly at its forty-seventh session;

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7. <u>Decides</u> to include in the provisional agenda of its forty-seventh session the item entitled "Question of the Comorian island of Mayotte".



UNITED NATIONS





General Assembly

Distr. LIMITED

A/C.3/46/L.12 16 October 1991

ORIGINAL: ENGLISH

Forty-sixth session THIRD COMMITTEE Agenda item 93

RIGHT OF PEOPLES TO SELF-DETERMINATION

Botswana, Brunei Darussalam, Chile, Colombia, Costa Rica, Djibovti, Ecuador, Iran (Islamic Republic of), Jordan, Malaysia, Mauritania, Morocco, Oman, Pakistan, Papua New Guinea, Qatar, Samoa, Saudi Arabia, Senegal, Sierra Leone, Singapore, Somalia, Sudan, Thailand, United Arab Emirates and Vanuatu: draft resolution

Universal realization of the right of peoples to self-determination

The General Assembly,

Reaffirming the importance, for the effective guarantee and observance of human rights, of the universal realization of the right of peoples to self-determination enshrined in the Charter of the United Nations and embodied in the International Covenants on Human Rights, 1/ as well as in the Declaration on the Granting of Independence to Colonial Countries and Peoples contained in General Assembly resolution 1514 (XV) of 14 December 1960,

<u>Welcoming</u> the progressive exercise of the right to self-determination by peoples under colonial, foreign or alien occupation and their emergence into sovereign statehood and independence,

<u>Deeply concerned</u> at the continuation of acts or threats of foreign military intervention and occupation that are threatening to suppress, or have

^{1/} See resolution 2200 A (XXI), annex.

already suppressed, the right to self-determination of an increasing number of sovereign peoples and nations,

Expressing grave concern that, as a consequence of the persistence of such actions, millions of people have been and are being uprooted from their homes as refugee, and displaced persons, and emphasizing the urgent need for concerted international action to alleviate their condition,

Recalling the relevant resolutions regarding the violation of the right of peoples to self-determination and other human rights as a result of foreign military intervention, aggression and occupation, adopted by the Commission on Human Rights at its thirty-sixth, 2/ thirty-seventh, 3/ thirty-eighth, 4/ thirty-ninth, 5/ fortieth, 6/ forty-first, 7/ forty-second, 8/ forty-third, 9/ forty-fourth, 10/ forty-fifth, 11/ forty-sixth 12/ and forty-seventh sessions, 13/

^{2/} See Official Records of the Economic and Social Council, 1980, Supplement No. 3 and corrigendum (E/1980/13 and Corr.1), chap. XXVI, sect. A.

^{3/} Ibid., 1981, Supplement No. 5 and corrigendum (E/1981/25 and Corr.1), chap. XXVIII, sect. A.

^{4/} Ibid., 1982, Supplement No. 2 and corrigendum (E/1982/12 and Ccrr.1), chap. XXVI, sect. A.

^{5/} Ibid., 1983, Supplement No. 3 and corrigendum (E/1983/13 and Corr.1), chap. XXVII, sect. A.

^{6/} Ibid., 1984, Supplement No. 4 and corrigendum (E/1984/14 and Corr.1), chap. II, sect. A.

^{7/} Ibid., 1985, Supplement No. 2 (E/1985/22), chap. II, sect. A.

^{8/} Ibid., 1986, Supplement No. 2 (E/1986/22), chap. II. sect. A.

^{9/} Ibid., 1987, Supplement No. 5 and corrigenda (E/1987/18 and Corr.1 and 2), chap. II. sect. A.

¹⁰/ Ibid., 1988, Supplement No. 2 and corrigendum (E/1988/12 and Corr.1), chap. II. sect. A.

^{11/} Ibid., 1989, Supplement No. 2 (E/1989/20), chap. II. sect. A.

^{12/} Ibid., 1990, Supplement No. 2 and corrigendum (E/1990/22 and Corr.1), chap. II, sect. A.

^{13/} Ibid., 1991, Supplement No. 2 (E/1991/22), chap. II, sect. A.

Reiterating its resolutions 35/35 B of 14 November 1980, 36/10 of 28 October 1981, 37/42 of 3 December 1982, 38/16 of 22 November 1983, 39/18 of 23 November 1984, 40/24 of 29 November 1985, 41/100 of 4 December 1986, 42/94 of 7 December 1987, 43/105 of 8 December 1938, 44/80 of 8 December 1989 and 45/131 of 14 December 1990,

Taking note of the report of the Secretary-General,

- 1. Reaffirms that the universal realization of the right of all peoples, including those under colonial, foreign and alien domination, to self-determination is a fundamental condition for the effective guarantees and observance of human rights and for the preservation and promotion of such rights;
- 2. <u>Declares its firm opposition</u> to acts of foreign military intervention, aggression and occupation, since these have resulted in the suppression of the right of peoples to self-determination and other human rights in certain parts of the world;
- 3. <u>Calls upon</u> those States responsible to cease immediately their military intervention and occupation of foreign countries and territories and all acts of repression, discrimination, exploitation and maltreatment, particularly the brutal and inhuman methods reportedly employed for the execution of these acts against the peoples concerned;
- 4. <u>Deplores</u> the plight of the millions of refugees and displaced persons who have been uprooted as a result of the aforementioned acts, and reaffirms their right to return to their homes voluntarily in safety and honcur;
- 5. Requests the Commission on Human Rights to continue to give special attention to the violation of human rights, especially the right to self-determination, resulting from foreign military intervention, aggression or occupation;
- 6. <u>Requests</u> the Secretary-General to report on this issue to the General Assembly at its forty-seventh session under the item entitled "Right of peoples to self-determination".







Distr. LIMITED

A/C.1/46/L.24 1 November 1991

ORIGINAL: ENGLISH

Forty-sixth session FIRST COMMITTEE Agenda item 63

ISRAELI NUCLEAR ARMAMENT

Algeria, Bahrain, Djibouti, Jordan, Kuwait, Lebanon, Libyan Arab Jamahiriya, Mauritania, Morocco, Oman, Qatar, Saudi Arabia, Somalia, Sudan, Syrian Arab Republic, Tunisia, United Arab Emirates and Yemen: draft resolution

The General Assembly,

Bearing in mind its previous resolutions on Israeli nuclear armament, the latest of which is resolution 45/63 of 4 December 1990,

Recalling its resolution 44/108 of 15 December 1989, in which, inter alia, it called for placing all nuclear facilities in the region under International Atomic Energy Agency safeguards, pending the establishment of a nuclear-weapon-free zone in the Middle East,

Recalling also that the Security Council in its resolution 487 (1981) of 19 June 1981 called upon Israel urgently to place all its nuclear facilities under the Agency safeguards.

Noting with grave concern Israel's persistent refusal to commit itself not to manufacture or acquire nuclear weapons, despite repeated calls by the General Assembly, the Security Council and the International Atomic Energy Agency,

Taking note of resolution GC (XXXV) RES/570 of 20 September 1991 adopted by the General Conference of the International Atomic Energy Agency,

Taking into consideration the final document on international security and disarmament adopted by the Ninth Conference of Heads of State or Government of Non-Aligned Countries, held at Belgrade from 4 to

A/C.1/46/L.24 English Page 2

7 September 1989, 1/ in paragraph 12 of which Israel was condemned for continuing to develop its nuclear military programmes and weapons of mass destruction and for its refusal to implement the resolutions of the United Nations and the International Atomic Energy Agency in this regard,

Deeply alarmed by the information with regard to the continuing production, development and acquisition of nuclear weapons by Israel and its testing of their delivery systems in the Mediterranean and elsewhere, thus threatening the peace and security of the region, and equally alarmed by reports of Israel's placing on alert its nuclear arsenal during conflicts in the Middle East.

Aware of the grave consequences that endanger international peace and security as a result of Israel's development and acquisition of nuclear weapons and Israel's collaboration with South Africa to develop nuclear weapons and their delivery systems,

<u>Deeply concerned</u> that Israel has not committed itself to refrain from attacking or threatening to attack safeguarded nuclear facilities,

- 1. Reiterates its condemnation of Israel's refusal to renounce any possession of nuclear weapons;
- 2. Reiterates also its condemnation of the cooperation between Israel and South Africa in the military nuclear field;
- 3. Expresses its deep concern regarding the information on Israel's continuing production, development and acquisition of nuclear weapons and testing of their delivery systems:
- 4. <u>Reaffirms</u> that I:rael should promptly apply Security Council resolution 487 (1981), in which the Council, <u>inter alia</u>, requested it to place all nuclear facilities under International Atomic Energy Agency safeguards and to refrain from attacking or threatening to attack nuclear facilities;
- 5. <u>Calls upon</u> all States and organizations that have not yet done so not to cooperate with or give assistance to Israel that could enhance its nuclear-weapons capability;
- 6. Requests the International Atomic Energy Agency to inform the Secretary-General of any steps Israel may take to place its nuclear facilities under Agency safeguards;
- 7. Requests the Secretary-General to follow closely Israeli nuclear activities and to report thereon to the General Assembly at its forty-seventh session;

^{1/} See A/44/551-S/20870, annex.

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8. <u>Decides</u> to include in the provisional agenda of its forty-seventh session the item entitled "Israeli nuclear armament".





Distr. LIMITED

A/C.1/46/L.32 1 November 1991

ORIGINAL: ENGLISH

Forty-sixth session FIRST COMMITTEE Agenda item 60 (1)

GENERAL AND COMPLETE DISARMAMENT: REGIONAL DISARMAMENT

Austria, Belgium, Cameroon, Canada, Cape Verde, Central
African Republic, Chile, Colombia, Costa Rica, Ecuador,
Egypt, Estonia, Germany, Ghana, Guinea-Bissau, Italy,
Latvia, Lesotho, Liberia, Lithuania, Madagascar, Mali,
Nepal, Netherlands, New Zealand, Norway, Pakistan, Papua
New Guinea, Peru, Poland, Samoa, Saudi Arabia, Senegal,
Somalia, Sudan, Suriname, Swaziland, Togo, Turkey, Ukraine,
United Kingdom of Great Britain and Northern Ireland,
United States of America, Uruguay and Venezuela:
draft resolution

Regional disarmament

The General Assembly,

Recalling its resolution 45/58 P of 4 December 1990 on regional disarmament.

<u>Relieving</u> that the efforts of the international community to move towards the ideal of general and complete disarmament are guided by the inherent human desire for genuine peace and security, the elimination of the danger of war and the release of economic, intellectual and other resources for peaceful pursuits,

Affirming the abiding commitment of all States to the purposes and principles enshrined in the Charter of the United Nations in the conduct of their international relations.

Noting that essential guidelines for progress towards general and complete disarmament were adopted at the tenth special session of the General Assembly, 1/

<u>Welcoming</u> the prospects of genuine progress in the field of disarmament engendered in recent years as a result of negotiations between the two super-Powers,

<u>Taking note</u> of the recent proposals for disarmament and nuclear non-proliferation at the regional and subregional levels,

Recognizing the importance of confidence-building measures for regional and international peace and security,

Convinced that endeavours by countries to promote regional disarmament, taking into account the specific characteristics of each region and in accordance with the principle of undiminished security at the lowest level of armaments, would enhance the security of smaller States and would thus contribute to international peace and security by reducing the risk of regional conflicts,

- 1. <u>Stresses</u> that sustained efforts are needed, within the framework of the Conference on Disarmament and under the umbrella of the United Nations, to make progress on the entire range of disarmament issues;
- 2. Affirms that global and regional approaches to disarmament complement each other and should therefore be pursued simultaneously to promote regional and international peace and security;
- 3. <u>Calls upon</u> States to conclude agreements, wherever possible, for nuclear non-proliferation, disarmament and confidence-building measures at regional and subregional levels;
- 4. <u>Welcomes</u> the initiatives towards disarmament, nuclear non-proliferation and security undertaken by some countries at the regional and subregional levels;
- 5. <u>Supports and encourages</u> efforts aimed at promoting confidence-building measures at regional and subregional levels in order to ease regional tensions and to further disarmament and nuclear non-proliferation measures at regional and subregional levels;
- 6. Decides to include in the provisional agenda of its forty-seventh session the item entitled "Regional disarmament".

^{1/} Resolution S-10/2.





Distr. LIMITED

A/C.2/46/L.42 11 November 1991

ORIGINAL: ENGLISH

Forty-sixth session SECOND COMMITTEE Agenda item 84 (b)

SPECIAL ECONOMIC AND DISASTER RELIEF ASSISTANCE: SPECIAL PROGRAMMES OF ECONOMIC ASSISTANCE

Afghanistan, Bangladesh, China, Cuba, Czechoslovakia, Djibouti, Egypt, Iran (Islamic Republic of), Jordan, Lebanon, Libyan Arab Jamahiriya, Mauritania, Peru, Philippines, Somalia, Syrian Arab Republic: draft resolution

Special assistance to Yemen

The General Assembly,

Recalling its resolutions 45/193 and 45/222 of 21 December 1990, Economic and Social Council resolution 1991/62 of 26 July 1991 and decisions 91/19 and 91/20 of 25 June 1991 of the Governing Council of the United Nations Development Programme, 1/

Noting the return of approximately one million Yemeni expatriates to their country as result of the situation between Iraq and Kuwait, in addition to the flows of tens of thousands of refugees and returnees from the Horn of Africa because of the recent developments in that region,

<u>Deeply concerned</u> at the grave economic and social consequences of the considerable flows of returnees, taking place at a time when Yemen is afflicted by stringent economic crises,

^{1/} See Official Records of the Economic and Social Council, 1991, Supplement No. 13 (E/1991/34), annex I.

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- 1. <u>Calls upon</u> States, United Nations organizations, governmental organizations, international non-governmental organizations and international financial institutions to extend their assistance to Yemen to enable that country to deal with the effects of the flows of refugees and returnees;
- Requests the Secretary-General to assist in mobilizing resources and to prepare a comprehensive programme to assist Yemen in finding a solution to the serious situation created by these flows;
- 3. Requests the Secretary-General to submit a report on the implementation of the present resolution to the General Assembly at its forty-seventh session.





Distr. LIMITED

A/C.2/46/L.46 12 November 1991

ORIGINAL: ENGLISH

Forty-sixth session SECOND COMMITTEE Agenda item 84 (b)

> SPECIAL ECONOMIC AND DISASTER RELIEF ASSISTANCE: SPECIAL PROGRAMMES OF ECONOMIC ASSISTANCE

Algeria, Argentina, Australia, Canada, Colombia, Czechoslovakia, Egypt, Guatemala, Iran (Islamic Republic of), Japan, Kuwait, Malaysia, Panama, Peru, Philippines, Poland, Romania, Singapore, Somalia, Spain, Uganda, Union of Soviet Socialist Republics, United Republic of Tanzania, Uruguay and Vanuatu: draft resolution

Emergency aid to the Philippines

The General Assembly,

Noting with concern the great loss of life and property caused by the most recent disasters in the Philippines, namely an earthquake, a volcanic eruption, typhoons, floods and a massive mudflow,

Noting further decision 91/22 of 25 June 1991 of the Governing Council of the United Nations Development Programme on emergency aid to the Philippines,

Acknowledging that the earnest efforts made by the Government of the Philippines to achieve economic growth and development have been hampered by those calamities,

- Commends the organs and organizations of the United Nations system for their prompt action in giving emergency aid to the Philippines:
- 2. Requests the Secretary-General, within his mandate, to further assist to the maximum extent possible the rehabilitation efforts of the Philippines;

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3. Requests all States and international organizations to extend further support to the Philippines in ways that would alleviate, for the duration of the emergency and the ensuing rehabilitation process, the economic and financial burden borne by the Philippine people.



Distr. LIMITED

A/C.2/46/L.45 13 November 1991

ORIGINAL: ENGLISH

Forty-sixth session SECOND COMMITTEE Agenda item 84 (b)

> SPECIAL ECONOMIC AND DISASTER RELIEF ASSISTANCE: SPECIAL PROGRAMMES OF ECONOMIC ASSISTANCE

Algeria, Bahrain, Bangladesh, Barbados, Cape Verde, Chile, Comoros, Djibouti, Ecuador, Egypt, France, Iran (Islamic Republic of), Italy, Jordan, Kuwait, Madagascar, Mauritania, Morocco, Nigeria, Pakistan, Peru, Philippines, Qatar, Saudi Arabia, Sierra Leone, Singapore, Somalia, Sri Lanka, Sudan, Syrian Arab Republic, Turkey, Uganda and Yemen; draft resolution

Emergency assistance for humanitarian relief and the economic and social rehabilitation of Somalia

The General Assembly,

Recalling its resolutions 43/206 of 20 December 1988, 44/178 of 19 December 1989 and 45/229 of 21 December 1990 and the resolutions of the Economic and Social Council on the subject,

Recalling also the appeal for urgent humanitarian assistance for Somalia and other countries in Africa made by the Secretary-General at the twenty-seventh ordinary session of the Assembly of Heads of State and Government of the Organization of African Unity, held at Abuja from 3 to 5 June 1991,

Noting with satisfaction the measures taken by the Secretary-General to mobilize international assistance to Somalia,

<u>Deeply concerned</u> at the massive displacement of the population in the affected regions of Somalia, the extensive damage and destruction of villages, towns and cities, the heavy damage inflicted by the civil conflict on the country's infrastructure and the widespread disruption of public facilities and services,

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Taking note of the report of the Secretary-General on emergency assistance to Somalia, 1/ and the statement made before the Second Committee of the General Assembly on 31 October 1991 by the Under-Secretary-General for Special Political Questions, Regional Cooperation, Decolonization and Trusteeship on the Special Emergency Programme for the Horn of Africa, 2/

<u>Deeply appreciative</u> of the humanitarian assistance rendered by a number of Member States to ameliorate the hardship and suffering of the affected population,

Noting that many areas and regions are safe and accessible enough to allow immediate and urgent humanitarian assistance to be provided to all of the affected population,

Noting with great satisfaction the humanitarian efforts being deployed by the various entities of the United Nations system and by national and international non-governmental organizations,

- 1. Expresses its gratitude to the Member States and the intergovernmental and non-governmental organizations that have responded to the appeals of the Secretary-General and others by extending emergency assistance to Somalia:
- 2. Expresses its appreciation to the Secretary-General for measures taken to mobilize emergency assistance to the affected population in Somalia;
- 3. Appeals to all States and relevant intergovernmental and non-governmental organizations to continue to extend emergency assistance to Somalia, taking into account the statement on the Special Emergency Programme for the Horn of Africa; 2/
- 4. Urges the pertinent specialized agencies and other organizations of the United Nations system, in particular the United Nations Development Programme, United Nations High Commissioner for Refugees, United Nations Children's Fund, World Health Organization, Food and Agriculture Organization of the United Nations, World Food Programme, United Nations Centre for Human Settlements and United Nations Environment Programme, to resume their assistance programmes in their respective fields of competence on the most urgent basis in order to alleviate the suffering of all the affected population in accessible areas;
- 5. Appeals to all parties concerned to engage in a national reconciliation process also with a view to facilitating the relief and rehabilitation efforts;

^{1/} A/46/457.

^{2/} See A/C.2/45/SE.26.

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- 6. <u>Calls upon</u> the Secretary-General to continue to mobilize international humanitarian assistance to Somalia:
- 7. Requests the Secretary-General, in view of the critical situation prevailing in Somalia, to take all necessary measures for the implementation of the present resolution, to apprise the Economic and Social Council at its regular session of 1992 of the progress made and to report to the General Assembly at its forty-seventh session.

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Distr. LIMITED

A/C.3/46/L.30 13 November 1991

ORIGINAL: ENGLISH

Forty-sixth session THIRD COMMITTEE Agenda item 97

> REPORT OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, QUESTIONS RELATING TO REFUGEES AND DISPLACED PERSONS AND HUMANITARIAN QUESTIONS

> Austria, Bahrain, Belgium, Canada, Central African Republic, Chad, Chile, China, Côte d'Ivcire, Denmark, Djibouti, Dominican Republic, Egypt, Ethiopia, France, Germany, Ghana, Greece, Guinea, Iceland, Italy, Jar.a, Kenya, Lesotho, Liberia, Luxembourg, Madagascar, Malaysia, Morocco, Netherlands, Norway, Philippines, Somalia, Sudan, Sweden, Turkey, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United States of America and Zambia: diaft resolution

Assistance to refugees, returnees and displaced persons in Africa

The General Assembly,

Recalling its resolution 45/139 of 14 December 1990 entitled "Emergency humanitarian assistance to Liberian refugees and displaced persons", as well as its resolutions 45/154 entitled "Assistance to refugees in Somalia", 45/156 entitled "Assistance to voluntary returnees and displaced persons in Chad", 45/157 entitled "Humanitarian assistance to refugees and displaced persons in Djibouti", 45/159 entitled "Assistance to refugees and displaced persons in Malawi", 45/160 entitled "Situation of refugees in the Sudan", 45/161 entitled "Assistance to refugees and returnees in Ethiopia", 45/171 entitled "Assistance to student refugees in southern Africa", all of 18 December 1990, and resolution 45/137 entitled "International Conference on the Plight of Refugees, Returnees and Displaced Persons in Southern Africa" of 14 December 1990,

Having considered the reports of the Secretary-General 1/ and the United Nations High Commissioner for Refugees, 2/

Bearing in mind that the affected countries are least developed countries,

<u>Convinced</u> of the necessity to strengthen the capacity within the United Nations system for the implementation and the overall coordination of relief programmes for refugees, returnees and displaced persons,

Welcoming the prospects for voluntary repatriation and durable solutions across the continent.

Recognizing the need for States of origin to create conditions conducive to voluntary repatriation,

Noting with appreciation the commitment of the countries concerned to do their utmost to facilitate the provision of assistance to the affected populations and to take the necessary measures in this regard,

Realizing the importance of assisting the host countries, in particular those countries which have been hosting refugees for a longer time, to remedy environmental deterioration and the negative impact on public services and the development process,

Recognizing the catalytic role the High Commissioner plays, together with the international community and development agencies in the promotion of humanitarian aid and development with a view to finding durable and lasting solutions for refugees, returnees and displaced persons,

<u>Deeply concerned</u> about the critical humanitarian situation in the Horn of Africa and other African countries, caused by drought, conflict and population movements.

<u>Welcoming</u> the establishment by the Secretary-General of an office for a Special Emergency Programme for the Horn of Africa and its efforts to coordinate needs assessment and to mobilize resources,

Taking into account the consolidated inter-agency appeal for the Special Emergency Programme for the Horn of Africa,

Bearing in mind the necessity to facilitate the work of humanitarian organizations in the Horn of Africa, in particular the supply of food, medicine and health care to refugees, returnees and displaced persons,

^{1/} A/46/371, A/46/428, A/46/429, A/46/430, A/46/431, A/46/432, A/46/433, A/46/434 and A/46/471.

^{2/} Official Records of the General Assembly, Forty-sixth Session, Supplement No. 12 and addendum (A/46/12 and Add.1).

<u>Deeply concerned</u> by the incessant inflow of externally displaced persons and refugees which has added considerably to the burden already being carried by Djibouti in respect of refugees in the country, and whose combined figure now stands at over 90,000,

Noting that according to the situation report No. 1 of 1 October 1991 issued by the office for the Special Emergency Programme for the Horn of Africa, in Djibouti, the ratio of refugees to nationals is nearing one to four, thereby posing a considerable burden on the country, in terms of security, a drain on economic resources and pressure on social services, given the alarming number of externally displaced persons and refugees and the size of the country and its population,

Bearing in mind also that the majority of externally displaced persons and refugees in Djibouti are concentrated in the country's main urban centres with all the implications that this may pose,

Recognizing the influxes of refugees and voluntary returnees and the presence of displaced persons in Ethiopia,

<u>Deeply concerned</u> about the massive presence of refugees, voluntary returnees and displaced persons in Ethiopia and the enormous burden this has placed on the country's infrastructure and meagre resources,

<u>Deeply concerned also</u> about the grave consequences this has entailed for Ethiopia's capability to grapple with the effects of the prolonged drought and rebuilding the country's economy,

Aware of the heavy burden placed on the Government of Ethiopia and of the need for immediate and adequate assistance to refugees, voluntary returnees, displaced persons and victims of natural disasters,

Aware of the burden placed on the Government of Kenya because of the recent influx of refugees from Somalia and Ethiopia,

Recognizing the efforts that have been made by the Government of Kenya with the assistance of the Office of the High Commissioner and other bilateral donors to deal with this emergency situation, and the need for further assistance to over 48,000 refugees still in Kenya,

<u>Deeply concerned</u> about the tragic impact which the civil war in Somalia has had on the lives of its population, affecting 4 to 5 million people who are either refugees in neighbouring countries or internally displaced, and are in need of urgent humanitarian assistance,

Melcoming the High Commissioner's initial repatriation plan and being aware that thousands of Somali refugees at present in other neighbouring countries and internally displaced persons who wish to return to their homes of origin require a planned and integrated international assistance programme designed to cover their basic needs,

Equally concerned about the plight of Ethiopian refugees remaining in Somalia who urgently need international assistance for their voluntary repatriation to their country of origin,

<u>Deeply convinced</u> that it is urgently necessary that humanitarian assistance to Somali refugees, returnees and displaced persons be mobilized and delivered without delay in view of the gravity of the situation,

Noting with appreciation that the Sudan is hosting, over an extended period of time, more than 780,000 refugees, and received an additional influx of nearly 100,000 Ethiopian refugees in May 1991, 3/ notwithstanding the consequent heavy burden shouldered by the people and the Government of the Sudan and in spite of the prevailing economic difficulties of the country,

Recognizing the efforts of the Government of the Sudan, the Government of Ethiopia and the Office of the High Commissioner for organizing the voluntary repatriation of the Ethiopian refugees despite the deterrent financial and logistical problems,

Emphasizing the need to help refugees by accomplishing the projects for refugee aid and development in refugee-affected areas of the Sudan in accordance with resolution 45/160,

Considering that the repatriation and reinsertion of returnees and relocation of displaced persons, aggravated by natural disasters, poses serious humanitarian, social and economic problems to the Government of Chad,

<u>Cognizant</u> of the appeal to Member States and intergovernmental and non-governmental organizations to continue to provide the necessary assistance to the Government of Chad to alleviate its problems and improve its abilities to implement the programme of repatriation, reinsertion and relocation of voluntary returnees and displaced persons,

Noting with appreciation the continuing mediatory efforts of the Economic Community of West African States to find a peaceful solution to the Liberian crisis and important decisions reached at the meeting held at Yamasukro, Côte d'Ivoire, on 29 October 1991, which could lead to a final settlement,

Bearing in mind the findings and recommendations contained in the report of the Secretary-General, particularly the need to continue emergency relief operations pending a comprehensive needs-assessment mission to all parts of Liberia which will result in a unified appeal and a concerted plan of action for the relief and rehabilitation of Liberia,

Recognizing the increasing number of voluntary returnees to Liberia and the enormous burden this has placed on the country's infrastructure and fragile economy,

^{3/} Report of the Secretary-General A/46/431.

<u>Concerned</u> that despite the efforts made to provide the necessary material and financial assistance for the Liberian refugees and relocation of displaced persons, the situation still remains precarious and has serious implications for the long-term development process of Liberia as well as those West African countries hosting Liberian refugees,

Recognizing the heavy burden placed on the people and Government of Malawi and the sacrifices they are making in caring for the refugees, given the country's limited social services and infrastructure, and the need for adequate international assistance to enable them to continue their efforts to provide assistance to the refugees,

<u>Gravely concerned</u> about the continuing serious social and economic impact of the massive presence of these refugees and displaced persons, as well as its far-reaching consequences for the country's long-term development process,

Bearing in mind the findings and recommendations of the Inter-Agency Mission to Malawi, particularly on the need to strengthen the country's socio-economic infrastructure in order to enable it to provide for the immediate humanitarian relief requirements of the refugees, as well as the long-term national development needs of the country,

Recognizing the need to view refugee-related development projects within local and national development plans,

Convinced also that there is an urgent need for the international community to extend maximum and concerted assistance to southern African countries sheltering refugees, returnees and displaced persons and also to highlight the plight of these persons,

Welcoming with appreciation that the High Commissioner has continued in 1990 and 1991 to organize and implement programmes for educational and other appropriate assistance for student refugees in the southern African region,

Expressing its appreciation to the Governments of Botswana, Lesotho, Mozambique, Swaziland, Zambia and Zimbabwe for the cooperation that they have extended to the United Nations High Commissioner for Refugees on matters concerning the welfare of student refugees,

- 1. <u>Takes note</u> of the reports of the Secretary-General <u>1</u>/ and the High Commissioner for Refugees; <u>2</u>/
- 2. Expresses its appreciation to the Secretary-General, the High Commissioner, donor countries and intergovernmental and non-governmental organizations for their assistance in mitigating the plight of the large number of refugees, returnees and displaced persons;
- 3. <u>Commends</u> the Governments concerned for providing assistance to refugees, returnees and displaced persons and their efforts in promoting voluntary repatriation and other measures taken in order to find appropriate and lasting solutions;

- 4. Expresses deep concern at the serious and far-reaching consequences of the massive presence of refugees and displaced persons in the countries concerned and the implications for their long-term socio-economic development;
- 5. Expresses the hope that additional resources will be made available for general refugee programmes to keep pace with refugee needs;
- 6. Appeals to Member States, international organizations and non-governmental organizations to provide adequate material, financial and technical assistance for relief and rehabilitation programmes for the large number of refugees, voluntary returnees and displaced persons and victims of natural disasters;
- 7. Calls upon the Secretary-General and the High Commissioner to continue their efforts to mobilize humanitarian assistance for the relief, repatriation, rehabilitation and resettlement of refugees, returnees and displaced persons;
- 8. Requests the Secretary-General to continue his efforts to mobilize adequate financial and material assistance for the full implementation of ongoing projects in rural and urban areas affected by the presence of refugees, returnees and displaced persons;
- 9. Also requests the High Commissioner to continue her efforts with the appropriate United Nations agencies and intergovernmental, governmental and non-governmental organizations in order to consolidate and increase essential services to refugees, returnees and displaced persons;
- 10. <u>Further requests</u> the Secretary-General to study and assess the environmental socio-economic impact of the prolonged presence of refugees in the host countries with a view to rehabilitating those areas;
- 11. Requests the Secretary-General to submit a comprehensive and consolidated report on all aspects of the present resolution to the General Assembly at its forty-seventh session, through the Economic and Social Council, on the implementation of the present resolution under the sub-item "Questions relating to refugees, returnees and displaced persons".



UNITED NATIONS





General Assembly

Distr. LIMITED

A/C.2/46/L.48 13 November 1991

ORIGINAL: ENGLISH

Forty-sixth session SECOND COMMITTEE Agenda item 84 (b)

SPECIAL ECONOMIC AND DISASTER RELIEF ASSISTANCE:
SPECIAL PROGRAMMES OF ECONOMIC ASSISTANCE

Bangladesh, Jordan, Somalia, Sudan and Uganda: draft resolution

Emergency assistance to the Sudan and Operation Lifeline Sudan

The General Assembly,

Recalling its resolutions 43/8 of 18 October 1988, 43/52 of 6 December 1988, 44/12 of 24 October 1989 and 45/226 of 21 December 1990, on assistance to the Sudan.

Moting with deep concern the continuing negative impact of persistent natural disasters and armed conflict in the Sudan, which have resulted in the destruction of the socio-economic infrastructure of that country and generated large numbers of displaced persons, and the expected serious consequences of the most recent drought - namely, crop failures and food shortages,

Recognizing that the Sudan continues to require, as a complement to its own efforts, strong and continued international solidarity and humanitarian support to meet the urgent requirements of relief, rehabilitation and reconstruction.

Noting that the food and non-food requirements of emergency assistance to the Sudan are spelt out in the Consolidated Inter-agency Appeal for the Special Emergency Programme for the Horn of Africa, issued in September 1991,

Also noting with regret that the other party to the conflict in the Sudan has continued to obstruct the conclusion of an agreement on Operation Lifeline Sudan, phase III, and the smooth flow of emergency relief, as agreed,

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- 1. Attaches importance to the established principles governing United Nations emergency programmes in conflict situations, including the principle that humanitarian assistance should be provided through agreed corridors of tranquillity;
- 2. Expresses its deep gratitude and appreciation to the States and intergovernmental and non-governmental organizations that are providing assistance to the Government and the people of the Sudan in their relief, rehabilitation and reconstruction efforts, in the context of the Sudan Emergency Operation and Operation Lifeline Sudan;
- 3. Expresses its full appreciation to the Secretary-General and the organizations of the United Nations system for effective resource mobilization, successful coordination and support for the Sudan Emergency Operation and Operation Lifeline Sudan;
- 4. Requests the Secretary-General, in close cooperation with the Government of the Sudan, to continue to coordinate the efforts of the United Nations system to help the Sudan in its emergency, rehabilitation and reconstruction programmes, to mobilize resources for the implementation of those programmes and to keep the international community informed of the needs of that country;
- 5. <u>Calls upon donor countries</u> to contribute generously to the relief and rehabilitation requirements of displaced persons;
- 6. Further calls upon donor countries to respond generously to the appeal made in the Consolidated Inter-agency Appeal for the Horn of Africa;
- 7. <u>Urges all parties</u> involved to offer all feasible assistance, including the movement of relief supplies and personnel, to guarantee maximum success of the Emergency Operation in all parts of the country;
- 8. Takes note with appreciation of the report of the Secretary-General on emergency assistance to the Sudan and Operation Lifelife Sudan, 1/ and requests him to continue to assess the progress of evolution of the emergency situation and to report to the General Assembly at its forty-seventh session, through the Economic and Social Council, on all matters connected with the implementation of emergency and relief operations in the Sudan and to offer briefings in the appropriate forums during the intervening period.





Assemblée générale

Distr. LIMITEE

A/C.1/46/L.24/Rev.1 13 novembre 1991 FRANCAIS ORIGINAL: ANGLAIS

Quarante-sixième session PREMIERE COMMISSION Point 63 de l'ordre du jour

ARMEMENT NUCLEAIRE D'ISRAEL

Algérie, Arabie saoudite, Bahreïn, Djibouti, Egypte, Emirats arabes unis, Jamahiriya arabe libyenne, Jordanie, Koweït, Liban, Maroc, Mauritanie, Oman, Oatar, République arabe syrienne, Somalie, Soudan, Tunisie et Yémen; projet de résolution révisé

L'Assemblée générale,

Ayant à l'esprit ses résolutions précédentes sur l'armement nucléaire israélien, dont la plus récente est la résolution 45/63 du 4 décembre 1990,

Rappelant sa résolution 44/108 du 15 décembre 1989, dans laquelle elle a notamment demandé qu'en attendant la création d'une zone exempte d'armes nucléaires au Moyen-Orient toutes les installations nucléaires de la région soient soumises aux garanties de l'Agence internationale de l'énergie atomique,

Rappelant aussi que, dans la résolution 487 (1981), le Conseil de sécurité a demandé à Israël de placer d'urgence coutes ses installations nucléaires sous les garanties de l'Agence,

Notant avec une vive préoccupation qu'Israël refuse toujours de s'engager à ne pas fabriquer ni acquérir d'armes nucléaires, en dépit des appels répétés de l'Assemblée générale, du Conseil de sécurité et de l'Agence internationale de l'énergie atomique,

<u>Prenant note</u> de la résolution GC(XXXV)/RES/570 adoptée le 20 septembre 1991 par la Conférence générale de l'Agence internationale de l'énergie atomique,

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Prenant en considération le document final sur la sécurité internationale et le désarmement, adopté par la neuvième Conférence des chefs d'Etat ou de gouvernement des pays non alignés tenue à Belgrade du 4 au 7 septembre 1989 1/, en particulier son paragraphe 12, qui concerne la capacité nucléaire d'Israël,

Profondément alarmée par les informations indiquant qu'Israël continue de fabriquer, de mettre au point et d'acquérir des armes nucléaires et qu'il continue de procéder à des essais de vecteurs en Méditerranée et ailleurs, menaçant ainsi la paix et la sécurité de la région, et également alarmée d'apprendre qu'Israël mettrait en état d'alerte son arsenal nucléaire lors des conflits au Moyen-Orient,

Sachant les graves et dangereuses conséquences qu'entraînent pour la paix et la sécurité internationales la mise au point et l'acquisition par Israël d'armes nucléaires et la collaboration d'Israël avec l'Afrique du Sud pour mettre au point leurs vecteurs,

<u>Profondément préoccupée</u> par le fait qu'Israël ne se soit pas engagé à s'abstenir d'attaquer ou de menacer d'attaquer des installations nucléaires soumises aux garanties,

- 1. <u>Déplore</u> le refus d'Israël de renoncer à posséder des armes nucléaires;
- 2. <u>Se déclare gravement préoccupée</u> par la coopération entre Israël et l'Afrique du Sud dans le domaine nucléaire militaire;
- 3. <u>Se déclare profondément préoccupée</u> par les informations selon lesquelles Israël continue de fabriquer, de mettre au point et d'acquérir des armes nucléaires ainsi que de procéder à des essais de vecteurs;
- 4. <u>Réaffirme</u> qu'Israël doit appliquer sans délai la résolution 487 (1981) dans laquelle le Conseil de sécurité lui demandé notamment de placer d'urgence toutes ses installations nucléaires sous les garanties de l'Agence internationale de l'énergie atomique et de s'abstenir d'attaquer ou de menacer d'attaquer des installations nucléaires;
- 5. <u>Engage</u> tous les Etats et toutes les organisations qui ne l'ont pas encore fait à s'abstenir de coopérer avec Israël et de lui prêter une assistance lui permettant de renforcer sa capacité d'armement nucléaire;
- 6. <u>Prie</u> l'Agence internationale de l'énergie atomique d'informer le Secrétaire général de toute mesure qu'Israël pourrait prendre aux fins de soumettre ses installations nucléaires aux garanties de l'Agence;

^{1/} Voir A/44/551-S/20870, annexe.

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- 7. <u>Prie</u> le Secrétaire général de suivre de près les activités nucléaires d'Israël et de lui en rendre compte lors de sa quarante-septième session;
- 8. <u>Décide</u> d'inscrire à l'ordre du jour provisoire de sa quarante-septième session la question intitulée "Armement nucléaire d'Israël".





Assemblée générale

Distr. LIMITEE

A/C.2/46/L.48/Rev.1 20 novembre 1991 FRANCAIS ORIGINAL : ANGLAIS

Quarante-sixième session DEUXIEME COMMISSION Point 84 b) de l'ordre du jour

ASSISTANCE ECONOMIQUE SPECIALE ET SECOURS EN CAS DE CATASTROPHE : PROGRAMMES SPECIA!X D'ASSISTANCE ECONOMIQUE

Bangladesh, Chine, Ethiopie, Jamahiriya arabe libyenne, Jordanie, Liban, Ouganda, Pakistan, Sri Lanka, Somalie, Soudan, Suriname et Yémen; projet de résolution

Aide d'urgence au Soudan et opération Survie au Soudan

L'Assemblée générale,

Rappelant ses résolutions 43/8 du 18 octobre 1988, 43/52 du 6 décembre 1988, 44/12 du 24 octobre 1989 et 45/226 du 21 décembre 1990, relatives à l'assistance au Soudan,

<u>Profondément préoccupée</u> par les effets persistants de catastrophes naturelles sucessives et du conflit armé au Soudan, notamment la destruction de l'infrastructure socio-économique du pays et le déplacement d'un grand nombre de personnes, ainsi que par les graves conséquences probables de la dernière période de sécheresse, à savoir de mauvaises récoltes et une pénurie alimentaire,

Estimant que pour soutenir les efforts du Soudan, la communauté internationale devrait continuer à lui manifester sa solidarité en lui fournissant un appui humanitaire substantiel afin de répondre aux besoins urgents de secours et d'aide au relèvement et à la reconstruction du pays,

Notant que les besoins alimentaires et autres au titre de l'aide d'urgence au Soudan sont décrits dans l'appel général interorganisations lancé en septembre 1991 pour le Programme spécial d'urgence en faveur de la corne de l'Afrique,

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- 1. Exprime sa profonde gratitude aux Etats et aux organisations intergouvernementales et non gouvernementales qui, au titre de l'Opération d'urgence et de l'opération Survie au Soudan, aident le Gouvernement et le peuple soudanais dans leurs activités de secours, de relèvement et de reconstruction;
- 2. Sait tout particulièrement gré au Secrétaire général et aux organismes des Nations Unies d'avoir appuyé et coordonné avec succès les activités entreprises au titre de l'Opération d'urgence et de l'opération Survie au Soudan et d'avoir réuni les ressources nécessaires à cette fin;
- 3. <u>Prie</u> le Secrétaire général de continuer, en étroite coopération avec le Gouvernement soudanais, à coordonner l'action des Nations Unies en vue d'aider le Soudan dans l'exécution de ses programmes de secours, de relèvement et de reconstruction, à obtenir des ressources à cette fin et à tenir la communauté internationale informée des besoins de ce pays;
- 4. <u>Invite</u> les pays donateurs à continuer de contribuer généreusement aux opérations de secours et de relèvement en faveur des personnes déplacées;
- 5. <u>Invite en outre</u> les pays donateurs à répondre généreusement aux demandes d'aide formulées dans l'appel général interorganisations pour le Programme spécial d'urgence en faveur de la corne de l'Afrique;
- 6. <u>Exhorte</u> toutes les parties concernées à fournir toute l'assistance possible, notamment en facilitant l'acheminement des secours et les mouvements du personnel qui les transporte, afin de garantir le plein succès de l'Opération d'urgence au Soudan dans l'ensemble du pays;
- 7. Prend acte en l'appréciant du rapport du Secrétaire général sur l'aide d'urgence au Soudan et l'opération Survie au Soudan 1/ et le prie de continuer à évaluer l'évolution de la situation d'urgence, de lui rendre compte à sa quarante-septième session, par l'intermédiaire du Conseil économique et social, de toutes les questions liées à la conduite des opérations de secours d'urgence au Soudan et de tenir, dans l'intervalle, des réunions d'information dans les instances appropriées.





Distr. LIMITED

A/C.2/46/L.71 22 November 1991

ORIGINAL: ENGLISH

Forty-sixth session SECOND COMMITTEE Agenda item 77 (e)

DEVELOPMENT AND INTERNATIONAL ECONOMIC COOPERATION: **ENVIRONMENT**

Algeria, Argentina, Bahrain, Bangladesh, Benin, Botswana, Bulgaria, Burkina Faso, Burundi, Cameroon, Cape Verde, Chile, Comoros, Congo, Costa Rica, Côte d'Ivoire, Cyprus, Czechoslovakia, Democratic People's Republic of Korea, Diibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Grenada, Guinea, Guinea-Bissau, Haiti, Honduras, India, Iran (Islamic Republic of), Kenya, Kuwait, Latvia, Lebanon, Lesotho, Madagascar, Maldives, Mauritania, Mongolia, Morocco, Namibia, Nepal, Nicaragua, Niger, Oman, Pakistan, Philippines, Poland, Qatar, Romania, Rwanda, Saudi Arabia, Senegal, Singapore, Solomon Islands, Somalia, Thailand, Togo, Tunisia, Turkey, United Arab Emirates, United Republic of Tanzania and Zaire: draft resolution

International cooperation to mitigate the environmental consequences on Kuwait and other countries in the region resulting from the situation between Iraq and Kuwait

The General Assembly,

Aware of the disastrous situation caused in Kuwait and neighbouring areas by the torching and destruction of hundreds of its oil wells and of the other environmental consequences on the atmosphere, land and marine life,

Having taken note of the report of the Secretary-General to the Security Council describing the nature and extent of the environmental damage suffered by Kuwait, 1/

^{1/} See S/22535.

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Having also taken note of decision 16/11 A of the Governing Council of the United Nations Environment Programme, 2/

<u>Profoundly concerned</u> at the deterioration in the environment as a consequence of the damage, especially the threat posed to the health and well-being of the people of Kuwait and the inhabitants of the region, and the adverse impact on the economic activities of Kuwait and other countries of the region, including the effects on livestock, agriculture and fishing, as well as on wildlife,

Acknowledging the fact that dealing with this catastrophe goes beyond the capabilities of the countries of the region and, in that regard, recognizing the need for strengthened international cooperation to deal with the issue,

Taking note with appreciation of the appointment by the Secretary-General of an Under-Secretary-General as his Personal Representative to coordinate United Nations efforts in this field,

Also taking note with appreciation of the efforts already undertaken by the Member States of the region, other States, the organizations of the United Nations system, and governmental and non-governmental organizations to study, mitigate and minimize the consequences of this environmental catastrophe,

Bearing in mind the effective work of the Regional Organization for the Protection of the Marine Environment and the inter-agency task force established especially for the environmental situation in the region under the leadership of the United Nations Environment Programme,

Expressing its special appreciation to the Governments which have extended financial support to the two trust funds established for the purpose by the Secretary-General of the International Maritime Organization and the Executive Director of the United Nations Environment Programme,

Emphasizing the need to continue to take comprehensive measures to study and mitigate these environmental consequences within a framework of sustained and coordinated international cooperation,

1. <u>Urgently appeals</u> to all States Members of the United Nations, intergovernmental and non-governmental organizations, scientific bodies and individuals to provide assistance for programmes aimed at the study and mitigation of the environmental deterioration of the region, and for strengthening the Regional Organization for the Protection of the Marine Environment and its role in coordinating the implementation of these programmes;

^{2/} See A/46/25, annex; to be issued subsequently as Official Records of the General Assembly, Forty sixth Session, Supplement No. 25 (A/46/25).

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- 2. <u>Calls upon</u> the organizations and programmes of the United Nations system, in particular the International Maritime Organization and the United Nations Environment Programme, to pursue their efforts to assess and counteract the short-term as well as long-term impact of the environmental deterioration of the region;
- 3. Requests the Secretary-General, through his Personal Representative, to render assistance to the members of the Regional Organization for the Protection of the Marine Environment in the formulation and implementation of a coordinated and consolidated programme of action comprising costed project profiles, to help identify and mobilize possible resources for the programme of action and, inter alia, for strengthening the environmental capacities of the members of the Regional Organization for the Protection of the Marine Environment to surmount the problem, and to allocate the minimum resources required to enable his Personal Representative to continue to help coordinate the activities of the United Nations system to that end;
- 4. <u>Also requests</u> the Secretary-General to submit to the General Assembly at its forty-seventh session, through the Economic and Social Council, a report on the implementation of the present resolution;
- 5. <u>Decides</u> to include in the provisional agenda of its forty-seventh session an item entitled "International cooperation to mitigate the environmental consequences on Kuwait and other countries in the region resulting from the situation between Iraq and Kuwait".





Assemblée générale

Distr. LIMITEE

A/C.2/46/L.45/Rev.1 27 novembre 1991 FRANCAIS ORIGINAL : ANGLAIS

Quarante-simième session DEUXIEME COMMISSION Point 84 b) de l'ordre du jour

ASSISTANCE ECONOMIQUE SPECIALE ET SECOURS EN CAS DE CATASTROPHE : PROGRAMMES SPECIAUX D'ASSISTANCE ECONOMIQUE

Algérie, Arabie saoudite, Bahreïn, Bangladesh, Barbade, Cap-Vert, Chili, Chine, Comores, Costa Rica, Djibouti, Egypte, Emirats arabes unis, Equateur, France, Iran (République islamique d'), Italie, Jordanie, Koweït, Madagascar, Maroc, Mauritanie, Nicaragua, Nigéria, Oman, Ouganda, Pakistan, Pérou, Philippines, Oatar, République arabe syrienne, Sierra Leone, Singapour, Somalie, Soudan, Sri Lanka, Togo, Turquie et Yémen; projet de résolution révisé

Assistance d'urgence pour des secours humanitaires et le relèvement économique et social de la Somalie

L'Assemblée générale.

Rappelant ses résolutions 43/206 du 20 décembre 1988, 44/178 du 19 décembre 1989 et 45/229 du 21 décembre 1990 ainsi que les résolutions et décisions du Conseil économique et social sur l'assistance d'urgence à la Somalie,

Rappelant également l'appel lancé par le Secrétaire général lors de la vingt-septième session ordinaire de la Conférence des chefs d'Etat et de gouvernement de l'Organisation de l'unité africaine, tenue à Abuja du 3 au 5 juin 1991, pour qu'une side humanitaire soit fournie d'urgence à la Somalie et à d'autres pays d'Afrique,

Notant avec satisfaction les mesures prises par le Secrétaire général pour qu'une assistance internationale soit accordée à la Somalie,

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Profondément préoccupée par les déplacements massifs de population dans les régions touchées de la Somalie, par l'etendue des dommages et des destructions causés aux villes et aux villages, par la désintégration de l'infrastructure du pays résultant de la guerre civile et par la perturbation généralisée des services publics,

Soulignant qu'il importe au plus haut point de mettre fin à la guerre civile dans les plus brefs délais grâce à la participation active de toutes les parties,

Prenant acte du rapport du Secrétaire général sur l'assistance d'urgence à la Somalie 1/ et de la déclaration faite le 31 octobre 1991 à la Deuxième Commission de l'Assemblée générale par le Secrétaire général adjoint aux questions politiques spéciales, à la coopération régionale, à la décolonisation et à la tutelle au sujet du programme spécial d'urgence pour la corne de l'Afrique 2/,

Appréciant vivement l'assistance humanitaire fournie par un certain nombre d'Etats Membres pour alléger le sort et les souffrances de la population touchée,

Notant que de nombreuses zones et régions sont sûres et suffisamment accessibles pour qu'une assistance humanitaire d'urgence puisse être fournie immédiatement à toute la population touchée,

Notant avec une vive satisfaction l'action humanitaire des divers organismes des Nations Unies et des organisations non gouvernementales nationales et internationales,

- 1. <u>Exprime sa gratitude</u> aux Etats Membres et aux organisations intergouvernementales et non gouvernementales qui ont répondu aux appels du Secrétaire général, entre autres, en fournissant une assistance d'urgence à la Somalie:
- 2. <u>Sait gré</u> au Secrétaire général des mesures qu'il a prises pour organiser une assistance d'urgence en faveur de la population touchée en Somalie;
- 3. <u>Fait appel</u> à tous les Etats et aux organisations intergouvernementales et non gouvernementales compétentes pour qu'ils continuent de fournir une assistance d'urgence à la Somalie, en tenant compte de la déclaration sur le Programme spécial d'urgence pour la corne de l'Afrique <u>2/;</u>

^{1/} A/46/457.

^{2/} Voir A/C.2/46/SR.26.

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- 4. <u>Demande instamment</u> aux institutions spécialisées et aux autres organismes concernés des Nations Unies, en particulier le Programme des Nations Unies pour le développement, le Haut Commissariat des Nations Unies pour les réfugiés, le Fonds des Nations Unies pour l'enfance, l'Organisation mondiale de la santé, l'Organisation des Nations Unies pour l'alimentation et l'agriculture, le Programme alimentaire mondial, le Centre des Nations Unies pour les établissements humains et le Programme des Nations Unies pour l'environnement, de reprendre de toute urgence leurs programmes d'assistance dans leurs domaines de compétence respectifs afin de soulager les souffrances de toute la population touchée dans les zones accessibles;
- 5. Fait appel à toutes les parties concernées pour qu'elles mettent fin aux hostilités et engagent un processus de réconciliation nationale qui permette de rétablir la paix, l'ordre et la stabilité et aussi de faciliter les activités de secours et de relèvement;
- 6. <u>Demande</u> au Secrétaire général de continuer à susciter une assistance humanitaire internationale en faveur de la Somalie;
- 7. Prie le Secrétaire général, compte tenu de la gravité de la situation en Somalie, de prendre toutes les mesures nécessaires pour assurer l'application de la présente résolution, d'informer le Conseil économique et social, à sa session ordinaire de 1992, des progrès réalisés et de faire rapport à ce sujet à l'Assemblée générale lors de sa quarante-septième session.





Assemblée générale

Distr. LIMITEE

A/C.2/46/L.48/Rev.2 3 décembre 1991 FRANCAIS ORIGINAL : ANGLAIS

Quarante-sixième session DEUXIEME COMMISSION Point 84 b) de l'ordre du jour

> ASSISTANCE ECONOMIQUE SPECIALE ET SECOURS EN CAS DE CATASTROPHE : PROGRAMMES SPECIAUX D'ASSISTANCE ECONOMIQUE

Banqladesh, Chine, Eqypte, Ethiopie, Iraq, Jamahiriya arabe libyenne, Jordanie, Liban, Mali, Oman, Ouganda, Pakistan, Sri Lanka, Somalie, Soudan, Suriname, Togo et Yémen : projet de résolution révisé

Aide d'urgence au Soudan et opération Survie au Soudan

L'Assemblée générale,

Rappelant ses résolutions 43/8 du 18 octobre 1988, 43/52 du 6 décembre 1988, 44/12 du 24 octobre 1989 et 45/226 du 21 décembre 1990, relatives à l'assistance au Soudan,

Profondément préoccupée par les effets persistants de catastrophes naturelles sucessives et du conflit armé au Soudan, notamment la destruction de l'infrastructure socio-économique du pays et le déplacement d'un grand nombre de personnes, ainsi que par les graves conséquences de la dernière période de sécheresse, à savoir de mauvaises récoltes et une pénurie alimentaire.

Estimant que pour soutenir les efforts du Soudan, la communauté internationale devrait continuer à lui manifester sa solidarité en lui fournissant un appui humanitaire substantiel afin de répondre aux besoins urgents de secours et d'aide au relèvement et à la reconstruction du pays,

Notant que les besoins alimentaires et autres au titre de l'aide d'urgence au Soudan sont décrits dans l'appel général interorganisations lancé en septembre 1991 pour le Programme spécial d'urgence en faveur de la corne de l'Afrique,

Est consciente qu'il importe d'assurer la liberté de mouvement du personnel qui apporte des secours à tous ceux qui en ont besoin;

A/C.2/46/L.48/Rev.2 Français Page 2

- 2. <u>Exprime sa profonde gratitude</u> aux Etats et aux organisations intergouvernementales et non gouvernementales qui, au titre de l'Opération d'urgence et de l'opération Survie au Soudan, aident le Gouvernement et le peuple soudanais dans leurs activités de secours, de relèvement et de reconstruction;
- 3. Sait tout particulièrement gré au Secrétaire général et aux organismes des Nations Unies d'avoir appuyé et coordonné avec succès les activités entreprises au titre de l'Opération d'urgence et de l'opération Survie au Soudan et d'avoir réuni les ressources nécessaires à cette fin;
- 4. <u>Prie</u> le Secrétaire général de continuer, en étroite coopération avec le Gouvernement soudanais, à coordonner l'action des Nations Unies en vue d'aider le Soudan dans l'exécution de ses programmes de secours, de relèvement et de reconstruction, à obtenir des ressources à cette fin et à tenir la communauté internationale informée des besoins de ce pays;
- 5. <u>Invite</u> la communauté internationale à continuer de contribuer généreusement aux opérations de secours et de relèvement en faveur des personnes déplacées;
- 6. <u>Invite aussi</u> la communauté internationale à répondre généreusement aux demandes d'aide formulées dans l'appel général interorganisations pour le Programme spécial d'urgence en faveur de la corne de l'Afrique;
- 7. <u>Exhorte</u> toutes les parties concernées à fournir toute l'assistance possible, notamment en facilitant l'acheminement des secours et les mouvements du personnel qui les transporte, afin de garantir le plein succès de l'Opération d'urgence au Soudan dans l'ensemble du pays;
- 8. Prend acte en l'appréciant du rapport du Secrétaire général sur l'aide d'urgence au Soudan et l'opération Survie au Soudan 1/ et prie le Secrétaire général de continuer à évaluer l'évolution de la situation d'urgence, de lui rendre compte à sa quarante-septième session, et d'informer le Conseil économique et social, de toutes les questions liées à la conduite des opérations de secours d'urgence au Soudan et de tenir, dans l'intervalle, des réunions d'information dans les instances appropriées.





General Assembly

Distr. LIMITED

A/46/L.29/Add.1 6 December 1991

ORIGINAL: ENGLISH

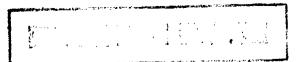
Forty-sixth session Agenda item 34

COOPERATION BETWEEN THE UNITED NATIONS AND THE LEAGUE OF ARAB STATES

Algeria, Bahrain, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libyan Arab Jamahiriya, Mauritania, Morocco, Oman, Qatar, Saudi Arabia, Sudan, Syrian Arab Republic, Tunisia, United Arab Emirates and Yemen; draft resolution

Addendum

Add Somalia to the list of sponsors of the draft resolution.





Assemblée générale

Distr. LIMITEE

A/C.2/46/L.71/Rev.1 9 décembre 1991 FRANCAIS ORIGINAL : ANGLAIS

Quarante-sixième session DEUXIEME COMMISSION Point 77 e) de l'ordre du jour

DEVELOPPEMENT ET COOPERATION ECONOMIQUE INTERNATIONALE : ENVIRONNEMENT

Algérie, Arabie saoudite, Argentine, Bahrein, Bangladesh, Bénin, Botswana, Bulgarie, Burkina Faso, Burundi, Cameroun, Cap-Vert, Chili, Chine, Chypre, Comores, Congo, Costa Rica, Côte d'Ivoire, Djibouti, Egypte, El Salvador, Emirats arabes unis, Equateur, Estonie, Grenade, Guinée, Guinée-Bissau, Haïti, Honduras, Iles Salomon, Inde, Iran (République islamique d'), Kenya, Koweït, Lesotho, Lettonie, Liban, Madagascar, Malaisie, Maldives, Mali, Maroc, Mauritanie, Mongolie, Namibie, Népal, Nicaragua, Niger, Oman, Pakistan, Philippines, Pologne, Qatar, République arabe syrienne, République de Corée, République dominicaine, République populaire démocratique de Corée, République-Unie de Tanzanie, Roumanie, Rwanda, Samoa, Sénégal, Singapour, Somalie, Sri Lanka, Tchécoslovaquie, Thailande, Togo, Tunisie, Turquie, Yougoslavie et Zaïre : projet de résolution révisé

Coopération internationale en vue d'atténuer les conséquences écologiques, pour le Koweït et les autres pays de la région, de la situation entre l'Irag et le Koweït

L'Assemblée générale,

Consciente de la situation catastrophique où se trouvent le Koweït et les régions avoisinantes du fait de l'incendie et de la destruction de centaines de puits de pétrole koweïtiens et des autres dommages écologiques ainsi causés à l'atmosphère ainsi qu'à la faune et à la flore terrestres et marines,

Ayant à l'esprit toutes les résolutions pertinentes du Conseil de sécurité, en particulier la section E de la résolution 687 (1991) du 3 avril 1991,

A/C.2/46/L.71/Rev.1 Français Page 2

Ayant pris mote du rapport présenté au Conseil de sécurité par le Secrétaire général, où sont exposées la nature et l'ampleur des dommages écologiques subis par le Koweït 1/,

Ayant pris note également de la décision 16/11 A du Conseil d'administration du Programme des Nations Unies pour l'environnement, en date du 31 mai 1991 2/,

Profondément préoccupée par la détérioration de l'environnement résultant des dommages subis, notamment par la menace qui pèse sur la santé et le bien-être de la population koweïtienne et des populations de la région, ainsi que par les conséquences indésirables pour les activités économiques du Koweït et d'autres pays de la région, notamment les effets sur le bétail, l'agriculture et la pêche, ainsi que sur la faune et la flore sauvages,

Sachant que les me ures à prendre à la suite de cette catastrophe dépassent les possibilités des pays de la région et, consciente à cet égard de la nécessité de renforcer la coopération internationale pour faire face à la situation.

Notant avec satisfaction que le Secrétaire général a désigné un secrétaire général adjoint comme son représentant personnel et l'a chargé de coordonner l'action des Nations Unies dans ce domaine,

Notant également avec satisfaction l'effort que font déjà les Etats Membres de la région, d'autres Etats, les organismes des Nations Unies et des organisations gouvernementales et non gouvernementales pour étudier, atténuer et limiter les conséquences de cette catastrophe écologique,

Ayant à l'esprit l'oeuvre efficace accomplie par l'Organisation régionale pour la protection du milieu marin et par l'Equipe spéciale interorganisations constituée spécialement, sous l'égide du Programme des Nations Unies pour l'environnement, aux fins d'étudier la situation écologique dans la région, ainsi que le plan d'action,

Remerciant spécialement les gouvernements qui ont versé des contributions financières aux deux fonds d'affectation spéciale créés à cette fin par le Secrétaire général de l'Organisation maritime internationale et le Directeur exécutif du Programme des Nations Unies pour l'environnement,

<u>Soulignant</u> qu'il faut continuer à agir dans tous les domaines pour étudier et atténuer ces conséquences écologiques, dans le cadre d'une coopération internationale soutenue et coordonnée,

^{1/} Voir S/22535.

^{2/} Voir A/46/25, annexe; le rapport sera publié en tant que <u>Supplément No 25</u> des <u>Pocuments officiels de l'Assemblée générale, quarante-sixième</u> session (A/46/25).

A/C.2/46/L.71/Rev.1 Français Page 3

- 1. <u>Demande instamment</u> à tous les Etats Membres de l'Organisation des Nations Unies, aux organisations intergouvernementales et non gouvernementales, aux institutions scientifiques et aux particuliers de fournir une aide pour soutenir les programmes visant à étudier et atténuer la dégradation écologique dans la région, et pour renforcer l'Organisation régionale pour la protection du milieu marin et sa capacité de coordonner l'exécution de ces programmes;
- 2. <u>Demande</u> aux organismes et programmes des Nations Unies, notamment à l'Organisation maritime internationale et au Programme des Nations Unies pour l'environnement, de poursuivre leurs efforts pour évaluer et neutraliser les répercussions, à court et à long terme, de la dégradation écologique de la région;
- 3. Prie le Secrétaire général, par l'intermédiaire de son représentant personnel, de prêter assistance aux membres de l'Organisation régionale pour la protection du milieu marin dans l'élaboration et l'exécution d'un programme d'action coordonné et concerté comportant des aperçus de projets chiffrés, d'aider à identifier toutes les ressources qui pourraient être mobilisées pour ce programme d'action, en particulier afin de renforcer les moyens écologiques dont disposent les membres de l'Organisation régionale pour surmonter ce problème, et d'allouer, dans les limites des ressources disponibles, les ressources indispensables pour que son représentant personnel puisse continuer à aider à coordonner à cette fin les activités des organismes des Nations Unies:
- 4. <u>Prie également</u> le Secrétaire général de lui présenter à sa quarante-septième session, par l'intermédiaire du Conseil économique et social, un rapport sur l'application de la présente résolution;
- 5. <u>Décide</u> d'inscrire à l'ordre du jour provisoire de sa quarante-septième session une question subsidiaire intitulée "Coopération internationale en vue d'atténuer les conséquences écologiques, pour le Koweït et d'autres pays de la région, de la situation entre l'Iraq et le Koweït", au titre de la question intitulée "Développement et coopération économique internationale".





General Assembly

Distr. LIMITED

A/C.2/46/L.120 10 December 1991

ORIGINAL: ENGLISH

Forty-sixth session SECOND COMMITTEE Agenda item 12

REPORT OF THE ECONOMIC AND SOCIAL COUNCIL

Algeria, Bahrain, Egypt, Iraq, Jordan, Lebanon, Libyan Arab Jamahiriya, Mauritania, Morocco, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, Syrian Arab Republic, Tunisia, United Arab Emirates, Viet Nam, Yemen and Zambia; draft resolution

Adverse economic effects of Israeli settlements in the occupied Palestinian territory, including Jerusalem, and other Arab territories occupied since 1967

The General Assembly,

<u>Guided</u> by the principles of the Charter of the United Nations and affirming the inadmissibility of the acquisition of territory by force, and Security Council resolutions 242 (1967) of 22 November 1967 and 497 (1981) of 17 December 1981.

Recalling Security Council resolution 465 (1980) of 1 March 1980, General Assembly resolution 45/74 of 11 December 1990 and the other relevant resolutions affirming the applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, 1/to the occupied Palestinian territory, including Jerusalem, and other Arab territories occupied by Israel since 1967,

Expressing its concern at the ongoing establishment by Israel, the occupying Power, of settlements in the occupied Palestinian territory and other Arab territories occupied since 1967, and the settlement of new immigrants therein,

^{1/} United Nations, Treaty Series, vol. 75, No. 973.

A/C.2/46/L.120 English Page 2

- 1. Takes note of the report of the Secretary-General; 2/
- 2. <u>Deplores</u> the establishment of settlements by Israel in the Palestinian territory, including Jerusalem, and the other Arab territories occupied since 1967, and regards those practices as unlawful and therefore without any legal effect;
- 3. Recognizes that the continuing establishment of settlements and their ongoing enlargement in the Palestinian territory and the other Arab territories occupied by Israel since 1967 and the settlement of new immigrants have adverse consequences for the economic and social development of the Arab population of these territories;
- 4. Strongly deplores Israel's practices in the occupied Palestinian territory and other Arab territories occupied since 1967, in particular its extensive confiscation of land, its diversion of water resources, its depletion of the natural and economic resources of the occupied territories and its displacement and deportation of the population of those territories;
- 5. Reaffirms the inalienable right of the Palestinian people and the population of the Syrian Golan to their natural and economic resources, and regards any infringement thereof as being without any legal validity;
- 6. Requests the Secretary-General to submit a report on the economic and social consequences of the establishment of settlements by Israel in the Palestinian territory, including Jerusalem, and the Syrian Golan to the General Assembly at its forty-seventh session through the Economic and Social Council.

Annex 78 United Nations General Assembly draft resolutions sponsored by Somalia, 1992





General Assembly

Distr. LIMITED

A/46/L.66/Add.1 2 March 1992

ORIGINAL: ENGLISH

Forty-sixth session Agenda item 20

ADMISSION OF NEW MEMBERS TO THE UNITED NATIONS

Albania, Algeria, Australia, Austria, Bahrain, Barbados, Belarus, Belgium, Belize, Brazil, Canada, Chile, China, Colombia, Comoros, Costa Rica, Cyprus, Czechoslovakia, Denmark, El Salvador, Finland, France, Gabon, Germany, Greece, Guatemala, Honduras, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kenya, Lao People's Democratic Republic, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Malta, Mauritania, Mexico, Mongolia, Morocco, Nepal, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Samoa, Saudi Arabia, Senegal, Sierra Leone, Spain, Sudan, Suriname, Sweden, Tunisia, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Vanuatu, Venezuela and Yemen: draft resolution

Admission of the Republic of San Marino to membership in the United Nations

Addendum

Add the following countries to the list of sponsors of the draft resolution

Afghanistan, Bahamas, Bangladesh, Burundi, Cape Verde, Congo, Democratic People's Republic of Korea, Djibouti, Ecuador, Fiji, Guinea-Bissau, Kuwait, Madagascar, Maldives, Marshall Islands, Micronesia (Federated States of), Oman, Philippines, Qatar, Sao Tome and Principe, Somalia, Thailand, Uruguay and Yugoslavia

92-09621 4174Z (E) 030392





General Assembly

Distr. LIMITED

A/46/L.71 21 May 1992

ORIGINAL: ENGLISH

/ . . .

Forty-sixth session • Agenda item 20

ADMISSION OF NEW MEMBERS TO THE UNITED NATIONS

Albania, Algeria, Australia, Austria, Bahamas, Bahrain, Bangladesh, Belarus, Belgium, Brazil, Bulgaria, Canada, Cape Verde, Chile, China, Costa Rica, Czechoslovakia, Democratic People's Republic of Korea, Denmark, Djibuuti, Dominican Republic, Ecuador, Egypt, Estonia, Fiji, Finland, France, Germany, Greece, Guatemala, Guinea, Honduras, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Japan, Jordan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malaysia, Malta, New Zealand, Nicaragua, Norway, Omau, Pakistan, Poland, Portugal, Romania, Russian Federation, Saudi Arabia, Senegal, Somalia, Spain, Sudan, Suriname, Sweden, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay and Yemen; draft resolution

Admission of the Republic of Slovenia to membership in the United Nations

The General Assembly,

<u>Having received</u> the recommendation of the Security Council of 18 May 1992 that the Republic of Slovenia should be admitted to membership in the United Nations, $\underline{1}$ /

1/ A/46/920.

A/46/L.71 English Page 2

Having considered the application for membership of the Republic of Slovenia, 2/

Decides to admit the Republic of Slovenia to membership in the United Nations.

^{2/} A/46/913-5/23885.







General Assembly

Distr. LIMITED

A/46/L.73 21 May 1992

ORIGINAL: ENGLISH

Forty-sixth session Agenda item 20

ADMISSION OF NEW MEMBERS TO THE UNITED NATIONS

Albania, Algeria, Australia, Austria, Bahrain, Bangladesh, Belarus, Belgium, Bulgaria, Canada, Cape Verde, Chad, Comoros, Costa Rica, Czechoslovakia, Democratic Feople's Republic of Korea, Denmark, Diibouti, Dominican Republic, Egypt, Fiji, Finland, France, Germany, Greece, Guatemala, Guinea, Honduras, Hungary, Iceland, India, Indonesia, Iran (Islamic Republic of), Ireland, Israel, Italy, Jordan, Kuwait, Latvia, Liechtenstein, Luxembourg, Malaysia, Malta, Morocco, New Zealand, Nicaragua, Norway, Oman, Pakistan, Poland, Portugal, Qatar, Romania, Russian Federation, Saudi Arabia, Senegal, Somalia, Spain, Sudan, Suriname, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay and Yemen; draft resolution

Admission of the Republic of Bosnia and Herzegovina to membership in the United Nations

The General Assembly,

Having received the recommendation of the Security Council of 20 May 1992 that the Republic of Bosnia and Herzegovina should be admitted to membership in the United Nations, 1/

^{1/} A/46/922.

A/46/L.73 English Page 2

Having considered the application for membership of the Republic of Bosnia and Herzegovina, 2/

<u>Dacides</u> to admit the Republic of Bosnia and Herzegovina to membership in the United Nations.

^{2/} A/46/921-S/23971,

UNITED NATIONS





General Assembly

Distr. LIMITED

A/46/L.74 21 May 1992

ORIGINAL: ENGLISH

Forty-sixth session Agenda item 20

ADMISSION OF NEW MEMBERS TO THE UNITED NATIONS

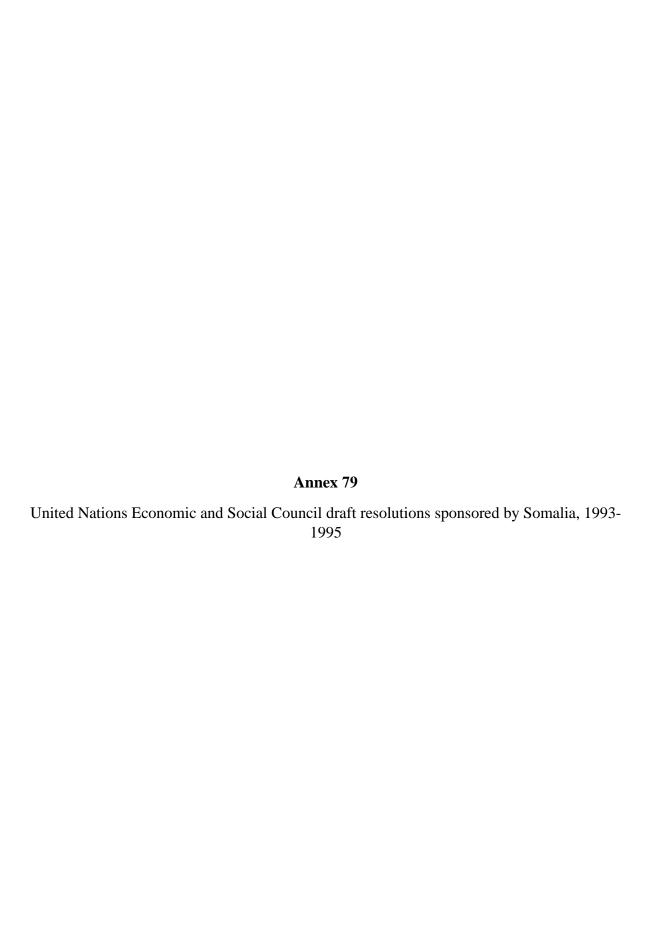
Albania, Algeria, Australia, Austria, Bahamas, Bangladesh, Belarus, Belgium, Brazil, Bulgaria, Canada, Cape Verde, Chile, China, Costa Rica, Czechoslovakia, Democratic People's Republic of Korea, Denmark, Djibouti, Dominican Republic, Fiji, Finland, France, Germany, Greece, Guatemala, Guinea, Honduras, Hungary, Iceland, India, Indonesia, Ireland, Is:ael, Italy, Japan, Jordan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malaysia, Melta, New Zealand, Nicaragua, Norway, Oman, Pakistan, Poland, Portugal, Romania, Russian Federation, Saudi Arabia, Senegal, Somalia, Spain, Sudan, Suriname, Sweden, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay and Yemen:

Admission of the Republic of Croatia to membership in the United Nations

The General Assembly,

<u>Having received</u> the recommendation of the Security Council of 18 May 1992 that the Republic of Croatia should be admitted to membership in the United Nations, 1/

1/ A/46/919.



Distr. LIMITED

E/CN.4/1993/L.2 12 February 1993

Original: ARABIC/ENGLISH

COMMISSION ON HUMAN RIGHTS Forty-ninth session Agenda item 4

QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE

Afghanistan*, Algeria*, Bahrain*, Bangladesh, Cuba, India, Indonesia, Iran (Islamic Republic of), Iraq*, Jordan*, Kuwait*, Lebanon*, Libyan Arab Jamahiriya, Malaysia, Mauritania, Morocco*, Oman*, Pakistan, Qatar*, Saudi Arabia*, Senegal*, Somalia*, Sudan, Syrian Arab Republic, Tunisia, United Arab Emirates*

and Yemen*: draft resolution

1993/... Human Rights in the occupied Syrian Golan

The Commission on Human Rights,

<u>Deeply concerned</u> at the suffering of the population of the Syrian and other Arab territories occupied by Israel since 1967 and the continued Israeli military occupation, and that the human rights of the population continue to be violated,

Recalling Security Council resolution 497 (1981) of 17 December 1981, in which the Council, <u>inter alia</u>, decided that the Israeli decision to impose its laws, jurisdiction and administration in the occupied Syrian Golan was null and void and without international legal effect, and demanded that Israel should rescind forthwith its decision.

Recalling General Assembly resolutions 36/226 B of 17 December 1981, ES-9/1 of 5 February 1982, 37/88 E of 10 December 1982, 38/79 F of 15 December 1983, 39/95 F of 14 December 1984, 40/161 F of 16 December 1985,

^{*} In accordance with rule 69, paragraph 3, of the rules of procedure of the functional commissions of the Economic and Social Council.

A/CN.4/1993/L.2 page 2

41/63 F of 3 December 1986, 42/160 F of 8 December 1987, 43/21 of 3 November 1988, 43/58 F of 6 December 1988, 44/2 of 6 October 1989, 45/74 F of 11 December 1990, 46/47 F of 9 December 1991 and 47/70 F of 14 December 1992,

<u>Recalling also</u> General Assembly resolution 3414 (XXX) of 5 December 1975 and other relevant resolutions in which the Assembly, <u>inter alia</u>, demanded the immediate, unconditional and total withdrawal of Israel from the Arab territories occupied since 1967,

Recalling further General Assembly resolution 3314 (XXIX) of 14 December 1974, in which it defined an act of aggression,

Reaffirming once more the illegality of Israel's decision of 14 December 1981 to impose its laws, jurisdiction and administration on the occupied Syrian Golan, which has resulted in the effective annexation of that territory,

Reafrirming that the acquisition of territory by force is inadmissible under the principles of international law and under the Charter of the United Nations and the relevant resolutions of the Security Council and the General Assembly, and that all territories thus occupied by Israel must be returned,

Taking note with deep concern of the report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories (A/47/509) and, in this connection, deploring Israel's constant refusal to cooperate with and to receive the Special Committee,

Expressing its grave alarm, after considering the above-mentioned report of the Special Committee, over Israel's flagrant and persistent violations of human rights in the Syrian and other Arab territories occupied since 1967, despite the resolutions of the Security Council and the General Assembly which repeatedly called upon Israel to put an end to such occupation,

<u>Reaffirming</u> its previous relevant resolutions, the most recent being resolution 1992/1 of 14 February 1992,

<u>Guided by</u> the relevant provisions of the Charter of the United Nations and the Universal Declaration of Human Rights and with particular reference to the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and the relevant provisions of The Hague Conventions of 1899 and 1907,

1. <u>Strongly condemns</u> Israel, the occupying Power, for its refusal to comply with the relevant resolutions of the General Assembly and the Security Council, particularly resolution 497 (1981), in which the Council, <u>inter alia</u>, decided that the Israeli decision to impose its laws, jurisdiction and administration on the occupied Syrian Golan was null and void and without international legal effect, and demanded that Israel, the occupying Power, should rescind forthwith its decision;

- 2. <u>Condemns</u> the persistence of Israel in changing the physical character, demographic composition, institutional structure and legal status of the occupied Syrian Golan, and emphasizes that the displaced persons of the population of the occupied Syrian Golan must be allowed to return to their homes and to recover their properties;
- 3. <u>Determines</u> that all legislative and administrative measures and actions taken or to be taken by Israel, the occupying Power, that purport to alter the character and legal status of the Syrian Golan are null and void, constitute a flagrant violation of international law and of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and have no legal effect;
- 4. <u>Strongly condemns</u> Israel for its attempt to impose forcibly Israeli citzenship and Israeli identify cards of the Syrian citizens in the occupied Syrian Golan and for its practices of annexaiton, establishment of settlements, confiscation of lands and diversion of water resources and imposing a boycott on their agricultural products; and calls upon Israel to desist from its settlement designs and policies aimed against academic institutions with the goal of distorting the historical facts and serving the objectives of occupation, and to desist from its repressive measures against the population of the occupied Syrian Golan;
- 5. <u>Calls once again upon</u> Member States not to recognize any of the legislative or administrative measures and actions referred to in paragraph 4 of the present resolution;
- 6. Requests the Secretary-General to bring the present resolution to the attention of all Governments, the competent United Nations organs, the specialized agencies, regional intergovernmental organizations and international humanitarian organizations and to give it the widest possible publicity, and to report to the Commission on Human Rights at its fiftieth session;
- 7. <u>Decides</u> to include in the provisional agenda of its fiftieth session, as a matter of high priority, the item entitled "Question of the violation of human rights in the occupied Arab territories, including Palestine".

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Distr. LIMITED

E/CN.4/1993/L.2 12 February 1993

Original: ARABIC/ENGLISH

COMMISSION ON HUMAN RIGHTS Forty-ninth session Agenda item 4

QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE

Afghanistan*, Algeria*, Bahrain*, Bangladesh, Cuba, India, Indonesia, Iran (Islamic Republic of), Iraq*, Jordan*, Kuwait*, Lebanon*, Libyan Arab Jamahiriya, Malaysia, Mauritania, Morocco*, Oman*, Pakistan, Qatar*, Saudi Arabia*, Senegal*, Somalia*, Sudan, Syrian Arab Republic, Tunisia, United Arab Emirates*

and Yemen*: draft resolution

1993/... Human Rights in the occupied Syrian Golan

The Commission on Human Rights,

<u>Deeply concerned</u> at the suffering of the population of the Syrian and other Arab territories occupied by Israel since 1967 and the continued Israeli military occupation, and that the human rights of the population continue to be violated,

Recalling Security Council resolution 497 (1981) of 17 December 1981, in which the Council, <u>inter alia</u>, decided that the Israeli decision to impose its laws, jurisdiction and administration in the occupied Syrian Golan was null and void and without international legal effect, and demanded that Israel should rescind forthwith its decision.

Recalling General Assembly resolutions 36/226 B of 17 December 1981, ES-9/1 of 5 February 1982, 37/88 E of 10 December 1982, 38/79 F of 15 December 1983, 39/95 F of 14 December 1984, 40/161 F of 16 December 1985,

^{*} In accordance with rule 69, paragraph 3, of the rules of procedure of the functional commissions of the Economic and Social Council.

A/CN.4/1993/L.2 page 2

41/63 F of 3 December 1986, 42/160 F of 8 December 1987, 43/21 of 3 November 1988, 43/58 F of 6 December 1988, 44/2 of 6 October 1989, 45/74 F of 11 December 1990, 46/47 F of 9 December 1991 and 47/70 F of 14 December 1992,

<u>Recalling also</u> General Assembly resolution 3414 (XXX) of 5 December 1975 and other relevant resolutions in which the Assembly, <u>inter alia</u>, demanded the immediate, unconditional and total withdrawal of Israel from the Arab territories occupied since 1967,

Recalling further General Assembly resolution 3314 (XXIX) of 14 December 1974, in which it defined an act of aggression,

Reaffirming once more the illegality of Israel's decision of 14 December 1981 to impose its laws, jurisdiction and administration on the occupied Syrian Golan, which has resulted in the effective annexation of that territory,

Reafrirming that the acquisition of territory by force is inadmissible under the principles of international law and under the Charter of the United Nations and the relevant resolutions of the Security Council and the General Assembly, and that all territories thus occupied by Israel must be returned,

Taking note with deep concern of the report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories (A/47/509) and, in this connection, deploring Israel's constant refusal to cooperate with and to receive the Special Committee,

Expressing its grave alarm, after considering the above-mentioned report of the Special Committee, over Israel's flagrant and persistent violations of human rights in the Syrian and other Arab territories occupied since 1967, despite the resolutions of the Security Council and the General Assembly which repeatedly called upon Israel to put an end to such occupation,

<u>Reaffirming</u> its previous relevant resolutions, the most recent being resolution 1992/1 of 14 February 1992,

<u>Guided by</u> the relevant provisions of the Charter of the United Nations and the Universal Declaration of Human Rights and with particular reference to the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and the relevant provisions of The Hague Conventions of 1899 and 1907,

1. <u>Strongly condemns</u> Israel, the occupying Power, for its refusal to comply with the relevant resolutions of the General Assembly and the Security Council, particularly resolution 497 (1981), in which the Council, <u>inter alia</u>, decided that the Israeli decision to impose its laws, jurisdiction and administration on the occupied Syrian Golan was null and void and without international legal effect, and demanded that Israel, the occupying Power, should rescind forthwith its decision;

- 2. <u>Condemns</u> the persistence of Israel in changing the physical character, demographic composition, institutional structure and legal status of the occupied Syrian Golan, and emphasizes that the displaced persons of the population of the occupied Syrian Golan must be allowed to return to their homes and to recover their properties;
- 3. <u>Determines</u> that all legislative and administrative measures and actions taken or to be taken by Israel, the occupying Power, that purport to alter the character and legal status of the Syrian Golan are null and void, constitute a flagrant violation of international law and of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and have no legal effect;
- 4. <u>Strongly condemns</u> Israel for its attempt to impose forcibly Israeli citzenship and Israeli identify cards of the Syrian citizens in the occupied Syrian Golan and for its practices of annexaiton, establishment of settlements, confiscation of lands and diversion of water resources and imposing a boycott on their agricultural products; and calls upon Israel to desist from its settlement designs and policies aimed against academic institutions with the goal of distorting the historical facts and serving the objectives of occupation, and to desist from its repressive measures against the population of the occupied Syrian Golan;
- 5. <u>Calls once again upon</u> Member States not to recognize any of the legislative or administrative measures and actions referred to in paragraph 4 of the present resolution;
- 6. Requests the Secretary-General to bring the present resolution to the attention of all Governments, the competent United Nations organs, the specialized agencies, regional intergovernmental organizations and international humanitarian organizations and to give it the widest possible publicity, and to report to the Commission on Human Rights at its fiftieth session;
- 7. <u>Decides</u> to include in the provisional agenda of its fiftieth session, as a matter of high priority, the item entitled "Question of the violation of human rights in the occupied Arab territories, including Palestine".

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Distr.
GENERAL

E/CN.4/1993/L.3 15 February 1993

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS Forty-ninth session Agenda item 27

SITUATION OF THE HUMAN RIGHTS IN THE TERRITORY OF THE FORMER YUGOSLAVIA

Afghanistan*, Albania*, Bahrain*, Bosnia and Herzegovina*, Indonesia, Iran (Islamic Republic of), Jordan*, Kuwait*, Malaysia, Oman*, Pakistan, Qatar*, Saudi Arabia*, Senegal*, Slovenia*, Somalia*, Sudan, Turkey*, United Arab Emirates* and Yemen*: draft resolution

Abuse and rape of women and children in the territory of the former Yugoslavia

The Commission on Human Rights,

<u>In conformity</u> with the Charter of the United Nations, international law and all the relevant human rights instruments, in particular the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and international humanitarian law, in particular the Geneva Conventions of 12 August 1949, and the Additional Protocols thereto of 1977 and General Assembly resolution 3074 (XXVIII) of 3 December 1973,

^{*} In accordance with rule 69, paragraph 3, of the rules of procedure of the functional commissions of the Economic and Social Council.

Appalled at the recurring and substantiated reports of widespread abuse and rape of women and children, in particular their systematic use by Serbian forces against Muslim women and children in the Republic of Bosnia and Herzegovina,

<u>Convinced</u> that these heinous practices constitute a deliberate weapon of war in fulfilling the Serbian policy of ethnic cleansing which, as stated in General Assembly resolution 47/121 of 17 December 1992, is a form of genocide,

Recalling the relevant resolutions of the Security Council and the General Assembly which, <u>inter alia</u>, condemned the savage and abhorrent practice of rape,

- 1. <u>Condemns in the strongest possible terms</u> the repugnant practices of abuse and rape of women and children in the territory of the former Yugoslavia, and especially their use by the Serbian forces as a weapon of war against Muslim women and children as an integral part of the policy of ethnic cleansing in the Republic of Bosnia and Herzegovina;
- 2. <u>Appeals</u> to all Member States and United Nations bodies to provide the victims with all necessary assistance for their physical and mental rehabilitation;
- 3. <u>Urges</u> all States Members of the United Nations to take all necessary measures, as provided for in the Charter of the United Nations, aimed at putting an end to these despicable practices;
- 4. <u>Demands</u> that, in accordance with international law and bearing in mind the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide, that the States Members of the United Nations individually and collectively bring to justice all those individuals involved directly or indirectly in these outrageous crimes;
- 5. Requests the Secretary-General to submit a report on the implementation of the present resolution to the members of the Commission on Human Rights not later than 30 June 1993.

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Distr. LIMITED

E/CN.4/1993/L.90 5 March 1993

ENGLISH

Original: ARABIC

COMMISSION ON HUMAN RIGHTS Forty-ninth session Agenda item 12

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS
IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND
OTHER DEPENDENT COUNTRIES AND TERRITORIES

Afghanistan*, Algeria*, Bahrain*, Bangalesh, Burundi, Cuba, India, Indonesia, Iraq*, Jordan*, Kuwait*, Libyan Arab Jamahiriya, Malaysia, Mauritania, Morocco*, Oman*, Pakistan, Qatar*, Saudi Arabia*, Somalia, Sudan, Syrian Arab Republic, Tunisia, United Arab Emirates*, Yemen*, and Zambia: draft resolution

The human rights situation in southern Lebanon The Commission on Human Rights,

Gravely concerned at the ongoing practices of the Israeli occupation forces in southern Lebanon, which constitute a violation of the principles of international law pertaining to the protection of human rights, and particularly the Universal Declaration of Human Rights, in addition to their flagrant violation of the relevant provisions of international humanitarian law as set forth in the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 13 August 1949 and the Fourth Hague Convention of 1907,

^{*} In accordance with rule 69, paragraph 3, of the rules of procedure of the functional commissions of the Economic and Social Council.

Deeply regretting Israel's failure to implement Security Council resolutions 425 (1978) of 19 March 1978 and 509 (1982) of 6 June 1982,

<u>Deeply disturbed</u> at Israel's deportation of 415 Palestinians to the occupied territory of southern Lebanon, which constitutes a further violation of Lebanese sovereignty, and at Israel's refusal to implement Security Council resolution 799 (1992) demanding the immediate return home of the Palestinian deportees,

Affirming Israel's full responsibility for the Palestinian deportees,
Reaffirming that the continued occupation and the practices of the
Israeli forces constitute violations of the Security Council resolutions, of
the will of the international community and of the conventions in force in
this regard,

Hoping for a continuation of the peace negotiations with a view to a settlement of the conflict in the Middle East through the achievement of a just, comprehensive and lasting peace in the region, and affirming that Israel's continued violations of human rights are hampering the steps and endeavours that are being taken to achieve peace in the Middle East,

Gravely concerned at the fact that the International Committee of the Red Cross and other humanitarian organizations are being prevented from fulfilling their humanitarian tasks in the occupied territory of southern Lebanon, and particularly from investigating the reports received concerning ill-treatment of detainees at the Khiyam and Marjayoun detention centres,

Reaffirming its resolution 1992/70 of 4 March 1992 and expressing its deep regret at Israel's failure to implement that resolution,

- 1. <u>Condemns</u> the ongoing Israeli violations of human rights in southern Lebanon consisting, in particular, in the arbitrary detention of civilians, the demolition of their homes, the confiscation of their property, their expulsion from the occupied territory, the bombardment of civilian villages and areas, and other practices which violate human rights;
- 2. <u>Demands</u> that Israel put an immediate end to those practices and implement the two above-mentioned Security Council resolutions calling for Israel's immediate, full and unconditional withdrawal from all Lebanese territory and respect for Lebanon's sovereignty, independence and territorial integrity;

- 3. <u>Demands</u> that Israel put an immediate end to the policy of forced deportation and implement Security Council resolution 799 (1992) of 18 December 1992;
- 4. <u>Also demands</u> that the Government of Israel, as the occupying Power in southern Lebanon, comply with the Geneva Conventions of 1949, particularly the Geneva Convention relative to the Protection of Civilian Persons in Time of War;
- 5. <u>Further demands</u> that the Government of Israel, as the occupying Power in southern Lebanon, facilitate the humanitarian task of the International Committee of the Red Cross and other humanitarian organizations in this region and, in particular, permit those organizations to visit the detention centres at Khiyam and Marjayoun and examine the situation of the persons detained there;
 - 6. Requests the Secretary-General:
- (a) To inform the Government of Israel of this resolution and call upon it to provide information concerning the extent of its compliance therewith;
- (b) To report to the General Assembly at its forty-eighth session, and to the Commission on Human Rights at its fiftieth session, on the results of his endeavours in this regard;
- 7. <u>Decides</u> to continue the consideration of this question at its fiftieth session.

Distr. LIMITED

E/1993/L.43 27 July 1993

Original: ENGLISH

Substantive session of 1993 Geneva, 28 June - 30 July 1993 Agenda item 6 (a)

SPECIAL ECONOMIC, HUMANITARIAN AND DISASTER RELIEF ASSISTANCE: SPECIAL PROGRAMMES OF ECONOMIC ASSISTANCE

Algeria*, Cuba, Iraq*, Lebanon*, Malaysia, Morocco, Senegal*, Somalia, Syrian Arab Republic, Tunisia*, and Yemen*: draft resolution

Assistance to the Palestinian people

The Economic and Social Council,

Recommends to the General Assembly the adoption of the following draft resolution:

"Assistance to the Palestinian people

"The General Assembly,

"Recalling its resolution 47/170 of 22 December 1992,

"Taking into account the <u>intifadah</u> of the Palestinian people in the occupied Palestinian territory against the Israeli occupation, including Israeli economic and social policies and practices,

"Rejecting Israeli restrictions on external economic and social assistance to the Palestinian people in the occupied Palestinian territory,

 $^{\,\,^*\,}$ In accordance with rule 72 of the rules of procedure of the Economic and Social Council.

GE.93-70505 (E)

"Concerned about the economic losses sustained by the Palestinian people as a result of Israeli closures and isolation of the Palestinian territory, including Jerusalem, occupied since 1967,

"Affirming that the Palestinian people cannot develop their national economy as long as the Israeli occupation persists,

"Taking into account developments in the peace talks and their implications for the Palestinian people,

"Welcoming the convening of the United Nations seminar on assistance to the Palestinian people in Paris during the period 26-29 April 1993 in response to General Assembly resolution 47/170,

"Aware of the increasing need to provide economic and social assistance to the Palestinian people,

- "1. Takes note of the report of the Secretary-General;
- "2. <u>Expresses</u> its appreciation to the States, United Nations bodies and intergovernmental and non-governmental organizations that have provided assistance to the Palestinian people;
- "3. <u>Requests</u> the international community, the United Nations system and intergovernmental and non-governmental organizations to sustain and increase their assistance to the Palestinian people, in close cooperation with the Palestine Liberation Organization;
- "4. <u>Calls</u> for treatment on a transit basis of Palestinian exports and imports passing through neighbouring ports and points of exit and entry;
- "5. Also calls for the granting of trade concessions and concrete preferential measures for Palestinian exports on the basis of Palestinian certificates of origin;
- "6. <u>Further calls</u> for the immediate lifting of Israeli restrictions and obstacles hindering the implementation of assistance projects by the United Nations bodies and others providing economic and social assistance to the Palestinian people in the occupied Palestinian territory;
- "7. Reiterates its call for the implementation of development projects in the occupied Palestinian territory, including the projects mentioned in its resolution 39/223 of 18 December 1984;
- "8. <u>Calls</u> for facilitation of the establishment of Palestinian economic and social institutions in the occupied Palestinian territory;

- "9. <u>Suggests</u> to the Committee on the Exercise of the Inalienable Rights of the Palestinian people to consider, in its future programmes, convening seminars concerning economic and social assistance to the Palestinian people, taking into account their assistance needs in the light of the development in the region;
- "10. Requests the Secretary-General to seek ways and means of mobilizing and coordinating assistance to the Palestinian people, taking into account the outcome of the Paris seminar;
- "11. Requests the Secretary-General to report to the General Assembly at its forty-ninth session, through the Economic and Social Council, on the progress made in the implementation of the present resolution."

Distr. LIMITED

E/CN.4/1994/L.4 11 February 1994

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS Fiftieth session Agenda item 4

QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED ARAB TERRITORIES INCLUDING PALESTINE

Afghanistan*, Algeria*, Bahrain*, Cuba, India, Indonesia,
Iran (Islamic Republic of), Iraq*, Kuwait*, Lebanon*,
Libyan Arab Jamahiriya, Madagascar*, Malaysia, Mauritania,
Morocco*, Oman*, Pakistan, Qatar*, Saudi Arabia*, Senegal*,
Somalia*, Sri Lanka, Sudan, Syrian Arab Republic, Tunisia,
United Arab Emirates*, Viet Nam* and Yemen*:

draft resolution

Human rights in the occupied Syrian Golan

The Commission on Human Rights,

<u>Deeply concerned</u> at the suffering of the population of the Syrian and other Arab territories occupied by Israel since 1967 and the continued Israeli military occupation, and that the human rights of the population continue to be violated,

^{*} In accordance with rule 69, paragraph 3, of the rules of procedure of the functional commissions of the Economic and Social Council.

Recalling Security Council resolution 497 (1981) of 17 December 1981, in which the Council, inter alia, decided that the Israeli decision to impose its laws, jurisdiction and administration in the occupied Syrian Golan was null and void and without international legal effect, and demanded that Israel should rescind forthwith its decision,

Recalling General Assembly resolutions 36/226 B of 17 December 1981, ES-9/1 of 5 February 1982, 37/88 E of 10 December 1982, 38/79 F of 15 December 1983, 39/95 F of 14 December 1984, 40/161 F of 16 December 1985, 41/63 F of 3 December 1986, 42/160 F of 8 December 1987, 43/21 of 3 November 1988, 43/58 F of 6 December 1988, 44/2 of 6 October 1989, 45/74 F of 11 December 1990, 46/47 F of 9 December 1991, 47/70 F of 14 December 1992 and 48/41 D of 10 December 1993,

<u>Recalling also</u> General Assembly resolution 3414 (XXX) of 5 December 1975 and other relevant resolutions in which the Assembly, <u>inter alia</u>, demanded the immediate, unconditional and total withdrawal of Israel from the Arab territories occupied since 1967,

Recalling further General Assembly resolution 3314 (XXIX) of 14 December 1974, in which it defined an act of aggression,

Reaffirming once more the illegality of Israel's decision of 14 December 1981 to impose its laws, jurisdiction and administration on the occupied Syrian Golan, which has resulted in the effective annexation of that territory,

Reaffirming that the acquisition of territory by force is inadmissible under the principles of international law and under the Charter of the United Nations and the relevant resolutions of the Security Council and the General Assembly, and that all territories thus occupied by Israel must be returned.

Taking note with deep concern of the report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories (A/48/557) and, in this connection, deploring Israel's constant refusal to cooperate with and to receive the Special Committee,

Expressing its grave alarm, after considering the above-mentioned report of the Special Committee, over Israel's flagrant and persistent violations of human rights in the Syrian and other Arab territories occupied since 1967,

despite the resolutions of the Security Council and the General Assembly which repeatedly called upon Israel to put an end to such occupation,

Reaffirming its previous relevant resolutions, the most recent being resolution 1993/1 of 19 February 1993,

<u>Guided</u> by the relevant provisions of the Charter of the United Nations and the Universal Declaration of Human Rights and with particular reference to the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and the relevant provisions of the Hague Conventions of 1899 and 1907,

- 1. <u>Strongly condemns</u> Israel, the occupying Power, for its refusal to comply with the relevant resolutions of the General Assembly and the Security Council, particularly resolution 497 (1981), in which the Council, <u>inter alia</u>, decided that the Israeli decision to impose its laws, jurisdiction and administration on the occupied Syrian Golan was null and void and without international legal effect, and demanded that Israel, the occupying Power, should rescind forthwith its decision;
- 2. <u>Condemns</u> the persistence of Israel in changing the physical character, demographic composition, institutional structure and legal status of the occupied Syrian Golan, and emphasizes that the displaced persons of the population of the occupied Syrian Golan must be allowed to return to their homes and to recover their properties;
- 3. <u>Determines</u> that all legislative and administrative measures and actions taken or to be taken by Israel, the occupying Power, that purport to alter the character and legal status of the Syrian Golan are null and void, constitute a flagrant violation of international law and of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and have no legal effect;
- 4. <u>Strongly condemns</u> Israel for its attempt to impose forcibly Israeli citizenship and Israeli identity cards on the Syrian citizens in the occupied Syrian Golan and for its practices of annexation, establishment of settlements, confiscation of lands and diversion of water resources and imposing a boycott on their agricultural products; and calls upon Israel to desist from its settlement designs and policies aimed against academic institutions with the goal of serving the objectives of occupation, and to desist from its repressive measures against the population of the occupied Syrian Golan;

E/CN.4/1994/L.4 page 4

- 5. <u>Calls once again upon</u> Member States not to recognize any of the legislative or administrative measures and actions referred to in the present resolution;
- 6. Requests the Secretary-General to bring the present resolution to the attention of all Governments, the competent United Nations organs, the specialized agencies, regional intergovernmental organizations and international humanitarian organizations and to give it the widest possible publicity, and to report to the Commission on Human Rights at its fifty-first session;
- 7. <u>Decides</u> to include in the provisional agenda of its fifty-first session, as a matter of high priority, the item entitled "Question of the violation of human rights in the occupied Arab territories, including Palestine".

Distr. LIMITED

E/CN.4/1994/L.5 11 February 1994

Original: ARABIC AND ENGLISH

COMMISSION ON HUMAN RIGHTS Fiftieth session Agenda item 4

QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE

Algeria*, Bahrain*, China, Cuba, Indonesia, Jordan*, Malaysia,

Mauritania, Morocco*, Oman*, Pakistan, Qatar*, Saudi Arabia*,

Senegal*, Somalia*, Sri Lanka, Sudan, Tunisia, United Arab

Emirates* and Yemen*: draft resolution

Α

The Commission on Human Rights,

 $\underline{\text{Guided}}$ by the purposes and principles of the Charter of the United Nations, as well as by the provisions of the Universal Declaration of Human Rights,

<u>Guided also</u> by the provisions of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights,

Taking into consideration the provisions of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and the provisions of Additional Protocol I thereto, and the Hague Convention IV of 1907, as well as the principles of international law

^{*} In accordance with rule 69, para. 3, of the rules of procedure of the functional commissions of the Economic and Social Council.

affirmed by the General Assembly in its resolutions 3 (I) of 13 February 1946, 95 (I) of 11 December 1946, 260 A (III) of 9 December 1948 and 2391 (XXIII) of 26 November 1968,

Recalling the relevant Security Council resolutions,

Recalling also the General Assembly resolutions on Israeli violations of human rights in occupied Palestine, since 1967 and until now,

Recalling further the provisions of the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights on 25 June 1993,

Taking note with appreciation of the report of the Special Rapporteur, Mr. René Felber, regarding his mission undertaken in accordance with Commission resolution 1993/2 A (E/CN.4/1994/14),

Taking note also of the reports of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories submitted to the General Assembly since 1968,

Noting with great concern the continued Israeli refusal to abide by the resolutions of the Security Council, the General Assembly and the Commission on Human Rights,

Welcoming the signing of the Declaration of Principles on Interim Self-Government Arrangements by the Palestine Liberation Organization and the Government of Israel on 13 September 1993, whereby violations of human rights will end through the full withdrawal of Israeli forces from the occupied Palestinian territories,

Recalling all its previous resolutions on the subject,

- 1. <u>Deeply regrets</u> the continued violations of human rights in the occupied Palestinian territory since the signing of the Declaration of Principles on Interim Self-Government Arrangements by the Palestine Liberation Organization and the Government of Israel on 13 September 1993,
- 2. <u>Condemns</u> the continued violations of the human rights of the Palestinian people in the Palestinian territory occupied by Israel with military force, including Jerusalem, and, in particular, the opening of fire by the Israeli army and settlers on Palestinian civilians that results in killing and wounding them; the imposition of restrictive economic measures; the demolition of houses; the expropriation of houses; collective punishment; arbitrary and administrative detention of thousands of Palestinians without trial; the confiscation of property of Palestinians; the expropriation of

land; the prevention of travel; the closure of universities and schools; the perpetration of crimes of torture in Israeli prisons and detention centres; and the establishment of Israeli settlements in the occupied Palestinian territory;

- 3. <u>Calls once more</u> upon Israel, the occupying Power, to desist from all forms of violation of human rights in the Palestinian and other occupied Arab territories and to respect the bases of international law, the principles of international humanitarian law, and its commitments to the provisions of the Charter and resolutions of the United Nations;
- 4. <u>Also calls upon</u> Israel to withdraw from the Palestinian territory, including Jerusalem, and the other occupied Arab territories in accordance with the relevant resolutions of the United Nations and the Commission on Human Rights;
- 5. Requests the Secretary-General to bring the present resolution to the attention of the Government of Israel and all other Governments, the competent United Nations organs, the specialized agencies, regional intergovernmental organizations and international humanitarian organizations, to disseminate it on the widest possible scale, and to report on its implementation by the Government of Israel to the Commission on Human Rights at its fifty-first session;
- 6. Also requests the Secretary-General to provide the Commission on Human Rights with all United Nations reports issued between sessions of the Commission that deal with the conditions in which the citizens of the Palestinian and other occupied Arab territories are living under the Israeli occupation;
- 7. <u>Decides</u> to consider the question at its fifty-first session as a matter of priority.

В

The Commission on Human Rights,

Recalling Security Council resolutions related to the applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Palestinian and other occupied Arab territories, which call for Israel's commitment to them,

Recalling all relevant General Assembly resolutions on the applicability to the occupied Palestinian territory of the Convention which urge Israel's commitment to and respect for their provisions,

Recalling also the decisions of the International Conference of the Red Cross and the International Conference for the Protection of War Victims (Geneva, 30 August - 1 September 1993) in respect of the application of the Convention in all circumstances and the statements of the International Committee of the Red Cross which condemn the continuous serious violations by Israel of the provisions of the Convention and its refusal to apply those provisions in the occupied territories,

Recalling further the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights on 25 June 1993,

<u>Taking into account</u> that States parties to the Convention undertake, in accordance with article 1 thereof, to respect, and ensure respect for, the Convention in all circumstances,

Recalling all its previous resolutions on the subject,

- 1. Reaffirms that the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, is applicable to the Palestinian and all other Arab territories occupied by Israel since 1967, including Jerusalem, and that Israel's long-standing refusal to apply the Convention to those territories had led to the perpetration by the Israeli authorities of grave violations of human rights against Palestinian citizens, and calls upon Israel to comply with its international commitments, to respect the Convention and to apply it in the occupied Palestinian territory, including Jerusalem;
- 2. <u>Urges once more</u> all States parties to the Convention to make every effort to ensure the Israeli occupation authorities' respect for and compliance with the provisions of the Convention in the Palestinian and all other Arab territories occupied by Israel since 1967, including Jerusalem, and to undertake the necessary practical measures to ensure the provision of international protection for the Palestinian people under occupation, in accordance with the provisions of article 1 and other relevant articles of the Convention;
- 3. <u>Strongly condemns once more</u> the refusal of Israel to apply the Convention to Palestine and the Arab territories occupied since 1967 and to their inhabitants, Israel's policies of perpetrating crimes of torture against Palestinian detainees and prisoners in Israeli prisons and detention camps and

its continued deliberate disregard for the provisions of the Convention, in contravention of resolutions of the Security Council, the General Assembly and the Commission on Human Rights;

- 4. <u>Calls upon</u> Israel to allow those who have been deported since 1967 to return to their homeland without delay in implementation of the resolutions of the Security Council, the General Assembly and the Commission on Human Rights;
- 5. Requests the Secretary-General to bring the present resolution to the attention of the Government of Israel and all other Governments, the competent United Nations organs, the specialized agencies, regional intergovernmental organizations, international humanitarian organizations and non-governmental organizations, and to report on progress in its implementation by the Government of Israel to the Commission on Human Rights at its fifty-first session;
- 6. <u>Decides</u> to consider the question at its fifty-first session as a matter of high priority.

Distr. LIMITED

E/CN.4/1994/L.6 11 February 1994

Original: ARABIC and ENGLISH

COMMISSION ON HUMAN RIGHTS Fiftieth session Agenda item 9

THE RIGHT OF THE PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

Algeria*, Bahrain*, China, Cuba, Indonesia, Jordan*, Malaysia,

Mauritania, Morocco*, Oman*, Pakistan, Qatar*, Saudi Arabia*,

Senegal*, Somalia*, Sudan, Tunisia, United Arab Emirates*,

and Yemen*: draft resolution

^{*} In accordance with rule 69, paragraph 3, of the rules of procedure of the functional commissions of the Economic and Social Council.

Situation in occupied Palestine

The Commission on Human Rights,

Guided by the purposes and principles of the Charter of the United Nations, in particular the provisions of Articles 1 and 55 thereof, which affirm the right of peoples to self-determination, and scrupulous respect of the principle of refraining in international relations from the threat or use of force, as specified in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970, in accordance with the Charter of the United Nations,

<u>Guided also</u> by the provisions of article 1 of the International Covenant on Economic, Social and Cultural Rights and article 1 of the International Covenant on Civil and Political Rights, which affirm that all peoples have the right of self-determination,

Taking into consideration the provisions of the Declaration on the Granting of Independence to Colonial Countries and Peoples adopted by the General Assembly in its resolution 1514 (XV) of 14 December 1960,

<u>Guided</u> by the provisions of the Vienna Declaration and Programme of Action adopted by the United Nations World Conference on Human Rights on 25 June 1993, and in particular Part I, paragraphs 2 and 3 relating to the right of self-determination of all peoples and especially those subject to foreign occupation,

Noting Security Council resolutions 183 (1963) of 11 December 1963 and 218 (1965) of 23 November 1965, which affirmed the interpretation of the principle of self-determination as laid down in General Assembly resolution 1514 (XV),

Recalling General Assembly resolutions 181 A and B (II) of 29 November 1947 and 194 (III) of 11 December 1948, as well as all other resolutions which confirm and define the inalienable rights of the Palestinian people, particularly their right to self-determination without external interference and to the establishment of their independent State on their national soil, especially Assembly resolutions ES-7/2 of 29 July 1980 and 37/86 E of 20 December 1982,

Reaffirming its previous resolutions in this regard,

Bearing in mind the reports and recommendations of the Committee on the Exercise of the Inalienable Rights of the Palestinian People which, from 1976 to 1993, have been submitted to the Security Council through the General Assembly,

Reaffirming the right of the Palestinian people to self-determination in accordance with the Charter of the United Nations, the relevant United Nations resolutions and declarations, and the provisions of international covenants and instruments relating to the right to self-determination as an international principle and as a right of all peoples in the world,

Expressing its grave concern at the persistence of Israel in preventing by force the Palestinian people from enjoying their inalienable rights, in particular their right to self-determination,

Recalling that the foreign occupation by the armed forces of a State of the territory of another State constitutes an obstacle and a grave violation of human rights according to part I, paragraph 30 of the Vienna Declaration and Programme of Action and an act of aggression and a crime against the peace and security of mankind, according to General Assembly resolution 3314 (XXIX) of 14 December 1974,

Expressing its grave concern that no just solution has been achieved to the problem of Palestine, which has constituted the core of the Arab-Israeli conflict since 1948,

Welcoming the Declaration of Principles on Interim Self-Government Arrangements signed by the Palestine Liberation Organization and the Government of Israel on 13 September 1993, aimed at enabling the Palestinian people to achieve their national rights and, principally, their right to self-determination free of external intervention,

- 1. <u>Reaffirms</u> the inalienable right of the Palestinian people to self-determination without external interference;
- 2. <u>Calls upon</u> Israel to comply with its obligations under the Charter of the United Nations and the principles of international law and to withdraw from the Palestinian and other Arab territories which it has occupied since 1967 by military force, including Jerusalem, in accordance with the relevant United Nations resolutions, so as to enable the Palestinian people to exercise their universally recognized right of self-determination;

E/CN.4/1994/L.6 page 4

- 3. Requests the Secretary-General to transmit the present resolution to the Government of Israel and to all other Governments, to distribute it on the widest possible scale and to make available to the Commission on Human Rights, prior to the convening of its fifty-first session, all information pertaining to the implementation of the present resolution by the Government of Israel;
- 4. <u>Decides</u> to include in the provisional agenda for its fifty-first session the item entitled "The right of peoples to self-determination and its application to peoples under colonial or alien domination or foreign occupation" and to consider the situation in occupied Palestine under that item, as a matter of high priority.

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UNITED E



Economic and Social Council

Distr.
LIMITED

E/CN.4/1995/L.4/Rev.1 16 February 1995

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS Fifty-first session Agenda item 4

QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE

Algeria, Bahrain*, Cuba, Egypt, Indonesia, Kuwait*, Lebanon*,

Malaysia, Mauritania, Morocco*, Oman*, Qatar*, Somalia*,

Sudan, Sri Lanka, Syrian Arab Republic*, Tunisia*,

United Arab Emirates*, Viet Nam* and Yemen*:

revised draft resolution

Human rights in the occupied Syrian Golan

The Commission on Human Rights,

 $\underline{\text{Deeply concerned}}$ at the suffering of the population of the occupied Syrian Golan due to the violation of their human rights since the Israeli military occupation of 1967,

Recalling Security Council resolution 497 (1981) of 17 December 1981,

Recalling also all relevant General Assembly resolutions, including the latest, resolution 49/36 D of 9 December 1994, in which the Assembly,

inter alia, called upon Israel to put an end to its occupation of the Arab Territories,

^{*} In accordance with rule 69, paragraph 3, of the rules of procedure of the functional commissions of the Economic and Social Council.

Reaffirming once more the illegality of Israel's decision of 14 December 1981 to impose its laws, jurisdiction and administration on the occupied Syrian Golan, which has resulted in the effective annexation of that territory,

Reaffirming that the acquisition of territory by force is inadmissible under the principles of international law and under the Charter of the United Nations,

Taking note with deep concern of the report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories (A/49/511) and, in this connection, regretting Israel's constant refusal to cooperate with and to receive the Special Committee,

<u>Guided</u> by the relevant provisions of the Charter of the United Nations and the Universal Declaration of Human Rights and with particular reference to the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and the relevant provisions of the Hague Conventions of 1899 and 1907,

Noting with satisfaction the convening at Madrid of the International Peace Conference on the Middle East on the basis of Secruity Council resolutions 242 (1967) of 22 November 1967 and 338 (1973) of 22 October 1973, with the hope that substantial and concrete progress will be achieved on the Syrian and Lebanese tracks for the realization of a just, comprehensive and lasting peace in the region,

Reaffirming its previous relevant resolutions, the most recent being resolution 1994/2 of 18 February 1994,

- 1. <u>Calls upon</u> Israel, the occupying Power, to comply with the relevant resolutions of the General Assembly and of the Security Council, particularly resolution 497 (1981), in which the Council, <u>inter alia</u>, decided that the Israeli decision to impose its laws, jurisdiction and administration on the occupied Syrian Golan was null and void and without international legal effect, and demanded that Israel, the occupying Power, should rescind forthwith its decision;
- 2. <u>Also calls upon</u> Israel to desist from changing the physical character, demographic composition, institutional structure and legal status of the occupied Syrian Golan, and emphasizes that the displaced persons of the

population of the occupied Syrian Golan must be allowed to return to their homes and to recover their properties;

- 3. <u>Further calls upon</u> Israel to desist from imposing Israeli citizenship and Israeli identity cards on the Syrian citizens in the occupied Syrian Golan and to desist from its repressive measures against them, and from all other practices mentioned in the report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian people and Other Arabs of the Occupied Territories;
- 4. <u>Determines</u> that all legislative and administrative measures and actions taken or to be taken by Israel, the occupying Power, that purport to alter the character and legal status of the occupied Syrian Golan are null and void, constitute a flagrant violation of international law and of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and have no legal effect;
- 5. <u>Calls once again upon</u> Member States not to recognize any of the legislative or administrative measures and actions referred to in the present resolution;
- 6. Requests the Secretary-General to bring the present resolution to the attention of all Governments, the competent United Nations organs, the specialized agencies, regional intergovernmental organizations and international humanitarian organizations and to give it the widest possible publicity, and to report to the Commission on Human Rights at its fifty-second session;
- 7. <u>Decides</u> to include in the provisional agenda of its fifty-second session, as a matter of high priority, the item entitled "Question of the violation of human rights in the occupied Arab territories, including Palestine".

UNITED NATIONS

E



Economic and Social Council

Distr. LIMITED

E/1995/L.41 21 July 1995

ENGLISH

Original: ARABIC

Substantive session of 1995 Geneva, 26 June-28 July 1995 Agenda item 5 (a)

SOCIAL, HUMANITARIAN AND HUMAN RIGHTS QUESTIONS: REPORTS OF SUBSIDIARY BODIES, CONFERENCES AND RELATED QUESTIONS: SPECIAL ECONOMIC, HUMANITARIAN AND DISASTER RELIEF ASSISTANCE

Algeria*, Bahrain*, Costa Rica, Cuba, Egypt, Gabon, Honduras*, Jordan*, Kuwait*, Lebanon*, Libyan Arab Jamahiriya, Madagascar*, Morocco*, Oman*, Philippines, Qatar*, Romania, Somalia*, Sudan, Syrian Arab Republic*, Tunisia*, United Arab Emirates* and Yemen*: draft resolution

Assistance for the reconstruction and development of Lebanon

The Economic and Social Council,

Recalling General Assembly decision 48/450 of 21 December 1993 on assistance for the reconstruction and development of Lebanon,

Recalling the resolutions of the Economic and Social Council in which the Council called upon the specialized agencies and other organizations and bodies of the United Nations system to expand and intensify their programmes of assistance in response to the urgent needs of Lebanon,

 $^{\,\,^*}$ In accordance with rule 72 of the rules of procedure of the Economic and Social Council.

Reaffirming its resolution 1994/35 of 29 July 1994,

<u>Aware</u> of the magnitude of the requirements of Lebanon resulting from the extensive destruction of its infrastructure, which is impeding national rehabilitation and reconstruction efforts and adversely affecting economic and social conditions,

Reaffirming the pressing need to continue to assist the Government of Lebanon in the reconstruction of the country and the recovery of its human and economic potential,

Expressing its appreciation of the efforts of the Secretary-General in mobilizing assistance for Lebanon,

- 1. Appeals to all Member States and all organizations of the United Nations system to intensify their efforts to mobilize all possible assistance for the Government of Lebanon in its reconstruction and development efforts;
- 2. <u>Calls upon</u> all organizations and programmes of the United Nations system to intensify their assistance in response to the urgent needs of Lebanon, especially in the technical and training fields;
- 3. <u>Requests</u> the Secretary-General to inform the Council at its substantive session of 1996 of the progress achieved in the implementation of the present resolution.

Annex 80

Somalia's consistent assertion of a 200-nautical mile territorial sea before the United Nations, *Law of the Sea Bulletins*, Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, 1993-2010

10

LAW OF THE SEA **BULLETIN**

No. 23 **JUNE 1993**



DIVISION FOR OCEAN AFFAIRS AND THE LAW OF THE SEA OFFICE OF LEGAL AFFAIRS

States	Convention ratification/	Territorial sea	Contiguous zone	Exclusive economic zone	Fishery zone	Continental shelf
SAMOA		12		200		
*SAO TOME AND PRINCIPE	3/11/87	12		200		
SAUDI ARABIA		12	18			
*SENEGAL	25/10/84	12	24	200		200/CM
*SEYCHELLES	16/6/91	12		200		200/CM
SIERRA LEONE		200				200m/EXP
SINGAPORE		3				
SOLOMON ISLANDS		12		200		200nm
*SOMALIA	24/7/89	200				
SOUTH AFRICA		12			200	200m/EXP
SPAIN		12	24	200		200m/EXP
SRI LANKA		12	24	200		200/CM
*SUDAN	23/1/85	12	18			200m/EXP
SURINAME		12		200		
SWEDEN		12		Up to equidistance line with neighbouring States		200m/EXP

LAW OF THE SEA BULLETIN

Anyex 80

No. 25

JUNE 1994

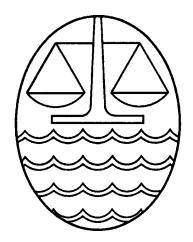


DIVISION FOR OCEAN AFFAIRS AND THE LAW OF THE SEA OFFICE OF LEGAL AFFAIRS

IW

State	Convention ratification/ accession/ g/ succession b/	Territorial sea	Contiguous zone (nm)	Exclusive economic zone (nm)	Fishery zone (am)	Continental shelf
RWANDA*		•	•	•	•	•
SAINT KITTS AND NEVIS	7/1/93	12	24	200		200/CM
SAINT LUCIA	27/3/85	12	24	200		200/CM
SAINT VINCENT AND THE GRENADINES	1/10/93	12	24	200		200
SAMOA		12		200		
SAN MARINO*		-	•	•	•	•
SAO TOME AND PRINCIPE	3/11/87	12		200		
SAUDI ARABIA		12	18			
SENEGAL	25/10/84	12	24	200		200/CM
SEYCHELLES	16/6/91	12		200		200/CM
SIERRA LEONE		200				200m/EXP
SINGAPORE		3				
SLOVAKIA*		1	•	• Control of the Cont	1	•
SLOVENIA						
SOLOMON ISLANDS		12		200		200
SOMALIA	24/7/89	200				
SOUTH AFRICA		12			200	200m/EXP
SPAIN		12	24	200		200m/EXP
SRI LANKA		12	24	200		200/CM
SUDAN	23/1/85	12	18			200m/EXP
SURINAME		12		200		

Law of the Sea

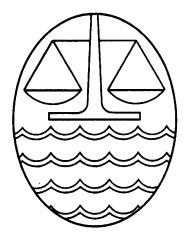


Bulletin No. 30



State	Convention ratification/ accession a/ succession s/	Territorial sea (nm)	Contiguous zone (nm)	Exclusive economic zone (nm)	Fishery zone (nm)	Continental shelf
SAINT KITTS AND NEVIS	7 Janaury 1993	12	24	200		200/CM
SAINT LUCIA	27 March 1985	12	24	200		200/CM
SAINT VINCENT AND THE GRENADINES	1 October 1993	12	24	200		200
SAMOA	14 August 1995	12		200		
SAN MARINO*		-	,	•	•	,
SAO TOME AND PRINCIPE	3 November 1987	12		200		
SAUDI ARABIA		12	18			
SENEGAL	25 October 1984	12	24	200		200/CM
SEYCHELLES	16 September 1991	12		200		200/CM
SIERRA LEONE	12 December 1994	200				200m/EXP
SINGAPORE	17 November 1994	3				
SLOVAKIA*		-	•	•	ı	•
SLOVENIA	16 June 1995					
SOLOMON ISLANDS		12		200		200
SOMALIA	24 July 1989	200				
SOUTH AFRICA		12			200	200m/EXP
SPAIN		12	24	200		200m/EXP
SRI LANKA	19 July 1994	12	24	200		200/CM
SUDAN	23 January 1985	12	18			200m/EXP
SURINAME		12		200		
SWAZILAND*		•	•	•	•	•

Law of the Sea

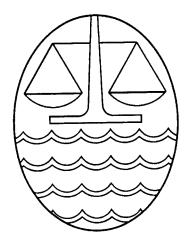


Bulletin No. 34



State	Convention ratification/ accession ½ succession ½	Territorial sea (nm)	Contiguous zone (nm)	Exclusive economic zone (nm)	Fishery zone (nm)	Continental shelf
NIGER*		-	•	1		
NIGERIA	14 August 1986	30		200		200m/EXP (58)
RWANDA*		-	•	•		-
SAO TOME AND PRINCIPE	3 November 1987	12		200		
SENEGAL	25 October 1984	12	24	200		200/CM (58)
SEYCHELLES	16 September 1991	12		200		200/CM
SIERRA LEONE	12 December 1994	200				200m/EXP (58)
SOMALIA	24 July 1989	200				
SOUTH AFRICA		12	24	200		200/CM (58)
SUDAN	23 January 1985	12	18			200m/EXP
SWAZILAND*		ı	•	•	•	(58)
TOGO	16 April 1985	30		200		
TUNISIA	24 April 1985	12	24			
UGANDA*	9 November 1990	•	1	•		(58)
UNITED REPUBLIC OF TANZANIA	30 September 1985	12		200		
ZAMBIA*	7 March 1983	1	-	•	•	
ZIMBABWE*	24 February 1993	t	•	1	•	

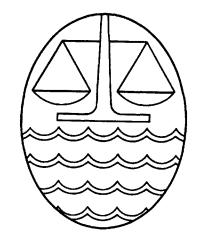
Law of the Sea





State	Territorial sea	Contiguous zone (nm)	Exclusive economic zone (nm)	Fishery zone (nm)	Continental shelf 3
NOIL PEDEBATION			000		
			003		ZOOCIA
SAINT KITTS AND NEVIS	12	24	200		200/CM
SAINT LUCIA	12	24	200		200/CM
SAINT VINCENT AND THE GRENADINES *	12	24	200		200
SAMOA	12		200		
SAO TOME AND PRINCIPE *	12	24	200		
SAUDI ARABIA	12	18			Limits not specified
SENEGAL	12	24	200		200/CM
SEYCHELLES	12		200		200/CM
SIERRA LEONE	200				
SINGAPORE	3				
SLOVENIA					
SOLOMON ISLANDS*	12		200		200
SOMALIA	200				
SOUTH AFRICA	12	24	200		200/CM
SPAIN	12	24	200 25	Up to equidistance line with neighbouring States 26	
SRI LANKA	12	24	200		200/CM
SUDAN	12	18			200m/EXP
SURINAME	12		200		

Law of the Sea





⁴⁰ In the Atlantic Ocean.

⁴¹ In the Mediterranean Sea.

Law of the Sea





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43 In the Atlantic Ocean.

 $^{^{\}underline{\#}}$ In the Mediterranean Sea, defined by coordinates of points.

LAW OF THE SEA BULLETIN

No. 63

STATE	UNCLOS Ratification, Accession	Does the legislation provious for straight baselines? ¹	Does the State claim archipelag status? ²	Territorial Sea	Contiguous Zone	Exclusive Economic Zone	Fisheries Zone	Continental Shelf introductory note) 1982 Convention State is not a part to 1958 Conventic claims as reflected	Continental Shelf (see introductory note): Parties to 1982 Convention or, where the State is not a party to it, parties to 1958 Convention Outer limit claims as reflected in legislation ³
		de	gic	Breadth of th	Breadth of the zone in nautical miles 3	cal miles ³		Party to:	Outer limit
Solomon Islands	23/06/1997		Yes	12		200		1982	200
Somalia	24/07/1989	Yes		200				1982	N/A
South Africa	23/12/1997	Yes		12	24	200		1982	CM/200
Spain	15/01/1997	Yes		12	24	200 49	<u>≅</u> •⊠	1982	N/A
Sri Lanka	19/07/1994	Yes		12	24	200		1982	CM/200
Sudan	23/01/1985	Yes		12	18			1982	200m/EXPL.
Suriname	09/07/1998			12		200		1982	N/A
Sweden	25/06/1996	Yes		12		DLM		1982	200m/EXPL.
Syrian Arab Republic		Yes		12	24	200			CM
Thailand		Yes		12	24	200		1958	N/A
Timor-Leste				12	24	200			CM/200
Тодо	16/04/1985			30		200		1982	N/A
Tonga	02/08/1995	Yes		12		200		1982	N/A
Trinidad and Tobago	25/04/1986		Yes	12	24	200		1982	CM/200
Tunisia	24/04/1985	Yes		12	24	DLM	<u>⊡</u> .⊡	1982	N/A
Turkey				<u> 52</u> 9		200 53			N/A

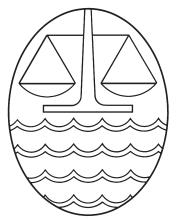
 $\frac{49}{10}$ In the Atlantic Ocean.

 $\overline{\mathfrak{so}}$ In the Mediterranean Sea, defined by coordinates of points.

 $\underline{^{51}}$ Up to 50-m isobath - Off the Gulf of Gabès.

 $\underline{s2}$ Six nautical miles in the Aegean Sea, 12 nautical miles in the Black Sea. $\underline{s3}$ In the Black Sea.

Law of the Sea





		Doe	Doe	MARITIME ZONES	ZONES				
STATE	CLOS Ratification, ession Date	es the legislation provide straight baselines? ¹	es the State claim	Territorial Sea	Contiguous Zone	Exclusive Economic Zone	Fisheries Zone	including submissions to the CLCS (see introductory note)	Continental Shelf,
			Br	eadth of t	he zone in	Breadth of the zone in nautical miles ³	S -3	Outer limit	Sub.
Slovenia	16/06/1995	•	7	12/DLM		নুন্ন 🔼		DLM	
Solomon Islands	23/06/1997		• 12	2		200		CM/200	<u>86</u>
Somalia	24/07/1989	•	2(200				CM/200	j/d
South Africa	23/12/1997	•	12	-	24	200		CM/200	<u>88</u> , 88 €
Spain	15/01/1997	•	12	-	24	_{ਨਨ} 007	COORD ⁹⁰	CM/200 ⁹¹	• <u>92, 93</u>
Sri Lanka	19/07/1994	•	12	2	24	200		CM/200	•
Sudan	23/01/1985	•	12	2	18			200m/EXPL	
Suriname ⁴⁵	09/07/1998		12	2		200		CM/200	•

85 See "Ecological Protection Zone and Continental Shelf of the Republic of Slovenia Act" adopted on 4 October 2005. The delimitation of the ecological protection zone shall be effected by agreement with the neighbouring States. The Act provides for its provisional outer limits.

86 In respect of the joint submission by the Federated States of Micronesia, Papua New Guinea and Solomon Islands - concerning the Ontong Java Plateau $\frac{87}{10}$ In respect of the mainland of the territory of the Republic of South Africa.

88 Joint submission by France and South Africa - in the area of the Crozet Archipelago and the Prince Edward Islands.

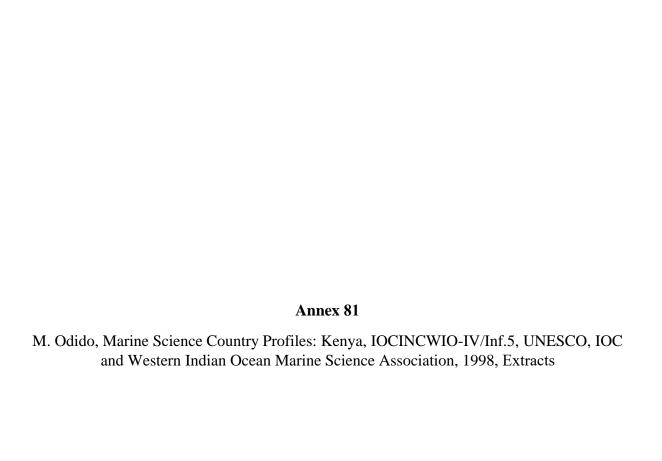
 $\frac{89}{10}$ In the Atlantic Ocean.

 $^{\underline{90}}$ In the Mediterranean Sea.

 $\frac{91}{2}$ With the exception of the Mediterranean Sea.

⁹² Joint submission by France, Ireland, Spain and the United Kingdom of Great Britain and Northern Ireland - in the area of the Celtic Sea and the Bay of Biscay.

 $^{\underline{93}}$ In respect of the area of Galicia.







INTERGOVERNMENTAL OCEANOGRAPHIC COMMISSION & WESTERN INDIAN OCEAN MARINE SCIENCE ASSOCIATION

Marine Science Country Profiles

Kenya

MIKA ODIDO



PREFACE

The Marine Science Country Profile (MSCP) is a tool designed to assist individuals, local and international organisations and governments, in making informed decisions regarding allocation of funds to marine sciences programmes, and identification of programmes to be undertaken. It provides an overview of infrastructure in terms of facilities, training and education which may be required to support proposed programmes. In short, the MSCP is supposed to reveal the true picture of the marine sciences in a country, with respect to the available resources (e.g. personnel, facilities, etc.) as well as strengths and deficiencies in the national marine sciences capabilities.

The MSCP provides the following:

- I. a general outline of the main productive activities and sea-related infrastructures within the country's economy, as well as relevant national institutions and policies, particularly those concerned with research and education in marine science and technology;
- II. an objective view of national capabilities in marine science and technology, including institutional aspects, scientific and technical personnel, infrastructures, laboratories and working facilities at sea, common support services, etc.
- III. an assessment of available information and data with a view to determining bottlenecks and other constraining factors.

The Kenya Marine Science Country Profile is produced within the framework of Intergovernmental Oceanographic Commission (IOC) - Western Indian Ocean Marine Science Association (WIOMSA) co-operation and as a contribution to the International Oceanographic Data and Information Exchange (IODE) programme. The MSCP has also been prepared for the following other countries in the WIO region; Madagascar, Mozambique, Tanzania, Comoro, Seychelles and Mauritius. These profiles contain information that has been gathered through library research and interviews with responsible individuals of various organisations. The multidisciplinary approach has been used during the preparations of these documents, since they cover physical and biological characteristics of the coastal resources and their contribution to the economy; social and economic aspects of the coastal communities; human resources, the role of various institutions in the management and development of coastal resources, and national/priorities in terms of management and development of coastal and marine resources.

We would like to acknowledge the assistance provided by Kennedy Ochego of RECOSCIX-WIO who extracted information required from WIODIR, and the catalogue of holdings of Marine Science Libraries in Western Indian Ocean (WIOLIB).

We would also like to express our thanks to Ms Eunice Onyango who assisted in preparation of the document.

2.3 INTERNATIONAL RELATIONS IN MARINE AFFAIRS

Kenya participates in the marine related activities of various international organisations. These include:

Intergovernmental Oceanographic Commission (IOC) of UNESCO where Kenya Marine and Fisheries Research Institute is the focal point. Kenya holds the Vice Chairmanship of the organisation. Programmes of IOC in which Kenya participates actively include GLOSS, IODE, TEMA, IGOSS.

Food and Agricultural Organisation (FAO) of United Nations. Kenya actively participates in the fisheries programmes of FAO where it is represented by the Fisheries Department and KMFRI. Kenya is also a member of the Aquatic Science and Fisheries Abstract (ASFA) Board and KMFRI is an ASFA Input Centre.

International Maritime Organisation: Kenya is a member of the organisation and is represented by the Kenya Ports Authority.

World Meteorological Organisation: Kenya is represented by the Kenya Meteorological Department and is also the regional centre for Africa and hosts the Regional Institute for Meteorological Training and Research.

Kenya is also a member of several regional bodies involved in marine science activities including:

IOC's Regional Committee for Co-operative Investigations in the North and Central Western Indian Ocean (IOCINCWIO) where KMFRI represents Kenya. Kenya is vice chairman of the organisation.

Indian Ocean Marine Affairs Commission (IOMAC): Kenya is a member and is represented by the Ministry of Foreign Affairs and International Co-operation.

2.3.1 International Organisation Located in Kenya with interest in Marine Activities

The United Nations Environment Programme (UNEP) has its headquarters in Nairobi, Kenya. The UNEP Water Branch deals with coastal and marine science activities and is also the implementing agency for the Nairobi Convention for Protection, Management and Development of the Coastal Environment of the Eastern Africa Region.

The World Conservation Union (IUCN) also has a regional office in Nairobi. IUCN has projects dealing with marine biodiversity and Integrated Coastal Area Management.

The UNESCO Regional Office for Science and Technology in Africa (ROSTA) is also located in Nairobi. The activities of ROSTA include co-ordination of marine science programmes of UNESCO and IOC including the Regional Project for Research and Training on Coastal Marine Systems in Africa (COMARAF).

The Food and Agricultural Organisation of the United Nations also has a regional office in Nairobi which has been involved in fisheries research and development activities in the region.

ANNEX III: STATUTES RELATING TO COASTAL ZONE AND ENFORCEMENT AGENCIES

ISSUE/CONCERN	LEGISLATION	ENFORCEMENT/ IMPLEMENTATION	
Security	Maritime Zones Act Continental Shelf Act	Kenya Navy	
Land Tenure	Government Lands Act Land Titles Act Registration of Titles Act Land (Group Representatives Act) Trust Land Act Mazrui Land Trust Act Registered Land Act Land Planning Act	Commissioner of Lands Local Govt. Authorities Physical Planning Dept.	
Water Use and Conservation	Water Act National Water Conservation Pipeline Corporation Act	Ministry of Land Reclamation, Regional & Water Development/ NWCPC	
Environment and Conservation, including pollution	Chief's Act Local Government Act Kenya Ports Authority Act Public Health Act Factories Act Fisheries Act Wildlife Management and Conservation Act National Museums Act Petroleum Act	Provincial Administration Municipal, Town, County Kenya Ports Authority Ministry of Health Ministry of Labour Fisheries Department KWS, Ministry of Tourism and Wildlife NMK	
Tourism	Tourist Industry Act Tourist Development Corporation Act	Ministry of Tourism and Wildlife/KTDC	
Industrial Development	Coast Development Authority Act Factories Act Export Processing Zones Act Land Planning Act Town Planning Act	CDA Ministry of Labour EPZA Physical Planning dept Municipal, Town, County	
Shipping	Kenya Ports Authority Act Merchant Shipping Act. Carriage of Goods at Sea Act.	KPA/ Ministry of Transport and Communications	

Agriculture	Agriculture Act Crop Production and Livestock Development Act Plants Protection Act Seeds and Plants Varieties Act Coconut Preservation Act Irrigation Act Pests Control Act	Ministry of Agriculture and Livestock Development	
Forestry	Forestry Act	Ministry of Environment and Natural Resources	
Research	Science and Technology Act	Ministry of Research Technical Training and Technology/ Research Institutes.	
Fisheries	Fisheries Act	Fisheries Department.	

Annex 82

G. Saetersdal *et al*, The Dr. Fridtjof Nansen Programme 1975-1993. Investigations of Fishery Resources in Developing Regions. History of the Programme and Review of Results. *FAO Fisheries Technical Paper*. No. 391., Rome, FAO. 1999, Extracts

The Dr. Fridtjof Nansen Programme 1975–1993

Investigations of fishery resources in developing regions History of the programme and review of results

by
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Gabriella Bianchi
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Bergen, Norway

Siebren C. Venema Fisheries Department FAO

INSTITUTE OF MARINE RESEARCH BERGEN NORWAY



NORWEGIAN AGENCY FOR DEVELOPMENT COOPERATION



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M-43 ISBN 92-5-104377-9

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Foreword

Norwegian development co-operation has mainly been aimed at alleviating poverty in the poorest developing countries. Support to fisheries development, and particularly to fishery research and management, has been an important item in Norwegian development co-operation during the last thirty years. There are two main reasons for this. In the early 1970s, many developing countries, wanting to develop their fishing industry based on marine resources, found that they had very little knowledge about the abundance of these resources. This created great uncertainty as regards the possibility for increased fish production. The need for support in fishery research was even more strongly felt in the late 1970s, with the extension of the national jurisdiction and the establishment of EEZs in most coastal countries. The second reason relates to the fact that Norway itself is a coastal country with important fishery resources, and has a longstanding experience in marine fisheries research as a tool for managing its marine fish resources. It was felt that this experience should be shared with the developing world.

This work could only have been carried out because the Institute of Marine Research in Bergen, Norway, the Food and Agriculture Organization of the United Nations (FAO) and the United Nations Development Programme (UNDP) took upon themselves the task of coordinating and implementing this programme. The main instrument in this work has been the research vessel "Dr. Fridtjof Nansen", first funded by Norway in 1974. The vessel has been able to carry the UN flag throughout this period, facilitating its deployment in many different countries.

In 1991 Norway approved a continuation of the Nansen Programme, with two extended aims, i.e. to assist developing coastal countries in strengthening their capability of managing their marine fish resources, and to assist in improving the information basis for monitoring the marine environment. In principle, this was a decision to continue financing this work for another 15-year period, because it involved building a new research vessel. Monitoring the most important fish resources and advising in resources management and fisheries management has become the focus of the new programme.

This new programme is more geographically focused, as Norway's partner countries in development have been given priority so far. Furthermore, national institution building has become a main item in the new programme, while such activities had a more modest role in the previous periods of the programme. The Norwegian Directorate of Fisheries has become another pillar of the new programme, providing competence in fisheries management in the broader sense of the word. It is our hope that the co-operation between the Norwegian institutions involved and the institutions in cooperating countries will enhance the knowledge base and the sustainable management of the marine fish resources in these countries.

During the period of reporting as laid out in this book, the late Prof. Gunnar Sætersdal of the Institute of Marine Research has been most instrumental in bringing forward the needs of developing countries in this area, having himself been in charge of the cooperation involved. The combination of being a front figure in fishery research, strongly promoting the utilisation of fishery research as a basic tool for fisheries management, and his deep political engagement and understanding of the problems that developing nations were facing, have played a key role in shaping present Norwegian development aid in the field of fisheries.

Norway is proud to have been a part of this programme for so many years, and wishes the reader a good journey into this book summarising the results and outcomes of the first phase of a programme that still continues.

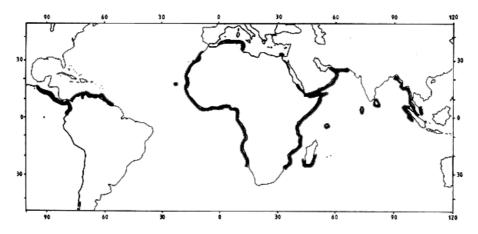


Figure 1.2 Map of the areas covered by the DR. FRIDTJOF NANSEN, 1975–93

Table 1.1 lists areas or countries covered in approximately 18 years of vessel operations, a more detailed list is presented in Appendix II. Figure 1.2 provides an overview of all areas covered. About half the time was spent in the Indian Ocean for which, by the mid-1970s information on the fishery resources was scarce. The first two-year survey of the northwest Arabian Sea had the largely exploratory objective of testing whether this region, known to be very promising from the viewpoint of basic biological productivity, held fish resources similar to those from other highly productive regions such as the eastern boundary current upwelling regions off West Africa and the west coasts of the Americas.

Table 1.1 Summary of survey assignments of the DR. FRIDTJOF NANSEN by major sea areas and years

Area (countries)	Years	Relevant chapter
Arabian Sea and adjacent Gulfs (Pakistan, Iran, Oman, Yemen, Somalia, and Djibouti*)	1975–79 1981, 1983, 1984	3
Eastern Indian Ocean and South China Sea (Sri Lanka, Bangladesh, Myanmar, Thailand, Malaysia, Indonesia and the Maldives*)	1978–80 1983	4
Southwest Indian Ocean (Kenya, Tanzania, Mozambique, Seychelles* and Madagascar*)	1977–78 1980, 1982–83 1990	5
Red Sea and Mediterranean* (Ethiopia*, Egypt*, Tunisia* and Algeria*)	1981	-
Atlantic Ocean off northwest Africa (Morocco, Mauritania, Senegal, the Gambia, Guinea- Bissau, Guinea, Sierra Leone, Liberia, Côte d'Ivoire, Ghana, Togo*, Benin*, Nigeria*, Cameroun*, Equatorial Guinea, São Tomé e Principe and Cape Verde Islands*)	1981–82 1986 1992	6
Atlantic Ocean off southwest Africa (Gabon, Congo, Angola, Namibia) Pacific Ocean off Central America	1985–86 1989–93	7
(Colombia, Panama, Costa Rica, Nicaragua, El Salvador, Guatemala and Mexico)	1987	8
Caribbean Sea off northern South America (Suriname, Guyana, Trinidad & Tobago, Venezuela and Colombia) *) Resources of these countries and area have not been reviewed in this report	1988	9

Most of the subsequent assignments in the Indian Ocean had a character of providing inventories by countries. This period coincided with that of the establishment of EEZs by

many coastal States and there was a great interest in obtaining descriptions of the resources found in these zones. These surveys were detailed and comprehensive and in most cases repeated in order to confirm main findings and to study seasonal variations.

Another type of survey in the Indian Ocean was related to one of the main findings of the first exploratory surveys of the northwest Arabian Sea: the very high abundance in a part of the region of mesopelagic fish, mainly Myctophidae. To study these fish in more detail, special surveys were mounted in the Gulfs of Oman and Aden in 1979, 1981 and 1983.

The objectives in the two years of surveys off the Americas, on the shelves of the Eastern Central Pacific and of the north coast of South America respectively, were to provide detailed information on the resources as a basis for further development of mostly existing fisheries.

The background was different for the assignments on the West African shelf, Morocco to Ghana, Angola and later Namibia. In these upwelling regions, there was a history of both fisheries and fisheries research and the task of the DR. FRIDTJOF NANSEN programme was to provide up-to-date information on the state of the stocks for purposes of management of the resources as well as for further fisheries development.

IMR was responsible for the tactical planning of the assignments, a responsibility shared with the co-operating scientific institutions in the countries of operation. Representatives of FAO's Fisheries Department and of existing field projects often assisted in this process, especially in the case of regional programmes when formal meetings were called for planning purposes.

IMR's responsibility included the technical operation of the vessel, which was crewed from Norway, but often complemented with fishermen/deckhands from the region of operation; this also served training purposes. Technical breakdowns at times caused problems in regions where shipyards and dock facilities were scarce. From 1981, a new mode of operation was adopted involving two months of continuous operation followed by a one month's lay-up. This facilitated repair and maintenance and saved crew costs while maintaining an annual operational period in excess of 200 days.

The annual operational costs of the vessel started at about NKr 15 million (recalculated to the 1995 price index level). There was some increase after the early years, and since 1980 the cost level was NKr 17–18 million (US\$ 3.4 million at the 1995 exchange rate) with no trend, but with variations caused by major refits. The main component (50–60%) was, however, crew wages, social insurance and travel. Scientific management and execution, together with reporting, meetings, scholarships, etc., represented a considerable additional cost estimated at some NKr 4 million (US\$ 630,000).

The IMR scientific survey staff consisted of about five persons. In addition in each assignment arrangements were made for participation in the survey of a contingent of scientists and technicians from the countries included in the programme. They were selected and appointed by the respective government authorities and represented fisheries research institutions and sometimes universities. Their role in the work was of utmost importance and served several purposes. These include: to be made acquainted with the techniques and methods used in the survey and with the fish fauna in the area, to be trained in these aspects, to assist in the overall activities on board, especially sampling, logging and first analysis of data and, after the completion of the assignment, to help the authorities in recognising and understanding the reported findings. About five scientists/technicians from the relevant counterpart agency participated in survey execution and data processing on a rotation basis (see Appendix III). Professional cooperation also included scholarships for leading scientists from the counterpart institutions both at IMR and at the University of Bergen.

Review of evaluations - the extended programme

special need which existed for more information on its fishery resources and also demonstrated the expectations as to its development potentials.

Figure 3.1 shows the geographical coverage of DR. FRIDTJOF NANSEN surveys in the Indian Ocean: most of the Indian Ocean's coastal areas were included, except those of India, Australia and most of Indonesia. The southwest coast of India was already covered by a survey programme with similar objectives, the FAO/UNDP Pelagic Fishery Project (IND/69/593) in the period 1971–76 and its successor (Pelagic Fishery Investigations on the Southwest Coast - Phase II (IND/75/038) (FAO, 1982).

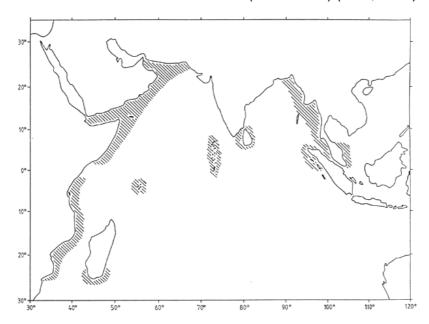


Figure 3.1 Location of the DR. FRIDTJOF NANSEN surveys in the Indian Ocean and South China Sea, 1975–84

During the first two years (1975 and 1976), the DR. FRIDTJOF NANSEN surveys differed from later assignments in having an exploratory character, investigating wide and largely unknown areas in order to obtain a first appreciation of the distribution, composition and the magnitude of the pelagic fish stocks in these waters. In retrospect, this first exploratory phase could be considered unnecessarily long, and a change to more detailed investigations of specific areas could have been made after only one year. The situation after the completion of one pre-monsoon and one post-monsoon coverage was, however, one of considerable uncertainty (IMR, 1976b). Although survey results confirmed the occurrence of small pelagic fish in the known highly productive inshore areas, their estimated abundance was nowhere as high as expected. On the other hand, the very high abundance of mesopelagic fish over the whole survey area was an unexpected finding. There was thus a need to confirm these general results and check on possible inter-annual variations. The character of the work and main objectives were therefore maintained in the continued survey, although there was some redistribution of survey intensity with more attention being given to the most promising parts.

Subsequent assignments were based on a different approach as regards both the general organization of the surveys and their objectives. Even though still operating under the umbrella of the IOP until its termination in 1979, each assignment was now planned and executed in closer co-operation with authorities of the countries concerned and the survey period was estimated to allow detailed repeated investigations of all the resources which could be targeted by the methods used as well by environmental studies.

In the late 1970s there was considerable interest in fishery research among the coastal countries of the Indian Ocean. FAO, through IOFC and IOP, had made the countries aware of the potentials for fishery development. In addition most States in the region had

by the late 1970s established EEZs in accordance with the provisionally agreed text of the Law of the Sea Convention and were conscious of a need for more information on the fishery resources within their EEZs.

The sequence of new DR. FRIDTJOF NANSEN assignments did not follow a long-term plan, but was adjusted to meet priorities set in part by FAO/UNDP, and in part by NORAD. In many cases assignments were renewed in a region or coastal zone already covered. The objective was then to confirm and supplement previous work and to study interannual fluctuations of the composition, distribution and abundance of the resources.

The IOP's original plan for a pelagic fish assessment survey of the North Arabian Sea included the whole shelf and adjacent ocean from Somalia to Cape Comorin (the southern tip of India) (Midttun *et al.*, 1973). In order to provide a more complete overview of the pelagic resources of the entire North Arabian Sea reference will also be made to the findings from the almost contemporary (1971–75) survey programme off the southwest coast of India, the FAO/UNDP Pelagic Fishery Project (IND/69/593). This project was not part of the DR. FRIDTJOF NANSEN programme, but IMR was involved in its scientific execution and there was an important intercalibration between the project vessels RASTRELLIGER and DR. FRIDTJOF NANSEN. In order to maintain a time sequence in the review, this project will be presented first (see Section 3.2).

Section 3.3 deals with the first exploratory period of the DR. FRIDTJOF NANSEN which covered the highly productive northwest Arabian Sea from Pakistan to Somalia in 1975–76. Relevant findings of the Pakistan assignment of January-June 1977 are also included.

The joint findings of these surveys represented at that time the first, and in retrospect apparently fairly conclusive, replies to the important questions concerning the fish potentials of the Arabian Sea and adjacent Gulfs for which such high expectations had been held out.

The mesopelagic fish, which in their high abundance are restricted to the slope of the continental shelf and the adjacent oceanic parts of the northwest Arabian Sea, are described separately in a section which includes the special follow-up surveys mounted for these species in 1979, 1981 and 1983 (Section 3.4).

Section 3.5 describes the follow-up surveys for small pelagic and demersal fish from Pakistan to Somalia from 1983 to 1984 on a country-by-country basis.

Other parts of the Indian Ocean are dealt with in Chapters 4 and 5.

3.2 PELAGIC FISHERY INVESTIGATIONS OFF SOUTHWEST INDIA, 1971–75: RESULTS OF THE FAO/UNDP PROJECT IND/69/593

Project objectives and effort

The southwest coast of India (Malabar coast) is included in this review for reasons of completeness. This will allow comparisons between the upwelling system off the Somalia-Arabian coast and that off the Malabar coast. The survey methods used were more or less identical to those of the DR. FRIDTJOF NANSEN programme, a result of IMR's involvement in both programmes.

The project resulted from a request from the Government of India to UNDP/FAO in 1967. The background was the experience of wide fluctuations in the yields of the important inshore fisheries for oil sardine (*Sardinella longiceps*) and mackerel (*Rastrelliger kanagurta*) on the coast from Cochin to Goa resulting in shifts between seasons of glut and years of failing fisheries with extremely low landings. It was envisaged that an

5 SURVEYS IN THE SOUTHWEST INDIAN OCEAN

In the 1970s and early 1980s, the development of marine fisheries in countries bordering the Southwest Indian was of great interest to donor agencies, such as NORAD and UNDP. After the termination of the strong co-operation with FAO and UNDP in the Arabian Sea, NORAD decided to deploy the DR. FRIDTJOF NANSEN in Mozambique, where it supported a number of long-term fisheries development programmes.

After the initial surveys in Mozambique, an interest was developed to also cover the adjacent states, usually in co-operation with FAO and local FAO/UNDP or NORAD projects.

A total of 16 surveys were conducted in the period 1977–90, of which seven in Mozambique, with 13 complete or partial coverages of the shelf areas, four in Kenya, three in Tanzania and one each in Madagascar and the Seychelles.

The survey in the Seychelles was incomplete, while the one off Madagascar was mainly for oceanographic purposes, covering only the southern part of the island. The results of the surveys in Kenya, Tanzania and Mozambique are described and discussed below.

5.1 KENYA, 1980-83

Survey objectives and effort

Surveys of the shelf of Kenya was part of the DR. FRIDTJOF NANSEN's East African Coast programme in the early 1980s to investigate small pelagic fish with acoustic methods and demersal fish with bottom trawling. The four surveys in Kenya, in December 1980, August and December 1982 and May 1983 covered together all trawlable parts of the shelf and the slope from about 10 m to 500 m. The shallow, more productive part of the shelf was covered in each of the surveys. The results were briefly described in cruise reports (IMR, 1982d; Nakken, 1981; Iversen, 1983) and summarized in a special report for the "NORAD-Kenya Seminar on the Marine Fish Stocks and Fisheries in Kenya" held in Mombasa in 1984 (Iversen, 1984; Iversen and Myklevoll, 1984b).

Table 5.1 shows the operational data of the four surveys. The degree of coverage for the acoustic investigations, was generally high and particularly so for the August 1982 survey. The trawl stations are those recorded as successful swept-area hauls, available in the NANSIS data bank with the exception of those from the 1980 survey.

Table 5.1 Details of the surveys in Kenya

Number	1	II	III	IV
Date	Dec 1980	Aug 1982	Dec 1982	May 1983
Survey distance (nmi)	1,300	2,360	1,040	810
Survey area (nmi²)	6,000	4,500	3,500	2,300
Degree of coverage	17	35	17	17
No. of trawl stations	47	47	27	27

Figure 5.1 shows the shelf of Kenya, the sub-areas used in the trawl survey programme and the coverage in the August 1982 survey. Table 5.2 shows the areas of the depth strata by subarea (Iversen, 1984). Most of the southern area is very deep and this part was only covered in the December 1980 survey. The North Kenya Bank is narrow with a steep slope. The Malindi Bank-Ungama Bay area has the widest shelf with a generally smooth trawlable bottom. The bottom trawl investigations in the 1982/83 surveys were mostly confined to this area and to the southern part of the North Kenya Bank.

Senegal 1981-92

Bonbacar Ba

Abibou Faye

L. le Reste

Birane Samb

Moustapha Seck

Sierra Leone 1981-86

I.E. Bangura

R. Jones

P.A.T. Showers

Somalia 1984

Abdi Ismail Abdi

Omar Haji Ahmed Dubad

Sri Lanka 1978-80

A. de Alwis

G.H.P. de Bruin

P. Dalpadado

K.P. Jinasena

P.G. Pereira

A. Ratnasekera

J.R. Samarasinghe

M. Siddeek

Suriname 1988

Yolanda Echteld

J.A. Emanuels

Chanderalth Gajadin

Heidi Jessurun

Rene Lieveld

Tanzania 1982-83

Peter K. Chisara

Omar Shaame Faki

Winfired V. Haule

Egid F.B. Katunzi

Sadock P.N. Kimaro

George D. Msumi

Magnus A.K. Ngoile

Harishchandra B. Pratap

Jim Yonazi

Thailand 1980

Rabieb Jangsilapa

Likit Noopetch

Weera Pokapunt

Dhummasakdi Poreeyanond

Dheerasah Wasuthapitah

Trinidad & Tobago 1988

Sammy Alleyre

Alan Aruato

Erol Caesar

Ronald Chan-A-Shing

Boris Fabres

Leo Heilemann

Sherry Heilemann

Annex 83

U.N. Doc A/55/PV.16, United Nations General Assembly, *Official Records*, Fifty-fifth session, 16th plenary meeting, 15 September 2000, Address by Mr. Salim Abdikassim Salad Hassan, President of the Somali Republic

United Nations A/55/PV.16



Official Records

16th plenary meeting Friday, 15 September 2000, 10 a.m. New York

President: Mr. Holkeri (Finland)

The meeting was called to order at 10 a.m.

Agenda item 9 (continued)

General debate

The President: I first give the floor to His Excellency The Honourable Sir John Kaputin, Minister for Foreign Affairs of Papua New Guinea.

Sir John Kaputin (Papua New Guinea): On behalf of the people and Government of Papua New Guinea, I join previous speakers in congratulating you, Sir, on your election to your prestigious post. Your unanimous election as President of the General Assembly at the dawn of the new millennium shows the high esteem in which the international community holds both you personally and your country, Finland. We are confident that you will guide the historic fifty-fifth session to a successful conclusion.

The skill with which your predecessor, Mr. Theo-Ben Gurirab of Namibia, cooperated to develop the theme of the recent Millennium Summit, and presided over the drafting of the outcome document and ensured the smooth management of the Summit earned our sincere appreciation for a job very well done. We also congratulate him on his very positive contribution to our collective deliberations during the previous year.

May I also take this opportunity, through you, Sir, to heartily congratulate the heads of State of both Finland and Namibia on their magnanimous stewardship and successful conclusion of the recent unprecedented large assembly of approximately 150

heads of State and Government in New York, which paved the way for the pursuit of our common vision and security into the twenty-first century.

Beyond the millennium celebrations, this is a time for reflection and looking ahead. The Millennium Summit took place on the eve of the twenty-fifth anniversary of Papua New Guinea's independence. The same anniversary also marks the first quarter century of my country's membership of the United Nations. It is therefore an apt occasion both for reflecting on experience and for looking ahead.

My particular focus is on the changing character of, need for and potential for international cooperation. The conjunction of the millennium with Papua New Guinea's silver anniversary invites us to take a number of different time perspectives: the short, medium and long terms. For those of us who have been privileged to play an active part in public life during this period, it also provides the opportunity to compare the ambitions we had 25 years ago with the challenges we face now.

As the Secretary-General recently reminded us in the very title of the document (A/54/2000) he prepared to guide and stimulate the Millennium Summit, the United Nations was formed in the name and with the objective of furthering the common purposes of "We the peoples of the United Nations". In similar fashion, the Constitution that came into effect when my country became independent was made and adopted in the name of "We the people of Papua New Guinea".

This record contains the text of speeches delivered in English and of the interpretation of speeches delivered in the other languages. Corrections should be submitted to the original languages only. They should be incorporated in a copy of the record and sent under the signature of a member of the delegation concerned to the Chief of the Verbatim Reporting Service, room C-178. Corrections will be issued after the end of the session in a consolidated corrigendum.

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In these four decades, our people have resisted acts ranging from political pressures and attempts at diplomatic isolation to the most insidious lying campaigns, from subversion and terrorism to assassination attempts on its main leaders, from biological warfare to the most ruthless blockade and economic war and from the promotion of armed bands to military invasion and the threat of nuclear extermination. Today, on behalf of that same generous and courageous people, we can once again say to our third world brothers and to all those who anywhere in the world defend our right to life and development that revolutionary socialist Cuba will never cease to struggle for everyone's dreams.

Address by Mr. Salim Abdikassim Salad Hassan, President of the Somali Republic

Mr. Salim Abdikassim Salad Hassan, President of the Somali Republic, was escorted into the General Assembly Hall.

The President: Before giving the floor to His Excellency Mr. Abdikassim Salad Hassan, President of the Somali Republic, I would like to welcome the President, who has recently participated in the United Nations Millennium Summit. I am pleased to note that Somalia is participating again in the deliberations of the General Assembly after a long absence. As members of the Assembly are well aware, participants at the Djibouti peace process agreed on a Transitional National Assembly which then elected President Abdikassim Salad Hassam and he was sworn in at a ceremony held in Djibouti on 25 August.

On behalf of the General Assembly, I have the honour to welcome to the United Nations His Excellency Abdikassim Salad Hassan, President of the Somali Republic, and to invite him to address the Assembly.

President Salad Hassan: It is a singular honour and privilege for me to be here today to address this session of the General Assembly. On this auspicious occasion, I would like to take this opportunity to congratulate you, Mr. President, on your unanimous election to this eminent position. Taking into account your Excellency's wide experience in international affairs, I am confident that you will successfully contribute to the work and deliberations before this Assembly.

Permit me also, Mr. President, to pay special tribute to your predecessor, His Excellency Mr. Theo-Ben Gurirab, Minister for Foreign Affairs of the Republic of Namibia, who conducted the affairs of the Assembly in a most successful manner during his term of office.

Our profound gratitude also goes to our able and dynamic Secretary-General, His Excellency Mr. Kofi Annan, who has shown exemplary leadership and demonstrated efficiency in managing the activities of our Organization. Indeed, he has played a pivotal role in the enhancement of the Organization's aims and objectives, and in furthering peace, stability and international cooperation the world over.

I am highly honoured to address this Assembly today in the presence of my colleague and brother, His Excellency Mr. Ismail Omar Guelleh, President of the Republic of Djibouti. In this regard, I would like to pay special tribute for the exceptional role played by His Excellency, his Government and the people of Djibouti in our recently concluded national reconciliation conference, held in Arta, a resort town near Djibouti.

contrast to the previous 12 Somali reconciliation conferences, held in the past 10 years in various capitals, the Arta reconciliation conference was unique and more focused. While the previous reconciliation conferences were based on attempts to reconcile the personal differences and rivalries between power-seeking faction leaders, the Arta conference, on the other hand, concentrated essentially on the constructive engagement and the interaction of the various components of Somali society, such as traditional clan elders and sultans, religious leaders, intellectuals, politicians and representatives of the various sectors of Somali civil society. More than 2,000 delegates from inside and outside the country attended the conference, the deliberations of which continued for more than five months.

It was in the context of this transparent process that a consensus was reached on the agenda and criteria for participation in the conference, based on the balanced and equitable representation of the various clans in the country. In pursuance of this innovative approach, the conference conducted its business. This led to the general agreement on the adoption of a Transitional Charter. The Charter, inter alia, provided for the establishment of the basic constitutional organs of the Third Republic of the Somali State: the National

Assembly, the President, the Council of Ministers and an independent judiciary. In accordance with these transitional measures, the first organ the conference established was the National Assembly. In turn, the National Assembly elected the President in a fair and free manner in the presence of observers and representatives of the international community.

The outcome of the Arta reconciliation conference received an overwhelming endorsement of the Somali people within the country and in the diaspora. Strong messages of support and pledges poured into Arta from all regions of the country and from Somali communities abroad.

In contrast to anarchy and civil war, which prevailed in Somalia for the past 10 years, the creation of the National Assembly and the election of a President ushered in a new era for peace and stability and constituted the first step of restoring order and central authority to the country. This was indeed translated into reality during my recent visit to Mogadishu and Baidoa. The spontaneous reaction of the hundreds of thousands of people who welcomed us in both cities demonstrated vividly that they wanted to leave years of civil war behind and open a new era of peace, tranquillity, good governance, restoration of the rule of law and national unity.

In this connection, let me emphasize the fact that the majority of the Somali people in the regions that we were not able to visit, including the regions in the northwest and northeast of the country, uphold a shared commitment and optimism for the unity and future progress of the country.

With regard to the warlords and individuals who still remain outside the reconciliation process, we express our full preparedness to engage with them in peaceful dialogue, and we call upon them to review their positions, hear the voice of reason, and respect the legitimate aspirations of the Somali people to achieve national unity, social and economic development and durable peace throughout the country.

The challenges that the Somali Republic faces today are monumental. My Government is prepared to meet those challenges with a realistic approach. We understand that our country stands today in the midst of a crisis of serious proportions. We shall exercise care, compassion and objectivity to manage that crisis and overcome it in the end.

There has been large-scale destruction of the physical infrastructure and resources in both urban and rural areas. Generations of children have not gone to school for almost two decades. A good number of highlevel managerial staff and skilled technicians have left the country. The role of the international community in assisting us in peace-building, rehabilitation and reconstruction is therefore of pivotal importance for us. There should be no relaxation by the international community in the overall effort to provide humanitarian and developmental assistance to the Somali Republic.

We will engage Somali professionals and technical experts inside and outside the country to be actively involved in all reconstruction programmes and projects. We will also give indigenous and international non-governmental organizations and relevant United Nations agencies all the necessary assistance to be able to contribute effectively to the rehabilitation and reconstruction of the country.

I would like to emphasize that my Government will place particular emphasis in the immediate future on the following priority areas: first, restoration of peace, stability and national unity, and the formation of an effective security force to consolidate them; secondly, disarmament of the militias and their encampment, subsequent rehabilitation and training in all the regions of the country; and, thirdly, maintenance of law and order through the creation of effective law enforcement agencies and professional courts of law. Within the framework of that policy, my Government will promote and consolidate peace, security and unity in the country at large.

At the international level, we reaffirm our unqualified support for the principles and objectives of the United Nations and pledge to cooperate with relevant regional and subregional organizations, namely, the Organization of African Unity, the League of Arab States, the Organization of the Islamic Conference and the Inter-Governmental Authority on Development. We shall also maintain and strengthen our relations with the European Union. We would like to open up new vistas of cooperation and economic ties with other organizations, such as the Gulf Cooperation Council and the Association of South-East Asian Nations.

My Government will promote strong links of cooperation with the countries of the Horn of Africa

and the Red Sea based on the principles of mutual respect, sovereign equality of States and non-interference in the internal affairs of other States, as provided in the Charter of the United Nations. We will promote economic partnership, open borders and common port services among the countries of the Horn of Africa.

In conclusion, my delegation requests the Assembly to facilitate the adoption of a resolution under the title "Assistance to the Somali Republic" relating to the following areas of need: first, urgent assistance from Member States for the rehabilitation and reconstruction of Somalia; secondly, resumption of sustained economic cooperation with the international community in general and with Member States of the United Nations in particular; and, thirdly, a call on relevant United Nations agencies and organizations to redouble their efforts in providing financial and material assistance to the people of Somalia.

Finally, I extend my profound appreciation to the United Nations for the commendable role it has played in the efforts to alleviate the plight of the Somali people during the last 10 years. We also wish to express our appreciation for the efforts of the world body in its continued search for a solution to our political crisis throughout the decade, and for its continued humanitarian support and assistance to the Somali people. I am confident that the United Nations will continue to provide support for the realization of the aspirations of the Somali people to stability, peace and development.

The President: On behalf of the General Assembly, I wish to thank the President of the Somali Republic for the statement he has just made.

Mr. Abdikassim Salad Hassan, President of the Somali Republic, was escorted from the General Assembly Hall.

Agenda item 9 (continued)

General debate

The President: I now give the floor to the Minister for Foreign Affairs and Trade of New Zealand, His Excellency The Honourable Phil Goff.

Mr. Goff (New Zealand): I begin by joining others who have congratulated you, Mr. President, on your election. I also assure you of the New Zealand

delegation's full cooperation as you carry out your important duties.

I also welcome the admission last week of our neighbour and friend Tuvalu into the United Nations. The admission of four new Pacific nations in the space of a year contributes to the truly universal character of the Organization.

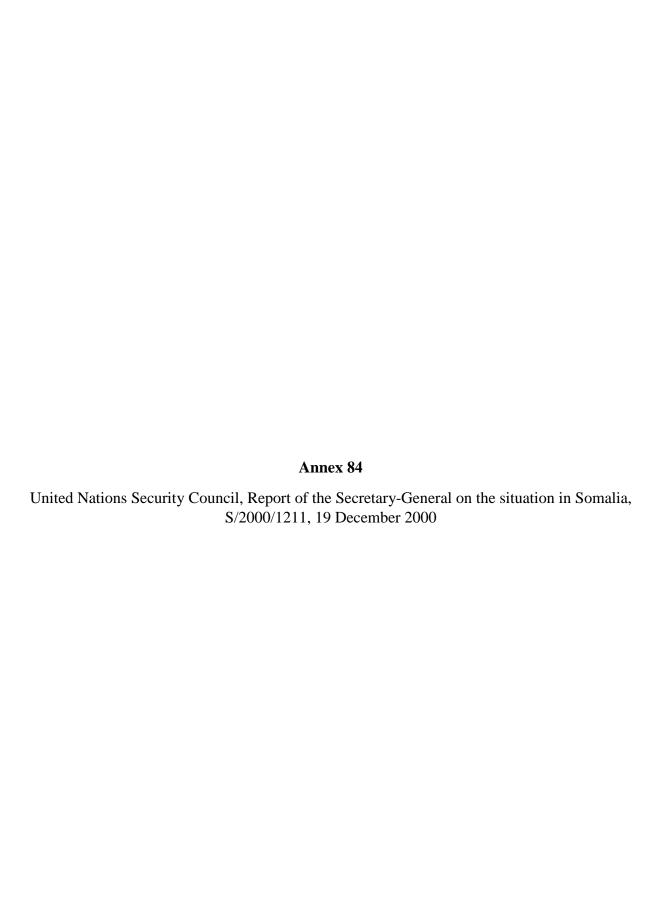
This general debate is taking place at the start of a new century and a new millennium. Secretary-General Kofi Annan has called upon the Member States of the United Nations to harness the symbolic power of the millennium to meet the real and urgent needs of people in every part of the world. This is an appropriate time to recommit ourselves to the beliefs, the values and the principles that led to the birth of the Organization 55 years ago.

Like many other Members of the Organization, New Zealand is a small country that tries to take a principled and independent view of the world. In 1945, in San Francisco, we played an active part through the Labour Prime Minister of the day, Peter Fraser, in framing the Charter in which heads of State and Government reaffirmed their faith here last week.

We have always viewed the maintenance of international peace and security, and the practical task of peacekeeping, as key roles of the United Nations. We are currently making our largest-ever contribution to the United Nations peacekeeping operation in East Timor. This commitment underlines our full support for the central role of the United Nations in building a stable, democratic and economically viable East Timor in partnership with its people. So do the non-military personnel and development assistance we have provided to help the East Timorese create essential services.

Just over a year ago, the East Timorese people voted overwhelmingly for an independent future, and I had the privilege of being part of the United Nations Mission in East Timor (UNAMET) group that oversaw that electoral process. We recall the horrors which followed as pro-integration militias laid waste to the territory, slaughtered innocent people and forced thousands of East Timorese into West Timor.

Relative calm and stability has been restored in most of East Timor, and we remember here today the sacrifices made by peacekeepers from Australia, Bangladesh, Nepal and my own country who in recent



United Nations S/2000/1211



Distr.: General 19 December 2000

Original: English

Report of the Secretary-General on the situation in Somalia

I. Introduction

1. Members of the Security Council, in their statement of 27 May 1999 (S/PRST/1999/16), requested me to submit periodic reports on the situation in Somalia. The present report is submitted pursuant to that request and covers events since my last report, submitted on 16 August 1999 (S/1999/882).

II. Political developments

A. Peacemaking efforts

- 2. In the interval between the publication of my previous report and the initiative launched by President Ismail Omar Guelleh of Djibouti in September 1999, Somali leaders and interested Governments continued their efforts to find a solution to the problem of Somalia. On 23 August 1999, a group of Somali leaders who had formed the "Somali Peace Alliance" (SPA) travelled to Djibouti to brief President Guelleh and also travelled to Addis Ababa for similar meetings with Ethiopian authorities. The leaders forming SPA included those of "Puntland", the "Somali Consultative Body", the Rahanwein Resistance Army (RRA) and the Somali National Front (SNF).
- 3. Another group of faction leaders, including Hussein Mohamed Farah Aidid and Osman Hassan Ali "Atto", assembled in the Libyan Arab Jamahiriya in early September 1999 in an attempt to resolve differences. Colonel Abdullahi Yusuf of "Puntland" also arrived in the country several days later. Mohamed Ibrahim Egal of "Somaliland" declined to attend. Colonel Yusuf refused to meet the other leaders and returned to Somalia through Addis Ababa and Djibouti,

where he met President Guelleh. The Aidid group also travelled to Addis Ababa in late October 1999, and Mr. Aidid reportedly agreed to withdraw support from groups considered to be a security threat to Ethiopia. Soon thereafter, Mr. Aidid announced that he had disarmed elements of the Oromo Liberation Front who were in Somalia

- 4. President Guelleh, in his address to the General Assembly at its fifty-fourth session, on 22 September 1999, said that he was prepared to lead a new attempt to bring peace and reconciliation to Somalia and establish structures of governance. Lamenting the failure of the Somali warlords to live up to the promises they had made in previous negotiations, President Guelleh stressed that any future process should be linked to Somali civil society. He also declared that warlords should be charged with crimes against humanity, and international sanctions should be imposed on those obstructing the peace process.
- 5. President Guelleh's address received positive reactions from Somalis both within and outside the country. There were demonstrations in a number of Somali towns and cities in support of his initiative. Initial responses from Somali leaders were also positive. Mohamed Ibrahim Egal of "Somaliland" welcomed the initiative. However, the subsequent deterioration in the relationship between his administration and Djibouti led to the former closing the border at the end of the year. The dispute was resolved in January 2000. Mr. Egal subsequently paid a visit to Djibouti and reaffirmed his support for the Djibouti peace initiative.
- 6. In January 2000, my Special Representative for Somalia visited Baidoa, Hargeisa and Garowe to consult Somali leaders on the Djibouti initiative. David

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Stephen met the leaders of "Somaliland", "Puntland" and RRA, among others, who expressed support for the initiative but felt that there was a need for certain concepts and issues to be clarified. A similar position was put forward by a group of leaders in Mogadishu in a statement issued in January. Mr. Egal told my Representative that the Djibouti initiative would provide the "south" of Somalia with a leadership with which he could negotiate.

- Even though the initiative remained in outline form, it received support from external actors. The Standing Committee on Somalia Intergovernmental Authority on Development (IGAD) endorsed the Djibouti proposal on 30 September 1999 and the IGAD Partners Forum did likewise on 19 October. IGAD itself, at its summit meeting in Djibouti on 26 November, welcomed and endorsed the Djibouti initiative in principle. Formal endorsement was given by an IGAD ministerial meeting in Djibouti on 27 March 2000. At the meeting of the Partners Forum Liaison Group on Somalia in Djibouti on 7 February, the Djibouti authorities presented a plan of action for a Somali national peace conference. On the whole, the Liaison Group reacted positively to the plan.
- 8. The first formal move to implement the Djibouti initiative was the holding of the Technical Consultative Symposium, hosted by the Government of Djibouti in March 2000. President Guelleh emphasized that the Symposium was not a decision-making body but a means of providing advice to the Government of Djibouti in its preparations for the conference. The Symposium was attended by about 60 Somalis, invited in their individual capacities, from all parts of the country and from the diaspora. My Special Adviser, Mohamed Sahnoun, represented the United Nations.
- 9. The Symposium recommended, inter alia, that the process should be made as inclusive as possible by allowing the participation of faction leaders who desired peace and by enhancing the role of civil society within Somalia and in the diaspora. On the future structure of government, the Symposium recommended a decentralized arrangement as well as consolidation of peace in areas in which peace had been restored; the establishment of a human rights commission to monitor violations of the peace process; the departure of Somalis occupying the lands and properties of others; the reaffirmation of Mogadishu as the capital of Somalia, with the possibility of establishing a temporary capital for a future provisional government;

- and the rehabilitation of militia members, with the conversion of some of them into a national army. If necessary, the transitional government could call for an international force to assist in matters of security. The delegates also recommended stricter enforcement of the Security Council arms embargo on Somalia, stressed the need for international support for a future agreement by Somalis and called upon Djibouti to send delegations to Somalia to prepare for the Somali National Peace Conference.
- 10. During March and April 2000, the Government of Djibouti consulted further with Somalis from all clans and walks of life. A delegation of representatives of the Islamic courts from Mogadishu told my Representative that their organizations fully supported the Djibouti peace proposal. A group of influential Somali businessmen visited Djibouti in March 2000 and pledged moral and material support for the Conference.
- 11. On 2 May 2000, the first phase of the Somali National Peace Conference, a meeting of traditional and clan leaders, was formally opened in the town of Arta, which is located approximately 40 kilometres north of Djibouti. Participants included elders from most of Somalia's clans and from all parts of the country. The first phase of the Conference concluded on 13 June. In addition to working on reconciliation issues among the clans, the Conference prepared for the second phase by drawing up an agenda and lists of delegates representing clans. The delegates included political, business and religious leaders, as well as representatives of civil society. President Guelleh formally inaugurated the second phase on 15 June. The total number of delegates was 810, made up of four delegations of 180, each including 20 women, representing the four main clan families, plus 90 minority alliance representatives, including 10 women. The elders who had participated in the first phase of the Conference were allowed to attend as members of delegations, but without a vote. On 17 June, delegates and traditional leaders unanimously elected as cochairmen a former mayor of Mogadishu and the then Secretary-General of RRA. Four vice-chairpersons, including one woman, were also appointed.
- 12. After deliberating in committee and plenary sessions for a month, the delegates approved the Transitional National Charter for governance in a transition phase of three years, culminating in elections. The Charter provides for regional autonomy, based on the 18 regions that existed at the end of the

Siad Barre regime. It also sets out structures for executive, legislative and judicial powers, as well as the rights of individuals. These include, for the first time in Somali history, a specific requirement that 25 seats in parliament be set aside for women. A representation of 24 seats for minority clans was also agreed upon. The Charter will be the supreme law until a definitive federal constitution for Somalia is adopted at the end of the transition period. It also provides for the election of a 225-person Transitional National Assembly.

- 13. In early August, in accordance with the provisions of the Charter and on the basis of nominations from clans, delegates selected the 225 members of the Assembly. This proved to be an arduous process, since serious differences emerged about the number of seats to be allotted to each clan. The Somali National Peace Conference later gave President Guelleh the right to use his own discretion to select a further 20 parliamentarians. This was seen as a way of defusing tensions.
- The Transitional National Assembly convened for the first time on 13 August and a few days later elected Abdalla Deerow Issag as its Speaker. When nominations for the presidential elections closed, there were 45 candidates, 16 of whom entered the electoral contest on 25 August. The election was won by Abdikassim Salad Hassan on 26 August, and the next day he was inaugurated as President at a ceremony held at Arta. Those present included the Presidents of Djibouti, Eritrea, the Sudan and Yemen and the Prime Minister of Ethiopia. In addition to the diplomatic community accredited in Djibouti, senior officials from France, Italy, Kenya, the Libyan Arab Jamahiriya and Saudi Arabia, as well as senior representatives of the Organization of African Unity, the League of Arab States and IGAD witnessed the inauguration. My Representative read a message on my behalf.

B. Activities of the Transitional National Assembly and the Transitional National Government

15. In an address to the delegates to the Somali National Peace Conference on 28 August, Mr. Hassan called upon those with weapons to surrender them and stated that his Government would provide rehabilitation for former militiamen, some of whom

would be incorporated into the new Somali army. On 30 August, Mr. Hassan visited Mogadishu and Baidoa together with members of the Transitional National Assembly and was welcomed by large crowds.

- 16. Mr. Hassan proceeded to Cairo, where he addressed the ministerial meeting of the League of Arab States and met with Egyptian officials. He then flew to New York and participated in both the Millennium Summit and the general debate of the General Assembly. Mr. Hassan, or his Prime Minister, has since visited the Libyan Arab Jamahiriya, Yemen, Ethiopia, Kenya and Uganda. Mr. Hassan also participated in the summit meeting of the League of Arab States, held at Cairo on 21 and 22 October, and the summit conference of the Organization of the Islamic Conference, held at Doha from 12 to 14 November 2000.
- 17. At the IGAD summit meeting, held at Khartoum on 23 and 24 November, Mr. Hassan was the first Somali leader since 1991 to be re-admitted to the seat of Somalia in the organization. The acceptance of the Transitional National Government by Somalia's immediate neighbours represents an important development in the country's return to the community of nations.
- 18. On 8 October, Mr. Hassan announced the appointment of Ali Khalif Galaydh as Prime Minister. Soon thereafter, Mr. Galaydh named Ismail Mohamed Hurreh "Buba" as Minister for Foreign Affairs. Members of the Transitional National Assembly returned to Mogadishu during the first two weeks of October and the President and Prime Minister returned on 14 October. The following week, Mr. Galaydh announced the appointment of a deputy prime minister and 22 ministers. The appointees, all of them men, included representatives of all major clans, and one from an ethnic minority group. A week later, the Prime Minister announced the appointment of 45 assistant ministers, 5 ministers of state and the Governor of the Benadir region (Greater Mogadishu). Of these, 4 were women.
- 19. Mr. Hassan is giving priority to the security situation in Mogadishu. A security committee has been established. Demobilization and disarmament of the various militias is reportedly taking place. A police force is being established and is being financed, for the time being, by contributions from Somali businessmen. On 17 October, Mr. Hassan appointed the Chairman of

the National Demobilization Authority, who was killed the next day by gunmen allegedly associated with one of the warlords opposed to the Transitional National Government.

20. Following the call by Mr. Hassan for interested entities to assist in reconciling the Transitional National Government with those who had stayed away from the peace process, the Government of Italy sent envoys to consult with the leaders of "Somaliland" and "Puntland". They have reported their findings to Mr. Hassan in Mogadishu. President Ali Abdallah Saleh of Yemen has twice received some of the faction leaders from Mogadishu. From 18 to 22 November, Mr. Hassan was in Yemen. In late November, Mr. Hassan visited the Libyan Arab Jamahiriya. Reports indicated that the Libyan leader offered to assist in the reconciliation process.

C. Reactions of Somali leaders to the Djibouti initiative

- 21. In early February, subsequent to Mohamed Ibrahim Egal's endorsement of the Djibouti initiative (subsequently known as the Arta peace process) and after he had visited President Guelleh on 28 January, 60 "Somaliland" parliamentarians denounced the initiative and reportedly passed a law declaring that any "Somalilander" attending the Conference would be considered a traitor and liable to the death penalty. Two "Somalilanders" were imprisoned in Hargeisa after visiting Djibouti. On 28 August, the Egal administration issued a decree giving sweeping powers to a "national" security committee empowered, inter alia, to suspend habeas corpus and ban public demonstrations. On 17 September, a court in Berbera sentenced a senior traditional leader of the Dulbahante clan from the Sool region to seven years in prison for attending the Arta Conference. The leader was subsequently pardoned by Mr. Egal. A representative of the United Nations High Commissioner for Human Rights was present at the trial. In similar fashion, Mr. Egal detained Sultan Abdul Kadir and five others who had participated in the Arta Conference and, on 19 November, pardoned them as well.
- 22. Djibouti sent a delegation to "Somaliland" on 14 April to brief Mr. Egal and seek his participation, but the delegation was not allowed to disembark at Hargeisa airport. Reacting to the election of Mr. Hassan as President, Mr. Egal stated that he would

- enter into negotiations only with someone who could claim legitimacy over the southern regions of Somalia. After the adjournment of the Somali National Peace Conference, a delegation led by the "foreign minister" of "Somaliland", travelled abroad, including to New York, to explain the position of "Somaliland".
- 23. On 23 March, Colonel Yusuf stated that "Puntland" was withdrawing its support for the Arta peace process. Among other things, he objected to what he claimed was the hand-picking of delegates to the Technical Consultative Symposium; unwillingness on the part of Djibouti to accept advice on the legitimacy of a building blocks approach; the holding of meetings in secret; and the imposition of decisions. Following the statement by Colonel Yusuf, there were demonstrations in a number of major towns in "Puntland" in favour of the peace process. The Government of Djibouti denied the claims of the "Puntland" authorities and reiterated that the process belonged to all Somalis.
- 24. On 18 April, the Government of Djibouti dispatched a delegation to Garowe to brief "Puntland" elders and the administration. Eventually, Colonel Yusuf agreed that the elders could proceed to Djibouti to attend the first phase of the Conference. Some of the "Puntland" elders returned to Garowe, ostensibly to brief their constituencies, but did not return to Arta. On 17 June, Colonel Yusuf announced that the "Puntland" delegation had withdrawn from the Somali National Peace Conference and stated that those remaining did not have the mandate of the people. After the Arta Conference, he maintained that "Puntland" had not participated in it and that it would not recognize its outcome. However, he assured the United Nations Political Office for Somalia (UNPOS) that he would not resort to force unless Mr. Hassan's forces attacked him.
- 25. Although representatives of various sub-clans took full part in the Arta Conference, a number of the faction leaders from Mogadishu stayed out of it. On several occasions the Government of Djibouti sent delegations to Mogadishu. Subsequently, Mogadishu faction leaders, including Hussein Aidid and Ali "Atto", rejected the outcome of the Arta Conference. Some threatened that Mr. Hassan would be prevented from entering Mogadishu. In a statement issued on 30 October, six Mogadishu faction leaders accused Mr. Hassan of taking steps that could provoke catastrophic war. The signatories of the statement

claimed that they were people of peace who did not intend to fight in Mogadishu unless they were forced to do so. They deplored the importation of banknotes by Mogadishu businessmen and said that only an allinclusive government could open the Mogadishu seaport.

26. On 25 and 26 October, at a meeting in Garowe, the leaders of "Puntland", RRA and the Somali Patriotic Movement declared that Somalia should be a federal state made up of "Puntland" state, Northwestern state ("Somaliland"), Central state and Southwestern state, the latter consisting of the Lower Shabelle, Bay, Bakool, Gedo and Lower and Middle Juba regions. The group called for a national reconciliation conference and for a technical committee to draft a charter. They also called on interested countries and organizations to assist both existing "regional states" and those to be set up.

D. Role of the United Nations

- 27. On 1 September and 3 December 1999 and 24 April 2000, the Under-Secretary-General for Political Affairs convened ambassadorial meetings of external actors on Somalia in New York. The representative of the Government of Djibouti briefed the meetings on the Somali National Peace Conference. The ambassadors who spoke at the meeting generally supported the efforts of Djibouti and called upon others to do the same.
- 28. UNPOS has continued to monitor the political situation in Somalia and to encourage Somali leaders and the international community to work together to restore peace in the country. At my request, my Representative travelled to Djibouti on 1 February 2000 to assist and support the Djibouti efforts. He remained there until the conclusion of the process. Colleagues from the United Nations Somalia team, including the Resident and Humanitarian Coordinator and the Human Rights Officer, joined the UNPOS team from time to time throughout the process.
- 29. Prior to the launching of the Djibouti plan of action, UNPOS convened in Nairobi on 16 November 1999 a forum that brought together over 500 Somalis of different backgrounds, including faction leaders and representatives of civil society and minority groups. Members of the diplomatic community and the Government of Djibouti were also represented. The

forum provided an opportunity for Somalis to express their views in the presence of representatives of the international community. Although some of the Somali speakers were critical of certain aspects of the Djibouti proposal, the vast majority welcomed the new initiative.

- 30. The specialized agencies of the United Nations system contributed to the peace process by offering technical support in their areas of competence, thus also fostering regional confidence-building. Programme for Education for Emergencies and Reconstruction (PEER) of the United Nations Educational, Scientific and Cultural Organization (UNESCO) supported a Djibouti non-governmental organization, l'Association pour le développement et l'animation culturelle, which staged the first Regional Musical Festival for the Horn of Africa (FEST'HORN) in Djibouti from 5 to 10 May 2000 as part of a celebration of the culture of peace, dedicated to Somalia. Artists from Djibouti, Egypt, Ethiopia, Somalia and the Sudan performed at the Palais du peuple in Djibouti and also for the conference delegates at Arta. United Nations Development Programme (UNDP) provided technical assistance for various aspects of the Conference itself.
- 31. In the course of the Djibouti process, my Representative made several attempts to engage the "Somaliland" administration. He visited Hargeisa on 8 March 2000 for talks with senior ministers, which were inconclusive. In July, he was successful in establishing direct talks between President Guelleh and Mr. Egal. Unfortunately, the talks did not lead to the participation of the Egal administration in the Arta Conference. In September, he tried to encourage dialogue between Messrs Egal and Hassan. Mr. Egal told my Representative that he would not talk to Mr. Hassan as long as the latter claimed to be the President of all of Somalia.
- 32. Concern has been expressed by the independent expert appointed by the Secretary-General in connection with the question of human rights in Somalia about threats of punishment by the administrations of "Somaliland" and "Puntland" against individuals from the two regions attending the Arta Conference. In a press release issued on 10 July, the independent expert drew attention to the action of the "Somaliland" authorities in arresting and seeking to deport back to "Puntland" 25 persons on their way to Djibouti to take part in the Conference. The

independent expert has also raised the question of the killing in "Somaliland" of an army officer, allegedly for opposing the forcible deportation of Majerten leaders who had wished to travel to Arta.

33. I have been in touch with President Guelleh during the course of the Somali National Peace Conference and he has shared with me his assessment of the progress achieved at Arta. He has asked me to garner support for the peace effort, including financial assistance. I would like to express my gratitude to Iceland, Norway and the United Kingdom of Great Britain and Northern Ireland, which have responded positively to my appeal, as of the date of the present report.

III. Security situation

- 34. The security situation in north-western and northeastern Somalia remains relatively calm, with occasional incidents of banditry and other criminal acts. In the central and southern parts of the country, the security situation continues to be uncertain and sometimes extremely tense. Extended parts of coastal areas, such as the area between Galcayo and Adado, are not under the control of any effective regional authority. They continue to be dominated by pirates and the risk for the personal safety of international staff is very high. Some parts of the country, including the area around Kismayo, can be described as anarchic. There have also been sporadic local skirmishes in other areas. They involved intra-Marehan clan fights in the Gedo region, conflicts between RRA and the Digil Salvation Army and Habr-Gedir militia in the Lower Shabelle region.
- 35. Banditry is rampant in Mogadishu. There is no single authority for the maintenance of law and order. Significant parts of the city continue to be under the control of the different militias, including the seaport and the airport, which remain closed, the former government blocks and the main city market. The Transitional National Government has only limited control of the Greater Mogadishu area. A member of the Transitional National Assembly was killed on 12 November at his residence in Mogadishu, in what was apparently a political assassination.
- 36. Several Somali aid workers have lost their lives during the period under review. On 19 August 1999, Qasim Aden Egal, an employee of the World Health

- Organization (WHO), was killed in Hargeisa Yarey Village in Middle Juba. On 13 September, the Somali administrator of the Dutch non-governmental organization Memisa, Farah Ali Gurhan, was shot and killed in his office at Garbaharey by SNF gunmen (a total of 10 people were killed during the fighting). On 15 September, Somali bandits ambushed a vehicle of the United Nations Children's Fund (UNICEF) being used to transport senior health officials and local staff members, killing Dr. Ayub Sheikh Yarrow Abdiyow and wounding five others, one of whom subsequently died in hospital. The incident took place near Jowhar in Middle Shabelle. On 18 October, two national officers of the World Food Programme (WFP) were fired upon at El Bur, in the Galgadud region. They were withdrawn safely from the area.
- 37. On 11 September 1999, a British citizen, Alan MacLean, was killed, allegedly by pirates, while sailing off the north-east coast of Somalia. On 6 June 2000, Dieter Krasemann, a German national working for the German Technical Cooperation Agency was killed at Burao, "Somaliland". On 8 June, an aircraft used by the humanitarian programmes of the European Commission was fired upon and struck in the wing as it landed at Merka. On 15 June, a grenade was tossed into the Merka compound of an Italian non-governmental organization, Cooperazione Iternazionale per lo Sviluppo. According to some reports, this was an attempt by Islamic "fundamentalist" elements to prevent the celebration of the Day of the African Child. No one was hurt.
- 38. On 26 July, a French national, Françoise Deutsch, and a British national, John Ward, both staff members of the Paris-based international non-governmental organization Action contre la faim, were kidnapped and held hostage in Mogadishu. They were released on 18 September after negotiations that reportedly involved Mr. Hassan and his security advisers. Although it was reported that no ransom had been paid, reports reaching UNPOS indicated that the release was negotiated and financed by local businessmen.
- 39. In August 1999, President Daniel arap Moi of Kenya, announced a ban on all air travel between Kenya and Somalia. The land borders had been sealed previously. Although President Moi eventually lifted the bans, he suggested that they had been put in place in reaction to an increased flow of arms from Somalia into Kenya. On 4 October, Mr. Hassan expressed

concern about the flow of arms into Somalia from an unnamed neighbouring country.

IV. Humanitarian conditions

- 40. Following the severe drought that lasted from the end of 1999 through the first quarter of 2000, humanitarian needs have decreased significantly across most of Somalia. This change has occurred since June, primarily owing to favourable environmental conditions. As a result, the estimated number of Somalis facing food insecurity has declined from 750,000 to below 400,000. In response, United Nations agencies are now developing assistance strategies to promote the mid-term recovery of the livelihood of poor and displaced populations. While it is still too soon to declare an end to the cycle of crises rendering the lives of millions of Somalis vulnerable to uncertain climatic, economic and security conditions, the lull in relief requirements enables aid agencies to focus on emergency prevention and support for local, community-based emergency preparedness and coping initiatives.
- 41. During the long dry season from December 1999 to April 2000, the Gedo, Bakool and northern Hiran regions were considered the most drought-affected areas of Somalia. Numerous nutritional surveys conducted in southern Somalia reported global malnutrition rates of over 20 per cent, whereas 15 per cent global malnutrition is generally accepted as the threshold for declaring an emergency. In response, WFP has succeeded in improving the quantity and timing of distributions to match better the district-level food-need estimates provided by the Food Security Assessment Unit of the Food and Agriculture Organization of the United Nations (FAO) and the UNICEF nutrition assessments. Similarly, FAO has successfully distributed seeds and tools to assist in building the productive capacity of rain-fed and irrigated farming. Further, given that malnutrition in Somalia is not caused simply by lack of food, intersectoral assistance to address related factors, in particular sanitary conditions, access to water and the availability of medical care, became the focus of United Nations coordination activities and UNICEF supplementary feeding programmes.
- 42. Three weeks of heavy rainfall from the end of April through the second week of May led to good crop establishment, improved access to water and pasture

- regeneration in most areas. In August, field reports confirmed these generally positive results. Seasonal crop production (estimated at 214,000 metric tonnes) was good when compared to the average post-war production (175,000 metric tonnes) but remains poor when compared to pre-war production (350,000 metric tonnes). By September, the harvest had lowered market food prices in most areas. Nonetheless, concern remained about some areas that had received less than average rainfall, particularly the Lower Juba, Middle Juba and Gedo regions. The future status of populations resident in these areas depends heavily on the success of the short rainy season in November 2000. The reported flooding in Middle and Lower Shabelle since late November could be a precursor to a major emergency.
- 43. While humanitarian concerns may have lessened on the national level, pockets of vulnerability remain. As of October, field reports indicated that the bumper harvest might provide only temporary respite for many communities in southern Somalia. Without further improvements in their livelihood, many communities will face more food and water insecurity in the coming months. Long-term processes of destitution, including land alienation, internal displacement, economic destruction of productive collapse and the infrastructure, have not affected all households equally. These processes have stratified livelihood conditions between rich and poor households within Somali communities and generated grave disparities in the distribution of humanitarian need. The dispersion of displaced persons and other destitute groups amid populations with more assets and higher living standards renders their plight less visible to the international community and decreases the perceived urgency of humanitarian responses.
- 44. An example of varying humanitarian conditions even within the same geographical location was illustrated in June by Action contre la faim, which conducted a nutritional survey of the internally displaced populations in Mogadishu. The survey accessed 60 per cent of the internally displaced population on all sides of the "green lines". A total of 12.9 per cent global malnutrition, including 2 per cent severe malnutrition, was observed. This is a significant reduction since the last survey in 1995, which identified a global rate of 26 per cent. Casual observation indicates that the situation in south Mogadishu is worse than on the north side of the city.

It is expected that conditions are generally better for the city's non-internally displaced resident population but worse for those internally displaced populations that the survey (and hence aid agency activities) could not reach.

- 45. Following the first-ever recorded outbreak of Rift Valley fever in the Middle East, the imposition of an embargo on the importation of livestock from the Horn of Africa was announced by the Government of Saudi Arabia on 19 September. All other countries on the Arabian peninsula followed the Saudi initiative, banning the importation of both live animals and processed meat. To date, no cases of Rift Valley fever have been identified in either livestock or human populations in Somalia. Since this ban on the importation of livestock from the Horn area is more comprehensive than the previous ban in 1998, involving more countries and all livestock species, the implications for food security and economic development are very grave. As of October, reports indicated sharp declines in livestock prices in northern and central regions. By restricting trade opportunities, inevitably reduce the ban will employment opportunities and affect access to other important income sources throughout the economy.
- 46. Cholera, which is endemic in Somalia, with outbreaks occurring annually since 1994, returned to Somalia in December 1999. The epidemic peaked between 15 and 21 April 2000, when 1,022 cases and 145 deaths were recorded. Case fatality rates were high this year, particularly in the Bay region, where the Dinsoor district reported a rate of 25.8 per cent. Following the heavy rains in April and May, morbidity decreased across central and southern Somalia, until all cholera treatment centres were closed by June. During the 1999-2000 cholera epidemic, 9 of Somalia's 18 regions reported outbreaks. In the areas where international non-governmental organizations with strong medical expertise are located, the strength of cholera preparedness and response measures were evidenced by low case fatality rates. Fortunately, the most populous regions that are regularly affected by cholera (e.g. Mogadishu and Kismayo) were covered by these agencies. In areas with either non-medical international non-governmental organizations or no non-governmental organizations at all, preparedness was minimal and case fatality rates were high. This was the case in rural areas, where cholera outbreaks have been explosive but short-lived. In response to

future cholera outbreaks, agreement was reached within the Somalia Aid Coordination Body to provide training for key international and national staff from less experienced agencies and to form a team of health-care professionals to assist in initiating control measures in areas without any aid presence. WHO and UNICEF undertook such initiatives in the Gedo and Bay regions in 2000, although conflict in some areas impeded access.

- 47. Health surveillance by United Nations agencies and partners of the Somalia Aid Coordination Body confirmed in July that a Kala Azar epidemic was affecting much of southern Somalia. Kala Azar, an immuno-suppressant disease, proves fatal in 95 per cent of cases within six months. Owing to the vague clinical presentation of the disease, Kala Azar symptoms are often confused with tuberculosis, AIDS, malaria and other diseases. Although the extent of the epidemic cannot be confirmed given the limited resources and access conditions, dozens of cases have been detected from Lower Juba and Gedo to Bakool. Médecins sans frontières has taken the lead in conducting evaluations and laboratory tests and supplying drugs. Treatments have been provided by the "Gedo group" of international non-governmental organizations and Médecins sans frontières in Bakol. UNICEF and WHO are supporting these efforts through the procurement of new testing materials and the training of field health staff.
- 48. Other than the annual outbreak of cholera and the onset of the Kala Azar epidemic, no new diseases were reported in Somalia over the past year. Nonetheless, there is continuing concern over the prevalence of tuberculosis and measles. In response, UNICEF and WHO immunization programming has been increased. In addition to preventing outbreaks, these agencies are targeting health assistance to support household resource bases by increasing access to public services, such as water, education and health, and reducing essential household expenditures. Among other activities in the water and environmental sector, UNICEF has continued to increase community access clean water and improved sanitation by rehabilitating urban water systems, repairing boreholes and hand-dug wells, constructing latrines for primary schools and working with water and sanitation committees across the country to undertake sanitation and hygiene control.

- 49. Long-term development efforts have remained concentrated in the north-west ("Somaliland") and north-east ("Puntland"). Through various projects, United Nations agencies have helped the two northern administrations to promote good governance and strengthen their capacity for planning, economic management, administration, enforcement, demining and urban planning. The efficient management of Somalia's important trade infrastructure airports, seaports telecommunications — is an important element of economic recovery, as well as the primary revenue source for the local administrations. United Nations agencies have provided technical assistance to increase the efficiency of these key facilities and to identify the specific development needs for bilateral donor consideration. In this respect, the United Nations has worked closely with the local authorities and with other international actors to provide an enabling environment for business growth, thereby seeking to reduce unemployment and supporting continued peace and stability. United Nations agencies have helped the private and public sectors to promote the expansion of trade and transportation links to regional markets.
- 50. In addition, United Nations agencies have strengthened participatory approaches and preliminary rehabilitation in southern Somalia. On average, only 1 in 10 children of primary school age is enrolled in school. During the past year, UNICEF rehabilitated 70 schools, thus expanding access to education for over 12,000 children. In addition, UNICEF, UNESCO and the United Nations Development Fund for Women (UNIFEM) have been instrumental in organizing and supporting local resources for peace, with special emphasis on women's organizations.
- 51. Alongside the improved food security conditions, Somali populations are looking to benefit from the establishment of the Transitional National Government following the conclusion of the Somali National Peace Conference at Arta. United Nations agencies have initiated a planning process through the consolidated appeal for 2001 and intensive consultations with partners of the Somalia Aid Coordination Body to develop strategies to support both immediate livelihood needs and the continuing transition towards peace, stability and respect for human rights. Although the security situation remains fragile, there have so far been no developments that affect the general humanitarian situation in Somalia. Nevertheless,

security conditions do continue to hinder aid agency access in many parts of southern Somalia.

52. In view of Somalia's long-standing conflict, economic collapse, lack of media coverage and donor fatigue, the response to previous appeals for humanitarian assistance has been limited. The consolidated appeal for 2000 to date has received contributions covering some 60 per cent of the requested funding. Mid- and long-term programmes needed to sustain and rehabilitate livelihoods remain poorly funded. The aid assistance required to act as a against buffer future emergencies, such rehabilitation of water sources, repair of river embankments, education programmes, eradication of female genital mutilation, prevention of HIV/AIDS infection and protection of assets for pastoral communities, has not been forthcoming.

V. Observations

- 53. The Djibouti initiative for peace in Somalia was a welcome development that was launched in the absence of any other viable peace process in the country and that President Guelleh took forward with a mandate from and the support of IGAD member Governments. The United Nations, the Organization of African Unity, the League of Arab States, the Organization of the Islamic Conference and the European Union also supported the initiative.
- 54. The Djibouti process was intended to have a broader basis and greater legitimacy than previous peacemaking efforts. Somali elders from all parts of the country, representatives of clans and, for the first time, Somali women were involved actively in discussions on how to embark on the road to peace in Somalia. This is the major asset for the Transitional National Government as it moves to the next stage of the process.
- 55. The Transitional National Government is now located in Mogadishu. It has begun the process of establishing itself on Somali soil and expanding the areas under its influence. It has three years, until 2003, in which to prepare for the installation of permanent governance arrangements. During that period, basic political, economic and development challenges will have to be addressed by the new authorities. They will have to complete the task of creating a government of

unity and reconciliation. They will also have to prepare for democratic elections.

- 56. At the same time, massive challenges of reconstruction and development confront Somalia. No country has ever been so long without central authority. According to the UNDP Special Human Development Report on Somalia, 1998, socio-economic indicators for 1997 and 1998 place Somalia at the very bottom of the human development index rankings worldwide. The destruction caused by the cycle of civil war, state collapse and anarchy is total. To recover from a decade of statelessness and conflict will involve not only the remaking of political society but also the total reconstruction of the country's basic infrastructure.
- 57. The absence of some Somali politicians and leaders from the Djibouti process has posed two immediate challenges for the new authorities: how to incorporate into the peace process those who are opposed to it and to its outcome, some of whom are heavily armed; and how to work out relations with the authorities in "Somaliland" and "Puntland" without jeopardizing the relative peace and stability in those two regions. As regards the latter, the basic challenge is to work out, in a spirit of mutual respect, practical arrangements between the Transitional National Government and those authorities.
- 58. I welcome Mr. Hassan's commitment to achieving progress by peaceful means. I hope that Somalis on all sides will do everything possible to solve the remaining issues in a peaceful and constructive way and in the interest of the common good. The United Nations and the international community in general should be prepared to assist the people of Somalia in the realization of this goal.
- 59. It will clearly take time for the Transitional National Government to prepare a comprehensive development plan and seek international financial support for it at an international pledging conference. However, even in advance of such a conference, there is an immediate need for urgent assistance, especially in the areas of demobilization, disarmament and rehabilitation of basic infrastructure. The repatriation of Somali refugees hundreds of thousands of whom are in neighbouring countries will be both a challenge and an opportunity.
- 60. United Nations agencies are working on plans to assist in the reconstruction and rehabilitation of Somalia in their respective areas of responsibility.

- "First steps", an operational plan to support governance and peace-building in Somalia for the period from September to December 2000, was launched in Nairobi in the autumn. It was prepared by all the United Nations agencies resident in Nairobi under the auspices of the United Nations Regional and Humanitarian Coordinator, in full consultation with the Somalia Aid Coordination Body, an umbrella partnership of donor Governments, United Nations agencies and intergovernmental organizations concerned about the situation in Somalia. I appeal to the potential donors to contribute without delay the resources needed for implementation of the plan.
- 61. As I stated in my previous reports on Somalia (S/1997/135 and S/1999/882), the establishment of a trust fund for Somalia could be an important indicator of the commitment of the international community to support the search for peace in Somalia. It is my intention, therefore, in anticipation that political and financial support will be forthcoming from Member States, to put in place a trust fund for peace-building in Somalia.
- 62. In my last report (S/1999/882), I urged the international and national financial institutions as well as donor Governments to propose creative mechanisms to engage Somalia. Then, there were no established state institutions. Today, the situation is changing. The Transitional National Government provides the Bretton Woods institutions with the opportunity of forging partnerships in the rebuilding of state and private institutions. It is my hope that the World Bank and the International Monetary Fund will take up the challenge.
- 63. In the light of the request made by President Guelleh on 14 September 2000, the Security Council may wish to consider what action might be appropriate to enhance the success of the Djibouti peace process by consolidating its achievements. I stand ready to prepare a proposal for a peace-building mission for Somalia. A key function of such a mission, which I expect to be based inside Somalia, would be to assist in the completion of the peace process. The Office of the United Nations Security Coordinator would be closely involved in the elaboration of options on the relocation of the United Nations in Somalia.
- 64. Given the current security situation, locating United Nations staff in the capital would be possible only after a single and effective authority for

security in the city has been established. It would be a good sign if full operations for all traffic were restored in both the seaport and airport and if free and safe access to all districts of the city were guaranteed, with no "green lines" to cross.

- 65. As the people of Somalia tackle the challenges I have outlined, they will need the sympathetic understanding and support of the international community. The search for peace and prosperity in Somalia will not be smooth; nor will peace be achieved quickly. As a result of the Djibouti process, a major step forward has been taken in the search for peace in Somalia. The priority now, for Somalis and for the international community, is to ensure that the process continues and advances.
- 66. I wish to recognize and pay warm tribute to the enormous efforts and sacrifice of the Government and people of Djibouti in helping to bring peace and reconciliation to Somalia. It has placed a heavy burden on a small State one that has been carried willingly and with great distinction. I also wish to acknowledge the sustained efforts of my Representative for Somalia, David Stephen, to support the Djibouti initiative and indeed the positive role played by the whole of UNPOS and the United Nations team in Somalia.



United Nations S/2001/263



Distr.: General 23 March 2001

Original: English

Letter dated 21 March 2001 from the Prime Minister of Somalia addressed to the President of the Security Council

A rather belated congratulations for holding the Presidency of the Security Council during the month of March. You deserve this important and prestigious post and your great country deserves the recognition.

Since our delegation had the pleasure to meet with the Security Council on 11 January 2001, the Transitional National Government of Somalia has been aggressively pursuing its policy of constructive and peaceful dialogue with the groups that are outside the Arta process in order to bring about national reconciliation.

Building upon the Arta outcome is, and will continue to be, our single most important national objective. We have succeeded in engaging two out of the five factions based in Mogadishu that are not supportive of the Arta Conference. Mohamed Qanyare Afrah holds a Cabinet post in the Transitional National Government and close associates of Hussein Haji Bod have also joined the Cabinet. Given a chance, we are confident that the Transitional National Government and the remaining groups that are outside the Arta framework can work out acceptable and honourable agreements. Given a chance, the Somali people have it in them to negotiate seriously and resolve these apparently intractable differences. Given a chance, the Transitional National Government and the Somali people will not let down the Security Council, which has been steadfast in supporting the unity, territorial integrity and political independence of Somalia. If only we are given that chance.

Our neighbour, Ethiopia, is not prepared to give us that chance. On the contrary, Ethiopia is determined to destroy our chance to restore peace, stability, democratic governance and political independence to Somalia. Ethiopia is not opposed merely to the election of President Abdiqassim Salad Hassan and the composition of the Transitional National Government and Transitional Parliament; Ethiopia is vigorously opposed to the very idea of a reconstituted independent Somali State. Ethiopia's actions, not the lip-service it pays to the resolutions of the United Nations, the Organization of African Unity (OAU) and the Intergovernmental Authority on Development (IGAD), pose a clear and present danger to our unity, territorial integrity and political independence. We would like to submit to you and to the other members of the Security Council that Ethiopia's

unalloyed aggressive actions are a threat to peace in Somalia, the subregion and the international community. Without exaggeration, we in Somalia are alarmed and are forced, therefore, to share with you our grave concern.

Some of the recent actions of Ethiopia provide the basis of our deep concern:

- 1. The Transitional National Government invested heavily in engaging the remaining three groups based in Mogadishu that were opposed to the Arta process, and we were very close to cutting deals with two of the three. Ethiopia knew perfectly well of the developments and embarked upon an obstructionist policy of beckoning them audaciously to Addis Ababa.
- 2. The three groups based in Mogadishu joined a few more individuals who have already had close relationships with the government of the Tigray People's Liberation Front (TPLF). A dozen or so characters in search of a Pirandello are currently being hosted by the Ethiopians. Their objective is to fulfil the Ethiopian strategy of obstructing the reconstitution of an independent Somali State. The pursuit of a "building bloc" approach is a smokescreen to blunt the Arta peace process and simultaneously to negate the emergence of even an Ethiopian-sponsored viable alternative.
- 3. If Ethiopia is genuinely interested in a credible peace and national reconciliation in Somalia, it is a secret known only to her. We believe that the Security Council, the Secretary-General, OAU and even IGAD are not briefed properly about the "secret plan". The only plan we observe is a sinister one of a dissembling stance bent on the destruction of a present or a future Somali State.
- Ethiopia has blatantly occupied the towns of Dolow, Bulo Hawo and Lugh in Gedo since August 1996. Ethiopia has similarly occupied towns in the Bay and Bakol regions since 1999. The Ethiopian military presence in Somalia has always been known and documented in the humanitarian circles serving Somalia, including United Nations agencies, international non-governmental organizations and donor and diplomatic missions based in Kenya. The World Food Programme, the United Nations Children's Fund, the Free State Agricultural Union, Trocaire, the African Medical and Research Foundation, Intersos, Terra Nuova and Care were some of the independent witnesses of the overwhelming military presence of Ethiopia in the Gedo, Bay and Bakol regions. The Transitional National Government has used diplomatic channels to reason with Ethiopia and to request the removal of Ethiopian forces from Somali territory. President Abdigassim Salad Hassan has privately pleaded with the Ethiopian political leadership to remove the occupying forces from our country. Despite the protestations of the TPLF government that it was markedly different from the imperial and Mengistu regimes, it has justified ominously, on the one hand, the illegal occupation of Somali territory on the imperatives of its own national security needs and, on the other hand, blamed Somalia, the victim, for publicizing the presence of troops deep inside Somali territory.

- 5. The Addis Ababa leadership has accused the Transitional National Government of using Ethiopia as a scapegoat and has termed our discreet and peaceful efforts to free our people of oppression as a campaign to discredit Ethiopia and to obtain financial assistance from external sources.
- 6. It dawned on Ethiopia that its policy of blaming the victim was no longer tenable and that the standard imperial policies were no longer sufficient to contain the anger and liberation activities of the citizens of the occupied areas, and the pressure of the international community was proving to be unbearable. Under the cover of darkness Ethiopia pulled out its troops on Sunday night, 4 February 2001. Ethiopia, however, still occupies the border towns of El Barde and Qura Joome in Bakol and Dolow in Gedo. Ethiopian forces are still being used frequently in patrolling operations deep in our territory. These operations are against the Charter of the United Nations and the resolutions of the Security Council and are a threat to international peace and security. More pertinently, these operations are instruments to terrorize our people and to destabilize the Transitional National Government.
- Ethiopia is pursuing its dangerous policy of recruiting, training, arming and supporting "friendly militias" in Gedo, Bay Bakol, Hiran, Galgadud and other regions close to the border. The creation and support of these militias are examples of the blatant Ethiopian interference in our internal affairs. They are a clear and present danger to our unity, territorial integrity and political independence. Ethiopia claims to prefer a "building bloc" approach to peace and national reconciliation in Somalia. Ethiopia claims to be mandated by IGAD, in the absence of a national government, to play a leading role in bringing about national reconciliation, peace and stability to Somalia. The Somali people have spoken and have decided that the Arta peace process is the only way out of the civil strife, lawlessness and contraction of the human spirit. Even if viable at some stage, the "building bloc" approach is no longer credible. There is a broadly defined peace process and the needed transitional National Charter and transitional national institutions are in place. The Somali people are yearning to get on with the difficult task of reconstituting a new Somali State that is committed to a culture of peace, democratic governance, reconstruction and recovery. We believe that the Ethiopian-created and supported "friendly militias" are nothing but wrecking squads that are programmed to destabilize Somalia, to brutalize our people, to obstruct the unfolding peace process and to destroy the hopes and aspirations of the Somali people.
- 8. Ethiopia is campaigning vigorously to discredit and destroy the Arta peace process. Instead of the broadly based and supported process, Ethiopia is determined to anoint a few individuals as the leaders of Somalia. The TPLF government in Addis Ababa has vociferously claimed not to be imperial in its orientation. The corralling of few individuals from the political wilderness is truly imperial but lacks at least the expected finesse. The selection of these individuals as the leaders of the Somali people is bound to be futile. They were unable to hold their small meeting inside the country. The people of Baidoba

rejected that outright and the people of the north-east have stated most emphatically that Garowe was out of bounds for the Ethiopian-inspired scheme. The spokesperson for the Ethiopian Foreign Ministry then stated that Addis Ababa was a safe and neutral venue for the blighted meeting. Indeed.

These are some of the ongoing activities that the Ethiopian Government is carrying out openly and arrogantly against Somalia and its people. These activities are blatant interferences in our internal affairs and pose a serious threat to the unity, territorial integrity and political independence of Somalia. My Government would like the Security Council to take note of these dangerous policies that are being executed by Ethiopia. These executed policies are of grave concern to Somalia and its people.

Somalia is bracing itself now for an onslaught of destabilization programmes that are being hatched by the Ethiopian Government and its anointed leaders. Ethiopia has been supplying weapons to its "friendly militias". Of particular concern is one of the Mogadishu-based warlords. He has been provided deadly landmines in the recent past and we have no assurance that would stop in the future. On the contrary, the planting of different types of landmines, the assassination of prominent citizens and other sabotage activities are expected to be carried out in Mogadishu and its environs. A reign of terror visited upon the inhabitants of Mogadishu, who are yearning for peace and stability, is not something to cherish. The prospect of an Ethiopian onslaught of destabilization is present, real and dangerous.

Yet another testimony to the Ethiopian determination to preclude a united and independent Somalia is the de facto recognition of the north-west. Ethiopia is the only country that is accepting the "passports" issued by the administrative entity in the north-west of Somalia. Ethiopia is placing contingents of its forces in Da'ar Budhug and Arabsiyo. These foreign troops are supposedly going to protect the Berbera-Hargeisa-Jigjiga corridor. Ethiopian Airlines is about to start twice weekly services between Hargeisa and Addis Ababa. Further, an agreement has been reached to allow an Ethiopian bank to operate in Hargeisa. The cumulative effect of these activities, which are focused on the north-west, is to negate the re-emergence of a unified, peaceful and independent Somalia.

The Security Council has repeatedly reaffirmed its commitment to the sovereignty, territorial integrity, political independence and unity of Somalia. Somalia has assumed its rightful place in the United Nations, OAU, IGAD, the League of Arab States and the Organization of the Islamic Conference. The Transitional National Government is deeply grateful to the Security Council and the Secretary-General for their principled support of Somalia. The security situation of Mogadishu has improved significantly. All 14 police stations in Mogadishu are manned by the reconstructed police force of the Transitional National Government and there are neither green lines nor checkpoints run by the warlords. The level of political violence is almost non-existent in Mogadishu now, but as stated earlier, we are bracing up for destabilization activities engineered by our neighbour.

The Transitional National Government and the Somali people would like to alert the Security Council that it should remain seized of the matter of Ethiopian interference in our internal affairs.

We should be grateful if you would circulate this letter as a document of the Security Council.

(Signed) Ali Khalif **Galaydh** Prime Minister, Somali Republic

Annex 86

Executive Board of the United Nations Development Programme and of the United Nations Population Fund, Assistance to Somalia (2002-2004), Note by the Administrator, DP/2002/29, 8 August 2002

DP/2002/29



Executive Board of the United Nations Development Programme and of the United Nations Population Fund

Distr.: General 8 August 2002

Original: English

Second regular session 2002
23 - 27 September 2002, New York
Item 5 of the provisional agenda
Country programmes and related matters

Assistance to Somalia (2002-2004)

Note by the Administrator

Elements of a decision

The Executive Board may wish to:

- (a) take note of the current situation in Somalia and its implications for the need for and delivery of humanitarian and development assistance to the Somali people;
- (b) endorse the strategic approach of the country office to promoting peace and security by concentrating on the three areas:
 - (i) the rule of law and security;
 - (ii) governance, public administration and civil society; and
 - (iii) poverty reduction.
- (c) encourage UNDP to continue in its efforts to mobilize resources and establish strategic partnerships, including through the Consolidated Inter-Agency Appeal process, direct donor support and in the framework of the United Nations Department of Political Affairs Trust Fund for Peace-Building in Somalia; and
- (d) authorize the Administrator to continue to approve projects consistent with the strategic approach on a case-by-case basis.

DP/2002/29

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Introduction

1. In its decision 99/7, the Executive Board took note of the report on assistance to Somalia (DP/1999/11) and authorised the Administrator to continue to approve projects in Somalia on a case-by-case basis. In accordance with that decision, the present note outlines the proposed UNDP programme for 2002-2004 for Somalia. The note has been formulated taking into account the programme review, the re-profiling mission conducted in November 2001 and the inter-agency security mission fielded at the request of the Security Council in January 2002.

I. Development situation from a sustainable human development perspective

- 2. Development in Somalia continues to be subject to ongoing internecine warfare and widespread insecurity. The country has now been without a unified central government since the end of 1990, resulting in localized factional rivalry and fighting and the non-existence of the rule of law in many areas. The fighting and emergencies have caused the loss of an estimated 300 000 lives and the displacement of some 10 per cent of the population 300 000 internally and a further 246 000 to neighbouring countries (NHDR 2001, page 199). Violence and suffering have affected populations in almost all parts of the country, with women, children, the elderly and marginalized groups being particularly hit hard. In the limited areas of the country that have managed to achieve relative peace and stability, local populations have initiated reconstruction of their communities and are achieving some progress in development, with little external support.
- 3. On the initiative of the Government of Djibouti and the regional Inter-Governmental Authority for Development (IGAD), a Somali national peace conference was held in Djibouti in April and May 2000. This culminated in the formation in September 2000 of a Transitional National Government (TNG) in the Somali capital, Mogadishu. As of June 2002 however, the TNG had not yet been able to establish full authority in or beyond the capital. Separate administrations remain in other parts of the country. Of these the self-proclaimed state of Somaliland in the northwest has been the most successful so far, with fragile but functioning systems of governance and administration. A fragile peace, with intermittent outbreaks of factional fighting, is holding in the northeast (the self-declared autonomous region of Puntland) and in the southwest around Baidoa. Elsewhere insecurity remains high.
- 4. While the fighting and fragmentation of authority have led to widespread destruction of economic infrastructure, new economic and political structures have emerged in more stable areas. The national human development report (NHDR) 2001 for Somalia noted that in the absence of central state authorities the main economic and human development in Somalia has been occurring at the grass-roots level. This has led to the emergence in places of a private sector characterized by its energy and innovation. The private sector however, has been left almost entirely without institutional support to facilitate its development and/or regulate its activities. Moreover, the economy and a large proportion of the population remain vulnerable to external shocks. The capacities and reach of public administration and civil society organizations must be strengthened to deal effectively with many broader development challenges facing Somalia, ranging from the securing of any sustained peace agreements, to the response to environmental degradation (a cause of subsidiary conflicts in the country).
- 5. The achievement of peace and stability is therefore of paramount importance. External support for peace has so far focused mainly on the efforts of the regional IGAD, which aims to establish a political and consultative framework to facilitate Somali reconciliation and national reconstruction. The United Nations Political Office for Somalia is also providing support for the peace and reconciliation process. Meanwhile, United Nations organizations have continued humanitarian and development operations in the country, focusing as appropriate on areas of relative calm with functioning authorities. These operations have an important role to play in building peace from the grass-roots level up and complement United Nations support to the efforts of IGAD (or other

parties) to bring about peace through political negotiations. In support of this, in March 2002 the United Nations Security Council requested that the Secretary-General coordinate ongoing peace-building activities and provide for their incremental expansion and establish a Trust Fund for Peace-Building in Somalia that would support preparatory activities on the ground and supplement the United Nations Consolidated Inter-Agency Appeal for Somalia.

- 6. The NHDR 2001 found that Somalia had an overall human development index (HDI) of 0.284, which places the country among the five least developed countries in the world. This low HDI nonetheless represents a slight improvement over previous years, giving a glimmer of encouragement that some of the more positive economic and social developments in the past five years have been having an impact on overall development. Chapter 5 of the NHDR 2001 provides all the development indicators for Somalia covered in this section.
- 7. While life expectancy indicators are comparable to neighbouring Ethiopia and Kenya, education and health indicators are considerably worse. It is estimated that some 49 per cent of the population live without access to sanitation and 77 per cent without access to safe water. In 1990 it was estimated that 60 per cent of the population was living below the poverty line. Available data suggest that this proportion remains as high today, if not higher. There are significant development inequities between urban and rural areas and between women and men. For example, the adult literacy rate for rural and nomadic populations is estimated at 10 per cent whereas the urban rate is 35 per cent. Female adult literacy is estimated to be only 52 per cent of the male rate and the female primary school enrolment ratio similarly is only 53 per cent of the male rate.
- 8. The attainment of the Millennium development goals (MDGs) in Somalia is a distant prospect. While the reversal of the decline in some development indicators suggests that private Somali initiatives and coping mechanisms do have a positive impact, the absence of firm governance structures and the continuing conflict make it difficult to address most MDG targets.

II. Results and lessons of past assistance

- 9. UNDP programming between 1997 and 2001 achieved positive results in the areas of civil protection, governance capacity-building and poverty reduction. Particular examples include: a) more than 2000 police were trained in northwest and northeast Somalia and Mogadishu and two police training centres were refurbished and staff retrained; b) some 2000 farms in the Gabiley region in north-west Somalia were surveyed to enable clear land ownership titles to be drawn up and registered, making each farm the legal property of its owner and acceptable as collateral for credit; c) in cooperation with the Food and Agriculture Organisation of the United Nations (FAO), a series of initiatives were undertaken to resolve the ban in several Gulf countries on the import of chilled meat and livestock from Somalia. As a result, Oman, the United Arab Emirates and Yemen reopened their markets for chilled meat and livestock from Somalia and import licences were introduced and granted to abattoirs in Galkayo and Mogadishu.
- 10. Valuable support was also provided in civil aviation and port services: a) the Civil Aviation Caretaker Authority for Somalia (CACAS) was established to manage air traffic control services, rehabilitate basic services in selected airports and run a flight information centre in Nairobi, which serves as the substitute for the Mogadishu air control tower; b) over 400 Somalis were trained in specific areas of civil aviation and ground services have been re-established at several airports inside Somalia; c) UNDP, with the United Nations Conference on Trade and Development (UNCTAD) and the financial support of the Governments of Sweden and the United States, completed a project on ports and trade efficiency and focused on improving the efficiency of Somali ports and facilitating trade diversification.
- 11. A further key result was the publication of the NHDR for 2001, the second for Somalia.

- 12. A number of lessons have emerged from the UNDP programme in the past four years, in particular through the reprofiling mission and programme review in November 2001. Overall, it is clear that the programme suffered from being too dispersed in its activities and intended outcomes. This is in part the result of the exceptional difficulty of the operating environment in Somalia (complete absence of a central government, fluctuations in security levels and inability to maintain a stable operating presence inside the country). In addition to these contextual difficulties, it was found that the lack of focus in the past programme resulted partly from over-ambitious planning, inadequate monitoring and evaluation of programme activities and projects and failure to follow up on initial assessments with concrete results on the ground.
- 13. In light of this, the following key recommendations have been made for the coming period:
- (a) The overall programme should build upon existing successful programmes and aim to contribute to peace-building through development. The programme should continue to invest primarily in human capacity rather than physical infrastructure;
- (b) Priority should be given to programmes less vulnerable to political insecurity and disruptions and to programmes which can reinforce political efforts to achieve stability and security, with care in all cases given to maintain UNDP neutrality;
 - (c) Increased attention must be given to implementation and delivery;
- (d) Measures must be taken to ensure that the work of the United Nations Coordination Unit adequately serves both the resident coordinator and the humanitarian coordinator and that development activities are not neglected. This applies similarly to the consolidated inter-agency appeal process (CAP).

III. Objectives, programme areas and expected results

14. In view of the humanitarian and developmental situation in Somalia, the above recommendations and the global mandate of UNDP to work for the reduction of poverty, the country office is framing its programme to contribute to peace-building through development. The programme will work in three overall and inter-related thematic areas: (a) the rule of law and security; (b) governance, public administration and civil society; and (c) poverty reduction. These three programme areas represent essential building blocks for achieving overall peace and stability. Improved rule of law and security will increase stability in Somalia and facilitate rehabilitation of individual livelihoods. Strengthened governance institutions, public administration and civil society will provide a framework for enabling development across a broader range of dimensions – economic, human and social – and will facilitate dialogue for peace. The implementation of policies and activities for poverty reduction will provide both a means for improving the lives of the most disadvantaged in Somalia and a framework for longer-term economic and human development. In all its activities, UNDP will seek to ensure sustainability in programme outputs through local partners, existing authorities and non-governmental and civil society organizations. It will also remain alert for any opportunities that emerge for linkages with national bodies capable of replicating successful field undertakings.

A. Rule of law and security

15. Recognizing that the fluid and unstable situation currently prevailing in Somalia has severe consequences for development prospects from the level of the individual to the level of the country as a whole, the objective of this area of the programme will be to work for the restoration of the rule of law and a reduction in the sources of

insecurity in the country. Funding (including in-kind contributions) has been pledged from the European Union and the Governments of Denmark, Italy, Norway, Sweden, Switzerland and the United States. The strategy will focus on the following two outcomes.

- 16. Improved judiciary and law enforcement capacities, with increased respect for human rights. As part of a multi-agency project on the rule of law and civil protection, UNDP will provide assistance for the organization of legal systems in Somalia and provide capacity-building and training for new judiciary workers. UNDP will continue with an existing law enforcement initiative, which provides training for police forces and prison staff in international policing standards and human rights. Initiatives will also be carried out to improve human rights knowledge in the judiciary and police forces, as well as in the public at large. UNDP will also seek to support the establishment of human rights institutions and mechanisms for increasing access to justice. Target outputs include: (a) law school(s) or training centre(s) established to provide legal and human rights training to new and existing workers in the Somali judiciary system(s); (b) police forces trained in policing standards and human rights; and (c) establishment of legal advisory and/or human rights institutions (e.g. ombudsman) facilitated by UNDP.
- 17. Sustainable demobilization, disarmament and reintegration of combatants/militia, supported by implementation of small arms control measures. UNDP will lead the coordination and implementation of the This plan has been adopted by 19 international non-Consolidated Demobilization Plan for Somalia. governmental organizations (INGOs) and United Nations organizations and has received strong support from the Secretary-General. With the full participation of local communities, UNDP will aim to demonstrate ways for the comprehensive reintegration of ex-combatants into society and will seek to develop the capacities of local authorities and regional "demobilization departments" to coordinate and sustain the process. Complementing this, with the support of the Bureau for Crisis Prevention and Recovery (BCPR), a project for small arms control will be implemented. A first phase is already being carried out, aimed at establishing a basis for scaling up the project over the longer term in partnership with international NGOs and with the involvement of Somali authorities and local communities. Target outputs include: (a) a database of militias established; (b) options developed and piloted for psycho-social assistance, vocational training and reintegration of excombatants/militia; (c) effective strategies and policies on demobilization, disarmament and reintegration implemented by local and/or regional authorities; and (d) legal framework(s) for small arms control established and implemented.

B. Governance, public administration and civil society

- 18. The objective will be to strengthen representative governance institutions, public administration and civil society in order to improve the ability of existing local governance institutions to fulfil their roles effectively. In general, UNDP will aim to improve the administration of key public infrastructure and services that impact on economic development. At the local level, the organization will aim to enable local authorities, civil society organizations and local communities to play a stronger role in the management of development. The strategy will focus on the following three outcomes.
- 19. Improved effectiveness of Somali (regional) institutions of representation and governance to perform their legislative, administrative and oversight functions. Working with regional governing institutions in specific areas such as administrative systems and financial management, UNDP will seek to reinforce democratic and participatory approaches to governance. It will promote the establishment of effective systems for the distribution of power between the local, regional and (where possible) national levels and through this seek to increase Somali dialogue for peace. Target outputs include: (a) regional Somali authorities and civil servants trained in parliamentary and ministry-specific practices and standards; (b) administrative and legal frameworks for public financial accounts, standards and accountability proposed and reviewed by regional authorities; and (c) dialogue established between governing authorities on issues of administration, peace and security.

- 20. Improved enabling environment for the development of a competitive, market-oriented private sector. UNDP will focus on the administration of key public infrastructure, services and mechanisms that can facilitate economic growth. Building on previous results, assistance will be provided specifically to the country's aviation and ports authorities. At the policy level, UNDP will seek to assist the development of appropriate economic policies and measures and the establishment of basic regulatory frameworks. Target outputs include: (a) improving essential facilities and services in local Somali airports; (b) implementing measures for increased financial self-sufficiency for Civil Aviation Caretaker Authority for Somalia (CACAS), including better collection of over-flight charges; (c) preparing and reviewing by authorities options for involvement of the private sector in the management of Berbera and Bosasso ports and establishment of free trade zone and (d) implementing new economic policies and measures conducive to economic growth (e.g. covering customs, tariffs, trade regulation, information and communication technology).
- 21. Local authorities, civil society organizations and communities in rural and urban areas involved in the planning and management of development activities. Sustainable recovery and development in Somalia will depend to a large extent on the organization and involvement of local authorities and communities. Since the breakdown of central government, many active civil society and non-governmental organizations have emerged but with limited capacities and largely in isolation from each other. UNDP will provide capacity building for local authorities and civil society organizations in selected areas of need. It will pursue ways of increasing the involvement of local communities in issues such as land use, basic services and development planning in general. Through this, it will also seek to foster dialogue for peace at the local level. Target outputs include: (a) network(s) of civil society organizations created and coordination in development activities facilitated; and measures implemented enabling civil society organizations and affected communities to participate in the formulation and implementation of local development plans and in peace dialogue.

C. Poverty reduction

- 22. In this area the objective will be both to reduce poverty in specific areas at the level of the individual and locality and to assist the formulation and adoption of policies that will contribute to the wider and sustained reduction of poverty. Assistance will be provided for internally displaced persons, returning refugees and other disadvantaged groups to reintegrate and re-establish livelihoods. Supporting activities will be carried out at the regional and, as far as possible, national levels. This will be complemented by monitoring of poverty and progress towards the MDGs. Four overall outcomes will be aimed for.
- 23. Anti-poverty strategies and action plans developed through participatory processes involving in particular the poor and other disadvantaged groups. Through the Somalia Watching Brief Programme, co-financed by the World Bank Post-Conflict Fund and in collaboration with Somali authorities and other development partners, UNDP will work to improve capacities for collecting, monitoring and assessing poverty and gender-disaggregated data. It will use the NHDR process to promote broad and inclusive debate on poverty reduction strategies. UNDP will work in consultation with the various administrative authorities in Somalia and other development partners to prepare a poverty reduction strategy, which could serve as the basis of an interim poverty reduction strategy paper (PRSP) for Somalia. Target outputs include: (a) preparing next NHDR, focusing on national recovery and poverty reduction; (b) producing MDG report(s) through collaboration between UNDP, United Nations organizations and Somali authorities; and (c) Somali authorities identifying and reviewing options for participatory formulation of an interim PRSP.
- 24. Development of key economic sectors facilitated and sources of income for the poor protected. Building on established partnerships with Somali authorities, UNDP will aim to support the development of key economic sectors and opportunities for diversification. Assistance will be provided for developing capacities in land surveying. Particular attention will be given to strengthening the priority areas of remittance systems and livestock or chilled meat exports. Target outputs include: (a) establishing mechanisms enabling local authorities

to increase coverage of cadastral surveys; (b) formulating and implementing action plan for remittance companies to comply with relevant international financial rules and regulations with assistance from UNDP; (c) developing and reviewing options for remittance companies to expand their operations to commercial banking and other financial services; and (d) Somali authorities formulating measures for improved processes and standards in livestock exports, with UNDP assistance.

- 25. Sustainable recovery and reintegration of returning refugees, internally displaced persons and other conflict-affected or marginalized populations. UNDP will direct its activities in this area through an initiative launched with the Office of the United Nations High Commissioner for Refugees (UNHCR) under the auspices of IGAD, designed to facilitate the reintegration of uprooted populations in the Horn of Africa. Activities will be carried out in collaboration with United Nations organizations, NGOs and Somali authorities, with UNDP playing a lead coordinating role. The Government of Sweden has already contributed to the project and other donors have pledged support. Target outputs include: (a) initiatives implemented to provide basic social services to reintegrating populations; (b) pilot initiative(s) formulated for creating livelihood opportunities for reintegrating populations and implementation begun; and (c) effective policies for recovery and reintegration and management of the process implemented by local and/or regional authorities.
- 26. Increased national capacity for mine action targeted at improving access to land and livelihood resources for the poor. Landmines and unexploded ordnance affect a wide range of aspects of Somali life, from the loss of life, disability and insecurity of affected communities, reduced land available for livestock and cultivation, to increased transportation costs. It is the rural poor who are most affected by the loss of productive land and the risk of injury resulting from landmines and unexploded ordnance. Somalia lacks a comprehensive mine action database and cannot effectively prioritize and coordinate mine action. UNDP will play the lead coordinating role in the development and implementation of a Mine Action Support project, building on a preparatory phase launched in early 2002. Target outputs include: (a) establishing a mine action centre and database; (b) "recovering" land in pilot areas for farming use as a result of mine-marking and prioritized clearance; and (c) setting up a mine and unexploded ordnance action plan on the basis of landmine impact surveys, enabling targeted extension of activities to new areas of the country.

D. Cross-cutting themes

27. Environment, gender, HIV/AIDS and information and communication technology (ICT) will be crosscutting themes within the programme's three thematic areas. UNDP will explore ways of incorporating environmental concerns into policies and practices and developing capacity in disaster prevention, preparedness and management. UNDP will seek to increase the participation of women within its programme activities and beyond in Somali society. Working with UNFPA, the United Nations Children's Fund and the United Nations Development Fund for Women, it will promote their participation in activities and policy-making that concern the re-establishment of security and the rule of law and more broadly in decision-making at all levels. In cooperation with other United Nations organizations, UNDP will work to incorporate the combat of HIV/AIDS in all its activities and will seek to highlight the issue of the spread of HIV/AIDS in situations of conflict, displacement, return and movement along trade routes. UNDP will seek to build upon a project funded by the Government of Denmark responding to identified ICT needs in educational and administrative institutions in northwest Somalia. In this it will explore partnership opportunities with private sector companies to fill the gap left by a missing national government framework for ICT development. Target outputs for these cross-cutting themes include: (a) raising public awareness about the relationships between environmental management and livelihoods in order to increase ownership of environment issues; (b) taking concrete measures for the inclusion of women in local and regional authorities and in decision-making processes for development; (c) raising public awareness on patterns of transmission of HIV/AIDS, especially along trade/trucking routes; and (d) improving Internet access for educational institutions in targeted areas, with scope for extension to other users.

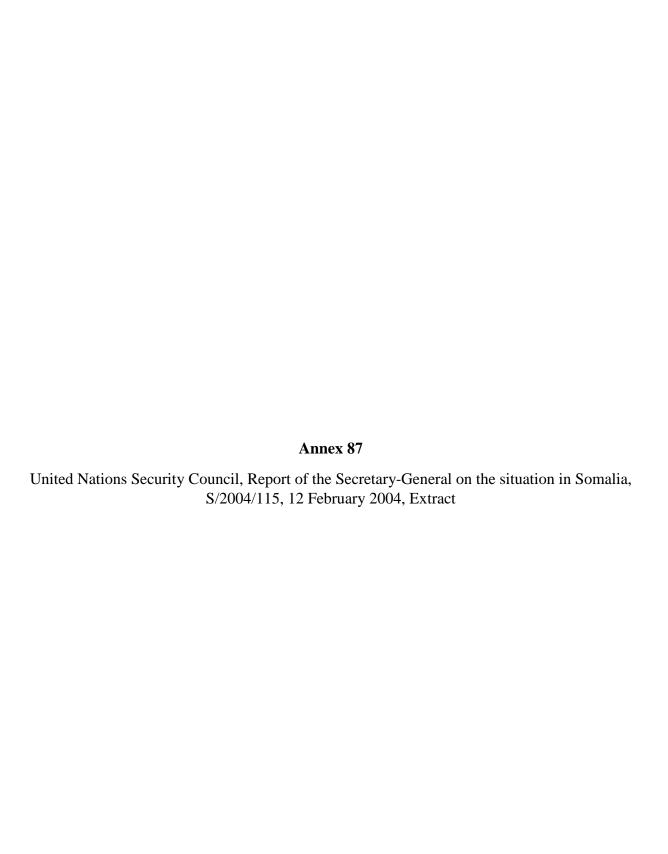
28. Another key cross-cutting issue is that of security, the absence of which is a significant constraint on both development and humanitarian programme delivery. Development programmes in particular require security as a precondition for sustainability of results. Consequently, security will be a primary condition to the initiation of development activities and an integral part of all development programme documents and plans. Continued close coordination between the country office and the cost-shared United Nations Security Coordinator (UNSECOORD) team will ensure staff and programme security in the foreseeable future. All security arrangements and activities will continue to be guided by the Security Plan for Somalia. The Security Management Team, chaired by the resident representative will meet frequently to ensure that executive interagency security management decisions remain responsive to the fluid security situation in the country.

IV. Management arrangements

- 29. Considerable efforts have been made to strengthen Somali participation and ownership in the programme through consultation mechanisms such as local management/steering committees. Monitoring, review and evaluation systems for the provision of regular feedback and reporting with a focus on outputs and outcomes have been put in place for all sub-programmes and projects.
- 30. During 2002, the country office will complete implementation of the reprofiling. New training will be undertaken for country office staff. The country office will also aim to benefit from support resources from headquarters, including from BCPR, as well as from other country offices as appropriate. Networking, knowledge management and policy support will be sought from the sub-regional resource facility (SURF) for the Arab States.
- 31. Since 2000, the country office has begun to implement projects using the direct execution modality in order to take direct charge of the management of UNDP-funded projects and improve the visibility and standing of UNDP in Somalia. Considerable success has been achieved to date and the country office intends to continue to use this execution modality where appropriate. The country office has already strengthened its capacity to handle direct execution and will further strengthen it during the remainder of 2002 with direct execution training for all staff. As new programmes are prepared, the country office will ensure, as in the past, that United Nations organizations and international and national NGOs are identified where appropriate to implement relevant components of each programme. The country office will also use the services of fully funded United Nations Volunteers (UNVs) to assist in programme implementation.
- 32. It has become clear that the location of the country office outside Somalia is a severe limiting factor for programme effectiveness. For this reason, UNDP has begun to transfer programme and project monitoring functions to Somalia. The process of transfer is incremental and is strictly subject to security considerations. Ultimately, security permitting, it is envisaged that Nairobi will become an overall liaison office and that the programme will operate out of four sub-offices covering broad geographical areas within Somalia: Baidoa, Garowe, Hargeisa and Mogadishu. This will allow country office programme monitoring functions to be fully devolved inside the country. Until then, these sub-offices will operate with a largely project-based orientation, focusing on implementation, monitoring and evaluation of activities and outputs.
- 33. The country office will continue to place emphasis on raising other (non-core) resources from as wide a donor net as possible, though at the same time seeking contributions from Somali partners. Total potential donor interest is great. In 2001, donors pledged more than \$10 million to UNDP. The principal donors already actively supporting the UNDP programme for Somalia are Denmark, the European Union, Finland, Italy, the Netherlands, Norway, Sweden, the United Kingdom and the United States. A new partnership has been established with the World Bank, which since May 2002 has been co-financing the Somalia Watching Brief. In addition, countries such as Canada, France, Germany and South Africa have expressed strong interest in the situation in Somalia and

in UNDP-led initiatives in the country. The country office will use core funds as seed money to leverage third party co-financing.

- 34. The country office recognizes that there is a strong need to encourage donors and the international community to move beyond a persistent focus on short-term humanitarian emergency interventions and to become more actively involved in long-term recovery and development activities. Drawing on practical examples of successful development in Somalia, the country office will now seek to identify development partners for building long-term strategic partnerships and "development coalitions" that go beyond individual projects and programmes. These will include traditional and non-traditional donors, international financial institutions, other United Nations organizations, international NGOs, the private sector and regional institutions. The country office will also continue to involve donors in the project formulation and evaluation process through respective steering committees and the Somali Aid Coordination Body (SACB).
- Since 1990, international organizations and the United Nations system in particular have borne a primary responsibility for ensuring the effective coordination of humanitarian assistance operations and aid programmes and collaboration with Somali regional counterparts. Since March 1995, international staff and many national staff from United Nations and other aid organizations have withdrawn from Mogadishu, as a result of prevailing insecurity and established temporary operation centres in Nairobi, Kenya. Other United Nations organizations are present in Somalia only through specific development projects. The United Nations Political Office for Somalia (UNPOS) is also temporarily based in Nairobi. The United Nations Resident/Humanitarian coordinator facilitates coordination within the United Nations country team and in this is supported by a secretariat, the United Nations Coordination Unit (UNCU), which includes UNDP and the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) officers in Nairobi and in the field. The UNCU has now been restructured to ensure that development activities and humanitarian imperatives are adequately coordinated and addressed by the offices of the Resident Coordinator and Humanitarian Coordinator. Coordination in Nairobi between the United Nations system, the European Union, NGOs, donors and members of the international community is facilitated by the SACB, a voluntary aid coordination forum created in December 1993. The SACB is an experiment aimed at consensual management of aid operations and shoulders much of the responsibility for "coordination" of aid agencies operating in Somalia. The Resident Coordinator acts as a Vice-Chairman of the SACB Executive Committee and chairs the Steering Committee, which leads SACB sectoral committees. Recently, conditions have permitted United Nations, UNDP and OCHA to set up three centres of operation inside Somalia. They report to the Resident Coordinator and are responsible for inter-agency assessments, information sharing and common planning. United Nations organizations in Somalia are in the final stages of preparing the Joint Action Recovery Plan (JARP), which outlines a common assessment of the overall situation and a common plan to address the challenges that Somalia presents. The JARP will be completed in the third quarter of 2002 and for the time being will take the place of the common country assessment and the United Nations Development Assistance Framework for Somalia.



United Nations S/2004/115



Distr.: General 12 February 2004

Original: English

Report of the Secretary-General on the situation in Somalia

I. Introduction

- 1. In its presidential statement of 31 October 2001 (S/PRST/2001/30), the Security Council requested me to submit reports, at least every four months, on the situation in Somalia and the efforts to promote the peace process.
- 2. The present report covers developments since my previous report, dated 13 October 2003 (S/2003/987). Its main focus is the challenges faced and the progress made by the Somali national reconciliation process, which has been ongoing in Kenya since October 2002 under the auspices of the Intergovernmental Authority on Development (IGAD), with support from the international community. The report also provides an update on the political and security situation in Somalia and the humanitarian and development activities of United Nations programmes and agencies in the country.

II. Somali national reconciliation process

- 3. By mid-September 2003, developments at the Somalia National Reconciliation Conference at Mbagathi, Kenya, led to an impasse over the contested adoption of a charter (see S/2003/987, paras. 13-18). Some of the leaders, including the President of the Transitional National Government, Abdikassim Salad Hassan, Colonel Barre Aden Shire of the Juba Valley Alliance (JVA), Mohamed Ibrahim Habsade of the Rahanwein Resistance Army (RRA), Osman Hassan Ali ("Atto") and Musse Sudi ("Yalahow") rejected the adoption, and returned to Somalia. On 30 September, a group of them announced the formation of the National Salvation Council consisting of 12 factions under the chairmanship of Musse Sudi. On 7 October, the National Salvation Council signed a memorandum of understanding with the President of the Transitional National Government, in which it acknowledged the continuance in office of the Transitional National Government. The signatories also announced their intention to convene a new national reconciliation conference separate from the one at Mbagathi. No parallel conference has been held, however.
- 4. At the tenth IGAD Summit, held at Kampala on 24 October under the chairmanship of the President of Uganda, Yoweri Museveni, the heads of State focused attention on ways and means to get the Somali national reconciliation process back on track. The President of Mozambique, Joachim Chissano, Chairman of the African Union, and Alpha Konaré, Chairperson of the Commission of the

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African Union, also participated in the Summit. My Special Adviser, Mohamed Sahnoun, accompanied by my Representative for Somalia, Winston Tubman, collaborated actively with IGAD leaders in efforts to re-energize the stalled reconciliation process.

- 5. The IGAD heads of State decided to expand the membership of the IGAD Technical Committee to include Eritrea, the Sudan and Uganda, in addition to Djibouti, Ethiopia and Kenya, and renamed it the IGAD Facilitation Committee. The Special Envoy of the African Union for Somalia was made a member of the Facilitation Committee. The Summit directed the Facilitation Committee to meet in Nairobi at the ministerial level on 28 October to review the status of the Somali national reconciliation process.
- 6. The ministerial meeting, chaired by the Minister for Foreign Affairs of Kenya, was held in Nairobi as scheduled and was attended by ministers from Djibouti, Eritrea and Uganda as well as Ethiopian officials. The ministers agreed that Somali leaders would be invited to a Leaders' Consultation in Kenya on 20 November and that phase III of the Conference would commence only after the successful conclusion of the Leaders' Consultation.
- 7. The Transitional National Government and the National Salvation Council raised several objections to the proposed Leaders' Consultation. The main objection centred on the issue of representation. The group of leaders who had endorsed the adoption of a charter in mid-September wanted the Consultation to be held as scheduled and the participants limited to Abdikassim Salad Hassan and those leaders who had signed the Eldoret Declaration (S/2002/1359, annex) on 27 October 2002. On the other hand, the Transitional National Government and National Salvation Council groups wanted a larger representation of leaders and the exclusion of the former Prime Minister of the Transitional National Government and the Speaker of Transitional National Assembly (see S/2003/987, para. 9). In addition, both groups called for the postponement of the Leaders' Consultation to observe the final days of Ramadan.
- 8. The Minister for Foreign Affairs of Kenya, accompanied by the Kenyan Special Envoy for Somalia and Chairman of the Conference, Bethuel Kiplagat, held talks with officials in Djibouti, Ethiopia and Saudi Arabia in November to seek support for the Somali national reconciliation process.
- 9. The Under-Secretary-General for Political Affairs, Kieran Prendergast, visited eastern regions and the Horn of Africa from 7 to 16 November. Following in-depth briefings by my Special Adviser and my Representative for Somalia, he held discussions with a wide spectrum of Somali leaders, the Minister for Foreign Affairs of Kenya, Mr. Kiplagat, and members of the IGAD Facilitation Committee, the Executive Committee of the Somalia Aid Coordination Body, the United Nations country team for Somalia and other external actors to assess the current status and prospects for national reconciliation in Somalia, as well as planning for a future United Nations role in the country.
- 10. At its second meeting on 8 December, the Facilitation Committee was obliged once again to postpone the Leaders' Consultation until 18 December. In a joint communiqué, the Ministers stressed that any invited Somali leader who did not attend the meeting "shall be deemed not to be interested in the reconciliation process and will be treated as such". In view of the continuing impasse, the Minister for

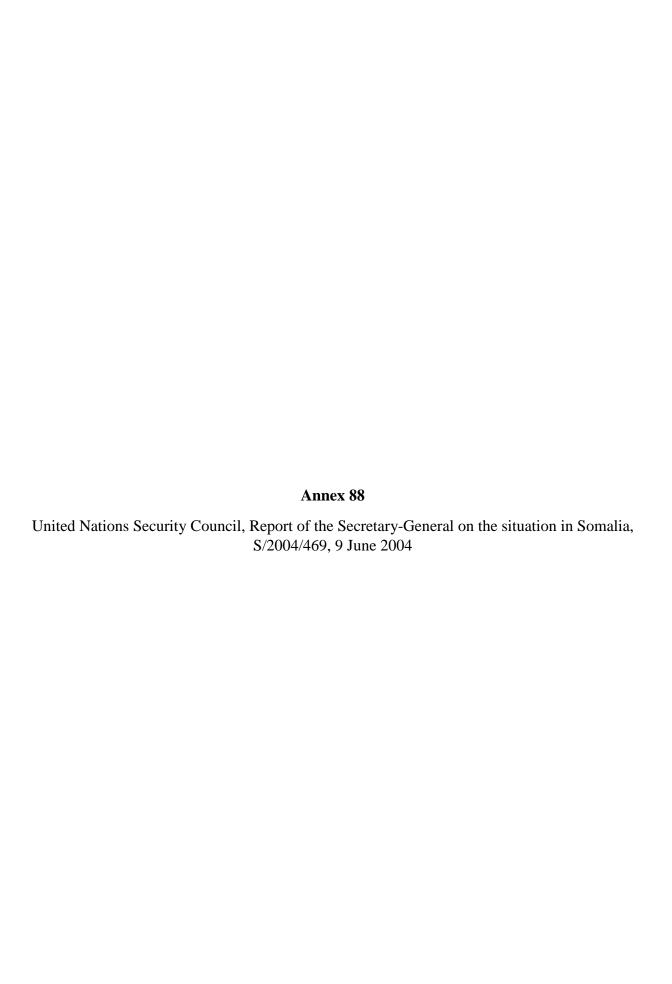
Foreign Affairs of Kenya, after consultations with President Museveni, had to postpone the Leaders' Consultation for a third time, until 9 January 2004.

- 11. International observers at the Conference, including my Representative, engaged with all Somali stakeholders, in groups as well as individually, in efforts to reconcile divergent positions. On 4 December, the Special Envoy of the African Union led a delegation that included Kenyan, Ugandan, Swedish and United Kingdom representatives to meet with representatives of the Transitional National Government and the National Salvation Council in Mogadishu in order to persuade them to participate in the Leaders' Consultation in Nairobi. Likewise, on 12 December, international observers held a meeting with Somali leaders of opposing views in Nairobi and urged them to adopt a cooperative attitude that would ensure the participation of all Somali leaders in the Leaders' Consultation.
- 12. After discussions with Somali leaders in Nairobi on 8 and 9 January, President Museveni and the President of Kenya, Mwai Kibaki, launched the Somali Leaders' Consultation in Nairobi on 9 January. The former appealed to Somali leaders to reach the necessary compromises and agreement on a permanent peace in the country, the formation of a national army, the restoration of Somali sovereignty and the recovery of the economy.
- 13. On 29 January, the Somali leaders signed a document entitled "Declaration on the Harmonization of Various Issues Proposed by the Somali Delegates at the Somali Consultative Meetings from 9 to 29 January 2004". The document consisted of proposed amendments to the transitional federal charter adopted at the plenary meeting of the Conference on 15 September 2003. The leaders decided that the name of the charter would be transitional federal charter of the Somali republic; the name of the government would be transitional federal government; its term would last five years; and that the transitional federal parliament would consist of 275 members, 12 per cent of whom would be women. In addition, the document called for a national census to be undertaken while a new constitution was being drafted, as well as for its approval by an internationally supervised national referendum. A controversy subsequently arose, however, over the method of selection of the members of parliament, and efforts are being made to overcome the problem.
- 14. Regarding the financing of the Conference, the IGAD facilitation announced a severe financial crisis and renewed its appeal to donors for additional funding in December. The facilitation estimated that costs for the Conference from February 2003 to January 2004 would amount to ϵ 11 million. While donors are reported to have pledged ϵ 5 million, the Conference was considered to be carrying a deficit of ϵ 5.9 million (54 per cent) by December 2003.
- 15. It is noteworthy that the budget of the Conference had supported the expenses of approximately 800 Somalis at Mbagathi until November 2003. In view of the impasse in the proceedings and the precarious financial situation, the IGAD facilitation began a vigorous repatriation of many of the Somalis, with the exception of the 366 accredited delegates for phase II of the Conference and 45 Somali elders.
- 16. Meanwhile, Italy announced a further contribution of \$500,000. The United Kingdom of Great Britain and Northern Ireland, Sweden and the League of Arab States contributed \$100,000, \$50,000 and \$75,000 respectively. The European Commission remains the major contributor to the Conference.

17. On 19 October, Sheikh Ibrahim Ali, a delegate at the Conference, his driver and another person were found murdered in the Ngong forest in Nairobi. Another delegate, Ahmed Rashid Sheik Mohamed, a Somali Canadian, was found dead in Mbagathi on 6 November. While the death of the latter is considered to be from natural causes, the Kenyan authorities are conducting an investigation into the first incident.

III. Developments inside Somalia

- 18. Subsequent to the removal of Hassan Abshir Farah and Abdalla Deerow Issak as Prime Minister and Speaker of the Transitional National Assembly, respectively (see S/2003/987, para. 9), Mustafa Gududow was elected as the new Speaker on 4 December. Abdikassim Salad Hassan appointed Mohamed Abdi Yussuf as the new Prime Minister of the Transitional National Government on 8 December. The latter has since appointed a cabinet of 37 ministers.
- 19. Abdikassim Salad Hassan and members of the National Salvation Council held talks with officials in Djibouti, the Libyan Arab Jamahiriya, Saudi Arabia and Yemen from 13 to19 November, reportedly to seek political and financial support for the holding of a reconciliation conference in Somalia. Reports also indicate that the Presidents of Djibouti and the Libyan Arab Jamahiriya encouraged the Somali leaders to return to the IGAD-led Somali national reconciliation process.
- 20. Abdikassim Salad Hassan participated in the Organization of Islamic Conference Summit, held in Kuala Lumpur from 16 to 18 October. He also attended the tenth Summit of the IGAD heads of State held in Kampala on 24 October.
- 21. On 21 December, the "Somaliland" Parliament adopted a resolution, asserting "Somaliland's" authority over the Sool and Sanaag regions, which are also claimed by "Puntland". In a letter dated 22 December, addressed to the United Nations Political Office for Somalia, the "Puntland" administration stated that it would not fail to use all means at its disposal to defend the security and territorial integrity of "Puntland". On 27 December, forces loyal to the "Puntland" administration assumed control of Las-Anod district in Sool region. "Somaliland" considers its borders to be those of the former British Somaliland Protectorate, which included the two regions. "Puntland's" claim is based on the fact that the clans living in those regions are mostly Darod, the dominant group in "Puntland".
- 22. In view of the escalation of tension between the two administrations, the Kenyan Foreign Minister issued a statement on 19 January 2004 on behalf of the IGAD Facilitation Committee, calling on both parties to exercise maximum restraint.
- 23. I also called on the parties to refrain from the use of force. I urged them to seek a solution through political dialogue and reminded them of their responsibility to protect the civilian population and ensure unimpeded access for humanitarian assistance in their respective areas. I reiterated my call to all Somali parties to reach agreement on national reconciliation that would put an end to the fighting and bloodshed in the country.



United Nations S/2004/469



Distr.: General 9 June 2004

Original: English

Report of the Secretary-General on the situation in Somalia

I. Introduction

- 1. The present report is submitted pursuant to the statement by the President of the Security Council of 31 October 2001 (S/PRST/2001/30), in which the Council requested me to submit reports at least every four months on the situation in Somalia and efforts to support the peace process, including updates on the scope and contingency planning for launching a peace-building mission for Somalia.
- 2. The report covers developments since my previous report, dated 12 February 2004 (S/2004/115 and Corr.1). It highlights the issues and challenges faced by the Somalia National Reconciliation Conference, which has been under way since October 2002 in Kenya under the auspices of the Intergovernmental Authority on Development (IGAD), with Kenya as Chairman. The report also provides an update on developments inside Somalia, security conditions, and the humanitarian and development activities of United Nations programmes and agencies.

II. Somali national reconciliation process

- 3. As previously reported (S/2004/115, para. 13), Somali leaders on 29 January signed a document entitled "Declaration on the Harmonization of Various Issues Proposed by the Somali Delegates at the Somali Consultative Meetings from 9 to 29 January 2004". Although the document was signed in Nairobi in the presence of President Mwai Kibaki of Kenya, controversy arose over the method of selection of members of the future transitional federal parliament. Despite the concerted efforts of the IGAD Facilitation Committee and the support of international observers, the reconciliation process was effectively stalled from early February until it resumed recently.
- 4. On 4 February, some members of the Somali Restoration and Reconciliation Council issued a press statement contesting the validity of the Declaration. According to them, the text regarding article 30 of the draft transitional federal charter on the selection of the members of parliament was different from the text they had agreed upon during the Somali Leaders' Consultation (S/2004/115, paras. 10-12). These Somali Restoration and Reconciliation Council leaders contended that only the 24 leaders who had signed the Eldoret Declaration on the Cessation of Hostilities (S/2002/1359, annex) and President Abdikassim Salad Hassan of the

Transitional National Government constituted all of the political leaders entitled to be involved in the selection of the members of parliament. Traditional leaders from Somalia's clans would then endorse the selection of members of parliament. They claimed that the increase in the number of political leaders in the text of the Declaration was meant to obtain an overrepresentation of some political groups. This view was also supported by the former Transitional National Government prime minister and the former speaker of the Transitional National Assembly (see S/2003/987, para. 9, and S/2004/115, para. 7).

- 5. In the meantime, the Transitional National Assembly, convened by Abdikassim Salad Hassan, endorsed the Declaration on 8 February. Five of the Somali Restoration and Reconciliation Council leaders who withdrew their signatures on the Declaration left Mbagathi for Jowhar in the Middle Shabelle region of Somalia. On 23 February, the draft transitional charter (reflecting the 29 December Declaration) received the endorsement of the Somali delegates present in a plenary session of the Conference. However, Colonel Abdallhahi Yusuf of "Puntland" and several other Somali Restoration and Reconciliation Council leaders argued that the plenary session had serious procedural problems. They criticized the IGAD Facilitation Committee for conducting the plenary session with only Djibouti and Kenya present. They insisted that unless all six IGAD country representatives were present during conference deliberations, the conclusions reached were not binding.
- 6. On 11 March, the five Somali leaders in Jowhar announced the formation of the National Organizing Council for Somalia, reportedly made up of 51 members under the leadership of Mohamed Omar Habeeb ("Mohamed Dhere"). They stated their intention to complete phase III of the Conference inside Somalia. In a statement issued on 8 March, Colonel Yusuf, other Somali Restoration and Reconciliation Council leaders remaining in Nairobi and the former Transitional National Government prime minister and speaker also expressed a lack of confidence in continuing the peace process in Kenya.
- 7. Following the approval of the charter by the plenary Conference, the IGAD Facilitation Committee began preparations for phase III of the Conference. However, the Committee was unable to meet at ministerial level (with Ethiopia and Eritrea represented at the ambassadorial level) until 12 March in Nairobi to plan phase III of the Conference.
- 8. A delegation composed of the African Union's Special Envoy for Somalia, an IGAD secretariat official, and officials from Kenya, Sweden and the United Kingdom met with National Organizing Council for Somalia members in Jowhar on 17 March, to persuade them to return to the Conference. However, the National Organizing Council for Somalia group asserted the validity of the charter as endorsed on 15 September 2003 (see S/2003/987, paras. 10-16) and demanded that no other amendments be made to the charter. They reiterated their position that the number of political leaders to select members of parliament be limited to 24+1, that is the 24 Eldoret signatories and Abdikassim Salad Hassan; and that IGAD should declare that the latter could no longer act as President of Somalia. Should IGAD fail to meet these demands, the National Organizing Council for Somalia group restated its plan to convene phase III of the Conference inside Somalia.
- 9. Other Somali Restoration and Reconciliation Council leaders met in Nairobi on 25 March and decided to remain engaged in the Conference. However, Colonel Yusuf left Nairobi on 29 March for "Puntland", reportedly in compliance with a

provision of the "Puntland" constitution that required the "President" not to be absent from the territory for more than 60 consecutive days. The Chairman of the Juba Valley Alliance, Colonel Barre Aden Shire ("Barre Hirale"), left the Conference on 27 March, ostensibly to deal with tensions that arose from the killing of a businessman in Kismaayo. Musse Sudi ("Yalahow") also returned to Mogadishu on 3 April, following the killing of a militia commander in Mogadishu. However, these leaders continued to affirm their commitment to the IGAD-led reconciliation process.

- 10. Meanwhile, the Somali delegates remaining at the Conference made efforts to compile and harmonize the rules of procedure for phase III but did not reach meaningful agreement. The Government of Sweden offered financial support for the airlifting of traditional leaders, who would join phase III of the Conference, from Somalia to Mbagathi. However, in Baidoa, airplanes dispatched for this purpose were prevented by militia from transporting the traditional leaders. In the case of Mogadishu, on two occasions, no traditional leaders assembled at the airport.
- 11. European Union Troika representatives met with the Kenyan Foreign Minister on 16 April in Nairobi to discuss the European Union's decision to reduce funding for the Conference. They argued that the end of phase II should result in the departure of delegates who had been at the Conference for that phase. They were of the view that the number of funded delegates at the Conference be limited to 203 persons, including the traditional leaders who were expected to join the process.
- 12. On 22 April, the Kenyan Foreign Minister announced a road map with fixed dates for the completion of the Conference. It required all political leaders absent from Nairobi to return and for the traditional leaders to arrive at the Conference venue within a stated time frame. The process would culminate in the swearing in of a president for the transitional federal government of Somalia on 1 July. The road map also fixed the fifth Ministerial Facilitation Committee meeting for 6 May, when the Ministers were expected to launch phase III of the Conference.
- 13. The Facilitation Committee meeting took place on schedule in Nairobi from 6 to 7 May with all IGAD Ministers of Foreign Affairs in attendance. The Executive Secretary of IGAD and the Commissioner for Peace and Security of the African Union also participated in the discussions. In the joint communiqué, the Ministers inter alia "declared their total and unreserved commitment to unite in resolving the Somali problem once and for all", appealed to Somali leaders to return to the Conference by 20 May and for the Conference to conclude successfully by the end of July 2004. The Foreign Ministers agreed to hold their next meeting in Nairobi on 20 May.
- 14. Furthermore, the Ministers agreed to collectively brief the Commission of the African Union and the Security Council on the status of the Somali national reconciliation process before the end of phase III of the Conference. They expressed appreciation for the diplomatic and financial contribution of the European Union and the international observers and called for further assistance for the Conference which was operating on a 52 per cent budget deficit. International observers welcomed the initiative taken by the IGAD Ministers.
- 15. Following the IGAD Ministerial meeting, the Jowhar group indicated its intention to re-join the Conference by 20 May. However, on 6 May, the Chairman of the National Organizing Council for Somalia group, "Mohamed Dhere" reportedly

detained reporters of a Jowhar radio station for airing a statement urging Somali leaders to return to the Conference. On 13 May, Abdikassim Salad Hassan was reported to have criticized the IGAD joint communiqué as it appeared to undermine the existence of the Transitional National Government and failed to mention the 29 January Declaration (see para. 3). He also expressed concern about the Kenyan Government's refusal to issue visas on Somali passports and stated that the Transitional National Government would suspend its participation in the Conference until Kenya rescinded its decision on Somali passports.

- 16. Following the sixth IGAD Ministerial Facilitation Committee meeting in Nairobi on 22 May, the Ministers stated that they had consulted all Somali clans for the completion of the third and final phase of the Conference. They called for the early arrival of traditional leaders at the Conference site and for Somali political leaders to cooperate in the process of selecting the members of the transitional federal parliament. The Ministers warned that absent leaders would not be allowed to hold the process hostage and that, punitive measures would be taken against those obstructing completion of the reconciliation process.
- 17. My Representative and the United Nations Political Office for Somalia remained actively engaged in the Somali national reconciliation process. My Representative participated in the meeting of the IGAD Partners' Forum in Addis Ababa on 20 February. IGAD Partners' Forum representatives concluded that a high level of diplomatic support from the international community, particularly the Security Council, would be needed for the successful conclusion of the Conference and the establishment of sustainable governance structures in Somalia. My Representative also met with senior Ethiopian officials who reiterated Ethiopia's commitment to the Somali national reconciliation process. In addition, the Ethiopian officials expressed a desire for a stronger interest in Somalia to be evidenced by members of the international community.
- 18. The United Nations Political Office for Somalia held consultations with the European Community, non-governmental organizations, donors and the World Bank concerning the realization of a common framework on peace-building and to coordinate planning and implementation strategies. This ongoing effort commenced with a one-day workshop on 8 April, in which some 15 countries and organizations participated.

III. Developments inside Somalia

- 19. In a letter addressed to me on 7 April, the Transitional National Government denounced Ethiopia's alleged military interference in Somalia, claiming that Ethiopia had been occupying parts of Somali territory and was recruiting and training militias. The Ethiopian authorities have denied these allegations on a number of occasions.
- 20. The President of "Somaliland" held talks with British officials, parliamentarians and businessmen in the United Kingdom in mid-March. He also visited Brussels and Addis Ababa.
- 21. In March, "Somaliland" authorities reiterated their intent, first announced in September 2003, to deport "illegal immigrants" from areas under their control. However, the deadline has been extended several times. Included in the

- classification of "illegal immigrants" are some 40,000 internally displaced persons, mainly from southern Somalia. United Nations agencies continue to work with the "Somaliland" authorities to assure the protection of the human rights and humanitarian needs of these groups.
- 22. Meanwhile, the environment for "foreigners" in general and internally displaced persons from southern Somalia in particular has continued to deteriorate in "Somaliland". Harassment, exploitation and extortion of these groups is quite common. These conditions have forced many of those affected to flee southwards and into "Puntland", where they are living in squalid conditions. United Nations agencies in Ethiopia have also reported the presence of "deportees" from "Somaliland" in the Somali region (Zone V) of Ethiopia, where they are placing an additional burden on the region's limited resources. The United Nations is currently undertaking a review of new arrivals in "Puntland" to ascertain the scope of the influx, in order to design an appropriate response. "Puntland" already hosts some 70,000 internally displaced persons. The largest concentration of about 25,000 is based in Bosasso, where the administration's capacity to provide for them is limited.
- 23. In Bay region, reconciliation efforts led by the elders among the Rahanwein since January have triggered the return of large numbers of internally displaced persons to villages surrounding Baidoa. More than 2,500 internally displaced persons fled fighting between two different clan groups within the Rahanwein Resistance Army (RRA) in 2003. While the reconciliation talks have yet to conclude, the area has been peaceful and access has improved considerably.

Security

- 24. A significant increase in threats and attacks on international and national aid workers in Somalia has caused serious concern within the international community.
- 25. On 19 March, Flora Chepkemoi Cheruyiot (Kenya) of the German Agency for Technical Assistance and a Somali driver were killed by gunmen on the road from Hargeisa to Berbera. A German staff member also sustained neck injuries in the attack. Members of the armed Somali escort who engaged the assailants suffered gunshot wounds. The "Somaliland" authorities assert that the five suspects they have arrested are Islamic militants and will be brought to trial.
- 26. United Nations and other aid workers also continue to face harassment from elements within Somalia who make unjustified demands. For instance, on 24 February, a gunman in Badan in Eastern Sanaag shot at a World Food Programme (WFP) distribution team, claiming that his clan was not getting its proper share of food aid. On March 10, "Puntland" authorities in Las Anod accused two nongovernmental organization international staff of misusing international humanitarian funds and detained them for four days. The killing of a Somali driver working for Norwegian People's Aid in March, in Las Anod, degenerated into revenge killings during April.
- 27. In Galgudud region, sporadic fighting around Heraale village between the Marehan and Dir clans (see S/2004/115, para. 26) has continued. On 29 February, 12 people were killed and 29 wounded. In mid-March, at least 38 people were killed in the same village.
- 28. On 25 April, militia looted a Kenyan-registered aircraft in Baidoa. The aircraft had been sent to collect elders to attend phase III of the Conference and was held on

the ground for several hours. Groups of gunmen demanded money from the pilot, threatened him and looted his personal belongings. The aircraft later departed following the intervention of RRA officials.

- 29. On 12 May, following the discovery of a large anti-tank mine on the runway of the Dinsor airstrip in Bay region, south-west of Baidoa, the United Nations was forced to suspend all flights into Somalia for a few days. A thorough review of security measures was undertaken. The airstrip is used by European Commission Humanitarian Aid Office (ECHO) aircraft on a regular basis and by United Nations aircraft occasionally. An ECHO flight had been expected to land at the airstrip on 12 May.
- 30. In the Belet-Hawa district of Gedo region, some 3,500 people became internally displaced persons as a result of intra-Marehan clashes for control of the town on 8 May. Most of the people affected temporarily crossed into the Kenyan border town of Mandera to seek protection. The fighting has subsided due to the intervention of clan elders.
- 31. Tension over the banana trade among the Habr Gedir in Lower Shabbelle has led to several violent confrontations. In one incident 17 people were killed on 17 March. On 26 April, in Bakool region, WFP staff in the International Medical Corps were threatened in Isdohorte village by gunmen who insisted that their children continue to receive the food rations, although they were no longer eligible.
- 32. A general increase in tension is reported in the Kismaayo area in the Juba region. The Juba Valley Alliance (JVA) militia fought with the Sheikhal militia in Haramka area. At least 13 people were reported killed and 29 wounded. A United Nations Security Officer, Rolf Helmrich (Germany), was kidnapped and held hostage from 29 January to 7 February and then released unharmed. While reports indicate large-scale displacement resulting from clashes in February in Buale and Jilib districts of the Middle Juba region, insecurity has so far prevented a full assessment of conditions. On 5 March, a Somali staff member working with the United Nations Polio Eradication Initiative was injured in a shooting incident south of Buale.
- 33. Clan fighting in February displaced about 240 families from the west to the east bank of the Shabelle river, in Belet Weyne in Hiran region. Reports indicate that some 200 pastoralist families fled to Hiran region from Ethiopia in March as a result of inter-clan clashes in Zone V in the Somali region of Ethiopia. While their needs are so far being met by local communities, their presence is placing an undue burden on the resident population, which is itself poor. The situation continues to be monitored closely, and potential responses are under consideration. Again, insecurity could hinder a full response by aid agencies.
- 34. The problem of crime in Mogadishu has continued unabated. This is in addition to the occasional inter- and intra-clan fighting that continues to claim lives, in spite of the efforts of clan elders who try to mediate. Clashes between two Wa'eysle sub-clans in the Bermuda area on 6 April resulted in the killing of 13 people, with 29 others wounded. Warsangeli and the Waabudan sub-clan (Abgal) clashes in Mogadishu from 9 to 13 May displaced a large number of people from north Mogadishu and resulted in about 60 deaths, with over 200 people wounded. At least half of the casualties were civilians. Later, Abgal clan elders defused the tension.

- 35. On the night of 10 April, a serious fire in the main Bakaara market in Mogadishu resulted in at least 8 people killed and more than 30 wounded. Armed looters shot indiscriminately into the crowd. The incident caused widespread insecurity in the areas surrounding the market.
- 36. Ordinary Somalis continue to take risks in order to escape conditions in their country. In April, reports indicated that at least 85 people drowned when two boats, each carrying over 100 illegal immigrants, collided in the Red Sea off the coast of Sanaag region. One boat sank completely. Only eight passengers and five crew members survived. The other boat was damaged but saved by the "Puntland" coast guard and all 105 passengers survived.
- 37. On 17 April, Kenyan authorities imposed a ban on the issuance of Kenyan visas on Somali passports for entry into Kenya. This development has caused difficulties for the operations of aid organizations as the large number of Somali nationals who work for international programmes will not be able to travel to Nairobi, where most coordination activities take place. On 22 April, Kenyan authorities indicated that visas would be issued to traditional leaders upon arrival so that they could participate in phase III of the Conference. The retaliatory response of the "Puntland" authorities on holders of Kenyan passports in late April has also had a negative impact on aid delivery.
- 38. In view of deteriorating conditions for aid workers, the security phase in Western "Somaliland" was raised to phase 4 (Emergency Operations) and to phase 5 (Evacuation) in Kismaayo town and for parts of the western border with Kenya. Mogadishu remains at phase 5.
- 39. New security measures designed to enhance the protection of aid workers have also been adopted. In "Somaliland", once considered the most secure region, recent attacks forced the United Nations to lower the number of international staff deployed. Activities of non-governmental organizations have been curtailed since mid-March, when most abided by the European Community advisory to withdraw. These organizations are just beginning to return in small numbers on the advice of the European Community.
- 40. In April, a joint donor United Nations/non-governmental organization mission visited "Somaliland" to initiate a dialogue with the authorities on security concerns. As a result, additional support will be provided by the European Community to a Special Protection Unit, comprising "Somaliland" police officers specially trained by the United Nations Development Programme through its Rule of Law and Security Programme. This Unit will be dedicated to the protection of aid workers.
- 41. Strengthened security measures are also being put in place throughout Somalia, through revised Minimum Operating Security Standards for United Nations staff. Donor funding is being sought for a dedicated non-governmental organization Security Officer who will help strengthen the NGO community's security preparedness and risk management, in close collaboration with the Office of the United Nations Security Coordinator. Donor support for increased security measures is critical in ensuring the continued and smooth functioning of humanitarian programmes in Somalia.
- 42. Deterioration in security for international workers since October 2003 in "Somaliland" and in other parts of Somalia has resulted in the reduction of international aid agency field presence and the slowing down of programmes.

Notwithstanding these troubling developments, the United Nations and its partners continue to implement programmes which are essential in meeting humanitarian and development needs.

IV. Humanitarian situation

- 43. Four years of consecutive drought in northern Somalia in late 2003 and into 2004 have caused massive livestock deaths. In some areas up to 80 per cent of the herds have perished, further impoverishing about 200,000 pastoralist families. At the same time, food and water prices increased beyond the reach of most households. As a result, many began cutting trees to sell as charcoal, causing environmental damage and reducing fodder for camels.
- 44. United Nations agencies and non-governmental organizations responded with short-term interventions. These include: emergency water trucking; food aid and supplementary feeding; mobile health clinics; and veterinary services and cash grants until the next Gu rains, which were due in May 2004, and until longer-term interventions such as cash-for-work projects could be put in place. Those rains started, albeit sporadically in April 2004, but rainfall has still not been sufficient to reverse the prolonged effects of the drought, in particular in the lower Nugal and eastern Sanaag and Sool regions. These areas continue to be in a state of humanitarian emergency. Thus, immediate humanitarian assistance as well as ongoing livelihood support remain critical, as funding shortfalls continue to limit programmes.
- 45. Overall Deyr cereal production in 2004 was normal compared to the post-war average. However, harvests were lower by as much as 50 per cent in the Hiran, Lower Juba and Bakol regions due to the delayed onset and irregular distribution of rain. Poor crop production, insecurity, economic stress and disease continued to contribute to high levels of malnutrition of above 15 per cent among the vulnerable populations in southern Somalia. There is increasing evidence that such high levels of malnutrition are associated with high mortality rates in Somalia.
- 46. A nutritional survey is under way to help determine the underlying cause of vulnerability, design appropriate responses, and set baseline data for future monitoring. Also of critical concern are the communities in northern Gedo region, where malnutrition persists in particular in the districts of Luuq, Dolow, Elwak and Belet-Hawa. The latter areas exhibit the highest incidence of severe malnutrition, which is caused largely by insecurity, which prevents farmers from harvesting their crops. Only limited activities continue in this region, as more comprehensive responses are hampered by persistent insecurity, including attacks on aid workers. Internally displaced persons in Kismaayo and Mogadishu also continue to suffer from chronic malnutrition.
- 47. During the reporting period, the Office of the United Nations High Commissioner for Refugees (UNHCR) repatriated a total of 2,918 Somali refugees from camps in Djibouti to "Somaliland", mostly to the Awdal region. Meanwhile, the demining of the repatriation route from Ethiopia was completed and preparations were under way to resume voluntary returns from the Aisha camp in May.
- 48. UNHCR is implementing reintegration projects in Somalia with special focus on local development activities that generate employment and promote self-reliance

of returnees. The second priority area for this year is education and the special needs of girls. A regional initiative, "Together for Girls", targets Somali girls in refugee camps in the countries of the region and their return to Somalia. UNHCR aims to increase girls' enrolment and retainment in schools as well as community awareness of the importance of girls' education.

V. Operational activities in furtherance of peace

- 49. The newly refurbished and reopened Mandera Police Training Academy in "Somaliland" has received its second intake of 160 "Somaliland" trainee police officers who will graduate at the end of July 2004. The Law Review Commission has begun operating in "Somaliland" and a Human Rights Ombudsman has been established as well. A legal clinic continues to operate out of the university in Hargeysa, providing legal assistance to marginalized people in the city.
- 50. The "Puntland" Police Academy is under construction and basic training has started for a limited number of police officers in "Puntland" and Jowhar in the south. The staff of the recently established "Puntland" Mine Action Centre have been trained and will assist in the landmine impact survey of "Puntland", which will take place over the next few months.
- 51. The Somalia National Reconciliation Conference has identified disarmament, demobilization and reintegration as one of the six key areas for implementation by the future transitional federal government (see S/2003/231, para. 28). However, until recently, support for capacity-building in the area of disarmament, demobilization and reintegration had largely been through ongoing programmes in support of the rule of law under implementation by international agencies (Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ), Nederlandse Organisatie voor Internationale Bijstand (Novib), as well as the United Nations Development Programme) with emphasis on police and judicial training as well as reintegration and not on demobilization and disarmament.
- 52. In recognition of the importance and complexity of the issues involved, the European Community organized a preliminary discussion on disarmament, demobilization and reintegration on 23 February in Nairobi among concerned international donors and agencies. The meeting decided to engage international expertise to assist in strategic planning, coordination and advice on the disarmament, demobilization and reintegration process.
- 53. The United Nations has, in close collaboration with a Somali women's non-governmental organization network (SAACID), assisted in the demobilization of 300 militia, including 75 girls who recently completed a disarmament, demobilization and reintegration programme in Mogadishu. The programme is currently preparing for the publicized destruction of weapons handed over under its auspices.
- 54. Four scholarships for Somali youths to participate in the Real Madrid summer camp have recently been created by the Spanish soccer team as part of the celebration of the 2004 International Peace Day. Upon their return to Somalia, they will become messengers for peace in their respective communities. The selection process for the four scholarships will involve the first peace cup that is being

- organized by the United Nations country team in cooperation with the local authorities in "Somaliland" and in the central and southern regions of Somalia.
- 55. During the first quarter of the year, child protection coordination networks were established in Bari, Nugal, Mudug, Benadir, Lower Shabelle and Hiran regions. Their role is to facilitate information sharing and coordination of advocacy initiatives on behalf of child victims of violence, abuse and exploitation. Membership is open to all civil society organizations, in particular to relevant women and youth groups, as well as to representatives of local authorities, professional groups and international partners. The networks have agreed on their priorities to include help for street children, efforts towards the total eradication of female genital mutilation and the protection of internally displaced children.
- 56. A team of 24 child protection advocates began work in about 40 communities throughout Somalia in the first quarter of 2004. They have helped to organize community-based dialogues to mobilize leadership on the issue. Thus far, the level of involvement by community leaders has varied greatly. Successful efforts include: access to education for disadvantaged children; commitment from business people to provide support and care to street children; community action to protect children against prostitution and exploitative labour; and the commitment of some militia leaders to support children's attendance in school.
- 57. The gross enrolment rate in primary schools is currently only 17 per cent and basic school infrastructure is in need of major support. The United Nations has a 2003/2004 primary school survey under way, which provides data relating to primary schooling in Somalia and is used to measure progress and assist in forward planning for all groups engaged in education work in the country. The Education Management Information System is also being revised and provides more routine information on pupils, classes and schools. Together, these tools give a comprehensive picture of the situation of education throughout Somalia.
- 58. The Socio-Economic Survey on Somalia (see S/2004/115 and Corr.1, para. 44) provides the latest national estimates of various demographic, economic and social statistics. During the current reporting period, regional administrative data was published for "Somaliland" and compiled for "Puntland". Statistics were compiled for selected municipalities, for major ports and for consumer prices and exchange rates in major urban centres. The first report on Millennium Development Goals for Somalia is under preparation.
- 59. The United Nations has recently undertaken a project to improve financial services based in Somalia and enhance their transparency, accountability and credibility. It has begun work on a web site for the recently established Somali Financial Services Association (see S/2004/115, para. 52). The project has trained two Association board members on microfinance activities in the private sector. The production of a compliance manual is under way which will form the basis of a validation workshop with key stakeholders in June 2004.
- 60. The United Nations country team has compiled the strategic framework for access to basic services to provide a definition of minimum standards, a clear unified prioritization of needs and a results-based framework against which to report progress in addressing access and provision of basic services to communities.
- 61. The United Nations has distributed crop and legume seeds (46 metric tons) to 7,650 households as part of the crop diversification programme in Bay, Bakool,

Middle Juba and Gedo regions and sorghum and cowpea seeds (28.5 metric tons) to 1,900 conflict-affected households displaced following inter-clan fighting in Baidoa district.

- 62. The United Nations is also procuring vegetable seeds for further distribution and training in the growing and processing of vegetables for 9,000 households and women's groups, in Tayeglo, Hoddur, Wajid, Rabdurre, Baidoa, Dinsor, Qansahdere, Lugh, Dolo, Sakow and Buále districts. It has also provided locally made farming hand tools, motor pumps, animal draught equipment and training on animal nutrition and welfare for approximately 21,000 households in these areas.
- 63. Somalia was removed from the list of polio-endemic countries in March as a result of nearly two years without any confirmed cases of the disease in the country. The next step in the process is obtaining polio-free status for Somalia. United Nations and partner agencies will continue with regular national immunization days until the disease is totally eradicated from the country. In addition to ending polio in Somalia, vaccination campaigns have acted as a vehicle for peace-building for over eight years, fostering cooperation among communities and achieving access to them. United Nations agencies continue to work closely with traditional leaders, who have been a major force behind the eradication programme, actively participating in immunization campaigns.
- 64. The first comprehensive HIV/AIDS knowledge, attitudes, beliefs and practice survey has been completed in 21 districts in Somalia. The study was undertaken to assess the levels of knowledge among men and women aged 15 to 49 and to identify attitudes and practices related to HIV/AIDS and other sexually transmitted diseases. The study will provide inputs into subsequent policy design and programming on HIV/AIDS for all partners. The results will also be linked to the ongoing HIV surveillance system recently established by the World Health Organization (WHO).

VI. Observations

- 65. The outcome of the two recent IGAD Ministerial Facilitation Committee meetings held in Nairobi demonstrated a renewed cohesiveness among the IGAD Foreign Ministers on the issue of national reconciliation in Somalia. Their stated resolve (see paras. 13-16 above) was welcomed by the international community. It is my sincere hope that the initiative can help the Somalia National Reconciliation Conference, which has suffered a serious impasse for several months, to conclude with an accepted outcome.
- 66. A coherent regional approach is essential if the Facilitation Committee is to provide political leadership during the proceedings of phase III and the finalization of the Conference. Moreover, the two-month time frame, given by the IGAD Ministers to conclude the Conference, places extraordinary pressure on the Somali parties and the region. Somali leaders have until the end of July to reach agreement on several contentious issues and form an inclusive transitional federal government for Somalia. It is incumbent upon them to demonstrate the necessary political will and make difficult decisions.
- 67. I would also like to reiterate the important role that the international observers continue to play in support of the IGAD initiative and the laudable efforts of the Government of Kenya. Once again, I commend the European Union for its financial

assistance and political support for the Conference. The African Union and the League of Arab States have made an important contribution in supporting peace and national reconciliation in Somalia. I ask for their continued active engagement with the Conference.

- 68. The international community, including the United Nations, must stand ready to support these efforts as well as the subsequent efforts to implement the agreement to be reached on the ground. For over a decade, Somalia has experienced a near total lack of governance structures, especially at the national level. In large parts of the country, politicians, businessmen and faction leaders have charted out armed control over their fiefdoms. They continue to demonstrate a lack of vision and political will to positively dialogue for peace in order to enhance national reconciliation and development, and this could make the task of assisting in the implementation of any agreement in Somalia particularly challenging.
- 69. While it is clear that the ultimate responsibility for peace in Somalia rests squarely on the shoulders of all Somalis, in particular their leaders, it is at the same time incumbent on the international community to rediscover the way to engage Somalia. I would like to urge IGAD, the African Union, the League of Arab States, the European Union and the Security Council to consider what additional measures could be taken in support of peace and national reconciliation in Somalia. The active engagement of the Security Council and the putting in place of the Arms Embargo Monitoring Group could provide the much-needed impetus in this regard. The international community will also need to encourage the recent signs of harmonization of the divergent positions in the subregion vis-à-vis Somalia if the peace process in Somalia is to enjoy the maximum chances of success.
- 70. Violence and armed conflict, as well as natural disasters, continue to exacerbate already significant vulnerabilities in Somalia, which has some of the lowest human development indicators in the world. While access is severely constrained to allow for comprehensive humanitarian responses in some areas, aid agencies have been responding to various humanitarian crises in fluid security environments, provided they have the resources to do so.
- 71. Somalis, in spite of their difficulties and constraints, have shown tremendous resourcefulness in overcoming some of the difficulties created by the absence of a central government and governance structures, and the relative lack of international support. They have created an informal banking system, initiated university programmes and established education facilities, and built a modern communications system. Improved humanitarian and development funding, in particular to increase access to basic social services and to strengthen civil society and the rule of law, would contribute a great deal to the efforts to build peace and promote reconciliation within and between communities.
- 72. The currently revised Consolidated Inter-Agency Appeal for Somalia for 2004 calls for \$119 million, of which available resources amount to only \$27,878,685 (23 per cent), leaving unmet requirements at \$91,247,614. I call on donors not only to contribute generously to the appeal, but also to do so without delay so as to allow the effective implementation of a full, coherent and balanced humanitarian and peace-building programme.

73. In conclusion, I would like to commend the efforts of my Representative for Somalia, the staff of the United Nations Political Office for Somalia, and the United Nations country team as well as the many non-governmental organizations active in the country for their humanitarian activities and contribution to the international effort to help promote and support national reconciliation and peace in Somalia.

Annex 89

Information note by Turkey, concerning its objection to the Agreement between the Republic of Cyprus and the Arab Republic of Egypt on the Delimitation of the Exclusive Economic Zone, 17 February 2003, *Law of the Sea Bulletin* No. 54, Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, 2004, p. 127

Division for Ocean Affairs and the Law of the Sea Office of Legal Affairs

Law of the Sea



Bulletin No. 54



B. Communications by States

1. <u>Information note by Turkey, concerning its objection to the Agreement between the Republic of Cyprus and the Arab Republic of Egypt on the Delimitation of the Exclusive Economic Zone, 17 February 2003</u> 1

The Permanent Mission of Turkey to the United Nations presents its compliments to the Secretary-General of the United Nations and has the honor to submit an information note, concerning the objection of Turkey to the agreement signed between the Arab Republic of Egypt and the Greek Cypriot Administration of Southern Cyprus on 17 February 2003 with regard to the "Delimitation of the Exclusive Zone".

The Permanent Mission of Turkey to the United Nations kindly requests the present text and its annex be published in the next Law of the Sea Bulletin.

The Permanent Mission of Turkey to the United Nations avails itself of this opportunity to renew to the Secretary-General of the United Nations the assurances of its highest consideration.

New York, 2 March 2004

ANNEX

The agreement signed between the Arab Republic of Egypt and the Greek Cypriot Administration of Southern Cyprus on 17 February 2003 concerning the "Delimitation of the Exclusive Zone" has recently been published in the Law of the Sea Bulletin Vol. 52, page 45.

It is understood from the content of the said agreement that the above-mentioned Parties delimit the EEZ through a line defined by 8 geographical coordinates in the high seas of the Mediterranean.

Following a thorough examination of the said agreement, the Republic of Turkey has reached the view that the delimitation of the EEZ or the continental shelf in the Eastern Mediterranean, especially in areas falling beyond the western part of the longitude 32° 16'18", also concerns Turkey's existing ipso facto and ab initio legal and sovereign rights, emanating from the established principles of international law.

It is the considered opinion of the Republic of Turkey that the delimitation of the EEZ and the continental shelf beyond the western parts of the 1ongitude 32°16′18" should be effected by agreement between the related states at the region based on the principle of equity.

The Republic of Turkey, for the above stated legal reasons which arise from the established principles of international law, does not recognize the said agreement and reserves all its legal rights related to the delimitation of the maritime areas including the seabed and subsoil and the superjacent waters in the west of the longitude 32° 16′18".

Finally, the Republic of Turkey wishes to reiterate that there is no single authority which in law or in fact is competent to represent jointly the Turkish Cypriots and the Greek Cypriots, consequently Cyprus as a whole.

 $^{^{1}}$ Note No. 2004/Turkuno DT/4739 dated 2 March 2004 from the Permanent Mission of Turkey to the United Nations.

Annex 90

Yearbook of the United Nations, 2004, Volume 58, Department of Public Information, United Nations, New York, pp. 256-7

Yearbook of the United Nations, 2004

Volume 58 Sales No. E.06.I.1

Prepared by the Yearbook Section of the Department of Public Information, United Nations, New York. Although the *Yearbook* is based on official sources, it is not an official record.

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tions to exercise pressure on the parties to ensure full compliance with its resolutions.

Further political progress

The Secretary-General, in a 31 December press statement [SG/SM/9661-AFR/1086], welcomed the initialling that day by the Government of the Sudan and SPLA of the last two agreements of the north-south peace process: the Agreement on the Implementation Modalities of the Protocols and Agreements, and the Agreement on the Permanent Ceasefire and Security Agreements Implementation Modalities, which constituted integral parts of a comprehensive peace agreement and marked the parties' commitment to end more than two decades of civil war. The Secretary-General looked forward to the official signing of the Comprehensive Peace Agreement in January 2005, ushering in a new era of peace in the Sudan, in which the United Nations was prepared to play a significant role.

Eritrea-Sudan

On 4 and 22 January, the Sudan accused Eritrea of inciting, supporting and training groups of outlaws in the Darfur region of the country as part of its attempts to destabilize the Sudan and the ongoing peace process [A/58/669-S/2004/14]. It also said that, according to news reports, an outlaw group in eastern Sudan, the Beja Congress, had forged an alliance with the outlaw groups in the Darfur region, with support from Eritrea [A/58/693-S/2004/66]. Eritrea, on 22 January [S/2004/63], rejected those claims as attempts to isolate Eritrea and to divert Sudanese public attention from the country's domestic problems. On 10 August [S/2004/638], the Sudan again informed the Security Council of what it called Eritrea's continuing hostility towards the Sudan and its involvement in the conflict in Darfur.

Somalia

In 2004, progress was made in the national reconciliation process of Somalia, which was based on the outcome of the 2002 Eldoret (Kenya) Conference, held under the auspices of IGAD, and which led to the signing of the Declaration on Cessation of Hostilities and the Structures and Principles of the Somalia National Reconciliation Process (the Eldoret Declaration) [YUN 2002, p. 202]. That Declaration was signed in December 2002 by five Mogadishu faction leaders and the Transitional National Government (TNG), established by the Arta (Djibouti) Conference in 2000 [YUN 2000, p. 215]. It set up a national reconciliation process, aimed at bringing the factions into agreement on a national government. Some pro-

gress was made in 2003 in five of the six reconciliation committees of the process, and agreement was reached by participating Somali leaders at a conference in September 2003 on a transitional federal government [YUN 2003, p. 248]. However, the TNG President and some faction leaders rejected the document and opposed the proposed federal system. During the negotiations on reconciliation, Somaliland, in the northwest, remained outside the process.

The first sign of progress in 2004 was the signing by Somali leaders, on 29 January, of a declaration on agreement of issues related to the transitional federal government. That meeting was part of the ongoing IGAD-sponsored Somali National Reconciliation Conference in Kenya, which aimed to establish a viable transitional government. In mid-2004, IGAD held a series of Ministerial Facilitation Committee meetings on the Conference and launched its third and final phase, which led to the establishment of the Transitional Federal Government of Somalia. The Security Council, in July, welcomed the AU's decision to dispatch a reconnaissance mission to prepare for deploying military monitors to Somalia

The Conference, meeting in Kenya and attended by representatives of the numerous factions and clans of Somalia, with the notable exception of Somaliland, agreed to form the Transitional Federal Parliament, with members selected by the factions at the Conference. That body elected the Speaker of Parliament and the Transitional President, important steps towards the re-establishment of stability. The peace process produced a power-sharing arrangement for a transitional period of five years. The inclusive peace process involved all clans and most major faction leaders. At the same time, fighting inside Somalia continued.

The United Nations Political Office for Somalia (UNPOS), led by the Secretary-General's Special Representative, Winston A. Tubman (Liberia), remained involved in the peace process and humanitarian efforts, and continued to operate from Nairobi.

The Secretary-General, in response to a 2003 Council request, established a Monitoring Group of four experts to investigate violations of the arms embargo against Somalia, and to provide a draft list of the individuals continuing to violate it. The Group reported to the Council in August that weapons and ammunition continued to flow into, through and out of Somalia, in contravention of the embargo; and that to fully investigate violations, it required more time than specified in its mandate. Therefore, the Council called for the re-establishment of the Group, for a period of

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six months, to continue its functions and to update the draft list.

The economic and social situation in Somalia continued to suffer as a result of the chronic warfare and drought. At times, UN activities had to be curtailed due to insecurity in various parts of the country. The General Assembly, in **resolution** 59/218 (see p. 913), noted the urgent need for humanitarian and reconstruction assistance and urged the international community to respond accordingly. In related action, the Executive Board of UNDP and the United Nations Population Fund, in decision 2004/35 (see p. 879), endorsed UNDP's approach in promoting security by reducing poverty and encouraging good governance. The Board authorized the UNDP Administrator to approve projects consistent with the strategic approach of promoting peace and security on a case-by-case basis.

National reconciliation process and security situation

Report of Secretary-General (February). The Secretary-General, in a 12 February report on the situation in Somalia [S/2004/115 & Corr.1], submitted in response to the Security Council's request in the President's statement S/PRST/2001/30 [YUN 2001, p. 210], described developments since his previous report in October 2002 [YUN 2003, p. 248].

He reported that, on 29 January, at the Somali Leaders' Consultation Meeting (Nairobi), organized by IGAD under the chairmanship of the President of Uganda, Yoweri Museveni, and the President of Kenya, Mwai Kibaki, participating Somali leaders signed a document entitled "Declaration on the Harmonization of Various Issues Proposed by the Somali Delegates at the Somali Consultative Meetings from 9 to 29 January 2004". The Declaration consisted of proposed amendments to the transitional federal charter adopted on 15 September 2003 [YUN 2003, p. 248]. The leaders decided that the charter would be called the transitional federal charter of the Somali republic, and the government, the transitional federal government, whose term would last for five years. The transitional federal parliament would consist of 275 members, 12 per cent of whom would be women. A national census would be undertaken during the drafting of a new constitution, which would be approved by an internationally supervised national referendum. A controversy subsequently arose, however, over the method for selecting members of parliament.

The security situation at the beginning of 2004 remained serious in many Somali regions and affected humanitarian aid delivery. In the north, Somaliland and Puntland gave assurances of

safe access to the contested areas of the Sool and Sanaag regions. Intense inter-clan fighting occurred in the central region, forcing 9,000 people to flee to surrounding towns and preventing adequate intervention. In southern and central Somalia, violence and armed conflict continued to hamper access and humanitarian programming.

The Secretary-General commented that the agreement at the leaders' consultation marked a breakthrough that could lead to further progress at the Somali National Reconciliation Conference, which had been stalled for some time. The next and final phase of the reconciliation process would involve the selection of members of the transitional national parliament, who would elect a president to lead the country during the transitional period. The Secretary-General stressed that progress in the political arena should be accompanied by efforts by the Somali leaders to improve the security situation on the ground so as to make it conducive to the implementation of a political agreement, thereby according credibility to the agreement.

Communications. On 30 January, the AU [S/ 2004/88] and the EU [S/2004/112] welcomed the signing of the Declaration. The AU Central Organ of the Mechanism for Conflict Prevention, Management and Resolution called on the Somali factions and leaders to continue to uphold the spirit of the 2002 Eldoret Declaration and to refrain from action that would jeopardize the Somali reconciliation process at Mbagathi, Kenya, which was approaching conclusion. It called on the authorities of Puntland and Somaliland to desist from resorting to military means to resolve their territorial dispute in the provinces of Sool and Sanaag. The statement released by the EU Presidency reiterated EU support to the IGADsponsored national reconciliation process, to which there was no alternative for the restoration of effective government, peace and stability in Somalia.

SECURITY COUNCIL ACTION (February)

On 25 February [meeting 4915], following consultations among Security Council members, the President made statement **S/PRST/2004/3** on behalf of the Council:

The Security Council, recalling its previous decisions concerning the situation in Somalia, in particular the statement by its President of 11 November 2003 and welcoming the report of the Secretary-General of 12 February 2004, reaffirms its commitment to a comprehensive and lasting settlement of the situation in Somalia and its respect for the sovereignty, territorial integrity, political independence and unity of the country, consistent with the purposes and principles of the Charter of the United Nations



United Nations S/2005/642



Distr.: General 11 October 2005

Original: English

Report of the Secretary-General on the situation in Somalia

I. Introduction

1. The present report is submitted pursuant to the statement of the President of the Security Council of 31 October 2001 (S/PRST/2001/30), in which the Council requested me to submit reports on a quarterly basis on the situation in Somalia. The report covers developments since my previous report, of 16 June 2005 (S/2005/392). The main focus of the report is on the efforts undertaken by the international community and, in particular, by my Special Representative, to foster inclusive dialogue among the leaders of the Somali transitional federal institutions. The report also provides an update on the security situation and the humanitarian and development activities of United Nations programmes and agencies in Somalia.

II. Situation within the transitional federal institutions

- 2. There has been no progress in ameliorating the contention between leaders of the transitional federal institutions on four broad issues: the relocation of the transitional federal institutions, a national security and stabilization plan, national reconciliation and the peace support mission envisaged by the African Union (AU)/Intergovernmental Authority on Development (IGAD). Tensions between President Abdullahi Yusuf Ahmed and Prime Minister Ali Mohammed Gedi, based in Jawhar, on the one hand, and the Speaker of Parliament, Sharif Hassan Sheikh Adan, and ministers based in Mogadishu on the other, have been exacerbated during the period under review. My Special Representative for Somalia, François Lonseny Fall, has spared no effort to convince the three leaders to reach the necessary agreements through dialogue so that the transitional federal institutions could begin to function effectively. While they have stated their readiness to do so, they have reneged on a face-to-face meeting thus far (see paras. 8-19 below).
- 3. On 12 June 2005, President Yusuf attended a meeting of some members of Parliament in Nairobi under the chairmanship of the First Deputy Speaker, Mohamed Omar Dhalha, and announced a two-month recess of Parliament. However, the Speaker, who was not at the meeting, questioned the legitimacy of the meeting and the President's authority to declare a parliamentary recess.
- 4. It will be recalled that some members of the Transitional Federal Parliament began to return to Somalia in March and April 2005 (see S/2005/329, para. 6). Relocation of the transitional federal institutions began in the middle of June,

following a farewell ceremony in Nairobi presided over by President Mwai Kibaki of Kenya.

- 5. A few days later, the Government of Yemen tried to mediate between the President and the Speaker, who were both visiting Sana'a. However, the two leaders failed to reconcile their differences. In the meantime, Prime Minister Gedi, who arrived in Jawhar on 18 June accompanied by several ministers and members of Parliament, has since set up his administration in that town. Other ministers and parliamentarians relocated to their home localities.
- 6. Despite the fact that the Prime Minister and the Speaker were both in Djibouti in late June, there was no dialogue between them. Upon their return to Jawhar and Mogadishu, respectively, both leaders celebrated, separately, the Somali national day on 1 July. The following day, the Speaker held a meeting with members of Parliament in Mogadishu. A formal session of Parliament could not be held owing to the lack of a quorum.
- 7. President Yusuf arrived in Boosaaso in "Puntland" on 3 July and on 9 July, met in Gaalkacyo with a delegation of Ministers and officials led by the Prime Minister. Since President Yusuf's arrival in Jawhar on 26 July, the President and Prime Minister have been using that city as a de facto temporary seat of the Transitional Federal Government.
- 8. On the basis of the statement by the President of the Security Council of 14 July 2005 (S/PRST/2005/32), I instructed my Special Representative to intensify his contacts with the leadership of the transitional federal institutions with a view to fostering an inclusive dialogue. On 1 August, he visited Jawhar and presented President Yusuf and Prime Minister Gedi with a proposal for a road map for dialogue. The road map would address the key issues of (a) an agreement on the safe relocation of the transitional federal institutions; (b) a national security and stabilization plan; (c) modalities for the deployment of an AU/IGAD peace support mission; and (d) national reconciliation.
- 9. My Special Representative also handed over to the leaders a sequencing chart that had been prepared by representatives of IGAD, AU and the European Union (EU). The chart proposed that, following the successful conclusion of the dialogue, the Council of Ministers and a full session of the Parliament should be called with a view to establishing a national security commission. This proposed commission would draw up the modalities for the deployment of a peace support mission. Prime Minister Gedi informed my Special Representative that his Government was already working on the issues outlined in the road map, especially national security.
- 10. On 3 August, my Special Representative visited Mogadishu, where he held discussions with the Speaker, ministers and members of Parliament who had relocated to the capital and presented them with a copy of the road map and the sequencing chart. The leaders welcomed the statement by the President of the Security Council of 14 July 2005 and expressed support for my Special Representative's initiative. However, they also used the occasion to voice their concerns that President Yusuf and Prime Minister Gedi might resort to an armed confrontation with them. While committing themselves to dialogue, they emphasized that the agenda, venue and composition of delegations for the talks had to be agreed to in advance.

- 11. Since early August, President Yusuf, Prime Minister Gedi, the Speaker and the Mogadishu-based leaders have taken unilateral actions, none of which have contributed to the resolution of the differences between them.
- 12. On 8 August, Prime Minister Gedi announced the composition of committees on national security, economic affairs and social affairs. Although the National Security Committee included the Minister for National Security, Mohamed Kanyare Afrah, one of the Ministers based in Mogadishu, the latter refused to recognize the right of the Transitional Federal Government to establish such committees without consultations, as stipulated in the Transitional Federal Charter.
- 13. On 13 August, some members of Parliament met in Mogadishu under the chairmanship of the Speaker. In a statement, they announced the establishment of a 59-member committee to restore peace and stability in Mogadishu. They also summoned all members of Parliament to Mogadishu to participate, on 27 August, in the establishment of parliamentary subcommittees. This meeting did not take place, however.
- 14. On 27 August, Prime Minister Gedi announced to reporters that the Government would start offering oil, gas and mineral concessions to foreign firms in the near future. He called upon foreign companies to avoid dealings with any authorities other than the Transitional Federal Government.
- 15. Hussein Aidid, Deputy Prime Minister and Minister of Interior, returned to Mogadishu on 14 August after an absence of over four years. He announced that he would try to help efforts to reconcile differences within the transitional federal institutions. Before returning to Mogadishu, he called on my Special Representative, who encouraged him to use all possible means to foster dialogue within the transitional federal institutions.
- 16. In a joint effort, my Special Representative and the Minister for Regional Cooperation and East African Affairs of Kenya secured the agreement of both the Prime Minister and the Speaker to attend a meeting on 19 August in Nairobi. However, the Speaker later informed my Special Representative that he would not attend because the Prime Minister's statement said that he would meet the Speaker only if the latter was ready to cooperate with his Government. Prime Minister Gedi announced at a press conference on the same day that his Government was open for dialogue within the transitional federal institutions.
- 17. On his part, the Speaker gave an undertaking to my Special Representative not to use any meeting of members of Parliament in Mogadishu to undermine the prospects for dialogue within the transitional federal institutions. In a meeting with members of the international community on 26 August, he reiterated his willingness to enter into dialogue within the framework of the transitional federal institutions and stressed the need to respect the Transitional Federal Charter.
- 18. On 13 September, Prime Minister Gedi addressed a letter to ministers of the Transitional Federal Government, informing them of his intention, after consultations, to begin holding meetings of the Council of Ministers in Mogadishu. My Special Representative immediately welcomed the initiative and expressed the hope that the meetings would be preceded by consultations and followed by a full session of Parliament, in accordance with the Transitional Federal Charter.

19. The Presidency of the EU issued a statement on 19 September in support of Prime Minister Gedi's initiative. EU urged the Mogadishu-based ministers to respond positively as it was an important step towards resolving outstanding issues and called upon all parties to refrain from making military preparations and inflammatory statements and to commit themselves to the peaceful resolution of their differences through inclusive dialogue. EU stressed that the creation of any national Somali military force should take place in the framework of a national security and stabilization plan and in line with the statement by the President of the Security Council of 14 July 2005. EU also expressed support for my Special Representative's statement of 8 September underlining that there could be no military solution to the problems facing the transitional federal institutions.

III. Activities of the United Nations and the international community

- 20. Representatives of the international community in Nairobi continued to meet almost every week throughout the reporting period in support of the initiative of my Special Representative to foster inclusive dialogue within the framework of the transitional federal institutions.
- 21. At its twenty-fifth meeting, held on 12 June, the IGAD Council of Ministers reviewed the relocation of the transitional federal institutions to Somalia and reinstated the IGAD Facilitation Committee on Somalia. My Special Representative briefed the Ministers and emphasized the need for dialogue within the transitional federal institutions.
- 22. Following the visits of my Special Representative to Mogadishu and Jawhar on 1 and 3 August, respectively, a delegation from the European Commission also visited both cities and urged the two sides to begin a meaningful dialogue. Delegations from the Government of Kenya, AU and the donor community also visited Jawhar on 4 August, where a meeting of the Joint Planning Committee was held with the Transitional Federal Government.
- 23. Since his arrival in Nairobi on 27 May 2005, my Special Representative has impressed upon leaders in the subregion and others the need to have a coordinated approach towards Somali leaders and to urge them to engage in dialogue and refrain from military action for the resolution of the differences within the transitional federal institutions. On 10 June, he met in Kampala with President Yoweri Museveni of Uganda, and on 29 June he held talks with President Ismail Omar Guelleh of Djibouti and the Executive Secretary of IGAD in Djibouti.
- 24. On 24 June, he travelled to Addis Ababa, where he had discussions with State Minister for Foreign Affairs, Tekeda Alemu, AU Chairman Alpha Oumar Konaré and AU Peace and Security Commissioner, Said Djinnit. He returned to Addis Ababa on 29 August for meetings with Chairman Konaré and the Prime Minister of Ethiopia, Meles Zenawi. He emphasized the need to foster dialogue within the transitional federal institutions and encouraged his interlocutors to use their influence towards that end.
- 25. On 27 August, my Special Representative visited Cairo, at the invitation of the Government of Egypt, and held talks with Foreign Minister Ahmed Aboul Gheit and the Secretary-General of the League of Arab States, Amre Moussa. He briefed his

interlocutors on developments in Somalia and on his initiative to foster an inclusive dialogue. Foreign Minister Gheit informed my Special Representative of his Government's readiness to undertake an initiative in support of dialogue within the transitional federal institutions.

- 26. Subsequent to his travels in the subregion, my Special Representative decided to enlist the support of European Governments to encourage dialogue within the transitional federal institutions, and engage them in the need for the international community to speak with one voice on this issue. He held talks with officials of Italy, Sweden and the United Kingdom of Great Britain and Northern Ireland in London and Stockholm, and with EU officials in Brussels. My Special Representative stressed the need for a functional parliament as essential for the legitimacy of the Transitional Federal Government.
- 27. On 29 August, Prime Minister Gedi met with the Heads of Mission of EU countries in Nairobi and informed them of his proposal to resolve the differences within the transitional federal institutions at three levels: the leadership (President, Prime Minister and Speaker); the Cabinet (Ministers); and Parliament. The Heads of Mission took the opportunity to reaffirm their support for my Special Representative's initiative and the statement of the President of the Security Council of 14 July. They welcomed the Prime Minister's intention to resolve the differences within the transitional federal institutions and emphasized that if the transitional federal institutions were able to resolve their differences through dialogue, more financial assistance would be forthcoming from their countries.
- 28. Six projects will be funded for implementation during 2005 and 2006 under the United Nations Trust Fund for Peacebuilding in Somalia. They include two projects each in support of (a) reconciliation: the establishment of a national reconciliation commission and dialogues for peace and reconciliation between different regions of Somalia; (b) rule of law and state-building: reconstitution and re-activation of the judiciary system and a seminar on federalism and constitutional affairs; and (c) security and disarmament, demobilization and reintegration: the establishment of a disarmament, demobilization and reintegration commission and the setting up of youth service centres for skills development and employment creation in Mogadishu, "Puntland" and "Somaliland".
- 29. On 5 September, Kenya and Somalia signed an agreement on technical and economic cooperation, covering the education, health and security sectors. The agreement was signed in Nairobi by the Foreign Ministers of the two countries in the presence of Prime Minister Gedi. On 7 September, AU announced the opening of its liaison office in Jawhar, through which it would channel its support to Somalia.

IV. Developments inside Somalia

30. In an interview with the BBC on 6 July, President Yusuf announced the creation of a Somali national army to be assembled from various regions of Somalia. Soon thereafter, he said that he had begun to raise a new army. The announcement raised concerns among the leaders based in Mogadishu, prompting some of them to threaten pre-emptive attacks against Jawhar if President Yusuf and his supporters marched on the capital.

- 31. On 10 August, President Yusuf flew from Jawhar to Gode and Mustahil in the Somali-inhabited Region 5 of Ethiopia, with the stated purpose of promoting local reconciliation between ethnic Somali clans living in the border region. However, some leaders in Mogadishu accused the President of going to Ethiopian territory to acquire weapons and troops for his future activities in Somalia. President Yusuf refuted this accusation as baseless.
- 32. In early September, troops loyal to President Yusuf arrived in Jawhar. The Mogadishu-based leaders, in response, also deployed troops from Mogadishu in the direction of Jawhar. In a press release issued on 7 September on behalf of the Mogadishu-based leaders, the troop movements in Jawhar were portrayed as creating a "state of war". The press release further warned all humanitarian agencies and diplomats currently in Jawhar to suspend their presence in the area and cautioned all aircraft to cease landing in Jawhar. On 8 September, the United Nations relocated its international humanitarian personnel out of Jawhar as a precautionary measure (see para. 46 below), a move criticized by President Yusuf.
- 33. Meanwhile, on 26 June, in "Somaliland", speaking on the occasion of its forty-fifth anniversary of independence from the United Kingdom, "President" Dahir Riyale Kahin expressed optimism for "Somaliland" gaining international recognition. He also reaffirmed his intention to hold parliamentary elections in mid-September, as planned. On 10 August, in a presidential decree, he postponed the parliamentary elections by two weeks, to 29 September, at the request of the "Somaliland" electoral commission.
- 34. In preparation for that election, print and broadcast editors in "Somaliland" drafted a new code of conduct to guide their coverage of the upcoming elections. The new code calls for the news media to adhere to impartial reporting of the election.

V. The role of women's groups

- 35. There are many women's advocacy groups and non-governmental organizations across Somalia, although it is difficult to estimate the exact number in the absence of a systematic national registration system. In the absence of an effective central government, these groups play a vital role in providing basic social services and literacy and vocational training to Somalis. Most of the funding for their programmes comes from United Nations agencies and non-governmental organizations. There are some key women's umbrella organizations with which the United Nations works on a regular basis. They include: Negaad, in north-western Somalia; We are Women Activists in north-eastern Somalia; Coalition of Grassroots Women's Organizations; Women's Development Organization and Save Somali Women and Children in southern and central Somalia.
- 36. Women's groups, by and large, have not formed, as yet, an effective political organization to further their rights and issues. This is a by-product of the political bargaining at the Somalia National Reconciliation Conference based largely on the power of militia leaders and their clan associations. Their role is further hampered by the current political paralysis within the transitional federal institutions and the lack of sufficient funds available to the Transitional Federal Government to support their activities.

- 37. There are 23 women members of Parliament. The Association of West European Parliamentarians for Africa conducted a workshop for them in 2004 in parliamentary conduct and procedures and on their role and responsibilities as members of Parliament. Nevertheless, the effective realization of their potential political role is being undermined by the continuing differences within the transitional federal institutions.
- 38. Women's groups, along with other civil society and business groups, have played a prominent role in initiating and supporting pre-disarmament encampments in Mogadishu. They have also been successful in convincing militia leaders in both Mogadishu and Kismayo to dismantle a large number of checkpoints and improve the security environment in those cities to some degree.
- 39. Progress has also been made in "Somaliland", where the Ministry of Social and Family Affairs is functioning and has been funded by the United Nations Development Programme (UNDP), to develop a gender action plan. The Ministry of Women and Family Affairs in "Puntland" has been given similar funding by the United Nations Development Fund for Women (UNIFEM) and it has also developed a gender action plan. Furthermore, the staff are being trained on issues related to human rights and HIV/AIDS.
- 40. United Nations agencies and partners have developed a gender-based violence and psychosocial counselling training manual and conducted trainings in Hargeysa and Boosaaso for participants from settlements for internally displaced persons in Hargeysa and representatives of women's organizations from "Puntland", "Somaliland" and south Somalia. This activity was undertaken in collaboration with Negaad. Participants have now provided psychosocial support and HIV/AIDS training to over 592 women in internally displaced persons camps.
- 41. The United Nations also provided training for the Women's Media Association to enable them to generate public awareness on human rights and HIV/AIDS. Women's organizations are now collecting and disseminating information on violations of women's human rights. They are also lobbying with the authorities to establish mechanisms for the protection of the rights of women living with HIV/AIDS, as such individuals are stigmatized and isolated by their families and communities. The United Nations has also provided training in media and information communication technology to women journalists and human rights workers in Mogadishu, "Puntland" and "Somaliland".

VI. Security

- 42. Insecurity remains a significant problem for aid agencies in much of the country. There has been a number of reports of military preparations, activities and movements that are being linked with the continuing differences within the transitional federal institutions. According to reports, the United Nations arms embargo continues to be violated, and the inflow of weapons into the country has increased. In addition, particularly in the central and southern parts of Somalia, tensions and clashes between and within clans, mostly over water, grazing, and land disputes, result in death and injury and make humanitarian access difficult.
- 43. Mogadishu continues to remain insecure in spite of unprecedented efforts to take militiamen off its streets. At least two camps have been set up in the capital

which are housing over 2,000 militiamen from various clans inside the city. In addition, over 100 "technicals", or battlewagons, have been cantoned, as part of a pre-disarmament effort. This has been carried out under pressure from the business community and civil society, in particular women's groups, and it is they who have largely borne the costs of this process. Substantial financial resources from the Hawiye diaspora have assisted in this process, but it is unlikely that the assistance in support of encampment efforts can be sustained over a long period of time. In addition, after considerable pressure from civil society, several checkpoints in the city have been dismantled. In spite of such efforts, there are still concerns about security in Mogadishu, with the presence of several factional militias as well as those which are either freelance or associated with businessmen and the sharia courts. The presence of extremist elements and their alleged activities have also been a matter of concern. The reporting period has seen a number of killings and politically-linked assassinations in Mogadishu.

- 44. On 5 June, a Somali reporter, Duniya Muhyadin Nur, working for the Horn Afrik Radio station in Mogadishu, was killed at a checkpoint in Mogadishu by a militiaman while she was trying to cover protests by a group of transporters against checkpoints in the city. In the early morning of 11 July, unknown gunmen broke into the house of Abdul Qadir Yahya, a long-standing peace activist and a senior member of the Center for Research and Dialogue, and assassinated him. A day later, the head of the militias of one of the sharia courts was killed in an ambush. On 30 July, three assassinations were reported in Mogadishu, including a former Colonel in the police intelligence and an imam of a mosque. On 31 August, unknown gunmen assassinated Daqare Omar Jess, the brother of Ahmed Omar Jess, a prominent faction leader.
- 45. After the arrival of troops loyal to President Yusuf and their deployment just south of Jawhar, in early September reports followed that the Commerce Minister, Muse Sudi Yallahow, had sent a number of "technicals" to strengthen his forces in Balad, south of Jawhar. There are also reports that Adam Hashi Ayro, a commander who was recently appointed head of the sharia courts militia in Mogadishu, sent a number of his "technicals" to an unspecified location west of Jawhar.
- 46. Following the developments cited in paragraph 32, all international United Nations staff based in Jawhar were relocated safely out of the city on 8 September. Seven were flown to Nairobi while another six were relocated to Wajid. National staff continued to come to work until 12 September, when Mohamed-Dhere, the Governor of the Middle Shabele region and the faction leader controlling Jawhar, ordered the effective shut-down of the offices of the United Nations Children's Fund (UNICEF) in Jawhar. On 10 September, a clash between his militia and unidentified gunmen left two people dead in Mir Taqwo, north of Jawhar. This was connected to the faction leader's attempts to assert his authority in the region and levy taxes.
- 47. The security situation in Kismayo has improved during the period under review. According to reports, checkpoints have been dismantled under pressure from civil society. In addition, a broader agreement among the clans in Kismayo and the Juba Valley is apparently being sought to enhance security in the region. In this regard, a reconciliation effort was launched in Brava between Mogadishu and Kismayo in early September, involving Barre Hirale, other leaders of the Juba Valley Alliance led by Yusuf Mire Serar and representatives of the Mogadishu-based faction leader, Indha-aade, and those of General Mohamed Hersi "Morgan". The

aim of the effort was to improve security in the region, strengthen the Juba Valley Alliance and reconcile General "Morgan" and the Alliance, who have been fighting over territories in the Juba Valley for a number of years.

- 48. On 21 July, fighting erupted in Gaalkacyo in the ongoing dispute between two sub-sub-clans of the Omar Mahamud sub-clan of the Majerteen. Although the fighting subsided, there were unconfirmed reports of several casualties.
- 49. On 7 September, Mohamed Ibrahim Habsade, the faction leader controlling Baidoa, reportedly reached an understanding with his rival, Mohamed Nur Shattigudud, who also holds the portfolio of Minister of Agriculture, to resolve their differences peacefully. The understanding was apparently brokered by Digil-Mirifle clan elders who were concerned that the differences between the two leaders were causing serious rifts within the clan.
- 50. Inter- and intra-clan fighting has accounted for much of the violence in central and southern Somalia during the reporting period. In the Hiraan region in central Somalia, heavy fighting on 7 and 8 June, between the Galje'el and Jajele sub-clans of Hawiye over land and water on the western side of Beletweyne led to the reported deaths of 36 people and injuries to 70 people. In the Bakool region, also in central Somalia, clashes on 10 and 11 June between militiamen from the Hadamo and Ogaden clans in the El-Barde area resulted in at least 4 deaths and injuries to 10 people. On 15 June, at least 16 people were killed and 20 others injured in fighting between rival militias over land and pasture rights in the same area. During the week of 19 to 26 June in the Bay region, about 10 persons were killed and 9 others were wounded in fighting between the Digil-Mirifle sub-clans in the area, including the Leysan, Luway and Yantar. The fighting was related mainly to land and water disputes. On 13 August, fighting took place in Idale between the Yantar and Huber sub-clans of the Digil-Mirifle over control of the village and water and grazing rights, which resulted in 12 deaths. A week later the elders of the Digil-Mirifle intervened to mediate an end to the fighting.
- 51. In the Gedo region in southern Somalia, fighting from 5 to 11 June near the border with Kenya between the Garre and the Marehan clans over the control of Elwak town led to 13 reported deaths. The town has been contested by the two clans over the past six months. Fighting was again reported on 22 and 23 July in Elwak between the same clans, resulting in 32 deaths and injuries to over 60 persons. Clan elders and the Kenyan authorities intervened in mid-August to help resolve the dispute. Efforts aimed at reconciliation between the two sides continued into the month of September.
- 52. There have been no significant incidents between "Somaliland' and "Puntland" in the disputed regions of Sanaag and Sool in past months, although there still appears to be no progress towards a political solution. The issue of the exchange of prisoners captured in the conflict in the disputed regions in 2004 is being resolved through the facilitation of the Independent Expert of the Commission on Human Rights on the situation of human rights in Somalia.

VII. Humanitarian situation

- 53. The humanitarian situation in Somalia continues to be affected by the security situation in the country and by climatic conditions. According to a recent assessment, the number of people in need of urgent assistance has increased since February 2005, with the most critical communities in need of assistance now being in southern Somalia.
- 54. Between 920,000 and 950,000 people, including 370,000 to 400,000 internally displaced persons, are in need of urgent assistance at least until early 2006. According to a recently released report of the Food and Agriculture Organization of the United Nations (FAO), around 345,000 people are in a state of livelihood crisis, while 200,000 are experiencing a humanitarian emergency. Most of those communities are in southern Somalia, where about 169,000 people in Gedo, Bakool, Middle and Lower Juba are in a state of humanitarian emergency. The Juba Valley in particular continues to be beset by high malnutrition (above 20 per cent in some areas) and mortality rates, while Gedo is beset by chronic food insecurity. During the recent consultations on the Consolidated Appeal for Somalia, United Nations agencies and non-governmental organizations agreed to give priority to those communities in 2006.
- 55. More than three years of drought have come to an end in the northern and central regions due to two good consecutive rainy seasons (*deyr* 2004-2005 and *gu* 2005). This has aided the recovery of pastoral livelihoods, and the area is no longer in a humanitarian emergency phase. Still, in the northern and central regions, 254,000 people remain in an acute livelihood crisis. It will take a considerable amount of time before full recovery is achieved given the loss of livestock, levels of indebtedness and severe environmental depletion caused by the prolonged drought. In the central regions, unresolved conflicts also continue to affect livelihoods and delay recovery.
- 56. Somalia continues to be vulnerable to floods. Thousands of households were affected during the flooding that occurred in May and June 2005 due to high flows from the Ethiopian catchments of the Shabelle and Juba rivers. Aid agencies mobilized a response, yet the unusual gu flows highlighted the need for well-developed early warning and emergency preparedness plans. Efforts are being made, in collaboration with affected communities and local authorities to update the interagency action plan for flood forecasting, preparedness and response for the Juba and Shabelle Rivers in Somalia. It is anticipated that the interagency action plan will be updated in time for the 2005-2006 deyr season, when flooding usually occurs.
- 57. Relative stability in the northern zones has continued to facilitate access in most regions, with the exception of the contested Sool and Sanaag regions. In recent months, the House of Elders (*Guurti*) has discussed the organization of a peace conference in the Sool region, but no progress has yet been made. Any heightened tension in this area could further impede access to needy populations.
- 58. In southern and central Somalia, while the prevailing security conditions continued to negatively impact humanitarian access in most regions, recent improvements in specific areas bode well for the reopening of those areas to humanitarian activities. It is expected that with security improvements in Kismayo, there will be a gradual resumption of humanitarian activities in the district, particularly in reaching around 15,000 internally displaced persons in the town of

Kismayo and the riverine communities hit by the 2005~gu floods. Many of the improvements stem from localized reconciliation efforts and pressure from civil society on leaders to ensure not only a more secure environment but also better social services and more accountability. However, in Gedo, continued clashes between the Garre and Marehan prevented humanitarian organizations from reaching and providing assistance to the estimated 15,000 persons displaced by the fighting.

- 59. The protective environment in Somalia, particularly in the southern and central areas, where the bulk of 370,000 to 400,000 internally displaced persons reside is still very weak. During the reporting period, the United Nations country team finalized a joint strategic framework to enhance the protection of internally displaced persons, returnees and other vulnerable populations, improve their current living conditions and foster durable solutions.
- fully 60. In Somalia. tsunami-related activities are now in the rehabilitation/recovery phase. Preparations are under way for an integrated development project along the northern coast to provide shelter to over 2,400 people living in the tsunami-affected town of Hafun. The project, which will help bring basic social services and economic development to the town, will be implemented by United Nations agencies and partners undertaking water and sanitation, rehabilitation of schools, infrastructure and health activities. As the resumption of the fishing season draws closer, discussions are under way with the "Puntland" fisheries authorities to strengthen the sector so as to maximize productivity.

VIII. Operational activities to promote peace

Governance

- 61. The Somalia emergency budgetary support project for the Transitional Federal Government began in April 2005 as a coordinated funding mechanism to provide budgetary support to the transitional federal institutions, strengthen their capacities and assist their relocation into Somalia. A total of 275 members of Parliament, along with more than 400 other officials, have been relocated back to Somalia. The project has also rehabilitated and equipped offices and has provided support to internal transportation and logistical support to the Transitional Federal Government.
- 62. The Civil Service Institute opened in Hargeysa in August 2005. The Institute is a public-private partnership, whose main partners include the Civil Service Commission of "Somaliland" and the University of Hargeysa. UNDP is facilitating the partnership process and is providing technical and budgetary support to the new Institute. While its main focus will be on developing the capacity of the civil service in areas such as management, planning, office skills and accounting, private companies and non-governmental organizations will also be able to contract training services for their staff.
- 63. The qualified expatriate Somali technical support project established to engage the Somali diaspora in the rebuilding of the country has increased the number of Somalis coming home to assist for short periods of time. The sectors of involvement include governance and manufacturing, among others. During 2005, 15 Somalis committed themselves to assisting organizations in "Somaliland", "Puntland" and South/Central Somalia in the education, agriculture and health sectors. Of the 15

participants, 4 are female. So far, two assistance projects have been completed in education and health.

Joint needs assessment

64. The concept note for the Somali joint needs assessment is now finalized and has been accepted by Somali stakeholders, including the Somali Transitional Federal Government. The concept note outlines the way forward for the Somali joint needs assessment and includes substantial participation by Somalis in the exercise, as both government and zonal counterparts and international experts from the Somali diaspora. The coordination structure and mechanisms of participation in the joint needs assessment process are now in place. They include a secretariat, an operational oversight committee called the coordination support group, and a strategic oversight committee called the joint planning committee. Work is currently under way in assembling the joint needs assessment teams made up of cluster leaders and sub-cluster experts from the United Nations, the World Bank, and international experts, including members of the Somalia diaspora and Somali counterparts. Further information can be found on the joint needs assessment website http://somali-jna.org.

Human rights

65. In August 2005, the Independent Expert of the Commission on Human Rights on the situation of human rights in Somalia undertook his fifth fact-finding mission to the region. He was encouraged by the increasingly visible role played by civil society in advocating for human rights. He strongly condemned the assassination of human rights defenders and journalists during 2005 (see para. 44 above). Among the continuing issues of concern, the Independent Expert highlighted: the conditions of internally displaced persons and minority groups; the exploitation of the Somali coastline, in particular, unregulated fishing activities by foreign companies and human trafficking, which affects thousands of individuals every year; prison conditions; oppression of peace activists and journalists; measures taken by some countries to repatriate Somali asylum-seekers; and conflict related detainees between "Puntland" and "Somaliland". The Independent Expert was encouraged to hear of the intention of the Transitional Federal Government to establish an independent human rights commission.

Rule of law

- 66. The United Nations Rule of Law and Security Programme has been providing technical and financial support for a law enforcement seminar and training workshop for the Somali Police Force in Kampala, since August 2005. The workshop brings together former police personnel from across the country in order to develop a road map to guide the rebuilding of the civilian police force. As a first step towards demobilization, disarmament and reintegration, the Programme is also supporting demobilization efforts in and around Mogadishu through a pilot initiative entitled "Support for peacebuilding and demilitarization" (see paras. 38 and 43 above).
- 67. Donors are providing support for the United Nations to facilitate the participation of the Transitional Federal Government in the meeting of the Standing Committees of the States Parties to the Convention on the Prohibition of the Use,

Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction. This is a preliminary step in the accession process to becoming a full signatory of the Ottawa Treaty. The activity is part of an ongoing dialogue between the United Nations Rule of Law and Security Programme and the Transitional Federal Government on mine-related issues and support to processes that will ensure it is aware of, and could consider participating in, relevant international legal instruments.

- 68. In July 2005, phase 1 of the construction of the Armo Police Training Academy in "Puntland" was completed. The first cohort is expected to begin training in October 2005. The academy will be an important institution to implement the new training syllabus and support the implementation of the road map for the rebuilding of the civilian police force. The local community has contributed substantially to the construction of the academy. Once completed, the academy is expected to provide high-quality training to support the eventual creation of a nationwide civilian police force.
- 69. The rehabilitation of a prison in Berbera was completed in July 2005. The facility is the first of its kind, and features a proper infirmary for inmates. The United Nations has provided support for the training of the custodial staff, which was consistent with international human rights standards, on the treatment of detainees.
- 70. A legal clinic support project at the University of Hargeysa has achieved significant results in reducing the waiting period of remanded individuals in "Somaliland". The legal clinic also provides free legal representation for individuals who are financially disadvantaged.

Water and sanitation

- 71. A sustainable water supply system in the tsunami-affected town of Hafun is under construction. This will increase the coping capacity of the community in future emergency situations. Efforts towards preventing cholera outbreaks in Mogadishu, including the chlorination of water supplies and close collaboration with the health sector, have been ongoing. No cholera outbreaks have taken place in 2005.
- 72. Two major water and sanitation programmes are under way. A rural water programme for central and southern Somalia started in March 2005, and a countrywide urban water and sanitation programme began in July. The rural programme aims to achieve permanent improvement of access to water through improved technologies and strengthened social mobilization. The urban water programme aims to build on public-private partnership management models for town water systems. It will be closely integrated with other urban development activities.

Health

73. The United Nations organized a six-week data management course which ended in June 2005 in collaboration with the Higher Institute of Public Health in Alexandria, Egypt for 15 Somali health workers from different parts of the country who are responsible for disease surveillance and monitoring. The participants received training in advanced data management and analytical skills. It is hoped that

the skills and knowledge they acquired will improve the quality and utility of surveillance information generated.

- 74. A national malaria control strategy is under way, and 80,000 insecticide-treated nets have been delivered to hyper-endemic areas with further consignments set to arrive. Insecticide-treated nets will be distributed to pregnant women during the upcoming maternal and neonatal tetanus campaign. New malaria diagnosis and treatment guidelines are being introduced that initiate artemesinin-based combination therapy. Information, education and communication materials have been developed to support those activities.
- 75. In an effort to ensure that polio cases in countries neighbouring Somalia do not cross the border, additional national immunization days have taken place using Monovalent oral polio vaccine (OPV) to pre-empt reintroduction of the polio virus. Unfortunately, despite those efforts, the re-emergence in Mogadishu of the wild polio virus P1 will call for more vigorous eradication activities with the support of the international community.

HIV/AIDS

- 76. In June 2005, a joint United Nations mission on HIV/AIDS travelled to "Somaliland" for the launch of the first anti-retroviral therapy project in Hargeysa, which is being supported by several United Nations agencies and non-governmental organizations. Most importantly, it has been endorsed by the "Somaliland" authorities. Led by the Joint United Nations Programme on HIV/AIDS, United Nations agencies and partners are developing a United Nations Implementation Support Plan for HIV/AIDS in Somalia that ensures a coordinated and effective response to the disease.
- 77. A leadership advocacy toolkit for community and religious leaders is being used to train religious and community leaders from all regions of Somalia. The toolkit references the Koran in fighting stigma and discrimination and advocates for HIV/AIDS awareness and care. Community leaders and local non-governmental organizations were given training on basic counselling skills in order to develop a cadre of psychosocial support givers in communities. Simultaneously, a counselling needs assessment was conducted in all three regions to establish the level of awareness of services and needs.

Education

- 78. The 2004-2005 annual primary school survey is under way. The survey should be ready for distribution in November 2005. Related to this activity, new education management and information tools have been introduced to 120 master trainers/mentors across all regions, which will increase local capacities in educational data management.
- 79. An enrolment and advocacy drive continues across the three regions, with a special focus on girls and children in settlements for internally displaced persons. Within a period of six months, approximately 100,000 new children were enrolled to begin school in September. This enrolment drive involved partnerships with educational authorities, communities and schoolchildren themselves. Primary alternative education centres have been established throughout the country with a total of 60,000 students, including children and youths.

80. Since July 2005, mentor and teacher training campaigns have been initiated, targeting 120 mentors and approximately 9,000 teachers across the country. The mentors are a core group of Somali trainers who have been trained in the essentials of pedagogy and educational management.

Child protection and youth

- 81. During the reporting period, three of the United Nations local partners in Somalia have trained and recruited community-based child protection advocates and are now actively working with vulnerable and disadvantaged communities to assist in finding solutions to such problems. The United Nations is supporting a training exchange for Somali psychosocial workers, enabling them to visit psychosocial support projects in Uganda as a means of capacity development and to undertake psychosocial support and care interventions at the community level.
- 82. In a follow-up to Security Council resolutions on children affected by armed conflict, in particular resolution 1612 (2005), a strong partnership has been established between the United Nations and the non-governmental organization NOVIB Somalia to initiate community-based reporting and monitoring on child rights and child protection violations.
- 83. During the reporting period, 33 youth peer educators underwent training for trainers in Hargeysa. They will train youth groups in organizational development and in youth peer skills in their home communities.

IX. Observations

- 84. Some progress has been made in the peace process in Somalia, particularly with the formation and return of the transitional federal institutions back to the country. However, the peace process remains fragile, and much remains to be done in overcoming the current political impasse through dialogue. The effective functioning of the transitional federal institutions is important and urgent. It is unfortunate that, one year after the conclusion of the Somali National Reconciliation Conference, the leaders of those institutions are still assuming rigid positions, even against entering into a dialogue, instead of tackling the more pressing issues of a national security plan, reconciliation and improvement of the quality of life of the Somali people.
- 85. Unless the differences within the transitional federal institutions are addressed, the current political impasse could grow into deeper divisions and undermine the very institutions that the people of Somalia so ardently desire and the international community and the United Nations are willing to support.
- 86. I am deeply concerned that the political tensions between the leaders of the transitional federal institutions have given rise to military preparations on their part. There are persistent reports of increased violations of the arms embargo. I call on the Somali leaders and countries of the region, in particular, not to be part of an exacerbation in political and military tensions. The threat of violence must be averted by all concerned. I once again urge the Somali leaders to enter into a comprehensive ceasefire agreement.

- 87. I am compelled to draw attention to the events outlined in paragraphs 32 and 44 to 46 above that forced the relocation of international United Nations staff from Jawhar in early September. The people of Somalia need and want the assistance of international workers and their Somali partners who are implementing much needed programmes in the country. Tangible improvement in the security situation on the ground is an essential responsibility of the Somali leaders.
- 88. I welcome the expressed willingness of the Speaker of Parliament, Sharif Hassan Sheikh Aden, to enter into dialogue under the auspices of the United Nations. I equally welcome the public statements of Prime Minister Ali Mohammed Gedi in favour of dialogue within the framework of the transitional federal institutions. His initiative to hold consultations that are to lead to cabinet meetings in Mogadishu could open the road to agreement on outstanding issues. I urge all Somali leaders to undertake the necessary steps towards reconciling their differences.
- 89. The Somali leaders and delegates who had gathered in Nairobi for over two years at the Somali National Reconciliation Conference and adopted the Transitional Federal Charter attached great importance to the role of Parliament. I urge them and the international community to help build the capacity of the Somali transitional institutions, including the Transitional Federal Government, the Parliament and the judiciary. An active and robust Parliament could serve as a national forum of debate and reconciliation and is essential for the realization of a healthy democratic order in Somalia. Likewise, the functioning of an independent judiciary is urgently needed for the restoration of law and order and the protection of human rights in Somalia.
- 90. I express my appreciation to the neighbouring countries, IGAD, AU, the League of Arab States, EU and concerned Member States for their keen interest and persistent efforts in support of the peace process in Somalia. I urge them to use their influence and leverage to ensure that the transitional federal institutions resolve their differences, through an inclusive dialogue, and to move ahead on the key issues of security and national reconciliation.
- 91. I would like to use this opportunity to call on all members of the international community to support the efforts of my Special Representative, François Lonseny Fall, to bring about an inclusive dialogue among the leaders of the transitional federal institutions aimed at achieving peace, reconciliation and development in Somalia. However, I once again underline that the sustained support of the international community, speaking with one voice, to encourage the Somali leaders to effectively begin dialogue would be crucial in overcoming the current impasse.
- 92. I commend the United Nations programmes and agencies and their partners for continuing to provide humanitarian assistance and undertake innovative and much needed operational activities in support of reconstruction and rehabilitation in Somalia. I call on all donors to support such programmes generously.

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Annex 92 Kenya's 2005 EEZ Proclamation with Coordinates, *Law of the Sea Bulletin* No. 61, Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, 2006, pp. 96-7

LAW OF THE SEA BULLETIN

No. 61 2006

3. Kenya

Proclamation by the President of the Republic of Kenya, 9 June 2005¹

Annex Kenya Gazette Supplement No. 55 22 July 2005 (Legislative Supplement No. 34) Legal Notice No. 82

Whereas the Third United Nations Convention on the Law of the Sea recognizes the right of a coastal state to establish beyond and adjacent to its territorial sea, the exclusive economic zone, and to exercise thereon sovereign rights for the purposes of exploring, exploiting, conserving and managing the natural resources whether renewable or non-renewable, of the water column, sea-bed and subsoil.

And whereas, it is already recognized by the said convention that the extent of the area referred to as the exclusive economic zone, aforesaid, shall not exceed two hundred nautical miles measured from the same baseline as the territorial sea.

And whereas, it is necessary that a declaration be made establishing the extent of the said exclusive economic zone of the Republic of Kenya.

Now therefore, I, Mwai Kibaki, President and Commander-in-Chief of the Armed Forces of the Republic of Kenya, do declare and proclaim in accordance with the Constitution of the Republic of Kenya:

- 1. That notwithstanding any rule of law or any practice which may hitherto have been observed in relation to Kenya or the waters beyond or adjacent to the territorial Sea of Kenya, the Exclusive Economic Zone of the Republic of Kenya shall extend across the sea to a distance of two hundred nautical miles measured from the appropriate baseline from where the territorial sea is measured, as indicated in the map annexed to this Proclamation. Without prejudice to the foregoing, the Exclusive Economic Zone of Kenya shall:
 - a. In respect of its southern territorial waters boundary with the United Republic of Tanzania be eastern latitude north of Pemba Island to start at a point obtained by the northern intersection of two arcs one from the Kenya Light-house at Ras Kigomasha.
 - b. In respect of its northern territorial waters boundary with Somali Republic be on eastern latitude South of Diua Damascian Island being latitude 1°39'34" degrees south.
- 2. That this Proclamation replaces the earlier Proclamation by Kenya but shall not affect or be in derogation of the vested rights of the Republic of Kenya over the Continental Shelf as defined in the Continental Shelf Act, 1973.
- 3. All States shall, subject to the applicable laws and regulation of Kenya, enjoy in the Exclusive Economic Zone the freedom of navigation and over flight and of the laying of submarine cables and pipelines and other internationally lawful recognized uses of the sea related to navigation and communication.

¹ Text transmitted through note verbale dated 11 April 2006 from the Permanent Mission of the Republic of Kenya to the United Nations addressed to the Secretary-General of the United Nations. The text of the Presidential Proclamation was published in Kenya Gazette No. 55 of 22 July 2005 (Legal Notice No. 82 (Legislative Supplement No. 34)). The First and Second Schedules, together with the illustrative Map, constitute an adjustment to and are in replacement of the Proclamation made by the President of the Republic of Kenya on 28 February 1979.

4. That the scope and regime of the Exclusive Economic Zone shall be as defined in the Schedule attached to this Proclamation.

FIRST SCHEDULE

The area of the territorial waters of the Republic of Kenya extends to a point twelve international nautical miles from the straight baseline, hereinafter described as follows:

Diua Damasciaca	1°39'34.25344" S	41°34'44.19626" E	
Kiungamwina Drying	1°46'39.55824" S	41°30'09.02159" E	
Mwamba Haasani	2°07'04.15178" S	41°11'50.25051" E	
Mwamba wa Punju	2°36'51.85347" S	40°37'01.06070" E	
Ras Ngomeni	2°58'46.46191" S	40°14'24.69583" E	
Leopard Reef	3°16'18.11141" S	40°09'42.26120" E	
Jumba la Mtwana	3°56'23.60363" S	39°47'18.81358" E	
Leven Reef	4°03'03.42975" S	39°43'21.75929" E	
Chale Reef	4°27'37.64311" S	39°32'01.50853" E	
Mwamba Kitungamwe	4°48'25.43385" S	39°21'32.85192" E	

SECOND SCHEDULE

The Exclusive Economic Zone of the Republic of Kenya is the area described by the following points and 200 nautical miles wide as measured from the baseline.

Diua Damasciaca	1°39'34.253" S	41° 34'44.196" E
E- Diua Damasciaca	1°39'36.000" S	44°54'47.520" E
E- Diua Damasciaca	1°39'36.000" S	44°54'47.520" E
E-A	2°39'36.000" S	44°43'19.092" E
E-B	3°39'36.000" S	44°15'13.896" E
E-C	4°40′53.004″ S	43°20'36.204" E
T-C	4°40'55.740" S	39°36'30.240" E
Т-В	4°40′52.000″ S	39°36'18.000" E
T-A	4°49'56.000" S	39°20'58.000" E
B-MK	4°49'51.636" S	39°20'59.244" E

The baseline is as described under the First Schedule.

Signed and sealed with the Public Seal for the Republic of Kenya at Nairobi this 9^{th} day of June, two thousand and five.

Mwai Kibaki

President of the Republic of Kenya

Annex 93	
FAO Fishery Country Profile: The Republic of Kenya, FID/CP/KEN, April 2007, Extract	

FISHERY COUNTRY PROFILE	Food and Agriculture Organization of the United Nations	FID/CP/KEN
PROFIL DE LA PÊCHE PAR PAYS	Organisation des Nations Unies pour l'alimentation et l'agriculture	
	Organización de las Naciones Unidas para la Agricultura y la Alimentación	April 2007

THE REPUBLIC OF KENYA

1. GENERAL ECONOMIC DATA

Area:	582 650 km²
Shelf area (to 200 m):	ca. 6 500 km²
EEZ:	142 400 km²
Length of coastline (Indian Ocean):	ca. 640 km
Water area (varies with rains)	10 500 - 11 500 km ²
Population (2005):	30 million
GGDP (2005):	US\$ 18.0 billion
GNI per caput (2005):	US\$ 530
Agricultural GDP (2005):	27.4% of GDP
Fisheries GDP (2005):	0.5% of GDP

Note: (1) Value of fish to the fishers plus export value.

conflicts. The government and other stakeholders are looking into ways of resolving the conflicts by using the data collected to arrive at a sustainable fishing regime acceptable to all stakeholders. The prawn fishery is not under threat, but shrimp harvesting threatens other fisheries whose juveniles are caught as by-catch. The trawlers have over the years imposed a voluntary 4-month (November to March) closed fishing season to protect berried shrimps. The offshore fishing operations in 2005 and 2006 in Kenya's EEZ involved DWFN vessels: 33 purse seiners and 30 long-liners, all foreign vessels licensed by the Kenyan government. There has been steady increase in the number of licensed vessels since 2003, when the government took a keen interest in illegal fishing and occasionally used the Kenya Navy to patrol the EEZ. The number of licensed foreign fishing vessels stabilized in 2005. The country is in the process of establishing an effective Monitoring Control and Surveillance (MCS) system, but currently none exists, and therefore, there is reason to believe that there are many other foreign vessels operating illegally.

Annual marine fish production from artisanal fishery in Kenya during 1980 to 2005 show a high of 9 972 t in 1990 and a low of 4 336 t in 1993. For the most of the period, production fluctuated between 6 000 and almost 10 000 t. Overfishing in inshore area has continued to cause a decline in fish catches, while the deeper territorial waters remain underexploited due to lack of deep sea fishing capacity by the local fishers. The EEZ is estimated to have an annual potential of more than 150 000 t, according to a desk study conducted in 2002 with Commonwealth Secretariat assistance. The actual amount harvested by DWFNs is not known, because their activities are not monitored, due to poor MCS. A significant amount of tuna is landed by the foreign vessels in Mombassa for either transshipment or local processing.

4.2.2 Sport fishing

Kenya enjoys a reputation as one of the world's great big game sports fishing destinations. Kenya's marine waters contain most of the major target game species, primarily billfishes, especially sailfish, swordfishes, the marlins, sharks and some tunas. Sport fishers are registered in the several sport-fishing clubs, which coordinate the fishing activity and record data. The peak sport fishing season is in September to March. The clubs have a large number of high quality boats and trained crews. The popular sport fishing areas are Malindi, Watamu, Shimoni and Lamu . In 2005, 30 sport-fishing clubs were registered.

There is also an underdeveloped but popular angling recreational activity in trout rivers in central and western Kenya, and also in inland lakes such as Lake Naivasha. There is need to start a stocking programme and concession some of the rivers to ensure expeditious development of this fishery.

4.3 Inland sub sector

4.3.1 Freswater capture fisheries

Freshwater fishery accounts for about 95 per cent of Kenya's total fish production, principally from Lake Victoria. Kenya is endowed with extensive inland waters, covering between 10 500 and 11 500 km² depending on rainfall, but it is the country's 6 per cent share of Lake Victoria that accounts for almost all (96 per cent) national freshwater fish production. Other freshwater-bodies of commercial importance include lakes Turkana (Kenya's largest freshwater body), Naivasha, Baringo, Jipe and the Tana River dams. The major rivers include Tana, Nzoia, Kuja, Yala and Athi/Sabaki.

Fishing in Kenya is mainly small scale, by artisanal fishers using small un-motorized fishing crafts propelled by sail and paddle. Fishing gear includes gillnets, long-lines and seine nets. Beach seines are now banned. From 1963 to the 1970s, freshwater fish production remained below 50 000 t per year, but steadily increased from the early 1980s, reaching over 140 000 t in 1989, and then remained at 180 000 t on average until 2001. The highest recorded landed volume was 209 438 t in 1999, after which catches fell steadily to a low of 112 720 t in 2003. The decline

was caused by the increase in fishing effort due to high demand, especially for Nile perch for export. However, action was taken by the Department of Fisheries to restore the lake fisheries and landings increased, with 127 700 t in 2004 and 139 026 t in 2005.

Lake Victoria is the second-largest freshwater body in the world, with a surface area of 68 800 km², of which 35 088 km² (51 per cent) is in Tanzania, 29 584 km² (43 per cent) is in Uganda, and 4 128 km² (6 per cent) is in Kenya. It has a shoreline of 3 450 km, of which 1 150 km (33 per cent) is in Tanzania, 1 750 km (51 per cent) is in Uganda and 550 km (16 per cent) is in Kenya. The lake has a catchment area of 192 890 km² (Uganda 30 880 km², 16 per cent; Kenya 42 460 km², 22 per cent; Tanzania 84 920 km², 44 per cent; Rwanda 21 120 km², 11 per cent; Burundi 13 510 km², 7 per cent) with a rapidly growing population of over 30 million people. Lake Victoria is the most important fishery in the country, earning over K Sh 4 billion (US\$ 50 million) annually in foreign exchange from the export of Nile perch products and over K Sh 6.5 billion to the fishers.

Lake Victoria has a multi-species fishery of tilapiines and haplochromines, cichlids and more than 20 genera of non-cichlid fish, including Mormyrus, catfish, cyprinids and lungfish. There has been a steady decrease in fish diversity and quantity due to increase in fishing effort as a result of commercialization of fishing in the last two decades.

The introduced species, especially Nile Perch and Nile tilapia, have been responsible for the increasing total annual fish catches since the early 1980s. Following the increase in the Nile perch stock in the lake, a commercial artisanal fishery developed and subsequently the fish processing industry for export evolved. The incentive created by the ready market of the fish processing plants fuelled a rapid increase in fishing effort. Fish landings declined in the 1990s due to indiscriminate exploitation of the fisheries. The mean fish size has been declining steadily since the 1980s as fishers have been progressively switching to smaller meshed gillnets, and juvenile Nile perch are increasingly exploited through use of illegal beach seines.

From the early 1980s to 2004, species composition was dominated by *Lates niloticus*, *Rastrineobola argentea* and *Oreochromis niloticus* in that order. In 2005, the species catch composition for the first time in many years was dominated by *Rastrineobola argentea*, contributing about 41 per cent while *Lates niloticus* contributed 38.5 per cent and *Tilapia niloticus* 16 per cent. The dramatic increase in *Rastrineobola argentea*, in 2005 has not yet been explained but the stringent participatory measures for management of *Omena* fishery, including closed seasons, and also the notable decline in the predatory Nile perch, may have contributed.

Lake Turkana is Africa's fourth-largest lake, with an area of 7 400 km² lying in a low, closed basin, 365 m above sea level in the arid northwest of Kenya. Over 90 per cent of the annual water discharge by volume is from river Omo, originating in Ethiopia, while the rest is from the seasonal rivers Kerio and Turkwell. The lake has many unique characteristics, such as drastic lake level fluctuations, low fish species diversity and intermittent peak production in fish, especially tilapia. With no surface outlet, the water budget is a balance between river- inflow and evaporation, which imposes special physical chemical conditions, making the lake saline. The commercial fishery is based on 12 species, namely *Oreochromis niloticus*, *Lates niloticus*, *Hydrocynus forskalii, Mormyrus* spp., *Labeo horie, Bagrus* spp., *Distichodus niloticus*, *Citharinus* spp., *Barbus* spp., *Clarias lazera*, *Aletes* spp., and *Synodontis schall*.

From the 1960s to the mid-1970s, nominal catches from the Kenyan part of the lake were generally no more than $5\,000\,t/year$. A huge increase occurred, rising to a catch of $17\,044\,t$ in 1976, and thereafter catches continued in the range of $7\,000\,t/year$ until 1988, when production collapsed to the $1\,000\,t/year$ level until 1997. Since 1998 production has fluctuated between $2\,000\,and\,10\,000\,t/year$.

A valuable fishery developed in the mid-1970s as rising water levels created ideal breeding and feeding conditions for *Oreochromis niloticus* in Ferguson's gulf. As many as 7 000 fishers

were operating on the lake in the early 1980s, including many migrants from Lake Victoria. Reasonable infrastructural development was implemented in the context of the high production levels and future expectations, including a fish processing plant and an all-weather road linking the lake area into the national highway network 300 km to the south. Ensuing years witnessed a gradual drying up of Ferguson's Gulf, oil price spikes, and withdrawal of many fishers to Lake Victoria to cash on the rapidly developing Nile perch fishery. By the early 1990s, the number of fishers was down to around 1 500. In the 1970s and 1980s, Lake Turkana supported a lucrative export operation of dried fish to the Democratic Republic of Congo (DRC), through a fishers' cooperative society. The DRC market collapsed in the late 1990s due to economic instability.

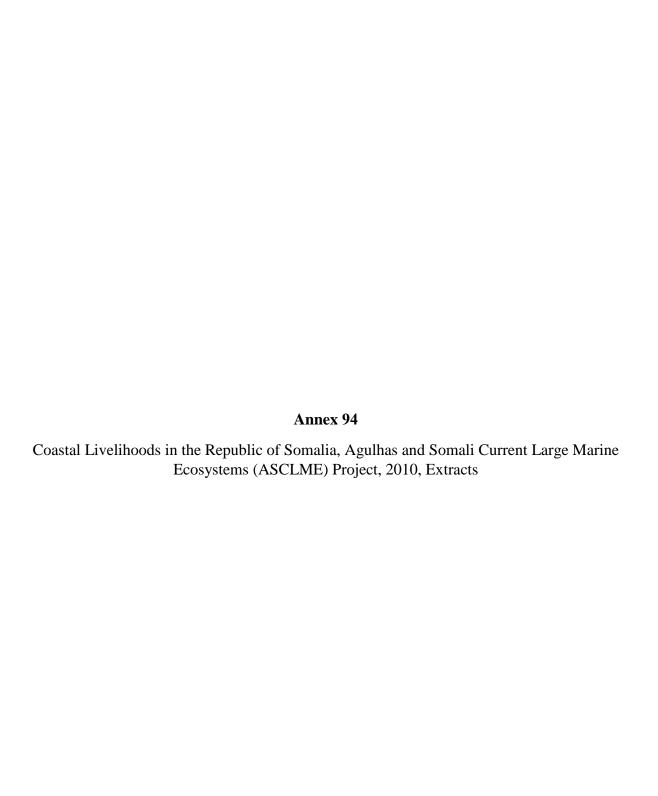
Lake Naivasha lies in a closed basin in the central rift Valley, with an area of about 115 km², fluctuating according to rainfall. The lake supports a small commercial fishery based on four finfish species and one crustacean species, namely Oreochromis leucostictus, Tilapia zillii, Microptrerus salmoides (Black bass), Cyprinus carpio (Common carp) and Procambrus clarkii (crayfish). Barbus amphigramma and Lebistes reticulata (guppy) are also present but not commercially exploited. Sport angling is also practised. In the latter half of the 1980s the number of active fishers was reported to be 200 to 300, and the number of fishing craft between 50 and 100. Besides the increase in legal fishers, illegal fishers also increased, and this increased fishing effort led to fishery collapse, forcing many fishers to abandon fishing, which had become unprofitable. The situation began to reverse in 2002, following a paradigm shift in fisheries management that encouraged wider stakeholder participation in management decisions. This process saw reduction in fishing craft number, from 133 to 40, and fishers from 300 to 120; a voluntary annual closed season from June to September each year; and improved fish production. There was also reduction in the illegal fishers although this has remained a problem because of the poor MCS system. Species composition in the catches has drastically changed, from tilapiines dominating up to 2002, but common carp (an inadvertent introduction) dominant since then.

Lake Baringo is a Rift Valley lake with an area of 130 km². The lake is shallow, with a mean depth of about 5.6 m, and becoming shallower due to increasing siltation. The lake is fed from the south by rivers Ndau, Chemeron, Perkerra, Molo and Arabel. All these except Molo are seasonal.

Lake Baringo fishery is based on six fish species, namely *Oreochromis niloticus, Barbus gregorii, Barbus lineomaculatus, Clarias mossambicus, Labeo cylindricus* and the recently introduced *Protopterus aethiopicus. Labeo cylindricus* is the only species that is not commercially exploited. Fishing is passive, mainly by gillnetting and hand line. The steadily declining fish catch has been attributed to poor lake productivity, mainly due to the heavy siltation. This led to stakeholders deciding to close fishing for two years, 2002 and 2003, in the hope that production would recover. This measure did not bear fruit as fish landings in 2004 and 2005 were 63 and 43 t, respectively, down from 468 t in 2000 and 117 t in 2001. The lake currently supports on average 134 fishers and 66 fishing craft. Strangely, in 2001, prior to the two-year fishing closure, there were fewer fishers (75) and craft (25).

Other lakes and rivers support minor fisheries, namely:

- Lake Victoria Basin: rivers Gucha/Migori, Mara Nzoia, Sondu and Yala;
- Rift Valley Basin: rivers Suam-Turkwel, Kerio, Ewaso Nyiro, Lessos Reservoir and Turkwel Gorge Reservoir;
- Athi River Basin: rivers Athi/Galana/Sabaki and Voi, lakes Chala and Jipe;
- Tana River Basin: upper Tana River and impoundments including Masinga, Kamburu, Gitaru Kindaruma reservoirs, and lower Tana River and floodplain with numerous small lakes, including lakes Balisa and Shakababo. Several streams in the central and western highlands have been stocked with trout and provide sports fishing opportunities.



COASTAL LIVELIHOODS IN THE REPUBLIC OF SOMALIA

GENERAL INTRODUCTION

The Agulhas and Somali Current Large Marine Ecosystems (ASCLME) project is focused on the two large marine ecosystems of the Western Indian Ocean (WIO) region, covering nine countries that are directly influenced by these current systems. It is estimated that at least fifty-six million people are reliant either directly or indirectly on the goods and services provided by these two current systems. The ASCLME project aims to support these countries in their efforts to collectively manage the marine resources on which their people and economies depend. Fisheries and other key coastal activities, including various forms of tourism, aquaculture, shipping and coastal transport, the energy sector, agriculture and forestry, are very important contributors to the economies of the countries of the WIO. In recognition of the complexity and importance of these activities, a Coastal Livelihoods Assessment (CLA) component was developed for the ASCLME project.

The CLA component had three main objectives:

- to collect as much existing information as possible about the main coastal activities in the nine participating countries as a contribution to the national Marine Ecosystem Diagnostic Analyses (MEDAs);
- to make input into ensuring that this information is stored and organised in a manner that will allow easy access and maximum utility to multiple stakeholders, both during and after the lifetime of the ASCLME Project;
- to review and sythesise the information collected in order to provide useful inputs to the TDA and SAP processes.

In order to achieve these objectives, the CLA component was separated into three distinct phases, with the first phase kicking off in May 2009. During phase one, a "desktop" review of available data was conducted by the regional project coordinators, input was made into the design of a literature management tool to facilitate the storage of information, and preparations were made for the in-country data gathering process. Planning meetings were held between the core CLA team and the in-country Data and Information (D+I) Coordinators in August 2009. The processes involved in the in-country component of recruitment and data gathering was discussed and confirmed at this stage.

Phase two involved in-country personnel having been identified and recruited through a regionally inclusive recruitment process. Nominations were invited and received from country focal points and D+I Coordinators. Twenty three consultants were recruited to assist with the project. For some sectors international experts (drawn from the region where possible) were asked to provide information for all countries in the region while in others, where good local capacity existed, in-country consultants were recruited. This group of consultants collected information from existing resources, such as published articles, government reports, regional reviews, project reports and outputs, policy documents as well as a range of other grey literature that was likely to be useful.

Phase three involved the organisation of the information into country Coastal Livelihood Reports where individual sector reports have been assessed and the key elements from each sector extracted and presented in a summarised format. These country reports will be reviewed by project representatives in each country and once accepted, will be incorporated as a separate Coastal Livelihoods chapter in the overall country MEDA documents. It is anticipated that the information collated in these reports will allow examples of best-practice to be identified for application in other parts of the region. The objective is to build on approaches that work rather than to duplicate efforts. Information gaps will be identified and addressed in subsequent phases of the ASCLME, including during a Cost/Benefit Analysis (CBA)

exercise designed to weigh up the costs and benefits of various development options. Key information from these reports will feed into the CBA and hopefully provide useful guidelines for the Transboundary Diagnostic Analysis (TDA) and the development of Strategic Action Plans (SAP) for the overall ASCLME project.

The following country report begins with an overview of coastal livelihoods in Somalia, which provides a concise overview of the seven sector reports and the findings of the in-country and regional consultants. This overview ends with a conclusion which summarizes the collected information as it relates to the coastal zone in Somalia in general. This overview is followed by the more detailed sector reports, which represent the original contributions by the in-country and regional consultants. The sectors are organized in the following order: Small-scale Fisheries, Tourism, Mariculture, Agriculture and Forestry, Energy, Ports and Coastal Transport and Coastal Mining.

Each sector report has been prepared by specialists in that particular sector drawn either from the country or internationally. Sector reports have been prepared according to a pre-determined template to ensure that the relevant aspects of that sector were captured by the consultants. Reports include descriptive sections on the biophysical environment, human environment, policy and governance, planning and management, and development, trade and projects related to that sector. Each report is concluded with a SWOT analysis which provides a summary of the Strengths, Weaknesses, Opportunities and Threats facing that sector. It is the outputs of these SWOT analyses that are of particular importance to the strategic planning aspects of the overall ASCLME project. These reports were initially submitted to the regional coordinators for review and have subsequently been corrected and updated by the consultants themselves.

Finally, each sector report has a bibliography containing key references and links to relevant information. Full details of the information resources collected during compilation of each sector report, as well as electronic copies of literature (where available), are included in the overall ASCLME reference management system.

OVERVIEW OF COASTAL LIVELIHOODS IN SOMALIA

I. Small-Scale Fisheries

There is an operative small-scale fishery in Somalia with approximately 50 fishing centers and an estimated 30,000 people from coastal communities engaged. Despite rich bio-diversity and an extensive coastline, exports of fishery products only account for around 3% of total exports and contribute about 2% to GDP. Household income in the sector also fluctuates by season, with fishers earning \$1.5 USD per day during monsoon season and an estimated \$40 USD per day during fishing season.

Data, law enforcement and policy development are practically non-existent in the sector, as there is currently no government, institutional infrastructure and regulatory capacity in the country. Despite the variety of fish resources, poor processing facilities, poverty, old fishing gear and the isolation of fishing communities all highlight the weaknesses prevalent in the sector. While a legitimate transitional government has been established, security remains fragile, as both the presence of piracy and an on-going insurgency have constricted economic development. Due to the lack of monitoring capacity, fishing and waste disposal by foreign vessels has also become problematic along the coast.

As a whole, potential for growth in the small-scale fishery is robust, however, there are clearly numerous constraints preventing further development. Nevertheless, opportunities, such as the development of local market places, the provision of micro-finance, improved processing facilities and the standardization of

inboard and outboard engines, all highlight the prospects prevalent in the sector. While the lack of regulation and data in the sector could breed over-exploitation, particularly of species such as sharks, the potential for increases in production and domestic consumption is great. The sheer scope and extent of the country's coast and resources should accentuate these opportunities.

II. Tourism

Security in Somalia is inevitably a constraint on tourism in the country's coastal zone, however, its long scenic coastline, rich biodiversity and favorable climate make it an ideal region for future tourism development. The country's close proximity to the Middle East, along with its historic Islamic culture, also make it a convenient destination for nearby travelers. All opportunities are, however, dependent on improvements in the security situation.

Unfortunately, accompanying the current security situation are the stigmas of violence and conflict attached to the country, which negatively affects both the marketability and the volume of tourist activity. Similarly, weak infrastructure, limited institutional capacity and the reluctance of NGO's to operate has severely constrained development in the sector. Again, if the security situation is improved and law and order is reestablished, these constraints could be marginalized. Under these improved conditions opportunities for growth and development in the sector could spur other entrepreneurial activities in the region. Similarly, international organizations could be engaged to assist in developing the sector. Growth in the sector could also not only sensitize the population to the importance of sustaining the country's natural habitat, but it could also reduce the over-exploitation of natural resources by creating opportunities for employment in the sector.

III. Mariculture

A dedicated report on mariculture has not been included in this country report due to the current difficulty in obtaining detailed information on the potential of this sector in Somalia. It has been determined though, that there are currently no mariculture activities taking place in the country. However, given the extensive coastline and strong tradition of utilizing and consuming marine products in the coastal zone, there is no reason why this kind of development should not be as attractive as it has proved to be in the other Western Indian Ocean states, once political stability returns to Somalia.

It is important to note that according the ASCLME project representatives from Somalia, the Transitional Federal Government of the Republic of Somalia sees activities such as mariculture in the coastal zone as an important alternative income generating activity that has the potential of reducing over-exploitation of coastal resources. It is recommended that at the appropriate time a dedicated assessment of the mariculture potential in Somalia be undertaken to determine the best approach to take in the development of this sector.

IV. Agriculture and Forestry

Accounting for an estimated 64% of GDP, agriculture and forestry is the most dominant sector in Somalia. Despite livestock movement bans, animal exports account for about 60% of Somalia's employment opportunities, generating about 40% of GDP and 80% of foreign currency earnings. Taxation of livestock trade and export is one of the major revenue sources for the regional administrations. The main food crops are sorghum, millet, maize and rice, while the majority of cash crop exports are bananas, sugar and cotton. Bananas were once a key export and source of foreign exchange, however, the El Nino floods in 1998 largely collapsed the sector. Hence, as livestock is the main source

of income and employment for the majority of the Somali population, droughts, fluctuating environmental conditions and market volatility all have a great impact on the people and the economy.

Acacia and Commiphora shrub and woodland habitat are widespread in the country and are extensively utilized for a variety of purposes. While large swaths of the resource have been cleared for agriculture, as well as fuelwood and charcoal production, woodlands still provide numerous goods, particularly in dry times. Deforestation is, however, a significant problem in the northern areas and the Jubba Valley. Forests are not predominant in the coastal zone, however, mangroves remain important, valued at around \$91 million USD.

While policies for coastal zone management have been promoted in Somaliland, security and governance clearly remain predominant issues. Despite these constraints, positives can be seen. For example, IFAD is currently providing technical expertise and funding focused on food security and livelihood opportunities in the northern regions, while the opportunity to expand agriculture, forestry and livestock production has been documented. Similarly, the country's extensive bio-diversity, particularly bird-life, hast potential for attract tourism development in the future. However, for any initiatives and opportunities to be realized, security will have to be brought under control.

V. Energy

There is little activity in oil, gas and biofuels in Somalia, with the country's only refinery closing due to the civil war. Although there is currently no hydrocarbon production, the country does have 200 billion cubic feet of proven gas reserves, as well as prospective oil fields in the northern zone and in the Nuggal and Dharoor basins. Total is the only identified agent involved in downstream activity, managing the oil terminal in Berbera and supplying fuel to the airports in Berbera and Hargeisa. While most exploration activities were suspended due to the onset of civil conflict, many companies have shown a renewed interest in the sector. For example, a consortium of companies have obtained the rights to explore the Nuggal and Dharoor basins from the Puntland government, while blocks to explore offshore of Mudug and around the coastal area of Berbera have been conceded by the national government. The validity of these agreements does, however, remain in question, particularly the agreements with the Puntland government, as ownership of the resources remains ambiguous.

Numerous constraints have been identified in the sector, the most challenging being the security situation. Not only did the civil war force the majority of companies to suspend operations, but the present security situation has made operations very difficult. The development of operations in such an unstable environment also increases the risk of spills and accidents. Governance and capacity also remains constrained, which has not only facilitated conflict between different branches of government, but has led to a lack of basic infrastructure throughout the country. Much of the country's economic activity also remains informal, which means the state is unable to obtain revenue to contribute to basic services. Piracy also remains highly problematic, as it has not only become a principal coastal industry, but it is likely to constrain offshore operations in the near future.

Some strengths and opportunities have, however, been identified in the sector. For example, an effective government in Somaliland could potentially be conducive to sectoral development in the region, while the prospects for oil deposits throughout Somalia are very positive. Oil sector development could also be supportive of employment and contribute to the development of infrastructure, while the transitional national government has shown a willingness to support the sector. Nevertheless, any future development in the sector is largely dependent on improvements in the security situation.

VI. Ports and Coastal Transport

There are four major ports in Somalia, each under the control of independent local clans. Kismaayo, the most southerly port, handles exports of charcoal and bananas from the Juba valley and receives vehicle imports from the Gulf. Merka, which lies 100 km south of Mogadishu, has no operational infrastructure, therefore, ships are forced to anchor offshore with cargo brought inshore by smaller vessels. The Mogadishu port, which was rebuilt with the US and UN finance in the early 1990's, is largely controlled by different factions and clans. The port does, however, reportedly have some adequate warehouses that could potentially be used for imports. The port in Eyl is only noted as a stronghold for piracy. None of these four ports are considered to be fully operational.

All these ports were formerly under the control of the Somali Ports Authority, however, the collapse of the central government has led to fragmented control across the sector. The collapse of authority has also recently resulted in an increase in piracy, wherein, numerous international ships have been hijacked off the Somali coast. The waters are subsequently seen as the most dangerous in the world, which inevitably repels most foreign vessels from docking anywhere in the country.

While road transport is still semi-operational in the country, ports and shipping remain constrained by the present security situation. Thus, while some harbours are developed and the country does posses seafaring skills, any growth in the sector is directly dependent on improvements in security. Under these improved conditions, it is important to note that there is enormous potential in the ports and shipping sector, with an estimated 25 000 vessels passing the Gulf of Aden annually.

VII. Coastal Mining

Deposits of tin-tantalum in Puntland, simpsonite in Berbera, and deposits of salt and gemstone throughout the country, all highlight the fact that there are numerous documented opportunities for mining in the country. Similarly, despite the lack of reliable data, a US geological survey also noted that 1,500 tons of gypsum, 600 tons of marine salt and 6 tons of sepiolite was mined, each year, from 1998 to 2002. Nevertheless, data for all minerals remains constrained by the present security situation.

The only reported mining activity along the coast was in cement, which was subsequently concluded in 1996. There have been no indications of mining activity in the coastal region since then. Again, similar to inland mining, the country's security situation has inevitably constrained any mining activity in the region.

While both Somaliland and Puntland have developed mineral decrees of their own, no environmental policies or coastal management techniques have been developed by the Transitional Federal Government in relation to the mining industry. Likewise, while the UN has developed a Reconstruction and Development Programme for the country, there are no indications that it will deal with mining in the coastal regions. In either case, the mining sector is likely to remain inoperable until the security situation is improved.

Conclusions

There are many constraints that remain constant across sectors in Somalia, such as security, environmental management, and infrastructure, all of which have had a widespread impact on all of the sector's considered in the coastal livelihoods study. Given more stability, there are also some strengths and opportunities apparent, particularly in the natural landscape of the coast, as well as the potential for improved governance and the affects it could have on all sectors. Currently, each of the sector reports

V. Energy - Prepared by Mr Francois Busson, E-mail: <u>rafrabus@free.fr</u>

1. Introduction

Somalia has a rhino-horn shaped coastline of more than 3.000km (1.684 miles), the longest in Africa, earning the title of the Horn of Africa. It is bordered by Djibouti to the northwest, Kenya to the southwest, the Gulf of Aden with Yemen to the north, the Indian Ocean to the east and Ethiopia to the west.

Northern Somalia was occupied by the British from 1920 and southern Somalia was conquered by the Italians in 1927. This occupation lasted until 1941, and was replaced by a British military administration. The union of the two regions in 1960 formed the Somali Republic. In 1991, the Somali Civil War broke out, which facilitated the collapse of the federal government.

Since 1991, Somalia has been engulfed in anarchy. In May 1991, northern clans declared an independent republic of Somaliland. Although not recognized by any government, this entity has maintained a stable existence. The regions of Bari, Nugaal, and northern Mudug make up the neighboring, semi-autonomous state of Puntland, which has been self-governing since 1998. The state is not, however, aiming for independence.



A two-year peace process, led by the Government of Kenya under the auspices of the Intergovernmental Authority on Development (IGAD), concluded in October 2004 with the election of Abdullahi Yusuf Ahmed as President of the Transitional Federal Government (TFG) of Somalia. This also produced the formation of an interim government, known as the Somalia Transitional Federal Institutions (TFIs). TFIs relocated to Somalia in June 2004. In 2009, the TFI's were given a two-year extension to October 2011. This situation was further complicated in 2007, when the "Islamic Courts Union" launched an insurgency. The group soon controlled a large part of the country, however, they were partly repelled with the help of Ethiopian troops. Today, the security situation is still highly unstable.

1.1 Oil and Gas Sector overview

Somalia currently has no hydrocarbon production, and the national oil refinery closed because of the civil war.

Somalia has an estimated 200 billion cubic feet of proven natural gas reserves, and no proven oil reserves. But according to geological surveys, prospects of oil fields exist in the Northern zone (oil seeps identified), and in the North-Western zone (Nuggal and Dharoor basins). Exploration activities were carried out by foreign firms, including Agip, Amoco, Chevron, Conoco and Phillips, in the 1980's. The firms were forced to suspend operations following the collapse of the central government. Exploration companies have, however, recently renewed their attention to these fields (cf Annexe 1).

Given the complexities of the current political situation (one "official" central government with very little power, one autonomous, and one semi-autonomous region, with ramping rivalries within each entity), it is difficult to assess the position of the supposed players in Somalia's exploration process.

• In 2005, Puntland's government signed an agreement with Consort Private (Australian) for exclusive rights to explore and drill for oil in the Nuggal and Dharoor blocks. This agreement

was signed against TFG government's will, which stated that the "natural resource belonging to the nation is the responsibility of the federal government". Since then, Consort Private's exclusive rights have been sold and shared to a consortium of 3 companies, including Africa Oil (Canadian), Range (Australian), and Lion (Canadian). Despite the "official" agreement with the Puntland Government, the companies are facing strong opposition from local landlords, and field operations have been delayed several times. It must also be added that the region of Sool, which contains the majority of the Nugaal block, was invaded by Somaliland forces in late 2007

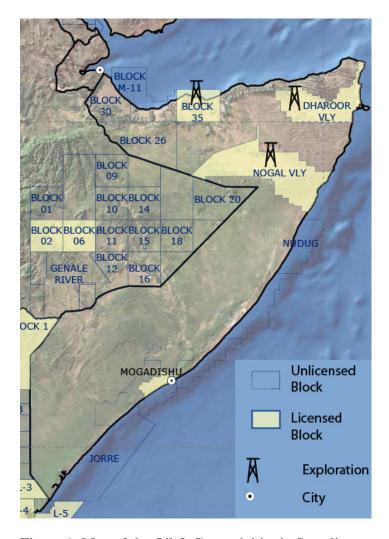


Figure 1: Map of the Oil & Gas activities in Somalia (adapted from Deloite 2009)

- In 2007, TFG President Abdullahi Yusuf signed an agreement with CNOOC (Chinese), giving the company exclusive rights to the large offshore blocks off the coast of Mudug. TFG Prime Minister Gedi tried to nullify this agreement in an attempt to give exploration rights for all of Somalia to Indonesia's PT Medco Energi Internasional Tbk and the Kuwait Energy Company. Gedi was later forced to resign.
- In 2003, Rovagold Energy Corp., UK gained rights to explore, develop and produce oil and gas in the coastal area of southeast Berbera, Somaliland. This included blocks 35, 36, M-10 and M-10A, previously operated by Amoco, a company that was forced to suspend operations in 1989.
- In 2001, Total signed an exploration agreement with the Transitional National Government (TNG). The twelve-month agreement granted Total the rights to explore in the Indian Ocean off southern Somalia. However, several factional leaders denounced the agreement, and stated that the TNG did not have the authority to sanction the agreement, nor the power to guarantee the safety and security of the exploration operations.

Annex 95 Security Council Resolution 1976 (2011), S/RES/1976 (2011), 11 April 2011

United Nations S/RES/1976 (2011)



Distr.: General 11 April 2011

Resolution 1976 (2011)

Adopted by the Security Council at its 6512th meeting, on 11 April 2011

The Security Council,

Recalling its previous resolutions concerning the situation in Somalia, especially resolutions 1918 (2010) and 1950 (2010),

Continuing to be gravely concerned by the growing threat that piracy and armed robbery at sea against vessels pose to the situation in Somalia and other States in the region, as well as to international navigation, the safety of commercial maritime routes and the safety of seafarers and other persons, and also gravely concerned by the increased level of violence employed by pirates and persons involved in armed robbery at sea off the coast of Somalia,

Strongly condemning the growing practice of hostage-taking by pirates operating off the coast of Somalia, expressing serious concern at the inhuman conditions hostage face in captivity, recognizing the adverse impact on their families, calling for the immediate release of all hostages, and noting the importance of cooperation between Member States on the issue of hostage-taking,

Emphasizing the importance of finding a comprehensive solution to the problem of piracy and armed robbery at sea off the coast of Somalia,

Stressing the need to build Somalia's potential for sustainable economic growth as a means to tackle the underlying causes of piracy, including poverty, thus contributing to a durable eradication of piracy and armed robbery at sea off the coast of Somalia and illegal activities connected therewith,

Reaffirming its respect for the sovereignty, territorial integrity, political independence and unity of Somalia, including Somalia's rights with respect to offshore natural resources, including fisheries, in accordance with international law, recalling the importance of preventing, in accordance with international law, illegal fishing and illegal dumping, including of toxic substances, and stressing the need to investigate allegations of such illegal fishing and dumping,

Being concerned at the same time that allegations of illegal fishing and dumping of toxic waste in Somali waters have been used by pirates in an attempt to justify their criminal activities,





Reaffirming that international law, as reflected in the United Nations Convention on the Law of the Sea of 10 December 1982 (Convention), in particular its articles 100, 101 and 105, sets out the legal framework applicable to combating piracy and armed robbery at sea, as well as other ocean activities,

Further reaffirming that the provisions of this resolution apply only with respect to the situation in Somalia and do not affect the rights and obligations or responsibilities of Member States under international law;

Reiterating its call upon States and regional organizations that have the capacity to do so, to take part in the fight against piracy and armed robbery at sea off the coast of Somalia, in particular, consistent with resolution 1950 (2010) and applicable international law, including human rights law, by deploying naval vessels, arms and military aircraft and through seizures and disposition of boats, vessels, arms and other related equipment used in the commission of piracy and armed robbery at sea off the coast of Somalia, or for which there are reasonable grounds for suspecting such use,

Underlining the importance of enhancing ongoing work to address the problems caused by the limited capacity of the judicial system of Somalia and other States in the region to effectively prosecute suspected pirates,

Noting with appreciation the assistance being provided by the United Nations, including its Office on Drugs and Crime (UNODC), and other international organizations and donors, in coordination with the Contact Group on Piracy off the Coast of Somalia (CGPCS), to enhance the capacity of the judicial and the corrections systems in Somalia, Kenya, Seychelles and other States in the region to prosecute suspected, and imprison convicted, pirates consistent with applicable international human rights law,

Commending those States that have amended their domestic law in order to criminalize piracy and facilitate the prosecution of suspected pirates in their national courts, consistent with applicable international law, including human rights law, and stressing the need for States to continue their efforts in this regard,

Noting with concern at the same time that the domestic law of a number of States lacks provisions criminalizing piracy and/or procedural provisions for effective criminal prosecution of suspected pirates,

Further expressing concern over a large number of persons suspected of piracy having to be released without facing justice, reaffirming that the failure to prosecute persons responsible for acts of piracy and armed robbery at sea off the coast of Somalia undermines anti-piracy efforts of the international community and being determined to create conditions to ensure that pirates are held accountable,

Recognizing the urgent need to undertake decisive further steps to boost anti-piracy efforts,

Expressing its gratitude for the work done by the Special Adviser to the Secretary-General on Legal Issues Related to Piracy off the Coast of Somalia Mr. Jack Lang in order to explore new solutions to counter more effectively piracy and armed robbery at sea off the coast of Somalia, including by more effective prosecution of suspected, and imprisonment of convicted pirates, and noting with appreciation the conclusions and proposals set forth in his report to the Security Council contained in the annex to document S/2011/30,

Determining that the incidents of piracy and armed robbery at sea off the coast of Somalia exacerbate the situation in Somalia, which continues to constitute a threat to international peace and security in the region,

- 1. Welcomes the report of the Special Adviser to the Secretary-General on Legal Issues Related to Piracy off the coast of Somalia;
- 2. Recognizes that the ongoing instability in Somalia is one of the underlying causes of the problem of piracy and contributes to the problem of piracy and armed robbery at sea off the coast of Somalia, and stresses the need for a comprehensive response to tackle piracy and its underlying causes by the international community;
- 3. Calls upon States to cooperate, as appropriate, on the issue of hostage-taking;
- 4. Requests States, UNODC, the United Nations Development Programme, the United Nations Political Office for Somalia (UNPOS) and regional organizations to assist the TFG and regional authorities in Somalia in establishing a system of governance, rule of law and police control in lawless areas where land-based activities related to piracy are taking place and also requests the TFG and regional authorities in Somalia to increase their own efforts in this regard;
- 5. Requests States and regional organizations to support sustainable economic growth in Somalia thus contributing to a durable eradication of piracy and armed robbery at sea off the coast of Somalia, as well as other illegal activities connected therewith, in particular in priority areas recommended by the Istanbul conference on piracy in Somalia;
- 6. *Invites* States and regional organizations to continue their support and assistance to Somalia in its efforts to develop national fisheries and port activities in line with the Regional Plan of Action, and in this regard *emphasizes* the importance of the earliest possible delimitation of Somalia's maritime spaces in accordance with the Convention;
- 7. Recalls preambular paragraphs 6 and 7 above and operative paragraph 2 of resolution 1950 (2010), and requests the Secretary-General to report within six months on the protection of Somali natural resources and waters, and on alleged illegal fishing and illegal dumping, including of toxic substances, off the coast of Somalia, taking into account the studies on this matter previously conducted by the United Nations Environmental Programme and other competent agencies and organizations, and expresses its readiness to keep the matter under review;
- 8. *Urges* States individually or within the framework of competent international organizations to positively consider investigating allegations of illegal fishing and illegal dumping, including of toxic substances, with a view to prosecuting such offences when committed by persons under their jurisdiction;
- 9. Calls upon States and regional organizations cooperating with the TFG in the fight against piracy off the coast of Somalia to further increase their coordination to effectively deter, prevent and respond to pirate attacks, including through the CGPCS;
- 10. Encourages States and regional organisations cooperating with the TFG to assist Somalia in strengthening its coastguard capacity, in particular by

supporting the development of land-based coastal monitoring and increasing their cooperation with the Somali regional authorities in this regard, as appropriate, after having any necessary approval from the Council's Committee pursuant to resolutions 751 (1992) and 1907 (2009);

- 11. Calls on States, regional organizations, the United Nations, IMO and other appropriate partners to provide all necessary technical and financial support to the implementation of the Djibouti Code of Conduct, the Regional Plan of Action for Maritime Security in Eastern and Southern Africa and the Indian Ocean agreed by Ministers in Mauritius in October 2010, and the CGPCS regional needs assessment report, recognizing the political will expressed by regional countries in these documents to combat piracy by all means possible, including through prosecution and imprisonment;
- 12. Commends the efforts of the shipping industry, in cooperation with the CGPCS and IMO, in developing and disseminating the updated version of the Best Management Practices to Deter Piracy off the Coast of Somalia and in the Arabian Sea Area (BMP) and *emphasizes* the critical importance for the shipping industry of applying the best practices recommended in the BMP;
- 13. *Urges* all States, including States in the region, to criminalize piracy under their domestic law, emphasizing the importance of criminalizing incitement, facilitation, conspiracy and attempts to commit acts of piracy;
- 14. Recognizes that piracy is a crime subject to universal jurisdiction and in that regard reiterates its call on States to favourably consider the prosecution of suspected, and imprisonment of convicted, pirates apprehended off the coast of Somalia, consistent with applicable international human rights law;
- 15. Underlines the need to investigate and prosecute those who illicitly finance, plan, organize, or unlawfully profit from pirate attacks off the coast of Somalia, recognizing that individuals and entities who incite or intentionally facilitate an act of piracy are themselves engaging in piracy as defined under international law and expresses its intention to keep under review the possibility of applying targeted sanctions against such individuals and entities if they meet the listing criteria set out in paragraph 8 resolution 1844 (2008);
- 16. *Invites* States, individually or in cooperation with regional organizations, UNODC and INTERPOL, to examine their domestic legal frameworks for detention at sea of suspected pirates to ensure that their laws provide reasonable procedures, consistent with applicable international human rights law, and *also invites* States to examine domestic procedures for the preservation of evidence that may be used in criminal proceedings to ensure the admissibility of such evidence, and encourages the CGPCS to contribute to this work;
- 17. Further invites States and regional organizations, individually or in cooperation with, among others, UNODC and INTERPOL, to assist Somalia and other States of the region in strengthening their counter-piracy law enforcement capacities, including implementation of anti-money-laundering laws, the establishment of Financial Investigation Units and strengthening forensic capacities, as tools against international criminal networks involved in piracy, and stresses in this context the need to support the investigation and prosecution of those who illicitly finance, plan, organize, or unlawfully profit from pirate attacks off the coast of Somalia;

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- 18. *Underlines* the importance of continuing to enhance the collection, preservation and transmission to competent authorities of evidence of acts of piracy and armed robbery at sea off the coast of Somalia, and *welcomes* further work of IMO, INTERPOL and industry groups to assist in providing guidance to seafarers on preservation of crime scenes following acts of piracy, noting the importance for the successful prosecution of acts of piracy of enabling seafarers to give evidence in criminal proceedings;
- 19. *Urges* States and international organizations to share evidence and information for anti-piracy law enforcement purposes with a view to ensuring effective prosecution of suspected, and imprisonment of convicted, pirates;
- 20. Requests States, UNODC and regional organizations to consider, consistent with applicable rules of international human rights law, measures aimed at facilitating the transfer of suspected pirates for trial, and convicted pirates for imprisonment, including through relevant transfer agreements or arrangements, and commends the efforts to date of the CGPCS in this regard;
- 21. Welcomes the readiness of the national and regional administrations of Somalia to cooperate with each other and with States who have prosecuted suspected pirates with a view to enabling convicted pirates to be repatriated back to Somalia under suitable prisoner transfer arrangements, consistent with applicable international law including international human rights law, recognizes in this regard the discussions between the Government of Seychelles and the national and regional administrations of Somalia, which resulted in an agreement in principle of a legal framework for the transfer of convicted pirates to Somalia after their prosecution and conviction in the Seychelles, and encourages States to continue their efforts in this regard;
- 22. *Urges* States, UNODC, based on support from donors, and regional organizations to consolidate international assistance to increase prison capacity in Somalia, including by constructing in the short-term additional prisons in Puntland and Somaliland, and *requests* UNODC to continue to provide training for prison staff in accordance with relevant international human rights standards and to continue to provide monitoring of compliance with such standards;
- 23. *Requests* the TFG, with the assistance of UNODC, to elaborate and adopt a complete set of counter-piracy laws, and in this regard, welcomes the positive steps made in Puntland, and the progress being made in Somaliland;
- 24. *Emphasizes* the need to ensure effective coordination of anti-piracy efforts and in that regard *requests* the Secretary-General to strengthen UNPOS as the United Nations focal point for counter-piracy, including the Kampala process;
- 25. Supports the ongoing efforts by regional States in the development of anti-piracy courts or chambers in the region, welcomes support by States and international organizations, in consultation with the CGPCS, to such efforts, and requests the Secretary-General to take appropriate measures to assist States and international organizations in such activities;
- 26. Decides to urgently consider the establishment of specialized Somali courts to try suspected pirates both in Somalia and in the region, including an extraterritorial Somali specialized anti-piracy court, as referred to in the recommendations contained in the report of the Special Adviser to the Secretary-

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General on Legal Issues Related to Piracy off the Coast of Somalia Mr. Jack Lang (annex to document S/2011/30), consistent with applicable human rights law, and requests the Secretary-General to report within two months on the modalities of such prosecution mechanisms, including on the participation of international personnel and on other international support and assistance, taking into account the work of the CGPCS and in consultation with concerned regional States and expresses its intention to take further decisions on this matter;

- 27. *Urges* both State and non-State actors affected by piracy, most notably the international shipping community, to provide support for the above-mentioned judicial and detention related projects through the Trust Fund Supporting the Initiatives of States Countering Piracy off the coast of Somalia;
 - 28. Decides to remain seized of the matter.

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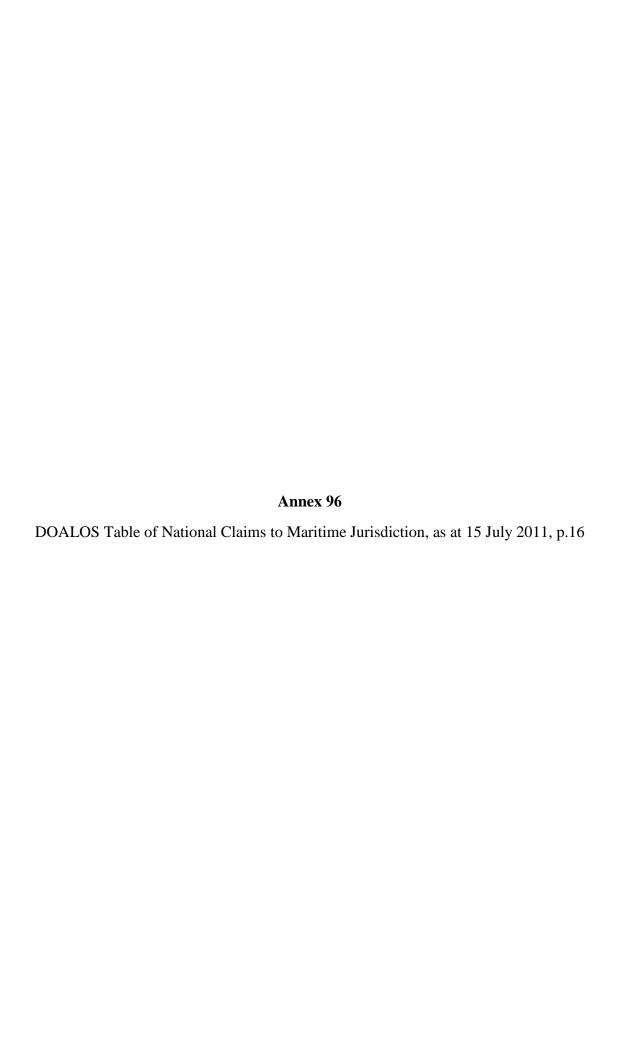


Table of claims to maritime jurisdiction (as at 15 July 2011)

Introductory note: The present, unofficial table of claims to maritime jurisdiction is a reference material based on national legislation and other relevant information obtained from reliable sources with a view to ensuring the most accurate representation of the status of claims. Despite extensive research and periodic review, however, the table may not always reflect the latest developments, especially those which have not been brought to the attention of the Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs of the United Nations. To report any new developments or inaccuracies regarding the status of claims, please contact the Division, Room DC2-0460, United Nations, New York, NY 10017, or send an email to: doalos@un.org.

Concerning the approach which has been adopted with respect to the information regarding the continental shelf, the following is to be noted:

The Convention on the Continental Shelf which was adopted in Geneva on 29 April 1958 ("the 1958 Geneva Convention") defines the term "continental shelf" as: (a) the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; and (b) the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.

Under the provisions of article 76 of the United Nations Convention on the Law of the Sea of 10 December 1982 ("the 1982 Convention"), the continental shelf extends up to the outer edge of the continental margin, or up to 200 nautical miles where the outer edge does not extend up to 200 nautical miles, or up to the line of delimitation.

The table reflects the fact that, under international law, ½ the rights of a coastal State over the shelf do not depend on occupation, effective or notional, or on any express proclamation. However, in a number of cases, discrepancies seem to exist between the limits as reflected in the national legislation, originally based on the 1958 Geneva Convention, and the entitlements of States Parties under the 1982 Convention. That Convention, pursuant to its article 311, paragraph 1, prevails, as between States Parties, over the 1958 Geneva Convention. As it appears, certain States that became States Parties to the 1982 Convention have not yet completed the process of harmonization of their national legislation with its provisions. However, the entitlement of coastal States to their respective continental shelves up to the limit allowed by international law is not affected.

In this connection, it has also to be noted that, under current international law of the sea and all legal aspects considered, the outer limits of the continental shelf would extend, in most cases, up to 200 nautical miles or up to the line of maritime delimitation. Regarding the limits of the continental shelf beyond 200 nautical miles, States Parties to the 1982 Convention need to make a submission to the Commission on the Limits of the Continental Shelf in order to seek its recommendation. A considerable number of submissions have already been made and a number of other States Parties are in the process of preparing such submissions, many of them having submitted preliminary information indicative of the outer limits of the continental shelf beyond 200 nautical miles, pursuant to SPLOS/183 - Decision regarding the workload of the Commission on the Limits of the Continental Shelf and the ability of States, particularly developing States, to fulfil the requirements of article 4 of Annex II to the Convention, as well as the decision contained in SPLOS/72, paragraph (a).

This material is unofficial and for informational purposes only. The designations employed and the presentation of the material on this site do not imply the expressing of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries. Publication on this site of information concerning developments relating to the law of the sea emanating from actions and decisions taken by States does not imply recognition by the United Nations of the validity of the actions and decisions in question..

 $^{^{1}}$ Article 2, paragraph 3, of the 1958 Geneva Convention and article 77, paragraph 3, of the 1982 Convention.

	UNC Acc	Does the legislation provide for straight baselines? ²	Does the State claim archipelagic status? ³	MARITIME ZONES					
STATE	UNCLOS Ratification, Accession Date			Territorial Sea	Contiguous Zone	Exclusive Economic Zone	Fisheries Zone	Continental Shelf, including submissions to the CLCS (see introductory note)	
				Breadth of the zone in nautical miles ⁴				Outer limit	Sub.
Seychelles	16/09/1991		•	12	24	200*/DLM		CM/200*	• <u>83</u> , <u>84</u>
Sierra Leone	12/12/1994			12	24	200		CM/200	p/i
Singapore	17/11/1994			12 ⁸⁵		☑ ⁸⁵			
Slovenia	16/06/1995	•		12/DLM		☑ ⁸⁶		DLM	
Solomon Islands	23/06/1997		•	12		200		CM/200	• <u>87</u>
Somalia	24/07/1989	•		200				CM/200	p/i
South Africa	23/12/1997	•		12	24	200		CM/200	• 88, 89
Spain	15/01/1997	•		12	24	200 ⁹⁰	.COORD ⁹¹	CM/200 ⁹²	• ⁹³ , ⁹⁴

⁸³ In respect of the joint submission by the Republic of Mauritius and the Republic of Seychelles - in the region of the Mascarene Plateau.

⁸⁴ In respect of the Northern Plateau Region.

^{85 &}quot;Should the limits of its territorial sea or Exclusive Economic Zone overlap with claims of neighbouring countries, Singapore will negotiate with those countries with a view to arriving at agreed delimitations in accordance with international law."

⁸⁶ See "Ecological Protection Zone and Continental Shelf of the Republic of Slovenia Act" adopted on 4 October 2005. The delimitation of the ecological protection zone shall be effected by agreement with the neighbouring States. The Act provides for its provisional outer limits.

⁸⁷ In respect of the joint submission by the Federated States of Micronesia, Papua New Guinea and Solomon Islands - concerning the Ontong Java Plateau.

⁸⁸ In respect of the mainland of the territory of the Republic of South Africa.

⁸⁹ Joint submission by France and South Africa - in the area of the Crozet Archipelago and the Prince Edward Islands.

⁹⁰ In the Atlantic Ocean.





Distr.: General 18 September 2012

Resolution 2067 (2012)

Adopted by the Security Council at its 6837th meeting, on 18 September 2012

The Security Council,

Recalling its previous resolutions on the situation in Somalia, as well as other relevant Presidential Statements on the situation in Somalia,

Reaffirming its respect for the sovereignty, territorial integrity, political independence and unity of Somalia and reiterating its commitment to a comprehensive and lasting settlement of the situation in Somalia,

Recognizing that a more stable Somalia is of vital importance in ensuring regional security,

Welcoming the significant progress that has been made over the past twelve months with the convening of the National Constituent Assembly and its subsequent adoption of the provisional Somali Constitution,

Further welcoming the important work of the Traditional Elders and the Technical Selection Committee in approving the Members of Parliament, welcoming the establishment of the new Federal Parliament of Somalia, but expressing concern at reports of intimidation and corruption during the selection process,

Also welcoming the selection by the new Federal Parliament of its Speaker and a new President, and *considering* that this represents the completion of the Transition in Somalia and an important milestone in Somalia's path to more stable and accountable governance,

Expressing concern at the worrying reports of financial misappropriation, encouraging the new Somali authorities to uphold high standards in financial management,

Welcoming the role of regional bodies in the Transition process, including the African Union and the Intergovernmental Authority for Development,

Commending the work of the Special Representative of the Secretary-General, Dr. Augustine Mahiga, for his efforts to bring peace and stability to Somalia,

Commending the contribution of the African Union Mission to Somalia (AMISOM) to lasting peace and stability in Somalia, and *noting* its critical role in improving the security situation in Mogadishu and other areas of south-central







Somalia, *expressing* its appreciation for the continued commitment of troops, police and equipment to AMISOM by the Governments of Burundi, Uganda, Djibouti, Kenya and Sierra Leone, and *recognizing* the significant sacrifices made by AMISOM forces,

Reiterating its strong condemnation of all attacks on Somali institutions, AMISOM, United Nations personnel and facilities, and the civilian population by armed opposition groups, and foreign fighters, particularly Al-Shabaab, and stressing that Somali armed opposition groups and foreign fighters, particularly Al-Shabaab, constitute a terrorist threat to Somalia, and the international community, stressing that there should be no place for terrorism or violent extremism in Somalia and reiterating its call upon all opposition groups to lay down their arms,

Calling on the new Somali authorities, with the support of AMISOM and international partners, to build an enhanced level of security in areas secured by AMISOM and the Somali National Security Forces (SNSF), underlining the importance of building sustainable, legitimate and representative local governance and security structures in areas recovered from Al-Shabaab,

Recalling its resolutions 1950 (2010), 1976 (2011), 2020 (2011) and 2036 (2012), commending the efforts already undertaken by the international community, including naval and capacity-building operations, welcoming the recent reduction in the number of successful piracy attacks, recognizing that these gains are potentially reversible, expressing its grave concern at the threat posed by piracy and armed robbery off the coast of Somalia, and recognizing that the ongoing instability in Somalia contributes to the problem of piracy and armed robbery at sea off the coast of Somalia.

Welcoming the increased representation of women in Parliament, commending the Somali authorities and underlining the need to increase their role in decision-making with regard to conflict prevention and resolution,

Expressing concern at the ongoing humanitarian crisis in Somalia and its impact on the people of Somalia, condemning any misuse of humanitarian assistance, underlining the importance of international humanitarian support,

Reiterating the importance of adhering to obligations under international law including the Charter of the United Nations and international human rights and humanitarian law,

Noting the importance of the investigation of breaches of international humanitarian law and the importance of holding those who commit such breaches to account,

Recognizing the importance of transitional justice processes in building lasting peace and reconciliation in addition to strong institutions to Somalia, and stressing the role that all Somalis, including women, civil society and government actors, will play in the reconciliation process through an inclusive and consultative dialogue, noting the extension of the mandate of the Independent Expert on the situation of human rights in Somalia for one year,

Looking forward to the forthcoming Secretary-General's high-level event on Somalia to be held on 26 September 2012, which will be an opportunity for Somalia's new leadership to consolidate the partnership with the international

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community including on next steps in enhancing security, stability, and transparent and accountable governance in Somalia,

- 1. Expresses its determination to work closely with the new institutions and offices of the Somali authorities, and encourages the new President to expeditiously appoint an inclusive, accountable Government, particularly a Prime Minister, and subsequently for the Prime Minister to appoint a Cabinet that can begin the work of peacebuilding in the country and urges the Somali actors and international community to pledge their continued support;
- 2. Emphasizes the critical role of the new Somali authorities in achieving reconciliation, lasting peace and stability in Somalia, calls on the Somali authorities to implement all postponed elements of the 6 September 2011 road map and to conduct government in an accountable and inclusive manner, and to conduct its finances in a transparent manner, working constructively with the international community;
- 3. *Emphasizes concern* at reports of irregularities and intimidation, during the selection process for the Members of Parliament, and *urges* the Somali authorities to investigate these reports and take appropriate action;
- 4. Stresses the importance of the new Somali authorities developing a programme to define post-transition priorities in consultation with partners and strengthening its relations with regional bodies and requests the Secretary-General and relevant United Nations entities to provide assistance in this regard, and underlines that a national referendum on the Provisional Constitution and general elections should take place within the term of the current Parliament;
- 5. Underlines the Somali authorities' responsibility to support reconciliation and deliver effective and inclusive local administrations, and public services to the people of Somalia, and underlines that these initiatives must be complemented by the expansion of rule of law institutions to areas recovered from Al-Shabaab;
- 6. *Reiterates* its willingness to take measures against individuals whose acts threaten the peace, stability or security of Somalia;
- 7. Expresses its concern at reports of financial misappropriation, reiterates its call for the end of financial misappropriation urges full cooperation in the rapid setting up and effective operation of the Joint Financial Management Board, calls on Somali authorities to develop an effective regulatory framework to promote economic development and requests all partners involved in the economic reconstruction of Somalia to increase their coordination, notes the importance of capacity-building of the relevant Somali institutions;
- 8. Reaffirms the important role of women in the prevention and resolution of conflicts and in peacebuilding, and stresses the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security, urges the Somali authorities to continue to promote increased representation of women at all decision-making levels in Somali institutions;
- 9. Recalls its resolutions 1674 (2006), 1738 (2006) and 1894 (2009) on the protection of civilians in armed conflict, reiterates its support to AMISOM, welcomes the progress AMISOM has made in improving security in Mogadishu and beyond, and emphasizes the need for AMISOM, in accordance with its mandate set out in paragraph 1 of resolution 2036 (2012) and paragraph 9 of resolution 1772

- (2007), and the SNSF, with the support of partners, to continue efforts to reduce the threat posed by Al-Shabaab and other armed opposition groups, and in this regard *urges* the Somali authorities to complete the restructuring of the SNSF including through ensuring full command and control is in place for all reintegrated personnel;
- 10. Welcomes support to AMISOM by the African Union's partners, especially through the European Union's African Peace Facility, and calls upon all partners, in particular new donors, to support AMISOM through the provision of funding for troop stipends, equipment, technical assistance, and uncaveated funding for AMISOM to the United Nations Trust Fund for AMISOM;
- 11. Welcomes the signing of the National Security and Stabilisation Plan, and reiterates the importance of the Somali authorities assuming responsibility for the establishment of good governance, rule of law and security and justice services, and emphasizes the importance of the early establishment of the National Security Committee, envisaged in the Provisional Constitution, to ensure an inclusive dialogue among the Somali people over the future security and justice architecture and urges the international community to redouble its efforts to support the development of the Somali security institutions and in this regard welcomes the support to the SNSF by the European Union Training Mission;
- 12. *Urges* the international community to continue its efforts to support the development of the Somali justice institutions and *reiterates* the fundamental importance of further enhancing coordination of international support in this area, *underlines* the importance of delivering on initiatives agreed at both the London and Istanbul conferences in 2012:
- 13. Encourages member States to continue to cooperate with Somali authorities and each other in the fight against piracy and armed robbery at sea, and calls upon States to cooperate, as appropriate, on the issue of hostage taking, underlines the primary role of the Somali authorities in the fight against piracy and armed robbery at sea off the coast of Somalia in accordance with the 6 September 2011 road map, and requests the Somali authorities, with assistance from the Secretary-General and relevant United Nations entities, to pass a complete set of counter-piracy laws without further delay, including laws to prosecute those who finance, plan, organize, facilitate or profit from pirate attacks, with a view to ensuring the effective prosecution of suspected pirates and those associated with piracy attacks off the coast of Somalia, the post-conviction transfer of pirates prosecuted elsewhere to Somalia, and the imprisonment of convicted pirates in Somalia, as soon as possible, and in addition urges the Somali authorities to declare an Exclusive Economic Zone, in accordance with the United Nations Convention on the Law of the Sea, which will promote the effective governance of waters off the coast of Somalia;
- 14. Notes that the new Somali authorities assume the previous role of the Transitional Federal Government for the purposes of paragraph 10 of resolution 1846 (2008) and paragraph 6 of resolution 1851, as renewed by paragraph 7 of resolution 1897 (2009), paragraph 7 of resolution 1950 (2010) and paragraph 9 of resolution 2020 (2011);
- 15. *Emphasizes* that protecting and promoting human rights, investigating breaches of international humanitarian law and bringing those responsible for such breaches to account will be essential for the legitimacy of the new Somali

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authorities, and *calls on* Somalia to fulfil its obligations under international human rights and international humanitarian law;

- 16. Welcomes the signing on 11 May 2012 of a Memorandum of Understanding between the Somali authorities and the United Nations on human rights, *urges* Member States to support all appropriate bodies in improving human rights monitoring in Somalia;
- 17. Welcomes the 6 August 2012 signing of an action plan by the Somali authorities and the United Nations to eliminate the killing and maiming of children, noting that this is the first such action plan to be signed, and calls upon the Somali authorities to vigorously implement both this action plan and the 3 July 2012 action plan on the recruitment and use of child soldiers, and stresses that any perpetrators of such acts must be brought to justice;
- 18. Strongly condemns the grave and systematic violations and human rights abuses perpetrated by many parties and in particular by Al-Shabaab and its affiliates against the civilian population, including violence against, children, journalists and human rights defenders and sexual violence against women and children, and calls for the immediate cessation of such acts, and emphasizes the need for accountability for all such violations and abuses;
- 19. *Reiterates* its demand that all parties ensure full, safe and unhindered access for the timely delivery of humanitarian aid to persons in need of assistance across Somalia;
- 20. Notes the fundamental importance of coherent and coordinated international support to Somalia, and *calls on* the United Nations to coordinate international efforts in the provision of assistance and capacity-building in Somalia welcoming the gradual relocation of an UNPOS office to Mogadishu and urges all United Nations entities to take further steps to rapidly achieve a more permanent and full relocation to Somalia, in particular in Mogadishu and in areas recovered from Al-Shabaab as soon as possible;
- 21. Looks forward to the Secretary-General's inter-agency review of the United Nations presence in Somalia, emphasizes the need to develop an integrated strategic approach to all activities of the United Nations system in Somalia, in close partnership with the Somali authorities and the African Union and in consultation with regional and international partners, and *requests* that he presents options and recommendations to the Security Council by 31 December 2012;
- 22. *Reaffirms* its support to finding a comprehensive and lasting settlement of the situation in Somalia;

23. Decides to remain actively seized of the matter.



United Nations S/RES/2077 (2012)*



Distr.: General 21 November 2012

Resolution 2077 (2012)

Adopted by the Security Council at its 6867th meeting, on 21 November 2012

The Security Council,

Recalling its previous resolutions concerning the situation in Somalia, especially resolutions 1814 (2008), 1816 (2008), 1838 (2008), 1844 (2008), 1846 (2008), 1851 (2008), 1897 (2009), 1918 (2010), 1950 (2010), 1976 (2011), 2015 (2011), and 2020 (2011), as well as the Statement of its President (S/PRST/2010/16) of 25 August 2010,

Continuing to be gravely concerned by the ongoing threat that piracy and armed robbery at sea against vessels pose to the prompt, safe, and effective delivery of humanitarian aid to Somalia and the region, to the safety of seafarers and other persons, to international navigation and the safety of commercial maritime routes, and to other vulnerable ships, including fishing activities in conformity with international law, and also gravely concerned by the extended range of the piracy threat into the western Indian Ocean and adjacent sea areas and the increase in pirate capacities,

Expressing concern about the reported involvement of children in piracy off the coast of Somalia,

Recognizing that the ongoing instability in Somalia contributes to the problem of piracy and armed robbery at sea off the coast of Somalia, and stressing the need for a comprehensive response by the international community to repress piracy and armed robbery at sea and tackle its underlying causes,

Recognizing the need to investigate and prosecute not only suspects captured at sea, but also anyone who incites or intentionally facilitates piracy operations, including key figures of criminal networks involved in piracy who illicitly plan, organize, facilitate, or finance and profit from such attacks, and reiterating its concern over persons suspected of piracy having to be released without facing justice, reaffirming that the failure to prosecute persons responsible for acts of piracy and armed robbery at sea off the coast of Somalia undermines anti-piracy efforts of the international community and being determined to create conditions to ensure that pirates are held accountable,

^{*} Reissued for technical reasons on 15 January 2013.







Reaffirming its respect for the sovereignty, territorial integrity, political independence and unity of Somalia, including Somalia's rights with respect to offshore natural resources, including fisheries, in accordance with international law, recalling the importance of preventing, in accordance with international law, illegal fishing and illegal dumping, including of toxic substances, and stressing the need to investigate any new allegations of such illegal fishing and dumping; noting the report of the Secretary-General (S/2012/783), which acknowledges difficulty in providing detailed information related to illegal, unreported, and unregulated fishing and dumping off Somalia's coast without adequate monitoring or reporting systems, and states that the United Nations has received little evidence to date to justify claims that illegal fishing and dumping are factors responsible for forcing Somali youths to resort to piracy, and that there is currently no evidence of toxic waste dumping on land and at sea; *emphasizing* that the concerns about protection of the marine environment as well as resources should not be allowed to mask the true nature of piracy off the coast of Somalia which is a transnational criminal enterprise driven primarily by the opportunity for financial gain, and expressing appreciation in this respect for the report of the Secretary-General on the protection of Somali natural resources and water (S/2011/661) prepared pursuant to paragraph 7 of Security Council Resolution 1976 (2011),

Further reaffirming that international law, as reflected in the United Nations Convention on the Law of the Sea of 10 December 1982 ("The Convention"), sets out the legal framework applicable to combating piracy and armed robbery at sea, as well as other ocean activities,

Underlining the primary responsibility of the Somali authorities in the fight against piracy and armed robbery at sea off the coast Somalia and noting the several requests from Somali authorities for international assistance to counter piracy off its coast, including the letter of 5 November 2012, from the Permanent Representative of Somalia to the United Nations expressing the appreciation of Somali authorities to the Security Council for its assistance, expressing their willingness to consider working with other States and regional organizations to combat piracy and armed robbery at sea off the coast of Somalia, and requesting that the provisions of resolution 1897 (2009) be renewed for an additional twelve months,

Commending the efforts of the European Union operation ATALANTA, North Atlantic Treaty Organization operations Allied Protector and Ocean Shield, Combined Maritime Forces' Combined Task Force 151 commanded by Denmark, New Zealand, Pakistan, Republic of Korea, Singapore, Turkey, Thailand and the United States, and other States acting in a national capacity in cooperation with Somali authorities and each other, to suppress piracy and to protect vulnerable ships transiting through the waters off the coast of Somalia, and welcoming the efforts of individual countries, including China, India, Japan, Malaysia, Republic of Korea, and the Russian Federation, which have deployed ships and/or aircraft in the region, as stated in the Secretary-General's report (S/2012/783),

Commending the efforts of flag States for taking appropriate measures to permit vessels sailing under their flag transiting the High Risk Area to embark vessel protection detachments and privately contracted armed security personnel, and encouraging States to regulate such activities in accordance with applicable international law and permit charters to favour arrangements that make use of such measures,

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Notes the request of some Member States on the need to review the boundaries of the High Risk Area on an objective and transparent basis taking into account actual incidents of piracy, noting that the High Risk Area is set and defined by the insurance and maritime industry,

Welcoming the capacity building efforts in the region made through the International Maritime Organization (IMO) Djibouti Code of Conduct Trust Fund and the Trust Fund Supporting Initiatives of States Countering Piracy off the Coast of Somalia, as well as the European Union's planned programming under EUCAP NESTOR, and recognizing the need for all engaged international and regional organizations to cooperate fully,

Noting with appreciation the efforts made by the IMO and the shipping industry to develop and update guidance, best management practices, and recommendations to assist ships to prevent and suppress piracy attacks off the coast of Somalia, including in the Gulf of Aden, and the Indian Ocean area, and recognizing the work of the IMO, and the Contact Group on Piracy off the Coast of Somalia (CGPCS); in this regard, notes the efforts of the International Organization for Standardization, which has developed industry standards of training and certification for Private Maritime Security Companies when providing privately contracted armed security personnel on board ships in high-risk areas,

Noting with concern that the continuing limited capacity and domestic legislation to facilitate the custody and prosecution of suspected pirates after their capture has hindered more robust international action against the pirates off the coast of Somalia, too often has led to pirates being released without facing justice, regardless of whether there is sufficient evidence to support prosecution and reiterating that, consistent with the provisions of the Convention concerning the repression of piracy, the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation ("SUA Convention") provides for parties to create criminal offences, establish jurisdiction, and accept delivery of persons responsible for or suspected of seizing or exercising control over a ship by force or threat thereof or any other form of intimidation,

Underlining the importance of continuing to enhance the collection, preservation and transmission to competent authorities of evidence of acts of piracy and armed robbery at sea off the coast of Somalia, and welcoming the ongoing work of the IMO, INTERPOL, and industry groups to develop guidance to seafarers on preservation of crime scenes following acts of piracy, and noting the importance for the successful prosecution of acts of piracy of enabling seafarers to give evidence in criminal proceedings,

Further recognizing that pirate networks continue to rely on kidnapping and hostage-taking, and that these activities help generate funding to purchase weapons, gain recruits, and continue their operational activities, thereby jeopardizing the safety and security of innocent civilians and restricting the flow of free commerce, and welcoming international efforts to collect and share information to disrupt the pirate enterprise, as exemplified by INTERPOL's Global Database on Maritime Piracy; and noting the ongoing initiative aimed at establishing the Regional Anti-Piracy Prosecution & Intelligence Coordination Centre, hosted by the Republic of Seychelles,

Reaffirming international condemnation of acts of kidnapping and hostage-taking, including offences contained within the International Convention against the Taking of Hostages, and strongly condemning the continuing practice of hostage-taking by pirates operating off the coast of Somalia, expressing serious concern at the inhuman conditions hostages face in captivity, recognizing the adverse impact on their families, calling for the immediate release of all hostages, and noting the importance of cooperation between Member States on the issue of hostage-taking and the prosecution of suspected pirates for taking hostages,

Commending the Kenya and the Seychelles' efforts to prosecute suspected pirates in their national courts, welcoming and looking forward to further engagement of Mauritius and Tanzania, and noting with appreciation the assistance being provided by the United Nations Office of Drugs and Crime (UNODC), the Trust Fund Supporting Initiatives of States Countering Piracy off the Coast of Somalia, and other international organizations and donors, in coordination with the CGPCS, to support Kenya, Seychelles, Somalia, and other States in the region to take steps to prosecute, or incarcerate in a third State after prosecution elsewhere, pirates, including facilitators and financiers ashore, consistent with applicable international human rights law, and emphasizing the need for States and international organizations to further enhance international efforts in this regard,

Welcoming the readiness of the national and regional administrations of Somalia to cooperate with each other and with States who have prosecuted suspected pirates with a view to enabling convicted pirates to be repatriated back to Somalia under suitable prisoner transfer arrangements, consistent with applicable international law including international human rights law,

Welcoming the report of the Secretary General (S/2012/783), as requested by resolution 2020 (2011), on the implementation of that resolution and on the situation with respect to piracy and armed robbery at sea off the coast of Somalia,

Taking note with appreciation of the reports of the Secretary-General on the modalities for the establishment of specialized Somali anti-piracy courts (S/2011/360 and S/2012/50), prepared pursuant to paragraph 26 of resolution 1976 (2011) and paragraph 16 of resolution 2015 (2011), and the ongoing efforts within the CGPCS and the United Nations Secretariat to explore possible additional mechanisms to effectively prosecute persons suspected of piracy and armed robbery at sea off the coast of Somalia, including those ashore who incite or intentionally facilitate acts of piracy,

Stressing the need for States to consider possible methods to assist the seafarers who are victims of pirates, and welcoming in this regard the ongoing work within the CGPCS and the IMO on developing guidelines for the care of seafarers and other persons who have been subjected to acts of piracy,

Recognizing the progress made by the CGPCS, UNODC, and UNPOS in the use of public information tools to raise awareness of the dangers of piracy, highlight the best practices to eradicate this criminal phenomenon, and inform the public of the dangers posed by piracy,

Further noting with appreciation the ongoing efforts by UNODC and UNDP to support efforts to enhance the capacity of the corrections system in Somalia, including regional authorities notably with the support of the Trust Fund Supporting

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Initiatives of States Countering Piracy off the Coast of Somalia, to incarcerate convicted pirates consistent with applicable international human rights law,

Bearing in mind the Djibouti Code of Conduct concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden, noting the operations of the newly established information sharing centres in Yemen, Kenya and Tanzania and the ongoing work regarding a regional maritime training centre in Djibouti, and recognizing the efforts of signatory States, including new signatory States South Africa and Mozambique, to develop the appropriate regulatory and legislative frameworks to combat piracy, enhance their capacity to patrol the waters of the region, interdict suspect vessels, and prosecute suspected pirates,

Emphasizing that peace and stability within Somalia, the strengthening of State institutions, economic and social development and respect for human rights and the rule of law are necessary to create the conditions for a durable eradication of piracy and armed robbery at sea off the coast of Somalia, and further emphasizing that Somalia's long-term security rests with the effective development by Somali authorities of the Somali National Security Forces,

Welcoming in this regard the election of the President on 10 September and the subsequent appointment of a Prime Minister and Cabinet, considering that this represents the completion of the Transition in Somalia and an important milestone in Somalia's path to more stable and accountable governance,

Noting that the joint counter-piracy efforts of the international community and private sector have resulted in a sharp decline in pirate attacks as well as hijackings since 2011 and *emphasizing* that without further action, the significant progress made in reducing the number of successful pirate attacks is reversible,

Determining that the incidents of piracy and armed robbery at sea off the coast of Somalia exacerbate the situation in Somalia, which continues to constitute a threat to international peace and security in the region,

Acting under Chapter VII of the Charter of the United Nations,

- 1. *Reiterates* that it condemns and deplores all acts of piracy and armed robbery against vessels in the waters off the coast of Somalia;
- 2. Recognizes that the ongoing instability in Somalia is one of the underlying causes of the problem of piracy and contributes to the problem of piracy and armed robbery at sea off the coast of Somalia;
- 3. *Stresses* the need for a comprehensive response to repress piracy and tackle its underlying causes by the international community;
- 4. Underlines the primary responsibility of Somali authorities in the fight against piracy and armed robbery at sea off the coast of Somalia, and requests the Somali authorities, with assistance from the Secretary-General and relevant UN entities, to pass a complete set of counter-piracy laws without further delay, and to declare an Exclusive Economic Zone in accordance with the United Nations Convention on the Law of the Sea;
- 5. Recognizes the need to continue investigating and prosecuting all suspected pirates and *urges* States, working in conjunction with relevant international organizations, to intensify their efforts to investigate and prosecute key

figures of criminal networks involved in piracy who illicitly plan, organize, facilitate, or finance and profit from such attacks;

- 6. Calling upon the Somali authorities to interdict, and upon interdiction to investigate and prosecute pirates and to patrol the territorial waters off the coast of Somalia to suppress acts of piracy and armed robbery at sea, noting the importance of strengthening Somalia's maritime capacity, and welcomes support by the international community for strengthening Somalia's capacity in this regard;
- 7. Calls upon States to cooperate also, as appropriate, on the issue of hostage taking, and the prosecution of suspected pirates for taking hostages;
- 8. Notes again its concern regarding the findings contained in the 13 July 2012 report (S/2012/544, page 211) and resolution 2020 (2011) that escalating ransom payments and the lack of enforcement of the arms embargo established by resolution 733 (1992) are fuelling the growth of piracy off the coast of Somalia, calls upon all States to cooperate fully with the Somalia and Eritrea Monitoring Group including on information sharing regarding possible arms embargo violations;
- 9. Recognizes the need for States, regional organizations, and other appropriate partners to exchange evidence and information with a view to the arrest and prosecution of key figures of criminal networks involved in piracy who illicitly plan, organize, facilitate, or finance and profit from piracy operations, and keeps under review the possibility of applying targeted sanctions against such individuals or entities if they meet the listing criteria set out in paragraph 8 resolution 1844 (2008);
- 10. Renews its call upon States and regional organizations that have the capacity to do so, to take part in the fight against piracy and armed robbery at sea off the coast of Somalia, in particular, consistent with this resolution and international law, by deploying naval vessels, arms and military aircraft and through seizures and disposition of boats, vessels, arms and other related equipment used in the commission of piracy and armed robbery at sea off the coast of Somalia, or for which there are reasonable grounds for suspecting such use;
- 11. Commends the work of the CGPCS to facilitate coordination in order to deter acts of piracy and armed robbery at sea off the coast of Somalia, in cooperation with the IMO, flag States, and Somali authorities and *urges* States and international organizations to continue to support these efforts;
- 12. Encourages Member States to continue to cooperate with Somali authorities in the fight against piracy and armed robbery at sea, notes the primary role of Somali authorities in the fight against piracy and armed robbery at sea off the coast of Somalia, and decides that for a further period of twelve months from the date of this resolution to renew the authorizations as set out in paragraph 10 of resolution 1846 (2008) and paragraph 6 of resolution 1851 (2008), as renewed by paragraph 7 of resolution 1897 (2009), paragraph 7 of resolution 1950 (2010), and paragraph 9 of resolution 2020 (2011) granted to States and regional organizations cooperating with Somali authorities in the fight against piracy and armed robbery at sea off the coast of Somalia, for which advance notification has been provided by Somali authorities to the Secretary-General;
- 13. Affirms that the authorizations renewed in this resolution apply only with respect to the situation in Somalia and shall not affect the rights or obligations or responsibilities of Member States under international law, including any rights or

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obligations, under the Convention, with respect to any other situation, and underscores in particular that this resolution shall not be considered as establishing customary international law; and *affirms further* that such authorizations have been renewed only following the receipt of the 5 November 2012 letter conveying the consent of Somali authorities;

- 14. Further affirms that the measures imposed by paragraph 5 of resolution 733 (1992) and further elaborated upon by paragraphs 1 and 2 of resolution 1425 (2002) do not apply to weapons and military equipment destined for the sole use of Member States and regional organizations undertaking measures in accordance with paragraph 12 above or to supplies of technical assistance to Somalia solely for the purposes set out in paragraph 6 of resolution 1950 (2010) which have been exempted from those measures in accordance with the procedure set out in paragraphs 11 (b) and 12 of resolution 1772 (2007);
- 15. Requests that cooperating States take appropriate steps to ensure that the activities they undertake pursuant to the authorizations in paragraph 12 do not have the practical effect of denying or impairing the right of innocent passage to the ships of any third State;
- 16. Calls on the Somali authorities to make all efforts to bring to justice those who are using Somali territory to plan, facilitate, or undertake criminal acts of piracy and armed robbery at sea and calls upon Member States to assist Somalia, at the request of Somali authorities and with notification to the Secretary-General, to strengthen capacity in Somalia, including regional authorities, and stresses that any measures undertaken pursuant to this paragraph shall be consistent with applicable international human rights law;
- 17. Calls upon all States, and in particular flag, port, and coastal States, States of the nationality of victims, and perpetrators of piracy and armed robbery, and other States with relevant jurisdiction under international law and national legislation, to cooperate in determining jurisdiction, and in the investigation and prosecution of all persons responsible for acts of piracy and armed robbery off the coast of Somalia, including anyone who incites or facilitates an act of piracy, consistent with applicable international law including international human rights law to ensure that all pirates handed over to judicial authorities are subject to a judicial process, and to render assistance by, among other actions, providing disposition and logistics assistance with respect to persons under their jurisdiction and control, such as victims and witnesses and persons detained as a result of operations conducted under this resolution;
- 18. Calls upon all States to criminalize piracy under their domestic law and to favourably consider the prosecution of suspected, and imprisonment of convicted, pirates apprehended off the coast of Somalia, and their facilitators and financiers ashore, consistent with applicable international law including international human rights law;
- 19. Reiterates its decision to continue its consideration, as a matter of urgency, of the establishment of specialized anti-piracy courts in Somalia and other States in the region with substantial international participation and/or support, as set forth in resolution 2015 (2011), and the importance of such courts having jurisdiction over not only suspects captured at sea, but also anyone who incites or intentionally facilitates piracy operations, including key figures of criminal

networks involved in piracy who illicitly plan, organize, facilitate, or finance and profit from such attacks, and *emphasizes* the need for strengthened cooperation of States, regional, and international organizations in holding such individuals accountable, and encourages the CGPCS to continue its discussions in this regard;

- 20. Welcomes, in this context, that the report of the Secretary-General pursuant to resolution 2015 (2011) contains detailed implementation proposals on ways to ensure that suspected pirates are held accountable through the due process of law in accordance with international standards, and encourages action in this field at the federal level in Somalia:
- 21. *Urges* all States to take appropriate actions under their existing domestic law to prevent the illicit financing of acts of piracy and the laundering of its proceeds;
- 22. *Urges* States, in cooperation with INTERPOL and Europol, to further investigate international criminal networks involved in piracy off the coast of Somalia, including those responsible for illicit financing and facilitation;
- 23. Commends INTERPOL for the creation of a global piracy database designed to consolidate information about piracy off the coast of Somalia and facilitate the development of actionable analysis for law enforcement, and *urges* all States to share such information with INTERPOL for use in the database, through appropriate channels;
- 24. *Stresses* in this context the need to support the investigation and prosecution of those who illicitly finance, plan, organize, or unlawfully profit from pirate attacks off the coast of Somalia;
- 25. *Urges* States and international organizations to share evidence and information for anti-piracy law enforcement purposes with a view to ensuring effective prosecution of suspected, and imprisonment of convicted, pirates;
- 26. Commends the establishment of the Trust Fund Supporting the Initiatives of States Countering Piracy off the Coast of Somalia and the IMO Djibouti Code Trust Fund and *urges* both state and non-state actors affected by piracy, most notably the international shipping community, to contribute to them;
- 27. *Urges* States parties to the Convention and the SUA Convention to implement fully their relevant obligations under these Conventions and customary international law and cooperate with the UNODC, IMO, and other States and other international organizations to build judicial capacity for the successful prosecution of persons suspected of piracy and armed robbery at sea off the coast of Somalia;
- 28. Urges States individually or within the framework of competent international organizations to positively consider investigating any new allegations of illegal fishing and illegal dumping, including of toxic substances, with a view to prosecuting such offences when committed by persons under their jurisdiction; encourages increased efforts to monitor and report on such allegations; takes note of the report of the Secretary-General (S/2012/783), which acknowledges difficulty in providing detailed information related to illegal, unreported, and unregulated fishing and dumping off Somalia's coast without adequate monitoring or reporting systems, and states that the United Nations has received little evidence to date to justify claims that illegal fishing and dumping are factors responsible for forcing Somali youths to resort to piracy, and that there is currently no evidence of toxic waste

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dumping on land and at sea; and *emphasizes* that the concerns about protection of the marine environment as well as resources should not be allowed to mask the true nature of piracy off the coast of Somalia which is a transnational criminal enterprise driven primarily by the opportunity for financial gain; and *takes note* of the Secretary-General's intention to include updates on these issues in his reports relating to piracy off the Coast of Somalia;

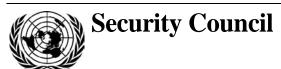
- 29. Welcomes the recommendations and guidance of the IMO on preventing and suppressing piracy and armed robbery against ships, underlines the importance of implementing such recommendations and guidance by all stakeholders, particularly the shipping industry, and of flag States ensuring, as appropriate, the implementation of such recommendations and guidance, and urges States, in collaboration with the shipping and insurance industries, and the IMO, to continue to develop and implement avoidance, evasion, and defensive best practices and advisories to take when under attack or when sailing in the waters off the coast of Somalia, and further urges States to make their citizens and vessels available for forensic investigation as appropriate at the first suitable port of call immediately following an act or attempted act of piracy or armed robbery at sea or release from captivity;
- 30. *Encourages* flag States and port States to further consider the development of safety and security measures onboard vessels, including, where applicable, developing regulations for the deployment of PCASP on board ships through a consultative process, including through the IMO and ISO;
- 31. *Invites* the IMO to continue its contributions to the prevention and suppression of acts of piracy and armed robbery against ships in coordination, in particular, with the UNODC, the World Food Program (WFP), the shipping industry, and all other parties concerned, and *recognizes* the IMO's role concerning privately contracted armed security personnel on board ships in high-risk areas;
- 32. *Notes* the importance of securing the safe delivery of WFP assistance by sea, welcomes the ongoing work by the WFP, EU operation ATALANTA and flag States with regard to Vessel Protection Detachments on WFP vessels;
- 33. Requests States and regional organizations cooperating with Somali authorities to inform the Security Council and the Secretary-General in nine months of the progress of actions undertaken in the exercise of the authorizations provided in paragraph 12 above and further requests all States contributing through the CGPCS to the fight against piracy off the coast of Somalia, including Somalia and other States in the region, to report by the same deadline on their efforts to establish jurisdiction and cooperation in the investigation and prosecution of piracy;
- 34. *Requests* the Secretary-General to report to the Security Council within 11 months of the adoption of this resolution on the implementation of this resolution and on the situation with respect to piracy and armed robbery at sea off the coast of Somalia;
- 35. *Expresses* its intention to review the situation and consider, as appropriate, renewing the authorizations provided in paragraph 12 above for additional periods upon the request of Somali authorities;
 - 36. Decides to remain seized of the matter.

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Annex 99

Report of the Monitoring Group on Somalia and Eritrea pursuant to Security Council resolution 2111 (2013), S/2014/726, 13 October 2014, Annex 5.1: Illustrative overview of contracts, pp. 192-7

United Nations S/2014/726



Distr.: General 13 October 2014

Original: English

Letter dated 10 October 2014 from the Chair of the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea addressed to the President of the Security Council

On behalf of the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea, and in accordance with paragraph 28 of Security Council resolution 2111 (2013), I have the honour to transmit herewith the report on Somalia of the Monitoring Group on Somalia and Eritrea.

In this connection, the Committee would appreciate it if the present letter and the report were brought to the attention of the members of the Security Council and issued as a document of the Council.

(Signed) Oh Joon

Chair

Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea







Letter dated 19 September 2014 from the members of the Monitoring Group on Somalia and Eritrea addressed to the Chair of the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea

We have the honour to transmit herewith the report focusing on Somalia of the Monitoring Group on Somalia and Eritrea, in accordance with paragraph 28 of Security Council resolution 2111 (2013).

(Signed) Jarat **Chopra**Coordinator
Monitoring Group on Somalia and Eritrea

(Signed) Nicholas **Argeros**Finance expert

(Signed) Zeina Awad Transport expert

(Signed) Déirdre Clancy Humanitarian expert

(Signed) Joakim Gundel Arms expert

(Signed) Dinesh **Mahtani** Finance expert

(Signed) Jörg Roofthooft Maritime expert

(Signed) Babatunde **Taiwo**Armed groups expert

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Report of the Monitoring Group on Somalia and Eritrea pursuant to Security Council resolution 2111 (2013): Somalia

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^{*} The annexes are being circulated in the language of submission only and are being issued without formal editing.

** The annex has not been reproduced in the present document because it is strictly confidential.

Annex 5.1: Illustrative overview of contracts

Oil and Gas sector

1. In its previous report (S/2013/413 annex 5.5), the Monitoring Group described some of the risks associated with increasing commercial activity in the oil and gas sector in Somalia without a resolution to constitutional and legal disputes surrounding the control of natural resources. It also highlighted transparency and accountability issues in the key Federal Government of Somalia (FGS) petroleum institutions that would govern capacity building and regulation, notably the Somali Petroleum Corporation and the Somali Petroleum Agency (SPA). During the course of 2013 and 2014, the FGS has nonetheless continued to engage in private negotiations with oil and gas companies and other corporations, resulting in a number of secret contracts and cooperation agreements that in due course are likely to exacerbate legal tensions and ownership disputes and stunt the transparent development of Somalia's oil and gas sectors.

Soma Oil and Gas

- 2. In August 2013, Soma Oil and Gas Exploration, a United Kingdom-registered company created in 2013 and chaired by the former leader of the United Kingdom Conservative Party, Lord Michael Howard, announced an agreement on 6 August 2013 signed with the FGS to conduct seismic surveys in Somalia's territorial waters and to collate and process historic seismic data, which would be placed into a data room controlled by the FGS. In return, Soma Oil would receive the right to apply for up to 12 oil licenses covering a maximum of 60,000 square kilometres of territory in Somalia.¹
- 3. The contract has never been made public, nor was it approved by the Federal Parliament of Somalia although it was ratified by the Council of Ministers on 3 October 2013. Those involved in the architecture of the deal included Dr. Abdullahi Haider, special advisor to Somali President Hassan Sheikh Mohamud, and Jay Park, a Canadian lawyer who is managing partner of Petroleum Regimes' Advisory and Park Energy Law. At a signing ceremony, Jay Park was accompanied by Abdirizak Omar Mohamed, the then Minister of Natural Resources. 3
- 4. On 3 February 2014, the company announced it had signed a seismic contract with Seabird Exploration to cover 20,000 square kilometres of seismic data off the coast of Somalia. On 6 June 2014, the company announced it had completed 20,500 square kilometres of seismic data acquisition and that processing of the data would run until late 2014.
- 5. On 6 August 2014, Robert Shepherd and Philip Wolfe, Chief Executive Officer and Chief Financial Officer of Soma Oil and Gas Exploration Limited wrote to the

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¹ Announcement on 6 August 2013 of the *Oil and Gas Agreement Signed with Somalia* and Soma presentation entitled *Unlocking Somalia's Potential*, 29-30 April 2014.

² Four separate industry sources interviewed on 26 September 2013 and 12 April 2014. A former advisor to President Hassan Sheikh on oil matters also stated he had been informed by FGS energy ministry officials that Jay Park and Abdullahi Haider were the key architects of the deal on the FGS side.

³ See http://som.horseedmedia.net/2013/08/somalia-federal-government-signs-oil-and-gas-agreement-with-soma-oil-gas-exploration-limited/. The former minister has been working as a consultant advisor to the Presidency following his departure from the FGS ministerial cabinet.

Monitoring Group to explain how they had managed the security arrangements for the Seabird operations. They stated that Soma had "contracted Peace Business Group, a licensed Somali security sector company to provide armed Somali personnel" and that "each seismic vessel was supported and protected by four support vessels and international and Somali security personnel on such support vessels". They stated that only Somali personnel held arms within the 12 nautical mile limit, and "internationally operated firearms remained outside the 12 nautical mile limit".4

Mubadala

- 6. On 17 July 2014, Mubadala, the sovereign investment fund of the United Arab Emirates (UAE) announced a cooperation agreement with the FGS aimed at "sharing knowledge, increasing the strength of the Somalia Ministry and its staff, and over time, developing upstream opportunities in Somalia".⁵
- 7. Given the institutional lack of capacity of Somali petroleum institutions, notably the SPA, the Monitoring Group is concerned that conflicts of interest could result from the provision of technical capabilities by corporate entities that are also seeking to secure oil acreage. If Mubadala's provision of "capacity" is not channelled into a transparently run SPA, which is responsible for managing a cadastre of licenses through a process of transparent auctions, the risk is that such "capacity" would serve to empower informal decision makers within the system who also may have a vested interest in parceling out licenses to favoured companies in secret deals. Seismic data, in particular, should be completely controlled by the SPA in a secure data room so that all companies eventually bidding for licenses would have equal opportunities to access data in a regulatory environment free from insider dealing.
- 8. In this regard, notably even at this stage the Minister of Petroleum and Natural Resources, Daud Mohamed Omar, has often been excluded from strategic decisions made by others who exert broader informal leverage over the decision making process related to oil licensing.⁶

Shell, ExxonMobil and BP

9. On 13 June 2014, Minister Omar visited the headquarters of Shell in The Hague, Netherlands. Shell was originally awarded a concession for five oil blocks (M3-M7) in Somalia in 1988, after which Mobil Exploration (now a unit of ExxonMobil) joined in as a 50 per cent partner (see S/2013/413, annex 5.5.b, for a map of where concessions lie). The companies have now begun discussions with the Ministry to convert the existing concessions, which have been under *force majeure* since 1990, to a Production Sharing Agreement, as called for by the 2008 Petroleum Law.⁷

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⁴ Security for Seabird Exploration's activities was provided by Solace Global Maritime (based in the United Kingdom) and Salama Fikira International (registered in Mauritius).

⁵ See announcement made on 17 July 2014 on http://www.mubadala.com/en/news/mubadala-petroleum-signs-cooperation-agreement-somalia.

⁶ Diplomatic source dealing with oil sector stated that the Minister had frequently complained about this problem, 5 May 2014. A Somali source known to the Minister also stated the same on 24 July 2014.

⁷ Joint Statement by the Federal Republic of Somalia and Shell, 13 July 2014.

- 10. While the negotiations with Shell and Exxon were widely publicized, the Monitoring Group is nonetheless concerned that such negotiations are premature and could spark conflict, especially since they have not been conducted in consultation with regional authorities who may be affected. Indeed, M5 is licensed over offshore territory claimed by Puntland. Just days after the announcement by Shell on the new discussions, Puntland's Director General of the Ministry of Mineral Resources and Petroleum, Issa Mohamoud Farah, rejected the legality of the negotiations, stating that "The Federal Government of Somalia does not govern over Puntland and all accords should be postponed until all states agree on how to share the country's natural resources". The 2008 Petroleum Law, which directly contradicts constitutional provisions giving regional authorities rights to control the licensing of their natural resources, is also yet to be approved by the Federal Parliament.
- 11. On 4 August 2014, President Mohamud was reported as saying that the FGS was also in renegotiations with BP.⁹ As previously shown by the Monitoring Group (S/2013/413, annex 5.5), BP's prior concessions in Somalia clash with current concessions licensed out by the Somaliland authorities.

Turksom

- 12. The Monitoring Group has received documentation concerning efforts by Musa Haji Mohamed 'Ganjab' 10 and Abdullahi Haider to operate a joint Turkish Somali company known as "Turksom" that would be involved in building and operating a fuel distribution business and securing Turkish investments in Somalia.
- 13. On 25 November 2011, Musa Ganjab e-mailed a document purporting to be a proposal letter from Turksom, thanking the Government of Turkey for its support and requesting the company to be appointed as sole representative of all of Turkey's economic interests in Somalia. The letter stated that the company was registered in both Turkey and Somalia, although the phone numbers provided for its Somalia office are Ugandan numbers. The letter also stated that the company would be able "to provide effective security to each and every project that Turkey Government and private business are planning to implement in Somalia" (see annex 5.2.a for a copy of the letter).
- 14. By 2012, Turksom was incorporated and in discussions with another Somali company, Hass Petroleum, a leading oil marketing company in East Africa originally founded by a group of *Dhulbahante* businessmen from Sool region in northeastern Somalia. In an e-mail to Ganjab on 30 October 2012 entitled "Memorandum of Understanding Between Turksom & Hass Petroleum (K) Ltd", a director at Hass Petroleum discussed a joint venture for the rehabilitation of petrol stations in Mogadishu and for construction of a fuel depot and port infrastructure with Turksom. The director requested clarification from Ganjab on how he would like his shareholding to be structured within the joint venture. The e-mail was

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⁸ See "Puntland rejects oil deal with Shell and ExxonMobil", 22 June 2014, at http://www.africareview.com/Business---Finance/Puntland-rejects-oil-deal-with-Shell-and-ExxonMobil/-/979184/2357968/-/f9fklwz/-/index.html.

⁹ See http://www.bloomberg.com/news/2014-08-04/somalia-sees-oil-results-this-year-as-bp-exxon-wooed.html.

¹⁰ See annex 6.4 for Ganjab's relations to arms embargo violations and Al-Shabaab, and annex 5.2 for his role in the recovery of Somali overseas assets.

accompanied by an attachment signed by Ganjab as CEO and Adbullahi Haider as Director General of Turksom Somalia Inc (see annex 5.2.b for a copy of the attachment).

15. On 6 September 2013, Ganjab received an e-mail from the address hersiburanea@yahoo.com entitled "Oil Depo and security project Financing" stating (unofficial translation from the Somali language as follows):

Haji Musa,

After greetings. You must have been busy yesterday. I have given your phone number to a guy in the UK called Ahmed who is the representative of a security company based in America (FLORIDA). Please contact them and negotiate as they are ready.

Mr. Mike Deegan is back from Dubai. Him and Mr Deylaf has not met ... please let me know when you are ready for a conference call.

Thank you Abdulhamid

16. Independently, the Monitoring Group has been informed that Ganjab has been in discussions with Mohamed Deylaaf, a businessman previously named by the Group in the context of diversion of food aid, including to Al-Shabaab (S/2010/91). ¹¹ Deylaaf is known to have interests in the downstream fuel sector. ¹² The Monitoring Group has also obtained documentation that Turksom Security Company was officially registered as an approved private security company with the Ministry of Interior in 2013 (see annex 5.2.c), although it is not clear to what extent this company operated and how it obtained its weaponry.

Fisheries protection and management

17. On 25 July 2013, the FGS signed a letter of appointment nominating a company called Somalia FishGuard Limited as the sole agent and representative of the FGS with exclusive rights to undertake the patrol, protection, management and development of fisheries in Somalia's waters, including in the Exclusive Economic Zone. The contract was signed by the then Minister of Natural Resources, Abdirizak Omar Mohamed. The company is obliged to provide and operate vessels for fisheries protection, including through the establishment and training of a Somalia Fisheries Protection Force, as well as prepare the provision of fishing regulations and the management of the licensing and regulatory infrastructure of the Government pertaining to fisheries. In return, the FGS would be obliged to provide the company access to state infrastructure and ports and "permission to carry light and medium sized weapons and ammunition consistent with the FPF requirements to exercise its obligations under this contract subject to UN Security Council resolutions". The company would also receive military style uniforms and be conferred with the necessary authority to detain and arrest vessels fishing illegally in Somali waters. The Monitoring Group has been informed that FishGuard would

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¹¹ Information received by three independent Somali businessmen in Mogadishu familiar with Ganjab's businesses, interviewed in December 2013.

¹² Somali company CEO and UN contractor who has provided services to Deylaaf, February 2014, and a Somali source with knowledge of Deylaaf's business affairs, May 2014.

retain 51 percent of all revenues ¹³ derived from licensing fees, although the figures have been deliberately blacked out in the copy of the contract obtained by the Monitoring Group (see annex 5.2.d for a copy of the FishGuard letter of appointment).

18. On 27 July 2013, two days after the contract was signed, Ganjab received an e-mail from Abdi Amalo (who the Monitoring Group has investigated for conspiracy to divert overseas assets in strictly confidential annex 5.2, which was entitled "Info". The text of the e-mail simply reads as follows:

Xaaji Musa, Let's talk brother http://companycheck.co.uk/company/04958710/FISHGUARD-MARINE-LIMITED

- 19. In April 2014, representatives of Somalia Fishguard Limited accompanied by President Mohamud and Minister of Fisheries and Marine Resources, Mohamed Olow Barow, were in Brussels to attend a fisheries meeting with Europêche and Federpesca at the Headquarters of the European Commission. The representatives included Chairman David Walker, Director John Church, William Oswald and Christopher Brooke.¹⁴
- 20. The Monitoring Group has been informed that Somalia Fishguard Limited has been in discussions with Saladin Security Ltd, a UK private security company, whose representatives were introduced to President Mohamud in Mogadishu by Abdullahi Haider (the business partner of Ganjab in Turksom, and a presidential advisor on oil and gas) in mid May or June 2013. 15 The company has operations in Mogadishu and is the private security contractor for Kilimanjaro Capital, a private equity firm which has farmed into an oil block awarded by the Transitional Federal Government (TFG) in 2008 to a private company, and which partly falls in Al-Shabaab territory. 16

National Theatre

21. The Monitoring Group has obtained a copy of a draft contract between the Ministry of Public Works and Reconstruction, Marine and Transport, Ports and Energy and Sinohydro Corporation Ltd for the reconstruction of the National Theatre in Mogadishu for a sum of USD 31 million. This contract was transmitted by Musa Ganjab to Jeremy Schulman of the U.S. law firm of Shulman Rogers on 23 November 2013 (see annex 5.2 for investigation into the diversion of overseas assets by Ganjab and Shulman Rogers). It is not clear whether any financial transactions related to this contract have taken place, as no major rehabilitation works on the National Theatre have taken place in 2013 and 2014.

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¹³ Information obtained from a fisheries advisor to the FGS on 5 May 2014.

¹⁴ Correspondence obtained by the Monitoring Group with a list prepared by Ahmed Mohamed Iman, Director General of the Ministry of Fisheries and Marine Resources, dated 1 April 2014. Christopher Brooke is the brother of Alan Henry Brooke, the 3rd Viscount Brookeborough, a member of the United Kingdom House of Lords.

¹⁵ Information obtained from advisor to the FGS, 6 May 2014, and from private security source, 10 June 2014.

¹⁶ See http://www.saladin-security.com/the-companies.php and http://www.marketwired.com/press-release/kilimanjaro-signs-somalia-security-memorandum-gxg-kcap-1909408.htm.

UNSOA

- 22. The Monitoring Group has obtained evidence that service contracts issued by the United Nations Support Office for African Union Mission in Somalia (UNSOA) may have been issued to companies associated with Ganjab.
- 23. On 26 June 2013, Nurta Sheikh Mohamud, the sister of President Mohamud wrote to Ganjab, forwarding a memo issued by UNSOA to the Ministry of Foreign Affairs and International Cooperation dated 20 June 2013. The memo informed the ministry of a two day business seminar to be held by UNSOA with the purpose of raising awareness among the Somalia business community on how to win contracts as vendors to the United Nations.
- 24. In the e-mail, the President's sister draws the attention to Ganjab to the memo and informs him that she has set up a conglomerate known as the Trust Group of Companies, for the express purpose of bidding for UN contracts. She requests a meeting with Ganjab to discuss the matter further.
- 25. While UNSOA has not registered any contracts to any company referred to as Trust or Trust Group, as a matter of due diligence and risk management, the Monitoring Group would recommend a full audit of all its contracts to determine whether there are any companies in which Ganjab has an interest, given the evidence pertaining to Ganjab's other illicit activities documented in strictly confidential annex 5.2 and strictly confidential annex 6.4.

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Annex 100

Kenya DOALOS Page, updated 14 October 2014

KENYA



Updated 14 October 2014

SUBMISSION IN COMPLIANCE WITH THE DEPOSIT OBLIGATIONS PURSUANT TO THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA (UNCLOS)

M.Z.N. 58. 2006. LOS of 25 April 2006: Deposit of two lists of geographical coordinates of points, specifying the straight baselines from which the breadth of the territorial sea is measured and the outer limits of the exclusive economic zone of Kenya, together with illustrative map number SK 90 (edition 4), as contained in the Proclamation by the President of the Republic of Kenya of 9 June 2005, in respect of Kenya's territorial sea and exclusive economic zone (Legal Notice No. 82 (Legislative Supplement No. 34) published in Kenya Gazette No. 55 of 22 July 2005).

Originals of deposited geographical coordinates of points

Relevant articles of <u>UNCLOS</u>: 16(2); 75(2) <u>LOSIC</u> No. 23

Proclamation of 9 June 2005, including the lists of geographical coordinates of points and the illustrative map, reproduced in *Law of the Sea Bulletin* No. 61

Communications received by the Secretary-General in connection with the deposit of charts and/or lists of geographical coordinates of points

N/A

CONTINENTAL SHELF BEYOND 200 NAUTICAL MILES FROM THE BASELINES FROM WHICH THE BREADTH OF THE TERRITORIAL SEA IS MEASURED

Submission to the Commission on the Limits of the Continental Shelf made on 6 May 2009

OTHER INFORMATION

Legislation

- Territorial Waters Act of 16 May 1972, revised in 1977
- Presidential Proclamation of 28 February 1979--replaced by Presidential Proclamation of 9 June 2005
- Approximate Co-ordinates of Baseline Points on Map Sheet SK/74, 28 February 1979
- Chapter 371--The Maritime Zones Act, 1989
- Presidential Proclamation of 9 June 2005, pursuant to article 16, paragraph 2, and article 75, paragraph 2, of UNCLOS (*Law of the Sea Bulletin* No. 61)

Piracy

Merchant Shipping Act 2009

Maritime boundary delimitation agreements and other material

with United Republic of Tanzania

- Exchange of Notes constituting an agreement on the territorial sea boundary, 17 December 1975 9 July 1976 (entry into force: 9 July 1976; registration #: 15603; registration date: 18 April 1977; link to UNTS)
- Agreement between the United Republic of Tanzania and the Republic of Kenya on the delimitation of the maritime boundary of the exclusive economic zone and the continental shelf, 23 June 2009 (see *Law of the Sea Bulletin* No. 70)

with Somalia

Memorandum of Understanding between the Government of the Republic of Kenya and the Transitional Federal Government of the Somali Republic to Grant to Each Other No-Objection in Respect of Submissions on the Outer Limits of the Continental Shelf beyond 200 Nautical Miles to the Commission on the Limits of the Continental Shelf (entry into force: 7 April 2009, registration #: I-46230; registration date: 11 June 2009; link to UNTS) (see also Law of the Sea Bulletin No. 70)*

Other communications

- Kenya: Note verbale dated 9 January 2014
- Somalia: Somalia Note verbale dated 7 October 2014

Additional information: ▶ The repertory of the <u>Law of the Sea Bulletins</u> |▶ <u>Declarations and statements</u> |▶ <u>FAO Fishlex</u> |▶ <u>ITLOS</u> |▶ <u>ICJ</u> |▶ <u>PCA - Cases</u> |

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^{*} By a note verbale dated 2 March 2010, the Permanent Mission of the Somali Republic to the United Nations informed the Secretariat that the MOU had been rejected by the Parliament of the Transitional Federal Government of Somalia, and "is to be hence treated as non-actionable."

Annex 101

Letter from the Coordinator of the Somalia and Eritrea Monitoring Group mandated pursuant to paragraph 46 of Security Council resolution 2182 (2014) to the Chair of the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea, reporting the initial findings of the Monitoring Group's investigation into the operations of Soma Oil & Gas Holdings Limited (Soma), S/AC.29/2015/SEMG/OC.31, 28

July 2015

UNITED NATIONS



NATIONS UNIES

Somalia and Eritrea Monitoring Group

REFERENCE: S/AC.29/2015/SEMG/OC.31 **28 July 2015**

Excellency,

I have the honour to address you in my capacity as Coordinator of the Somalia and Eritrea Monitoring Group (the Monitoring Group) mandated pursuant to paragraph 46 of Security Council resolution 2182 (2014).

I am writing to brief you on the initial findings of the Monitoring Group's investigation into the operations of Soma Oil & Gas Holdings Limited (Soma), an extractives exploration company that secured a lucrative contract in August 2013 with the Federal Government of Somalia (FGS) to conduct seismic surveying off the country's southern and central coast. The contract awarded Soma the subsequent right to exploit 12 offshore oil and gas blocks (totalling 60,000 km²) of its own choosing.

/...

His Excellency

Mr. Rafael Darío Ramírez Carreño

Chair

Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea

CC: H.E. Mr. Elmi Ahmed Duale, Permanent Representative of the Somali Republic to the United Nations, New York

Mr. Abdirahman Sheikh Issa, National Security Adviser to the Somali President, Federal Government of Somalia

H.E. Mohamed Aden Ibrahim, Minister of Finance, Federal Government of Somalia, and Chairman of the Financial Governance Committee

Mr. Nigel Roberts, representative of the World Bank with the Financial Governance Committee

¹ Soma Oil & Gas Holdings Limited is a UK-registered company incorporated on 26 April 2013, and chaired by Lord Michael Howard, former leader of the UK Conservative Party.

The Group has obtained evidence² demonstrating that Soma has been making regular payments since June 2014 to civil servants in the Ministry of Petroleum and Mineral Resources (the Ministry), some of whom were instrumental in both securing the company's initial contract, and negotiating subsequent agreements. A "Capacity Building Agreement" was signed by Soma and the Ministry mainly to channel these payments. The evidence collected by the Monitoring Group demonstrates that this Capacity Building Agreement created a serious conflict of interest, in a number of cases appearing to fund systematic payoffs to senior ministerial officials. Pursuant to paragraph 2 of resolution 2002 (2011) and paragraph 2 (c) of resolution 2060 (2012)³, the Monitoring Group will describe acts that undermine Somali public institutions through corruption and will demonstrate how:

- The Capacity Building Agreement was likely part of a *quid pro quo* arrangement, whereby the Ministry would protect Soma's contract from the potential negative consequences of a forthcoming review by the Financial Governance Committee (FGC), a body chaired by the FGS Minister of Finance and tasked with reviewing Government contracts;
- as a possible further *quid pro quo*, Ministry officials arranged to extend the offshore area in which Soma is permitted to conduct seismic surveying ("Evaluation Area") and later, at Soma's behest, began to renegotiate the Production Sharing Agreement (PSA) for the company's future blocks all while on Soma's payroll;
- senior civil servants awarded themselves 'salaries' pursuant to spuriously drafted contracts for positions they already held;
- at least six officials on Soma's 'capacity building' payroll simultaneously drew FGS civil servant salaries;
- Soma transferred the first instalment of 'capacity building' funds to the Ministry before performing internal due diligence on the individuals who were to receive salary payments. The company continued to transfer funds even once their identities became known to the company and;

² The Monitoring Group has obtained access to numerous original documents detailing agreements between Soma and the FGS Ministry of Petroleum and Mineral Resources. The Group has also viewed extensive electronic correspondence involving Soma and the Ministry, and has further corroborated its investigations through numerous testimonies from present and former Ministry and other FGS officials, oil and gas experts, legal experts, members of development agencies, members of the diplomatic community, journalists, and others. Confidential electronic correspondence is cited below in italics.

³ In paragraph 2 of resolution 2002 (2011), the Security Council expanded the scope of prohibited acts that threaten the peace, security or stability of Somalia to include the misappropriation of public financial resources. This is reiterated in paragraph 2 (c) of resolution 2060 (2012).

 Soma paid close to half a million dollars to an ostensibly independent legal advisor to the Ministry, J. Jay Park.

The Monitoring Group further describes how the misuse of 'capacity building' in the Soma context fits within a broader pattern of misconduct and misappropriation at the Ministry. The Monitoring Group has obtained evidence, for example, of the Ministry's attempts to persuade at least one other oil and gas company to pay 'salaries' to its staff. Ministry staff also diverted payments from another company into a privately held ministerial bank account in contravention of FGS regulations – and indeed attempted to have Soma direct its funding into this account.

The Monitoring Group's findings reinforce the rationale for its previous calls for the implementation of clear legal and policy frameworks governing the engagement of the extractives industry in Somalia. In particular the FGS should be encouraged to apply its existing legislation, especially the 2008 Petroleum Law, in the management of both current and future oil and gas contracts. As required by this legislation, it is critical to establish an independent Somali Petroleum Authority to serve as regulator for the industry. The Federal Parliament should also approve current, future contracts and authorisations – including the draft Soma PSA currently under consideration by the Ministry.

The Monitoring Group recognises the considerable potential of oil and gas discoveries in Somalia and in Somali waters, but also of the threat to peace, security and stability posed by an unregulated extractives industry. The Group has previously highlighted both the risks of corruption in the sector, and the "shortcomings" in transparency and capacity of Somalia's petroleum institutions (S/2013/413 and S/2014/726). The Group will, therefore, again recommend a moratorium on all PSAs until the necessary arrangements and institutions are in place to manage the industry for the good of the Somali people.

Background to the Capacity Building Agreement⁵

⁴ For a background to the oil and gas sector in Somalia, see Annex 1.

⁵ The inclusion of capacity building programmes in agreements between extractives companies and Governments of developing countries is relatively common. Each oil major that has signed a deal in Somalia (Royal Dutch Shell, Total S.A., Eni S.p.A., Chevron Corp., ConocoPhillips Co., and BP plc) offers local training and scholarship programmes in the developing countries in which it operates. However, having consulted with several independent experts, the SEMG has been unable to identify other cases where the regular payment of senior civil servants responsible for managing deals with oil and gas firms has been labelled "capacity building." Analogous payment practices, however, have been the subject of criticism: Royal Dutch Shell, Elf Aquitaine, Norsk Hydro and, most recently, Soco International, for example, have all been accused of impropriety with respect to the making of regular hidden payments to local security and/or Government officials in order to protect company interests. See The Guardian, "Shell spending millions of dollars on security in Nigeria, leaked data shows," 19 August 2012 (available at http://www.theguardian.com/business/2012/aug/19/shell-spending-security-nigeria-leak); Global Witness, "Elf

The circumstances and chronology of events surrounding the Capacity Building Agreement are integral to an understanding of how an ostensibly positive arrangement for Somalia was in fact a scheme concocted by the Ministry, with Soma's acceptance, in the expectation of reciprocal benefits.

In a May 2013 interview, the former Minister for National Resources,⁶ Abdirizak Omar Mohamed, asserted that the FGS "should wait until we have the right laws in place" before entering into agreements with oil and gas firms.⁷ Three months later, on 6 August 2013, the FGS signed a Seismic Option Agreement (SOA) with Soma, in which the latter agreed to conduct a seismic survey within an area to be confirmed in a later "Reconnaissance Authorisation" agreement. On 9 January 2014, with the "Evaluation Area" agreed, the FGS formally entered into a Reconnaissance Authorisation agreement with Soma. ⁸

On 21 January 2014 Daud Mohamed Omar was appointed as FGS Minister of Petroleum and Mineral Resources. Fewer than two weeks later, on 2 March 2014, the original SOA with Soma was sent to the newly established Financial Governance Committee (FGC) for review.

On 5 March 2014 Soma made arrangements for Minister Omar, Farah Abdi Hassan, the Director General of the Ministry, and Dr. Abdullahi Haider Mohamed and J. Jay Park, advisors to the Ministry, to stay at Nairobi's Fairmont Hotel from 9-13 March 2014 in order to hold meetings with the company.⁹

On 10 March 2014, Minister Omar signed a "First Amendment Agreement" to the 6 August 2013 SOA, which was subsequently transmitted to Soma on 22 March to be countersigned. The Agreement included a request for "capacity assistance in connection with the supporting work of the Government in relation to the seismic survey..." In a letter dated 15 March 2014 and also sent to Soma on 22 March, Minister Omar formally requested "that Soma provide financial support to the Government..."

trial throws spotlight on oil and corruption," 17 March 2003 (available at https://www.globalwitness.org/archive/elf-trial-throws-spotlight-oil-and-corruption/); Global Witness, "Statoil Hydro's Libyan "corruption" scandal shows need for oil industry disclosure laws," 20 November 2008 (available at

https://www.globalwitness.org/documents/14446/libya_oil_scandal_points_to_need_for_new_laws.pdf); Global Witness, "Virunga: UK company bankrolled soldiers accused of bribery and violence in quest for oil in Africa's oldest national park," 20 June 2015 (available at https://www.globalwitness.org/campaigns/democratic-republic-congo/soco-in-virunga/).

⁶ The Ministry of National Resources was subsequently split into four successor ministries in January 2014, including the Ministry of Petroleum and Mineral Resources.

⁷ The Financial Times, "Somalia: Oil thrown on the fire," 13 May 2013. Available at http://www.ft.com/cms/s/0/538e9550-b3e1-11e2-ace9-00144feabdc0.html#axzz3fm1LvjAB.

⁸ See Annex 2 for a map of Soma's offshore Evaluation Area and Reconnaissance Authorisation Area.

⁹ A photograph of the Fairmont Hotel meeting is available in Annex 3.

¹⁰ See Annex 4 for a copy of the First Amendment Agreement.

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Specifically, Minister Omar requested support with:

- a. rehabilitation of the Ministry's offices in Mogadishu;
- b. furnishing and equipping the Ministry's office, including establishment of a data room;
- c. the hiring and contracting of qualified technical staff and expert consultants and advisors, inside and outside of Somalia, including covering the costs of:
 - i. salary or consulting fees;
 - ii. benefits;
 - iii. accommodation allowance; and,
 - iv. business related travel;
- d. training programs for Ministry staff;
- e. Petroleum regime development programs focused on the following objectives:
 - i. harmonization of Somalia's constitutional provisions governing petroleum and minerals issues;
 - ii. development of petroleum policy, petroleum law, petroleum regulations, and model host government contracts; and
 - iii. conferring and developing consensus with governments of regional member states; and
- f. Other areas as may be agreed in writing by Government and Soma. 11

On 27 March 2014, the Director General of the Ministry, Farah Abdi Hassan, expressed annoyance over delays in Soma's response to the Ministry's request for capacity assistance, declaring in an email addressed to the Ministry's legal advisor, Jay Park, that the Ministry would not stand for Soma "questioning" or "delaying" the programme. He also warned that Soma's contractual agreements with the FGS, both past and prospective, would be subject to review if "assistance" were not provided: "If the SOMA questions the assistance [to] the Ministry then so many things goes [sic] to review, while the parliament is asking to ratify the SOA agreement."

On 17 April 2014, Director General Hassan wrote to two of Soma's directors, CEO Robert Sheppard and Hassan Khaire, informing them that the Natural Resources Subcommittee of the FGS Parliament had requested a copy of the 6 August 2013 SOA for review. In the correspondence, Hassan again suggested a link between the provision of 'capacity building' and the protection of the Soma SOA from official review: "[w]hy don't you sign the [First Amendment Agreement] and return, because, I am sure it will protect the [SOA] agreement." The very same day, Sheppard sent a formal letter to Minister Omar confirming Soma's desire to move ahead with the agreement:

¹¹ This letter is attached in Annex 5.

"Soma Oil & Gas understands your request for support in regards to capacity building at the Ministry. In the next few days, I will be writing a separate letter to you outlining how Soma Oil & Gas proposes to support the Ministry in this regard."

Three days later, on 20 April 2014, Soma followed through on its pledge, and a draft text of the Capacity Building Agreement was sent to Director General Hassan for his review.

Three days after receipt of this draft agreement, the FGC "Confidential Assessment" of the Soma SOA arrived at the Ministry. While specific improvements to the SOA were recommended – alongside more general concerns raised regarding "contracting in the oil and gas sector as a whole" – the FGC did not make recommendations that threatened the validity of the Soma deal. 12

The Capacity Building Agreement ("the Agreement") was signed by the Minister on 27 April 2014 and by Robert Sheppard on 15 May 2014. ¹³ In the Agreement Soma pledged to cover the salary costs, up to USD 5,000 per month each, for a maximum of six "qualified technical staff, consultants and advisors, inside and outside of Somalia" over a 12-month period (totalling USD 360,000). Soma also committed to "pay the cost of office equipment, transportation, and other working tools which shall not exceed lump sum of [USD 40,000]." The Agreement therefore capped the total capacity support to be provided by Soma, including salary payments, at USD 400,000. The Agreement did not include, however, any provision for funding of training or petroleum regime development programmes, as had also been requested in the Ministry's letter of 15 March 2014.

Among the conditions of the Agreement was a requirement for the Ministry to submit monthly written reports to Soma, providing the names, terms of reference, and employment contracts for each proposed staff member. Critically, the Agreement prohibited the Ministry from contracting any "connected person" within the framework of the programme. "Connected person" was defined as "any person, company, other organisation or legal entity directly or indirectly controlled by any member of the Government or who is otherwise directly or indirectly related to or connected to any member of the Government."

On 27 April 2015, Soma signed an extension of the Agreement with the Ministry, prolonging the duration of the programme for an additional six months, from April to September

¹² Of the eight contracts and concessions the FGC had reviewed by January 2015, Soma's was the only contract on which "no action" was taken. Others were "overtaken by events" (Simatech International), "withdrawn as duplicative" (TGS-NOPEC Geophysical Company ASA), "restructured and allegedly signed" (CGG/Robertson GeoSpec International), "considered for cancellation" (Somalia-FishGuard Ltd.), "under investigation" (AMO Shipping Company Ltd.), or "under discussion" (Albayrak Turizm Inşaat Ticaret A.Ş and Favori LLC). Quoted from the "FGC Reviews of Public Sector Contracts and Concessions" report, 31 December 2014.

¹³ See Annex 6 for a copy of the Capacity Building Agreement.

2015.¹⁴ Under the extension, Soma agreed to provide further "capacity support payments" of USD 30,000 per month, equalling a total over six months of USD 180,000.

Payments

On 22 May 2014 Soma's CFO, Philip Wolfe, sent the Director General a template invoice for the Ministry to submit. The next day, a USD 70,000 invoice for the first instalment of the 'capacity building' funds, signed by Director General Hassan and Deputy Director General Jabril Mohamoud Geeddi – who both later received salaries themselves under the Agreement – was returned to Soma. 15

Following receipt of the first instalment of the Soma funds in the Ministry's Central Bank of Somalia (CBS) account, Director General Hassan attempted to persuade Soma to circumvent the CBS when making future transfers. Such an arrangement would be in flagrant violation of FGS Ministry of Finance directives, which require that all FGS revenue be channelled through the Treasury Single Account at the CBS. On 29 June 2014, Hassan emailed Soma CEO Robert Sheppard and CFO Philip Wolfe explaining,

"I am thinking to change the route or have an account from another bank. We realized how things gets [sic] late if we didn't get alternative way, there are number of private companies which are easier to use and more efficient than the central bank."

Wolfe refused the Director General's suggestion, informing him that Soma would continue to route 'capacity building' monies to the CBS for purposes of transparency.

Soma transferred a total of USD 400,000 for the Capacity Building Agreement in three instalments to the Ministry's CBS account. The company also transferred an additional USD 90,000 instalment in May 2015, the first payment pursuant to the extension of the Agreement on 27 April 2015:

- 1. USD 70,000: receipt confirmed by the Ministry on 30 June 2014;
- 2. USD 150,000: receipt confirmed by the Ministry on 17 August 2014;
- 3. USD 180,000: receipt confirmed by the Ministry on 13 November 2014;
- 4. USD 90,000: receipt confirmed by the Ministry on 28 May 2015. 16

¹⁴ Letter dated 24 July 2015 from Soma to the Monitoring Group, in response to the Group's email queries of 16 July 2015

¹⁵ See Annex 7 for the first 'capacity building' invoice submitted by the Ministry.

¹⁶ Letter from Soma to the Monitoring Group, 24 July 2015.

The Monitoring Group has obtained a 'salary chart' sent to the Ministry by Soma in March 2015. This chart details the 'capacity building' payments Soma made (totalling USD 295,800) to 14 ministerial employees from March 2014 to the end of February 2015, with projections of future payments continuing up to June 2015.¹⁷ The 14 employees listed on the salary chart, and the amounts they are listed as having received, are:

Name	Title(s)	Received from Soma as of February 2015
Farah Abdi Hassan	Director General	USD 36,000
Jabril Mohamoud Geeddi	Deputy Director General Director of Administration & Finance Department	USD 36,000
	Senior Management Advisor	
Mohamed Ali-nur Hagi	Permanent Secretary to the Prime Minister	USD 33,000
	Director of Planning & Development Department Senior Resource Economist	
Dr. Abdulkadir Abiikar Hussein	Director of Exploration Department Senior Petroleum Geologist	USD 30,000
Hussein Ali Ahmed	Managing Director of the Somalia Petroleum Corporation Director of Oil Management	USD 16,000
	Department Senior Economic Advisor	
Yusuf Hassan Isack	Head of Public Relations Media Expert	USD 24,000

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¹⁷ Soma's 'salary chart' is provided in Annex 8. While the salary chart lists payments dating back to March 2014, the first instalment of Soma's 'capacity building' funds did not arrive at the Ministry until June 2014. Thus all chart payments prior to June 2014 represent backdated amounts paid as 'arrears' to Ministry officials.

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Abdinor Mohamed Ahmed	Media Coverage	USD 16,000
	Reporter	
	Public Relations	
Abdullahi Mohamed Warfaa	International Relations	USD 16,000
Mohamed Yousuf Ali	Director of Legal Affairs	USD 32,000 ¹⁸
	Department	
	Senior Legal Expert	
Dr. Abdi Mohamed Siad	Senior Advisor	USD 32,000 ¹⁹
	Mineralogist	
Leila Ali Ahmed	Administration Assistant	USD 4,200
Dr. Abdullahi Haider	Senior expert &Team Leader	USD 15,000
Mohamed	FGS Advisor on Oil & Gas	
	Diplomat	
Abdirzak Hassan Awed	Personal Assistant	USD 4,000
Farah Ahmed Isma'il	Personal Assistant	USD 1,600

Double Dipping

The Monitoring Group has been able to confirm, through information provided by the FGS Ministry of Finance and the Ministry of Petroleum and Mineral Resources itself that at least six Ministry officials paid by Soma under the Capacity Building Agreement concurrently drew civil servant salaries from the FGS:

- 1. Farah Abdi Hassan
- 2. Jabril Mohamoud Geeddi
- 3. Mohamed Ali-nur Hagi
- 4. Abdulkadir Abiikar Hussein
- 5. Hussein Ali Ahmed
- 6. Leila Ali Ahmed²⁰

¹⁸ Mohamed Yousuf Ali claimed in correspondence with the SEMG that he only received a total of USD 4,000 of the USD 32,000 earmarked for him.

¹⁹ Abdi Mohamed Siad similarly claimed in correspondence with the SEMG that he only received a total of USD 4,000 of the USD 32,000 earmarked for him.

The Monitoring Group has been unable to find evidence that the Capacity Building Agreement was reflected in the 2014 FGS national budget. When contacted by the Monitoring Group, the Minister of Finance, H.E. Mohamed Aden, stated that he was unaware of a privately funded capacity building programme in any FGS ministry, informing the SEMG that "[a]s far as I am aware there is no private capacity injection programs. All capacity injection programs are through multitrust and/or bilateral donors." Soma did not directly respond to a question from the Monitoring Group as to whether the company had notified the Ministry for Finance about the Capacity Building Agreement, stating only that "Soma signed the Capacity Building Agreements with the Ministry of Petroleum & Mineral Resources."

Profiles of officials who received payments from Soma

The Monitoring Group has compiled profiles, below, of the officials who received payments under Soma's Capacity Building Agreement. A number of these officials – including the Director General of the Ministry, the Deputy Director General, and the Permanent Secretary to the FGS Prime Minister – occupy positions in which they routinely take decisions directly bearing on the company's financial interests in Somalia. As such, their receiving payments from Soma represented a clear conflict of interest.

In addition, three individuals listed on Soma's salary chart have told the Monitoring Group that they only received a fraction of the amount allocated to them on paper. One alleged recipient of USD 28,000 in 'missing' payments has asserted that he does not recognise the signature on the payslip receipt provided to him for inspection by the Monitoring Group. It is not yet clear to the Group who signed for or received these monies.

Farah Abdi Hassan

Director General of the Ministry of Petroleum and Mineral Resources

Farah Abdi Hassan was appointed Director General of the then-Ministry of National Resources in July 2013, and has retained this position since its successor ministry, the Ministry of Petroleum and Mineral Resources, was created in January 2014. As Director General, Hassan served as the Ministry's primary point of contact for Soma and other oil and gas firms, affording him a great deal of influence. An April 2014 memo from Minister Omar, seen by the Monitoring

²⁰ The Monitoring Group notes with appreciation the cooperation of the FGS Minister of Finance, H.E. Mohamed Aden, in supplying this information.

²¹ Email to the SEMG from Minister Aden, 21 May 2015.

²² S/AC.29/2015/NOTE.25/Add.4, 1 July 2015.

Group, stipulated that Hassan was to be "the lead contact and the focal point of the Ministry in all aspects of communications." ²³

Hassan was present for negotiations over the First Amendment Agreement in Nairobi in March 2014. In May 2014 Hassan co-signed, with Jabril Mahamoud Geeddi, the first invoice for the programme. He then proceeded to sign a new contract for his existing position – formulated by Mohamed Ali-nur Hagi (see below) and countersigned by Minister Omar – backdated to March 2014.²⁴

Hassan was paid USD 3,000 per month under the Capacity Building Agreement, and by February 2015 had received a total of USD 36,000. According to the FGS Ministry of Finance, Hassan also draws a civil servant monthly salary of USD 1,235. Over the course of one year, therefore, Soma made monthly payments to the most senior civil servant in the Ministry equivalent to almost triple his Government salary.

Dr. Abdullahi Haider Mohamed

Senior expert & Team Leader FGS Advisor on Oil and Gas

Between October 2014 and February 2015, Dr. Abdullahi Haider Mohamed held the position of "Senior expert & Team Leader" at the Ministry, and was paid a total of USD 15,000 through Soma's Capacity Building Agreement.

The SEMG's 2014 final report (S/2014/726) identified Haider as a special advisor to FGS President Hassan Sheikh Mohamud and one of two "key architects" of the Soma deal.²⁵ The SEMG's current investigation into Haider's role corroborates this assessment. According to a former advisor to the Ministry, negotiations over the Soma deal were conducted by Haider, Ministry legal advisor Jay Park, and then-FGS petroleum minister Abdirizak Omar Mohamed during the Somalia conference in London in May 2013.²⁶ In a 1 July 2015 letter to the SEMG,

²⁵ See S/2014/726, annex 5.1. The 2014 report also links Dr. Abdullahi Haider Mohamed to Musa Haji Mohamed 'Ganjah' a former advisor to EGS President Hassan Sheikh Mohamud accused by the SEMG of ties to Al-Shahaa

²³ This memo was attached in a 13 April 2014 email from Mohamed Ali-nur Hagi to Farah Abdi Hassan.

²⁴ See Annex 9 for a copy of Farah Abdi Hassan's Capacity Building Agreement contract.

^{&#}x27;Ganjab,' a former advisor to FGS President Hassan Sheikh Mohamud accused by the SEMG of ties to Al-Shabaab and of the diversion of recovered overseas FGS assets. Haider served as Director General of Ganjab's joint Turkish-Somali company, "Turksom," which was involved in a project to build and operate a fuel distribution business in Mogadishu, as well as secure Turkish investments in Somalia.

²⁶ 23 September 2013 email from Patrick Molliere to an oil executive, provided to the SEMG by Molliere. Molliere served as Special Advisor to the Government for Petroleum Affairs from October 2015 to August 2013, and was instrumental in drafting the federal Petroleum Law of 2008.

Soma acknowledged that Haider "represented the Federal Government...in the negotiations around the Seismic Option Agreement that was signed in August 2013."²⁷

Haider's influence in the Ministry extended beyond the Soma portfolio: on 9 August 2013, three days after the Soma SOA was signed, Patrick Molliere, a former oil executive and at the time an advisor to the Ministry, received an email from the Ministry's interlocutor at Royal Dutch Shell plc, William Sevier: "Hope all is well. We have been advised to deal with Dr Haider wit [sic] cc to Minister." ²⁸

Since 2010, Haider has been referred to interchangeably as a presidential, ministerial, or governmental advisor on oil and gas. A regional news service stated that Haider "has become *de facto* the privileged interlocutor for international oil organisations." Haider's LinkedIn profile currently identifies him as a "Senior Adviser at Commission for Petroleum & Mineral Resources" and previously as a "Senior Adviser, Oil and Gas" from 2010-2014.³⁰ Indicative of his status within the FGS, Haider carries a diplomatic passport, which lists his occupation as "Diplomat."

As recently as April 2015, during an oil and gas conference – after his tenure as "Senior expert & Team Leader" at the Ministry had come to an end – Haider was again being presented as a 'senior advisor' to the FGS.³² At the conference, which took place in London from 27-28 April 2015, Haider conducted side meetings with industry executives, at which the Minister was not present.³³

Prior to, during, and after the period when he received payments via the Soma Capacity Building Agreement, Haider was in a position to exert significant influence on Government decisions directly bearing on Soma's business prospects in Somalia. In this context, his signing of a contract with the Ministry to serve as "Senior expert & Team Leader" was merely a temporary re-hatting of his already existing role, in order to facilitate his receiving payments from Soma.

²⁷ S/AC.29/2015/NOTE.25/Add.4, 1 July 2015.

²⁸ Email provided to the SEMG by Patrick Molliere.

²⁹ African Intelligence, No. 1381, 6 June 2014.

³⁰ Available at https://www.linkedin.com/pub/abdullahi-haider/87/711/723. Accessed 24 July 2015.

The Guardian, "Where there is oil and gas there is Schlumberger," 18 May 2015. Available at http://www.theguardian.com/environment/2015/may/18/where-there-is-oil-and-gas-there-is-schlumberger.

Monitoring Group's interviews with three journalists and an oil and gas analyst who were present at the April conference, June 2015.

Mohamed Ali-nur Hagi

Permanent Secretary to the Prime Minister Director of Planning & Development Dept / Senior Resource Economist

Prior to joining the Ministry in April 2014, Mohamed Ali-nur Hagi served as Minister of Planning for Galmudug regional authority. From April 2014 to February 2015, Hagi received a total of USD 33,000 from Soma's Capacity Building Agreement. According to the salary chart Hagi was also due an additional USD 3,000 for the month of March 2015.

Internal ministerial correspondence shows that Hagi drafted his own employment contract, which subsequently became the template for each subsequent contract signed by pavees of the Capacity Building Agreement. Hagi also drafted the terms of reference for his own position, "Director of Planning and Development Department & Senior Resource Economist," as well as that of Dr. Abdullahi Haider Mohamed ("Senior expert & Team Leader").

Since at least 9 February 2015, Hagi has served as the Permanent Secretary to the FGS Prime Minister, Omar Abdirashid Shermarke. However, Soma continued to pay Hagi once he had become the prime minister's top staffer. Hagi confirmed to the SEMG in July 2015 that he had received 'capacity building' salary payments up to the end of February 2015;³⁴ Soma's salary chart shows that he was due to be paid up to the end of March.

Hagi has provided the Monitoring Group with a copy of a decree marking his appointment as Permanent Secretary, dated 9 February 2015 and signed by Prime Minister Shermarke. 35 However, an 11 January 2015 email from Director General Hassan to seven other senior members of the Ministry makes reference to "A-Mohamed Hagi, the PS of office of the Prime minister." This reference suggests that Hagi may have been serving unofficially as Prime Minister Shermarke's Permanent Secretary as early as the beginning of January, and was apparently regarded as such by other Ministry officials.

Jabril Mohamoud Geeddi

Deputy Director General of the Ministry of Petroleum and Mineral Resources Director of Administration & Finance Department / Senior Management advisor

Jabril Mohamoud Geeddi has been employed at the Ministry since January 2013, originally under the title of "Coordinator." Geeddi's employment contract, signed for the purposes of receiving a Soma 'capacity building' salary, lists his position as "Director of Administration & Finance Department & Senior Management advisor." However, his curriculum

Email from Mohamed Ali-nur Hagi to the SEMG, 3 July 2015.
 Email attachment from Hagi to the SEMG, 7 July 2015.

vitae, as well as extensive internal correspondence from the Ministry on file with the Monitoring Group, identifies him as the Deputy Director General of the Ministry.

In an email dated 30 July 2014, Geeddi provided a description, in the third person, of his function at the Ministry: "Mr. Geddi is responsible for the administration and finance sector, of the Ministry, and he's full time employee who earns a standard salary of grade A from the government plus bonus... [emphasis added]." In an interview with the Monitoring Group on 11 June 2014, Director General Hassan confirmed that Geeddi was the primary official responsible for the financial administration of the Ministry, including the management of the Capacity Building Agreement. As such, Geeddi was responsible for withdrawing 'capacity building' funds from the Ministry's CBS account.³⁶

Geeddi is a close associate of Dr. Abdullahi Haider Mohamed. At the 2013 CWC Groupsponsored Somalia Oil and Gas Summit in London, held on 7 October 2013, Haider and Geeddi were observed to be "leading the minister around." Following the summit, a dinner took place at principal Soma shareholder Basil Shiblag's London restaurant, Maroush, which both Geeddi and Haider attended. Also present were Lord Michael Howard, the Chairman of Soma, Abdullahi Mohamed Ali 'Sanbololshe,' the FGS ambassador to the UK, petroleum minister Abdirizak Omar Mohamed, Soma CEO Robert Sheppard, CFO Philip Wolfe, Basil Shiblaq, Jay Park, as well as other individuals intimately involved in the Soma deal.³⁸

From March 2014 to February 2015, Geeddi received salary payments totalling USD 36,000, or USD 3,000 per month, from Soma's Capacity Building Agreement. Over the same period, he also received an FGS civil servant salary of USD 1,135 per month.

Hussein Ali Ahmed

Managing Director of the Somalia Petroleum Corporation Director of Oil Management Department / Senior Economic Advisor

Between July 2014 and February 2015, Hussein Ali Ahmed occupied the position of "Director of Oil Management Department & Senior Economic Advisor" in the Ministry. Both prior to and during his time on Soma's payroll, Ahmed served as Managing Director of the Somalia Petroleum Corporation (SPC),³⁹ the national oil company that he was instrumental in establishing in 2007.

³⁷ Monitoring Group's interview with a source who was present at the October summit, 4 June 2015.

³⁶ For a sample of withdrawal slips with Geeddi's signature, see Annex 11.

³⁸ Monitoring Group's interview with a source that was present at the dinner, 4 June 2015. The source provided the SEMG with a photograph alleged to have been taken during the dinner.

39 For a more detailed discussion of the Somalia Petroleum Corporation, see Annex 1.

Ahmed held a series of prominent positions prior to heading up the SPC; from 2004-2007, he served as special advisor on oil and gas to former Somali Prime Minister Ali Mohamed Gedi, and as mayor of Mogadishu from 2001-2004. In 2007, Ahmed also headed the Somalia Petroleum Law Team, which was responsible for drafting the 2008 Petroleum Law, legislation that still remains in force.

Similar to other officials on Soma's payroll, therefore, Ahmed has a lengthy history of oil and gas postings in the Somali Government. While being paid by Soma as "Director of Oil Management Department & Senior Economic Advisor" to the Ministry, he concurrently held the title of SPC Managing Director, a position of influence with direct impact on Soma's interests in Somalia.

Between July 2014 and February 2015, Ahmed received a total of USD 16,000 from Soma's Capacity Building Agreement. According to the salary chart obtained by the Monitoring Group, as well as his employment contract with the Ministry, Ahmed was to receive an additional USD 8,000 up to June 2015. According to the FGS Ministry of Finance, Ahmed receives a civil servant salary of USD 1,135 per month.

Dr. Abdulkadir Abiikar Hussein

Director of Exploration Department / Senior Petroleum Geologist

Dr. Abdulkadir Abiikar Hussein joined the Ministry in May 2014. Hussein possesses a Master's of Science degree in Engineering Geology and Geotechnics, and his employment contract with the Ministry lists his position as "Director of Exploration Department and Senior Petroleum Geologist."

Hussein received USD 30,000 from Soma's Capacity Building Agreement between May 2014 and February 2015. According to the salary chart obtained by the Monitoring Group, he was due to be paid an additional USD 6,000 up to April 2015.

In an interview with the Monitoring Group held on 11 June 2015, Director General Hassan confirmed that Hussein is a key member of a "negotiation team," responsible for reaching an agreement on production sharing with Soma (see discussion of the "Draft Production Sharing Agreement (PSA)" below), a function he exercised whilst receiving payments from Soma.

An email dated 27 April 2015 from Hussein to various members of the Ministry provided an outline of the agenda for the "Exploration Department," of which he is the director. One of the agenda items he listed, to be completed by September 2015, was "[e]valuating PSAs submitted by farm-out partners of Soma Oil and Gas and signing them."

Abdullahi Mohamed Warfaa

Personal Assistant to the Minister 'International Relations'

While Abdullahi Mohamed Warfaa's employment contract defines his role at the Ministry as relating to "International Relations," in correspondences dated October and December 2014 he is referred to as the "personal assistant" to the Minister.

Between July 2014 and February 2015, Warfaa received a total of USD 16,000 through Soma's Capacity Building Agreement. According to the salary chart obtained by the Monitoring Group, as well as his employment contract with the Ministry, Warfaa was due an additional USD 8,000 up to June 2015.

Leila Ali Ahmed

Administration Assistant

Leila Ali Ahmed was employed as an "Administration Assistant" under the Capacity Building Agreement from July 2014 to February 2015, receiving a total of USD 4,200 according to the salary chart. However, from 8 August 2014 onwards Ahmed concurrently drew an FGS civil servant salary of USD 735 per month.

Possible Ghost Workers

The Monitoring Group has identified four officials on Soma's salary chart as possible ghost workers. Three of these individuals claim to only have worked at the Ministry for a fraction of the time indicated in the salary chart; the Group has been unable to confirm the very existence of a fourth.

Mohamed Yousuf Ali

Director of Legal Affairs Department / Senior Expert

Mohamed Yousouf Ali holds a Masters of Law degree, and his 'capacity building' employment contract designates his position within the Ministry as "Director of legal affairs Department & Senior expert." From July 2014 to February 2015, according to the salary chart, Ali collected USD 32,000 from Soma's Capacity Building Agreement.

On 13 October 2014 Director General Hassan suspended Ali's contract with the Ministry, citing the latter's inability to be present in Mogadishu due to personal reasons. Nonetheless,

according to Soma's salary chart, Ali's salary payments continued until February 2015, despite the fact that he had not been physically present in Mogadishu since late August 2014. 40

Ali informed the SEMG that he had only received one salary payment of USD 4,000 before the suspension of his contract, and that the Ministry never paid him an additional two months' salary owing. 41 If true, after July 2014 Ali became effectively a ghost worker at the Ministry, with the remaining USD 28,000 owing in his contract collected by an unknown third party. The SEMG has yet to determine who countersigned for Ali on his payslips, or where the funds subsequently ended up.

Abdi Mohamed Siad

Senior Advisor for the Ministry and Mineralogist

Dr. Abdi Mohamed Siad is a senior lecturer at the University of the Western Cape in the Republic of South Africa. He holds a PhD in Applied Geochemistry, making him the only technical expert whose employment under the Capacity Building Agreement does not represent a conflict of interest.

From July 2014 to February 2015, according to the salary chart, Siad collected USD 32,000 while serving in the position of "Senior Advisor for the Ministry and Mineralogist." However, Siad informed the Monitoring Group that he returned from Mogadishu to South Africa in August 2014, and subsequently gave notice of his resignation to Minister Omar and Director General Hassan on 14 October 2014. 42 According to Siad, he was sent one month's salary from Hassan in the amount of USD 4,000, but received no subsequent payment.

The Monitoring Group sent Siad a 'capacity building' payslip dated 30 November 2014, allegedly displaying his signature; Siad confirmed that the signature was not his. The SEMG has yet to determine who forged Siad's signature on his payslips, or who collected the USD 28,000 remaining on his contract.⁴³

Abdirizak Hassan Awed

Personal Assistant for the Ministry

From November 2014 to February 2015, Abdirizak Hassan Awed was employed under the Capacity Building Agreement in the position of "Personal Assistant for the Ministry,"

⁴⁰ Email from Mohamed Yousuf Ali to the SEMG, 29 June 2015.

⁴¹ Email from Ali to the SEMG, 29 June 2015.

⁴² Email from Dr. Abdi Mohamed Siad to the SEMG, 9 July 2015. Siad also forwarded his 14 October 2014 resignation email to the Group.

43 See Annex 12 for a copy of this forged payslip.

collecting USD 4,000. According to the salary chart, he was also slated to receive an additional USD 2,000 from March to April 2015.

In an email in the Somali language, Awed informed the Monitoring Group that he had been employed by the Ministry from November 2014-April 2015, but that the final two months of his salary payments had been "embezzled."

Farah Ahmed Isma'il

Personal Assistant for the Director General's Office

According, to the salary chart, Farah Ahmed Isma'il received USD 1,600 from November 2014 to February 2015 under the Capacity Building Agreement, and was due another USD 800 from March-April 2015. As of 5 March 2015, the Ministry had not submitted Isma'il's curriculum vitae, employment contract, or passport copy to Soma, as required by Soma's internal due diligence mechanism (see "Due Diligence," below). The Monitoring Group has found no communications from or to Isma'il within the Ministry correspondence it has viewed. As a result, the Group has so far been unable to substantiate Isma'il's existence.

Abdinor Mohamed Ahmed and Yusuf Hassan Isack

The Monitoring Group continues to investigate the involvement of the two remaining officials on Soma's salary chart, Abdinor Mohamed Ahmed and Yusuf Hassan Isack.

Due Diligence

In order to perform internal due diligence on the individuals being paid under the Capacity Building Agreement, Soma required the Ministry to provide a set of documents for each payee: curriculum vitae, employment contracts, passport copies, and signed payslips. Soma began transferring the 'capacity building' funds in June 2014, however, before it had received any of this documentation. The Ministry began submitting the required documents in early August 2014, definitively revealing to Soma the identities of senior officials being paid, if the company had not already been aware. The Ministry began submitting the required documents in early august 2014, definitively revealing to Soma the identities of senior officials being paid, if the company had not already been aware.

45 Correspondence between Soma and the Ministry dated June 2014 and seen by the Monitoring Group.

⁴⁴ Email from Abdirizak Hassan Awed to the SEMG, 13 July 2015.

⁴⁶ Farah Abdi Hassan and Jabril Mohamoud Geeddi, respectively the Director General and Deputy Director General of the Ministry, were first to receive salaries from Capacity Building Agreement. According to Hassan, Soma was aware that both individuals would be on the company's payroll before the transfer of funds commenced. SEMG interview with Hassan, 11 June 2015.

As of late as March 2015 – 11 months after the date of the Capacity Building Agreement – Soma's representative in Nairobi was still requesting the Ministry to deliver the remaining documents the company had demanded.

The Monitoring Group has found no evidence demonstrating that Soma questioned the Ministry's choice of payees, despite the fact that the Capacity Building Agreement explicitly prohibited the contracting of "connected persons" defined in the Agreement as "any person, company, other organisation or legal entity directly or indirectly controlled by any member of the Government or who is otherwise directly or indirectly related to or connected to any member of the Government." Instead, Soma proceeded to transfer the remaining 'capacity building' funds to the Ministry in two further instalments, accepting the Ministry's continued and absolute discretion in selecting the payees without prior notification. In response to the Monitoring Group's inquiries, Soma claimed that "no connected persons ever received payment pursuant to Soma's Capacity Building Agreement," despite being aware that both the Director General and Deputy Director General of the Ministry were on the company's payroll.⁴⁷

Soma failed to provide the Monitoring Group with the names, positions, and other requested details of the individuals who received salary payments from its Capacity Building Agreement. In its response to the Monitoring Group's direct request, Soma provided the following:

"Soma Oil & Gas has put in place a robust Anti Bribery & Corruption Policy and Procedures. On this basis we have reviewed the passports, curriculum vitae and contracts of all the individuals who receive salary payments from the Ministry of Petroleum & Mineral Resources under the Capacity Building Programme, as well as reviewing the monthly payroll information."

Soma's Statements Relating to the Capacity Building Agreement

Soma has acknowledged the existence of its Capacity Building Agreement on multiple occasions. In a press release dated 24 September 2014, Soma announced that the programme "will see the Company cover the salaries of a small number of experts, including geologists and geoscientists for a one-year period." Soma's public relations firm, FTI Consulting Inc., further acknowledged the existence of the programme and payments on 22 October 2014:

⁴⁷ Letter dated 24 July 2015 from Soma to the Monitoring Group, in response to the Group's email queries of 16 July 2015.

⁴⁸ S/AC.29/201mern5/NOTE.25/Add.4, 1 July 2015.

⁴⁹ Available at http://somaoilandgas.com/news/12.

"The \$400,000 commitment from Soma will enable the Ministry to employ 12 qualified geologists, geoscientists and other professionals for a one year period – these are individuals who will be trained at internationally recognised institutions and are committed to making a contribution to their own country's development through the opening up of the hydrocarbons industry." ⁵⁰

Only three⁵¹ of the 14 ministerial officials paid by Soma possess advanced degrees in the fields of geology or geoscience. Two of these three were already on the FGS civil servant payroll during the period they received 'salaries' from Soma; the third, Dr. Abdi Mohamed Siad, held a position at the Ministry for barely a month before returning home (see "Abdi Mohamed Siad," above).

In an email response dated 23 September 2014 to an inquiry about capacity building from The Wall Street Journal, Director General Hassan wrote the following: "In April 2014, H.E. Minister Daud Mohamed Omar signed a capacity building paper with Soma (see picture on Ministry website)⁵² - they will help us with some office equipment and some salaries of expert staff at the Ministry for one year." The text of Hassan's response had been drafted by Soma CFO Philip Wolfe, following a 22 September 2014 email in which the former requested Wolfe's assistance: "Pls consult what to answer? I knew that they [The Wall Street Journal] have already some hints…"

In summary, Soma's official representations of its Capacity Building Agreement to journalists and the public are in stark contrast to the events described by and documentary evidence obtained by the Monitoring Group. Instead of being an assistance package to facilitate hiring a limited number of technical experts, Soma's Capacity Building Agreement amounted in many cases to extra 'salaries' paid to top ministerial officials who had already been on the FGS payroll prior to the programme's launch.

Agreement Amendments Following the Capacity Building Agreement

Shortly after the signing of the Capacity Building Agreement, the FGS and Soma began negotiating a further territorial allowance for Soma's seismic exploration, as well as a draft agreement that would grant Soma a larger share of profits from potential production ("Evaluation Area Extension" and "Draft Production Sharing Agreement (PSA)"). The Monitoring Group has

⁵¹ Dr. Abdi Mohamed Siad, Dr. Abdulkadir Abiikar Hussein, and Dr. Abdullahi Haider Mohamed.

⁵⁰ Written response to a journalist's query.

⁵² The Monitoring Group has been unable to locate this photo – or indeed any reference to Soma's Capacity Building Agreement – on the Ministry's website (http://mopetmr.so/), accessed 24 July 2015.

identified these concessions to Soma as potential *quid pro quos* related to the Capacity Building Agreement.

Evaluation Area Extension

On 8 May 2014, the Minister signed a letter extending the offshore area available to Soma to survey (Evaluation Area Extension).⁵³ "In light of [Soma's] progress, it is the desire of the Ministry that the Evaluation Area...as agreed between the Ministry and Soma be expanded to include a larger area. The Ministry hereby requests that Soma include within its exploration Program (as defined in the SOA) a 2D seismic survey that extends to the JORA block as outlined in the attached map."⁵⁴ The letter ends: "Also, the JORA Block will become part of the area in respect of which Soma may serve a Notice of Application for a Production Sharing Agreement pursuant to Article 2.2. of the SOA."⁵⁵

The timing of the signing of the Evaluation Area Extension suggests that it may have represented a *quid pro quo* between the Ministry and Soma. The Minister signed the Evaluation Area Extension on 8 May 2014, fewer than two weeks after agreeing the terms of the Soma Capacity Building Agreement. A week later, on 15 May 2014, Soma countersigned the Capacity Building Agreement.

Draft Production Sharing Agreement (PSA)

On 28 November 2014, Soma CEO Robert Sheppard addressed a letter⁵⁶ to the Minister, stating Soma's case for revising the production sharing terms.⁵⁷ The rationale presented by Soma for renegotiating the PSA included the fact that "much of the basin is in deep or ultra deep water," the unproven nature of the reserves, and the collapsing global price of oil. The letter also set forth Soma's wish to also include explicit fiscal terms for gas in the revised PSA.⁵⁸

Subsequently in December 2014 a draft PSA agreement was sent to the Ministry for approval. The terms of this draft PSA have since been criticised for being highly unfavourable to the FGS, particularly following the publication of a Bloomberg article that first revealed the

⁵⁴ Ownership of the Jora block is currently subject to a maritime border dispute between the governments of Kenya and Somalia.

⁵⁷ The original PSA was set forth in an annex of the 6 August 2013 SOA.

⁵³ See Annex 13 for a copy of this letter.

⁵⁵ The Ministry later offered production sharing rights for the Jora block to another company in exchange for a similar 'capacity building' arrangement to Soma's, Allied Petroleum (SO) Corp. (see "Pattern of Corruption," below).

⁵⁶ See Annex 14 for a copy of this letter.

⁵⁸ The primary impetus for the revised PSA may have been that Soma's seismic survey had revealed larger gas deposits than previously expected. Interview with a Western embassy official based in Nairobi, 24 March 2015.

parameters of the proposed deal.⁵⁹ In a copy of the draft PSA seen by the Monitoring Group, Soma's share of revenue is stipulated to be as high as 90% in some cases. Furthermore, the draft PSA grants the company a four-year royalty holiday for oil and gas found fewer than 1,000 metres below the sea's surface, as well as a decade-long moratorium on paying taxes to the FGS.

Following publication of the Bloomberg article, the Ministry issued a statement in which it denied having received any draft PSA from Soma, further announcing that "Somalia is not accepting PSA deals at the moment." However, in a meeting with the Monitoring Group on 11 June 2015, Director General Hassan acknowledged that the Ministry had received the draft PSA from Soma, though he denied having personally seen it. Hassan further claimed that negotiations on the PSA had not yet begun, although he made reference to a "negotiation team," to which Dr. Abdulkadir Abiikar Hussein belongs. Contrary to Hassan's statements, internal Ministry correspondence seen by the Monitoring Group shows that Hussein sent a copy of the draft PSA to Hassan on 29 January 2015. Both Hassan and Hussein, as previously noted, have been paid 'salaries' by Soma.

Correspondence seen by the Monitoring Group shows that negotiations over the draft PSA with Soma have been taking place since at least late April 2015. In an email dated 30 April 2015, Peter Roberts, a lawyer representing the Ministry from the Houston-based firm Andrews Kurth LLP, wrote to another Ministry representative:

"Soma - we had a cordial meeting and we promised to send to their lawyers next week a table of key issues and concerns regarding the PSA draft, with a view to discussing it with their lawyers week commencing 11 May. Going well so far."

The current FGS Minister of Petroleum and Mineral Resources, H.E. Mohamed Mukhtar, told the Monitoring Group in June 2015 that the Ministry would not sign any PSA before a resource-sharing framework had been established with Somalia's regional authorities. He also told the Monitoring Group that The African Legal Support Facility, a public international institution hosted by the African Development Bank, was in the process of assigning a legal consultant to assist the Ministry in developing a model PSA for Somalia. 61

⁵⁹ Bloomberg, "Somalia May Pay 90% Oil Revenue to Explorer Under Draft Deal," 29 May 2015. Available at http://www.bloomberg.com/news/articles/2015-05-28/somalia-may-pay-90-of-oil-revenue-to-explorer-under-draft-deal.

⁶⁰ AMISOM Daily Media Monitoring, 31 May 2015. Available at http://somaliamediamonitoring.org/june-1-2015-morning-headlines/.

⁶¹ SEMG interview with H.E. Mohamed Mukhtar, 29 June 2015.

Data Room

Negotiations with Soma have taken place in a context of fundamental disparity, in which only one side, Soma, has access to the seismic survey data.⁶²

Under the terms of the 6 August 2013 SOA, Soma was required to turn over the data obtained from its offshore seismic survey to the FGS "within a reasonable time." Although the survey was completed by June 2014, the company has yet to fulfil this obligation. Soma has justified the delay by referencing the lack of a data room at the Ministry, where the data may be stored properly.

In a letter dated 17 October 2014, signed by Director General Hassan, Soma agreed to pay the costs of "rebuilding and refurbishment of that part of the Ministry Building that will house the data room in Mogadishu" up to a total of USD 100,000. The Ministry confirmed receipt of these funds into its CBS account on 18 December 2014. In February 2015, Soma requested an update from the Ministry on how the company's funds had been disbursed. A 3 March 2015 letter to Soma, signed by Jabril Mohamoud Geeddi, reported that "the funds are still in the above mentioned account as we have not yet began working on the project as the site for construction is currently occupied by Internally Displaced Persons (IDPs)."63

When interviewed by the Monitoring Group on 11 June 2015, Director General Hassan acknowledged that no further progress had been made towards establishing a data room on the Ministry's premises. Hassan further stated that he lacked "a concept of what kind of room we need for data." Hassan could not account for the USD 100,000 transferred by Soma and referred the SEMG to Jabril Mohamoud Geeddi. Geeddi has not responded to the Group's request for an interview.

Pattern of Corruption

The Monitoring Group has obtained evidence suggesting that requests for 'capacity building' may form part of a pattern of corruption within the Ministry.

The Group has in its possession a Memorandum of Understanding (MOU), 64 dated 24 November 2014, between the Ministry and Allied Petroleum (SO) Corp., a Dubai-based petroleum exploration company "supported by Middle Eastern Sovereign Wealth Funds and

⁶² A London-based oil and gas analyst interviewed by the Monitoring Group on 3 June 2015 referred to this state of affairs as "unconscionable."

A copy of this letter is provided in Annex 15.
 The Allied Petroleum MOU is attached in Annex 16.

major US Banks."65 Former Minister Daud Mohamed Omar met with Allied Petroleum CEO Justin Dibb and COO Andrew Robinson in Abu Dhabi on 5 May 2014. At that meeting, the company expressed its interest in signing PSAs for four blocks in the Jora region, proximate to the Kenya-Somalia border. Before agreeing to any PSA terms, Director General Hassan insisted that Allied Petroleum provide 'capacity building' support to the Ministry.

Subsequent to that meeting, Hassan sent the text of a proposed MOU to Allied Petroleum. The Allied Petroleum MOU bore many similarities to the Soma MOU, with a number of same clauses. For instance, the MOU stipulated that Allied Petroleum would pay the salaries of eight "consultants, advisors, or employees engaged by the Ministry," to a maximum of USD 5,000 each per month over a 24-month period. It also stipulated that Allied Petroleum was to pay for "the establishment of a data room," a project towards which Soma had already committed USD 100,000. The MOU also identified an International Bank of Somalia (IBS) account to receive the 'capacity building' funds, thereby bypassing the Central Bank. 66

The terms of the MOU make it clear that the proposed Capacity Building Agreement was intended to be a quid pro quo for the Ministry's granting of offshore PSA rights to Allied Petroleum; paragraph 11 states: "The Commencement Date of the MoU shall be the date, being 90 days following signature of PSA's covering Offshore Jor[a] A, B, C, D." Per the terms of the Evaluation Area Extension agreement with Soma, however, the Ministry had already granted exploration rights of the entire Jora region to Soma on 8 May 2014.

Although Director General Hassan and CEO Justin Dibb signed the MOU with Allied Petroleum on 24 November 2014, it appears that it was never implemented.

The Ministry also approached Royal Dutch Shell plc with demands for 'capacity building.' In multiple emails dating back to May 2014, Director General Hassan repeatedly reminded Shell of its capacity building obligations – including granting scholarships to Somali students – as stipulated in the pre-civil war Somali Government's 1988 Concession Agreement with Pecten Somalia Co. (a subsidiary of Shell). In a 20 November 2014 email to Menno DeRuig, an Exploration Manager for Shell covering Sub-Saharan Africa, Hassan wrote:

"We repeatedly ask you issue [sic] a letter for sponsoring of university students, I don't [know] what is [sic] the difficulties you have and you didn't come back to us... The attached is [sic] the eligibility letters for some of the students so please you either directly communicate to the university and ask to proceed convincing [sic] that you are sponsoring or simply issue letter to sponsor to [sic] deal with them."

Guoted from Allied Petroleum's company profile.
 See Annex 17 for details of the Ministry's IBS account.

Attached to the email were admission letters from USCI University in Kuala Lumpur for four Somali students: Abdirahman Farah Abdi, Asho Osman Abdi, Rakia Farah Abdi, and Salman Osman Abdi. All four are children of Director General Hassan. Examination of email correspondence by the SEMG has revealed that each student's admission to USCI University had been arranged through the intercession of Polaris Energy Sdn Bhd, a Malaysian oil company with which Hassan and other members of the Ministry had held meetings in Kuala Lumpur in September 2014.

On 24 November 2014 DeRuig responded to Hassan with an extensive list of documentation requirements, and also informed him that Shell would be unable to fund training programmes longer than one year in duration. The Monitoring Group is unaware of any subsequent attempts by Hassan to arrange for Shell to fund his children's education.

Soma's Payments to an FGS Legal Advisor

The Monitoring Group has confirmed that Soma made payments to a long-standing FGS legal advisor, the Canadian lawyer J. Jay Park, QC, between 3 June 2013 and 6 August 2013.

The FGS' relationship with Park long pre-dated the existence of the Capacity Building Agreement and the signature of the Soma SOA on 6 August 2013. Between 2007 and August 2012, Park served as an oil and gas advisor for the Somali Transitional Federal Government (TFG), during which time he was a member of the Petroleum Law Team responsible for drafting the 2008 legislation. In early 2013, Park was implicated in a petroleum bribery scandal in Chad two years earlier, where he had allegedly facilitated the transfer of USD 2 million to the wife of a diplomat.⁶⁷ In April 2013, Park announced his retirement from his firm, Norton Rose Canada LLP. In June 2013 he founded his own entity, Petroleum Regimes Advisory Ltd. (PRA), and continued as an official advisor to the FGS, a role he exercised during the SOA negotiations with Soma. In its 2014 report (S/2014/726), the Monitoring Group identified Jay Park, along with Dr. Abdullahi Haider Mohamed, as a "key architect" of the Soma deal on the FGS' side. 68 In 2013, one of Soma's own representatives told an international consulting firm that Park had a role "to protect all interests" – both those of the FGS and Soma – during the SOA negotiations.⁶⁹

⁶⁷ The Globe and Mail, "Bay Street law firms advised Griffiths on Chad deal," 26 January 2013. Available at http://www.theglobeandmail.com/report-on-business/industry-news/the-law-page/bay-street-law-firms-advisedgriffiths-on-chad-deal/article7890162/.

68 See S/2014/726, annex 5.1.

⁶⁹ 2013 interview with Adam Smith International for the first draft of its report titled "Needs Assessment for the Extractives Industry in Somalia." A more detailed discussion of this report is presented in Annex 1.

In a letter to the SEMG dated 1 July 2015, Soma acknowledged that it had paid Park's fees during the SOA negotiation process, despite the apparent conflict of interest doing so entailed:

"It was of the utmost importance for Soma Oil & Gas and the Federal Government, that both parties had independent legal advice during the negotiations. As the Federal Government was unable to pay for this advice which transpired late in the negotiations, the Federal Government asked if Soma would cover its legal expenses. The Company's board took extensive independent legal advice before proceeding to do so."⁷⁰

Park acknowledged that his firm PRA had received USD 494,564.85 from Soma, through the then-Ministry of National Resources, for legal services rendered from 3 June 2013 to 6 August 2013.⁷¹ Park informed the SEMG that on 6 August 2013 – the same day the SOA was signed – then-Minister Abdirizak Omar Mohamed "issued a written direction to Soma to pay the fees associated with our work for the FGS in relation to Soma."⁷²

Soma failed to provide a response to the Monitoring Group's inquiry regarding the size of the payment the company had made to Park.⁷³ However, both Soma and Park confirmed that the company had issued payment to PRA on 18 December 2014.⁷⁴ Between 6 August 2013 and 18 December 2014 Park continued to legally advise the Ministry on numerous matters, including the Capacity Building Agreement. PRA remains on retainer with the Ministry to the present day, though Park told the Monitoring Group that the last legal request he had received from the Ministry was in March 2015.⁷⁵

Engagement with Soma and FGS officials

The Monitoring Group contacted each of the Ministry officials profiled above, informing them of its investigations and that their names will appear in this communication to the Committee. As of 24 July 2015, Farah Abdi Hassan, Mohamed Ali-nur Hagi, Dr. Abdi Mohamed Siad, Abdirizak Hassan Awed, Jay Park, and Mohamoud Yousuf Ali had been interviewed by the Group.

⁷⁰ S/AC.29/2015/NOTE.25/Add.4, 1 July 2015.

⁷¹ Letter from Jay Park to the SEMG, 19 July 2015.

⁷² Letter from Jay Park to the SEMG, 19 July 2015. Park's account was confirmed by Soma in the company's 24 July 2015 letter to the Group.

⁷³ Letter from Soma to the SEMG, 24 July 2015.

⁷⁴ Letter from Jay Park to the SEMG, 19 July 2015; letter from Soma to the SEMG, 24 July 2015.

⁷⁵ Letter from Jay Park to the SEMG, 19 July 2015.

In a June 2015 interview with the Monitoring Group, H.E. Mohamed Mukhtar, FGS Minister of Petroleum and Mineral Resources, categorised Soma's Capacity Building Agreement as furnishing "basic support salaries for these individuals that we need at the Ministry, but cannot afford to employ." He also assured the Group that Soma had received no benefit, and would receive none in future, as a result of payments the company had made to the Ministry. Minister Mukhtar further stated that he would entertain "no discussion...that those who were paid had, or will have, any influence on oil deals."

On 18 June 2015, the Monitoring Group sent a letter to Soma CEO Robert Sheppard, requesting that the company provide information on a number of the matters discussed above.⁷⁷ Soma sent a reply to the Monitoring Group on 1 July 2015 and another on 24 July in response to the Group's follow-up questions, much of the content of which has been cited in the preceding discussion.

Findings and Recommendations

The Monitoring Group considers that the circumstances described above constitute both misappropriation, and facilitation of misappropriation of public resources by officials of the FGS and by Soma in violation of paragraph 2 of resolution 2002 (2011) and paragraph 2 (c) of resolution 2060 (2012). The Monitoring Group has had indications that the Ministry intends to sign a revised PSA with Soma as early as August 2015, which influenced the Group's decision to submit the following recommendations to the Committee prior to the submission of its final report in October. The Monitoring Group therefore recommends that the Chair address a letter, on behalf of the Committee to the FGS:

- (i) Urging the FGS to investigate and undertake prosecutions, where appropriate, of individuals and entities found to have been engaged in misappropriation of public resources in violation of the sanctions regime, where this conduct also constitutes violation of applicable national laws;
- (ii) Urging the FGS to take steps to ensure that the requirements of Somali national law are fulfilled with respect to the Soma agreements described above, including as regards their publication, review and presentation for discussion and assent by the Federal Parliament;
- (iii) Encouraging Soma and the FGS to work together to ensure that the data collected in Soma's offshore seismic survey, which rightfully belongs to the people of Somalia, is

⁷⁶ SEMG interview with H.E. Mohamed Mukhtar, 29 June 2015.

⁷⁷ S/AC.29/2015/SEMG/OC.23, 18 June 2015.

transferred as soon as possible into the possession of the FGS, including through the construction of the appropriate data room.

More broadly, the findings of this investigation reinforce the Group's previous calls for the implementation of clear legal and policy frameworks governing the engagement of the extractives industry in Somalia. In particular the FGS should be encouraged to apply its existing legislation, particularly the 2008 Petroleum Law, in the management of both current and future oil and gas contracts. As required by this legislation, it is critical to establish an independent Somali Petroleum Authority to serve as regulator for the industry.

Finally, in light of the material presented above, and against the background of the Security Council's call to the FGS "to mitigate properly against the petroleum sector in Somalia becoming a source of increased tension in Somalia," the Monitoring Group recommends that the Committee consider the Group's longstanding recommendation of a moratorium on oil and gas agreements in Somalia until a federal resource-sharing framework is in place, and viable federal and regional institutions are established to govern the extractives sector effectively.

The Monitoring Group is continuing its investigation into Soma Oil & Gas Holdings Limited, to be presented in its final report on Somalia. In the meantime, the Group remains available to the Committee to provide additional details as may be required or to answer any questions the Committee may have.

Please accept, Excellency, the assurances of my highest consideration.

Christophe Trajber
Coordinator
Somalia and Eritrea Monitoring Group
Security Council resolution 2182 (2014)

⁷⁸ Preamble, United Nations Security Council Resolution 2182 (2014).

Annex 102

Somalia DOALOS Page, updated 10 April 2017

SOMALIA

Updated 10 April 2017

SUBMISSION IN COMPLIANCE WITH THE <u>DEPOSIT OBLIGATIONS</u>
PURSUANT TO THE UNITED NATIONS CONVENTION ON THE
LAW OF THE SEA (UNCLOS)

M.Z.N. 106. 2014. LOS of 3 July 2014: Deposit of a list of geographical coordinates of points

Originals of deposited geographical coordinates of points

Relevant articles of UNCLOS: 75(2), 84(2) Law of the Sea Bulletin: No. 85

Communications received by the Secretary-General in connection with the deposit of charts and/or lists of geographical coordinates of points

- **Djibouti:** Note Verbale dated 31 January 2017: <u>French</u> | English (pending)
- Yemen: Communication dated 25 July 2014
- Yemen: Communication dated 10 December 2014

OTHER INFORMATION

Legislation

- Law No. 37 on the Territorial Sea and Ports, of 10 September 1972 (transmitted by a letter dated 20 December 1973 from the Permanent Representative of Somalia to the United Nations addressed to the Secretary-General)
- Law No. 5 dated 26 January 1989 approving the Somali Maritime Law of 1988 (not available)
- Law No. 11 dated 9 February 1989 relating to the ratification of the United Nations Convention on the Law of the Sea (not available)
- Decree No. 14 dated 9 February 1989 relating to the instrument of ratification of the United Nations Convention on the Law of the Sea
- Proclamation by the President of the Federal Republic of Somalia, dated 30 June 2014
- Outer Limit of the Exclusive Economic Zone of the Federal Republic of Somalia, dated 30 June 2014

Maritime boundary delimitation agreements and other material

with Kenya

Memorandum of Understanding between the Government of the Republic of Kenya and the Transitional Federal Government of the Somali Republic to Grant to Each Other No-Objection in Respect of Submissions on the Outer Limits of the Continental Shelf beyond 200 Nautical Miles to the Commission on the Limits of the Continental Shelf (entry into force: 7 April 2009, registration #: I-46230; registration date: 11 June 2009; link to UNTS) (see also Law of the Sea Bulletin No. 70) *

Additional relevant material

Somalia: Letter dated 17 February 2015 from the Secretary-General addressed to the President of the Security Council <u>S/2015/122</u>

^{*} By a note verbale dated 2 March 2010, the Permanent Mission of the Somali Republic to the United Nations informed the Secretariat that the MOU had been rejected by the Parliament of the Transitional Federal Government of Somalia, and "is to be hence treated as non-actionable."

Annex 103 East African Standard extracts, 21, 23 and 24 September, 5 and 6 October 1970



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U.S. firm to mine Katanga copper

Ghana's cocoa industry



Annex 103

Canadian

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Top Ten

MOMBASA SHIPPING MOVEMENTS

FARRELL LINES

A New Shipping Line

'not too

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11 defenders named for Zanzibar

OPES RISE AFTER -0 WARM-UP WIN

THE FAIRVIEW

The Country Hotel in Town



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East African Standard



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boat arrested

Another Kenya fishing boat was arrested by a Tanzania patrol off Pemba on Friday, taken to the island and detained there for 24 hours.

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- NAZIR RAHIM

East African Standard



BLOOD PETITION FOR THE 'BRIDES'

Dr. Nyerere asked 'free slave wives' A group of 24 prominent Muslims in Dar es Salaam MIKHAN'S MAKE have petitioned President Nyerere asking him to

rescind the forced marriages that took place on Zanzibar last month. Their petition, which the signatories have signed in blood, urges the Tanzania President

signed in blood, urges the Tanzania President to intervene "with great urgency" and securethe release of the four girls forcibly married on Sunday, September 6, at 9,30 here of the secure of the s

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Annex 104

P. Giorgio Scorcelletti and B. M. Abbott, Petroleum Developments in Central and Southern Africa in 1978, *The American Association of Petroleum Geologists Bulletin* V. 63, No. 10, pp. 1689-1742, October 1979, p. 1694

Petroleum Developments in Central and Southern Africa in 19781

P. GIORGIO SCORCELLETTI and B. M. ABBOTT²

Abstract This review presents developments on petroleum exploration and production activity during 1978 in 45 countries of central and southern Africa.

Petroleum was produced in 7 countries with a cumulative production of 851,285,310 bbl (2.33 million b/d), an 8.6% decrease from the 1977 production level. Production increases were reported in Cameroun (93%), where the Ekoundou field went on stream at the end of 1978, and Congo (25%). Ghana recorded its first production from the Saltpond field in October 1978. These increases were offset by larger decreases in Angola (21%), Gabon (6%), Nigeria (9%), and Zaire (20%). Total annual gas production decreased 15% to 510, 600 MMcf (1,399 MMCFGD).

Surface exploration work increased 34% to 210.75 party-months, including 185.1 party-months of seismic, 13.6 gravity, 10.05 magnetometer, and 2 geology.

A total of 252 wells was drilled, an increase of 7 wells (3%) from 1977. Exploratory drilling was 114, the same as in 1977; 48 of the exploratory wells were discoveries, a success rate of 42%.

New-field discoveries were reported in Nigeria (22), Cameroun, Gabon, Angola, Chad, Ivory Coast, Congo, Ghana, and Zaire. A total of 66 unsuccessful wildcats was drilled in 10 countries.

Development drilling amounted to 138 wells in Nigeria (69), Congo, Cameroun, Gabon, Angola, and Ghana, with a 91% compounded success rate. Total wildcat and development footage was 2,084,694 (635,417 m). At year end 34 rigs were operating.

HIGHLIGHTS (Figs. 1-3; Tables 1-6)

Petroleum exploration permits were in force in 28 of the 45 countries covered by this review. Relinquishment of acreage held under concession occurred in Angola, Cameroun, Central African Empire, Gabon, Gambia, Ghana, Ivory Coast, Kenya, Madagascar, Nigeria, Senegal, Somali, and Tanzania.

New permits and concessions were granted in Angola, Congo, Gabon, Gambia, Ghana, Guinea Conakry, Ivory Coast, Mali, Niger, and Seychelles. Oil companies acquired interests in existing permits in Cameroun, Gabon, Ivory Coast, Mali, and Zaire.

Surface exploration was performed in 11 countries. Total geologic and geophysical exploration added up to 210.75 party-months, an increase of 34% compared with 1977. Seismic activity, mostly in Nigeria, Gabon, Cameroun, Chad, Ivory Coast, and Niger, amounted to 185.1 party-months, an increase of 35% from 1977. Gravity surveys were conducted in Niger, Gabon, Cameroun, and Congo. Magnetometer surveys were performed in Niger, Gabon, Seychelles, and Cameroun. Seismograph and magnetometer activity increased from the previous year.

The volume of drilling activity in 1978 reached a high level at 252 wells total for central and southern Africa versus 245 wells in 1977. Most of the drilling effort was reported from Nigeria with 104 wells in the exploratory and development categories.

Considerable drilling activity also took place in Cameroun (27 oil, 3 gas, 12 dry), Gabon (17 oil, 2 gas, 16 dry), Congo (24 oil, 5 dry), and Angola (5 oil, 8 dry). The compounded success rate was 69% compared with 68% in 1977.

The total number of exploratory wells was 114, the same as 1977; oil well completions totaled 41, gas wells 7 (versus 36 and 7, respectively, in 1977).

Development drilling activity increased to 138 units, or 5% greater than 1977. Nigeria again was the most active country with 69 wells drilled, of which 65 were successful.

Considerable development activity also occurred in Congo (23 oil, 0 dry), Cameroun (19 oil, 2 dry), and Gabon (13 oil, 2 dry). The success rate for development wells was 91% compared with 94% in 1977.

Wildcat and development footage increased to 2,084,694 (635,415 m) or 7% more than 1977. Average well depth was 8,273 ft (2,521 m), compared with 7,951 ft (2,423 m) in 1977.

At year end, 34 rigs were operating compared with 39 for 1977.

Annual oil production was 851,285,310 bbl, a decrease of 8.6% from 1977. The change resulted from decreased production in Angola, Gabon, Nigeria, and Zaire as a result of natural field depletion, but also owing to allowables, market demand, and operational circumstances. This decrease offset local increases in Cameroun, Congo, and Ghana, where new fields were placed on pro-

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¹Manuscript received and accepted, June 18, 1979.

²Gulf Oil Exploration and Production Co.-International, Houston, Texas 77001.

Article Identification Number 0149-1423/79/B010-0004\$03.00/0

each by Agip, Elf, and Gulf; and 1 by Texaco) and 1 was a gas discovery (by Shell-BP). The wildcat success rate was 63%, or 15% higher than in 1977. Of a total 69 development wells, 60 were oil and 5 were gas wells (33 oil and 5 gas wells by Shell-BP, 12 oil wells by Gulf, 8 oil wells by Agip, 5 oil wells by Mobil, and 1 each by Elf and Pan Ocean). The development success rate was 94%, or 1% higher than 1977.

Although much of the drilling was onshore, as in the previous year, the exploration drilling program in 1978 was notable for venturing beyond the better known main part of the delta into the outlying, relatively poorly known fringe areas and the deeper water shelf. Examples of delta-fringe tests are Shell Pologbene-1 in OML 1 (a discovery) and 2 others in OML 1 and OML 5 in the northern Niger delta margin, still being drilled at year end. Not far from Pologbene-1, Gulf discovered a new field, Opuekeba-1X, just southwest in the OML 49 swamp area. In the deeper shelf offshore, Gulf spudded Obokun-1X in OML 89 (a discovery) which was still being drilled at year end. Mobil discovered oil in similar water depth in OML 70 with well Nkuku-1.

In general hydrocarbons were found in all types of environments, from continental to paralic and marine, in sandstones ranging in age from Pleistocene to Cretaceous. Typical structural entrapment is the rollover anticline associated with growth faulting.

In-field drilling was reported in 49 fields, including 25 Shell-BP fields. Footage drilled was 687,207 (209,461 m) for development, and 381, 245 (116,203 m) for exploration, totaling 1,068, 452 (325,664 m). About 15 oil rigs were operating as of December 1978.

Crude oil production decreased in the first half of the year, but started increasing toward year end because of the Iranian production shutdown. Average production was 1,910,349 b/d in 1978 versus 2,100,074 b/d in 1977. However, in December 1978, the daily average was 2,383,091 bbl

NNPC and her joint-venture partners plan to drill 54 exploratory, 59 development, and 24 appraisal wells in the Niger delta areas. Thus, a total of 137 wells would be drilled in the offshore, swamp, and land locations in 1979.

SÃO TOMÉ AND PRINCIPE (Fig. 26)

Ball and Collins continue to be the sole right holder on the 2 islands. No exploration activity was carried out by them during 1978, and the permit boundaries remain unchanged.

SENEGAL (Fig. 15)

Pecten and Esso have both withdrawn from the

area leaving the new group of Shell Senrex and Deminex. Three permits were relinquished by the Shell group, leaving only 2 offshore permits in force. No exploration activity was reported for 1978.

SEYCHELLES (Fig. 27)

The Burmah group was granted an extension to the area it already held under their exploration agreement to bring their total area to approximately 17,700 sq km. The Burmah group carried out a seismic survey of unknown extent during December but no drilling activity was undertaken.

The Oxoco group conducted a 160-km seismic survey (0.5 party months) across their acreage. No drilling activity was reported.

Siebens' activity in the Seychelles was confined to the acquisition of approximately 1,400 km of seismic data and associated marine magnetometer work. Following the interpretation of this data, 4 blocks (37/11, 39/18, 84/11, and 85/8) were relinquished.

Owing to the poor response from the industry, the deadline for the second round of applications in 1978 was extended indefinitely.

A second phase of detailed seismic work was in progress at year end. On this basis, Siebens could make a commitment to drill in 1979.

SIERRA LEONE

No agreements on awarding permits and no exploratory activities were reported in 1978.

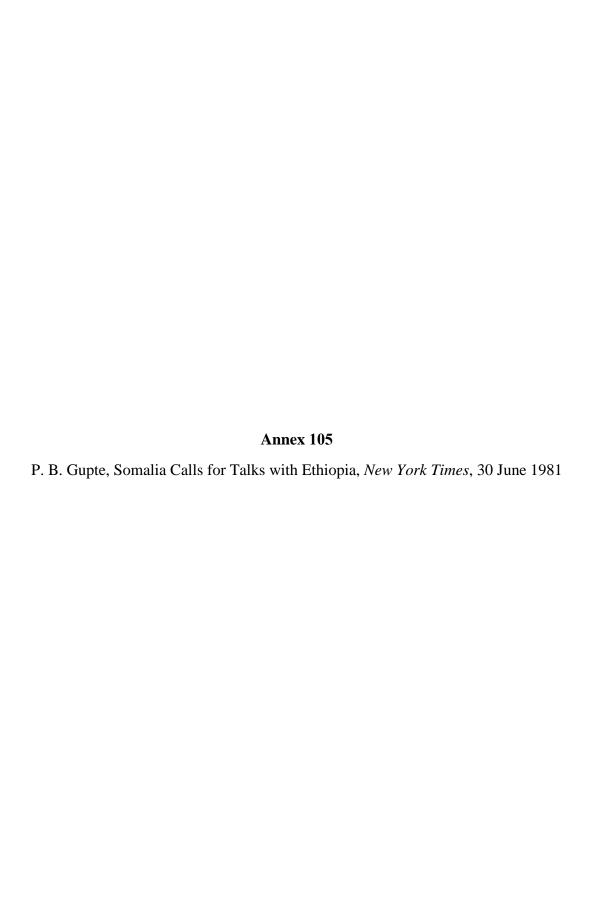
SOMALI REPUBLIC (Fig. 28)

Elf-Aquitaine relinquished its remaining permits on May 19, 1978. There are no petroleum rights in force in the Somali Republic. No exploration activity has been reported.

SOUTH AFRICA (Fig. 29; Tables 50-52)

Soekor's onshore exploration activity in the northern Karoo was completed as of February 1978, when borehole HF1/77 reached a total depth of 361.23 m. The well was abandoned as dry and no further exploration is envisaged. Preparatory work was undertaken during 1978 prior to the spudding of the Melville 308 stratigraphic test in the Port Elizabeth area. Four dry holes were drilled by local concession holders; SCH 2/77 by Black Gold Petroleum, PP 1/77 and GP 1/77 by A. J. Jonker, and AA 1/77 by A. E. Schafer.

Soekor drilled 4 wells on the Agulhas Bank, using the Sedco K semisubmersible. A fifth well was spudded at year end. Of these wells, GA-E2 encountered minor gas on test, Hb-C1 was dry,



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June 30, 1981

SOMALIA CALLS FOR TALKS WITH ETHIOPIA

By PRANAY B. GUPTE, Special to the New York Times

NAIROBI, Kenya, June 29— President Mohammed Siad Barre of Somalia said here today that he was prepared to meet immediately with the Ethiopian leader, Col. Mengistu Haile Mariam, to hold "peace negotiations" over the disputed territory of the Ogaden.

"Let us talk without any preconditions, let us finally have a dialogue of real sincerity," the 62-year-old President said in an interview here. "We have been antagonists for too long. We seek now a peaceful solution to the problem."

The Somali leader, who attended a five-day meeting of the Organization of African Unity that ended yesterday, also said in the interview that he would try to exert his influence on the guerrilla organization that is fighting to free the Ogaden region from Ethiopia and persuade the group to cease its hostilities. Mr. Siad Barre said that although his Government provided "moral, political and diplomatic support" to the guerrilla group, known as the Western Somali Liberation Front, Somalia did not and would not give the rebels weapons or training. No Comment From Ethiopia

Colonel Mengistu, who attended the O.A.U. meeting, left Nairobi yesterday and was unavailable for comment. Ethiopian diplomats based in Nairobi, when informed of some of President Siad Barre's remarks, withheld comment and said any official reaction would have to come from Addis Ababa, the Ethiopian capital.

In the past, the regime of Colonel Mengistu has not responded to signals from Somalia concerning a settlement. President Siad Barre also said Somalia was seeking "accommodation" with Kenya, with whom Somalia has had a border dispute for many years.

"Somalia is not seeking any territorial gain from Kenya," Mr. Siad Barre said. "We are for accommodation. We are not seeking any territory from Kenya."

The area in question is settled mainly by ethnic Somali tribes whose territory was divided up by Africa's colonial powers. Kenya says that Somalia wants to annex the area, known as the Northeastern province, and there has been heavy fighting there in recent months.

Mr. Siad Barre said that he had met privately with President Daniel arap Moi of Kenya to discuss the subject and that there would be more such meetings to resolve the dispute. "We are trying to reach an understanding and remove the obstacles," the Somali leader said. He went on, "But our relations with Kenya won't be brotherly unless this is settled."

The Somali President stressed in the interview that both Ethiopia and Somalia had incurred great military and economic losses because of their disputes.

"We need cooperation with Ethiopia in a brotherly way," President Siad Barre said, speaking in English. "Now is the time to find a way out. After our long, long struggle, there should now be reflection."

Although Mr. Siad Barre did not directly say that Somalia would give up its claims to the Ogaden region, he said in response to a question about the territory, "Somalia already has a very big territory. We don't want expansion."

President Siad Barre pointed out that the dispute with Ethiopia, which has gone on for more than six years, had drained his country's economic resources to a point where funds for economic development were scarce. Somalia spends more than a fourth of its annual gross national product of \$425 million on the military, according to the London-based International Institute for Strategic Studies.

The Somali leader said that he would "greatly welcome" initiatives from any of the Western powers, the United Nations and other African and Arab countries to get the process going for negotiations with Ethiopia.

Somalia has said that as a result of the Ogaden crisis, more than 1.5 million refugees have entered its territory and placed even greater strain on its economy.

"With the Soviets on their side, the Ethiopians have been intransigent," President Siad Barre said. "We both have many similarities in culture. If we both had been wise, we would have agreed a long time ago and directed our efforts in a joint cooperation."

He continued, "So let's find a way for a fair, long-lasting political solution. Let's finally get together."

Illustrations: photo of Guerrillas training with Russian-made AK-47 automatic rifles

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Annex 106 Demonstrators Protest Exploration Deal in Somalia, World Oil, March 2001

looking ahead

Oil firms' projected 2001 budgets show increased E&P spending. Oil companies' huge profits last year, especially in the fourth quarter, were the result of one main factor—record-high oil and gas prices. Most firms plan to funnel these additional funds back into E&P activities. For instance, USX-Marathon Group's projected 2001 budget for its capital, investment and exploration activities reflects a 9% increase, to \$1.8 billion from the \$1.64 billion spent in 2000. Phillips Petroleum. whose fourth-quarter profits more than tripled, plans to spend about \$2.5 billion (25% more than the previous year's figure) most of which will be for E&P activities. After increasing capital and exploration spending by 11% in 2000. ExxonMobil expects to enhance its 2001 CAPEX in the range of 15% to 20% more than the \$11.144 million spent in the previous year Large independent Devon Energy expects its L&P CAPEX to be about \$1.1 billion this year. The projected E&P budget will be the largest in the firm's history.

Marathon Oil is latest to settle royalty dispute. Marathon Oil has opted to negotiate settlements with the U.S. government rather than go to trial on allegations that it underpaid royalties to leased federal and Indian land between 1988 and 1998 The Houston-based firm will pay \$7.7 million, bringing the total federal settlement from 14 oil companies to more than \$408 million Marathon Oil is one of 17 firms caught in a private whistle-blower lawsuit, originally filed under the False Claims Act in U.S. District Court in Lufkin. Texas. The suit accuses the companies of paying royalties based on a posted wellhead price rather than so-called fair market value. It alleges that, together, the firms submitted more than 5,000 false claims; thus, damages and penalties might exceed \$5 billion. Although the case is scheduled for this month, the government already has received payments from BP, Chevron, Conoco, Mobil Oil, Oxy USA, Devon Energy Production, UPRC, Sunoco, Texaco, Kerr-Mcgee, ExxonMobil. Shell Oil and Burlington Resources The government is still attempting to settle with two remaining firms.

India's second licensing round on schedule. Indian Oil Minister Ram Naik said that this year's auction promises to attract strong international interest, despite the first-round disappointment in 1999, when no bids from major multinational oil giants were received. His prediction is influenced by an assumption that "there are very good prospects and the earlier era of delays and red tape is gone." There are 25 blocks, spread over 13 geographical basins on and offshore India. that are being offered. Of the 25 blocks, eight are in deep water (in excess of 1,312 ft) off the western coast. Another eight are in shallow water, and nine are onshore blocks. Submission deadline for bids is the end of this month.

Cuba plans to explore oil in deep waters of GOM. Cuba intends to explore oil and gas in its economic exclusive zone of the Gulf of Mexico. Partnered by Spanish firm Repsol-YPF, Cuba's Cubapetroleo (CUPET) will explore six of the 60 blocks into which the 4,067-sq-mi exploration zone is divided. The zone covers an area equal to almost 50% of Cuba's territory, and it lies in water depths of 3,280 ft to 4,920 ft. Repsol-YPF will provide the initial capital for at least two exploration wells. If these wells are successful, the amount of drilling will be increased, and the firms will share the earnings.

GOP senators propose energy bill. Republican energy legislation, introduced last month, focuses on boosting clean coal technology, revitalizing the nuclear industry and finding new sources of oil and natural gas, including opening up the Arctic National Wildlife Refuge to oil and gas development. The legislation purports to cut foreign imports from the current 56%. to 50% by 2010. However, it does not address the question of electricity's reliability, nor its deregulation. Sen. Frank Murkowski (Republican-Alaska), chairman of the committee that will review the legislative package, met with Vice President Dick Cheney (who heads a presidential task force on energy) to discuss the bill Murkowski said the meeting highlighted the fact that the country faces an energy crisis, and ways must be found to produce more energy and rely less on imports

Canadians puzzled by Bush energy policy plan. Canadian officials and petroleum industry leaders are confused by U.S. President George W. Bush's request for the creation of a North American energy policy that embraces the U.S., Canada and Mexico. Canadian Foreign Affairs Minister John Manley admitted that even he was still not clear "what the US is contemplating or seeking through a continental energy policy" Judith Dwarkin, global energy vice president with the Canadian Energy Research Institute, said there is already "total harmonization" in the continental oil and gas sectors, and similar progress in the electricity sector. Bush may be thinking more of lowering some barriers with Mexico, whose oil industry was exempted from the North American Free Trade Agreement, she said

Demonstrators protest exploration deal in Somalia. An exploration deal was signed by the Somali transitional government's Water and Mineral Resources Minister, Hassan Abshir Farah, and TotalFinaElf's representative, Jean Francisco Immediately afterwards, thousands of demonstrators took to the streets of Baidoa in south-central Somalia to protest the deal Rahanwein Resistance Army (RRA) faction's deputy commander, Ibrahim Habsade, accused the French firm of indirectly fueling civil war in Somalia by signing an agreement with a government that does not represent all Somalis. The contract allows the French oil group to explore for oil for 12 months, off the coast of southern Lower Shabelle and Juba Valley Somalı warlord Osman Hassan Ali "Atto" also criticized the agreement, calling it "illegal and risky."

Annex 107

T. Griffiths, Woodside's Kenya Deal Raises Hopes: Is East Africa the Next Big Thing?, African Energy, June 2003, pp. 4-6

Woodside's Kenya deal raises hopes: is East Africa the next big thing?

New studies, and new exploration contracts, suggest there may be oil off the coast of East Africa after all. Can it be that East Africa really is the next big thing for oil companies, asks **Thalia Griffiths**.

o far East African exploration has attracted mainly smaller companies, but the Kenya farmin by Australia's Woodside Energy suggests there may be more to the region than previously thought. And just as it has been in frontier areas of West Africa, the exploration is being led by risk-hungry Australian companies.

The East African Petroleum Conference held in Nairobi in March raised several companies' interest in the region. Aminex is spudding a well off Tanzania in August, and France's Maurel & Prom, Royal Dutch/Shell and Brazil's Petrobras are on the verge of signing for acreage off Tanzania after lengthy negotiations (AE 56/7). Canada's Antrim Energy has completed phase one of its Tanzania programme, and Malaysia's Petronas is exploring the Zambezi Delta in Mozambique.

Woodside has taken a 40% operating stake in Dana's four blocks in the Lamu basin, saying it hopes to reproduce its success offshore Mauritania. Woodside will operate blocks L5, L7, L10 and L11, which cover 47,500km² in water depths of up to 3,000 metres. This acreage includes some onshore areas and coastal waters.

Woodside's commitment under the farm-in is limited to the acquisition of 5,000km of 2D seismic in 2003-04 at a cost of \$3m. After two years, the joint venture has the option of entering a second exploration phase, which would include drilling of one exploration well in each of the blocks renewed.

Dana's interest in the blocks will be 40% with the remaining 20% continuing to be held by Star Petroleum International (Kenya), a wholly-owned subsidiary of Brisbane-based Global Petroleum, which listed on the Australian Stock Exchange in November.

Woodside public issues manager Rob Millhouse told *African Energy* the deal's attraction was that it provided a low-cost entry point for Woodside to develop its knowledge of the region's geology, with an easy exit if necessary before the company had to commit to any drilling programme.

The contract for seismic work is being finalised. Millhouse expected the survey to be done by end-year. "If we find it does not support viable drilling prospects, we can walk away," he said.

Shell's enduring interest

Shell, which owns 34% of Woodside, has been interested in the region for some time. Director of new ventures Agu Kantsler said a study of East Africa by Woodside had identified a variety of geological features with a range of leads of 50m to 1bn barrels.

"Our review identified East Africa as an underexplored frontier province that has the potential to replicate Woodside's successful exploration strategy in Mauritania," Kantsler said in a statement. "Kenya's oil and gas exploration industry has been virtually inactive since the early 1980s and this opportunity provides Woodside with a relatively low-cost entry to a very large area which we can mature by using our strong technical skills and leveraging from our success in deep water off Mauritania."

Between the 1950s and 1971, Shell and BP drilled 11 wells off Kenya, without finding hydrocarbons. In the 1970s and 80s, companies including Chevron, Total, Amoco, Petro-Canada and Texas Pacific drilled another 17 wells. Shell drilled another two wells off Mombasa in the early 1990s that had oil shows. Star Petroleum brought in Dana as a farm-in partner in 2001, and in 2002, British Virgin Islands-registered Afrex signed for blocks L6, L8 and L9, alongside Australia's Pancontinental Oil & Gas (AE 55/16).

During the negotiations for the acreage, Afrex was acquired by Black Rock Oil & Gas, another Australian junior.

"It's a frontier region, relatively unexplored, and we see some analogies with West African geology," said Millhouse.

The region presently imports almost all of its fuel needs. Kenya has proposed building an oil pipeline from Sudan, although the high cost of such a venture makes it unlikely in the short term. An increase in regional exploration activity could benefit firms such as Otterbea International, the logistics business acquired by DiamondWorks last year.

Improved energy supply could provide a valuable boost to the Kenyan economy, and to the government of President Mwai Kibaki, which faces the Herculean task of bringing about a recovery after decades of corruption and stagnation. Millhouse said the early signs of reform were encouraging.

Report highlights hopes for region

UK consultants Jebco Seismic and Global Exploration Services (GES) have completed a report on the East African margin, and are negotiating contracts for multi-client seismic with governments in the region.

"It really is the year of East Africa," Jebco's Chris Matchette-Downes told *African Energy*.

East African exploration success so far has been limited to gas, which is being harnessed for power in projects such as Tanzania's Songo Songo, and Sasol's project in Mozambique to pipe gas from the Pande and Temane fields. "Company after company has gone in over the past two or three decades and dismissed it as gas prone at best, but now we're seeing there's plenty of evidence of oil potential," said Matchette-Downes.

The authors re-examined the logs from a well drilled by Phillips in May 2000 in the Durban basin and found a lot of evidence of hydrocarbons that had not been reported, perhaps because the quantities were not commercial and the partners did not want the expense of a second well.

"There's not enough to claim a commercial discovery, but it does provide evidence of a major source-rock structure," Matchette-Downes said.

Until now, East Africa has been seen as a region with limited hydrocarbons prospectivity. The region lacks exposed, quality source rocks and dry holes drilled in the past have been assumed to prove the lack of a source. Yet its supporters note that there are as many oil and gas seeps in East Africa as in West Africa, and new ones are still being found.

Western Madagascar hosts one of the world's largest heavy oil accumulations – larger than many of the West African basin-margin asphalts.

The Jebco-GES report reviews previous studies by Western Geco of deep-water Tanzania in 2000 and by Exploration Consultants of Mozambique's Pande and Temane gas fields in 2001, as well as considering why Madagascar has so far failed to fulfil its apparent potential.

It uses satellite-derived gravity maps to divide the East Africa offshore, from southern Somalia to northern South Africa, together with western Madagascar, into segments for which the prospectivity is assessed and regionally ranked.

Drift section potential

According to the report, whose main author is GES's Nick Cameron, the most favourable areas for reservoir development are those where the drift section is thickest and contains the best quality sand developments. These are associated with either main river mouths or with clusters of smaller rivers, and are positioned along the hanging wall of the

continental hinges in deep-water settings. Sand delivery and the overall sediment supply volume increased in the younger Tertiary, but there are also multiple Cretaceous depocentres, many with reservoir quality sands.

The report predicts oil-prone source rocks in the deep-water Somali and Mozambique basins from the mid-Jurassic rift-drift transition upwards into the drift section and possibly in beds as young as Turonian. The source sequence is predicted to be of regional extent in the Somali Basin, and may also be more widespread in the Mozambique Basin.

GES says excellent quality and richness characterise the rift-drift transition source sequences of Tanzania and Madagascar, and predicts an end-Jurassic to probably Turonian source section for the Durban Basin, where oil-prone sources are expected in present-day deep-water settings.

The report says that basin modelling shows the oil window is preserved where the section is overpressured beneath a thicker section and extends further out into the deep water than indicated by conventional time-temperature models. In addition to the deep-water sand opportunities, footwall traps positioned along the hinge line present attractive targets for charges released following the failure of over-pressured cells. Ongoing tectonism related to the growth of the East Africa Rift and the reactivation of the Davie Fracture Zone has created multiple opportunities for this method of hydrocarbons delivery.

Mozambique activity

Ambitious independent Vanco Energy Company has carried out two 2D seismic surveys on Madagascar's Majunga Offshore Profond block.

Mozambique has yielded only gas so far, but Malaysia's Petronas has an E&P contract for the offshore Zambezi Delta block.

Tanzania potential

Tanzania has seen slightly more activity than the rest of the region in recent years. As well as the Songo Songo gas field development, exploration is starting to pick up, with Shell finalising a production-sharing contract with Tanzania Petroleum Development Corporation for Blocks 9-12.

Canada's Antrim Energy lifted *force majeure* on its Pemba Zanzibar concession in April 2002 and plans seismic and one well in a new four-year contract period likely to focus on exploration of the North Pemba prospect.

London-based Aminex, which took over Australian firm Tanzoil's Tanzanian interests in 2002, has secured an F200 rig from Romania's Dafora Group for

East African oil & US strategy

a drilling programme on the Nyuni offshore licence, comprising two wells with an option for two more.

Nyuni-1 is due to spud in early August and drilling of a second well on a separate structure is expected to continue into early 2004. Estimated cost of the initial two wells is \$10m. Romania's Petrom farmed into the licence, which lies adjacent to the Songo Songo gas

field, in December 2002, taking 30%.

Aminex said Nyuni-1 would be the first offshore well to be drilled in Tanzania for 12 years. "We believe that enormous oil and gas potential exists along the East African margin, which has only been very lightly drilled to date, and that it presents great opportunities," said chief executive Brian Hall.

Annex 108

Woodside Concise Annual Report, 2005, p.16





Concise Annual Report 2005

Africa

In Africa, Woodside is active as operator in the proven provinces of Libya and Mauritania, and Algeria as a non-operator.

In the frontier areas of Kenya and Liberia, Woodside operates several leases, while in Sierra Leone and the Canary Islands it is active as a nonoperator.

During 2005, Woodside further developed its Africa businesses, moving towards first oil from Chinguetti in February 2006. As Woodside's first international project as operator, Chinguetti established the company's credentials within Africa and internationally, with the project progressing from discovery to anticipated production in less than five years.

In 2005, Woodside was awarded offshore acreage in Libya's EPSA IV round one and in Liberia's first offshore licensing round, providing exploration opportunities and building Woodside's presence within Africa.

Woodside plans to drill 10 to 14 wells in Africa in 2006.

Algeria Ohanet Operations

Woodside Interest	1 = 0/
vvoodside interest	15%
Operator	BHP Billiton
Produces	LPG and condensate
Location	Onshore Illizi Basin in southern Algeria
Production Start	October 2003

In 2005, the Ohanet joint venture received its full revenue entitlement of \$71.2 million (gross), which equates to 1,355,449 barrels of condensate and 110,336 tonnes of LPG (calculated using a 10-year average price of US\$24 per bbl).

Algeria Exploration Block 401d

Title	ALG-401d				
Woodside Interest	26.25%				
Operator	Repsol YPF				
Location	Onshore, Berkine Basin, Algeria				
Interest Acquired	June 2002				

Woodside plans to drill at least one well onshore in ALG-401d during 2006.

Ksar Hirane

Titles	ALG-408a, 409
Woodside Interest	37.50%
Operator	BHP Billiton
Location	Onshore, Touggourt Uplift Basin, Algeria
Interest Acquired	September 2004

Mauritania Chinguetti Oil Project

Block 4 in Area B			
47.384%			
Woodside			
Offshore about 80 kms from the Mauritania coast			
~800 metres			
May 2004			
February 2006			

First oil from the Chinguetti oil field is anticipated in February 2006, which will mark the first hydrocarbons produced in Mauritania

Production is expected to peak at 75,000 barrels a day and the estimated field life is about 10 years. Oil is produced through wells on the seabed connected by flowlines to the floating production storage and offloading facility, *Berge Helene*, which will be permanently moored over the field.

Mauritania Exploration

Areas A, B, C2, C6, Blocks 7, Ta11 and Ta12, Chinguetti EP#
Area A and Area B – 53.846% in each, Area C2 – 41.75% Area C6 – 37.58%, Block 7 – 15.00%, Blocks Ta11, Ta12 – 75% Chinguetti EP# – 47.384%
Woodside
Offshore and onshore Mauritania
0 to 2,200 metres
1998 and 2004

EP - Exploitation Perimeter

Woodside drilled five exploration and appraisal wells in Mauritania in 2005 resulting in two discoveries, Tevét-2 and Labeidna-1 (commerciality is to be

determined), one successful appraisal and two dry holes.

The Sotto-1 (2005), Espadon-1 (2005) and Zoulé-1 (January 2006) wells were plugged and abandoned after no significant hydrocarbons were encountered. Acquisition of the Block 7 seismic survey was completed during the year.

Woodside plans to drill up to four exploration wells in Mauritania in 2006.

Kenya

Kenya Exploration

Titles	Blocks L-5, L-7			
Woodside Interest	50.00%			
Operator	Woodside			
Location	Offshore Kenya			
Water Depth	0 to 3,000 metres			
Interests Acquired	2003			

Woodside operates two blocks in Kenya covering 20,725sqkm. During 2005, Woodside continued to high-grade its portfolio withdrawing from one block and increasing its equity in the two remaining blocks. Acquisition of the Pomboo 2-D seismic survey was completed in early 2005 and interpretation continues.

Woodside is working to secure an offshore rig to drill a well in its Kenyan exploration permits before the end of 2006.

Libya Libya Exploration

Blocks NC205 to 210, 35, 36, 52, 53
NC205 to 210 45.00%, Block 35, 36, 52, 53 55.00%
Woodside
Onshore Sirte Basin in northern Libya with NC210 the Murzuq Basin in west Libya
November 2003, March 2005

Woodside was a successful participant in the Exploration and Production Sharing Agreement IV round one and was awarded four offshore blocks, Block 35, Block 36, Block 52 and Block 53.

Woodside's onshore and offshore acreage in Libya totals about 60,000sqkm.

Annex 109 Woodside Spuds Offshore Well; Kenya's Oil Future to be Determined in 2007, *IHS Same-Day Analysis*, 12 May 2006



Same-Day Analysis

Woodside Spuds Offshore Well; Kenya's Oil Future to Be Determined in 2007

Published: 12/5/2006

Kenya's first offshore well for 28 years has been spudded; the next 12 months should give a clear indication of whether Kenya will become an oil-producing country

Related Content

Energy Industry Analysis, Forecasts, and Data

Global Insight Perspective			
Significance	Woodside Petroleum has spudded a deepwater well in Block L5 offshore Lamu on the Kenyan coast. China is also set to prospect for oil in the country, having signed a deal earlier this year		
Implications	Residents of Lamu already believe they will be shortly enjoying huge oil riches; however, even if commercial oil deposits are discovered, this will not lead to local employment opportunities as the Lamu workforce is unskilled.		
Outlook	Kenya's upstream activities will also determine the scale of investment and the future of the country's downstream sector, with Mombasa's refinery either set to be expanded or shut down and turned into a mass storage facility for imported products. The next 12 months will determine Kenya's future as an oil producing nation.		

Drilling Begins for Oil in Kenya

Offshore drilling has begun in Kenya as Australia's Woodside Petroleum spudded the Pomboo-1 exploration well in deepwater Block L5. By the end of next year, when other test wells have been drilled, analysis of initial results should tell whether the country has the commercial deposits to become an oil-producing nation.

Woodside leads a consortium of independent exploration companies and is the operator in Block L5 with a 30% stake, Dana Petroleum (30%), Repsol (20%), and Global Petroleum (20%) are the other partners (see Kenya: 10 August 2006: Dana, Woodside and Global Petroleum Get Ready to Sink Exploratory Wells in Kenya).

Woodside has said that it will spend more than US\$90 million to drill a single well in Blocks L5 and L7 in the Indian Ocean. Woodside has previously stated that the Kenyan coast is "the most prospective part of East Africa with several large geological structures hosting multiple targets similar to those found on Australia's North-West Shelf". Dana Petroleum has also said that it believes that the blocks could contain over one billion barrels each. The first well is being drilled in 2,200 metres of water to a planned total depth of 5,005 metres. The drilling will be undertaken by the Japanese deepwater drilling vessel MV Chikyu.

Oil Deposits Will Not Bring Employment Opportunities

The drilling is taking place about 135 km off Lamu, but residents have already started believing that a future living off the riches of petrodollars is only a short time away. Mary M'Mukindia the managing director of Kenya's National Oil Co. (NOCK) is therefore having to calm the levels of excitement by organising seminars and public rallies to educate the local population. Even if commercial oil deposits are discovered in the Lamu basin, revenue is not expected to start rolling in until 2011-14. Another problem that the residents of Lamu are set to experience is that oil production would not increase the employment opportunities as the local workforce is largely unskilled and most jobs would be contracted out.

There is also the need for an independent environmental impact assessment as Lamu's waters represent the livelihood of its fisherman and despoliation of the environment would be a catastrophe for them and for the vital tourism sector. A National Environment Management Authority (NEMA) investigation is being carried out, but NEMA represents the government, which has a vested interest in oil being found in Lamu's deepwaters.

China to Prospect for Oil in Kenya

In April 2006, Chinese President Hu Jintao flew to Kenya to meet President Mwai Kibaki and conclude a deal for the China National Offshore Oil Corp. (CNOOC) to prospect for oil in mainly offshore areas (see **Kenya: 27 April 2006: Chinese President Agrees to Offshore Oil Exploration Deal During State Visit to Kenya**). Fu Chengyu chief executive of CNOOC Ltd, announced last week that the company's subsidiary, CNOOC Africa Ltd, would take on six production-sharing contracts (PSCs) in Kenya. These six PSCs cover Blocks 1, 9, 10A, L2, L3, and L4 in three basins of Lamu, Anza, and Mandera, with a total area of 115,343 sq. km. This marks the first time that CNOOC has explored in East Africa (see **Sub-Saharan Africa: 1 May 2006:China Increases Security of Supply**

with Energy Deals in Nigeria and Kenya). The agreement appears to be a low-risk investment for Kenya, with China taking on all exploration costs. While Kenya is seen as a highly prospective region, China's deal with Kenya can be seen as an insurance policy for its government, which is desperate to protect its investment in neighbouring Sudan, which ships the majority of its oil to Chinese markets. Most of Sudan's oilfields are in the centre or south of the country and the Kenya Pipeline Corp. (KPC) has offered to build a pipeline transporting oil from southern Sudan to the port of Lamu. This could protect Sudanese marketing routes in the event that the south of the country decides to secede under the terms of its sixyear interim peace agreement with the government in the Sudanese capital, Khartoum.

KPC managing director George Okungu told officials from southern Sudan that Kenya's position on the eastern coast of Africa and its experience in pipeline management would best enable Sudan to exploit its proven oil reserves (see Kenya: 8 April 2006: Kenya Pipeline Corporation Wants to Build Pipeline from Southern Sudan to Kenyan Coast). However, it is believed that a pipeline connecting south Sudan to the Kenyan coast would cost around US\$1.4 billion, which makes the idea very much a long-term project.

Outlook and Implications

Next year will be crucial in determining whether Kenya has a future as an oil-producing country. Woodside, which has already spent 852 million Kenya shillings (US\$12 million) in exploration work and seismic data since 2003, is committed to drilling at least two wells over the next 12 months, and it will sink 13 wells throughout Africa in the next year.

Kenya will be hoping the test results show hydrocarbon deposits, not least because its neighbour Uganda proved this year it has commercial amounts of oil and is set to become an oil-producing country by 2009. Ugandan President Yoweri Museveni has stated his government will launch an "Early Oil-Production Scheme" that will see the creation of a mini-refinery next year that will produce diesel, kerosene, and heavy oil by 2009. At a later date, the country will be able to produce gasoline (see Uganda: 10 October 2006:President Museveni Says Uganda Will Begin Producing Oil in 2009).

The question of whether Kenya discovers oil through its exploratory activities also has downstream implications. The Kenya Petroleum Refineries Ltd (KPRL) needs around 21 billion Kenya shillings (US\$300 million) to redevelop the country's Mombasa refinery; in its current state it is a burden on the economy. The inefficient refinery costs the taxpayer 5 billion Kenya shillings a year as a result of its poor performance; any upgrade to the refinery would need to enable it to produce environmentally friendly low sulphur diesel as the current refinery does not contain a de-sulphurisation plant. Also, by modernising the Mombasa refinery, one of the government's aims—of increasing Kenya's production of liquid petroleum gas—could be achieved. If drilling results show a future as an oil-producing nation, this could lead to a much larger expansion and investment in the Mombasa refinery.

However, if over the next 12 months no commercial oil deposits are discovered in Kenya it could lead to the refinery being shut down

and transformed into a mass storage facility for imported refined products. George Wachira general manager at the Petroleum Institute of East Africa said that it cost 2-3 Kenya shillings per litre more to refine a litre of fuel compared with importing refined products from the Middle East, where large and efficient refineries take advantage of economies of scale. (see **Kenya 1 November 2006: Inefficient Kenyan Refinery a Burden on Economy**). With Uganda already saying that it will construct a mini refinery on the basis of its known crude reserves, this could place Uganda in control of the East Africa fuels market.

Now the first well has been spudded in Kenya—the first offshore well for 28 years—the country has stepped up its programme to determine whether Kenya has a future as an oil-producing nation. This has been accompanied by the country's Energy Minister Kiraitu Murungi publishing a gazette of 38 exploration blocks in the country, in total covering 115,242 sq. km. Kenyans and energy industry observers will gain a clearer in 2007 as to whether the country will join Sudan and Uganda in having proven hydrocarbon reserves.



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Annex 110 Woodside Controlled Document, Pomboo-A Well Proposal, Block L-5 Deepwater, Kenya East Africa, June 2006, Extracts



(Strict Need-to-Know Basis)

CONTROLLED DOCUMENT

Title: POMBOO-1 WELL PROPOSAL, BLOCK L-5 DEEPWATER, KENYA EAST AFRICA, JUNE 2006.

DOCUMENT INFORMATION									
CDC No: B3700ZU2524268 DRIMS#		ORIMS#: 252	#: 2524268 Rev		DRIMS Classification (if applicable): COR/INF/085/v01		icable):		
Prepared by: El11 - Jonathan Hull			Date:	Date: 5/9/06		Signature:	Signature: Tomathem Wall		
Supervised by (if applicable): International New Ventures Manager - Stuart Brown				es Date: 5/9/06		Signature: Jopethan Wall Signature:			
Approved by: Head of Evaluation - Paul Senycia			Date: 6/9/6 S		Signature:	Signature:			
Custodian: Paul Senycia – wopps3						Signature:	ignature:		
CONCURRE	ENCE								
Name		Gr	roup	Date	Date Signature		re		
REVISION H	HISTORY								
Revision	Description		13	Date		Pre	epared by	Approved by	
Α	Issue for review		20/06/0	6	Geoff Freer		Stuart Brown		
В	Issue to Joint Venture		18/08/0	6	Johnny Hull		Stuart Brown		
0	Approved for Issue			08/09/0	6	Johnny Hull		Paul Senycia	
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	Confidential (Shared With Selected Personnel)			Review Not Required					
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Title: POMBOO-A WELL PROPOSAL, BLOCK L-5 DEEPWATER, KENYA EAST AFRICA, JUNE 2006.

1 PROSPECT SUMMARY SHEET

Well: Pomboo-A

Well Type: Vertical exploration well

Exploration Permit: Block L-5

Well Location: UTM Zone: 37S Datum: WGS84

(Pomboo Surface) Easting: 827222 mE Latitude: 01° 57′ 16.28″S

Northing: 9783679 mN Longitude: 41° 56′ 27.83″E

Seismic Reference: Line: W03KEN0049 Shotpoint: 2575

Trajectory: Vertical

Primary Objective: Maastrichtian basin floor fan sandstones,

Top @ $4805m \pm 200mTVDSS$

Secondary Objective: Maastrichtian – Palaeocene basin floor fan/toe of slope sandstones,

Top @ $3615m \pm 100mTVDSS$

Potential H/C Type: Oil and/or gas

Closure Area: ~28 km² (primary objective 350) ~30km² (secondary objective 330)

Closure Height: ~400 m

Trap: Structural – 4-way dip closure over blind thrust

Reservoir: Deepwater basin floor fan / toe-of-slope sandstones

Seal: Deepwater shales

Chance of Success: Probability of Success (POS): 12%

Hydrocarbon Volumes: Mean Success Volume (MSV) = 353 MMbbls recoverable

Key Risk: Charge (source presence and maturity), reservoir presence/effectiveness

Target Tolerance: Surface: 50m radius

Sub-surface: 320 Level – polygon (200x130x70), 350 Level - 200m

Water Depth: $2203m \pm 25m \text{ (LAT)}$

Proposed TD: 4805m ± 200mTVDSS (Maastrichtian - Campanian)

Budgeted Well Cost: TBA

Offset Wells: Simba-1, Kofia-1, Maridadi-1, DSDP 241

Drilling Hazards: Frontier environment, strong currents, offset wells long distance from

proposed location.

Environmental: Environmental Project Report (Low Level EIA) approved by National

Environmental Management Authority with some conditions. No

significant Issues identified

Technical Assurance Process:

75% Peer Review 05/12/2005 DRIMS #2268928 Volumetric Review 05/12/2005 DRIMS #2282094 Risk Review 05/12/2005 DRIMS #2282094

3 INTRODUCTION

3.1 General

The Pomboo prospect is located in Block L-5, offshore Kenya, 80km from the Kenyan coast, in a water depth of approximately 2203m (Figure 1). Pomboo is proposed as the first well to be drilled in Block L-5. This will fulfill the work program commitment of the 1st additional exploration term in Block L-5.

3.2 Permit Details

Kenya lies on the Eastern margin of the African Craton adjacent to the countries of Somalia and Tanzania. Block L-5 is located in the Lamu Basin, offshore Kenya (Figure 1). Water depths within this permit ranges from shallow water <50m to ultra-deep water > 3000m with the majority of the permits being in water depths of 1500-2500m. The original permit was awarded to Star Petroleum in October 2000 who subsequently farmed out equity to Dana Petroleum. Woodside acquired its initial interest in May 2003 and was elected operator. The joint venture has elected to enter into the first additional exploration term in Block L-5 and relinquished 25% of the original permit area in this block. Block L-5 currently covers an area of 8700km². There are currently no well penetrations in the deepwater area of the permit.

3.3 Well Objectives

The technical objectives of Pomboo-A well are to:

- Discover economically extractable hydrocarbons
- Establish reservoir thickness, quality and deliverability through sampling and high quality logs
- Quantify rock properties through sampling and high quality logs
- Establish hydrocarbon column heights (gas and oil) through logs and pressure data
- Obtain uncontaminated hydrocarbon samples to understand the regional source rock, PVT analysis and Fluid properties.

The strategic objectives of the well are to:

- Prove the presence, and delineate the extent of a working petroleum system offshore Kenya
- Determine the present day heat flow of the subsurface and the type and quality of any hydrocarbons present
- Determine the value of the Pomboo prospect
- Further reduce the risk uncertainty of the remaining prospect inventory by testing a prospect trap type which does not really on fault closure and will serve to constrain the presence/maturity of a source rock in the area.
- Reduce uncertainty in the value of Block L-5

Title: POMBOO-A WELL PROPOSAL, BLOCK L-5 DEEPWATER, KENYA EAST AFRICA, JUNE 2006.

Exploration History

Initial exploration onshore began in 1954 by a BP-Shell consortium which drilled a total of 10 wells with no significant success. Small amounts of gas were recovered from a couple of wells. The next phase of onshore exploration took place during 1971 - 1975 in response to high oil prices, again with no success.

The focus switched to the offshore Lamu Basin where seismic data was acquired by Shell in 1972/73. Further seismic was acquired around the same time by Total and three wells were drilled by Total (Simba-1) and a Marathon/Union consortium (Maridadi-1 & Kofia-1) between 1976 and 1985. Results were disappointing although the Simba-1 well proved the presence of deep-marine clastic reservoirs in the Offshore Lamu Basin and the seismic acquired by these companies appeared to show the presence of large structures on the continental slope but these were in water depths too great for drilling at that time.

After a long period of guiescence, exploration continued in the onshore in response to commercial successes in the Sudan rift system. From 1985 to 1996, Amoco and Total drilled ten exploration wells with only some containing oil and gas shows and no significant success. Little hydrocarbon exploration has been carried out in the years from 1996 until Star Petroleum negotiated PSC's for blocks L5, 7, 10 and 11 with an effective date 11th October 2000.

Dana Petroleum farmed into these PSC's and took operatorship. During 2003 Woodside farmed in to all seven offshore blocks in Kenya and took Operatorship. After acquisition of 7900sqkm 2D data and a detailed technical review, Woodside then exited blocks L6, 8, 9 (Pancon/Afrex) and 10 & 11 (Dana/Global) and currently have 50% interest in blocks L5, 7.

Title: POMBOO-A WELL PROPOSAL, BLOCK L-5 DEEPWATER, KENYA EAST AFRICA, JUNE 2006.

Figure 1 Location map of Blocks L-5 and L-7 offshore Kenya

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B3700ZU2524280

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Annex 111

Kenya Offshore Exploration Drilling Blocks L-5 and L-7, Environmental Audit Report, Woodside, March 2007



KENYA OFFSHORE EXPLORATION DRILLING BLOCKS L-5 AND L-7

ENVIRONMENTAL AUDIT REPORT

March 2007



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REPORT No. WTSE-36 ENV
FILE No. C-10-13



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Kenya Offshore Exploration Drilling Blocks I-5 and L-7 Environmental Audit Report

DOCUME	NT INFORMAT	ON						
CDC#W9	680RH3317313	DRIMS#: 33/73	13	Rev: 0	Cust	odian: D	& C	Date: 12/3/07
DRIMS CI	assification (if	applicable):			l.			
						Date		Signature
Prepared	by: S. Jarvis - D	&C Environmental	l Advise	r		8/3/0	7	Spurs
Reviewed	by: D. Moon -	Drilling Superintend	dent			8/5/0	7	H Zun
Approved	by: T. Quinn -	Deepwater Drilling	Operat	ions Man	ager	11		
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External

06

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY

RE	OIL CORPORATION OF KENYA CEIVED 1 5 SEP 2007
REPORT No.	WDSE-30/ENV
FILE No.	C-10-13

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1. Introduction

1.1. Background

Woodside Energy Kenya (WEK) carried out drilling operations for the Pomboo Project between December 2006 and January 2007, using the Drill ship 'Chikyu', operated by Seadrill. The exploration area is located within permit Kenya Block L-5, approximately 340 km north-north-east of Mombasa, and approximately 135 km north-east of Lamu Island. A total of one well was drilled, Pomboo 1.

WEK submitted the Kenya Offshore Exploration Drilling, Blocks L-5 and L-7 Project Report to the National Environment Management Authority (NEMA) in November 2005 as per the *Environmental (Impact Assessment and Audit) Regulations 2002*. An Environmental Impact Assessment Licence (Registration No. 0000720) was issued by NEMA on the 18th September 2006.

1.2. Purpose of this Document

The purpose of this document is to meet the Environmental Impact Assessment Licence (Registration No. 0000720) Condition 6 that requires the proponent to submit an Environmental Audit Report in the first year of operation.

Condition 6 details that the Environmental Audit Report shall confirm the efficacy and adequacy of the health, safety and environment management systems, oil spill contingency plan and to assess gravity of impacts and recovery rates during and after the exercise.

Compliance with the Environment Plan was assessed by the Woodside Well Site Manager, Seadrill Safety Officer and Woodside HSE Advisor during two audits of the Chikyu, with compliance on a day-to-day basis managed by the Woodside Well Site Manager. The Environmental Commitments Checklist and the Rig Environmental Audit Checklist were used to assess compliance during the audits.

Section 2 details the compliance with the Environmental Commitments Checklist from the approved Project Report.

1.3. Findings

A review of the environmental audits undertaken of the Chikyu while drilling at the Pomboo-1 location, commitments detailed within the approved Project Report and environmental performance shows that the HSE management system implemented by Woodside and Seadrill on the Chikyu was well implemented and met the requirements of the Project Report.

Two hydrocarbon spills to the ocean were reported to NEMA during the drilling campaign. It was estimate that approximately 5m³ of synthetic based mud (SBM) was discharged via the diverter on the first occasion and a 200 litre SBM spill from a shaker was the second occasion. As SBM is heavier than water no visible sign of the SBM or discolouration in the water was noticed on either occasion. Notifications and reporting were undertaken as per the Oil Spill Contingency Plan but deployment of spill response equipment was assessed to not be required.

Kenya Offshore Exploration Drilling Blocks L-5 and L-7Emironmental Audit Report

2. Environment Plan Commitments Checklist

The Environmental Commitments Checklist, as included in Appendix J, pages 136 141 of the Project Report, details how each commitment was closed out for the drilling of the Pomboo-1 well.

	Commitments (Criteria)	Actions & Actionee	Evidence	Project Report	Target Date	Comments	
07 .= 07 td	Spill contingency procedures are in place and operational and sufficient spill response equipment aboard rig and support vessels	Sight procedures and equipment. Audit items on the drill ship and supply vessel spill response manifests against stocks aboard. Check offshore and onshore drilling support packages (DSPs) are in place Actionee: Well Site Manager (WSM), and/or D&C Environmental Adviser (D&CEA) on site visits	Copies of the campaign specific oil spill contingency pian (ERP3260) aboard the drill ship and support vessels. Copies of drill ship and support vessel SOPEPs (Shipboard Oil Pollution Emergency Plans).	Table 2.2 Section 8.3.5	Prior to campaign start-up	The rig had a copy of the OSCP and SOPEP available onboard. Spill clean up material for deck spills was also available. Spill kits were located in various locations across the rig and were kept sealed with tape to show that they have not been used. If they were used the Control Room was notified and was responsible for ensuring that they are restocked and resealed. Weekly checks of spill kits were conducted as part of the marine crew weekly task list. During the audits of the rig all spill kits were found in their designated locations and to be adequately stocked.	
m o F o u	Briefing of all project personnel on environmental sensitivities, management procedures and commitments detailed in the Project Report	Present summary of the environmental sensitivities management procedures and commitments detailed in the Project Report Actionee: WSM, and/or D&CEA on site visit	Copy of induction attendance record	Section 8.1	During start- up induction	A spill drill was held on November 26, 2006. Several inductions were conducted to cover all drill crew and the various contractors who would be working on the rig. The main inductions were completed between November and December 2006, with several other smaller inductions conducted to cover additional crew and contractors. This included a briefing of the environmental sensitivities of the area as well as the management procedures and commitments detailed in the EP.	

Kenya Offshore Exploration Drilling Blocks L-5 and L-7Environmental Audit Report

#	Commitments (Criteria)	Actions & Actionee	Evidence	Project Report Reference	Target Date	Comments
m	Drilling fluids and drill cuttings are to be managed and disposed of in accordance with Woodside and Contractor procedures, and the requirements of the Project Report	Sight procedures and gain assurance from OIM that they are being implemented. Actionee: WSM, and/or D&CEA on site visit	Copies of Environmental Compliance Checklist for Offshore Drilling. Copy of D&CEA site visit report.	Table 2.2 Section 8.3.2	During all drilling operations	Adequate procedures were in place for management of fluids and cuttings and they were being followed. Volumes of drill fluids and cuttings discharged are detailed in the End of Well Discharge Report.
4	Waste management and disposal will be carried out in accordance with Woodside's HSE Management System and Environmental Standards and Aspirations, Contractor procedures and the Campaign Specific Waste Management Plan.	Sight procedures implemented offshore and gain assurance from OIM that they are being implemented. Storage and transfer of waster recorded on Woodside Waste Manifest Transfer Forms Sight procedures implemented onshore at supply base and gain assurance that they are being implemented Actionee: Drill Ship Superintendent (DSS), D&CEA on site visit; onshore Woodside Supply Operations Manager (SOM)	Copies of the drill ship's Waste Manifest Transfer Forms. Copy of D&CEA site visit report.	Table 2.2 Section 8.3.2 Appendix E	During all drilling operations	Waste collected onboard the Chikyu that could not be disposed of through onboard mechanisms (incinerator or macerator) was sent to the waste collection facility set up by SECO (Southern Engineering Company) in Mombasa. The facility and personnel completed the handling and redistribution of recyclable material without incident. Segregation overall was quite good with only minor issues discussed onshore. Waste Manifest Transfer Forms were completed for transfers of waste from Chikyu to final disposal or recycling. Waste was not managed onsite in Mombassa as per the Waste Management Plan due to NEMA's refusal to allow the incinerator to be use without another EIA Licence being granted (3 month delay). Waste was instead disposed of using commercial licensed companies.
ro.	All storage facilities and handling equipment are required to be in good order and designed and constructed in such a way as to prevent spillage	Inspect equipment for defects and recommend alterations/maintenance where required Actionee: WSM, and/or D&CEA on site visit	Copies of Environmental Compliance Checklist for Offshore Drilling. Copy of D&CEA site visit report.	Table 2.2 Section 8.3.2.6 Appendix F	Campaign start-up audit For each well	Storage and handling equipment on the rig were inspected during the audits conducted and found to be appropriate.

*	Commitments (Criteria)	Actions & Actionee	Evidence	Project Report Reference	Target Date	Comments
9	Environmental inspections and review shall be carried out according to the Well Engineering HSEMS review process and drill ship contractor processes	Complete all E actions on the Campaign Action Register. Actionee: WSM and/or D&CEA on site visit	Copies of Environmental Compliance Checklist for Offshore Drilling. Copy of D&CEA site visit report.	Table 2.2 Section 2.4	For each well	Two environmental audits were conducted during the drilling campaign with only minor findings. In addition, Advance Safety Audits/Tours were conducted on a weekly basis during the Campaign. These tours focused on different areas or aspects of the rig each week and were conducted by Seadrill, Woodside and 3rd Party Contrador personnel.
_	Sightings of whales, dolphins and porpoises to be recorded	Complete Whale and Dolphin Sighting Forms and forward to WSM Actionee: All drill ship and support vessel personnel Submit completed forms to WSM. WSM copies forms to DSS, Woodside Exploration HSE Manager, and Woodside Principal Environmental Adviser (PEA). Actionee: WSM Forward completed forms to Kenya Wildlife Service. Actionee: PEA	Copies of Whale and Dolphin Sighting Forms.	Table 2.2 Section 8.3.1.2 Appendix G	During all offshore operations	Crew on board the Chikyu were asked to record any marine fauna sightings, either using the supplied Whale and Dolphin sighting Report forms or filling in the Marine Fauna Sighting Form that was placed on the Environment Notice Board. During the Campaign a total of zero whale sightings were made, numerous schools of large tuna were sighted.
ω	Sewage and putrescible wastes disposed of in accordance with MARPOL requirements and campaign specific Waste Management Plan	Sight operational sewage and putrescible wastes disposal systems. Actionee: WSM and/or D&CEA on site visit	Copies of Environmental Compliance Checklist for Offshore Drilling. Copy of D&CEA's site visit report.	Table 2.2 Section 8.3.2.3 Appendix F	Campaign start-up audit	The sewage system on the Chikyu meets the requirements of MARPOL and was found to be functioning. Similarly the macerator in the galley was found to be discharging waste in accordance with MARPOL requirements.
on .	At sea refuelling and bulk transfers are carried out in accordance with Woodside and Contractor procedures, and with the requirements of this Project Report	Sight procedures and gain assurance from OIM that they are being implemented. Actionee: WSM	Drilling Contractor Fuel Transfer Procedure.	Table 2.2 Section 8.3.3.1	During all offshore operations	Various refuelling and transfer procedures were in place for both internal transfers and supply vessel transfers, with all procedures very comprehensive. A Fluid Transfer Request Form in conjunction with a Permit is required before any fluid transfer can take place. New transfer hoses and couplings were also installed at the beginning of the campaign. No environmental incidents occurred during the transfer of fuel or other bulk fluids.

Date Printed: March 07

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Kenya Offshore Exploration Drilling Blocks L-5 and L-7Environmental Audit Report

#:	Commitments (Criteria)	Actions & Actionee	Evidence	Project Report Reference	Target Date	Comments
01	Standard maritime safety procedures, for warning and notifying other vessels of presence of drill ship and support vessels, to be followed.	Radio contact with vessels, display of appropriate navigational beacons and lights, establishment of 500m safety exclusion zone around well locations. Notice to Mariners issued prior to commencement of each well. Actionee: WSM & DSS Appropriate prior consultation with the commercial fishing industry and Kenya Port Authority. Actionee: Woodside Kenya General Manager (GM), PEA	Copy of Notices to Mariners. Notes from stakeholder engagement meetings.	Table 2.2 Sections 8.3.4.1 & 8.3.4.2	Prior to arriving at each well location	Radio room was maintained 24hrs. Naval vessel kept station with Chikyu throughout drilling campaign, 500 m perimeter established for no go zone. Kenyan naval officer onboard Chikyu for communication to naval vessel and onshore military.
=	All vertical seismic profiling (VSP) activities to follow the guidelines for minimising cetacean interference.	Guidelines for minimising interference with cetaceans will be followed including a whale watch before and during activities, delaying activities should whales be sighted in close proximity and use of soft starts. Actionee: WSM and VSP Specialist	Copies of Whale and Dolphin Sighting Forms for sightings during VSP operations.	Table 2.2 Section 8.3.1.2 Appendix G	Duration of VSP activities	No VSP activity was undertaken on the Pomboo-1 well.
13	Ensure the <i>Drilling Environmental Discharge Report</i> is completed at end of each well	Send a signed hardcopy and electronic copy of the report to Woodside Drilling Superintendent and D&CEA Actionee: WSM	Copy of <i>Dritting</i> Environmental Discharge Report for each well.	Table 2.2 Section 8.3.2.1 Appendix H	End of each well	An End of Well Environmental Discharge Report was completed for the Pomboo-1 well.

Kenya Offshore Exploration Drilling Blocks L-5 and L-7Environmental Audit Report

#	Commitments (Criteria)	Actions & Actionee	Evidence	Project Report Reference	Target Date	Comments
2	Drill ship contractor to promptly notify WSM of all incidents likely to, or which affect the environmental performance objectives outlined in this Project Report. Incidents notification to be undertaken as per Well Engineering Integrity/HSE Reporting Requirement Matrix for internal reporting and Section 2.4 for external reporting. Incidents to be reported and investigated as per Woodside Standard HSE-06 Analysing and Reporting Incidents and Hazards. All reportable incidents to be reported:	Drill ship contractor to promptly notify WSM of all reportable environmental incidents Actionee: OIM, support vessel Masters Report all incidents in line with Woodside Incident reporting system and Section 2.4 of this Plan. All incidents to be investigated and reported internally by Woodside according to procedures described in HSE-06 Actionee: WSM & DSS Written reports of all reportable incidents to be provided to the Kenyan Government (Min. of Energy, NOCK; NEMA) Actionee: Woodside Kenya GM, PEA	All incident reports to be completed as per required procedures. Copy of relevant internal incident reports. Copy of external incident reports to Government.	Table 2.2 Section 2.4	During all offshore operations	Woodside's incident reporting procedure was well followed, including the requirement to report all spills > 1 litre. Two environmental incidents where synthetic based mud was spilt to the ocean occurred that required reporting to NEMA.

Annex 112

Unlocking Somalia's Potential, Eastern African Oil, Gas – LNG Energy Conference, Soma Oil & Gas Presentation, Nairobi, Kenya, 29-30 April 2014



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Company Overview



Focussing on offshore Somalia

- Soma Oil & Gas is focused on exploring for hydrocarbons offshore in the Federal Republic of Somalia
- Led by a Board and Management team with extensive experience in oil and gas, finance and international politics

► First mover in last offshore frontier in Africa

- Located in East Africa, a highly active oil and gas regions globally
- Access to acreage with high significant resource potential
- Limited exploration has been conducted to date in Somalia, but the acreage is potentially highly prospective

► A geopolitical inflection point

- Somalia has been on a path to greater stability since the election of President Hassan Sheikh Mohamud in September 2012
- Government is first to gain international recognition following two decades of state failure and enjoys particularly strong support from the UK, US, EU, UN and African Union

▶ Signed unique Seismic Option Agreement

- Commits Soma Oil & Gas to invest in the gathering and digitisation of all available geological information, the reprocessing of existing seismic data
- Acquisition and processing of new seismic data offshore Somalia across 122,000 km² Evaluation Area
- In return, Soma Oil & Gas has the right to apply for concession areas of up to 60,000 km² based on an agreed form template Production Sharing Agreement

Strong Board & Management



Lord Howard of Lympne CH, QC

Non Executive Chairman

- Former leader of Britain's Conservative Party
- Former Home Secretary in Conservative Government
- Previous cabinet positions held include Secretary of State for Employment and Secretary of State for the Environment
- Lord Howard also sits on the Board of a number of companies

Robert Sheppard

Chief Executive Officer

- 40 plus years' oil & gas experience with BP and Amoco
- Currently Senior Adviser to BP, non Executive Director at BlackRock Emerging Europe plc and Director of DTEK (Ukraine)
- Former TNK-BP board member
- Former Chief Executive Officer of Sidanco, President of Amoco Egypt and Argentina

Basil Shiblaq

Executive Deputy Chairman and Founder

- 45 years' experience in finance focussing in Oil & Gas and Mining
- One of the early investors in both Fusion Oil & Gas plc and Ophir Energy plc
- Founder of a number of private companies focussed on energy trading as well as oil & gas and mineral exploration
- Previously at Merrill Lynch, Kidder Peabody and Credit Suisse First Boston in the Middle East and London

Philip Wolfe

Chief Financial Officer

- 23 years' experience in oil & gas corporate finance
- Advised various IOCs, independents and NOCs on strategic transactions, IPOs and other financings
- Previously Head of EMEA Oil & Gas at UBS, Global Head of Oil & Gas at HSBC; Deutsche Bank and Merrill Lynch oil & gas teams

Strong Board & Management



Hassan Khaire

Executive Director, Africa

- Over 14 years' of experience at Norwegian Refugee Council
- Held senior positions as Regional Director of Horn of Africa and Yemen and Country Director of Somalia and Kenya
- Somali and Norwegian National
- BA at University of Oslo, MBA at Edinburgh Business School

Mohamad Ajami

Non-Executive Director

- Over 35 years' of investing experience in the oil and gas and mineral resources sectors
- Founder of the Levant Group a firm focussed on investments in oil & gas and minerals
- Previously at Morrison Knudsen Corporation, a civil engineering and construction company (now part of URS Corporation)

Georgy Djaparidze

Non-Executive Director

- He started his career as an attorney, specializing in mergers and acquisitions, finance, and international transactions in the oil and gas industry
- Currently runs an private investment fund and practices law, as Of Counsel
- Educated in Russia and the United States and currently resides in London

The Earl of Clanwilliam

Non-Executive Director

- Chairman of Eurasia Drilling Company since October 2007
- He is a director of NMC Healthcare plc and sits on the Advisory Board of Oracle Capital and Milio International

W. Richard Anderson

Non-Executive Director

- Over has 32 years' experience in oil and gas industry related finance and management.
- On the board of Eurasia Drilling Company, where he has been CFO since July 2008
- Chairman of the board of Vanguard Natural Resources LLC and he was President and Chief Executive Officer of Prime Natural Resources, Inc. from 2002 until 2007

Corporate Governance & Advisers





Technical Support



Auditors & Tax Adviser



Legal Adviser



Anti Bribery & Corruption Adviser



Financial PR & Strategic Communications Adviser



Professional Services

Anti-bribery and Corruption Policy



Soma Oil & Gas has a zero tolerance approach

 Anti-bribery and Corruption policy, procedures and implementation are being developed and complies with all applicable laws and regulations of the countries in which it operates

"Soma Oil & Gas is committed to upholding high standards of ethics, transparency and accountability in the oil and gas industry and fully supports and promotes an extractive sector free of corruption. We have decided to build a long term sustainable business in Somalia and intend to invest both in its ethical infrastructure and in the communities in which it works. From inception, we will build a corporate culture based on fundamental values including fairness, ethics and integrity in its business dealings, which is compliant with the highest standards of relevant legislation in the world. A zero tolerance policy towards bribery and corruption will form the basis of Soma Oil & Gas compliance framework which will be designed to protect its brand, its employees, its third party business associates and its stakeholders from the risks associated with bribery, corruption and extortion"

Lord Howard of Lympne CH, QC, Chairman of Soma Oil & Gas

- Both the SOA and the PSA include termination rights for the Government in the event that the SOA or any PSA have been attained in violation of corrupt practices, law or regulation
- All employees of Soma Oil & Gas and its affiliates are required to comply with the Group's Anti-bribery and Corruption policy

Rationale for Hydrocarbon Exploration Offshore Somalia



- Significantly under-explored due to historic security issues all PSCs in Force Majeure since 1990-91
 - Only 6 offshore wells along the entire length of the eastern offshore basin
 - Only 1 offshore well near Soma Oil & Gas offshore area of interest, drilled by Exxon in 1982 in shallow water
 - Deep water entirely unexplored; existing seismic mainly limited to water depths of less than 1,000m, while Soma Oil & Gas Area
 of Interest extends to approximately 3,000m water depth
- Hydrocarbon plays source and reservoir rocks proven in adjacent sedimentary basins
 - Jurassic plate reconstruction places Somalia offshore immediately next to Madagascar where Jurassic sources are proven
 - USGS estimate Undiscovered Resources of 16 billion barrels of oil and 260 tcf gas in three provinces bordering South Somalia offshore – Tanzania/Kenya, Madagascar and Seychelles
 - Tullow Oil, Eni, BG, Ophir Energy, Anadarko and Statoil have added considerable valuable from recent finds in East Africa
- Recent aggressive acreage licensing by Anadarko, Total and Eni in adjacent Kenya offshore
 - Likely to indicate strong technical interest in southern parts of Somalia offshore
 - Anadarko, Total and Eni all entered adjacent Kenya offshore as well as Mozambique



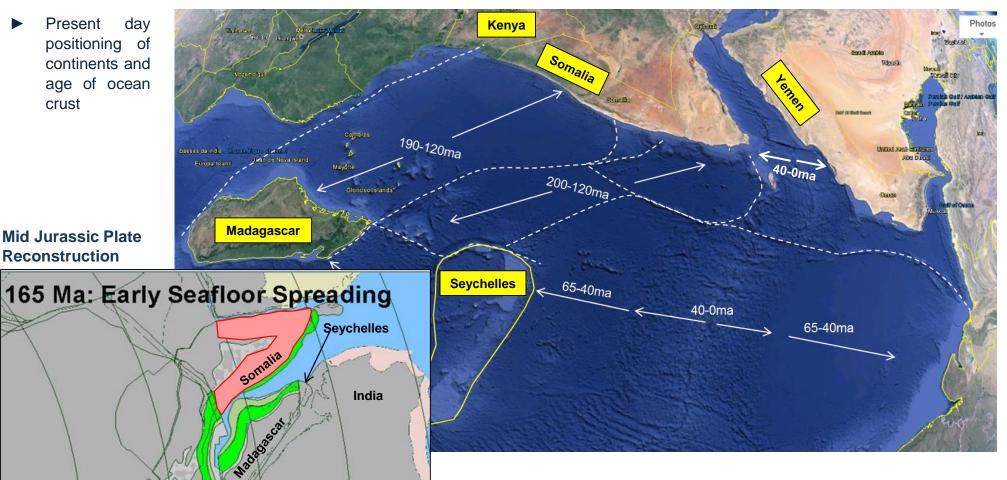
Somalia Plate Reconstruction in Jurassic

2500 km



Present day positioning of continents and age of ocean crust

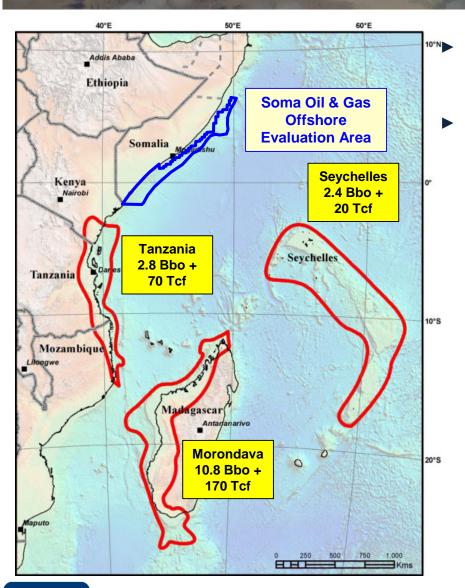
Mid Jurassic Plate Reconstruction



Mid Jurassic plate reconstruction places Somalia immediately opposite northeast Madagascar and Seychelles during the critical period of hydrocarbon source rock deposition

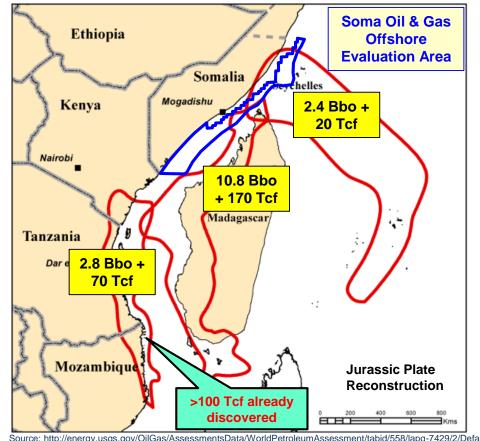
USGS Estimated Undiscovered Resources (2012)





USGS estimate total Undiscovered Resources of 16 billion barrels of oil and 260 tcf gas in provinces bordering Soma Oil & Gas Offshore Evaluation Area in Somalia offshore waters

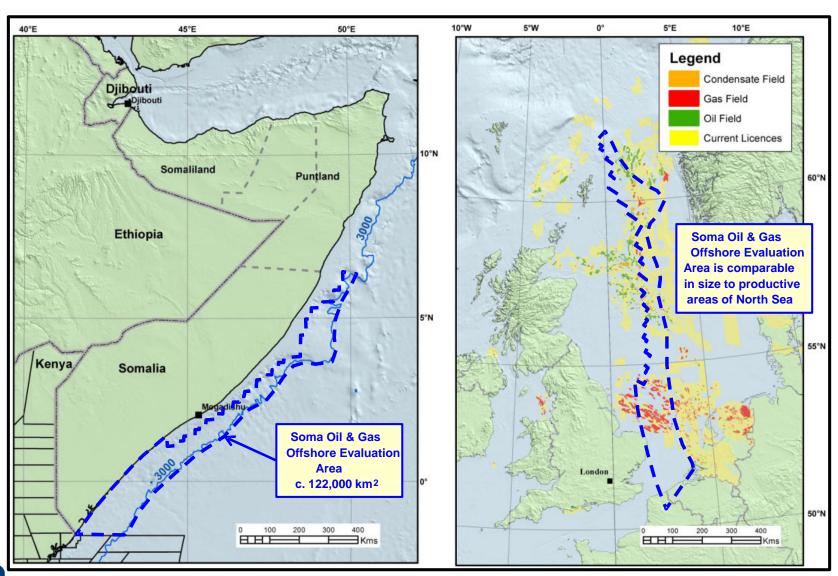
Plate reconstruction to Jurassic – time of deposition of hydrocarbon source rocks – emphasises the relevance of the adjacent data





South Somalia Offshore vs North Sea

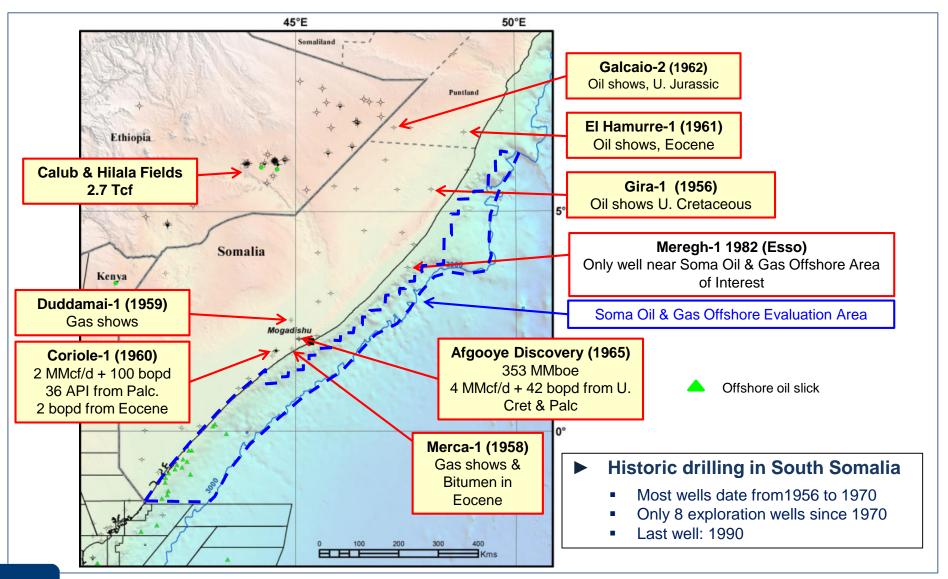






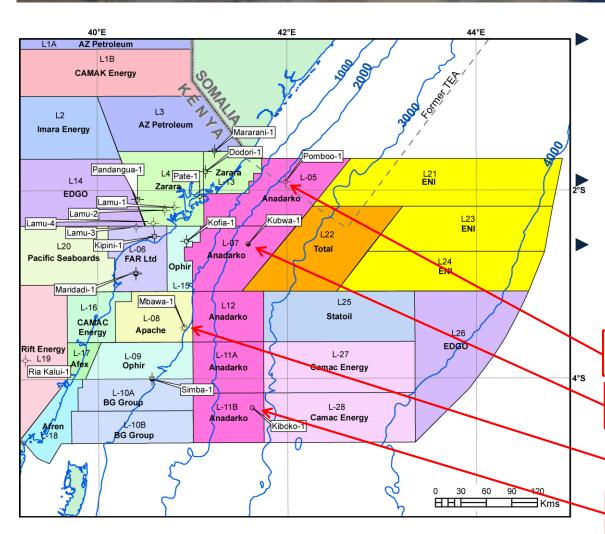
Hydrocarbons in South Somalia & Adjacent Areas





Industry Activity in Offshore Kenya





Recent offshore Kenya licensing

Anadarko L-5, 7,11,12 PSC, 2009
 Total farmin for 40% in 2012



- Total L-22; PSC, Sept. 2011
- Eni L-21, 23, 24. PSC, July 2012

TOTAL

Early drilling results

Oil and gas shows in many wells

Recent offshore Kenya drilling

Pomboo-1, Woodside 2007, WD >2000m, Reservoir present but no shows

Kubwa-1, Anadarko 2013, WD >2000m. Non commercial oil shows in reservoir quality sands

Mbawa-1, Apache 2012, WD 1000m, Cretaceous gas discovery

Kiboko-1, Anadarko 2013, WD c. 2500m, result not known



Seismic Option Agreement



- ► Soma Oil & Gas will undertake an Exploration Programme in Somalia lasting for 18 24 months including
 - Gathering and digitisation of all available geological information and the reprocessing of seismic data
 - The acquisition and processing of new 2-D seismic data over an agreed Evaluation Area offshore Somalia
 - Data will be assembled in a Dataroom for the Somali Ministry of National Resources
- ► In consideration for the Exploration Programme Soma Oil & Gas has the right to apply for concession areas of up to an aggregate of 60,000 km² and negotiate upto 12 individual PSAs of 5,000 km² each

Signing of the Seismic Option Agreement



Lord Howard of Lympne CH, QC with Robert Sheppard during the signing of the Seismic Option Agreement in Mogadishu on August 6, 2013

Soma Oil & Gas signs SOA



Somali Minister of National Resources Abdirizak Omar Mohamed shakes hands with Lord Howard of Lympne CH, QC after signing the Seismic Option Agreement in Mogadishu on August 6, 2013

Funding Agreement - January 2014



- On 13 January 2014, Soma Oil & Gas Holdings Limited announced that it has secured an equity investment of US\$50 million from a private investment company, Winter Sky
- ► In conjunction with the funding agreement, three individuals connected to Winter Sky have joined the Soma Oil & Gas Holdings Limited board as Non Executive Directors
- ► This additional funding is sufficient to see the Company through the initial stages of the exploration programme and satisfy its obligations to the Government of the Federal Republic of Somalia under the Seismic Option Agreement

Seismic acquisition programme - February 2014



- ➤ On 3 February 2014, Soma Oil & Gas announced that it has signed a contract with Seabird Exploration, a global provider of marine acquisition for 2D and 3D seismic data for the oil and gas industry
- ▶ Under the terms of the agreement, Seabird will acquire up to 20,000 km of 2D seismic data off the coast of Somalia for Soma Oil & Gas. It is expected that the survey will commence in mid-February and take approximately 90-100 days. Two survey vessels, the Northern Explorer and Hawk Explorer, will be used to acquire the data
- ► The Company is also in the process of collating and reprocessing historic seismic data using modern techniques, and will prepare an evaluation of Somalia's petroleum potential. Soma Oil & Gas will create a data room for the Federal Government of Somalia, into which all available data will be placed, including the newly acquired data from the Seabird seismic survey
- Seismic acquisition has now commenced





In Summary



- ► Inflection Point of Growing Prospectivity & Political Stability
 - Potential hydrocarbon revenues to support the infrastructure of the government thereby enhancing stability
 - Underpinning economic growth to help move on from the international aid cycle
- ► Positive impact of the Oil & Gas Sector in Somalia
 - Employment and training
 - Encourage other companies to explore for hydrocarbons in Somalia
- Social benefits to Somalia

Annex 113

Exit Strategy Challenges for the AU Mission in Somalia, *The Heritage Institute for Policy Studies*, February 2016, Extract

Exit Strategy Challenges for the AU Mission in Somalia





Paul D. Williams with Abdirashid Hashi

February 2016

Introduction

This report analyzes the main challenges facing AMISOM as it seeks to implement a successful exit strategy. Like all peace operations, AMISOM was never intended to be a permanent fixture of the Somali landscape but the mission is now nearly nine years old. AMISOM will leave Somalia; the questions are how and when? The official answers are set out in the mission's exit strategy. We define an exit strategy as the process of generating the resources needed for the mission to leave the host country. Successful exit strategies involve a mission leaving its host having achieved all or most of its stated objectives.

When it was first authorized in December 2006, AMISOM's original exit strategy was to transition to a UN peacekeeping operation after just six months. When this plan failed, AMISOM's strategy and tactics had to evolve as local conditions and international circumstances changed. This report provides an overview of the different ways in which peace operations can come to an end, and how AMISOM's exit evolved from have its deployment in March 2007 through to January 2016.

Now is an important time to analyze AMISOM's exit strategy. First, to our knowledge, this report represents the first independent effort to comprehensively study the challenges raised by AMISOM's exit. Despite being nearly nine years old, and the AU's largest ever peace operation, **AMISOM** has rarely been subjected independent scrutiny. Second, AMISOM now costs approximately US\$900 million per year. Hence, there are questions about its financial sustainability, especially after the recent EU decision to cut its funding to pay for AMISOM allowances by 20 percent, starting in January 2016. Third, AMISOM has also been one of the most deadly peace operations ever undertaken, causing an unknown number of fatalities among the peacekeepers and, probably, many more among its principal enemy (al-Shabaab) and Somali civilians.³ Fourth, the Federal Government of Somalia's (FGS) inability to hold national elections in 2016 as originally envisaged under "Vision 2016" has, once again, required AMISOM to adapt to new circumstances and alter its planned timetable.⁴

Finally, AMISOM's departure has become the subject of increasing debate and controversy. These debates have taken place among the troop-contributing countries, most notably in Burundi and Kenya, but probably most intensely among Somalis. As any survey of AMISOM's presence on social media will attest, increasing numbers of Somalis are making known their negative views about the mission. Some point to serious misconduct by AMISOM personnel, including killing civilians, engaging in sexual exploitation and abuse and selling mission resources such as fuel and rations. Others claim the mission has become a money-making enterprise for its contributing countries, leaving them with little incentive to defeat al-Shabaab. Others see AMISOM as legitimizing unwanted interference in Somali politics by its neighbors, especially Ethiopia and Kenya. Even AMISOM's supporters are increasingly calling for more international support to focus on creating effective Somali national security forces.

During nearly nine years of operations, AMISOM's evolution has reflected both the changing political context in Somalia and international responses to the country's many problems. In its first few years, AMISOM was widely viewed as a struggling mission. However, especially after AU and Somali soldiers pushed the majority of al-Shabaab forces out of

union-somalia-peacekeeping/

³ For a discussion, see Paul D. Williams, "How many fatalities has the African Union Mission in Somalia suffered?" *The Global Observatory*, 10 September 2015, <a href="http://theglobalobservatory.org/2015/09/amisom-african-afri

⁴ See AbdirashidHashi, "Somalia's Vision 2016: Reality check and the road ahead," Heritage Institute for Policy Studies, May 2015, http://www.heritageinstitute.org/somalias-vision-2016-reality-check-and-the-road-ahead/

Mogadishu in August 2011, AMISOM has been credited with various successes. For example, US President Barack Obama has lauded AMISOM as supporting a successful US "strategy of taking out terrorists who threaten us, while supporting partners on the front lines."5 Senior AMISOM officials have regularly argued that their recent operations have liberated 80 percent of southcentral Somalia from al-Shabaab, implying that the job is nearly finished but ignoring the fact that al-Shabaab retains freedom of movement across most of south-central Somalia. And in his departing interview, the head of the UN Assistance Mission in Somalia (UNSOM), credited AMISOM with playing a crucial role in reducing the threat from al-Shabaab and transitioning Somalia from a "failed" state to a "fragile but recovering" one.7

And yet AMISOM still faces considerable problems and limitations. This report focuses on five major challenges:

- 1. AMISOM still faces considerable internal problems including a lack of key enablers such as military helicopters and engineering units; problems in its command, control and coordination structures between its troopcontributing countries; its inability to roll out effective stabilization programs in recovered settlements; and various forms of misconduct by some of its personnel.
- 2. Al-Shabaab is a diminished political force, but it has proved adaptable and remains a deadly foe with a range of violent tactics at its disposal. It retains an ability to strike even the most secure of targets and has significantly

- increased its operational tempo beyond Somalia, most notably in Kenya.
- AMISOM's principal local partner, the Somali National Army (SNA), has not developed according to plan. Among the SNA's most pressing problems are destructive clan dynamics; numerous technical and infrastructural limitations; and problems related to command and control and political leadership.
- 4. AMISOM is facing intensifying criticisms from Somalis that are challenging the mission's credibility as well as its effectiveness.
- 5. Perhaps most fundamentally of all, AMISOM has been forced to operate in a context of regular political infighting between Somalia's leaders that took the focus away from fighting al-Shabaab. The subsequent lack of a political settlement between Somalia's bickering elites presented AMISOM with a wide range of problems and undermined its ability to effectively implement its mandated tasks.

⁵ "Statement by the President on ISIL," The White House, 10 September 2014, https://www.whitehouse.gov/the-press-office/2014/09/10/statement-president-isil-1

⁶ For example, "PSC Interview: The high cost of defeating Al-Shabaab," ISS, 6 February 2015, https://www.issafrica.org/pscreport/addis-insights/psc-interview-the-high-cost-of-defeating-al-Shabaab

⁷ "UN Envoy: Somalia Momentum Toward Peace 'Unstoppable'," *Voice of America*, 30 December 2015, http://www.voanews.com/content/somalia-momentum-toward-peace-unstoppable/3124257.html

Structure of the Report

To address these issues, this report is organized into seven sections. Section 1, *AMISOM: A Very Brief Overview*, summarizes how the AU mission has evolved since its initial deployment and sketches the main international partnerships that have kept it running.

Section 2, Exit Strategies in Theory, then briefly recaps some of the general conclusions about exit strategies for peace operations that emerge from the academic literature. It also lists the most common mechanisms used to bring peace operations to an end, namely, deadlines or predetermined timetables, cut and run, expulsion, sequenced withdrawals, achieving benchmarks and successor operations.

Section 3, Exit Strategies in Practice, then briefly reviews the practical modes of exit used by nine different foreign military operations in Somalia between 1992 and 2015. Its objective is to draw out any potential patterns or lessons that might be relevant for AMISOM.

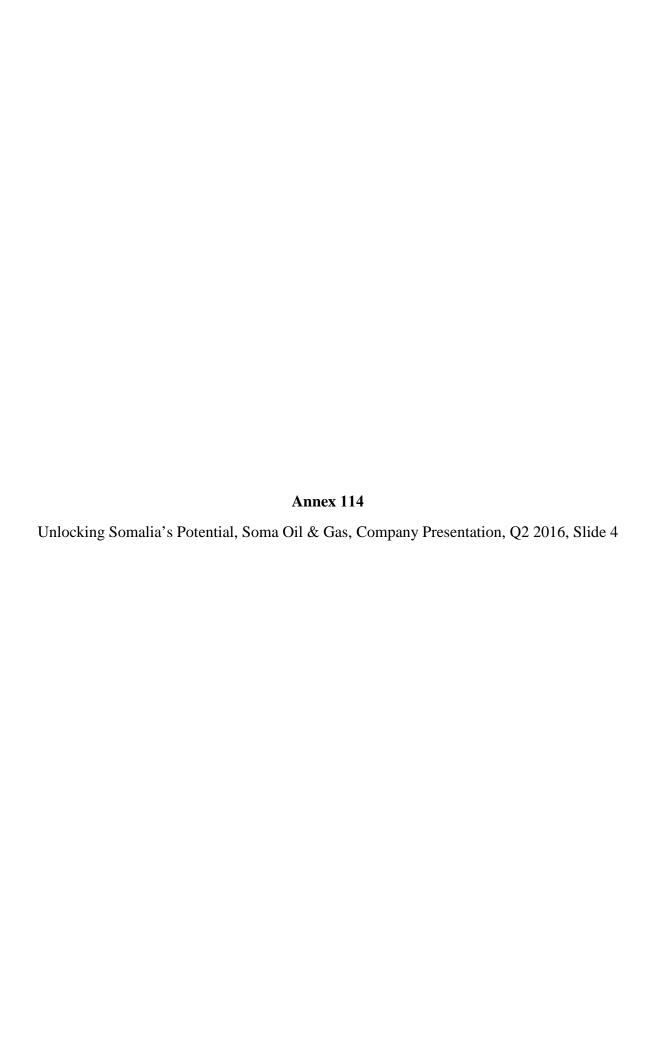
Section 4 turns from the history of previous operations in Somalia to examine how AMISOM's Theory of Exit has evolved since the mission was established in early 2007. Drawing on AMISOM's internal documents and several international reviews of the mission, this section shows how AMISOM's principal focus has been assessing whether conditions on the ground in Somalia were appropriate to transition into a UN-led peacekeeping operation, and, more recently, an emphasis on building the capacity of local Somali

security forces. In recent years, AMISOM has set out a range of different benchmarks to evaluate whether transitioning to a UN peacekeeping operation remains a viable way out of Somalia. This option is looking less and less likely.

Section 5, Practical Challenges to AMISOM's Exit, turns from the theory of AMISOM's exit strategies to analyze the main ongoing practical challenges facing the mission as it looks for a way out. For analytical purposes, these are grouped into five categories but in reality the issues overlap and interrelate in important ways. The challenges discussed are: the continued threat from al-Shabaab; internal problems within AMISOM; building an effective set of Somali national security forces, especially the SNA; the lack of a political settlement between the Federal Government and the regions, and the rise of negative local perceptions about AMISOM. If AMISOM is to chart a successful exit from Somalia that preserves its hard-won gains, all these challenges must be overcome.

Section 6, Future Scenarios and AMISOM's Exit Options, sketches six scenarios that might be useful for thinking about AMISOM's potential modes of exit as well as highlighting some of the potentially influential actors and issues that might hasten or prolong AMISOM's withdrawal.

Finally, Section 7, *Policy Considerations*, offers some proposals for moving forward to address some of AMISOM's main challenges.





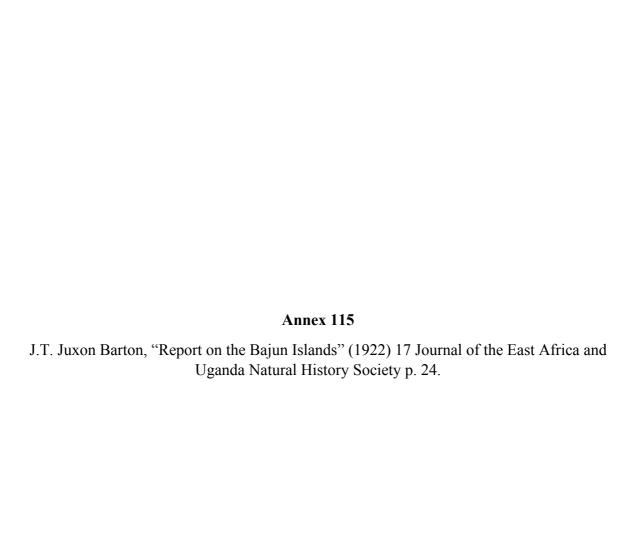
Oil & Gas Industry in Somalia



- Prior to 1991, BP (Amoco, Sinclair), Chevron (Texaco), Conoco, Eni, Shell, ExxonMobil, Total and 5
 others had signed rights to exploration blocks in Somalia
- By 1991, all operators claimed force majeure due to civil war
- All historical regional geological & geophysical data & knowledge lost due to civil war
- Oil & gas sector primary focus for TFG and FGS for rebuilding the economy
- Petroleum Law enacted by the TFG in 2008
- FGS approached 12 licence holders in 2012/13 to end force majeure all declined
- FGS contacted 8 other oil companies who also declined

TFG: Transitional Federal Government (of Somalia)

FGS: Federal Government of Somalia



mixture, as it is believed that the wounded animal will not then be able to cross a path without falling dead.

Some black substance found in the liver of a crocodile is finally added, as it is believed that by this means the wounded animal will at once fall dead if he should stop to drink water by the way.

A mysterious hidden force seems to be recognised, and is called 'Wak,' the same word being used by the Galla and the Duruma. The word is not used by the Giryama, who use 'Mulungu'; Mulunguni denoting the heavens.

The pottery found was all in the Giryama style. A honey barrel, which was beautifully fashioned, was found to be without mark of ownership. A small wooden drum with bottom and cover made of skin is a universal receptacle of the Alangulo for all kinds of food, and is carried by means of a strip of hide passing over the forehead. These are similar in appearance to the Kithembi of the Akamba.

The crops in the neighbourhood looked at least as flourishing as those of the Agiryama.

The Alangulo in the neighbourhood of Mlango Moro, where I camped, seemed very shy, and those whom I met invariably fled into the bush. It is hoped next time, through the medium of some friendly Giryama, to establish better relations, and obtain some more information about these interesting people.

REPORT ON THE BAJUN ISLANDS

By J. T. JUXON BARTON

I. PEOPLE

The Bajun (Ar. Ba-gun, a white tribe), Wa-Gunya (Ki-Swahili, Ku-Gawanya, to divide), i.e., a fractious people, a term of reproach applied by the Southern Wa-Swahili to the Northern and by the Northern to the Southern, or Wa-Tikuu (Ki-Swahili, contracted from nt'i kuu, the mainland), are said to represent the oldest form of civilisation on the coast; their language, the most archaic form of Swahili.

They inhabit the islands on the east coast of Africa lying between Lamu and Kismayu. These islands are divided into two groups, the northern group being known as the Dundas Islands.

It is submitted that the inhabitants of the northern islands are of a different origin from those of the south.

Their origin has been variously stated as Phœnician, Himyaritic, and Hamitic. The fact that coast dwellers of all nations can hardly claim descent from one stock seems to have been lost sight of, and an unreasonable antiquity argued from the ruins on the islands and on the mainland opposite to the islands.

Sir Harry H. Johnston, K.C.B., stated that at about the same time as the Bantu race movement, some 3000 years ago, the Arab-Sabæans came voyaging down the east coast of Africa, until they ultimately settled in the Sofala district south of the Zambesi, leaving as witnesses of their venture the Zimbabwe and other ruins. Phænicians also explored the east coast, founding stations as far south as Mozambique: one expedition, in the employ of the Egyptian King Necho, is said to have circumnavigated Africa about 600 B.C.

Later the pre-Islamic settlements of Arabs from Southern Arabia were revived by militant traders and missionaries of Islam establishing themselves at Mozambique, Kilwa, Zanzibar, Mombasa, and various ports on the Somali coast.

A colony of Mohammedan Persians (Shirazi) joined them in the tenth century at Lamu, and Persian as well as Arab influence began to be apparent in the architecture on the east coast.

Until the settlement of the coast towns by the Portuguese in the sixteenth century, these Arab states were sparsely colonised by Himyaritic or South Arabian Arabs from the Hadramaut, Yemen, and Aden.

A development amongst the Arabs of Muscat drove the Portuguese from that territory, and, following up their success at home, these Arabs attacked them on the east coast of Africa, the Muscat Arab becoming the predominant type.

In this connection may perhaps be mentioned the traditional arrival of two hundred and fifty Portuguese at Tula Island,

with an equal number of women who were, so the tradition runs, driven out of Arabia by the Arabs. A Portuguese grave is to be seen to this day on Tula Island.

Though immaterial, the higher type of features so noticeable amongst the population of Faza, Patte, and Siu in the Lamu Archipelago, is stated by the Bajuns to indicate European blood; and in further support of this opinion, the Bajuns of Tula amusingly instance the Faza custom of hanging washing to dry on a line, and taking the clothing down with a tearing motion, instead of laying on the beach with stones as weights, and carefully folding in the native fashion.

A rough chronology of the coast would seem to be:

- B.c. 600. Pharaoh Necho of Egypt sends a Phœnician expedition, which is said to have circumnavigated Africa in three years.
- A.D. 720. First Islamic settlement.
 - 1497. Vasco da Gama rounds the Cape and visits the towns on the coast.
 - 1584. Portugal is in possession and defeats Turkey, who attempts to wrest from her the Zanzibar coast.
 - 1698. By this date the rising of Arab power of 'Oman has driven Portugal out of all her possessions north of Mozambique.
 - 1752. The Portuguese, having finally lost Mombasa in 1730, recognised the Muscat Imamate of the coast.
 - 1888. The Imperial British East Africa Company receive a charter.
 - 1894. The I.B.E.A. Company is withdrawn, the territory becoming a protectorate.

The maps of Africa, according to Herodotus, 450 B.C., and Eratosthenes, 200 B.C., do not extend south below what is now Cape Guardafui.

'The Periplus of the Erythrean Sea,' circa A.D. 80, is a navigation guide of the east coast of Africa to about the latitude of Zanzibar.

Ptolemy, in about A.D. 140, marks the coast of Jubaland and Italian Somaliland as simply 'Barbaria,' the interior as

'Azania,' Kismayu 'Parvum Littus,' Port Durnford or thereabouts 'Magnum Littus.' Al Idris, in 1154, follows Ptolemy in 'Barbaria,' marking islands off the coast.

Martin Behaim, in 1492, leaves the coast a blank.

Diego Ribero of Seville, in 1529, showing Lamu, Patte, the Bajun Islands, the mouth of Juba River almost accurately, embellishes the coast and interior with drawings of elephants.

Pigafetta, in 1591, shows what may be the Tana River, Barkao, the mouth of the Juba, and islands.

Jacob van Meurs, in 1668, shows a town at Kismayu called 'Liongo,' and marks the vicinity of the Juba River 'Barenboa,' calling an island, with a town on the mainland opposite, 'Tetile' (Tula).

H. Moll, in 1710, calls the coast of Jubaland 'Barra Boa,' and the interior 'Quilimia.'

Smith's New Map of Africa, 1815, shows a town on the Juba mouth and the country between the Juba and the Tana as 'Galla.'

'Liongo' was a semi-mythical Swahili hero, vulnerable only in his navel to a copper needle, the subject of many poems, who lived in the neighbourhood of Lamu and who was buried at Ozi. Lamu and Patte are, however, shown in Jacob van Meurs' map, while Liongo occupies the place of Kismayu.

'Barenboa,' Barra Boa': the Bajuns, the Gallas, and the Somali use the word 'Barobaro' to denote an unmarried youth of the warrior class. Possibly also the word may be derived from 'barra' (Ki-Swahili, Arabic, 'the interior').

' Quilimia ' (Ki-Swahili, Kilimia, 'the Pleiades').

In attempting to deduce an origin of these people, the Himyaritic element pervades the coast; to a lesser, much lesser, degree the Persian; the Portuguese, with the early crusading zeal of Roman Catholicism, are little likely to have mixed their blood, on pain of purgatory.

The Persian element persists in a lesser degree, in that this tenth-century settlement of Shirasi adventurers would seem to have definitely limited itself to Lamu, where the prevailing type to this day is in marked distinction from the Bajuns, and it is to be remembered that until, and after, the arrival of the English, internecine war was rife.

There remains, then, what may perhaps be called the Hamitic theory. This seems to have received little consideration, despite the traditions of the Bajuns, and despite the obviously Hamitic features of many of the islanders.

In brief, the Bajun tradition is that they came from the north-east and occupied the present Garreh country, north of Dolo; were driven south-east by the Galla invasion; settled at Afmadu; were driven by the Galla to the coast at Kismayu, and thence to seek refuge in the islands.

They claim to have dug the so-called wells at Afmadu, and to have possessed camels.

A further point in estimating their origin which does not seem to have been mentioned is that the Bantu Nyika (Ki-Swahili, 'desert') tribes (Digo, Duruma, Rabai, Ribe, Kambe, Jibana, Chonyi, Kauma, and Giryama) occupied the Shungwaya or Burkao (Port Durnford) country, and were driven south by the Gallas. These people now occupy the littoral from the Tana River to the, until recently, Anglo-German boundary. The Bantu dialect spoken is akin to Ki-ngozi or Ki-ngovi, the old language upon which modern Ki-Swahili is based.

The Persian and Portuguese elements seem justly negligible. There then remain the Southern Arabian, the Hamite, and the Bantu as progenitors.

- (1) The Arab.—The Arab, driven by trade, pestilence, or famine, left his country and established stations along the coast. Were pestilence the reason, the disease would have followed; were famine, he would not have chosen the arid coral rag of the islands, open to the winds, with an inhospitable mainland, to give him sustenance. The factor was probably trade; and gold mines were worked near the Zambesi early in the history of man. Moreover, harbours near to food centres were necessary, and he chose Lamu and Mombasa as his home.
- (2) The Hamite.—The Bajun claims what almost may be called 'Somali' descent. He was driven from Garreh to Afmadu, from Afmadu to Kismayu, and from Kismayu to the islands by the Galla, and the Galla occupied Jubaland until fifty years ago.

He states he dug the wells at Afmadu: these wells are almost horizontal caves, not the work of Arab craftsmen.

He did not build with stone at Garreh, nor at Afmadu, nor Kismayu; but on the islands he built with stone in the Saracenic style—and work in stone is not learned in ten generations, and now the Arab element has disappeared he no longer uses stone.

The ruins on the islands have been stated to be of great age: all the evidence would seem to be to the contrary. The style is Saracenic, which style gave to Europe the battlements and portcullis of the medieval castle, and this style has undergone few if any modifications since its inception. The material used was coral rag and lime, and one has not to go far afield to see the result of but a year's neglect on such buildings on less exposed sites.

The people of Burkao (Port Durnford) claim kinship with the Rendile, and state that when accompanying the late Mr. Reddie, then District Officer, Port Durnford, on his journey to Rendile, they found lost relatives and brothers. The Rendile are of 'Somali' origin.

Bwana Hamudi, late Headman at Port Durnford, was of pure Garreh descent.

(8) The Bantu.—The place of origin of the Nyika tribe is the Jubaland littoral. Odd survivors owning stock as Somalis are still to be found, and, still more curiously, Bajuns (Tula Island) have spontaneously stated the former neighbourhood of the Wa-Nyika.

The Wa-Nyika were possibly agriculturists in the fertile watered valley between the Anole and Burkao creeks, now the Herti-Magharbul grazing. They were obviously hunters, nomads if necessary; undoubtedly subject to slave raids, equally undoubtedly to Mohammedan concubinage; and harassed from the coast by slavers, from the interior by the Galla, they sought refuge from their oppressors in comparatively recent times, and crossed the river Tana, as did the Galla in their turn when harried by the Somali. If this is, then, the parentage of the Bajun it is submitted that their story should run as follows:

The great migration of Hamites, increasingly obvious in the southern movement of the Somali tribes of the present day, began in the mother country of middle Egypt and Arabia. One branch, the Gallas, reaching Abyssinia, passing, driving before it all weaker tribes, mingling with its captives, drove the so-called Bajun (nomads also) from well to well until a sure refuge was found on the islands. The coast and hinterland was occupied by the Nyika tribes, and with these the islanders mixed: the struggle with the Gallas still continued, the islander and the Bantu being attacked as the former tried to regain and the latter to retain his hold upon the mainland. And so the struggle continued until and after the coming of the Arab from the south. The Arab came as a trader in ivory and slaves, and by barter with the Galla and the help of the Bajun, secured both the ivory and the slaves.

Mixing with the Bajun and Bantu, he built houses and mosques where no real prosperity promised (for the supply of ivory and humanity could not last, since both beast and man run from fear), and where but the scantiest crops could be grown, so that he brought grain from Lamu and the south in dhows. He was at his greatest prosperity in the eighteenth and early nineteenth century, when even the Galla, pressed by famine, sold his children, and so until the middle nineteenth century, when the Galla hunter disappeared into the dense Tana bush before the Somali coming by sea and land.

With the advent of government, the abolition of slavery and the preservation of ivory, the Arab returns south, leaving his houses, his mosques, and a people of mixed Hamitic, Bantu, and Arab blood using his buildings until the action of the winds and sea crumbled them away, and returning to their previous state of bare sustenance.

The Bajuns are light coloured, intelligent, and unwarlike. They are Mohammedans of a devout type, in marked contrast with the Pharisaical Somali. They are miserably poor, extremely thrifty, but spend lavishly when in funds. The average monthly earnings of the Bajun may perhaps reach seven rupees.

They have some knowledge of agriculture, and, what is

¹ A venerable and ruined mosque, now unused, on Koyama Island shows the date 1224 A.H. which, by use of the formula: A.H. $-3\frac{A.H.}{100} + 621 = A.D.$, gives the year 1808.

more important, the will to work: they obtain small crops from the most impossible soil.

They are courteous and obliging to strangers, and exceedingly friendly to government.

They possess a certain amount of low cunning, which is naturally more obvious in the markedly Hamitic type, but are otherwise honest in their dealings. They borrow extensively from Indian (Kismayu) traders, loans sometimes reaching Rs. 4000, which is evidence of their integrity or of an ivory trade, for they can give no security.

Their houses are built of wattle and daub, the palm for the roof coming from Lamu. Shelves and crude ornamental devices are sometimes contrived in the walls of the rooms. The houses are well-built. Bajuns are unable to build in stone, and probably they never knew the craft. The wells are all of some age.

The upanga is carried by the man, and is often ornamented with silver; this sword is a cutlass, and different from the Arab weapon.

Their dances are the usual advancing lines of men and girls; married women should not dance.

Two dances are performed exclusively by men, the one a sword-dance, the dancers prancing around one another, cutting at head and foot, a cloth being held in the free hand as a shield with sometimes another cloth in the teeth; the other is the old English quarter-staff, save that damage is rarely done. To this, drums and brass trays are beaten. The former is the Hazua, the latter the Kirimbizi.

Women and girls have also dances, no man being present. This is the Msondo, or school of love, presided over by a Somo, an adept in the art of attraction, the pupil being called Mwari. The original purpose of the Msondo was undoubtedly to prepare girls for the housewife's duties, the present practice is best imagined. A polite custom of the islands dissuades a man returning at night from landing and entering his house.

The women possess long hair which they wear in a coif, the ears are pierced for Arab ear-rings, the lobes often distended for the introduction of coloured paper rolls; the use of ornaments is lavish. Both sexes chew snuff mixed with magadi (soda). Comely women are confined to their houses; this is by no means general, and the shapeless blue buibui is not worn.

The threefold divorce is rarely used, the first formula being regarded as sufficient.

Fish is the staple diet: there are, however, clans who eat no fish. Most shell-fish, other than oysters, are prized; both men and women string cowries for the Indian market. Corn is sold at 12 lb. (two pishis) for the rupee. Seaweed is eaten.

Buni (unhusked coffee) is as necessary a drug to the Bajun as to the Somali and Galla.

A few goats and cattle are to be found on the islands.

Fishing dhows are made of Msindi wood, which has the disadvantage of not rising to the surface after immersion, the planks being bound with fibre rope and rendered seaworthy with shark fat. Very few large dhows are to be seen, and these represent bad debts of Indian merchants in Kismayu. The coastal carrying trade will be in time entirely in Indian hands. Small white pennons are flown on the bowsprit to propitiate the elements. A person on his first voyage must tie some article of clothing to the mast until the journey's end, and redeem it at a price.

The boating songs are exceedingly tuneful, and would be worth collection.

The method of catching the turtle by the Koyama people is worth recording. The taza, a slender sucking fish, about two feet or so in length, is caught. When a shoal of turtles (kasa) is seen, this fish is thrown into the water attached to a line. The taza almost 'hunts' his enormous victim, fastens himself to the under portion of the throat, sucking its blood, and the turtle is drawn towards the boat, from which the fisherman dives to fasten an iron ring, with a rope attached, to the turtle's flapper. This mode of fishing would seem to be unique.

The Bajun is a dying race: with some help and fosterage from Government they might be saved: their economic value is undoubtedly greater than that of the Somali, and their loyalty is not in question.

II. THE ISLANDS

(1) Koyama Island.—This island is situated some $21\frac{1}{2}$ miles down the coast from Kismayu, its greatest length being $3\frac{1}{2}$ miles, its breadth 2 miles.

There are two villages on the island, the village on the shore being known as Koyama, the village on the hill a mile or so away, Koyamani. The inhabitants of this island are markedly Hamitic in features. They regard themselves as a distinct tribe, and seem the most feeble and dispirited of the islanders.

The island possesses about four mosques in varying states of repair; a venerable ruin gives the date A.H. 1224—A.D. 1808. Tombs of a more intricate design than those of other islands are to be seen on the foreshore. China plates are cemented into the mosque walls around the Kibla.

A cloth slightly different from that of Benadir is still made.

Coco-nuts, tobacco, and some grain is grown. The people possess a few sheep and goats. The turtle is esteemed as a delicacy and caught in a manner already described. The wells are extremely brackish.

Some fifty years ago, when Jubaland was in the possession of the Gallas (an old man states), two boats' crews, fifteen souls in all, from one of Her Majesty's ships arrived, the vessel having foundered. These survivors were fed by the inhabitants, giving written bills in exchange for meat and grain: they camped on the highest point and remained two months when a ship was sighted which rescued them. Their debts were paid in full, and the late Headman possessed a letter of commendation from a shipwrecked officer.

On one occasion Somali traders from the Benadir had put into Tula Island and captured four children: all the slavers were killed, and the Bajuns returned by the English.

Bajun tradition states that the islands were populated by a race crossing from the mainland at Koyama, each section cutting its mark on a baobab tree opposite the island. These marks are very like the cattle and other brands of known Hamites. The life of the baobab may exceed a thousand years: the tree in question is of great age.

(2) Ngumi Island.—This island is close to Koyama, its greatest length being 4½ miles and breadth 1 mile. It is uninhabited save by two or three fishermen. Water is obtained from Koyama. The island possesses considerable ruins of a walled-in village. It is of no interest save with reference to the legend associated with the mosque.

The inhabitants traded in ivory and slaves with a white race: the tusks were packed in the long matting-bags used for grain. On one occasion a cargo was taken, but the bags contained but one tusk each and were packed with camel and other bones. The traders sailed, and on their return bombarded the village, destroying all the inhabitants.

One woman ran for sanctuary to the mosque, praying that she might be saved from the raiders; her answer was her transformation into stone. The stone has now disappeared, but is stated to have stood near the Kibla: it has been reported as still existent, but its whereabouts kept secret. From this legend Astarte worship has been argued, somewhat unwarrantably.

Men desirous of children burn incense before the ruined shrine.

The Bajuns are unwilling to clean the old stone wells in that each well demands a life.

(8) Chovai Island.—Chovai is the correct Ki-Tikuu name for this island, which is called Towala by the Arabs. The island is the most populous of the Dundas group.

It possesses very few stone ruins. The existing mosques have been repaired recently.

Some attempt at agriculture is made on the mainland. Sheep and goats are grazed. The water is moderate.

The inhabitants seem the most wealthy of the islanders, are markedly Hamitic, and are divided amongst themselves.

Chovai creek on the mainland is a harbour for native craft; the creek, penetrating some miles inland, is fringed with mangroves.

Ivory is probably smuggled.

(4) Tula Island.—This island is second in point of population: it is 57 miles from Kismayu, is $1\frac{1}{2}$ miles in breadth, $3\frac{1}{2}$ miles in length. The water is the sweetest on the islands.

There are two villages on this island, the one Tula, the other a mile or so distant, M'doa.

Coco-nuts grow extremely well, and with some encouragement would become profitable.

The island possesses a large tomb, said to be Portuguese, made with a cement the secret of which has been lost. The decorations are not Islamic.

Legend has it that five hundred Portuguese men and women landed on the island, having been driven out of Arabia: more probably they were expelled from Mombasa or Lamu by the Arabs in the eighteenth century.

A house, the interior decorations of which are singularly delicate, is shown as of great age. It was built with slave labour by the great-aunt of a living inhabitant. This woman was of the Defarad clan of the Tunni tribe and the Barawa people of the Benadir coast. The Tunni and Rehawen fought with the Somalis at Giumbo and were driven north.

The three stone mosques are in good repair: the interiors are decorated with plates: in many cases the design of this china is modern.

On the mainland a few hundred yards from the shore, at Kituni, is the ruin of a considerable mosque, the interior of which is decorated with the 114 Suras of the Koran carved in the plaster.

On the right-hand bank, at the mouth of the Anole Creek, are more ruins, likewise on the left-hand side at Kudai.

It is submitted that these mainland settlements were in their conception custom-houses, and, as relations with the Galla or Wa-Nyika were established, became villages. The custom is well known; the grain was placed some distance away, the tusk was brought: if either the price or the article did not suffice, the dissatisfied warned away the other by hostile demonstration. Manifestly the islander could not barter in safety on his island.

(5) Kudai Village.—This is a small settlement on the mouth of the Anole Creek, inhabited by a few Bajuns, who eke

out a wretched living by fishing and attempts to grow crops. It is marked 'Kituni' on the latest maps.

(6) Anole Village.—This is a small village of natives of various Bantu tribes who have moved from place to place until they have reached the head of Anole Creek, some twenty-five to thirty miles from the sea.

Their condition is miserable, and they are in constant dread of raids by Rer Abdulla youths aspiring to the white feather.

The soil round this village is suitable for shambas on an extensive scale; corn, sim-sim, manico (muhogo), and tobacco are grown.

The neighbourhood is the Jilal grazing of the Herti and Magharbul Somalis, with whom their relations are friendly. The water, from shallow wells, is abundant, clear, and sweet.

This stretch of fertile country extends for a considerable distance, as far as Busbushli on the Burkao Creek.

A road is said to have been cut by Mr. Haywood, District Commissioner, from the head of Anole Creek to Kudai. It is not visible, and the camel track followed through thick bush is a nine to ten hours' march. (European.)

- (7) Tosha Village.—This is a small and insignificant village some two miles from Kudai on the mainland. The water is moderately good.
- (8) Sheh Village.—This village, some five miles south of Tosha on the mainland, has been abandoned. No water is to be found, and mosquitoes with sand-flies in the mangroves render camping impossible.
- (9) Port Durnford Village.—This is marked as Burkao on maps; it is called 'Birikavo' by the Bajuns.

Formerly a Government station was maintained, and a considerable village was built, trade being with the Abdulla and Magharbul Somalis. It has since been abandoned.

There are ruins of an old village at Port Durnford and of a pier.

The water is impossible even for native consumption, and for Europeans the rain-tanks must be supplemented with water brought in dhows from Busbushli, some twenty miles up the creek.

The harbour is suitable for large vessels; boats drawing four to five feet can enter the creek some nineteen miles, which is navigable a further sixteen miles, as far as Wayore, by craft drawing nine inches or so.

Busbushli, where a large supply of fresh water is to be found, is the grazing of the Rer Abdulla section of the Ogaden Somalis during the month of January.

The Mohamed Zubeir Ogadens claim a vague suzerainty over this section.

Busbushli would seem a natural basis for operations against the Rer Abdulla.

The Administration house at Port Durnford is a large and commodious building, erected by the late Mr. Reddie, when District Officer.

It is now sadly in need of repair in every particular. The roof beams have fallen in some places, the windows and doors are broken, the floor has cracked, the verandah is a mass of rubble. The house has been in the occupation of a Police Post.

The inhabitants of Port Durnford wish to move to Ras Mnarani, some six hours distant down the coast, owing to the suitability of that place for shambas, water and grazing, and the impossibility of the water at Port Durnford.

(10) Ras Mnarani.—This can scarcely be called a village as yet. The inhabitants of Port Durnford, however, are desirous of moving thither, where water, grazing and some cultivation is possible.

Ras Mnarani is six hours' march from Port Durnford.

III. THE COAST

The coast-line of Jubaland from the river Juba to Ras Kiambone is about 120 miles long, a practically continuous line of sand-hills.

There are three tidal creeks—Chovai, Anole, and Burkao.

The creeks are fringed with mangroves, mwea, mkandaa and mutu trees, all of some commercial value:—

(1) Chovai Creek.—This creek lies opposite to Chovai Island, and is suitable for coasting craft.

(2) Anole Creek.—This creek is suitable for boats drawing three to four feet for about five miles. Canoes and small fishing-boats can be punted or sailed for this distance, and can proceed a further twenty to twenty-five miles in the dry season.

The journey to Anole village at the head of the creek should not be attempted by Europeans by land or water in one day.

(3) Burkao Creek.—Port Durnford, a sub-port, is a sheltered anchorage of about six fathoms. A steamboat has ascended the creek for about twenty miles in the dry season to Busbushli. Dhows drawing four to five feet can reach Busbushli at any time, and canoes, Wayore, a further sixteen miles.

The rumours of tsetse-fly would seem to be an obstructive Somali (Herti) myth.

This tribe grazes its cattle along the coast-line to Port Durnford, and what is more, along the Chovai and Anole creeks, the rank vegetation of which should harbour all manner of insects.

IV. COMMUNICATIONS

- (1) By Sca.—Journeys by sea are naturally subject to the N.E. and S.E. monsoons. The former blows roughly from April to August, the latter from September to March. During both monsoons the current is stronger near the land; despite this, the more speedy mode of travel against the monsoon would seem to be poling along the shore. The time taken between island and island is a matter of circumstance.
- (2) By Land.—The owners of boats on each island take it in turn to keep a ten days' watch. A fire is lit on the mainland, and travellers are ferried across to the island, where water can be obtained.

Chovai Creek has no ferry.

V. TRADE, PRODUCTS, ETC.

The Bajuns would seem to do a great deal of the coastal carrying trade. In reality this business is rapidly becoming a purely Indian concern.

Fishing is engaged in mainly as a means of livelihood.

Cowries and dried sharks' flesh are bought by Kismayu traders.

Pearling might become profitable, but the Bajuns do not possess the power of deep diving.

Coarse 'carriage' sponges are to be found.

Ambergris and turtle shell are rarities.

The question of grain for food deserves special consideration. The Juba river strip is in the hands of Arabs financed by Indians: the Bajuns on the islands consequently starve.

The coral rag of the islands is not fit for agriculture: an attempt is made to grow crops on the mainland a few yards from the shore: this is but little better.

The only arable land adjoining would seem to be the almost well-watered valley or 'tug' stretching from Mtoni at the head of Anole Creek to Busbushli, twenty miles up the Birikou Creek. The Chore or Joreh country is also watered.

Coco-nuts grow well on Tula Island, and would do well at Kudai and Port Durnford.

Trees of commercial value are to be found at Chovai, Anole, and Birikou creeks. These are 'borities'; 'mweah,' small borities used in the construction of native huts; 'mkandieh,' a wood used for burning lime; 'mutu,' a tree used for making native beds, chairs, etc., and burning lime.

Wild rubber is to be found in the vicinity of Port Durnford.

NOTES ON EAST AFRICAN MAMMALIA (OTHER THAN HORNED UNGULATES) COLLECTED OR KEPT IN CAPTIVITY 1915-1919. PART II.

BY ARTHUR LOVERIDGE

One day I tossed the still warm body of a newly-killed rat to her to see what she would do. First seizing the tail in her mouth she defied anyone to take it from her, then she subjected it to a critical examination, opening the mouth and looking inside, licked the blood from its nose, examined its fur minutely

Annex 116

D. Anzilotti, Cours de droit international (Sirey 1929) p. 347.

DIONISIO ANZILOTTI

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COURS

DE

DROIT INTERNATIONAL

PREMIER VOLUME : INTRODUCTION - THÉORIES GÉNÉRALES

TRADUCTION FRANÇAISE

d'après la troisième édition italienne, revue et mise au courant par l'auteur,

PAR

Gilbert GIDEL

PROFESSEUR A LA FACULTÉ DE DROIT DE L'UNIVERSITÉ DE PARIS ET A L'ÉCOLE LIBRE DES SCIENCES POLITIQUES MEMBRE DE L'INSTITUT DE DROIT INTERNATIONAL

LIBRAIRLE

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RECUEIL SIREY

(SOCIÉTÉ ANONYME)

22, Rue Soufflot, PARIS, 50

1929

L'acte juridique international peut comprendre et comprend souvent également des éléments que les juristes appellent déterminations accessoires de la volonté: en particulier des termes et des conditions. La nature et les effets de ces éléments ne sont pas soumis à des règles générales; la plupart du temps la question se réduit à une interprétation de volonté dans l'espèce dont il s'agit: les principes développés par les auteurs de droit privé ont pu être utilement mis en œuvre également dans notre domaine parce que, en grande partie, ces principes ne font qu'exprimer ce que l'on peut appeler la volonté raisonnable des intéressés.

Les actes juridiques internationaux se divisent également en actes unilatéraux et bilatéraux, suivant que le droit rattache l'effet juridique à la déclaration de volonté d'un seul sujet ou requiert, au contraire, le concours de la volonté de deux ou de plusieurs sujets.

II. - ACTES UNILATÉRAUX.

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BIBLIOGRAPHIE. — P. HEILBORN, System, p. 374 et s., Völkerrecht, § 14; I. Oppenheim, vol. I, part. IV, chap. I, III; K. Strupp, § 19; A. Cavaglieri, Alcune osservazioni sul concetto di rinuncia nel diritto internazionale, dans la « Rivista di dir. internazionale », vol. XII, 1918, p. 3 et s.; Kunz, Protest in Völkerrecht, dans le « Wörterbuch des Völkerrechts » de K. Strupp, vol. II, p. 329 et s.

En disant que, dans les actes juridiques unilatéraux, le droit requiert la manifestation de volonté d'un seul sujet, on veut dire que cette volonté est la seule à intervenir d'une façon principale. Ceci n'exclut pas que la volonté ou l'action d'autres sujets doivent concourir d'une façon subordonnée, ni que ces sujets puissent, par leur attitude, empêcher que la volonté manifestée devienne efficace.

Il peut également arriver, et en fait il arrive assez souvent, qu'une déclaration unilatérale de volonté représente l'acceptation d'une proposition précédente demeurée en suspens ou qu'elle soit elle-même une proposition nouvelle qui attende une acceptation éventuelle. Dans l'un et dans l'autre cas, la déclaration de volonté devient l'élément constitutif d'un accord duquel, et non pas de la déclaration individuelle, dérivent les effets juridiques dont il s'agit.

Les cas les plus remarquables et les plus communs d'actes juridiques unilatéraux en droit international sont les suivants :

1) La notification. — C'est l'acte par lequel un Etat porte à la connaissance d'un ou de plusieurs autres Etats un fait

déterminé auquel peuvent se rattacher des conséquences juridiques. La notification est souvent prévue et réglée par des normes spéciales régissant une matière déterminée : dans ce cas, la notification est obligatoire ou facultative, suivant que lesdites normes en disposent de telle ou telle façon, et elle produit les effets que ces normes y attachent. Ainsi l'article 34 de l'Acte général de Berlin du 26 février 1885 exigeait que les Puissances signataires notifiassent toute occupation de territoire ou tout établissement de protectorats sur les côtes du Continent africain aux autres Puissances signataires « afin de les mettre à même de faire valoir, s'il y a lieu, leurs réclamations » : la notification était obligatoire, et le silence gardé par les Etats après la notification régulièrement reçue impliquait renonciation à faire valoir des réclamations ultérieures. Ainsi encore le droit international coutumier (Comp. Déclaration de Londres, relative au droit de la guerre maritime,

du 26 févr. 1909, art. 11 et s.) exige que l'Etat belligérant notifie le blocus établi par lui aux Etats neutres; la nature et

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les effets de cette notification sont d'ailleurs assez controversés, et la pratique des différents Etats diffère sensiblement.

En tout autre cas, la notification est facultative, et son effet propre est celui de porter légalement les faits qui en sont l'objet à la connaissance de l'Etat à qui elle est adressée, de sorte que cet Etat ne pourra plus en alléguer l'ignorance et devra éventuellement se comporter de la manière qui, dans les circonstances données, lui est imposée par le droit international. Il ne semble pas que des effets plus larges puissent se déduire de la notification comme telle; ces effets peuvent cependant dériver de l'attitude que l'Etat observe à la suite de la réception de la notification.

2) La reconnaissance. — C'est la manifestation de la volonté de considérer comme légitime un état de choses donné, une prétention donnée, etc. Il peut arriver que la reconnaissance soit, en réalité, l'acceptation d'une proposition précédente et que sa valeur soit, par suite, de parfaire un véritable accord. Mais le droit international attache des effets juridiques au seul fait de la reconnaissance, en ce sens que l'Etat qui a reconnu une prétention donnée ou un certain état de choses ne peut plus en contester la légitimité, et cela indépendamment de tout accord avec le sujet en faveur duquel la reconnaissance a lieu. Une pratique générale bien établie, de laquelle d'ailleurs on comprend facilement la raison et l'utilité, a, de cette manière, imprimé à la reconnaissance le caractère d'un acte juridique unilatéral.

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Dans les rapports internationaux, la reconnaissance a une importance fondamentale par ses très larges applications et parce qu'elle remplace l'institution de la prescription. On a déjà dit qu'en droit international il n'existe pas de principe

général en vertu duquel le seul écoulement du temps détermine l'acquisition ou l'extinction de droits. Mais, par l'écoulement du temps, les exigences de la réalité portent presque toujours, tôt ou tard, les sujets intéressés à accepter l'état de choses dont, à l'origine, ils ont contesté la légitimité, et qui s'est manifesté en fait comme durable et viable : une fois la reconnaissance intervenue, cet état de choses devient légitime à l'égard de ceux qui l'ont reconnu, quel que soit le mode dans lequel il s'est originairement établi. Ce n'est pas l'écoulement du temps comme tel, mais la volonté manifestée par la reconnaissance, grâce à l'écoulement du temps, qui transforme ainsi les situations de fait en situations juridiques.

Sauf dispositions d'accords spéciaux dont il n'existe pas d'exemples fréquents, la reconnaissance peut résulter aussi bien de déclarations explicites que de faits concluants (reconnaissance tacite). La simple manière de se comporter d'un Etat, y compris, dans des circonstances déterminées, même son seul silence (supra, p. 344), peut signifier la volonté de reconnaître comme légitime un état de choses donné. Naturellement des considérations politiques induisent souvent les Etats à préférer cette voie à celle d'une reconnaissance explicite.

(313) Les effets concrets de la reconnaissance sont étroitement liés aux circonstances dans lesquelles elle se produit et à l'objet qu'elle concerne. Λ un point de vue général on peut dire que ce qui en dérive c'est qu'on ne peut plus contester la légitimité de ce qui a été reconnu. Il est inutile d'ajouter que cet effet, lui aussi, se produit seulement dans les limites précises où la reconnaissance est intervenue.

Rien n'empêche, et il y a de cela des exemples remarquables, que la reconnaissance soit subordonnée à des termes ou à des conditions. 3) La protestation. — C'est la déclaration de la volonté de ne pas reconnaître comme légitime une prétention donnée, une conduite donnée, un état de choses donné. On peut dire que la protestation est l'opposé de la reconnaissance : tandis que la reconnaissance assainit les conditions de fait originairement contraires au droit, la protestation sert à réserver la possibilité de contester la légitimité de cet état de choses donné, de cette conduite donnée, de cette prétention donnée. C'est précisément pourquoi les effets de la protestation cessent si l'Etat reconnaît les prétentions ou les faits contre lesquels il avait protesté : il faut d'ailleurs que celui qui veut s'en prévaloir prouve que la reconnaissance a eu lieu.

La protestation, pour produire les effets dont on vient de parler, doit être un acte de l'Etat dans le domaine des relations internationales et, par suite, doit émaner de l'organe internationalement compétent pour manifester la volonté de l'Etat: une protestation faite par d'autres organes, même doués d'une haute autorité, par exemple le Parlement, n'a pas de valeur juridique, bien qu'elle puisse avoir une grande importance politique.

Abstraction faite d'accords spéciaux par lesquels un Etat serait tenu envers d'autres Etats de sauvegarder le droit lésé ou menacé (protestation du Luxembourg contre la violation de sa neutralité par l'Allemagne), la protestation est facultative; mais elle peut être nécessaire pour réserver les droits de l'Etat dans les cas où son silence impliquerait reconnaissance.

4) La renonciation. — Naturellement, il est question ici de la renonciation au sens propre, c'est-à-dire de la renonciation acte unilatéral, qui est parfaite et produit ses effets par la

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seule volonté du renonçant; il n'est pas question de la renonciation contenue dans un acte bilatéral et faite en vue d'une compensation, laquelle ne constitue pas un acte juridique par elle-même.

La renonciation ainsi entendue est l'abandon volontaire d'un droit. Tous les droits ne sont pas susceptibles de renonciation; en particulier, ne sont pas susceptibles de renonciation ceux qui constituent le moyen nécessaire pour l'exécution d'un devoir juridique ou ceux auxquels la renonciation impliquerait en même temps renonciation à un devoir, toujours inadmissible. En dehors de ces cas, et à condition toujours que le contraire ne résulte pas de la lettre ou de l'esprit de l'accord dont dérive le droit, il faut admettre que la renonciabilité est un caractère des droits subjectifs internationaux des Etats: les accords au moyen desquels ces Etats établissent des droits et des obligations réciproques, impliquent en règle la faculté d'abandon volontaire des prétentions de la part de leurs titulaires; car cet abandon, étant à l'avantage de l'obligé, ne peut pas être présumé ne pas avoir été voulu par celui-ci.

La renonciation, qui a pour effet l'extinction du droit, ne se présume pas, mais il n'est pas nécessaire qu'elle soit explicite. Rien n'autorise à admettre qu'il existe une norme de droit international qui, par dérogation au principe général, (supra, p. 343 et s.), imposerait que la volonté de renoncer soit toujours exprimée au moyen de mots; et la pratique internationale connaît des cas dans lesquels on a discuté sur le point de savoir si les faits allégués pouvaient être interprétés comme une renonciation, tandis qu'elle ne connaît pas de cas dans lesquels aurait été affirmée la nécessité d'une déclaration expresse. La volonté d'abandonner un droit pourra donc se déduire également de l'attitude du sujet.

Il faut cependant observer deux choses. Avant tout, que $(3\dot{1}5)$ la volonté d'abandonner est requise : la simple inaction ne suffit donc pas, ni le non-exercice du droit, parce que tout ceci n'implique pas nécessairement la volonté d'abandon; on a déjà dit d'ailleurs (supra, p. 336 et s.), que le seul écoulement du temps n'a pas l'efficacité d'éteindre les droits. En second lieu, la renonciation, de même qu'elle ne se présume pas, ne doit non plus s'admettre que dans les limites précises où elle s'est manifestée comme effectivement voulue, et, en cas de doute, plutôt dans des limites plus étroites que dans celles plus larges qu'autoriserait l'interprétation : c'est pourquoi, par exemple, la renonciation à exercer certaines facultés faisant partie d'un régime juridique déterminé n'emporte pas renonciation également aux autres, si ces dernières peuvent subsister indépendamment de celles auxquelles il a été renoncé; entre la renonciation à l'exercice temporaire d'un droit et la renonciation au droit lui-même, il faut plutôt admettre la première solution que la seconde; une renonciation sous condition de certains avantages, doit, en cas de doute, être considérée comme voulue de préférence à une renonciation pure et simple; et ainsi de suite.

III. — ACTES BILATÉRAUX.

BIBLIOGRAPHIE. — La matière est développée largement dans tous les traités. Monographies de caractère général : G. Jellinek, Die rechtliche Natur der Staatenverträge, Vienne, 1880; F. Lagiii, Teoria dei trattati internazionali, Bologna, 1882; L. Gessner, Die Staatsverträge im allgemeinen, dans le vol. III du « Handbuch des Völkerrechts » de F. von Holtzendorff (1887), p. 5 et s.; E. Seligmann, Beiträge zur Lehre vom Staatsgesetz und Staatsvertrag. II : Abschluss und Wirksamkeit der Staatsverträge, Fribourg-en-B., 1890; O. Nippold, Der völkerrechtliche Vertrag, seine Stellung im Rechtssystem und seine Bedeutung für das

Annex 117

E. Brüel, "La protestation en droit international" (1932) 3 Nordisk tidsskrift for international ret (Nordic Journal of International Law) pp. 84–5.

LA PROTESTATION EN DROIT INTERNATIONAL

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La protestation de droit international n'est en général mentionnée qu'occasionnellement par la doctrine, lorsqu'il est question des actes de droit international, ou bien en tant qu'incident d'une cause juridique internationale; elle a rarement fait l'objet d'une monographie. Or, elle constitue l'un des actes de droit international les plus fréquents et l'évolution moderne du droit international, avec l'organisation juridique toujours plus développée de la société des Etats, semble avoir entraîné des modifications essentielles sur un point capital, à savoir son efficacité; il convient peutêtre de signaler ici quelques-uns des principaux problèmes qui se rattachent à cet acte de droit dont l'importance est particulièrement grande pour les petits Etats.

Avant d'en aborder l'étude, il semble naturel d'examiner brièvement les conditions auxquelles est subordonnée la protestation de

droit international.

En considérant l'institution juridique dénommée protestation de droit international il faut tenir compte de la portée très étendue que la règle »Qui ne dit mot consent«, a acquis en droit international. Sans avoir peut-être une valeur absolue¹) cette règle n'en possède pas moins, en droit international, une portée bien plus grande que celle que lui reconnaît habituellement le droit interne; il y a donc, en droit international, une importance particulière à ce que la protestation soit formulée en temps voulu et dans les formes requises, car le droit international, dont les règles sont souvent incertaines, et dont l'application reste encore essentiellement privée, n'en est qu'à un stade d'évolution tout à fait primitif.

Il faut, en outre, qu'en l'espèce il y ait violation imminente ou effective d'un droit dérivant du droit international. La violation

¹⁾ J. Kunz, notamment, attache au contraire à cette règle une valeur absolue, dans l'ouvrage de Strupp: Wörterbuch des Völkerrechts II page 329. — Cf. Strupp. Grundzüge des positiven Völkerrechts 1921, page 96.

imminente ou effective de *l'intérêt* qu'a un sujet de droit international à conserver, par exemple, la possibilité de s'approprier un territoire jusque-là sans souverain, ou à sauvegarder un principe politique déterminé, tel que la doctrine de Monroe, peut, elle aussi, donner lieu à une protestation qui, tout en ayant en la forme le caractère d'une protestation de droit international, s'en distingue en ce qu'elle n'est pas essentiellement conservatoire d'un droit, mais offre surtout une importance politique. L'exposé qui suivra, abstraction faite de notre remarque sur la forme, porte donc essentiellement sur la protestation contre la violation de droits dérivant du droit international.

En régle générale, il faut que le droit menacé ou violé soit celui du protestataire lui-même. Fauchille²) estime qu'un Etat neutre est fondé à protester contre les violations du droit international commises à l'égard d'un autre Etat neutre par les belligérants, parce que la violation des droits d'un Etat neutre est en réalité la violation du droit commun de tous les Etats neutres: il est probable que cette conception n'est pas juste au sens général que lui attribue Fauchille et qu'elle s'applique uniquement dans les cas où la communauté d'intérêts a trouvé une expression juridique, dans une alliance par exemple, ou dans une convention ratifiée aussi bien par l'Etat qui a subi la violation que par l'Etat protestataire. C'est ainsi, notamment, qu'un Etat ayant adhéré aux conventions de La Have sur les droits des neutres en temps de guerre doit être fondé à protester contre toute violation de ces conventions, encore que l'Etat qui a subi la violation matérielle s'abstienne de protester. Il en est peut-être de même lorsqu'il s'agit d'infractions graves à des principes consacrés du droit international. On peut citer ici, à titre d'exemple, les notes de protestations des pays nordiques en date du 12 novembre 1914, conçues en termes identiques, contre la saisie des courriers postaux scandinaves et dans lesquelles il est dit, au sujet des conventions élaborées dans les conférences de La Haye et de Londres en 1909, que ces conventions, même lorsqu'elles n'ont pas été ratifièes doivent être considérées comme l'expression la plus valable du sentiment du droit des peuples et comme reflétant donc le point de vue actuel du droit international²a). En pareil cas, d'ailleurs, il conviendra plutôt d'apprécier si la protestation doit être considérée comme formulée au nom de l'Etat qui a subi la violation ou au nom de la

²⁾ Traité de droit international public. II. pages 783-784.

²a) Utredning rörande Sveriges försvarspolitiske läge samt behov af försvarskrafter, Stockholm 1930, page 54.

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partie qui l'a signifiée. Il en est autrement lorsqu'un organisme spécial a qualité pour déposer une protestation au nom de tous les intéressés. C'est ainsi qu'une protestation émanant de la Société des Nations constitue une protestation de droit international, non seulement lorsqu' elle a trait à la violation d'un droit conféré à la Société, comme telle, par le droit international, mais aussi lorsqu'elle vise la violation des droits reconnus aux divers Etats membres et garantis par le Pacte de la Société. Dans ce cas, il ne semble pas que la protestation puisse être considérée comme formulée uniquement au nom de l'Etat qui a subi la violation, étant donné qu'en vertu du Pacte cette violation constitue «une affaire qui intéresse la Société tout entière». Il paraît donc y avoir ici une dérogation à la règle générale selon laquelle le droit menacé ou violé doit être celui de la partie qui proteste. Dans d'autres cas, il ne semble pas qu'on puisse reconnaître un droit de protestation quelconque à d'autres que la partie qui subit effectivement la violation.

La protestation suppose en outre que son auteur possède effectivement et sciemment le droit en question. Si ce droit ne lui appartient pas, la protestation ne peut lui en assurer la conservation, mais elle doit éventuellement donner lieu à une contre-protestation de la part du véritable titulaire de ce droit; d'autre part, lorsque par exemple, des conventions secrètes intervenues entre deux puissances ont conféré à un Etat tiers un droit dont il ignore l'existence, cet Etat ne peut, si ce droit vient à être violé, formuler aucune protestation de droit international contre une telle violation et le défaut de protestation ne saurait donc avoir pour effet l'extinction du droit lésé.

Il faut en outre que le protestataire sache que ses droits ont été violés ou se trouvent en péril; le défaut de protestation contre la violation du droit que lui a conféré un accord secret entre d'autres puissances, tel qu'une décision relative à l'occupation en cas de guerre, ne saurait entraîner l'extinction du droit violé. A titre d'exemple d'une transaction de ce genre, on peut citer la déclaration du 7 juin 1815 échangée au congrès de Vienne entre les rois de Suède-Norvège et de Danemark, dans laquelle les deux monarques, à l'occasion de «l'échange» de la Poméranie suédoise et du Lauenbourg, dé clarent qu'ils regarderont désormais le traité de Kiel comme ayant sa pleine et entière vigueur, en toute sa teneur, et dans toutes ses conditions et clauses non changées ou modifiées par la Déclaration en question. Cette déclaration a été gardée secrète à l'égard du gouvernement norvégien, et le fait qu'elle n'a donné lieu à aucune protestation de la part de la Nor-

vège n'a donc pas pu avoir pour effet que la Norvège, après la remise de cette déclaration, s'est trouvée liée par le traité de Kiel, dans une mesure plus grande ou moins grande qu'avant sa remise. Dans les instructions au commissaire norvégien, lors du réglement des dettes avec le Danemark, le comte Engeström, ministre suédonorvégien des Affaires étrangères souligne, en effet que la déclaration «ne lie la Norvège en aucune manière» ^{2b}).

Toutefois, en ce qui concerne les violations secrètes de droits, il ne faut pas perdre de vue qu'en principe, c'est au titulaire des droits en question, qu'il appartient d'être attentif à toute violation imminente ou effective; en général, il n'est pas fondé à exiger que lui soient notifiés les actes susceptibles d'entraîner une telle violation. Cette notification ne semble avoir été formellement prescrite que dans un seul cas: il s'agit de l'Acte général du 26 février 1885 relatif au Congo qui stipule, à l'art. 34, que la puissance qui, dorénavant, prendra possession d'un territoire sur les côtes du continent africain situé en dehors de ses possessions actuelles, ou qui, n'en ayant pas eu jusque là, viendrait à en acquérir, et de même la puissance qui y assumera un protectorat, accompagnera l'acte respectif d'une notification adressée aux autres puissances signataires du présent Acte, afin de les mettre à même de faire valoir, s'il y a lieu, leurs réclamations3). Mais il s'agit là d'une clause d'exception qui, lors même qu'elle aurait conservé sa validité, même après que l'Acte relatif au Congo a été abrogé par la convention de St. Germain du 10 septembre 1919, n'est en tout cas applicable tout au plus que lorsqu'il s'agit de l'acquisition de colonies, et peut-être même seulemênt sur les côtes du continent africain. Dans les autres cas, on ne saurait donc guère, comme le fait v. Lisst⁴), exiger que le protestataire ait été avisé officiellement de la violation imminente ou effective: en règle générale, il doit suffire que le titulaire du droit ait effectivement connaissance de ladite violation. C'est ainsi que la 3ème Convention de La Haye de 1907 relative à l'ouverture des hostilités stipule, à l'art. 2, que l'état de guerre devra être notifié sans retard aux puissances neutres et ne produira effet à leur égard qu'après réception de cette notification, tout en ajoutant que les puissances ne pourraient invoquer l'absence de notification, s'il était établi d'une manière

²b) Traités danois depuis 1800, vol. I, pages 88 et suivantes. Annuaire de la Société norvégienne de géographie, 1919—21, pages 169—170.

³⁾ Cohn, »Folkeretskilder« (Sources du droit international), p. 105. C'est nous qui soulignons.

⁴⁾ Das Völkerrecht, geme édition, 19.1, p. 161.

non douteuse qu'en fait elles connaissent l'état de guerre⁵). Mais, par contre, la notification peut avoir pour effet qu'une partie formulant ultérieurement une protestation ne peut alléguer qu'elle ignorait la violation imminente ou effective; de même, lorsque la notification a été faite sans donner lieu à protestation, l'assentiment peut se présumer avec plus de certitude qu'en l'absence de notification. Il est donc judicieux de procéder à la notification afin de se mettre entièrement à couvert. On peut citer ici, à titre d'exemples, la notification du Danemark au gouvernement suédo-norvégien, par note du 22 octobre 1894, concernant l'établissement de la colonie d'Angmagssalik, sur la côte orientale du Groenland, et sa notification au gouvernement norvégien par note du 29 novembre 1905, concernant l'extension du monopole commercial sur la côte occidentale du Groenland (reproduites sous les nos 16 et 17 dans le recueil de documents relatifs à l'affaire du Groenland oriental reproduits par la présente revue vol. II, fasc. 3). Le gouvernement norvégien ayant formulé, par note du 23 mai 1922, des réserves contre les dites extensions du territoire colonial danois au Groenland, en observant que ces extensions ne lui avaient pas été notifiées, le ministère des Affaires étrangères danois lui communiqua une copie des susdites notifications en remarquant que l'assertion de la Norvège devait reposer sur un malentendu; cette communication est restée sans réponse.

Nous examinerons maintenant les divers éléments de la protestation. La première question qui se pose est la suivante:

(1) Qui peut formuler une protestation de droit international? La protestation dont nous nous occupons ici supposant la violation imminente ou effective d'une règle de droit international, seule la partie à laquelle cette règle confère un droit, c'est-à-dire celle qui peut être sujet de droit international, a qualité pour protester. En règle générale, ce sont donc uniquement des Etats ou groupes d'Etats qui peuvent formuler cette protestation⁶).

Dans les cas exceptionnels où d'autres personnes qu'un Etat peuvent être sujets de droit international — notamment la Société des Nations, certaines minorités nationales, certaines commissions internationales, les organisations ouvrières et patronales, dans le cas prévu à l'article 409 du Traité de Versailles, les

⁵) Cohn: »Folkeretskilder« (Sources du droit international), p. 224. C'est nous qui soulignons.

⁶⁾ Par le traité de Latran du 11 février 1929, le Pape lui aussi a acquis cette capacité.

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groupes d'insurgés reconnus comme belligérants, etc.7) ces organisations ne doivent cependant pouvoir formuler une telle protestation que dans la mesure où leur est reconnu le caractère de sujets de droit international. Si, par exemple, la Société des Nations, se fondant sur l'article 11, ler alinéa, du Pacte, décide, à titre de mesure propre à sauvegarder efficacement la paix des nations, de protester contre une agression pouvant être caractérisée comme une menace de guerre, cette protestation doit être considérée comme une protestation de droit international, tout au moins lorsqu'elle est formulée à l'encontre d'un membre de la Société. La même règle s'applique, semble-t-il, à la protestation que les organisations patronales ou ouvrières peuvent adresser au Bureau international du Travail, en vertu de l'article 409 du Traité de Versailles⁸), lorsque l'un des membres de l'Organisation internationale du Travail n'a pas assuré d'une manière satisfaisante l'exécution d'une convention internationale ratifiée par lui; cette règle s'applique également à la protestation qu'une commission internationale pourrait formuler contre un Etat qui, par exemple, violerait un droit d'exterritorialité conféré aux membres de la commission. Par contre, les particuliers n'ont pas qualité pour formuler une protestation de droit international. Si la XIIème Convention de la Have relative à l'établissement d'une Cour internationale des prises avait été ratifiée, la protestation d'un particulier contre une violation imminente ou effective du droit que lui conférait cette convention d'exercer un recours devant ladite Cour, eût constitué une protestation de droit international; mais cette convention, on le sait, n'est jamais entrée en vigueur. Toute protestation formulée par des particuliers, par la presse, par des groupements, voire par des parlements, même lorsqu'elle vise un acte contraire au droit international commis par un Etat étranger, n'est pas une protestation de droit international. Cette remarque s'applique non seulement aux innombrables protestations formulées au début de la guerre 1914-1919 par la presse, par diverses organisations et par des personnalités notoires contre l'Allemagne, lorsque celle-ci envahit le Luxembourg et la Belgique, mais aussi, par exemple, à la résolution de protestation votée par le parle-

⁷⁾ Axel Møller: »Folkeretten i Fredstid og Krigstid«. Copenhague, 1925, p. 184. Note 4. (Edition anglaise 1931.)

⁸⁾ Voir, au sujet de ce droit: Erik Brüel: »Den internationale Arbejdsorganisation«, 1919—1929, page 12 (Tirage à part de la Revue »Nordisk Tidsskrift« No. 6, 1929).

ment brésilien[®]). Il en est ainsi a fortiori lorsque la protestation ne vise même pas un Etat déterminé, mais qu'elle s'adresse pour ainsi dire à toute partie pouvant se sentir visée par elle, comme le »manifeste« adressé par les savants russes aux intellectuels de tous les pays, le 1er août 1929, contre »la nouvelle guerre impérialiste menaçante et l'agression préparée contre l'Union des Soviets10), ou encore lorsque cette protestation n'a même pas trait à la violation d'une règle de droit international ou d'un droit appartenant à un Etat, comme celle qu'un groupe d'écrivains nordiques formulérent au printemps de 1931 contre la Hongrie qui avait interdit la publication de l'ouvrage «Jahrgang 1902», traduit en hongrois. Mais en dehors de leur effet politique, de telles manifestations émanant de particuliers peuvent, par la suite, donner lieu à une protestation de droit international proprement dite, formulée par l'Etat visé contre l'Etat où ces manifestations ont pris naissance; c'est le désir d'éviter des manifestations de ce genre qui, en partie, a motivé l'invitation adressée à la presse, le 2 août 1914, lors d'une réunion des représentants de Gouvernement et de la presse danoise, afin que celle-ci «fît preuve d'impartialité dans ses appréciations sur les belligérants»¹¹). A titre d'exemple d'une protestation de droit international suscitée par des protestations de particuliers on peut également citer les plaintes que les représentants diplomatiques des Etats étrangers adressent aux ministères des Affaires étrangères, lorsque les journaux critiquent les actes de leur Gouvernement.

2) Par qui la protestation doit-elle être signifiée? Comme, en principe, seuls les Etats peuvent formuler une protestation de droit international, celle-ci doit être présentée par les personnes qui, d'après les règles générales du droit international, ont qualité pour représenter l'Etat dans les affaires relevant du droit international, c'est-à-dire, outre le Chef de l'Etat, à titre officiel, le ministre des Affaires étrangères, les agents diplomatiques et consulaires et, dans certaines circonstances, les représentants militaires et de droit international, aux règles pertinentes. Par exemple, seule

⁹⁾ Fauchille: Traité de droit international public. II. page 784. Cf. Anzilotti: Lehrbuch des Völkerrechts, p. 265.

¹⁰⁾ Europäische Gespräche. 7ème année, no10 (oct. 1929), p. 562.

¹¹) Annexe au Rapport de la Commission pour l'étude de l'organisation future de l'Armée et de la Marine (dénommée dans les notes suivantes »Rapport«) Vol. II, p. 159. Annexe XV (voir également page 197).

¹²⁾ Axel Møller: »Folkeretten i Fredstid og Krigstide, p. 151 et suivantes.

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la contrainte exercée contre les particuliers rend nul l'acte juridique, alors que le fait que l'Etat protestataire s'est trouvé dans un état de contrainte reste sans effet. Lorsque, exceptionnellement, d'autres personnes que l'Etat sont fondées à formuler une protestation de droit international, celle-ci doit être signifiée par les organismes ayant qualité pour représenter les sujets de droit international en question, dans le domaine où cette qualité leur est reconnue, c'est-à-dire, pour la Société des Nations par exemple, le président en exercice du Conseil, l'Assemblée des délégués ou le Secrétaire général.

- 3. A qui doit s'adresser la-protestation? De même quen règle générale seul l'Etat peut formuler une protestation (voir ci-dessus sous 1) celle-ci n'a pu pratiquement être formulée, jusqu'ici qu'envers des Etats. Cependant, de même que, par suite de l'organisation progressive de la communauté de droit international, les cas dans lesquels un organisme central peut protester au nom de l'Etat victime de la violation deviennent toujours plus nombreux, on constate aussi un accroissement du nombre de cas dans lesquels la protestation doit être formulée non seulement envers l'auteur de la violation mais aussi — et parfois uniquement — envers l'organisme collectif chargé de faire respecter le droit. C'est ainsi qu'il est prescrit à l'article 409 du Traité de Versailles que la réclamation qu'une organisation ouvrière ou patronale peut, en vertu de cet article, formuler concernant un Etat membre de l'Organisation internationale du Travail qui n'aurait pas assuré de manière effective l'exécution d'une convention à laquelle ledit membre a adhéré sera, bien qu'il s'agisse d'une réclamation visant un Etat, adressée au Bureau international du Travail, et non directement à l'Etat qui a négligé d'observer ses obligations. Un autre exemple réside dans la démarche qu'un Etat effectue, en vertu de l'article 11, 2ème alinéa, auprès de l'Assemblée de la Société des Nations ou du Conseil, ou encore dans la remise d'une requête à la Cour permanente de Justice internationale. Dans la règle, toutefois, en même temps que seront prises ces dispositions, il sera adressé directement une protestation à l'Etat intéressé, et l'on peut citer ici, à titre d'exemple, la requête adressée par le Danemark à la Cour, le 11 juillet 1931, contre l'occupation norvégienne dans le Groenland oriental, et la note de protestation de même date, adressée à la Norvège (reproduites respectivement sous les Nos. 64 et 62 dans le recueil de documents publiés dans la présente revue, vol. II, fasc. 3).
 - 4. A quelles personnes doit être signifiée la protestation? La

protestation devant, en règle générale, être formulée vis-à-vis de l'Etat, c'est aux personnes qui, en vertu des règles générales du droit, ont qualité pour représenter l'Etat dans les questions de droit international, qu'elle doit être signifiée, c'est-à-dire, en principe, aux catégories de personnes mentionnées sous 2, qui représentent l'Etat visé par la protestation. C'est ainsi, par exemple, que la protestation formulée par un agent diplomatique étranger à l'encontre de la rédaction d'un journal au sujet d'attaques publiées contre son gouvernement, ne devient une protestation de droit international que lorsqu'elle s'adresse au gouvernement du pays où il réside (voir ci-dessus, sous 1).

Lorsque la protestation s'adresse à un organisme central — la Cour permanente de justice internationale, la Société des Nations, le Bureau international du travail — ou bien à une institution qui a le caractère de sujet de droit international ad hoc, comme certaines commissions internationales, elle doit être signifiée aux personnes qui, d'après les règles applicables à cette institution, sont

compétentes pour la représenter vis-à-vis des Etats.

5. Teneur de la protestation. La protestation doit, quant à sa teneur, exprimer clairement que le protestataire considère l'état de choses contre lequel il proteste comme étant contraire au droit international, soit à son propre égard - c'est-à-dire, lorsqu'il s'agit d'une protestation de droit international, comme constituant une atteinte à ses intérêts, au sens le plus large - soit, lorsque c'est un organe collectif qui proteste, à l'égard d'une ou de plusieurs des parties au nom desquelles est formulée la protestation. Celle-ci indiquera également, en règle générale, que le protestataire, nonobstant la violation imminente ou effective, se réserve ses droits en totalité, mais cette mention n'est guère indispensable en tant qu'élément substantiel de la protestation. La protestation peut comporter en outre une demande d'excuses et, ou de dommages-intérêts, ainsi que des menaces de représailles ou même de guerre. Du fait de ces additions, elle peut se transformer en ultimatum.

6. Forme de la protestation.

La protestation de droit international n'est pas assujettie à une forme déterminée; elle peut être formulée verbalement où par écrit ou encore par des actes »concluants«, pourvu que, dans la forme, les divers éléments indiqués ci-dessus en ressortent de façon indubitable.

Les actes »concluants« susmentionnés peuvent être, par exemple, un signal d'interdiction international, des coups de feu d'avertisse-

ment¹³), le placement d'une unité neutre entre l'agresseur et la victime de l'agression dans le cas où, par exemple, l'un des belligérants attaque un sous-marin appartenant à un autre belligérant et échoué en territoire maritime neutre¹⁴). Les formes de protestation mentionnées ci-dessus constituent, on le voit, un »crescendo« allant de la simple protestation verbale jusqu'à la défense par tous les moyens disponibles, celle-ci pouvant, le cas échéant, prendre directement la forme d'une guerre défensive, manifestation suprême de la protestation de droit international. (Défense de la Belgique contre l'invasion allemande en 1914). Nous verrons plus en détail, ci-après, en examinant l'efficacité de la protestation, jusqu'à quel point il peut être jugé nécessaire de recourir à ce crescendo, dans un domaine particulièrement important, à savoir la violation de l'intégrité territoriale.

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Les différentes formes de protestation peuvent être employées incontinent à l'égard d'une même violation: il peut être protesté tout d'abord sur les lieux, au moyen de coups de feu d'avertissement, et ensuite par écrit ou verbalement. C'est ainsi que, lorsque des destroyers allemands tirèrent sur le sous-marin anglais E. 13 échoué en territoire maritime danois, il fut protesté tout d'abord sur les lieux par l'interposition d'un torpilleur danois entre ce dernier et l'agresseur, puis par le ministre de Danemark à Berlin; le gouvernement allemand répondit à cette protestation par des excuses¹⁵).

7. La protestation doit-elle être signifiée dans un délai déterminé? Il n'est guère possible d'établir une règle fixe à ce sujet. Mais on peut présumer qu'en général la protestation doit être signifiée aussitôt que possible après que le protestataire a eu connaissance de la violation¹6). Il convient cependant d'envisager à cet égard une gradation, selon qu'il s'agit, par exemple, de protester par un coup de feu d'avertissement contre le vol d'un aéronef au-dessus d'un territoire neutre, ou de formuler une protestation qui doit être basée sur de longues enquêtes préliminaires. Dans le premier cas, il est sans doute indispensable que la protestation ait lieu au moment même où est constatée la violation, tandis que

¹³⁾ Annexe au Rapport, etc. p. 224.

¹⁴⁾ Annexe au Rapport, etc. p. 225.

¹⁵⁾ Annexe au Rapport etc., pp. 268—269. — Cf. Cohn: »Neutralitetsrettens Omdannelse«. Nordisk Tidsskrift for international Ret. 1ère année. Fasc. 1, pp. 36—37.

¹⁶⁾ Cf. Kunz, dans l'ouvrage de Strupp: »Wörterbuch des Völkerrechts«, II, p. 329.

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dans le deuxième, un délai plus long doit être concédé. C'est ainsi, par exemple, que, dans sa note du 16 octobre 1922 au ministre de Danemark à Oslo, le gouvernement norvégien indiqua que si les deux notes du 19 décembre 1921, dans lesquelles le gouvernement danois avait exposé son point de vue sur la question du Groenland, étaient restées sans réponse, c'est que, en raison de l'extrême importance de cette question, il avait fallu la soumettre à un examen très complet et approfondi, et notamment présenter au Parlement une communication du Gouvernement à son sujet. La protestation peut naturellement être formulée immédiatement, non seulement en fait, mais aussi «sur le papier». C'est ainsi que le gouvernement danois dès le lendemain de l'occupation norvégienne au Groenland oriental, a protesté à la fois directement, vis-àvis du gouvernement norvégien, et en saisissant la Cour de La Haye. 17)

Il faut, semble-t-il, attribuer sur ce point une influence décisive à la question de savoir s'il s'est écoulé un délai assez long pour que l'Etat contre l'attitude duquel il est protesté soit raisonnablement fondé à supposer que le protestataire, lui aussi, avait acquiescé à cette attitude. A cet égard, il peut également s'attacher une importance au fait que l'Etat protestataire, même si l'en fait abstraction du dépôt tardif de la protestation, pourrait lui-même avoir donné lieu à cette supposition; il peut importer également, d'autre part, que l'Etat contre l'attitude duquel est formulée la protestation tardive, ou trop tardive, non seulement avait abandonné toute incertitude mais encore s'était installé en fait, persuadé qu'il ne serait pas protesté. Autrement dit, la protestation tardive ne saurait guère être repoussée uniquement sous prétexte que »la carte a été jouée« et il doit être spécifié en outre que, dans la conviction qu' aucune protestation n'aurait lieu, on s'est établi en fait, supposant que personne n'avait d'objection à formuler contre la création de l'état de choses en question¹⁸). C'est ainsi, par exemple, que se fondant sur la déclaration de M. Ihlen, ministre norvégien des Affaires étrangères, suivant laquelle le gouvernement norvégien ne mettrait pas obstacle à la réalisation du désir qu'avait le Danemark d'obtenir de toutes les puissances intéressées la réconnaissance de sa souveraineté sur le Groenland, le Danemark a pris des mesures en vue de donner effet à cette souveraineté.

.8. Effet juridique de la protestation. La protestation de droit

¹⁷⁾ Voir le recueil des documents dans la présente revue vol II fasc. III.

¹⁸⁾ Cf. Smedal: »Erhvervelse af Statshøihet over Polaromraader«, p. 77-

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international valablement formulée a pour effet juridique, comme le protêt; la conservation du droit violé, nonobstant la violation intervenue¹⁹). La cause juridique doit en être recherchée dans la volonté de l'Etat protestataire de conserver son droit: celle-ci neutralise en quelque sorte la volonté de restriction ou de négation de ce droit, qui se manifeste par l'état de choses contre lequel il est protesté.

Dans quel cas la protestation s'impose-t-elle ou, tout au moins, offre-t-elle une importance juridique? Il n'est guère possible de formuler une règle générale en réponse à cette question. Une indication susceptible d'en permettre la solution réside dans le fait qu'il est plus facile de conclure à l'acquiescement, en cas de non protestation contre des déclarations et des actes comportant une violation, lorsque ceux-ci ont été notifiés, que lorsqu'ils ne l'ont pas été; par suite, le dépôt de la protestation a une signification plus grande lorsqu'il y a eu notification que dans le cas contraire. De même, on peut conclure plus facilement à l'acquiescement lorsqu'il n'est pas protesté contre une violation légère, que lorsqu'il n'est pas protesté contre une violation grave ou lorsque la violation a lieu dans des conditions qui la rendent moins grave pour la partie qui la subit que si elle s'était effectuée dans d'autres conditions (Survol d'ouvrages fortifiés en temps de paix et en temps de guerre); mais étant donné la portée étendue qu'on attribue, en droit international, à la règle »Qui ne dit mot consent«, on est sans doute fondé à considérer que l'Etat ex tuto doit protester chaque fois qu'il juge ses droits menacés ou violés. La fréquence de la protestation, dans la pratique, semble correspondre à cette opinion.

9. Efficacité de la protestation. La question de savoir si la protestation de droit international, pour produire l'effet juridique indiqué ci-dessus, doit être efficace, c'est-à-dire empêchér en fait la violation imminente, ou — lorsque la violation a déjà eu lieu — rétablir en fait l'état de choses qui existait auparavant, est l'un des problèmes les plus importants que soulève la protestation.

Il ne semble y avoir aucune nécessité conceptionnelle exiger cette efficacité: dans de nombreux cas où la protestation ne peut être suivie d'effet, par exemple lorsqu'un bâtiment de guerre neutre n'arrive sur les lieux qu'après qu'un navire appartenant à l'un des belligérants a ouvert le feu sur un bâtiment appartenant à un autre

¹⁹) Anzilotti: Lehrbuch des Völkerrechts, Berlin 1929, p. 265. Strupp: Theorie und Praxis des Völkerrechts, p. 66. Axel Møller: Folkeretten i Fredstid og Krigstid, p. 221. Kunz, loc. cit.

belligérant et réfugié en territoire neutre²⁰), la protestation formulée a cependant l'effet juridique qu'on attribue habituellement à une protestation de droit international. On ne peut en tout cas exiger, en pareilles circonstances, que la protestation ait un autre effet que la reconnaissance, par l'Etat qui commet la violation, du fait que le droit dont il s'agit subsiste, nonobstant cette violation. Dans d'autres cas, une indication à cet égard semble resortir de la conception selon laquelle l'efficacité réclamée est en raison inverse de la valeur du droit violé: plus cette valeur est grande pour la partie qui proteste, plus il est improbable que celle-ci y renoncera et plus on pourra facilement, semble-t-il, conclure à sa volonté de maintenir la règle juridique qui assure la protection du droit en question; par contre, lorsqu'il s'agit d'un droit de peu de valeur et qu'il n'est pas protesté efficacement, on est plutôt fondé semble t-il, à conclure que l'Etat qui proteste n'attache pas grande importance à la conservation de ce droit. Cet état de choses où la volonté de conserver le droit dont il 'agit est pour ainsi dire présumée, du fait qu'un grand intérêt s'attache à sa conservation, est particulièrement manifeste lorsque cette volonté est partagée par plusieurs sujets de droit et que cette communauté a trouvé une expression juridique, comme dans le cas de la garantie réciproque formulée à l'art. 10 (cf. art. 11, ler alinéa) du Pacte de la Société des Nations contre toute atteinte à l'intégrité territoriale et à l'indépendance politique présente des membres de la Société. La volonté de maintenir l'inviolabilité semble ici si évidente qu'il n'est guère nécessaire de l'exprimer vis-à-vis de l'agresseur autrement que par une simple protestation officielle. La situation est alors analogue à celle qui dérive du droit interne où le droit du citoven à l'intégrité corporelle n'est pas subordonné à ce qu'il repousse efficacement une agression éventuelle, la passivité complète de l'intéressé, elle-même, ne permettant pas de conclure à l'abandon de son droit, car à ce dernier se rattache un intérêt d'une portée plus étendue que le sien et protégé par l'ordre juridique en vigueur²¹). Lorsque derrière le droit menacé ou violé se trouve un intérêt de ce genre, qui revêt évidemment une haute importance on ne peut exiger, semble-t-il, que la protestation formulée contre la violation soit efficace, c'est-à-dire qu'elle ait effectivement pour résultat d'empêcher la violation ou de rétablir l'état de choses qui existait antérieurement à celle-ci.

Ce fait s'affirmera vraisemblablement avec d'autant plus de

²⁰) Annexe au Rapport, p. 224, cf. Cohn, loc. cit., pp. 36-37.

²¹⁾ Cf. Torp: Strafferettens alm. Del., p. 228.

clarté, que les communautés d'intérêts entre Etats trouveront, dans une mesure plus grande, leur expression juridique, c'est-à-dire d'autant plus que l'ordre juridique international sera plus développé. Dans la mesure où se réalisera cette condition, il est probable que les exigences concernant l'efficacité de la protestation diminueront, de telle sorte que celle-ci produira ses effets juridiques du seul fait que la volonté de conserver le droit dont il s'agit aura été exprimée avec une clarté suffisante. Tel est toujours le cas, semble t-il, lorsqu'une protestation est valablement signifiée à un organisme central chargé d'appliquer le droit (Société des Nations, Cour permanente de justice internationale, Bureau international du travail). Dans ces cas, la «signification» eller-même indiquant que la partie qui a subi la violation a intérêt au maintien du droit dont il s'agit, on ne peut en tout cas exiger que la protestation éventuellement formulée simultanément et directement vis-à-vis de l'auteur de la violation soit «efficace», car, dans les cas de ce genre, cette dernière protestation ne saurait guère, être jugée nécessaire, même si dans la règle - et en raison notammant du fait qu'une organisation collective pour l'application du droit, dans la communauté internationale, est une institution si nouvelle - cette protestation directe est encore d'usage, en fait.

La nécessité de l'efficacité, si elle était reconnue, entraverait gravement, ici, l'évolution vers l'abandon de l'action privée pour l'application du droit, évolution dont le développement est une condition sina qua non du droit international. Autrement, dit, en pareil cas, la situation est analogue à celle qui existe dans un Etat lorsque celui dont les droits sont violés peut manifester qu'il n'acquiesce pas à cette violation, et que, nonobstant celle-ci, il tient à assurer le maintien de ses droits en avisant de la violation les autorités compétentes, dans les formes prescrites, sans qu'il soit nécessaire — et dans la plupart des cas sans qu'il, lui soit même permis — de réagir directement vis-à-vis de l'auteur de la violation. A cet égard, notamment il ne semble pas qu'on puisse attribuer au caractère de la violation (violation de neutralité, guerre d'agression) une importance prépondérante, en ce sens qu'une catégorie déterminée de violations exigerait une protestation efficace. La guerre d'agression elle-même ne saurait sans doute plus considérée comme exigeant une protestation sous forme d'acte (guerre défensive)²²) et encore moins, semble-t-il, la violation de

²²) Documents de la Commission préparatoire de la Conférence du désarmement. Série III, pp. 93 et suivantes. Voir également Wehberg. Die Aechtung des Krieges. Berlin 1930. pp. 69 et suivantes.

neutralité²³). Un exemple classique du fait qu'une protestation exprimée verbalement ou par écrit suffit à assurer la conservation d'un droit, même à l'égard d'un acte de violation très efficace, est constitué par la protestation du Luxembourg contre le passage des troupes allemandes en 1914. Un autre exemple est fourni par l'acte de protestation du Danemark contre le bombardement du sous-marin anglais E. 13. Cette tendance se trouve renforcée dans une mesure importante par l'article 11 du Pacte de la Société des Nations.

10. Yat-il obligation de protester?

Dans l'état actuel du droit international, il semble qu'on doive admettre dans une vaste mesure l'obligation implicite de protester, en ce sens que l'Etat, s'il ne proteste pas, perd certains droits (voir la remarque ci-dessus au point 8). Par contre, il n'existe pas, en général, d'obligation explicite à cet égard. En principe, il doit appartenir à l'Etat qui la subit de décider s'il veut ou non protester contre la violation des droits que lui reconnaît le droit international. Mais il en est sans doute autrement lorsqu'à la conservation du droit violé se rattachent des droits appartenant à d'autres parties que celle qui subit directement la violation. On considère ainsi que le Luxembourg, par exemple, était non seulement fondé mais tenu à protester contre le passage des armées allemandes en août 1914²⁴). Il est à présumer également qu'il y a obligation de protester envers l'auteur de la violation et/ou envers la Société des Nations en cas d'agression visant l'intégrité territoriale ou l'indépendance politique présente d'un membre de la Société, sans qu'on puisse exiger, ainsi qu'il est mentionné ci-dessus 9), que cette protestation soit suivie d'effet ou prenne obligatoirement une forme déterminée (Résistance à une violation de neutralité, commencement d'une guerre défensive). Plus se développe l'organisation juridique des communautés d'intérêts existant en fait entre les Etats — et par suite l'application collective du droit — et plus on est fondé semble t-il, à considérer qu'il existe une obligation explicite de protester contre toute violation des droits garantis par l'ordre juridique, mais, simultanément, les exigences visant l'efficacité de cette protestation perdent de leur importance (voir ci-dessus au point 9), de telle sorte que le caractère de la protestation se transforme peu à peu d'un acte juridique privé assurant la conservation d'un droit en une «déclaration» notifiée à l'organe

²³) Whitton. Académie de droit international. Recueil des cours, tome 17, p. 476.

²⁴) Cf. Kunz, dans l'ouvrage de Strupp: »Wörterbuch des Völkerrechts«, II. p. 329.

collectif chargé d'appliquer le droit; en conséquence, il appartient à cet organe de rendre effective l'application du droit, c'est-à-dire de faire respecter *en fait* le droit menacé ou violé.

En d'autres termes, l'évolution du droit international semble avoir tendance à s'orienter toujours plus vers l'abandon à un organisme collectif du soin de faire respecter le droit en même temps que vers la limitation de la faculté, pour chaque Etat, de réagir directement comme suite à des violations de droits. (Il convient de rappeler, à cet égard, la stipulation de l'article 4 du pacte de Locarno qui, sauf certaines exceptions, enlève à l'Etat attaqué le droit de décider définitivement s'il s'agit d'une guerre d'agression et s'il peut donc prendre des mesures de défense, cette compétence étant attribuée àu Conseil de la Société des Nations. On a ici pour la première fois renoncé, en principe au droit d'entreprendre, de son propre grè, une guerre défensive et ce principe de l'interdiction de toute guerre défensive non sanctionnée au préalable par une autorité internationale, a été interpréte dans le sens d'une application plus générale, c'est-à-dire comme étant valable non seulement pour les puissances signataires des accords de Locarno, mais pour tous les membres de la Société des Nations (voir à ce sujet, Wehberg, dans la présente revue, vol. II, fasc. 1, page 26.

11. La violation répétée d'une règle de droit international annule-t-elle, bien qu'une protestation ait été dûment formulée, l'effet de celle-ci?

Il est parfois répondu affirmativement à cette question²⁵). Une distinction semble pourtant s'imposer entre différents cas: si l'acte illégal se répète immédiatement après la protestation, c'est-à-dire comme riposte à celle-ci, lorsque, par exemple, un navire de guerre appartenant à une puissance belligérante ne respecte pas l'avertissement que lui donne un bâtiment de surveillance neutre de ne pas traverser des eaux neutres, il s'agit d'une protestation sans effet, mais lorsqu'un navire de guerre belligérant, après s'être conformé à un avertissement de ce genre, essaie de nouveau, peut-être sur un tout autre point du territoire maritime, de pénétrer dans les eaux interdites, il s'agit plutôt d'une nouvelle violation du droit en question. Dans ce cas également, tout dépend sans doute de la question de savoir si de l'attitude de l'Etat protestataire envers la violation répétée on peut conclure qu'il acquiesce à celle-ci. Il semble qu'on puisse difficilement tirer cette conclusion, lorsqu'une première fois, et peut-être immédiatement avant la deuxième violation, il a été protesté contre celle-ci, de façon non équivoque, mais

²⁵⁾ Kunz, loc. cit.

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il peut en être autrement, lorsqu'un temps assez long s'est écoulé depuis la protestation. Lorsqu'il est protesté de nouveau, — ainsi qu'en ont usé les neutres à de nombreuses reprises, contre des violations répétées de même nature, pendant la guerre de 1914—1919 — on ne peut en tout cas présumer que l'Etat qui a subi la violation acquiesce à l'acte commis et, en général, il n'est guère probable qu'un Etat — après avoir une première fois protesté contre, une violation d'une nature déterminée soit disposé à acquiescer à une deuxième violation de même nature, lorsqu'il n'est pas survenu entretemps de changements essentiels dans la situation de fait.

L'effet de la protestation peut, en outre, se trouver annulé par la reconnaissance positive ultérieure de l'état de choses contre lequel il a été protesté tout d'abord — et aussi lorsque, cet état de choses tout en étant maintenu, est compensé d'autre manière.

On peut sans doute citer ici à titre d'exemple la convention du ler septembre 1819 concernant le réglement des dettes entre le Danemark et la Norvège. La convention réduisait à 3 millions la demande danoise primitive portant sur 15 millions de Rd., comme part de la Norvège dans la dette publique commune, et elle annulait «de fait et de droit toute redevance ultérieure de part et d'autre». Lorsqu'on envisage ce fait concurremment avec les négociations antérieures, — et notamment la note du 28 mai 1819 adressée par le comte Engeström, ministre des Affaires étrangères de Suède-Norvège, à Lord Strangford, ministre de Grande-Bretagne à Stockholm, qui faisait office de médiateur entre le Danemark et la Suède-Norvège (note dans laquelle le comte Engeström, au nom du roi de Suède-Norvège, déclare que le Roi «consent à renoncer . . . aux prétentions de ce pays (la Norvège) sur l'Islande, la Groenlande et les îles de Ferroe»), ainsi que la motion votée à l'unanimité par le Parlement norvégien, le 28 mai 1821, suivant laquelle «toutes les créances réciproques se rattachant à l'union entre le Danemark et la Norvège sont entièrement liquidées et réglées» (documents no. 9, 10 et 11 du recueil de documents relatifs à l'affaire du Groenland oriental, dans la présente revue, vol. II, fasc. 3) - on est fondé, semble t-il, à considérer comme abolis les effets conservatoires de droits qu'auraient pu entraîner, par ailleurs, les protestations de la Norvège contre les dispositions du traité de Kiel relatives à l'Islande, au Groenland et aux Féroé.

En cas de succession d'Etat, le successeur présumé doit, semblet-il, pour sauvegarder ses droits, protester contre les conditions existantes lorsqu'il y voit une violation desdits droits, même lorsque son prédécesseur n'a pas formulé de protestation à cet égard. Il n'en est pas ainsi lorsqu'il s'agit d'un simple changement de gouvernement dans un Etat.

12. Effet de l'absence de protestation.

Selon la thèse qui reconnaît une validité absolue en droit international²⁶) à la règle »Qui ne dit mot consent«, l'absence de protestation a pour effet la disparition du droit violé: or c'est sans doute aller trop loin. En tout cas, lorsque la violation intéresse également les droits d'autres personnes que celle qui la subit directement, et que cette communauté d'intérêts a trouvé une expression juridique, l'absence de protestation ne peut avoir pour effet la disparition du droit dont il s'agit. A titre d'exemple particulièrement important de cas de ce genre, on peut sans doute citer le domaine juridique limité, mais néanmoins important, que constitue la protection de l'intégrité territoriale et de l'indépendance politique présente des Etats, et à l'égard duquel la communauté d'intérêts a trouvé, dans les articles 10 et 11, ler alinéa, du Pacte de la Société des Nations, une expression juridique si claire qu'on semble même fondé à considérer qu'il s'agit ici d'une application du droit exercée d'office27). Mais, d'une façon générale, la règle »Qui ne dit mot consent« tend vraisemblablement à perdre sa validité absolue (ou tout au moins très étendue) en droit international, comme elle l'a perdue depuis longtemps dans le droit interne, de telle sorte qu'on ne peut désormais, comme auparavant, tirer inéluctablement de l'absence ou de l'inefficacité de la protestation la conclusion »qui tacet consentire videtur«. Il ne s'ensuit pas, toutefois, que la protestation de droit international aura alors perdu sa signification. Si même il faut admettre pue le processus de concentration sociologique, dans la société des Etats, aura pour résultat qu'à un degré croissant l'application du droit se trouvera transféré à un organisme central, — la faculté, pour l'offensé, d'exercer luimême la justice étant tout d'abord limitée, puis abolie, - ce seront cependant, même dans les collectivités internationales, uniquement les droits auxquels se rattachent aussi d'autres intérêts que celui de l'offensé qui feront l'objet d'une action en vue de leur maintien, exercée d'office, c'est-à-dire que l'offensé désire ou non voir ces droits respectés. Dans la très grande majorité des cas ce sera,

²⁶⁾ Kunz, loc. cit.

²⁷) Voir les expressions de l'art. 10 ».... le Conseil avise« et de l'article 11, ler alinéa ».... et celle-ci (la Société) doit prendre toutes les mesures«.

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comme dans chaque Etat particulier, la volonté, manifestée par l'ayant droit de faire respecter ses droits qui sera prépondérante. Mais en pareil cas, un intérêt continuera aussi à s'attacher à l'acte juridique par lequel se manifeste cette volonté, à savoir la protestation de droit international.

Kickfriel

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C. de Visscher, *Problèmes d'interprétation judiciaire en droit international public* (Pedone 1963) pp. 183–4.

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PROBLÈMES D'INTERPRÉTATION JUDICIAIRE EN DROIT INTERNATIONAL PUBLIC

PARIS ÉDITIONS A. PEDONE

LIBRAIRIE DE LA COUR D'APPEL ET DE L'ORDRE DES AVOCATS
13. Rue Soufflot, 13

1963

CHAPITRE II

L'INTERPRÉTATION DES ACTES JURIDIQUES UNILATÉRAUX

Les actes juridiques unilatéraux peuvent se définir comme émanant d'un sujet de droit et s'adressant à d'autres sujets qui n'y prennent aucune part (1). Exception faite de l'ouvrage classique de Franz Pfluger, leur étude a été longtemps négligée par la doctrine. Quelques bonnes monographies récentes, surtout italiennes, ont renouvelé la matière (2).

Les difficultés que soulève l'interprétation des actes unilatéraux procèdent surtout des incertitudes qui subsistent au sujet de leur caractère d'actes juridiques. Encore qu'un premier degré d'interprétation soit nécessaire pour les ranger sous les rubriques classiques (notification, reconnaissance, etc.), c'est bien plus au niveau du problème fondamental de leur nature et de leurs effets au regard du droit objectif qu'à celui de l'interprétation de leurs manifestations concrètes que s'élèvent les difficultés et les controverses.

Plusieurs types d'actes couramment désignés comme unilatéraux ne sont pas des actes juridiques autonomes, c'est-à-dire des actes générateurs par eux-mêmes d'effets de droit. Les effets qu'on leur attribue ne se produisent qu'au moment où la volonté qui s'y exprime entre en contact avec quelque acte, fait ou situation extérieur qui seul permet de fixer sa signification et de lui attribuer un effet juridique déterminé. Il en est ainsi de la notification, de

⁽¹⁾ R. Monaco, Manuale di diritto internazionale pubblico, 1960, p. 57.

⁽²⁾ Il saut tout spécialement signaler la récente et solide étude de Eric Suy, Les actes juridiques unilatéraux en droit international public, 1962.

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la promesse, de la protestation (v. infra, Sections I, II et III). Il n'en va pas de même de la reconnaissance et de la renonciation, actes autonomes générateurs par eux-mêmes d'effets juridiques (1).

L'interprétation concrète des actes de la première catégorie est tenue en suspens et reste problématique tant que la manifestation unilatérale de volonté n'a pas pris contact avec quelque circonstance extérieure qui vient à lui donner effet. Pour les actes de la deuxième catégorie, l'interprétation trouve d'emblée les données concrètes sur lesquelles elle opère ; les difficultés ne relèvent plus ici que de ses critères habituels.

D'une façon générale, l'interprétation des actes unilatéraux est commandée par le principe de la bonne foi, ce qui, compte tenu de l'extrême diversité des circonstances de fait, en fait le plus souvent une question d'espèce.

Ne relève pas de notre étude des actes juridiques unilatéraux l'interprétation des déclarations de volonté qui sont profondément engagées dans le droit des traités, comme l'adhésion, la signature différée, la dénonciation, le retrait. Beaucoup plus que les actes unilatéraux proprement dits, les problèmes qu'elle soulève ont été étudiés dans nombre d'articles et de monographies.

SECTION I

La notification

En dehors de la communication officielle de son objet (fait, acte ou situation juridique, prétention de droit), communication qui met le destinataire dans l'impossibilité d'alléguer désormais son ignorance et qui peut même, dans certaines circonstances, lui faire

⁽¹⁾ Cette analyse a été tentée de points de vue divers par les auteurs. Voy. notamment : G. Morelli, Nozioni di diritto internazionale, pp. 284-289 ; G. Biscottini, Contributo alla teoria degli atti unilaterali nel diritto internazionale (1951) ; A. Verdross, Völkerrecht (1959), p. 98.

un devoir d'en tenir compte, celui notamment de s'abstenir de contester le fait notifié, la notification par elle-même n'engendre pas d'effets juridiques. C'est qu'en effet les conséquences qu'elle peut entraîner dépendent de prises de position ultérieures du destinataire, prises de position que la notification a précisément pour but de provoquer et de rendre publiques (1).

On a vu plus haut la distinction à faire entre les notifications rendues conventionnellement obligatoires et les notifications facultatives, les premières génératrices d'effets juridiques définis, tandis que les conséquences des autres sont affaire d'espèce. Dans une mesure encore difficile à préciser dans l'état actuel de la pratique internationale, il semble que parmi les notifications prescrites par une norme conventionnelle, il y ait lieu de tenir compte d'une distinction dégagée par G. Cansacchi (2), selon qu'il s'agit d'une notification imposée au titre d'obligation de droit objectif ou seulement d'une notification prévue en tant que charge, l'omission de la notification n'ayant ici pour conséquence que d'empêcher la création d'un état de droit favorable aux prétentions de l'Etat qui aurait dû notifier.

De toute façon, la notification ne sera interprétée comme une condition de légalité qu'en vertu d'une règle de droit explicite (3).

La notification doit être tenue distincte de certaines déclarations unilatérales de volonté qui relèvent de l'ordre conventionnel comme l'offre et l'acceptation, la communication de la ratification d'un traité, l'adhésion à un traité, la dénonciation d'un traité.

On a vu plus haut qu'une notification peut ne susciter aucune réaction; le destinataire peut garder le silence sans que l'on soit

⁽¹⁾ La notification relève de l'extériorité du droit et remplit une fonction de clarification des rapports internationaux. Sur les effets de la notification, voy. Giorgio Cansacchi, La notificazione unilaterale, pp. 252 et ss.

⁽²⁾ La notificazione internazionale, p. 268, et dans le même sens le récent ouvrage de Eric Suy, Les actes juridiques unilatéraux en droit international public, pp. 91 et ss.

⁽³⁾ Ce point, nettement affirmé dans la sentence arbitrale de Max Huber dans l'affaire Palmas, est très généralement reconnu dans la doctrine; voy. notamment Ch. Rousseau, Principes généraux, p. 129.

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autorisé à en induire une conséquence juridique à son détriment. On ne peut obliger les Etats à protester invariablement contre toutes les inductions que le calcul politique peut attribuer à leur silence. Dans bien des cas, le souci de ne pas prendre prématurément position, celui de ne pas éveiller inutilement des susceptibilités, peuvent déterminer un gouvernement à s'abstenir de toute manifestation. Il va sans dire qu'il y a des notifications qui, par leur objet même, peuvent n'appeler aucune réponse. Tel serait le cas, en dehors de tout engagement conventionnel préexistant, d'une notification portant invitation à participer à un traité ou encore de certaines assertions unilatérales (par exemple certaines revendications exorbitantes touchant l'étendue de la mer territoriale), aussi longtemps du moins qu'elles restent assez isolées pour ne pas menacer sérieusement la règle coutumière établie. En somme, tout est ici affaire d'espèce.

La réaction du destinataire de la notification peut, au contraire, s'extérioriser sur le terrain du droit, soit par une reconnaissance, soit par une protestation (voy. infra, Sections III et IV). Réservant ces alternatives à un examen ultérieur, on se bornera à relever ici les ambiguïtés que présentent, faute surtout de jurisprudence internationale en la matière, certaines déclarations gouvernementales faites en réponse à une notification. Elles reflètent le plus souvent un souci de prudence qu'inspire moins l'objet même de la notification que les desseins politiques qui ont pu la déterminer. Il paraît difficile notamment de dégager une ligne de conduite bien définie de la distinction entre le « donner acte » qui ne serait qu'un accusé de réception et le « prendre acte » qui, lui, comporterait un certain degré d'engagement entre le notifiant et le destinataire (1).

⁽¹⁾ En faveur de cette distinction: Alex. Ch. Kiss, Les actes unilatéraux dans la pratique française du droit international, Revue générale de droit international public, 1961, p. 317. — Une distinction du même ordre apparaît dans la rédaction française de l'article 68 du Règlement de la C.I.J.: « Avant le prononcé de l'arrêt, si les parties tombent d'accord sur la solution à donner au litige et le font connaître par écrit à la Cour ou si, d'un commun accord, elles lui font connaître par écrit qu'elles renoncent à poursuivre l'instance, la Cour, ou le Président si la Cour ne siège pas, rend une ordonnance leur don-

Dans l'un et l'autre cas, la réponse peut être pure et simple ou, au contraire, assortie de réserves. Quand deux Etats sont en contestation de droit relativement à un même objet, comme par exemple la souveraineté d'un territoire ou une partie de la mer territoriale, les notifications respectivement échangées à ce sujet peuvent conduire à un modus vivendi fondé sur des réserves réciproques.

SECTION II

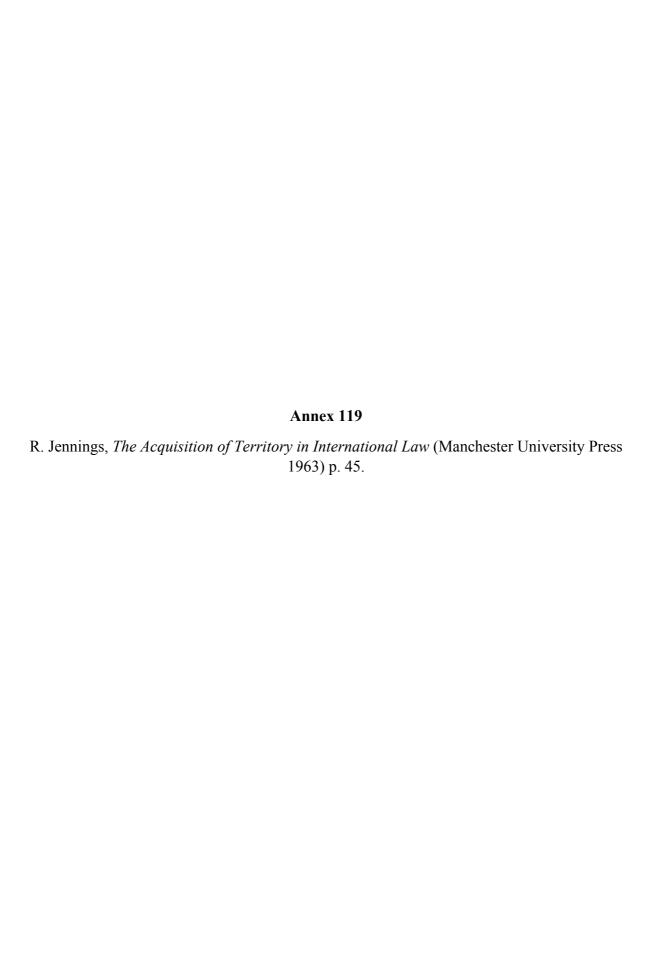
La promesse

Envisagée isolément, la promesse n'est pas un acte unilatéral, car ses effets juridiques ne dépendent pas de la seule volonté du promettant. En droit international, de tels effets apparaissent quand la bonne foi s'y trouve engagée, soit que la promesse ait été faite à personne déterminée, ce qui est le cas quand les circonstances désignent l'interlocuteur destiné à en devenir le bénéficiaire, soit qu'elle ait été signifiée à la généralité des Etats. Même orale, faite au nom de son gouvernement par un ministre des Affaires étrangère agissant en cette capacité, la promesse peut, dans certaines circonstances, s'interpréter comme un engagement juridiquement obligatoire de suivre une ligne de conduite donnée. La question a été nettement tranchée par la Cour permanente dans son arrêt du 5 avril 1933 relatif au Statut du Groenland oriental (1).

En réponse à une communication du Gouvernement danois qui demandait au Gouvernement norvégien de s'engager à « ne pas faire de difficultés au règlement de l'affaire » de la reconnaissance de la souveraineté danoise « sur l'ensemble du Groenland », le Ministre des Affaires étrangères de Norvège Ihlen avait donné au Ministre de Danemark une assurance positive dont les termes étaient incontes-

nant acte de leur arrangement amiable ou prenant acte de leur désistement et dans chaque cas prescrivant la radiation de l'affaire sur le rôle».

(1) Série A/B, n° 53, pp. 69-73.



THE ACQUISITION OF TERRITORY IN INTERNATIONAL LAW

THE MELLAND SCHILL LECTURES

delivered at the University of Manchester

and published by the University Press

The Law of International Institutions in Europe, by A. H. Robertson, B.C.L., S.J.D. Spring, 1961

The Role of International Law in the Elimination of War, by Professor Quincy Wright, Winters 1961

THE ACQUISITION OF TERRITORY

IN INTERNATIONAL LAW

by

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MANCHESTER UNIVERSITY PRESS U.S.A.: OCEANA PUBLICATIONS INC.

© 1963. Manchester University Press

Published by the University of Manchester at THE UNIVERSITY PRESS 316-324 Oxford Road, Manchester, 13

U.S.A.
OCEANA PUBLICATIONS INC.
60 Fourth Avenue, New York, 3, N.Y.

Chapter III

RECOGNITION, ACQUIESCENCE AND ESTOPPEL

In this lecture I want to consider the place of recognition, acquiescence and estoppel in questions of title to territorial sovereignty.

Obviously there is an important difference between recognition and acquiescence, even though it may not always be easy in practical situations to distinguish the one from the other especially where an implied or tacit recognition is in point. Whereas recognition, even though it be tacit, is the adoption of a positive acknowledgment on the part of a State, acquiescence may arise from a mere omission to protest against a situation where a right to protest existed and its exercise was called for. Both recognition and acquiescence, however, are manifestations of a legally operative consent on the part of a State. In what ways, then, are these different forms of acknowledgment by States relevant to the acquisition of a title to territorial sovereignty?

One does not need to look very far before discovering that both in the practice of States and the jurisprudence of international tribunals, these manifestations of consent have been regarded as important elements in the make-up of territorial titles. But it is by no means a simple matter. In order to understand it we must first attempt to classify the different situations where consent of third States may be relevant. It may be useful to think of the problem as being partly at least one of the relativity of rights: how far is the consent of a State necessary in order that a right may be available in international law against that State; how far is the consent of one or more States required to constitute a title enforceable erga omnes?²

The situation where a new State has arisen on territory formerly

² This aspect of the problem is very helpfully discussed in Charpentier, La Reconnaissance internationale et l'Evolution du Droit des Gens (1956), chap. II.

¹ 'Acquiescence thus takes the form of silence or absence of protest in circumstances which generally call for a positive reaction signifying an objection': see MacGibbon, *British Year Book of International Law*, vol. 31 (1954), p. 143.

subject to another sovereignty is one to which we have already had occasion to refer in the first lecture. It is a situation where recognition plays a primary and perhaps decisive role in the constitution of a territorial title. In such a situation it is ordinarily impracticable to separate out from the process of the creation of the new State the single element of title to sovereignty over its territory; for each is a constituent of the other.

How far in this situation the function of recognition may be constitutive of the title depends obviously upon one's view of the nature of recognition; a question which would require too great a digression to enter upon here. But in so far as the new State's title to its territory may be regarded as a product of the mere fact of its existence in the territory, there is clearly an affinity with those modes by which title may be changed from one existing State to another by reason of the fact of its apprehension and exercise. There is this difference, however: in the case of a new State there is no room for lapse of time as an element in title. However gradual may be the development of an entity to the full stature of Statehood there must be some moment of time at which that full personality is judged to have been attained, and this moment of time at which independent Statehood is attained is unavoidably to be regarded as a root of title to territory. It is true that the operation of this regime may depend upon a series of recognitions which occur at different times and this, even in spite of the retroactivity of recognition, must result in a fragmentation of title which seems foreign to the very notion of title. There is in fact room for a process of consolidation, but one in which the mere passage of time plays no part. This fragmentation of the elements of title is no doubt inelegant but unavoidable so long as recognition lacks any collective machinery.

It is to be observed, however, that even where a new person of the law is created—a new sovereign State—international law does not allow that it begins its legal life with a tabula rasa. International law has established a principle of State succession and to this principle of succession the succession to territory is obviously a key. Thus we are told that even a new State will inherit real rights or obligations attaching to the territory even if its title to the territory may in one sense be a new and an original one. And by the same token it would seem to follow that, if it inherits a parcel of territory the frontiers of which are themselves controversial, it inherits subject so to speak to the dispute: in other words that a third State's claim to a part of the territory is not defeated merely because the territory passes to a

THE ACQUISITION OF TERRITORY IN INTERNATIONAL LAW

new State; for a title to sovereignty—if the claim be a valid one—is the 'real' right par excellence. This is assuming, of course, that the claimant State has not itself recognized the title of the new State to the territory. Yet this can presumably apply only to questions of the relatively minor frontier class. For if the new State, to take the case at the other extreme, is established with the disputed territory as its sole territory, and its Statehood is recognized, it would seem that another claim to sovereignty over the territory is defeated. In short it is only where there is room for doubt or ambiguity in the definition of the new State's territory that a claim against the territory will survive. A sufficient number of recognitions of the new State clearly implying recognition of its title to the disputed territory would presumably destroy the claim.

Leaving aside now the question of the emergence of a new State, the question remains what part recognition may play in the acquisition of territorial sovereignty by an already existing State?

In the first place it is, of course, obvious that all forms of acknow-ledgment of a legal or factual position may be of great probative or evidentiary value even when not themselves an element in the substantive law of title. Recognition—and also acquiescence—is likely, therefore, for that reason alone, to have a prominent place in territorial questions. That it does do so is clear enough. One need look no further than the *Eastern Greenland* case to see both the anxiety of Denmark to collect recognitions from third States of her pretensions over Greenland, and the importance which the Court was willing to attach to them. The question remains how far if at all it is itself a root of title or at least an ingredient in a root of title and not merely evidence. Admittedly the distinction may be a nice one but it is nevertheless important. First, let us consider this question in relation to what may be called the orthodox modes of acquisition.

If occupation, or cession, for example, are indeed modes by which the law allows territorial sovereignty can be acquired, the presumption is that they are in themselves sufficient for that purpose; that whatever assistance recognitions may be in proving title by occupation—or cession—recognition is not a condition for the acquisition of title. And this is surely the true position. If a State effectively occupies a territory which is res nullius, it acquires an immediate title opposable to the whole world. In so far as recognition of that title may be required it is able legally to demand it. To say that recognition constitutes the title is to put the cart before the horse.

Indeed, in the case of occupation it is doubtful whether even pub-

lication of the claim is required, let alone its recognition. There is, it is true, some authority for the view that publicity of an alleged occupation is a requirement of international law; and the analogy of municipal laws, which have tended always to require publicity of conveyances of land, argues to the same effect. But the major opinion seems to be that publicity is not a requirement of international law. The conclusion seems to be, therefore, that recognition and questions of acquiescence are strictly irrelevant to title by occupation.

When we turn to consider any form of prescription, however, we find quite another situation. In prescription proceeding from an adverse possession at least, an acquiescence on the part of the State prescribed against is of the essence of the process. And as far as recognition goes, if that State were to recognize the claimant's title then cadit quaestio. Recognition or acquiescence on the part of third States, however, must strictly be irrelevant in this situation. They cannot have any locus standi in the matter, except perhaps in so far as recognition by third States may be relevant evidence showing that the State prescribed against must have been aware of the prescribing State's claim: for some measure of publicity is here an essential ingredient, since the holding must be nec vi, nec clam, nec precario.

But there are two situations in which the attitude of States generally—and not merely of a particular claimant State—is more directly relevant to an issue of title. Firstly, where the question at issue is not title to a parcel of land territory but to a portion of what is alternatively claimed to be high seas, the attitude of all States, whether demonstrated in recognition or forms of acquiescence, is certainly relevant. For here the object of the prescription is not one State's territory but a res communis. It is in this situation therefore that the

¹ See e.g. Westlake, *International Law*, Part I (1904), pp. 100-1, who also cites Lord Stowell in *The Fama*, 5 C. Rob., at p. 115.

² See the categorical statements in Oppenheim, *International Law*, vol. 1, 8th ed., by Lauterpacht (1955), p. 559: 'No rule of the Law of Nations exists which makes notification of occupation to other States a necessary condition of its validity. As regards all future occupations on the African coast the parties to the General Act of the Berlin Congo Conference of 1885 stipulated that occupation should be notified to one another. But this Act has been abrogated so far as the signatories of the Convention of St. Germain of September 10, 1919, are concerned.'

³ To the same effect, see Charpentier, op. cit., pp. 70-4, where he examines the precedents and concludes: 'Toute cette pratique peut être résumée en une phrase: l'exercise effectif des compétences gouvernementales sur un territoire sans maître est immédiatement opposable aux États tiers sans leur assentiment' (original italics).

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notion of a consolidation of a historic title is peculiarly apposite—and it is in this situation be it noted that the idea was articulated in the *Norwegian Fisheries* case.

Secondly, the attitude of third States is directly relevant, even in an issue strictly between two claimant States, and where there is no question of prescription against a res communis, if the process involved is of what may be called the immemorial possession rather than the adverse possession kind. For here obviously general 'repute' is indeed of the essence of the process of acquisition.

Now of course it must immediately be added that although we can for the purposes of a theoretical discussion draw a distinction between occupation, prescription and historic title, a moment's reflexion shows that this distinction may well be blurred in any actual case: not only the legal interpretation of the facts but the facts themselves may be both disputed and unclear; in many actual cases, occupation, prescription or historic title may be alternative and even complementary legal interpretations of the same facts. For our present purposes it is enough to note that it means that in a real situation, recognition and also indeed acquiescence are almost always prima facie relevant considerations, and factors to be taken into consideration by any international tribunal faced with a dispute over territorial sovereignty of this kind; and we must therefore always be on guard against thinking as if international law has ever known anything having the remotest resemblance to forms of action. It is this situation that the notion of a historic consolidation goes some way to explaining; though, as we have seen, some of its implications are still far from clear.

It must be emphasized again, however, that it is only in a context of effective possession that recognition of a situation by third States can be a mode of consolidation of title.² It may, so to speak, assist

¹ See MacGibbon, *loc. cit.*, p. 143: 'Rights which have been acquired in clear conformity with existing law have no need of the doctrine of acquiescence to confirm their validity. However, the line which divides conduct which international law permits from that which it prohibits is in many cases not susceptible of precise delimitation. A course of action which in one period may have been expressly prohibited may, by dint of its continued repetition coupled with the consent of other States, be acceptable under rules obtaining in a later period. It is not surprising that, in a system of law which is not fully developed, the extent to which a novel practice may be regarded as being in conformity with existing law should be unpredictable. In the absence of a satisfactory compulsory procedure for authoritative judicial ascertainment the legality of such practices may depend upon the measure in which they enjoy the express approval of other States, or, in the course of time, their acquiescence.' For an application of this idea see p. 62 below.

² See above at p. 26.

and accelerate a process for which the condition sine qua non is an existing effective possession; there is no evidence from practice to suggest that recognition by third States can by itself operate to create a title to territory not in possession.¹

ESTOPPEL

It is tempting to express these effects of recognition and even of acquiescence in terms of estoppel or, if you prefer, the principle of preclusion. That such a principle is accepted in international law is surely now beyond doubt: as McNair puts it, 'It is reasonable to expect that any legal system should possess a rule designed to prevent a person who makes or concurs in a statement upon which another person in privity with him relies to the extent of changing his position, from later asserting a different state of affairs.'²

The first thing to be said is that the principle of estoppel in international law must be approached with some caution; for once loosed from the many technical shackles that severely limit its operation in the common law, from which it is after all by analogy derived, it is in danger of seeming to be applicable to almost any situation in which a State has expressly or tacitly adopted some attitude towards a legal question. This tends only to obscure the actual legal questions and principles involved. An impressive warning against the temptation to put more weight upon estoppel than it can rightly bear is to be found in the separate opinion of Judge Sir Gerald Fitzmaurice in the *Temple* case.³ This is so important that I shall beg your leave to quote an extensive passage in full.

¹ See Dr. Schwarzenberger, in American Journal of International Law, vol. 51 (1957), at p. 317: 'Subject to one reservation, recognition of the territorial claims of another State cannot affect adversely the legal position of the effective occupant [here there is a reference to 2 Int. Arb. Awards 829 at 846 et. seq. Also ibid., 868]. The proviso which must be made is that such a recognition of the claims of another State deprives the State which is in actual control of the territory of the chance of obtaining recognition of its own rights.'

² The Law of Treaties (1961), p. 485.

³ I.C.J. Reports, 1962, at p. 63. See also the neat definition of this aspect of estoppel in M. Paul Reuter's argument in the oral hearings of the same case (4/5 March, 1962): 'On peut définir l'estoppel tel qu'il semble reçu en droit international comme une exception, opposée à une allégation qui, bien que conforme peut-être à la réalité des faits, est contraire à une attitude antérieure d'une des parties. Sans avoir à entrer ici dans toutes les finesses, qui sont grandes, de l'analyse juridique anglo-saxonne, il faut simplement relever que dans les relations internationales la doctrine fait de l'estoppel un mécanisme répondant au principe général de la bonne foi et au besoin de sécurité qui régit les sociétés humaines.'

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However, in those cases where it can be shown that a party has, by conduct or otherwise, undertaken, or become bound by, an obligation, it is strictly not necessary or appropriate to invoke any rule of preclusion or estoppel, although the language of that rule is, in practice, often employed to describe the situation. Thus it may be said that A, having accepted a certain obligation, or having become bound by a certain instrument, cannot now be heard to deny the fact, to 'blow hot and cold'. True enough, A cannot be heard to deny it; but what this really means is simply that A is bound, and, being bound, cannot escape from the obligation merely by denying its existence. In other words, if the denial can be shown to be false, there is no room or need for any plea of preclusion or estoppel. Such a plea is essentially a means of excluding a denial that might be correct irrespective of its correctness. It prevents the assertion of what might in fact be true. Its use must in consequence be subject to certain limitations. The real field of operation, therefore, of the rule of preclusion or estoppel, stricto sensu, in the present context, is where it is possible that the party concerned did not give the undertaking or accept the obligation in question (or there is room for doubt whether it did), but where that party's conduct has been such, and has had such consequences, that it cannot be allowed to deny the existence of an undertaking, or that it is bound.

Now it is, of course, true that the precise limits of estoppel in international law are and must remain a question of some doubt until at least there has developed a much more considerable jurisprudence on the subject; but this fact merely emphasizes the importance of proceeding cautiously, especially in questions of title. It is doubtful whether estoppel or preclusion can ever be itself a root of title to sovereignty. It may assist in the determination of a title based on some other ground but there probably is no such thing as a title by estoppel.¹

ESTOPPEL AND RECOGNITION

Let us consider first how far an estoppel worked by recognition may affect a question of territorial title. Dr. Schwarzenberger, in an important article on the subject, puts the matter in a striking way. The pliability of recognition as a general device of international law makes recognition an eminently suitable means for the purpose of establishing the validity of a territorial claim in relation to other States. However weak a title may be, and irrespective of any other criterion, recognition estops the State which has recognized the title from contesting its validity at any future time.²

Subject possibly to a qualification which will be indicated in a moment, this statement is, with respect, unexceptionable. The estoppel, if it operates at all, will operate irrespective of any actual weak-

¹ Cf. however n. 3 on p. 50 below.

² American Journal of International Law (1957), p. 316.

ness, or even the existence, of the title recognized for, as we have just learned from Judge Fitzmaurice, an estoppel 'is essentially a means of excluding a denial that might be *correct*—irrespective of its correctness'.

But before we can understand the relevance of this statement we have to ask the further question how far the opinion of the State subject to the estoppel may or may not be relevant to the establishment of a particular title. If the recognizing State be the only other possible claimant, the recognition may be decisive. One need seek no further than the *Eastern Greenland* case for authority. It will be remembered that the Court attached great weight to certain treaties between Norway and Denmark containing exclusion clauses by which Norway had in effect recognized the Danish claim over Eastern Greenland. The court said:

In accepting these bilateral and multilateral agreements as binding upon herself, Norway reaffirmed that she recognized the whole of Greenland as Danish; and thereby she has debarred herself from contesting Danish sovereignty over the whole of Greenland, and, in consequence, from proceeding to occupy it.¹

And, as Lord McNair says of this passage: 'If you are not going to call that estoppel, you must find another name for it.'2

¹ P.C.I.J. Reports, Series A, No. 53, at p. 68.

² The Law of Treaties (1962), p. 487. Lord McNair is here discussing the question how far the conception of estoppel on being admitted into international law must be the same as the common law conception. 'In particular,' he continues, 'it is questionable whether the common law requirement of action by one party to his detriment on the faith of a statement made by the other party will or should be regarded by international law as a necessary element. No such factor can be said to be present—except by somewhat strained reasoning—in the illustration cited above by the Eastern Greenland judgment. Yet can it be doubted that the Court was entitled to hold that the two treaties which described "Greenland' as Danish territory debarred Norway from making an assertion to the contrary, in spite of the fact that it is difficult to say that Denmark acted upon these statements to her detriment?'

On this particular question, however, see now Judge Sir Gerald Fitzmaurice in the *Temple* case, *loc. cit.*, at p. 63 where he says the following: 'The essential condition of the operation of the rule of preclusion or estoppel, as strictly to be understood, is that the party invoking the rule must have "relied upon" the statements or conduct of the other party, either to its own detriment or to the other's advantage. The often invoked necessity for a consequent "change of position" on the part of the party invoking preclusion or estoppel is implied in this. A frequent source of misapprehension in this connection is the assumption that change of position means that the party invoking preclusion or estoppel must have been led to change its own position, by action it has itself taken consequent on the statements or conduct of the other party. It certainly includes that: but what it really means is that these statements, or this conduct, must have brought about a change in the *relative* positions of the parties, worsening that of the one, or improving that of the other, or both.'

See also Bowett, British Year Book of International Law, vol. 33, 1957, p. 193.

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On the other hand, where the recognition in question is on the part of a third State having itself no possible title to the territory, the position, as we have already seen, is quite different. The recognition of the third State cannot affect the title unless perhaps when a considerable number of other States have likewise recognized title, in which case the cumulative effect of the recognitions may presumably form an ingredient of a process of consolidation. What is in question, perhaps, is whether any useful purpose is served by regarding this process as estoppel. A series of recognitions of an alleged title has certainly some probative value,² and a refusal of recognition on the other hand may seriously jeopardize a claim. It may be the case, as Dr. Schwarzenberger asserts, that 'the device of recognition can be employed as an independent root of title'.3 What is open to doubt, however, is how far it is useful or even accurate to think of the function of recognition in this regard as an estoppel. For it is the actual recognition of an alleged title by a third State that is the operative factor; not the further and independent proposition that in certain circumstances the recognizing State may later find itself estopped from denying the validity of the title. The question of estoppel is indeed only a way of asking how far and in what circumstances a recognition can be denied or withdrawn. It does not describe its effect.

Moreover, it is by no means clear that Recognition always does work an estoppel. There is a view which, whilst not uncontroverted, has strong authority to support it, that a *de facto* recognition is by its very nature tentative, certainly less committal than a *de jure* recognition, and therefore that it may at any rate in certain circumstances be withdrawn.⁴ This is as much as to say that in these cir-

¹ For the proposition that an estoppel will normally only have effect as such between parties to the statement and their privies, see Bowett, op. cit., p. 182.

There is in fact a case of the withdrawal of a de jure recognition of an annexation of territory, when in 1940 it was stated that the 'de jure recognition by His Majesty's Government of the Italian conquest of Ethiopia had been withdrawn'. See Azash Kebbeda Tesema v. Italian Government, Annual Digest, 1938-40, Case No. 36. It is also cited and commented upon in Lauterpacht, op. cit., p. 356, where he says: 'In so far as the recognition of new titles has, in contradistinction

² A true estoppel, however, is to be distinguished from admissions, representations and so on that merely have *some* probative value. An estoppel, if it operates at all, is peremptory. See Bowett, *British Year Book of International Law*, vol. 33 (1957), at p. 195. For an example of such an admission see *Minquiers and Ecrehos* case, *I.C.J. Reports*, 1953, at p. 71.

³ Loc. cit., p. 318.

⁴ Lauterpacht, Recognition in International Law (1947), pp. 349-57, where it is also suggested indeed that, within limits, de jure recognition may also be withdrawn.

cumstances a recognition de facto does not work an estoppel in any case.1

ESTOPPEL AND ACQUIESCENCE

That there may be a certain relationship between an acquiescence that operates in law and an estoppel is apparent,2 though the two are nevertheless quite distinct concepts. Thus, Sir Gerald Fitzmaurice, in the Temple case, 3 says: '[the principle of preclusion] is quite distinct theoretically from the notion of acquiescence. But acquiescence can operate as a preclusion or estoppel in certain cases, for instance where silence, on an occasion where there was a duty or need to speak or act, implies agreement, or a waiver of rights, and can be regarded as a representation to that effect.' An apt illustration of this position is to be found in a territorial claim: the Costa Rica— Nicaragua Boundary case,4 where Nicaragua argued that a treaty of 1858 which defined the frontier was not binding because a third State, San Salvador, had not ratified it in its capacity of guarantor. The arbitrator rejected this contention, pointing out that Nicaragua had in fact acquiesced in the validity of the treaty for ten or twelve years. He said:

But the Government of Nicaragua was silent when it ought to have spoken, and so waived the objection now made. It saw fit to proceed to the exchange of ratifications without waiting for San Salvador. . . . Neither may now be heard to allege, as reasons for rescinding this treaty, any facts which existed and were known at the time of its consummation.

An estoppel of this kind may then, in certain circumstances, proceed from acquiescence and may therefore affect a question of territorial title depending for example on the interpretation of a treaty⁵ fixing a boundary, or a treaty of cession, or depending upon prescription of whichever kind. As with recognition, much depends upon the nature of the right claimed. In a frontier dispute involving two States

to other forms of recognition, the character of a contractual arrangement, the British action cannot be regarded as arbitrary.'

¹ Cf. also the *Tinoco* case where it was held that *non*-recognition of a government did not necessarily work an estoppel. See *American Journal of International Law*, vol. 18 (1924), p. 147.

² On this subject see especially Dr. Bowett's illuminating article cited above.

³ I.C.J. Reports, 1962, p. 62.

⁴ Cited by Bowett, *loc. cit*. See also Moore's *International Arbitrations*, vol. 2, p. 1945.

⁵ See the *Temple* case, *loc. cit.*, for example.

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an estoppel to which they are both parties may be decisive; on the other hand if the claim is, as in the *Norwegian Fisheries* case, a claim to sovereignty over what must alternatively be *res communis*, an estoppel against one State cannot be conclusive, for it is the acquiescence of States generally that is here in point. For this reason the notions of estoppel and acquiescence ought perhaps to be kept distinct, as also the concept of prescription. As Dr. Bowett says of the distinction between acquiescence and estoppel: 'The confusion of these two notions will only serve to lessen the burden of proving the acquisition of title by prescription and, since no requirement of good faith demands such result, it would seem that the use of the doctrine of estoppel in circumstances where prescription ought to be relied on is inadmissible in international law.'1

Yet this is something of a counsel of perfection and it may be doubted how far it is very likely to be realized in practice; for this is not the way the judicial mind works when presented with the need for decision in a particular case. It is possible, indeed, that the general idea of consolidation—vague as it is—with estoppels making a weighty contribution to the process, will tend to become more attractive to Courts than prescription properly so-called. There is a suggestive passage from the argument of M. Reuter before the Court in the *Temple* case:

... it is our firm conviction that, in a general way, international case law has not thought it necessary to describe the formal processes which confirm the consolidating effect of lapse of time. It is certain that arbitrators

¹ See also Sir Percy Spender's dissenting opinion in the *Temple* case, *I.C.J. Reports*, 1962, p. 131:

⁴There is a close affinity between prescription, preclusion, recognition, acquiescence and absence of protest. The principle of preclusion is, however, in my view, quite distinct from the concept of recognition (or acquiescence), though the latter may, as any conduct may, go to establish either prescription of preclusion.

'To accord to the concept of recognition by a State of any fact or situation, without more, the legal consequence of a preclusion, not only finds, in my opinion, despite the views of certain writers, no authority as a principle of international law under Article 38 of the Statute of the Court, but provides an invitation to apply to the determination of a case in which recognition of a fact or of a situation is relied upon, considerations which are scarcely distinguishable from considerations ex aequo et bono.

'The concepts of recognition and acquiescence are important elements of international law. They are not likely to add to their usefulness if pushed beyond their proper content.

'In the present case any recognition by Siam of Annex I and the line of frontier shown thereon, or any acquiescence by Siam therein, is in my view of evidentiary value only.'

have hesitated to apply in international law any theory of acquisitive prescription and have raised the question, for instance, whether, in certain cases, the theory of estoppel would not provide some factors that could be of use in a territorial litigation [des éléments utilisables dans un litige territorial]. The lamented Sir Hersch Lauterpacht pointed this out in his work Private Law Sources and Analogies of International Law. He showed how, in the Alaska Boundary Dispute in 1903 (p. 235), estoppel had seemed to be an alternative or a substitute for prescription. The same remark was true to a lesser degree in regard to the Behring Sea Arbitration (p. 224). It could be shown without difficulty and without labouring the point that though international case law has always attached much weight to facts showing the effective exercise of sovereignty, it does not readily resort to the vocabulary of prescription.

THE TEMPLE CASE

Finally, we may not leave estoppel without a rather closer look at the decision of the International Court of Justice in the Temple case: a decision on a question of territorial title in which estoppel, acquiescence and recognition all played a prominent role. It will be remembered that the dispute was one between Cambodia and Thailand, each claiming to be sovereign over a small area of frontier territory containing the ruins of an ancient sanctuary and shrine called the Temple of Vihear, situated on an escarpment rising in high cliffs above the Cambodian plain. A treaty of 1904 between Siam (now Thailand) and France (Cambodia having been at that time French Indo-China) provided for the delimitation of the frontier in this area by a frontier commission. A frontier was, it seems, surveyed and fixed, but the evidence was inconclusive as to the question of the line of the frontier at Preah Vihear. Cambodia relied, however, and in the event relied successfully, on the production of a map of 1907, produced by the French authorities at the request of the Siamese, which clearly showed the Temple area as a part of French Indo-China, now Cambodia. It was strenuously and indeed persuasively argued by Thailand that the map was in error with respect to this part of the frontier, because it was not, they said, consonant with the method of fixing the frontier laid down for the commission in the 1904 Treaty. The point, however, on which the Court seized, was that this map, mistaken or no, was accepted by the Thailand Government without protest or even comment. Indeed, the Siamese Prince Damrong thanked the French for the maps and requested another fifteen copies.

¹ Distr. 62/50, p. 73.

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It was said for Thailand that there was no requirement upon her to protest the error in the map and that a failure to do so could not affect a change of sovereignty. But to this the Court said:

It is clear that the circumstances were such as called for some reaction, within a reasonable period, on the part of the Siamese authorities, if they wished to disagree with the map or had any serious question to raise in regard to it. They did not do so, either then or for many years, and thereby must be held to have acquiesced. Qui tacet consentire videtur si loqui debuisset ac potuisset.¹

And again some importance was attached to what is in effect another series of incidents of which the most important was in 1930 when Prince Damrong paid a state visit to the Temple, where he was received officially by the French Resident for the adjoining Cambodian Province, and with the French flag flying.

The Prince [said the Court] could not possibly have failed to see the implications of a reception of this character. A clearer affirmation of title on the French Indo-Chinese side can scarcely be imagined. It demanded a reaction. Thailand did nothing. Furthermore, when Prince Damrong on his return to Bangkok sent the French Resident some photographs of the occasion, he used language that seems to admit that France, through her Resident, had acted as the host country. . . . Looking at the incident as a whole, it appears to have amounted to a tacit recognition by Siam of the sovereignty of Cambodia (under French Protectorate) over Preah Vihear, through a failure to react in any way, on an occasion that called for a reaction in order to affirm or preserve a title in the face of an obvious rival claim.²

There was much else in the facts of what was indeed a very intricate case. But it was essentially on the considerations of fact that we have just been considering that the Court built its decision. The decision rested squarely on the ground of preclusion, or estoppel, coupled with recognition. Thus:

The Court will now state the conclusions it draws from the facts as above set out.

Even if there were any doubt as to Siam's acceptance of the map in 1908, and hence of the frontier indicated thereon, the Court would consider, in the light of the subsequent course of events, that Thailand is now precluded by her conduct from asserting that she did not accept it. She has, for fifty years, enjoyed such benefits as the Treaty of 1904 conferred on her, if only the benefit of a stable frontier. France, and through her Cambodia, relied on Thailand's acceptance of the map. Since neither side can plead error, it is immaterial whether or not this reliance was based on a

¹ I.C.J. Reports, 1962, p. 23.

belief that the map was correct. It is now not open to Thailand, while continuing to claim and enjoy the benefits of the settlement, to deny that she was ever a consenting party to it.

The Court however considers that Thailand in 1908–1909 did accept the Annex I map as representing the outcome of the work of delimitation, and hence recognized the line on that map as being the frontier line, the effect of which is to situate Preah Vihear in Cambodian territory.¹

This was not all, however. There was another clear, and indeed extremely neat, example of an estoppel found by the Court. One of Thailand's contentions was that she had since the promulgation of the map in 1908, and at any rate up to the time she made her own survey in 1934-5, believed that the line on the map and the watershed line laid down in the 1904 Treaty, coincided. Consequently, if she accepted the map line, she had only done so in the mistaken belief that the map line was the line of the watershed. But she also pleaded that the Temple area was Thailand territory as a result of acts of sovereignty that she had performed in the area. The two arguments were evidently inconsistent. If she had really believed that the map indicated the watershed line she must really have believed that the area was Cambodian, in which case her acts on the ground could only be regarded as attempted violations of Cambodian sovereignty. 'The conclusion is,' said the Court, 'that Thailand cannot allege that she was under any misapprehension in accepting the Annex I line, for this is wholly inconsistent with the reason she gives for her acts on the ground, namely that she believed herself to possess sovereignty in this area.'2 This is a very neat example of the rule that a party may not blow hot and cold in the same case, thus operating an estoppel by conduct to prevent Thailand from profiting from an allegation irrespective of whether it represented the truth of the matter or not.

It is evident that principles of estoppel or preclusion weighed heavily with the Court. What is not clear from the judgment is whether preclusion was regarded as one among other self-sufficient reasons for decision; or whether it was merely an adjunct of a kind of process of prescription (and certainly considerable weight was attached to the length of time during which Thailand failed to object to the map line); or whether it was regarded as being merely of assistance in a question basically one of treaty interpretation.³

¹ *Ibid.*, p. 32. ² *Ibid.*, p. 33.

³ The latter, for example, is suggested by this passage (p. 35): 'The indication of the line of the watershed in Article I of the 1904 Treaty was itself no more than an obvious and convenient way of describing a frontier line objectively,

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Indeed, looking simply to the majority judgment one is hard put to it not to lump all together in an omnibus concept of 'consolidation of title by lapse of time'. What is immediately striking about the case is the exiguous assistance that the Court derived from acts of either party on the ground-acts which indeed by themselves merely indicated a situation of ambiguity.

There is a further question concerning estoppel on which the Temple case sheds some new light. Is the rule of estoppel a rule of procedure or evidence merely, or is it a rule of substance? And I take it that the purport of the question is this: if estoppel is an adjectival rule, relevant only to questions of proof, it can only affect an issue of title in the context of a particular dispute before a competent tribunal; but if it be a rule of substance then it will presumably affect title in an absolute sense, irrespective indeed of whether any issue is formulated before a tribunal or not. This is a question, clearly of the first importance, but on which, in the past, different opinions have been expressed.2 Little help is to be derived on this point from the Judgment of the Court in the Temple case; but in the separate opinions there is formidable authority for the view that it is clearly a rule of substantive law.3 And if this view is correct it is clear that estoppel, where it does operate, can in effect operate itself to shift a title. Indeed this possibility is expressed with some acidity by Sir

though in general terms. There is, however, no reason to think that the Parties attached any special importance to the line of the watershed as such, as compared with the overriding importance, in the interests of finality, of adhering to the map line as eventually delimited and accepted by them. The Court, therefore, feels bound, as a matter of treaty interpretation, to pronounce in favour of the line as mapped in the disputed area.'

¹ The actual phrase is culled from M. Reuter's pleading, though here it was suggested as an alternative to both estoppel and prescription: 'On pourrait aussi, en dehors de l'estoppel et de la prescription acquisitive, se placer sur un autre plan et parler de consolidation d'un titre par le temps; il s'agirait alors d'un mécanisme que l'on serait tenté de qualifier de coutumier.' See loc. cit.,

² For references see Bowett, *loc. cit.*, p. 176, notes 1 and 2. ³ See Vice-President Alfaro, p. 41: 'In my judgment, the principle is substantive in character. It constitutes a presumption juris et de jure in virtue of which a State is held to have abandoned its right if it ever had it, or else that such a State never felt that it had a clear legal title on which it could base opposition to the right asserted or claimed by another State. In short, the legal effects of the principle are so fundamental that they decide by themselves alone the matter in dispute and its infraction cannot be looked upon as a mere incident of the proceedings.

^{&#}x27;The primary foundation of this principle is the good faith that must prevail in international relations . . . '

Also Judge Fitzmaurice at p. 62 and Sir Percy Spender at p. 143.

RECOGNITION, ACQUIESCENCE AND ESTOPPEL

Percy Spender in his weighty dissent in this case, when he concludes as follows:

With profound respect for the Court, I am obliged to say that in my judgment as a result of misapplication of these concepts and an inadmissible extension of them, territory, the sovereignty in which, both by treaty and by the decision of the body appointed under treaty to determine the frontier line, is Thailand's, now becomes vested in Cambodia.¹

This is indeed an impressive warning of the dangers of too facile an acceptance of estoppel as a device for the determination of title. But it is fair to add that, in the passage just cited, Sir Percy is assuming the correctness of his own interpretation of the facts and documents, and that in this interpretation he is at variance with his colleagues who voted the other way. If it were indeed clear that this disputed territory was on the Thai side of the frontier, it would unquestionably be a new and surprising departure if that sovereignty could then be shifted by an estoppel. As the Court saw the facts and documents, however —and a perusal of the pleadings lends weight to their view—the situation was one of considerable dubiety, in that the treaty of 1904 and the records of the boundary commission gave no certain answer to suggest the precise run of this part of the frontier. And it is surely in precisely this kind of dubious situation that there is room for estoppel to work. Thus, as it seems to me, although the case confirms that estoppel may assist, and even assist with decisive effect, in the interpretation of facts, and instruments and acknowledgments relative to the vesting of a title, it still remains true to say that estoppel is not itself a root of title.

¹ I.C.J. Reports, 1962, p. 146.

Annex 120 Speech by H.E. Judge Gilbert Guillaume, President of the International Court of Justice, to the Sixth Committee of the General Assembly of the United Nations, 31 October 2001.

SPEECH BY HIS EXCELLENCY JUDGE GILBERT GUILLAUME, PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE, TO THE SIXTH COMMITTEE OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS

31 OCTOBER 2001

Mr. Chairman,

Ladies and Gentlemen,

It is a privilege and an honour for me to be given this second opportunity to address your Committee in my capacity as President of the International Court of Justice.

Last year I chose to speak to you about a question of ongoing concern to the international legal community: the proliferation of international judicial bodies and its impact on international law. The extensive reaction to that presentation from diplomats, academics, journalists and legal practitioners shows that this concern is widely shared and is cause for much questioning.

There has been no improvement in the situation in this respect since last year. Quite to the contrary: the risks of forum shopping have worsened, as could be seen in connection with the swordfish stocks dispute between Chile and the European Union and the Bluefin Tuna case in which the International Tribunal for the Law of the Sea found that it had prima facie jurisdiction, but the Arbitral Tribunal set up by Australia, Japan and New Zealand ultimately came to the opposite conclusion.

The risks of conflicting case law have also grown and the International Court of Justice has, for example, recently been seised of an Application by Liechtenstein instituting proceedings against Germany concerning a case certain aspects of which have previously been dealt with by the European Court of Human Rights.

I remain convinced that the proliferation of international judicial bodies could jeopardize the unity of international law. I therefore continue to believe that international lawmakers and courts must in the future exercise great caution in this area. I fear, however, that such caution is not enough and that procedures ought possibly to be established to allow the International Court of

Justice to rule on such preliminary questions as specialized international courts might wish to submit to it. I shall not however return to that point today.

Nor shall I speak to you about the current position of the Court, which was the subject of my presentation to the General Assembly yesterday. Despite our Court's sustained activity, there are still 22 cases on its List. We have thus been obliged to request a modest increase in our budget; we thank the Advisory Committee for Administrative and Budgetary Questions (ACABQ) for the understanding it has shown of our position and hope that its report can be quickly approved by the Fifth Committee and by the General Assembly.

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Mr. Chairman,

The Court handed down several significant judgments last year; notably, on 16 March 2001 it decided a territorial dispute between Qatar and Bahrain concerning sovereignty over certain islands and the maritime delimitation to be established between the two States.

On that occasion it enlarged upon several points of its jurisprudence on the law of the sea, and I therefore thought it worthwhile to speak to you today concerning the contribution made by our Court to this law.

That contribution is both manifold and of long standing; the International Court of Justice has played, and continues to play, a vital role in this domain, having been seised of a total of some 20 international disputes involving this area. Indeed, it is significant that cases involving the law of the sea were the first contentious matters dealt with by both the Permanent Court of International Justice and the International Court of Justice: namely, the *S.S. "Wimbledon"* case¹ for the first and the *Corfu Channel* case² for the second.

¹P.C.I.J., Series A/B, No. 5, 1923.

²Judgment of 9 April 1949, *I.C.J. Reports 1949*, p. 4.

The Court's jurisprudence over that long history has concerned a wide range of areas of that law: freedom of the high seas, rights of passage through straits and through the territorial sea³, nationality of ships⁴, jurisdiction over those ships and their crews⁵, fishing rights, etc.

But I shall confine myself today to one question alone: the law governing the delimitation of maritime areas.

* *

Delimitation of those areas was long considered a secondary question, involving the fixing of the boundaries between narrow territorial seas. Extension of State jurisdiction to the high seas and technological developments have made this into one of the main territorial issues of the last 30 years.

From the beginning, two methods were recommended for making these delimitations. Some looked to the "equidistance method", pursuant to which the maritime boundary between States must follow "the median line every point of which is equidistant from the nearest points" on the coasts. Others pointed out that, while the equidistance method appeared generally acceptable for the delimitation of the territorial seas between States with opposite coasts which were comparable in length, it could yield inequitable results in other circumstances. They thus advocated maritime delimitations based on equitable principles or producing equitable results. After a long period of development, in which the Court played a leading role, today's law of the sea distinguishes between the delimitation of territorial seas, on the one hand, and of the continental shelf and fishing zones or exclusive economic zones, on the other. However, the Court has now formulated similar rules applicable to both types of cases.

* *

³In respect of the first, see the *Corfu Channel* case, cited above; in respect of the second, see the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), I.C.J. Reports* 1986, p. 14.

⁴Case concerning Constitution of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization, Advisory Opinion of 8 June 1960, I.C.J. Reports 1960, p. 150.

⁵ "Lotus", Judgment No. 9, 1927, P.C.I.J., Series A, No. 10.

The delimitation of territorial seas

The boundary between the territorial sea and the high seas was traditionally fixed at 3 miles from the coast. More often than not, it has now been increased to 12 miles. But which coasts are to be taken into account in fixing this boundary in order to ensure that the subsequent delimitation is appropriate? That is the first problem having confronted the Court.

There are two methods for identifying the starting points of the territorial sea: the normal baseline method and the straight baseline method.

The normal baseline ordinarily used for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State.

However, the International Court of Justice, in its Judgment of 18 December 1951 in the case concerning *Anglo-Norwegian Fisheries*⁶, preferred another method, that of straight baselines, to the traditional one. True, it noted that the method of normal baselines could be applied "without difficulty to an ordinary coast, which is not too broken". But it added that where "a coast is deeply indented and cut into, as is that of Eastern Finnmark, or where it is bordered by an archipelago such as the 'skjaergaard' along the western sector of the coast here in question, the base-line becomes independent of the low-water mark, and can only be determined by means of a geometrical construction". Thus, for those situations the Court adopted the method of straight baselines, which later was to be incorporated into the 1958 Convention on the Territorial Sea and then into Article 7, paragraph 1, of the Montego Bay Convention, providing:

"1. In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured."

Article 7, paragraph 3, adds:

⁶In the *Anglo-Norwegian Fisheries* case, the Court handed down an oft-quoted, fundamental dictum concerning the fixing of the seaward boundaries of maritime areas: "The delimitation of sea areas has always an international aspect; it cannot be dependent merely upon the will of the coastal State as expressed in its municipal law. Although it is true that the act of delimitation is necessarily a unilateral act, because only the coastal State is competent to undertake it, the validity of the delimitation with regard to other States depends upon international law". *Fisheries Case (United Kingdom v. Norway)*, Judgment of 18 December 1951, *I.C.J. Reports 1951*, p. 132.

⁷Fisheries Case (United Kingdom v. Norway), Judgment of 18 December 1951, I.C.J. Reports 1951, p. 128. Specifically, this comment concerned the *tracé parallèle* method, based on the normal baselines.

⁸Fisheries Case (United Kingdom v. Norway), Judgment of 18 December 1951, I.C.J. Reports 1951, p. 129.

"The drawing of straight baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the régime of internal waters."

In its Judgment of 16 March 2001 (Maritime Delimitation and Territorial Questions between Qatar and Bahrain), the Court had its first opportunity to apply these provisions, which it deemed to be a part of customary law.

Bahrain contended that the various maritime features lying off the eastern coast of its main islands "may be assimilated to a fringe of islands which constitute a whole with the mainland". It concluded from this that it was entitled to draw straight baselines connecting these features.

The Court did not agree with Bahrain on this point. While it recognized that the maritime features in question were part of Bahrain's overall geographical configuration, it observed that they were not part of a "deeply indented" coast, that they could not be characterized as a "fringe of islands" and that the situation was therefore different from the one analysed in the case of Norway and described in the United Nations Convention on the Law of the Sea. It added that in the case before it the method of straight baselines would have been applicable only if Bahrain had declared itself to be an archipelagic State under the Montego Bay Convention. That, however, was not the case. Bahrain was therefore not entitled to draw straight baselines. As a result, the equidistance line between Bahrain and Qatar which the Court must use — subject to possible subsequent adjustment — in order to fix the maritime boundary between the two States had to be drawn by reference to normal baselines. Bahrain's internal waters were reduced accordingly and the waters lying between the main islands and the Hawar Islands were territorial waters, in which the right of innocent passage was recognized?

*

The judgment rendered in that case goes beyond simply clarifying the rules enabling the external limits of territorial seas to be fixed. It also addresses the question of the delimitation of the territorial waters of neighbouring States.

⁹Case concerning *Maritime Delimitation and Territorial Questions between Qatar and Bahrain*, Judgment of 16 March 2001, paragraphs 210-216 and paragraph 223.

This question is governed by customary law as codified by the Geneva Conventions and the Montego Bay Convention. Article 15 of the latter lays down the principle that territorial seas must be delimited in accordance with the equidistance method. But it adds that:

"The above provision [on equidistance] does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith."

In actual fact, the delimitation of territorial seas in accordance with this equidistance/special circumstances rule is most often effected through bilateral agreements. For the first time, however, in the case between Qatar and Bahrain, the Court was called upon to rule on such a delimitation and applied the rule of customary law thus enshrined by the United Nations Convention on the Law of the Sea.

It accordingly proceeded in two stages: first, drawing the equidistance line; second, identifying any special circumstances.

As regards the drawing of the equidistance line, the Court, confirming its case law, refused to apply the method of mainland-to-mainland calculation. It identified each of the maritime features having an effect upon the course of the equidistance line and fixed that line by reference to the appropriate baselines and basepoints. To this end, it identified the islands and islets coming within the sovereignty of each of the States.

However, it was faced with a new difficulty, as a result of the presence in the area of low-tide elevations.

You will recall that, under the relevant provisions of the Conventions on the Law of the Sea, which reflect customary international law, "a low-tide elevation" is a naturally formed area of land which is surrounded by and above water at low tide but submerged at high tide¹⁰.

According to these provisions, when a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low-water line of that elevation may be used as the baseline for measuring the breadth of the territorial sea. Where a low-tide elevation is wholly situated at a distance exceeding the breadth of the territorial sea, it has no territorial sea of its own.

¹⁰Art. 11, para. 1, of the Convention of 1958 on the Territorial Sea and Contiguous Zone, Art. 13, para. 1, of the 1982 Convention on the Law of the Sea.

The case between Qatar and Bahrain, however, raised a particular problem, in so far as certain low-tide elevations were situated in the area where the territorial seas of the two States overlapped. In principle, therefore, each of them had a right to use the low-water line of these low-tide elevations for measuring the breadth of its territorial sea. For the purposes of delimitation, the competing rights of both States appeared to cancel each other out.

Nevertheless, Bahrain contended that it had taken possession of the majority of these low-tide elevations, which accordingly came within its sovereignty, and that it alone was permitted to take them into account for purposes of fixing the equidistance line.

The Court did not accept that argument. It held that the law of the sea distinguished in a number of respects between islands and low-tide elevations and that a State could not acquire sovereignty by appropriation over a low-tide elevation situated within the limits of its territorial sea where the same low-tide elevation was also situated within the limits of the territorial sea of another State¹¹. It accordingly concluded that these low-tide elevations could not be used for determining the basepoints and drawing the equidistance line¹².

Once this line has been determined, in accordance with the rules as thus stated, it remains to investigate in each particular case the existence of historic title or other special circumstances. In this respect, the Court held that a disproportionate effect should not be attributed to certain insignificant maritime features¹³. In the past, it had already, for these reasons, discounted any influence of the deserted islet of Filfla on the maritime delimitation to be effected between Libya and Malta¹⁴. Further, in the instant case, it noted that Qit'at Jaradah was a very small island, uninhabited and totally devoid of vegetation. It did recognize Bahrain's sovereignty over this minute feature, 12 by 4 metres, with an altitude of 0.4 metres at high tide¹⁵, but it considered that there is "a special circumstance in this case warranting the choice of a delimitation line passing

¹¹Case concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain), Judgment of 16 March 2001, paras. 200-209.

¹²Conversely, the Court held that in such cases sovereignty over the territorial sea determined sovereignty over low-tide elevations. In other words, the delimitation of territorial waters must be effected without regard to low-tide elevations and each State has sovereignty over the low-tide elevations located in the zone attributed to it, *ibid*, para. 210.

¹³*Ibid.*, para. 215.

¹⁴Case concerning Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985, p. 43, para. 54.

¹⁵*Ibid.*, para 197.

immediately to the east of Qit'at Jaradah"¹⁶ and thus conferring upon it a modest influence only on the delimitation of the territorial seas.

* *

The delimitation of the continental shelf and the exclusive economic zone

As regards the delimitation of the continental shelf and the exclusive economic zone, the Court has also gradually established a case law which is now authoritative, and to which it put the definitive touches in the case between Qatar and Bahrain.

As you know, in 1969, in the *North Sea Continental Shelf* case, the Court initially inclined towards a delimitation of that shelf in accordance with "equitable principles, and taking account of all the relevant circumstances"¹⁷. Next, in the case between Tunisia and Libya concerning a similar delimitation, it recalled that the delimitation must be achieved on the basis of equitable principles¹⁸. The same approach was adopted in the *Gulf of Maine* case¹⁹. These decisions were not without influence on the solution adopted by the Conference on the Law of the Sea. Thus, the Montego Bay Convention, in Articles 74 and 83, provides for "States to effect delimitation by agreement on the basis of international law . . . in order to achieve an equitable solution".

At this stage, case law and treaty law had become so unpredictable that there was extensive debate within the doctrine on whether there still existed a law of delimitations or whether, in the name of equity, we were not ending up with arbitrary solutions. Sensitive to these criticisms, in subsequent years the Court proceeded to develop its case law in the direction of greater certainty.

That development was begun in the *Continental Shelf* case between the Libyan Arab Jamahiriya and Malta, in which the Court took the equidistance line as the point of departure for

¹⁶*Ibid.*, para. 219.

¹⁷Case concerning the *North Sea Continental Shelf (Federal Republic of Germany* v. *Denmark and The Netherlands)*, Judgment of 20 February 1969, p. 53, para. 101.

¹⁸Case concerning *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Judgment of 24 February 1982, *I.C.J. Reports* 1982, p. 4.

¹⁹Case concerning the *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)*, 12 October 1984, *I.C.J. Reports* 1984, p. 300, para. 112.

delimitation and moved it northwards, having regard to the equitable principles to be applied in the case, namely, the general configuration of the coasts and their different lengths. Thus, equidistance was reinstated as a provisional line open to possible correction in order to achieve an equitable result²⁰.

A new stage was then reached with the Judgment delivered on 14 June 1993 in the case between Denmark and Norway concerning the maritime delimitation in the area between Greenland and Jan Mayen.

In that case, the delimitation of the continental shelf fell to be effected in accordance with the 1958 Geneva Convention (equidistance/special circumstances), whereas the fishing zones were to be effected in accordance with customary law (equitable solution, having regard to relevant factors). The Court stressed that, in both cases, an equitable result must be reached. It added that, as regards the fishing zones, delimitation had to proceed on the basis of equitable principles. In order to achieve this, it held that it was appropriate to start from the equidistance line, subsequently making all the necessary corrections to it, having regard to the relevant factors. Finally, it stated that these factors were comparable to the special circumstances envisaged by the 1958 Convention. On that basis, the Court, with a view in particular to taking account of the length of the coasts of both parties and of the zone's fishery resources, arrived at a single delimitation line for the continental shelf and the fishing zone and drew this line to the east of the median line.

Thus, the law on maritime delimitations was completely reunified. Whether it be for the territorial sea, the continental shelf or the fishing zone, it is an equitable result that must be achieved. Such a result may be achieved by first identifying the equidistance line, then correcting that line to take into account special circumstances or relevant factors, which are both essentially geographical in nature.

This solution of principle, arrived at in the case concerning Jan Mayen/Greenland, was applicable thenceforth with regard to the delimitation of the continental shelf and the fishing zones of States with opposite coasts. It remained to be seen whether the same applied in the case of adjacent coasts.

²⁰Case concerning the *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment of 3 June 1985, *I.C.J. Reports* 1985, p. 13.

The Court ruled affirmatively on the matter in the case between Qatar and Bahrain. In that case, the parties had conferred on the Court the task of drawing a single maritime line simultaneously dividing both the continental shelf and the exclusive economic zone. In order to do so, but on this occasion dealing with adjacent rather than opposite coasts, the Court again decided that an equidistance line should first be provisionally drawn, consideration then being given as to whether there were relevant circumstances leading to an adjustment of that line²¹.

In the event, it ruled out a number of circumstances invoked by the parties and retained one only, concerning a maritime feature known as Fasht al Jarim, which constituted a "projection of Bahrain's coastline in the Gulf area, which, if given full effect, would distort the boundary and have disproportionate effects". "In the view of the Court, such a distortion, due to a maritime feature located well out to sea and of which at most a minute part is above water at high tide, would not lead to an equitable solution which would be in accord with all other relevant factors." Consequently, "in the circumstances of the case considerations of equity require that Fasht al Jarim should have no effect in determining the boundary line".

* *

Mr. President, Ladies and Gentlemen,

We are all aware that international law is constantly developing, and the law of the sea is not immune in this regard.

However, it is encouraging to note that the law of maritime delimitations, by means of these developments in the Court's case law, has reached a new level of unity and certainty, whilst conserving the necessary flexibility.

Thus, the Court declared in its recent Judgment: "the equidistance/special circumstances rule" applicable to the delimitation of the territorial sea and "the equitable principles/relevant circumstances rule, as it has been developed since 1958 in case law and State practice with regard

²¹Case concerning the *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain)*, Judgment of 16 March 2001, para. 230.

²²*Ibid.*, paras. 247 to 249.

to the delimitation of the continental shelf and the exclusive economic zone, are closely interrelated"²³.

In all cases, the Court, as States also do, must first determine provisionally the equidistance line. It must then ask itself whether there are special or relevant circumstances requiring this line to be adjusted with a view to achieving equitable results.

The legal rule is now clear. However, each case nonetheless remains an individual one, in which the different circumstances invoked by the parties must be weighed with care.

As a result of these developments, the Court has, in my opinion, managed to reconcile law and equity. In the case between Qatar and Bahrain, the parties thanked us for achieving this and that was most welcome to us.

The Court still has before it other cases of the same type, notably between Cameroon and Nigeria and between Honduras and Nicaragua. The international community may rest assured that those cases will be adjudicated in the same spirit.

²³*Ibid.*, para. 231.



Case Law on Equitable Maritime Delimitation / Jurisprudence sur les délimitations maritimes selon l'équité

Digest and Commentaries / Répertoire et commentaires

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English Translation by Alan Perry

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Assistance technique par Hassiba Hadj-Sahraoui

MARTINUS NIJHOFF PUBLISHERS

THE HAGUE / LONDON / NEW YORK

UNIVERSITY OF BRISTLL LIBRARY KC144.1 KOL

Published by Kluwer Law International, P.O. Box 85889, 2508 CN The Hague, The Netherlands sales@kli.wkap.nl http://www.kluwerlaw.com

Sold and distributed in North, Central and South America by Kluwer Law International, 101 Philip Drive, Norwell, MA 02061, USA kluwerlaw@wkap.com

In all other countries, sold and distributed by Kluwer Law International, Distribution Centre, P.O. Box 322, 3300 AH Dordrecht, The Netherlands

Library of Congress Cataloging-in-Publication Data

Kolb, Robert,

Case law on equitable maritime delimitation : digest and commentaries = Jurisprudence sur les délimitations maritimes selon l'équité : répertoire et commentaires / by Robert Kolb. p. cm.

ISBN 9041119760 (alk. paper)

1. Continental shelf – Cases. 2. Territorial waters – Cases. 3. Economic zones (Law of the sea) – Cases. I. Title: Jurisprudence sur les délimitations maritimes selon l'équité. II. Title.

KZA1662.K65 2003 341.4'48-dc21

2002041350

Printed on acid-free paper ©2003 Kluwer Law International

ISBN 90-411-1976-0

Kluwer Law International incorporates the imprint Martinus Nijhoff Publishers.

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GRISBADARNA CASE

(Norway v Sweden) Award of 23 October 1909

1. Jurisdiction: Permanent Court of Arbitration

2. Arbitrators: J.A. Loeff (President, Netherlands); F.V.N.Beichmann (Norway);

K.H.L. Hammarskjøld (Sweden)

 Text of the Award (English language): American Journal of International Law, vol. 4, 1910, pp. 226 et seq. The text of the special agreement is published in: G. G. Wilson, The Hague Arbitration Cases, Boston, 1915 (reprinted in Littleton, Fred B. Rothman & Co., 1990), pp. 103–109.

I GEOGRAPHICAL CONTEXT

1. The area to be delimited lay off the southern end of the land boundary between Sweden and Norway, between the towns of Strömstad on the Swedish coast and Fredrikstad on the Norwegian coast, adjacent to Oslo Bay.

The area can conveniently be subdivided into two sectors:

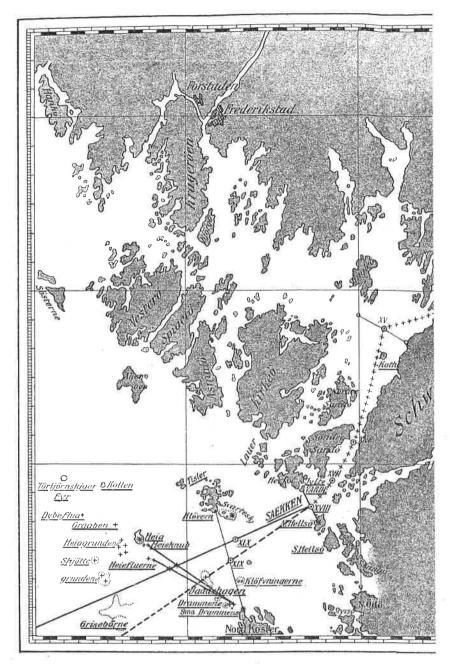
(1) To the North, at the mouth of the Idefjord, the Swedish coast runs in a southwesterly direction, with a series of offshore islands and islets belonging to Norway. It proved possible to reach agreement on the maritime boundary between the points numbered XIV to XVIII on the maps relating to the dispute, those being the points which lie at the extremities of the northern sector. The Roskilde peace treaty of 26 February / 9 March 1658¹ contemplated a fresh demarcation of the boundary between Denmark and Sweden in the area. That boundary settlement was embodied in a Convention of 26 October 1661;² to which a map was annexed. A Joint Commission, established by the two sides at the end of the 19th century with a view to clarifying the points remaining in dispute and making recommendations for a final solution of the maritime boundary issue, reached agreement on the line of the boundary in this northern sector. The boundary was drawn by means of a series of straight lines

² Parry, op.cit., vol. 6 (1660–1661), pp. 495 et seq.

¹ Cf. C. Parry (Ed.), The Consolidated Treaty Series, vol. 5 (1658-1660), pp. 1 et seq.

connecting five points (points XIV to XVIII) equidistant from the Swedish coast and the coasts of the Norwegian islands. Agreement having been reached, the arbitral Tribunal did not have to deal with the northern delimitation.

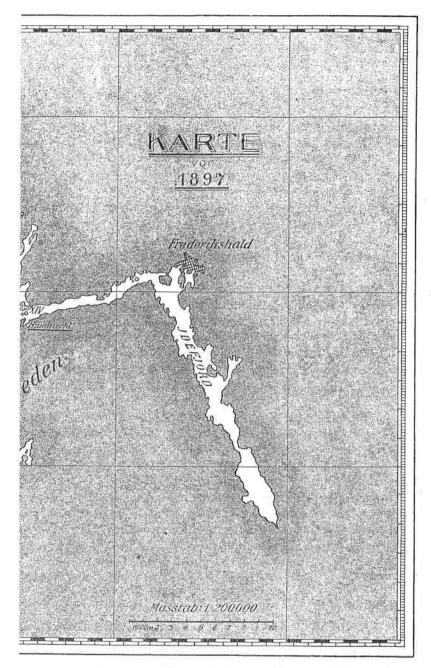
- (2) In the South, there is a vast maritime space to seaward of Point XVIII. In the northern part of that sector, the Norwegian islands lie close in to the opposite Swedish coast, separated only by a narrow arm of the sea, but in the southern part the position is different. The coasts cease to be opposite to each other, and become adjacent. To seaward, the geographical context is characterised by three elements. First, the existence of opposing coastal islands belonging respectively to Norway and to Sweden, particularly the Tisler Islands (Norway) and North Koster (Sweden). Second, the presence of a series of islets, rocks, reefs and low-tide elevations notably to the south-west of these islands. Third, the Grisbardana Banks, situated south-west of the Tisler Islands and North Koster, about eight nautical miles from Point XVIII. These banks, rich in fishery resources, especially lobsters, were the essential subject in issue. The delimitation from Point XVIII to seaward being in dispute, the Tribunal's task was to delineate the maritime boundary here in the southern sector.
- 2. Map No. 1 illustrates the position. See p. 3.
- 3. From the geographical point of view, four general characteristics are worthy of particular note:
- The area to be delimited was a restricted one, and lay relatively close inshore. It concerned only the territorial sea of the two States. At the beginning of the 19th century no recognition was given to the enjoyment by a coastal State of exclusive rights in any other maritime zone. We are, nevertheless, concerned here with a territorial sea which was "enlarged" by comparison with the ordinary rules of the day. This was so for two reasons. First, since the configuration of the coasts in question was a tortuous one, and since they were bordered by islands and rocks, straight baselines were drawn from points which were distant, to a greater or lesser degree, from the low water mark on the principal coast. Secondly, it should be borne in mind that, in accordance with Scandinavian practice (a true case of regional customary law, tolerated by a number of third States) the territorial sea in question extended to four miles instead of the three miles more generally applicable. Given the restricted areas which we are considering, one problem which did not arise was the distortion that can be produced by a simple (geometric) method of delimitation, a distortion progressively more marked the further the boundary projects to seaward.
- (b) The area to be delimited was characterised by a singular mix of adjacent and opposite coastlines. The general context was adjacency, as can be seen if one considers the area from the perspective of a closing line drawn through Point XVIII across the arm of the sea forming the northern sector. This general context was, however, modified by the existence of islands and rocks as features of the opposing coasts relied on by the parties as basepoints for the purpose of



Das Werk vom Hang. 11. 1. II.

Map | Carte No. 1. Grisbadarna: W. Schücking (ed.), Das Werk vom Haag, Die gerichtlichen Entscheidungen, vol. I, Series II, Duncker & Humblot, Munich | Leipzig, 1917, annex to the article of K. Strupp to the Grosbadarna case (en annexe à l'article de K. Strupp sur l'affaire Grisbadarna).

Grisbadarna Case



(Der Streitfall zwischen Schweden und Norwegen.)

delineating the boundary. Within the context of adjacent coasts there were thus a series of opposite relationships, two of which were particularly in dispute. The supple features of the two coastal configurations (adjacency/opposition) thus went well beyond beyond the somewhat schematic conceptions that would subsequently be developed up by the International Law Commission. In legal terms, the two categories of adjacency and opposition are exhaustive: according to the arbitral tribunal in the case of the United Kingdom v France (1977) § 94, no third (sui generis) legal category can be envisaged. Nevertheless one has to note that, in reality, these categories do not always apply in the round. They can fragment, in variable degrees, into a series of special relationships. The present case was an example of this. Another is to be found in the North Sea cases (1969), where the Netherlands and Denmark were, from a geographical perspective, simultaneously adjacent and opposite. In the United Kingdom v France case itself (1977), the situation in the Atlantic was legally characterised as one of adjacency even though the States concerned had no common terrestrial boundary. One might also mention the progressive transformation of adjacent into opposite coasts in the Tunisia/Libya case (1982) and the Gulf of Maine case (1984). In any event, the distinction is relevant to the particular method of delimitation only to the extent that the concepts of opposition or adjacency influence it.

Also noteworthy is the presence of numerous rocks, reefs and low-tide elevations in the area which was to be delimited. The question then arises as to their

use as basepoints.

The point from which the delimitation was to begin (Point XVIII) was fixed by agreement as the position equidistant between the closest points on the Islands of Herföl (Norway) and Hellsö (Sweden). Other provisions of the Arbitration Agreement were designed to limit or confine the arbitrators' freedom of choice. The parties, as domini negotii, imposed on the arbitrators certain obligations relating to the process of delimitation (see infra, II). The interesting point here is not the permissibility of such limitations, but their influence on the geographical context. In effect, a compromis of this kind adjusts the natural geography in the light of legal and/or political considerations, giving rise to a modified geography with a parallel existence to the "natural" one. Up to a point, the parties are free to make such modifications to the geographical framework, and the arbitrator or the judge has to take account of them. The rule that the geography (or indeed nature itself) must not be re-fashioned applies only to the judges, not to the parties to the dispute.

(II) THE TRIBUNAL'S TASK

The case was taken to arbitration by an Agreement signed at Stockholm on 14 March 1908.3 The articles relevant to the determination read as follows:

³ Cf. RSA, vol. XI, pp. 153-4

ARTICLE II

The court of arbitration, after having heard the claims of the parties and the arguments and evidence brought forth in support of these, shall determine the boundary line in the waters starting from the point indicated as XVIII on the map annexed to the project of the Swedish and Norwegian commissioners, August 18, 1897, in the sea to the limit of territorial waters. It is agreed that the line bounding the zone which, in consequence of the claims of the parties, may be the subject of litigation, and within which the boundary line will therefore be established, should not be drawn so as to include islands, islets, or reefs which are not always under water.

ARTICLE III

The court of arbitration shall decide whether the boundary line should be considered, either wholly or in part, as fixed in the boundary treaty of 1661 with the map thereto annexed, and in what manner the line thus established should be drawn, as also in so far as the boundary line shall not be considered as fixed by that treaty and map, the court shall fix the boundary line, having regard to the circumstances of fact and the principles of international law.

2. The law of maritime delimitation is factually intensive but spare in normative content. It looks for a particularly pronounced level of adherence to the factual circumstances, which are highly variable. From the normative point of view, one is limited to the operation of a number of general principles of law, in particular the principle of equity. Equity is the bridge par excellence between the crude facts and the law, the gulf between the two being spanned by that spontenaous sense of justice which, whilst essentially a legal one, can be applied to all kinds of facts. The "factuality" of the law of maritime delimitation has two aspects. First, it must be understood in relation to the geographical or other circumstances, which in various ways have a dominating influence over the legal process in relation to the area to be delimited. But, at the normative level, it also includes the specifities laid down in the compromis. By agreeing in that document on certain points, asking that certain circumstances be ignored and calling attention to certain norms superimposed upon or derogative of general international law, the parties to a greater or lesser extent load the case they are submitting for judicial resolution with a particular and idiosyncratic weight of its own. By influencing the result of the eventual decision, these parameters also have a formative effect on the chain of precedent which ultimately becomes the jurisprudence. There is thus, in two senses, an element of factual relativity in the law of maritime delimitation. The first element relates to the relevant circumstances. The second relates to the compromis, which in truth is, so to speak, the Constitution of the judicial or arbitral process. For this reason, a meticulous analysis of the compromis must precede and inform any study of the substantive

3. In the present case, four points should be noted about the Agreement to arbitrate:

- (a) It fixed the starting point for the delimitation (Point XVIII) and seems also to have wanted to fix the end-point ("...as far as the limit of the territorial waters"). This limit being a matter of dispute, the Tribunal might have to decide not only the disputed delimitation as between the two States, but also the limit between the two States and the high seas. As for the disputed area through which the boundary was to be drawn, the Agreement provided, though not very clearly, that the boundary must not be delineated in such a way as to take account of isles, islets or reefs which were not constantly submerged. These features did not constitute relevant points for the definition of the disputed zone.⁴
- The Tribunal was to apply the Treaty of 1661 so as to identify the established (b) boundary, and was itself to fix the boundary to the extent that it considered that the Treaty did not do so. The effect of this provision was to project the case backwards into the past, since it involved ascertaining the effects of older treaty titles. It is noteworthy that the potential combination of the Treaty provisions with the line to be fixed de novo was firmly provided for, in contradistinction to the ambiguous formulae to be subsequently used in the Guinea-Bissau/Senegal case, which was to give rise to a thorny problem. Article 3 of the Swedish-Norwegian compromis provided that the Tribunal must decide whether the treaty boundary had been fixed "entirely or in part", and, to the extent that it was not established by the Treaty, that the Tribunal must delineate it de novo. On the other hand, in Guinea-Bissau/Senegal Article 2 of the compromis would first ask whether the Treaty of 1960 was applicable between the parties, before adding that "in the case of a negative response" to the first question the Tribunal should draw the line on its own initiative. The Tribunal came to the following conclusion. The Treaty of 1960 applied between the parties in relation to the territorial sea, the contiguous zone and the continental shelf, but did not apply in relation to the waters of the exclusive economic zone and the fisheries zone. Not having replied wholly in the negative to the first question, the Tribunal did not proceed to delimit, de novo, the boundaries of the two latter zones. This result could have been avoided by means of a more carefully formulated compromis, along the lines of the Grisbadarna Arbitration Agreement. The de novo delimitation should not depend on a positive or negative response as to the applicability of the Treaty, but should be carried out to whatever extent the Treaty fails to establish the relevant boundary ("...to the extent that the boundary line is not considered to have been fixed by the Treaty and that map...").
- (c) The *compromis* asked the Tribunal, if it proceeded to fix a boundary *de novo*, to take account of the principles of international law and the factual circumstances. This formula seems astonishingly modern: principles and rules of

⁴ In particular, there is no *a contrario* argument to the effect that features which are constantly submerged could serve as relevant points.

international law/relevant circumstances. There is no substantial difference between the formulae used in the *Grisbadarna* case and that used in *Tunisial Libya* in 1982. Equally remarkable is the interpretation given in legal litterature to such "factual circumstances", seen as providing an opening for equitable considerations. The Tribunal was indeed influenced by equitable considerations (see *infra* p. 15). One can thus see in the *Grisbardana* arbitration agreement the distant but direct precursor of the applicable modern law: principles of international law, equitable principles, relevant circumstances.

(d) The Tribunal's task was relatively limited. The Tribunal was to choose between the lines already largely preconfigured by the parties. The *compromis* already contained certain indications, particularly in relation to the starting point. The parties' oral arguments further restricted the issues in dispute. Thus, for example, so far as concerned the boundary line between Points XIX and XX, the parties agreed on the principle to be applied (equidistance), but disagreed about the basepoints to be selected. The Tribunal's task therefore in truth consisted less of drawing a line *de novo* as in the more recent jurisprudence, than of supplementing or completing the general agreement of the parties in areas where there were lacunae in it.

(III) SPECIFIC FEATURES OF THE CASE

Certain aspects should be briefly emphasised.

1. The award was drafted in a series of succinct "motifs", on the French model. For this reason, and in contradistinction to later judgments, the reasoning was very dense, and tended to concentrate on the arbitrators' final conclusions. Consequently certain aspects were treated in a rather superficial way. At the same time, the value of the award as a precedent was reduced by the lack of substantial argumentation on which future judicial reasoning could be based.

2. The essential role played by established treaties and, through them, by intertemporal law, is absent from the most recent decisions, all of which have very largely been decided on the basis of the law in force at the time of the decision. By contrast, the *Grisbadarna* tribunal was led to consider the dispute in the light of the principles and rules of international law applicable in the 17th century. This consideration had a noticeable influence on the arbitrators' work. They were obliged to concentrate on historical sources and reconstructions, which were all the more uncertain because of the fragmentary state of knowledge and the absence of any adequate treatment of the subject of maritime delimitation in the older books.

⁵ Cf. K. Strupp, "Der Streitfall zwischen Schweden und Norwegen", in: W. Schücking, Das Werk vom Haag, Die gerichtlichen Entscheidungen, 2nd series, vol.1, Part 2, Munich/Leipzig, 1917, pp. 109–110

- 3. As already mentioned, the delimitation related only to the territorial sea, i.e. to the inshore maritime zones, within which the exercise of "historic" rights had already been established, notably in relation to fisheries. The parties' real interest was focussed on the rich lobster fisheries of the Gisbadarna Banks, an area rich in lobsters. It is scarcely surprising that the tribunal accorded great importance to these fisheries. In this respect there is a certain similarity with the *Gulf of Maine* case (1984): there, too, the parties' interest was focussed on fishing banks the George Bank rich in fishery resources. The *Grisbadarna* tribunal took more explicit account of such interests than the Chamber of the Court was to do in the *Gulf of Maine* case. The Chamber no doubt did so, but less explicitly.
- (IV) THE PARTIES' SUBMISSIONS
- (a) The Government of Sweden submitted that:

I. As regards, the preliminary questions:

May it please the Tribunal of Arbitration to declare that the boundary line in dispute, as regards the space between point XVIII as already fixed on the map of the Commissioners of 1897, and point A on the map of the boundary treaty of 1661, is but incompletely established by the said treaty and the map annexed thereto, for the reason that the exact situation of this point is not shown clearly therein, and, as regards the rest of the space, extending westward from the same point A to the territorial boundary, that the boundary line was not established at all by these documents.

II. As regards these main questions:

1. May it please the Tribunal to be guided by the treaty and map of 1661, to take into account the circumstances of fact and the principles of the law of nations, and to determine the maritime boundary line in dispute between Sweden and Norway from point XVIII as already fixed, in such a manner that in the first place the boundary line shall be traced in a straight line to a point which constitutes the middle point of a straight line, connecting the northernmost reef of the Röskären, belonging to the Koster Islands, that is to say, the reef indicated on table 5 of the report of 1906 as being surrounded with depths 9, 10, and 10, and the southernmost reef of the Svartskjär, belonging to the Tisler Islands, and which is furnished with a beacon, which point is indicated on the same table 5 as the point XIX.

2. May it please the Tribunal further to take account of the circumstances of fact and the principles of the law of nations and establish the rest of the disputed boundary in such a manner that –

a. Starting from the point fixed according to the conclusions of paragraph 1 and designated as point XIX, the boundary line shall be traced in a straight line to a point situated midway on a straight line connecting the northernmost of the reefs indicated under the name of Stora Drammen, on the Swedish side and the Hejeknub rock, situated to the southeast of Heja Island, on the Norwegian side, which point is indicated on the said table 5 as point XX; and

b. Starting from the point last mentioned, the boundary shall be traced in a straight line due west as far into the sea as the maritime territories of the two nations are supposed to extend.

(b) The Government of Norway submitted that:

Whereas, the line mentioned in the conclusions of the Norwegian agent is traced as follows:

From point XVIII as indicated on the map of the Commissioners of 1897, in a straight line to point XIX situated midway on a line drawn between the southernmost reef of the Svartskjär (the reef which is furnished with a beacon) and the northernmost reef of the Röskären.

From this point XIX in a straight line to point XX, situated midway on a line drawn between the southernmost reef of the Heiefluer (Söndre Heieflu) and the northernmost of the reefs comprised under the name of Stora Drammen.

From this point XX to point XXa, following a perpendicular drawn from the middle of the last mentioned line.

From this point XXa to point XXb, following a perpendicular drawn from the middle of the line connecting the said southernmost reef of the Heieflu with the southernmost of the reefs comprised under the name of Store Drammen.

From this point XXb to point XXc, following a perpendicular drawn from the middle of a line connecting the Söndre Heiefluer with the small reef situated to the north of Klöfningen islet near Mörholmen.

From this point XXc to point XXd, following a perpendicular drawn from the middle of a line connecting the Midtre Heieflu with the said reef to the north of Klöfningen islet.

From this point XXd, following a perpendicular drawn from the middle of the line connecting the Midtre Heieflu with a small reef situated west of the said Klöfningen to point XXI, where the circles cross which are drawn around said reefs with a radius of 4 nautical miles (60 to a degree).

2. Commentary

The propositions mentioned below can be divided into two parts.

(a) On the one hand, there was the *delimitation* within the respective territorial waters. Here, the two disputing States were agreed about the method to be used, the very method which resulted from the Convention of 1661. The method was based upon fixing a series of points to be obtained by drawing a straight line between the opposing islands or reefs (baselines) and then taking the midpoint on those lines. The maritime boundary would thus result from a series of straight lines either joining median points or placed at right angles to the straight baselines through those points. Here, the differences between the parties related above all to the question of which islands and reefs should be used as basepoints.

- (b) On the other hand, there was the question of determining the limit to seaward. Sweden was opposed to any move to fix that limit. It proposed to extend the line used in the last (westerly) segment of the delimitation, but to omit to specify its end-point. Norway, for its part, sought to fix that end-point, which it proposed to identify it as the point of intersection of two arcs, to be drawn from two identified reefs, with a radius of 4 nautical miles (the customary width of the territorial sea in Scandinavia). The divergence between these two positions can be explained by legal and economic considerations. The legal considerations related to differences in the respective internal legislation of the two States on the nature of the basepoints to be used for the purpose of determining the external limit of the territorial sea. More decisive, however, were the economic considerations. Sweden could hope, with good reason, to obtain the Grisbadarna Banks, where it enjoyed historic rights. Consequently it was not interested in an over-precise determination of the seaward limit.
- (V) THE TRIBUNAL'S AWARD
- (A) The Tribunal's room for manoeuvre
- 1. The Tribunal was preoccupied firstly by the need to establish, or to re-establish, its room for manoeuvre in the light of certain limitations set out in the *compromis*. In this connection it drew the following distinction: (1) the Tribunal was not obliged to choose certain specified basepoints in order to draw the lines which it considered appropriate, nor would it be bound by a end-point on the boundary imposed by the parties; (2) the Tribunal was nevertheless obliged to keep within the limits of the respective claims of the parties a limitation resulting from the principle *ne ultra petita*, applicable to arbitration as a type of civil law proceeding, founded on the autonomy of the parties. By ingenious interpretative reasoning, the Tribunal freed itself from excessive constraints under the first heading, whilst respecting the second.

Whereas, as regards the interpretation of certain expressions used in the convention and regarding which the two parties expressed different opinions during the course of the discussion –

In the first place the Tribunal is of opinion that the clause in accordance with which it is to determine the boundary line in the sea as far as the limit of the territorial waters has no other purpose than to exclude the possibility of an incomplete determination, which might give rise to a new boundary dispute in future. And

It was obviously not the intention of the parties to fix in advance the terminal point of the boundary, so that the Tribunal would have only to determine the direction between two given points. And

In the second place, the clause in accordance with which the lines bounding the zone which may be the subject of dispute in consequence of the conclusions of the parties must not be traced in such a manner as to comprise either islands, islets, or reefs which are not constantly underwater can not be interpreted so as to imply that the islands, islets, and reefs aforementioned ought necessarily to be taken as points of departure in the determination of the boundary. And

Whereas, therefore, in the two respects aforementioned, the Tribunal preserves full freedom to pass on the boundary within the limits of the respective contentions.

2. Commentary

- (a) It is profitless to dwell on the more "constitutive" than "declaratory" character of this line of argument, i.e. on the fact that it was based more on the tribunal's authority to decide than on the wishes of the parties. The question as to the external limit of the territorial waters was turned into an aspect of the exhaustivity of the line to be drawn. The prohibition against using island formations for the purpose of defining the total relevant area was transformed into a freedom to choose the basepoints within that area for the purposes of the delimitation properly so-called.
- (b) This claim to judicial freedom was more important on the level of principle than in relation to the specific issues of interpretation in the case. Subsequently the problem would be dealt with, once in an arbitration (Guinea-Bissau/Senegal, 1989), and a second time at the International Court of Justice (Gulf of Maine, 1984). In this connection the problem should be examined under two aspects, ratione personae and ratione materiae. So far as concerns the personal aspect, the distinction between arbitration and judicial resolution is of the first importance. An arbitrator, appointed ad hoc for the purposes of the dispute, is the creature of the parties who select him. He decides in their name. A judge, however, is the representative of society. Consequently, the essential distinction between ad hoc arbitration and judicial settlement is to be found in the extent to which the tribunal recognises and follows the will of the parties. In an arbitration, the parties alone are the dominii negotii; their joint will is a much greater constraint on the arbitrator, who can refuse to reach a decision only if that joint will is contrary to the precepts of justice. By contrast, the law which results from the Statute of the International Court of Justice is, for States parties, jus cogens in the true sense of the term. It reflects the independence of the Court and the fact that the Statute "belongs" not to those pleading any particular case, but to the collectivity of the States that are parties to the Statute. Consequently the Court is under a much greater duty than an arbitrator to ensure that its prerogatives are not excessively limited by the parties. To this personal aspect one should be added a reflection which is material in nature. The respective freedoms of the tribunal and the parties also depend, indeed they depend above all, on the requirements of the applicable law. If the applicable law refers back in this regard to the agreement between the parties, or has other means of accommodating their wishes in a flexible way, this state of affairs will lead to a parallel freedom on the part of the pleaders as to the choice of law and of the facts that they invoke before the tribunal. This is obviously the case in relation to the law of maritime delimitation. In no other sphere have judicial bodies so heavily insisted that their activity is a substitute for direct agreement between the parties. This flexibility in the subsequent jurisprudence cuts across the rather rigid position adopted by the Grisbadarna tribunal. All one can say is that flexibility is of the first

importance in a case heavily dependent upon the agreement of the parties, but this must not reduce the possibility of reaching a legal resolution of the dispute that is both adequate and just. Nor must it damage the judicial integrity of the tribunal which is to decide the issues.

(B) The maritime boundary between Points XIX and XX

1. Having taken note of the agreement between the parties on the boundary between Points XVIII and XIX, the Tribunal proceeded to consider the boundary between Points XIX and XX. The only issue between the parties related to the choice of the base point on the Norwegian side. The parties had agreed to apply the principle applied by the 1661 Convention in the northern sector, where it established a boundary. According to the Convention, basepoints that were constantly submerged should not be used. It was thus necessary to identify which features were or were not constantly underwater in 1661:

Whereas, in this connection, the parties have adopted, at least in practice, the rule of making the division along the median line drawn between the islands, islets, and reefs situated on both sides and not constantly submerged, as having been in their opinion the rule which was applied on this side of point A by the treaty of 1661;

The adoption of a rule on such grounds should, without regard to the question whether the rule invoked was really applied by said treaty, have as a logical consequence, in applying it at the present time, that one should take into account at the same time the circumstances of fact which existed at the time of the treaty. And

Whereas, the Heiefluer are reefs which, it may be asserted with sufficient certainty, did not immerge from the water at the time of the boundary treaty of 1661 and consequently they could not have served as a starting point in defining a boundary. And

Whereas, therefore, from the above mentioned standpoint the Heieknub should be preferred to the Heiefluer.

2. Commentary

It will be noted that the Tribunal applied the principle of intertemporal law, according to which the consequences of any appreciation of a fact or a judicial act must be carried out in the light of the law in force at the relevant time (in the present case, in 1661). However the Tribunal recognised that the Convention of 1661 did not delineate the maritime boundary beyond Point A on the map annexed to it. This Point A, the Tribunal said, was situated somewhere between Points XIX and XX (and thus did not extend to the latter point) (RIAA, p. 158). Consequently, Point XX was determined not on the basis of any provision in the Convention but on the basis of the *principle* the Convention enshrined. One might therefore suppose that the application of the principle of intertemporal law was not legally necessary, although it would have been reasonable to apply it, in order to maintain a unity of the applicable law all along the line of delimitation.

The Tribunal did, however, deal with the area beyond Point A as a dependency of the territory ceded by the Roskilde peace treaty of 1658. The maritime area was configured as accessory to, and following, the terrestrial one:

Whereas, this opinion is in conformity with the fundamental principles of the law of nations, both ancient and modern, in accordance with which the maritime territory is an essential appurtenance of land territory, whence it follows that at the time when, in 1658, the land territory called The Bohuslan was ceded to Sweden, the radius of maritime territory constituting an inseparable appurtenance of this land territory must have automatically formed a part of this cession. And

Whereas, it follows from this line of argument that in order to ascertain which may have been the automatic dividing line of 1658 we must have recourse to the principles of law in force at that time.

It was therefore necessary to have recourse to the principle of intertemporal law, with, in the case of these sectors beyond Point A; 1658 as the critical date.

Incidentally, when the Tribunal made its site visit, the Heiefluers were completely underwater.

(C) The maritime boundary between Point XX and the limit of the territorial sea

1. The Tribunal rejected the idea that the boundary in this area could result from the median line principle as provided for in the Convention of 1661 – the latter being inapplicable to the zone in question. As for the customary 17th century international law, it did not give effect either to the median line principle or to the *thalweg* principle. It did, however, recognise the rule of the perpendicular drawn at right angles to the general direction of the coast. Consequently, it was in accordance with this rule that the maritime boundary was to be delineated in the area in question.

Whereas, in this connection,

The boundary treaty of 1661 and the map thereto annexed make the boundary line begin between Koster and Tisler Islands; and

In determining the boundary line they went in a direction from the sea toward the coast and not from the coast toward the sea; and

It is out of the question to say that there might have been a continuation of this boundary line in a seaward direction; and

Consequently, the connecting link is lacking in order to enable us to presume, without decisive evidence, that the same rule was applied simultaneously to the territories situated this side and to those situated that side of the Koster-Tisler line.

Whereas, the rule of drawing a median line midway between the inhabited lands does not find sufficient support in the law of nations in force in the seventeenth century. And

Whereas, it is the same way with the rule of the *thalweg* or the most important channel, inasmuch as the documents invoked for the purpose do not demonstrate that this rule was followed in the present case. And

Whereas, we shall be acting much more in accord with the ideas of the seventeenth century and with the notions of law prevailing at that time if we admit that the automatic division of the territory in question must have taken place according to the general direction of the land territory of which the maritime territory constituted an appurtenance, and if we consequently apply this same rule at the present time in order to arrive at a just and lawful determination of the boundary. And

Whereas, consequently, the automatic dividing line of 1658 should be determined (or, what is exactly the same thing expressed in other words) the delimitation should be made today by tracing a line perpendicularly to the general direction of the coast, while taking into account the necessity of indicating the boundary in a clear and unmistakable manner, thus facilitating its observation by the interested parties as far as possible.

[...]

Whereas, the general direction of the coast, according to the expert and conscientious survey of the Tribunal, swerves about 20 degrees westward from due north, and therefore the perpendicular line should run toward the west to about 20 degrees to the south.

2. Commentary

- (a) It was certainly not for the Tribunal to engage in a detailed historical study going beyond the sources presented to it by the parties. One can note, in passing, the difficulty of relating an intertemporal law exercise back to fairly distant periods and to subjects which, at the time, were little regulated by law; a certain economy in the exercise could therefore be appropriate. In fact, there is room for doubt as to whether the Tribunal properly understood the 17th century law. It would seem that the rule of the perpendicular line was little more applied at that time than the thalweg or the median line, each being supported by only a few sparse precedents.
- (b) The ILC, at its meetings leading to the adoption of the Geneva Convention on the Territorial Sea (1958), rejected the perpendicular line method as a rule of general application. The experts consulted had demonstrated the inherent difficulties of that method: for example, the scale of the charts to be used and the determination of the relevant coasts.
- (c) Finally, attention should be drawn to the need for a boundary which was "clear and indubitable." This argument in favour of a precise solution was also to be used in the *Gulf of Maine* case (1984, §202), still in favour of perpendiculars or median lines, and in the *Eritrea/Yemen* case (1999, §128), with regard to the proximity of a major maritime traffic route.

⁶ The objective having been to facilitate the reciprocal exploitation of fishery resources.

(D) The (equitable) correction of the perpendicular line

1. The perpendicular line fixed upon fell foul of certain aspects of "human geography": it cut across important fishing banks (the Grisbadarna Banks), thus complicating their exploitation and being inconsistent with the existing factual state of affairs. A line bearing 19° South (instead of 20° South) would enable this problem to be avoided by clearly attributing the Grisbadarna Banks to Sweden and the Skjöttegrunde Bank to Norway. The Tribunal found in the facts a series of justifications for this solution: (1) the almost exclusive enjoyment of the fishing by Swedish nationals in the Grisbadarna Banks, the much more extensive activity of the Norwegian fishermen in the Skjöttegrunde Banks; (2) the acts of sovereignty by Sweden in the neighbourhood of the Grisbadarna Banks (buoys, soundings etc.) without protest on the part of Norway; and (3) the rule against modifying the preexisting state of affairs (quieta non movere). All these circumstances confirmed the appropriate (equitable) character of the 19° line.

Whereas, the parties agree in admitting the great unsuitability of tracing the boundary line across important bars; and

A boundary line drawn from point XX in a westerly direction to 19 degrees to the south would completely obviate this inconvenience, since it would pass just to the north of the Grisbadarna and to the south of Skjöttegrunde and would also not cut through any other important bank; and

Consequently, the boundary line ought to be traced from point XX westward to 19 degrees south, so that it would pass midway between the Grisbadarna Banks on the one side and Skjöttegrunde on the other.

Whereas, a demarcation which would assign the Grisbadarna to Sweden is supported by all of several circumstances of fact which were pointed out during the discussion and of which the following are the principal ones:

a. The circumstance that lobster fishing in the shoals of Grisbadarna has been carried on for a much longer time, to a much larger extent, and by much larger number of fishers by the subjects of Sweden than by the subjects of Norway.

b. The circumstance that Sweden has performed various acts in the Grisbadarna region, especially of late, owing to her conviction that these regions were Swedish, as, for instance, the placing of beacons, the measurement of the sea, and the installation of a light-boat, being acts which involved considerable expense and in doing which she not only thought that she was exercising her right but even more that she was performing her duty; whereas Norway, according to her own admission, showed much less solicitude in this region in these various regards. And

Whereas, as regards the circumstance of fact mentioned in paragraph a above, It is a settled principle of the law of nations that a state of things which actually exists and has existed for a long time should be changed as little as possible;

Whereas, as regards the circumstances of fact as mentioned under b: As regards the placing of beacons and of a light-boat -

The stationing of a light-boat, which is necessary to the safety of navigation in the regions of Grisbadarna, was done by Sweden without meeting any protest and even at the initiative of Norway, and likewise a large number of beacons were established there without giving rise to any protests; and

This light-boat and these beacons are always maintained by Sweden at her own expense; and

Norway has never taken any measures which are in any way equivalent except by placing a bellbuoy there at a time subsequent to the placing of the beacons and for a short period of time, it being impossible to even compare the expenses of setting out and keeping up this buoy with those connected with the beacons and the light-boat; and

It is shown by the foregoing that Sweden had no doubt as to her rights over the Grisbadarna and that she did not hesitate to incur the expenses incumbent on the owner and possessor of these Banks even to the extent of a considerable sum of money.

[...]

Whereas, a demarkation assigning the Skojöttegrunde (which are the least important parts of the disputed territory) to Norway is sufficiently warranted by the serious circumstance of fact that, although one must infer from the various documents and testimony that the Swedish fishers, as was stated above, have carried on fishing in the regions in question for a longer period, to a greater extent, and in greater numbers, it is certain on the other band that the Norwegian fishers have never been excluded from fishing there. And

Whereas, moreover, it is averred that the Norwegian fishers have almost always participated in the lobster fishing on the Skjöttegrunde in a comparatively more effective manner, than at the Grisbadarna.

2. Commentary

- (a) The first point to note is that this method was analagous to the one to be provided for in Article 12 of the Geneva Convention of 1958 on the Territorial Sea and the Contiguous Zone, or in Article 6 of the Geneva Convention of 1958 on the Continental Shelf ("equidistance/special circumstances"). In both cases, the lines drawn in accordance with a geometrical method are subject to the possibility of correction to take account of special circumstances in the zone to be delimited. These circumstances which may relate to the geography or to human activities (historic rights, fisheries etc.). Although equity had not yet been erected by normative proclamations into the touchestone of the law of maritime delimitation, it already applied, in the *Grisbadarna* case, as a corrective force, seeking to reconcile the geometric constructions with the human realities. In this sense, the *Grisbadarna* case was the first precedent in which a tribunal decided for an equitable maritime delimitation.
- (b) In the rationale for the Award, the factual circumstances invoked appear to confirm the resulting clean partition of the two banks the Grisbadarna and the Skjöttegrunde. The Tribunal said that such a delimitation "is *supported* by the totality of several factual circumstances..." (RIAA, p. 161, italics added). However here, as

in the subsequent case law, what is presented as confirmation *ex post facto* appears, in the reality of the judicial reasoning, to have been an operational criterion which permitted the solution to be not merely confirmed, but actually to be adopted. The option of separating the two Banks and not, for example, partitioning the Grisbadarna Banks⁷, which were much richer in resources, cannot in reality be explained except as a consequence of the factual circumstances which were described as "confirmatory". The distinction between the operational and the confirmatory thus had more to do with a hierarchy of serialised arguments as presented in the Award than with the real, intimate process by which the Tribunal made up its mind.

- (c) The factual circumstances relied on were of three types.
 - (1) Private historic rights: this means fisheries, which were the real subject of the dispute and to which the Tribunal paid the greatest attention. In contradistinction to the position in other cases, it was not a question of checking the influence of fisheries or other socio-economic factors on a delimitation based on geographical considerations. These fishing rights were treated by the Tribunal as historic rights constituting a prescriptive title. An argument of the same kind was to be raised by Tunisia in the Tunisia/Libya case (1982), and the Court, without giving substantive consideration to the alleged rights, found a way to avoid a line of delimitation encroaching on the area so claimed by Tunisia (ICJ, Reports., 1982, pp. 71–76). Rights exercised by fishermen are by their nature private ones. But the interest of the State in the fisheries enjoyed by its nationals, and the protection which it provides them with, provide such private activities with a public underpinning and make possible the establishment of a mixed (private/public) prescriptive title.
 - (2) The exercise of rights of sovereignty: Sweden had carried out a series of acts of sovereignty in the area of the Grisbadarna Banks, convincing it of its right to the area, particularly since Norway had not protested. Here again, we are concerned with the creation of prescriptive rights (acquisitive prescription).8 The Tribunal did not have to determine whether the conditions for prescription in due and proper form had been satisfied (which could have been doubtful).9 The process of prescription, not the prescriptive title acquired, carried weight as a complementary circumstance, justifying a maritime boundary line that was also based on other factors. In this accessory capacity, prescriptive rights minus quam perfectae could suffice. It should be added that the rights exercised by Sweden in the relevant area, or in any event those on which the Tribunal laid emphasis, all related to onerous obligations designed to improve the maritime spaces in issue. The Tribunal

⁷ Thus, in the *Gulf of Maine* case (1984), the Chamber of the Court attributed a small part of the George Banks, rich in resources, to Canada, while still drawing a clear line: 1CJ, *Reports*, 1984, p.[359].

⁸ Cf. Strupp (supra, note 5) p. 128 et seq. On the subject of acquisitive prescription in general, see R. Kolb, La bonne foi en droit international public, Paris, 2000, pp. 399 et seq., 404 (Grisbadarna).

⁹ In a negative sense, for example Strupp (supra, note 5), p.139

could take these into account on an equitable basis. This aspect was even more important in that, faced with such onerous activities, Norway was under an even more urgent duty to protest in order to safeguard its rights. But no such protest was made. 10 Investments of this kind, if undertaken prior to the crystallisation of the dispute (critical date), can thus be important to the drawing of boundaries, both in forming an assessment of the alleged prescriptive title itself, and when it comes to taking account, from an equitable perspective, of an incomplete prescriptive process.

Norwegian acquiescence: This subject has already been mentioned, but merits separate treatment. The Tribunal took care to emphasise the absence of protest by Norway in the face of Sweden's onerous activities (RIAA, p. 161). It must be emphasised that the acquiescence in question did not rest on a legal act embodying a tacit expression of will, a kind of agreement to renounce or to tolerate a given state of affairs. What the Tribunal envisaged was acquiescence as a principle of law derived from the principle of good faith. He who keeps silent when he ought to speak up, and thus creates a legitimate confidence in the justification for a state of affairs, is deprived of his right to dispute that state of affairs subsequently (qui tacet consentire videtur si loqui potuisset ac debuisset).11 The concern here is with normative acquiescence, not voluntary acquiescence. Or, rather, normative acquiescence (silence in the legal sense) is sufficient; it is not necessary to show any specific act of will. In the present case, such acquiescence was one of the ingredients of the prescriptive process mentioned above. In a number of other cases, it would be claimed as the source of autonomous delimitative rights: this argument was to be made, for example, in the Tunisia/Libya case (1982), Gulf of Maine (1984), Libya/Malta (1985), and Jan Mayen (1993) and, in conjunction with estoppel, as early as the North Sea cases (1969). In the event, it was not to be considered a decisive criterion or a relevant circumstance in any of these cases, except for a certain role that it did play in Tunisia/Libya. The factual evidence submitted by the parties scarcely permitted it. Tribunals hesitate to tie their hands by relying on acquiescence in a predetermined boundary. Nevertheless, normative acquiescence remains a relevant criterion if the restrictive conditions for it 12 are fulfilled in the specific case.

(VI) THE DISPOSITIF

The Tribunal decides and pronounces:

That the maritime boundary between Norway and Sweden, as far as it was not determined by the royal resolution of March 15, 1904, is fixed as follows:

11 Cf. Kolb (supra, note 8) pp. 339 et seq.

Possibly account should be taken of the fact that Sweden and Norway did not separate from the union between them until 1905. Cf. F. Despagnet, Cours de droit international public, 4th edn., Paris, 1910, pp. 151-3. This state of affairs could have had consequences for the duty to protest,

¹² Legal duty to react and to protest; awareness of the facts threatening own rights ("constructive knowledge" suffices); passing of a certain amount of time. Cf. Kolb (supra, note 8), pp. 342 et seq.

From point XVIII situated as indicated on the map annexed to the project of the Norwegian and Swedish Commissioners of August 18, 1897, a straight line is traced to point XIX, constituting the middle point of a straight line drawn from the northernmost reef of the Röskären to the southernmost reef of the Svartskjär, the one which is provided with a beacon;

From point XIX thus fixed, a straight line is traced to point XX, which constitutes the middle point of a straight line drawn from the northernmost reef of the group of reefs called Stora Drammen to the Hejeknub situated to the southeast of Heja Islands;

From point XX a straight line is drawn in a direction of west 19 degrees south, which line passes midway between the Grisbadarna and the Skjöttegrunde south and extends in the same direction until it reaches the high sea.

Done at The Hague, October 23, 1909, in the Palace of the Permanent Court of Arbitration.

(VII) INDIVIDUAL AND DISSENTING OPINIONS None.

(VIII) ACADEMIC COMMENT ON THE AWARD

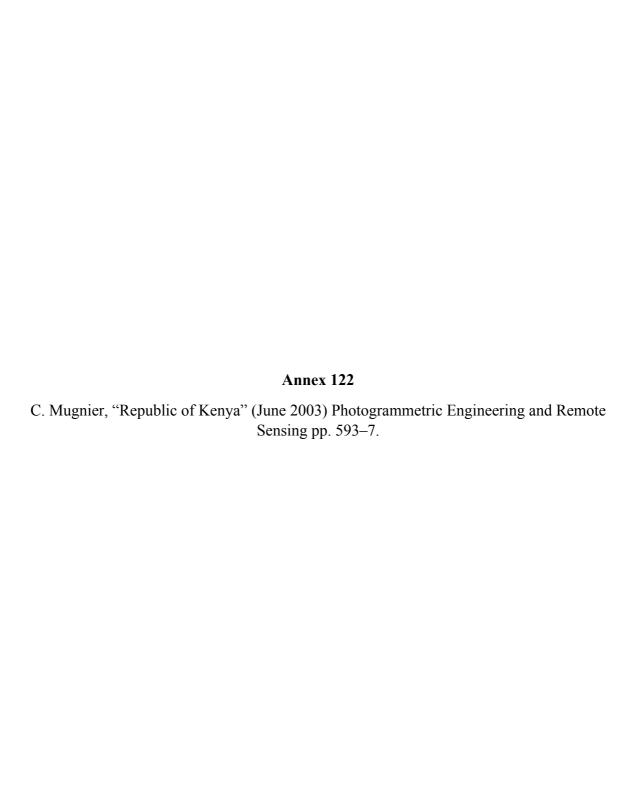
Bibliography: K. Strupp, "Der Streitfall zwischen Schweden und Norwegen", in W. Schücking, Das Werk vom Haag, Die gerichtlichen Entscheidungen, II Series, Vol. 1, part 2, Munich/Leipzig, 1917 pp. 47–140. R. Waultrin, "Un conflit de limites maritimes entre la Norvège et la Suède: l'affaire des Grisbadarna", RGDIP, vol. 17, 1910, pp. 177–189.

As appears from the above bibliography, academic comment on the *Grisbadarna* award has, notwithstanding its importance, been sparse. Both Strupp and Waultrin approved the content of the award in general terms. Their main criticism bore on the appreciation of the methods of delimitation recognised in the 17th century. While the principle of the *thalweg* seemed already to have featured in the precedents, the method of drawing a perpendicular line at right angles to the general direction of the coast does not seem to have been applicable, particularly in Scandinavia, until the 19th century. Turthermore, Waultrin arcised the question of the critical date: the Tribunal should not have taken account of any act subsequent to the first attempt to arbitrate the dispute, since to do so would be to reward usurpation. This cut-off date is obviously concerned with acts other than protests. However it would seem that in fact the Tribunal took account of acts that were fairly late in date only to the extent that they confirmed prior practice.

¹³ Strupp, op.cit., p. 119-125. Waultrin, op. cit., pp 188-89.

¹⁴ Op. cit. ,p.188

¹⁵ On this concept, cf. the comment in L.I.Sanchez Rodriguez, "Luti possidetis et les effectivités dans les contentieux territoriaux et frontaliers", RCADI, vol. 263, 1997, pp. 275 et seq., with numerous cross-references.



Grids & Datums

Republic of Kenya

The coast of Kenya was long dominated by Arabs and was seized in the 16th century by the Portuguese. The Europeans were expelled by the Omanis; the coast then came under the rule of the Sultan of Zanzibar, and later leased in 1867 to the British East Africa Association. The British extended their holdings into the interior and fixed an initial southern boundary with the German East Africa Company in 1886. Kenya is bordered on the north by Ethiopia (PE&RS, March 2003) (861 km), on the east by Somalia (682 km), on the southeast by the Indian Ocean (536 km), on the south by Tanzania (769 km), on the west by Uganda (933 km), and on the northwest by Sudan (232 km). The lowest point in Kenya is the Indian Ocean, and the highest point is Mount Kenya at 5,199 m. Comprised of the Nairobi Area and seven provinces — Central, Coast, Eastern, North Eastern, Nyanza, Rift Valley, and Western — Kenya is slightly larger than twice the size of Nevada. The former Colony of British East Africa gained independence on 12 December 1963.

Thanks to Morgan W. Davis, "The history of surveying in East Africa begins with the domination of those lands by European powers in the late 1800s. The British entered into a number of agreements defining spheres of influence in 1886, 1890, 1891, and 1894. The present day boundaries between Kenya and its neighbors are a result of legal descriptions hashed out in negotiations and subsequent triangulation and boundary surveys. Negotiations between the United Kingdom and Germany in 1886 and 1890 established spheres of influence north and south respectively, of a line beginning at the Indian Ocean near Vanga and extending to the eastern shore of Lake Victoria: 'The line of demarcation starts from the mouth of the River Wanga or Umbe (Umba), runs direct to Lake Jipe, passes thence along the eastern side and round the northern side of the lake and crosses the Lumi River ...

After which it passes midway between the territories of Taveita and Chaga, skirts the northern base of the Kilimanjaro range, and thence is drawn direct to the point on the eastern side of Lake Victoria Nyaza (Lake Victoria) which is intersected by the 1st degree of south latitude.'

The line between the Indian Ocean and Lake Jipe was surveyed by plane table. Most of the mapping in East Africa between 1890 and 1910 was a result of the boundary commissions. Basic topographic mapping of varying quality was accomplished along the narrow zones of the surveyed boundaries. There was little opportunity to extend mapping to the interiors of the colonies. An important outcome of this early phase was the consolidation of the War Office as the authority on boundary surveys and maps in Africa. Both the Foreign Office and the Colonial Office relied heavily on the expertise of the War Office on technical matters related to surveying and mapping, as well as for help in wording legal descriptions in negotiations. The Topographic Section of the General Staff of the War Office played a crucial role, as well in the policies and activities of survey departments in the colonies.

The colonial Survey Committee was created in an attempt to organize the mapping effort in the British East African colonies. The first meeting was held on 14 August 1905. They recommended that there be two survey departments, standardized topographic map scales at 1:62,500, 1:125,000, 1:250,000, and 1:1,000,000. In a 1907 meeting, they adopted the Clarke 1858 ellipsoid for Africa. They decided on the spelling of place names on maps. The Committee continued to be an important governing body up to the World War II years. Major E. H. Ellis was appointed Inspecting Officer to the departments in the Uganda and East Africa Protectorates (Kenya) in order to help expedite work. He submitted a comprehensive report in February 1907 in which he noted that a topographic section had not been constituted. He insisted that a full section of 2 officers and 6-8 surveyors be formed. He recommended map sheets covering 45' longitude and 30' latitude or 30' x 30', at 1:125,000 scale for developed areas, and 11/20 longitude by 1º latitude in undeveloped areas, utilizing the rectangular polyconic projection. (This was the same specification utilized during the same era by the British Survev of India. -cm)

In late 1908 one officer, three NCOs and a civilian were assembled to begin fieldwork on 1:125,000 sheets for Kijabe and Nairobi, and a special 1:62,500 sheet for Nairobi. Mapping continued until the outbreak of WWI. The Africa Series GSGS 1764 in 33 sheets at 1:250,000 scale covered both Uganda and the East Africa Protectorates. The maps were published in monochrome, principally between 1905 and 1907. These were provisional sheets with a paucity of detail. The maps were later also published in

color. Each sheet covered 1½° longitude and 1° latitude with a graticule spacing of 30′. They were reprinted in 1939-1941 during the East African Campaign. It was not until 1953 and thereafter that Series GSGS 1764 was replaced at the same scale by Series GSGS 4801 and subsequently Series Y503.

After WWI, the War Office was no longer available to do work in the African colonies. German East Africa had been assigned to Great Britain as a mandate from the League of Nations in 1919 and was renamed Tanganyika. The Arc of the 30th meridian was proposed as the foundation of triangulation in the East African colonies. Observations on a portion of the arc in western Uganda had been taken prior to 1914, and the triangulation net in Uganda was tied to it. Surveying on the arc had been done in northern Rhodesia, and it was felt that it was important to close the gap in the arc in Tanganyika.

Martin Hotine surveyed the arc of the 30th meridian in Tanganyika between 4½° and 9° South during the years 1931-1933. Depletion of funds in late 1933 left a gap in the arc between 1½° and 4½° South. From July 1936 to August 1937, a survey was conducted wholly within Tanganyika to fill the gap, consisting of observation angles and some azimuths. Uganda had withdrawn from the project due to fears that if their portion of the arc was connected to South Africa, they would be forced to recompute their already completed surveys on a new projection and grid system.

This leads to a major theme of discussion during the years between the two great wars - that of a common datum and projection for all of British Africa. Debate raged over this topic until the exigencies of war during the Second World War permitted the British military to force a solution. In a memorandum circulated in 1926, it was assumed that a common datum could be chosen, utilizing a meridional orthomorphic projection from Khartoum to Cape Town. The Clarke 1880 ellipsoid was suggested. During the second Conference of Empire Survey Officers (1931), it was assumed that all colonial governments would adopt the Transverse Mercator projection because it was already accepted by Egypt, South Africa and two of the West African territories. The width of the zones could not be agreed upon. Kenya saw little prospect in adopting the proposal because its cadastral work was computed on Clarke 1858 and the Cassini projection. Extension and

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re-computation of its triangulation was more urgent than conversion of its completed surveys to a new datum. In January 1934, GSGS proposed a coordinated projection and grid zone embracing South Africa, South Rhodesia, Sudan, Egypt, and the Central and East African territories. They recommended the Clarke 1880 ellipsoid and the Transverse Mercator projection on a 6-degree grid. The same parameters were recommended in a meeting of a sub-committee of the Colonial Survey Committee on 3 October 1935. Brigadier M. N. MacLeod insisted on the adoption of the meter as the map unit. Each time a new recommendation would be put forward for a common set of map parameters, one or more colonial governing bodies would shoot it down for various reasons.

Lord Hailey wrote An African Survey (1938) after his tour of Africa in 1935. His views were taken up by the Colonial Survey Committee in 1939, at which time they once again recommended a 6-degree grid and the adoption of the meter. Whittingdale replied that a 2-degree system was more appropriate for topographic mapping and military surveys. Huntley showed the military advantages of the 2-degree grid (artillery), and that it was inconvenient for cadastral surveyors to apply the corrections that a 6degree grid would necessitate. (The same reason for practicality continues to this day for NOT using the UTM grid for civil GIS and surveying applications. - CJM) South Africa totally opposed the change from 2-degree to 6-degree zones. There was general agreement on the adoption of the meter on map

A policy for military mapping was defined in July 1940, which utilized the Clarke 1880 ellipsoid and the Transverse Mercator projection with 5-degree zones. The central meridians were placed at 32° 30'E, 37° 30'E, and 42° 30'E. A scale factor reduction of 0.05% was introduced to provide correct scale on two parallel meridians approximately 1° 49' on either side of the central meridian. The scale error at the central meridian was about 1:2.000, and it was about 1:2,200 at the edges of the grid zones. The grid was originally in yards, but was later changed to meters. This became known as the East African War System, and it was eventually applied to an area bounded by 19°N, 15°E, 12°S and the Indian Ocean. The Directorate of Colonial Surveys was born on 1 March 1946, with Brigadier Martine Hotine as it first (and only) Director. An allowance of £2 million was approved for this centralized organization of geodetic and topographic

surveys. For the first time in the eastern African colonies, two problems, which had plagued the survey effort from the earliest days, were addressed: lack of funds and the lack of a centralized organizing body. In 1947, fieldwork for basic topographic mapping was commenced. The first 1:50,000 scale sheets of Series Y731 were produced for the Kenya Ethiopia Boundary Commission. At least 470 sheets were produced, virtually all of which were contoured, and 64 sheets along the Ethiopian border.

The 1:100,000 scale sheets of Series Y633 were produced between 1958 and 1968, mainly by the Survey of Kenya and the Directorate of Military Survey. A general map series at 1:250,000 (Y503) has been derived from the 1:50,000 and 1:100,000 scale sheets. The Survey of Kenya produced 42 of the 50 sheets needed to cover the country. Kenya is covered by 7 sheets of the 1:1,000.000 International Map of the World. The most commonly used geodetic parameters for maps produced by the Kenyan authorities are: Arc Datum 1960 referenced to the Clarke 1880 (modified) ellipsoid, Transverse Mercator projection with coordinates on the UTM grid.

In the 1970s, first-order EDM traverses were run between stations adjusted on the Arc 1960 Datum and Clifford triangulation. In 1972-1973 the Survey of Kenya, in conjunction with the U.S. Defense Mapping Agency and the Directorate of Military Survey of the U.K. made the first experimental Doppler satellite survey in Kenya. Recently the Kenya Institute of Surveying and Mapping (KISM) took GPS observations on existing control points. A. S. Lwangasi of the University of Nairobi reported the results of a datum transformation carried out on 25 control points from Arc 1960 Datum to WGS 84 Datum: $\Delta X = -179.1 \text{ m} \pm 0.7 \text{ m}, \Delta Y = -44.7 \text{ m} \pm 0.7 \text{ m},$ $\Delta Z = -302.6 \text{ m} \pm 2.2 \text{ m}.$

In a letter dated 20^{th} July 1989, J. R. R. Aganyo wrote for the Director of Surveys of the Survey of Kenya that the old Cassini-Soldner used in Kenya has the following parameters: grid name: Cassini-Soldner; years used: since introduction of cadastral surveys; central meridians: 33° , 35° , 37° , 39° East; unit: English Foot where 1 foot = 0.30480 International metres, exactly; ellipsoid: Clarke 1858 where a = 20,926,348 English feet and 1/f = 294.26.

In January 2000, Russell Fox of the U.K. Ordnance Survey sent a memo to me that was written by the famous H. F. Rainsford on 28 September 1961 with the (then) Directorate of Overseas Surveys:

"Since there appears to be some

confusion of thought about the 'origin' of the trigonometric data lists produced by this Directorate, the purpose of this paper is to clarify the position so far as possible.

Up to the present date, all trig. Lists have included in the preamble the words - 'New 1950 Arc Datum.' This denotes that the results in the list are based on the Arc of the 30th meridian, which was computed by the D.O.S., from South Rhodesia to Uganda, in the 1950 (circa). The values of the stations accepted as a starting point in South Rhodesia had been computed continuously from South Africa. These Arc results have been held fixed since 1950, and it is hoped that they will remain so for as long as possible in the future, since they are used not only by the D.O.S., but also by the Congo and Portuguese Africa, and they provide a uniform system from the Cape to the Equator.

The South African datum is an arbitrary one, as at no station were the Astronomic and Geodetic latitude, longitude and Azimuth made coincident. On the Arc itself the (A-G) values vary (sometimes quite abruptly) between: -

latitude +20" and -30" longitude +12" and -10" azimuth +15" and -08"

The only astronomic elements that have been held fixed on the Arc adjustment are – in South Africa one latitude, longitude and azimuth (but each at a different station) and an astronomic azimuth at Kicharere in Uganda, just south of the Equator.

The Year 1950 was used in the title as a convenient epoch mainly to distinguish from previous systems such as the "1935 Arc Datum." (original emphasis in color)

Tanganyika was the first East African territory in which geodetic trig. control was computed based on the Arc and used for control of topographic surveys. It was known that some of this trig. was not up to primary standards, but it was the only work available and it was hoped that recomputation based on the Arc would produce results of sufficient accuracy for the purpose required.

Since Laplace Azimuths had not been available for the Arc computa-

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tion nor in Tanganyika, the Tanganyika trig. was computed without holding fixed any azimuths, which were, in any case, of doubtful value. When the trig. computation reached Malindi in Kenya from the Arc it was found that the (A-G) azimuth was approximately 20".

It was then decided that a new approach was necessary. Put in new primary circuits based on the Arc, and observe frequent astronomic stations and tellurometer lengths, much closer together than the old measured bases. The trig. circuits (were) to be adjusted to the fixed (or nearly fixed) scale and azimuth checks. This policy has been carried out and results have already been circulated for: -

The Lake Circuit Uganda Primary Kenya Primary

All these results have been headed, as before, 'New 1950 Arc Datum', because the fundamental

datum, which is the Arc, has not been changed. Whenever the new coordinates differ from the previous; this is due to a recomputation (including new observations) of part of the trig. system.

To avoid any further misunderstanding in the future it is proposed to change the heading of trig. lists now to 'New 1960 Arc Datum.' Most of the Tanganyika main trig. has still to be recomputed and a letter will be sent to each territory indicating the particular trig. chains which have already been recomputed and circulated under the 1950 heading.

The Figure of the Earth used is the Modified Clarke 1880, for which a = 6378249.145 and r = 293.465 in International Metres. The geodetic tables used are *Latitude Functions Clarke 1880 Spheroid* Army Map Service, but most D.O.S. computations are now done on the Electronic Computer, which computes its own geodetic factors 'ab initio'. Co-ordinates are also produced on the U.T.M. projection."

Thanks go to Washington Abuto wherein his letter of 24 November 1997 for the Director of Surveys of the Survey of Kenya enclosed a paper detailing much of Kenya's history of Grids and Datums. That paper, authored by Mahinda, served as the basis of much of the specific geodetic history quoted in Davis' graduate-level term paper of 1999.



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The contents of this column reflect the views of the author, who is responsible for the facts and accuracy of the data presented herein. The contents do not necessarily reflect the official views or policies of the American Society for Photogrammetry and Remote Sensing and/or the Louisiana State University Center for GeoInformatics (C⁴G).

Annex 123

P. Nugent, *Africa Since Independence: A Comparative History*, (2nd edn., Palgrave Macmillan 2012) p. 105.

Africa Since Independence

Vidin.

A Comparative History

Second Edition

PAUL NUGENT

palgrave



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First edition published 2004 Second edition published 2012 by PALGRAVE MACMILLAN

Palgrave Macmillan in the UK is an imprint of Macmillan Publishers Limited, registered in England, company number 785998, of Houndmills, Basingstoke, Hampshire RG21 6XS.

Palgrave Macmillan in the US is a division of St Martin's Press LLC, 175 Fifth Avenue, New York, NY 10010.

Palgrave Macmillan is the global academic imprint of the above companies and has companies and representatives throughout the world.

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ISBN: 978-0-230-27287-3 hardback ISBN: 978-0-230-27288-0 paperback

This book is printed on paper suitable for recycling and made from fully managed and sustained forest sources. Logging, pulping and manufacturing processes are expected to conform to the environmental regulations of the country of origin.

A catalogue record for this book is available from the British Library.

A catalog record for this book is available from the Library of Congress.

10 9 8 7 6 5 4 3 2 21 20 19 18 17 16 15 14 13 12

Printed in China

whom he regarded as the legitimate authority after the breach with Kasavubu, whom he regarded as the tegruman agreed to send in Ghanaian troops under When Katanga secoded, Nkrumah agreed to send in Ghanaian troops under When Katanga seceded, Nkruman age under When Katanga seceded, Nkruman age under UN auspices in the hope that the Belgian meddling would be rebuffed and a UN auspices in the hope that the Belgian meddling would be rebuffed and a UN auspices in the hope that the Casablanca bloc as a whole demanded splintering of the country avoided. The Casablanca bloc as a whole demanded splintering of the country avoided that the UN recognise Lumumba, and when it declined to modify its stance that the UN recognise Lumumba, and when it declined to modify its stance that the UN recognise Luminous, that the UN recognise Luminous, the stance the member countries withdrew their peacekeeping troops. On the other hand, the member countries withdress that the Brazzaville countries backed Kasavubu against Lumumba and failed to take a principled stand against Katangan secession.

On the face of things, the prospects for a continental consensus looked very bleak at the end of 1961. However, with surprising speed renewed efforts to bridge the ideological divide bore fruit, leading finally to the foundation of the Organisation of African Unity (OAU) in May 1963. The reason for this turnaround lies partly in the disappearance of the main bones of contention between radicals and conservatives. In 1962, France and the FLN came to an agreement on Algerian independence. At the same time, the formation of a Congolese government of national unity under Adoula enabled backers of the Leopoldville and Stanleyville regimes to put aside their differences. As Western governments themselves went cold on Katangan secession, a consensus began to emerge about the need to bring all parts of the Congo back into the fold. As Klaas van Walraven has also observed, both the Casablanca and the Monrovia blocs began to lose their internal coherence at about the same time. The rift between Mali and Senegal led Modibo Keita to look to Côte d'Ivoire - led by an archconservative - for possible routes to the coast. Moreover, as relations between Ghana and Guinea turned sour, Sékou Touré jettisoned the Soviet alliance and embarked on an unlikely rapprochement with France. 107 Within the Monrovia group, relations between Senegal and Côte d'Ivoire were as tempestuous as ever, while in Equatorial Africa Gabon and Congo-Brazzaville were at daggers drawn. As a Francophone country, Guinea was ideally suited to bridging the gap between the Brazzaville group and the Casablanca countries. The Guineans found a close partner in Haile Selassie who was a natural conservative, but was also able to trade on the symbolic capital of Ethiopia as a country that had repeatedly and successfully resisted European imperialism. Together the leaders of Guinea and Ethiopia coaxed members of the Casablanca and Monrovia blocs back into a dialogue. The fruits of their labour were finally realised when delegations from 32 African countries - excluding the Grunitzky regime in Togo which was debarred - converged on Addis Ababa in May 1963.

After a great deal of horse-trading which need not detain us here, the heads of African governments finally put their signatures to an agreement which brought the Organisation of African Unity (OAU) into existence. Given the OAU fell far short of the amendment of an achievement in itself. However, the OAU fell far short of the expectations of many people – both at the time and since. On the one hand accurately far and people – both at the time and that since. On the one hand, committed pan-Africanists were disappointed that the OAU was not conceived of as a stepping-stone on the road to continental union, but rather the final rootine. union, but rather the final resting point. Indeed, the Charter did not commit the member states to apything out the basis the member states to anything other than voluntary co-operation on the basis of 'the sovereign equality of all Manual and voluntary co-operation on the basis of 'the sovereign equality of all Member States'. Because it seemed to foreclose options, Nkrumah was very relief. options, Nkrumah was very reluctant to sign the final document, although

he finally relented. On the other hand, the OAU held out little encouragement to states and political movements hoping for a wholesale revision of the map of Africa. Article 3 of the Charter demanded adherence to the following principles:

1. the sovereign equality of all Member States;

2. non-interference in the internal affairs of States;

3. respect for the sovereignty and territorial integrity of each State and for its inalienable right to independent existence;

4. peaceful settlement of disputes by negotiation, mediation, conciliation or

arbitration;

5. unreserved condemnation, in all its forms, of political assassination as well as of subversive activities on the part of neighbouring States or any States;

6. absolute dedication to the total emancipation of the African countries which

are still dependent;

7. affirmation of a policy of non-alignment with regard to all blocs. 108

Crucially, therefore, the OAU was constructed around the concept of state rights as opposed to group rights. 109 The second, third and fifth principles made it exceedingly difficult for secessionist and irredentist movements to stake a claim to political legitimacy. The OAU tied its hands in respect of the former, while it could little more than offer mediation when irredentist claims threatened to result in conflict.

The OAU Charter was a particular affront to the aspirations of Somali nationalists. The Somali government delegation had argued for boundary rectification to be included within the remit of the OAU, but failed to carry other states along with it. Having lost that battle, it shifted its campaign to the fora of the UN, but the latter merely referred the Somali case back to the OAU for consideration. After hearing evidence from all sides, the Council of Ministers fell back upon the principle of respect for the territorial integrity of member states. A further blow followed at the second OAU summit in Cairo in July 1964, when the Somalis failed to prevent passage of the Resolution on the Intangibility of Frontiers which stated that 'all Member States pledge themselves to respect the borders existing on the achievement of national independence'. 110 The Somali President was not present at the crucial meeting, and this enabled the Somalis to claim that they were not bound by its terms. However, from this point onwards the Somali unification campaign was regarded by most member states as in breach of OAU resolutions. At the Kinshasa summit in 1967, the Somalis accepted mediation and reached an agreement with Kenya, and this was followed by an accord with Ethiopia. When Siyad Barre became OAU Chairman in 1969, the Somali government even appeared to have accepted its defeat with relatively good grace. However, as we have seen above, the dispute was merely in abeyance and there was renewed recourse to arms over 1977/78 which the OAU was powerless to prevent.

The OAU was founded at the moment when the Congo crisis was temporarily in remission. However, the outbreak of the 'second independence' rebellions presented the OAU with a fresh dilemma. When Tshombe was installed as Prime Minister, certain states that recalled his earlier record preferred to accept



EQUITABLE PRINCIPLES OF MARITIME BOUNDARY DELIMITATION

Equity emerged as a powerful symbol of aspired redistribution in international relations. Operationally, it has had limited impact in the Westphalian system of nation states – except for maritime boundary delimitations. This book deals with the role of equity in international law, and offers a detailed case study on maritime boundary delimitation in the context of the enclosure movement in the law of the sea. It assesses treaty law and the impact of the United Nations Convention on the Law of the Sea. It depicts the process of trial and error in the extensive case law of the International Court of Justice and arbitral tribunals and expounds the underlying principles and factors informing the methodology both in adjudication and negotiations. Unlike other books, the main focus is on equity and its implications for legal methodology, in particular offering further guidance in the field of international economic law.

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EQUITABLE PRINCIPLES OF MARITIME BOUNDARY DELIMITATION

The Quest for Distributive Justice in International Law

THOMAS COTTIER



CAMBRIDGEUNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom

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www.cambridge.org
Information on this title: www.cambridge.org/9781107080171

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First published 2015

A catalogue record for this publication is available from the British Library

Library of Congress Cataloguing in Publication data Cottier, Thomas, author.

Equitable principles of maritime boundary delimitation : the quest for distributive justice in international law / Thomas Cottier.

pages cm
ISBN 978-1-107-08017-1 (hardback)
1. Maritime boundaries. I. Title.
KZA1450.C68 2015
341.4'48-dc23
2014035077

ISBN 978-1-107-08017-1 Hardback

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State practice

I. Unilateral acts (proclamations and legislation)

In the process of claims and responses, unilateral practice and acts of states are of importance in assessing the status of methods of delimitation. This chapter analyses the period from 1942 to 1992, comprehensively covering the formative stage of the continental shelf doctrine and of the EEZ. This prepares the ground for assessing state practice and customary international law in Chapter 7, taking into account the record of judicial settlement discussed in Chapter 6.

A. Continental shelf

Unilateral practice and acts reflect two of the three models discussed prior to UNCLOS III. While many documents do not explicitly address the principles and methods of delimitation applied, others refer to the models of equitable principles and the concept of equidistance–special circumstances, albeit with different weight and significance. In no case

For state practice on maritime boundary law see generally the seminal five-volume work initiated by Jonathan I. Charney: Jonathan I. Charney et al. (eds.), International Maritime Boundaries, 5 vols. (The Hague: Martinus Nijhoff Publishers, 1993-2005), vols. I and II (Charney and Alexander (eds.), 1993), vol. III (Charney and Alexander (eds.), 1998), vol. IV (Charney and Smith (eds.), 2002), vol. V (Colson and Smith (eds.), 2005) (containing the most comprehensive analysis and evaluation of approximately 180 agreements concluded between 1942 and 2004); see also, National Legislation and Treaties Relating to the Law of the Sea, United Nations Legislative Series, ST/LEG/SER.B/19 (1980); ST/LEG/SER. B/16 (1976); National Legislation on Treaties Relating to the Territorial Sea, the Contiguous Zone, the Continental Shelf and the High Seas and to Fishing Conservation of the Living Resources of the Sea, United Nations Legislative Series, ST/LEG/SER.B/2, 2 vols. (1951); Robin Churchill et al. (eds.), New Directions of the Law of the Sea (London: Oceana Publications, 1973-1977), vols. I-VI; Myron Nordquist et al. (eds.), New Directions in the Law of the Sea (London: Oceana Publications, 1980-1981), vols. VII-XI; Kenneth R. Simmonds (ed.), New Directions in the Law of the Sea (London: Oceana Publications, 1983 and subsequent supplements), vols. Benedetto Conforti and Giampiero Francalanci (eds.), Atlante dei Confini Sottomarini -

was the concept of the legal vacuum (ex aequo et bono) found to be formally applied.

- (i) Given the early uncertainty of the law on maritime boundary delimitation during the 1950s, it is hardly surprising that most of the post World War II proclamations on the shelf did not address the issue of boundary delimitation at all, or merely referred to settlement by agreement. They did not indicate any standards of delimitation. The 1964 declaration of the Federal Republic of Germany on the continental shelf is an example it point. It refers to international agreement² and thus implicitly to general international law to the extent that boundaries will be settled in court.
- (ii) Several states, although not many, explicitly referred to equidistance or the median line. Iraq is an example in point.³ Norway claimed rights of exploration and exploitation of the soil and the subsoil 'within as well as outside the maritime boundaries otherwise applicable, but not beyond the median line in relation to other States'.4 Another form of reference to the median line was used in terms of a residual rule by Italy to be applied pending agreement.⁵ This approach was adopted by all states whose proclamations or laws explicitly referred to Article 6 of the 1958 Continental Shelf Convention. 6
- (iii) Several early texts took up the concept of equitable principles, founded by the 1945 Truman Proclamation.⁷ One example includes

Atlas of the Seabed Boundaries, Part I (Milan: Giuffrè, 1979); Benedetto Conforti et al. (eds.), Atlante dei Confini Sottomarini - Atlas of the Seabed Boundaries, Part II (Milan: Giuffrè, 1987); Faraj Abdullah Ahnish (ed.), The International Law of Maritime Boundaries and the Practice of States in the Mediterranean Sea (Oxford University Press, 1994); Edward Duncan Brown, Sea-Bed Energy and Minerals: The International Legal Regime, 3 vols. (The Hague: Martinus Nijhoff, 1992), vol I: The Continental Shelf.

- '1. ... The detailed delimitation of the German continental shelf in relation to the continental shelf of foreign states shall be subject of agreement with those States.' National Legislation and Treaties related to the Law of the Sea, United Nations Legislative Series, ST/LEG/SER.B/15, 351 (1970).
- ³ Proclamation of 10 April 1958, 'adherence to international practice . . . and to the principle of equidistance'. See ST/LEG/SER.B/15, n. 2, p. 369.
- ⁴ Act of 21 June 1963 Relating to Exploration and Exploitation of Submarine Natural Resources. ST/LEG/SER.B/15, n. 2, p. 363.
- ⁵ Act No. 613 of 21 July 1967, Article 1(3). ST/LEG/SER.B/15, n. 2, p. 370.
- Declaration of 23 October 1968, p. 772. See also United Nations Legislative Series, ST/ LEG/SER.B/18, pp. 153-4 (1976), including the German Democratic Republic, Denmark, Poland and the USSR on the Baltic Sea.
- 'Proclamation No. 2667, Policy of the United States with Respect to the Natural Resources of the Subsoil and Sea Bed of the Continental Shelf, 28 Oct. 1945', reprinted in Marjorie M. Whiteman, Digest of International Law (Washington DC: Government Printing Office,

the British sponsored 1949 Proclamation by the Arabian Gulf States.⁸ This document, however, substantially differs from the United States' precedent to the extent that delimitation was not to be settled by agreement. Instead, it was to be settled unilaterally, as the Abu Dhabi Proclamation said, 'on equitable principles by us after consultation with the [Bahrain] neighbouring states'.⁹ One of the proclamations employed the term 'just principles', ¹⁰ which is related to the model of equity. The term was later equally used in proclamations by Iran¹¹ and the Philippines.¹²

B. Fisheries and exclusive economic zones

The problem of boundary delimitation and the standards applicable more frequently were addressed in proclamations and laws relating to the establishment of the EEZ or exclusive fishing zones up to 200 nm. These proclamations and laws reflect an increasing experience in the field, particularly accelerated by the rulings of the ICJ and debates at UNCLOS III during the 1970s. Again, the review reveals a great variety of different approaches. They are no longer limited to the three models discussed prior to UNCLOS III. There are also examples invoking international law as a basis for delimitation. While most proclamations and laws rely upon delimitation by agreement, there are still a number of cases calling upon unilateral determination. The following groups may be distinguished:

(i) Texts calling for a solution by negotiations and agreement, yet without indicating any guiding principles or methods of delimitation. Examples include the economic zone declared by France,¹³ the Federal Republic of Germany,¹⁴

1965), vol. IV, pp. 740, 756. For the twin-proclamation on fisheries see ibid., 954, United Nations Legislative Series ST/LEG/SER.B, 38 (1951).

See proclamations by Saudi Arabia, Ajman, Bahrain, Dubai, Kuwait, Qatar, Ras al Khaimah, all using 'equitable principles'. ST/LEG/SER.B/15, n. 2, pp. 22–27. For analysis see e.g. Ali A. El Hakim, *The Middle Eastern States and the Law of the Sea* (Manchester University Press, 1979), p. 31 ff.; Husain M. Al-Baharna, *The Arabian Gulf States, Their Legal and Political Status and their International Problems* (Beirut: Librairie du Liban, 1975), p. 278 ff.

⁹ ST/LEG/SER.B/15, n. 2, p. 22.

¹⁰ Proclamation by Bahrain, ST/LEG/SER.B/15, n. 2, p. 25.

¹¹ Delimitation 'conformément aux règles de l'équité', ST/LEG/SER.B/15, n. 2, p. 366.

Determination 'in accordance with legal and equitable principles', ST/LEG/SER.B/15, n. 2, p. 422.

Decree No. 77–130 of 11 February, 1977, Churchill et al., New Directions, vol. V, n. 1, p. 303.

Proclamation of 21 December 1976, ST/LEG/SER.B/19, n. 1, pp. 211–12.

- Mexico¹⁵ and Venezuela. 16 Closely related to this model are texts that refer to the United Nations Charter, or regional instruments, in order to stress the need for peaceful settlement, yet again without indicating any substantive principles or methods to be applied. This approach was utilized by the Declaration of Santa Domingo¹⁷ and during the African States Regional Seminar on the Law of the Sea. 18
- (ii) Texts defining the boundary unilaterally by means of co-ordinates of longitude and latitude. This approach, without indicating any principles of delimitation, has been applied by a number of states, using different methods of definition: Canada, ¹⁹ Ireland, ²⁰ the United States (in the Gulf of Maine area), ²¹ Maldives ²² and Mexico. ²³ The Seychelles defined their boundary by reference to charts, ²⁴ and Kenya unilaterally made its delimitation by using a parallel of latitude.²⁵
- (iii) Texts referring to the equidistance or the median line to applied as a mandatory rule. Such cases
- ¹⁵ Art. 27 of the Mexican Constitution, as amended by Decree of 26 January 1976, ST/LEG/ SER.B/19, n. 1, pp. 232, 234.
- Law Establishing a 200 Nautical Miles Outer Limit of the Territorial Sea of Venezuela, 26 July 1978, Article 2(2). Nordquist et al. (ed.), New Directions, vol. VIII, n. 1, p. 29; ST/ LEG/SER.B/19, n. 1, p. 261.
- Declaration on the Continental Shelf, para 4; Churchill et al., *New Directions*, n. 1, vol. I, p.
- ¹⁸ Conclusions in the General Report of the African States Regional Seminar on the Law of the Sea, Yaounde, 20-30 June 1972, paras. 6 and 7; Churchill et al., New Directions, n. 1, vol. I, p. 250.
- Fishing Zones of Canada (Zones 4 and 6) Order (1976), (1976) 15 ILM, 1372 ff, including the Gulf of Maine; see Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada v. United States of America), Judgment, ICJ Reports 1984, 284, para. 71; Arctic Pollution Prevention Act (1970), ST/LEG/SER.B/16, n. 1, p. 183.
- Maritime Jurisdiction (Exclusive Fishery Limits) Order (1976) (corresponding, according to Art. 4 to an 'equitable equidistant line'), ST/LEG/SER.B/19, n. 1, p. 213.
- ²¹ Federal Register of 4 November 1976; see ICJ Reports 1984, p. 284, para. 70.
- ²² Law No. 30/76 of 5 December 1976 relating to the Exclusive Economic Zone of the Republic of Maldives, Art. 11, ST/LEG/SER.B/19, n. 1, pp. 230–1. The agreement between India and the Maldives was signed later, on 28 December 1976. See Appendix I, Table A.1, No. 60, in Charney et al., International Maritime Boundaries, n. 1, vol. II (Charney and Alexander), Report Number 6-8.
- Decree of 4 June 1976 Establishing the Outer Limit of the EEZ of Mexico, ST/LEG/SER.B/19, n. 1, p. 235. The maritime boundary Agreement between Cuba and Mexico was only signed later, on 26 July 1976. See Appendix I, Table A.1, No. 58, in Charney et al., International Maritime Boundaries, n. 1, vol. I (Charney and Alexander), Report Number 2-8.
- ²⁴ The Exclusive Economic Zone Order 1978, ST/LEG/SER.B/19, n. 1, pp. 230–1.
- ²⁵ Proclamation by the President of the Republic of Kenya of 28 February 1979, Article 1(a) and (b), ST/LEG/SER.B/19, n. 1, pp. 228-9.

- Fiji, ²⁶ Norway, ²⁷ Morocco, ²⁸ New Zealand ²⁹ and the Soviet Union, specifying particular geographical areas of application. ³⁰
- (iv) Texts referring to equidistance or the median line to be applied as a residual rule, pending or failing agreement to the contrary. Such cases include: Barbados,³¹ Comoros,³² Denmark,³³ Guyana,³⁴ German Democratic Republic,³⁵ Iceland,³⁶ India,³⁷ Japan,³⁸ Nigeria,³⁹ Portugal,⁴⁰ Spain⁴¹ and Yemen.⁴² These states follow the model of the 1958 Continental Shelf Convention.
- ²⁶ The Fiji Marine Space Act of 1977, Art. 3(3) and (4). Nordquist et al. (eds.), *New Directions*, vol. VII, n. 1, p. 391.
- ²⁷ Law No. 91 of 17 December 1976, Relating to the Economic Zone of Norway, Art. 1(2), ST/LEG/SER.B/19, n. 1, p. 241('not beyond the median line').
- Moroccan Law (Dahir) No. 1–81, 8 April 1981, Art. 11; referred to by Judge ad hoc Jens Evensen, dissenting opinion, Continental Shelf (Tunisia v. Libyan Arab Jamahiriya), Judgment, ICJ Reports 1982, p. 285, para. 7.
- New Zealand Territorial Sea and Exclusive Zone Act, No 28, 1977, Sec. 9(2)(a), Nordquist et al. (eds.), *New Directions*, vol. VII, n. 1, p. 440; ST/LEG/SER.B/19, n. 1, p. 240.
- Decision No. 1963 of 24 February 1977 of the Council of Ministers of the USSR on the Introduction of Provisional Measures to Protect the Living Resources and Regulate Fishing in the Areas of the Pacific and Arctic Oceans Adjacent to the Coast of the USSR, ST/LEG/SER.B/19, n. 1, p. 255 (an exception was made for the historical boundaries based on the Russian–American Treaty of 18 (30) March 1867 in the Bering and Chukotsk Seas and the Arctic Ocean).
- Marine Boundaries and Jurisdiction Act 1978–3, Art. 3(3) and (4), Nordquist et al. (eds.), *New Directions*, vol. VII, n. 1, p. 337.
- ³² Ordinance No. 76–038 of 15 June 1976, Art. 3, ST/LEG/SER.B/19, n. 1, pp. 15–16.
- Act No. 507 of December 1976, Art. 1(2), ST/LEG/SER.B/19, n. 1, p. 192 ('failing agreement to the contrary').
- ³⁴ Maritime Boundaries Act, No. 10, June 1977, Art. 35, ST/LEG/SER.B/19, n. 1, p. 41.
- Decree of 22 December 1977 (concerning the Baltic Sea), Art. 2(1), ST/LEG/SER.B/19, n. 1, p. 206.
- Law No. 41 of 1 June 1979 concerning the Territorial Sea, the Economic Zone and the Continental Shelf, Art. 7, ST/LEG/SER.B/19, n. 1, pp. 43, 45. See also 'Iceland: Law Concerning the Territorial Sea, The Economic Zone and the Continental Shelf' (1979) 18 ILM, 1504.
- The Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act 1976, Art. 9(1); Churchill et al., *New Directions*, vol V, n. 1, pp. 305, 313; ST/LEG/SER.B/19, n. 1, pp. 47, 52.
- ³⁸ Law No. 31 of 2 May 1977, Art. 3(2) and (3), ST/LEG/SER.B/19, n. 1, p. 215.
- Exclusive Economic Zone Decree 1978, No. 28, Art. 1(2), Nordquist et al. (eds.), *New Directions*, vol. VII, n. 1, p. 474.
- ⁴⁰ Act No. 33/77 of 28 May 1977, Art. 2(2), Nordquist et al. (eds.), New Directions, vol. VIII, n. 1, p. 19, ST/LEG/SER.B/19, n. 1, p. 93.
- Law 15/1978 of 20 February, Art. 2; Nordquist et al. (eds.), New Directions, vol. VIII, n. 1, p. 19, ST/LEG/SER.B/19, n. 1, pp. 250-1.
- ⁴² Act No. 45 of 17 December 1977, sec. v. Art. 17; Nordquist et al. (eds.), *New Directions*, vol. VII, n. 1, p. 57, ST/LEG/SER.B/19 n. 1, pp. 21, 25.

(v) Texts referring to equitable principles as the foundation of delimitation to be applied. The only document found, however, which explicitly restated that model was the 1983 Reagan Proclamation on the Exclusive Economic Zone, that reaffirmed the approach of the 1945 Truman Proclamation as the modern approach in the United States:

In cases where the maritime boundary with a neighboring state remains to be determined, the boundary of the Exclusive Economic Zone shall be determined by the United States and the other States concerned in accordance with equitable principles.⁴³

In the light of the prominence of this model in international law, it is remarkable that proclamations did not use it more frequently.

(vi) Texts referring to international law in general as a basis for delimitation. This model was chosen by Kenya in its draft articles on the EEZ (in combination with a reference to the United Nations Charter and regional organizations).44 It was also employed by the Bahamas 45 and Vietnam (including a reference to the respect of independence and sovereignty as a basis for settlement). 46

In conclusion, unilateral state practice both on the shelf and the EEZ predominantly shows a preference for delimitation by agreement. The model of legal vacuum has never been invoked. Where substantive rules are mentioned, unilateral state practice developed, in quantitative terms, a preference for the model of equidistance-special circumstances (residual or mandatory) while examples that use the concept of equitable principles remained a minority. No support could be found in the period under review for the concept of delimitation based on international law in order to achieve an equitable solution. Since the predominant references to equidistance-special circumstances were made prior to the adoption of Articles 74(1) and 83(1) of the LOS Convention, they cannot be read as supporting a customary adoption of that model in state practice; such a process was frustrated by the adoption of the model of equitable solution in the multilateral negotiations of UNCLOS III.

⁴³ Proclamation No 5030, entitled 'Exclusive Economic Zone of the United States of America' (10 March 1983) (1983)77 American Journal of International Law, 619, 622, (1983) 22 ILM 461.

⁴⁴ UN Doc. A/AC. 138/S/C/II/L.10. (1972), Art. VIII; (1973) 12 ILM 33.

⁴⁵ Bahamas Fisheries Resources (Jurisdiction and Conservation) Act 1977, Sec. 11, ST/LEG/ SER.B/19, n. 1, pp. 179, 184.

Socialist Republic of Vietnam Statement on the Territorial Sea, The Contiguous Zone, the Exclusive Economic Zone, and the Continental Shelf of Vietnam, 12 May 1977; para. 7, Nordquist et al. (eds.), New Directions, vol. VIII, n. 1, p. 36.

II. Maritime boundary delimitation agreements

The following analysis relies upon a sample of 120 long-distance maritime boundary agreements (excluding territorial sea or contiguous zone delimitations, as well as the establishment of purely joint or common zones), which were concluded between 1942 and 1992. They establish a total of 132 boundaries and are listed in Appendix I of the present study. The period and numbers available are believed to be sufficiently representative for the forming stage of customary international law.

Fifty-eight of these agreements exclusively relate to the continental shelf. Forty-two agreements relate to the water column, including fishing zones or EEZs. Finally, twenty-one agreements delimitate an all-purpose, overall maritime boundary, which includes the soil and the water column, providing that an EEZ had been declared. With the development of the EEZ, agreements increasingly opted to adopt such all-purpose boundaries. In the 2001 *Qatar/Bahrain* case, the ICJ observed that the concept of a single maritime boundary stems from state practice. This trend is likely to continue for the reasons already discussed.

- ⁴⁷ The sample of agreements is based on the compilation presented by Canada at the ICJ in the 1984 *Gulf of Maine* case. Annexes to the Reply submitted by Canada, Pleadings, vol. I, State Practice, 12 December 1983, a collection presented by counsel for Libya in the 1984 *Libya-Tunisia Continental Shelf* case, Pleadings, as well as Conforti and Francalanci, *Atlas of the Seabed Boundaries*, Part I, n. 1 and Conforti et al., *Atlas of the Seabed Boundaries*, Part II, n. 1; and Limits in the Seas (The Office of the US Geographer, ed. 1969); and Charney et al., *International Maritime Boundaries*, n. 1.
- ⁴⁸ For an updated list of Agreements cf. Wikipedia, List of Maritime Boundary Treaties, http://en.wikipedia.org/wiki/List_of_maritime_boundary_treaties (last accessed February 2012).
- It may be remembered that the EEZ, unlike the continental shelf zone, requires an act of will to be established, see Chapter 2(III).
- All-purpose boundaries were often negotiated between the United States and its neighbours, the Gulf of Maine boundary being the most prominent example. See Mark B. Feldman and David A. Colson, 'The Maritime Boundaries of the United States' (1981) 75 American Journal of International Law, 729, 742; Edward J. Collins and Martin Rogoff, 'The International Law of Maritime Boundary Delimitation' (1982) 34 Maine Law Review, 1, 14–24.
- Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain), Merits, Judgment, ICJ Reports 2001, p. 93, para. 173.
- Anderson observed in 2005 that '[s]ome older agreements relating solely to the continental shelf remain in force, but the only new ones having this limited scope relate to areas beyond the 200 n.m. limit' (David H. Anderson, 'Developments in Maritime Boundary Law and Practice' in Charney and Alexander, *International Maritime Boundaries*, n. 1, vol. V (Colson and Smith), pp. 3197, 3210). However, states still

Tables 5.1, 5.2 and 5.3 flow from an analysis of the agreements from 1942 to 1992 from three perspectives. With a view toward assessing the practical importance and impact of different models and methods of delimitation, indications in agreements as well as effective applications are considered. Also, the impact of the 1958 Shelf Convention is examined.

A. Indications in agreements

Table 5.1 shows a quantitative distribution of models and methods called upon in the sample agreements: 98 of the 120 agreements contain an explicit indication of a particular model (positive indication); 36 treaties remain silent (negative indication); 14 agreements contain two different references.⁵³ Altogether, 134 indications (positive and negative) were found.

Table 5.1. Principles or methods indicated in 120 agreements

None	36 (26.9%)
Equidistance (incl. minor modifications)	23 (17.2%)
Median line (incl. minor modifications)	22 (16.4%)
Equity	20 (14.9%)
Parallel of latitude	12 (10%)
Straight line/Azimuth	11 (8.2%)
Perpendicular to coastal line	1 (0.7%)
Others (ad hoc constructions)	9 (6.7%)
Total indications	134 (100%)

refer to the EEZ and the continental shelf when they establish single maritime boundaries up to 200 nm as separate regimes (Cissé Yacouba and Donald McRae, 'The Legal Regime of Maritime Boundary Agreements', in Charney et al., ibid., pp. 3285–7). This may be due to caution on behalf of states, which might have future claims of continental shelves beyond 200 nm in mind, since the definition of the continental shelf in Art. 76 UNCLOS refers to 'the sea-bed and subsoil of the submarine areas that extend beyond the territorial sea', including thereby the area within 200 nm as well as the area outside 200 nm.

⁵³ The difference between the number of agreements (120) and number of indications (134, positive and negative) is explained by the fact that 14 agreements contain 2 indications (see Appendix I, Table A.1, Nos. 21, 29, 36, 42, 57, 63, 65, 81, 83, 85, 90, 95, 100, 114).

The absence of any indication of method in almost one-third of all agreements does not imply the absence of a particular method applied. Agreements may simply contain the results of the negotiations, and parties may well have worked on the basis of an agreed-upon method. Table 5.1 indicates that equidistance and the median line are clearly the most prominent methods invoked, together used in a total of 45 agreements (33.6 per cent). These are followed by equity or equitable principles in 20 agreements (14.9 per cent). The latter have been referred to mostly in the more recent years under review, presumably due to the educational process of UNCLOS III. Between 1978 and 1991, 16 of 53 agreements (30.2 per cent) call upon equity in one form or another. However, recourse to equity is not necessarily meant to exclude delimitation on the basis of equidistance, if this method would produce an equitable result.⁵⁴ Since equity or equitable principles are a broader concept than equidistance, and may include it, indications in agreements are not conclusive for the determination of the actual use of the different approaches. It nevertheless shows that if states chose to indicate a method, they most frequently named the median or equidistance line, leaving equity in an increasingly important minority. Other methods clearly appear less frequently.

B. Models and methods applied

More important and significant than the principles and methods invoked by the agreements are the results achieved and effected by them. The analysis in Table 5.2 based on the maps reproduced in Appendix II shows the distribution and application of different legal models and methods applied in 120 sample agreements. Given the fact

Le Gouvernement de Tonga ayant proposé que cette délimitation soit effectuée selon la méthode de l'équidistance; le Gouvernement français ayant accepté cette proposition, conforme dans le cas présent à l'application de principes équitables.

See also the French-Santa Lucia agreement of 4 March 1981, Charney et al., *International Maritime Boundaries*, n. 1, vol. I (Charney and Alexander), Report Number 2-10 (with the two governments: 'Considérant que l'application de la méthode de l'équidistance constitue dans ce cas un mode équitable de delimitation').

See e.g. The French-Tonga Agreement of 11 November 1980, Conforti et al., *Atlas of the Seabed Boundaries*, Part II, n. 1, p. 119; Charney et al., *International Maritime Boundaries*, n. 1, vol. I (Charney and Alexander), Report Number 5-8, which states in the preamble:

Table 5.2. Methods applied and effected in 120 sample agreement	nts
effecting 131 applications of methods	

Method	Opposite	Adjacent	Mixed	Total
Equidistance	27 (38%)	4 (16%)	20 (57.1%)	51 (38.9%)
Equidistance (mod.) Non-equidistant	22 (31%) 22 (31%)	4 (16%) 17 (68%)	3 (8.6%) 12 (34.3%)	29 (22.1%) 51 (39.0%)
Total	71 (100%)	25 (100%)	35 (100%)	131

that 10 agreements apply 2 models⁵⁵ and 1 agreement applies to 3,⁵⁶ a total of 131 applications resulted.

Table 5.2 shows that equidistance was applied (either strictly or in a modified form) in more than half of all the delimitations effected (61 per cent). Fifty-one agreements (39 per cent) relied on non-equidistant delimitations. Attention should be paid to the fact that non-equidistant methods clearly prevail over equidistance in geographical configurations of adjacent coasts. The sample suggests that equidistance has been most successful in opposite and mixed configurations, employed respectively in 69 per cent and 65.7 per cent of all cases. Simultaneously, non-equidistant methods prevailed in 68 per cent of all adjacent cases, and showed a considerable presence in mixed configurations (34.3 per cent). Taken together, these results suggest that delimitation with adjacent or mixed coastal constellations often requires particular solutions that cannot rely upon the mathematics of equidistance.

C. The impact of the 1958 Shelf Convention equidistance-special circumstances rule

It may be of some interest to evaluate the impact of Article 6 of the 1958 Convention on the Continental Shelf for the parties to that agreement. Looking at 111 agreements concluded among the parties since the Convention entered into force on 10 June 1964, 42 agreements delimitating 45 boundaries were completed. This amounts to a total of 40.5 per cent of all maritime boundary agreements and to 77.6 per cent of the 58 agreements of the sample strictly relating to the continental shelf.

Nine of the sample agreements establish two different boundaries (see Appendix I, Table A.1, Nos. 29, 59, 70, 101, 102, 105, 107, 108 and 113); one of them applies to different segments of the line (see No. 42).

⁵⁶ See Appendix I, Table A.1, No. 112.

Table 5.3. Application of Article 6 of the 1958 Shelf Convention

1	2	3	4
22	48.9%	19.8%	37.9%
8	17.8%	7.2%	13.8%
15	33.3%	13.5%	25.9%
45	100%	40.5%	77.6%
	8 15	8 17.8% 15 33.3%	22 48.9% 19.8% 8 17.8% 7.2% 15 33.3% 13.5%

- 1. Percentage of agreements concluded under the Convention.
- 2. Percentage of total of 111 boundary agreements concluded since the entry into force of the Convention (1964–1991).
- 3. Percentage of all maritime boundary agreements since the entry into force of the Convention (1964–1991).
- 4. Percentage of total of 58 agreements exclusively related to shelf delimitation since the entry into force of the Convention (1964–1991).

Table 5.3 indicates that the combined equidistance–special circumstances rule of the 1958 Convention is of considerable importance, but that it has not clearly emerged as the dominant factor in maritime boundary delimitation. Between 1964 and 1992, equidistance (strict or modified) under the Convention has been applied in 51.7 per cent of all continental shelf delimitations and in 27 per cent of all maritime boundary agreements (including EEZ and all-purpose boundaries). Although conceived merely as a residual rule, equidistance was applied in two-thirds of all delimitations under the 1958 Convention. This fact shows that states can indeed achieve negotiated settlements under particular rules of international law in a considerable number of scenarios. Further, it is evident that the 1958 Convention also served as an example to states that were not parties to the instrument. It certainly stimulated the use of equidistance, which served in 80 out of a total 131 cases (61 per cent) of delimitation, as Table 5.2 indicates.

D. Assessment and former studies

The present evaluation, of course, does not achieve more than a rough approximation. Models and methods applied cannot be coded and

The indications of percentage result from additions of positions 1 and 2 of col. 3, col. 2 and col. 1, respectively, of Table 5.3. A relatively small overall impact of Art. 6 of the 1958 Shelf Convention was also found by S. P. Jagota, 'Maritime Boundary' (1981) 171 Recueil des cours II, 85, 131–2; Sang-Myon Rhee, 'Equitable Solutions to the Maritime Boundary Dispute between the United States and Canada in the Gulf of Maine' (1981) 75 American Journal of International Law, 590, 605–6.

evaluated very precisely in quantitative terms: firstly, because a considerable number (one-third) of all settlements are purely negotiated solutions, which do not indicate any principles or methods applied; and secondly, because what appears on the map to be an application of a particular method may in fact be a purely negotiated solution, a result of a quid pro quo based on political expediency, as the history of the 1978 US-Mexican agreement indicates.⁵⁸ Most negotiations are, at least for academic purposes, off the record. The intentions of states are therefore difficult to assess.

Given the imponderable nature of these uncertainties, it may be useful to compare results achieved here with previous studies of the subject. They generally show a higher percentage of agreements based on equidistance than this study. Compared to each other, however, assessments vary considerably. This is not only due to the fact that the problem of imponderables always exists. Variations are also due to the different samples and time periods chosen. Nevertheless, overall, the findings of others reaffirm the results found above.

A review of fifty agreements on the continental shelf by Rüster, published in 1977, concluded that some forty agreements examined rely on the median or equidistance line (80 per cent). Only ten were 'negotiated' solutions (20 per cent).⁵⁹

Gounaris concluded in the same year that from a total of sixty-six continental shelf boundary agreements, twenty-eight (42.4 per cent) applied equidistance and twenty-two (33.3 per cent) apply modified equidistance methods, while only three agreements (3.5 per cent) rely upon equity, twelve agreements (18.2 per cent) used other methods, and one treaty was without any positive indication. 60 The same author found in 1980 a total of seventy-three agreements, of which thirty (41.1 per

⁵⁸ The agreement favoured the United States in the Pacific by using US islands as base points. Mexico is favoured in the Gulf of Mexico by using small Mexican islands as base points. The Treaty, signed 4 May 1978, 'Mexico-United-States: Four Bilateral Agreements' (1978) 17 ILM, 1056; Charney et al., International Maritime Boundaries, n. 1, vol. I (Charney and Alexander), Report Number 1-5, however, was later withdrawn from consideration by the US Senate, and a new study on hydrocarbon resources in the Gulf was ordered, Feldman and Colson, n. 50, 743-4.

⁵⁹ Bernd Rüster, Die Rechtsordnung des Festlandsockels (Berlin: Duncker und Humblot, 1977), p. 399 et seq.

Emmanuel Gounaris, 'Die Aufteilung des Festlandsockels unter dem Adriatischen und Ionischen Meer zwischen Griechenland und Italien vom 24.5.1977 und die Internationale Praxis' (1978) 31 Revue hellénique de droit international, 191.

cent) relied on equidistance, 22 (30.1 per cent) on modified equidistance, and seventeen agreements (23.3 per cent) relied on other methods.⁶¹

In a 1985 study, Jagota concluded from a sample of seventy-five agreements that forty-eight (64 per cent) applied equidistance, seventeen (22.7 per cent) rely on a modified equidistance line, and only ten (13.3 per cent) are 'negotiated' solutions. An expanded version covering a hundred agreements (twelve of which deal with the territorial sea and four establish joint or common zones) shows a total of sixty-four median or equidistance boundaries, eighteen modified median lines, fourteen non-equidistant (negotiated) solutions and four joint or common zones. 63

An evaluation of state practice by Canada in the Gulf of Maine argued in support of equidistance, showing that forty-four agreements (45.4 per cent) rely on strict or simplified equidistance (four between adjacent, sixteen between opposite and twenty-four in mixed constellations), twenty-four agreements (24.7 per cent) were considered using a modified equidistance line, with only twenty agreements (29.9 per cent) being non-equidistant. The United States, in opposing a strict application of equidistance, argued that merely 37 per cent of all agreements in force were based exclusively upon a strict application of equidistance.

The most comprehensive analysis, based upon detailed reports from 134 agreements effected by the project of the American Society of International Law was presented by Leonard Legault and Blair Hankey in 1993. The results of their analyses are summarized in Table 5.4.⁶⁶

In 2006 Tanaka concluded on the basis of the same material, but short of distinguishing strict and modified applications of the method, that 83 per cent of all continental shelf delimitation between opposite coasts are based upon equidistance, and 46 per cent of agreements in adjacent configurations. In hybrid cases, the method was used in 88 per cent of cases. Single maritime boundaries in opposite configurations were found to rely upon equidistance in 82 per cent and in adjacent configurations in 50 per cent of the agreements. In hybrid cases, he found 90 per cent of all purpose boundary agreements to be based upon equidistance. On the

⁶¹ Emmanuel Gounaris, 'The Delimitation of the Continental Shelf of Islands: Some Obervations' (1980) 33 Revue hellénique de droit international 111.

See Jagota, n. 57, 131.
 See ibid., p. 122.
 Canadian Reply, n. 47, pp. 23–34.
 Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada v. United States of America), Counter Memorial of the United States of America, 28 June 1983, Pleadings p. 145, para. 217.

⁶⁶ Leonard H. Legault and Blair Hankey, 'Method, Oppositeness and Adjacency, and Proportionality in Maritime Boundary Delimitation' in Charney et al., *International Maritime Boundaries*, n. 1, vol. I (Charney and Alexander), pp. 203, 215–17.

Table 5.4. <i>Account o</i>	of methods of	^f delimitation u	ısed (Le	gault/Hankey)

Method	General	Opposite	Mixed	Adjacent
Equidistance Strict/simplified Modified Other methods Mixed methods	103 (77%) 63 (47%) 40 (30%) 42 (31%)	55 (89%) 28 (45%) 27 (43%) 8 (13%)	37 (86%) 29 (67%) 8 (19%) 13 (30%) 16 (14%)	12 (40%) 6 (20%) 6 (20%) 20 (67%) 8 (27%)
(Eq./parallels of lat.)			, ,	, ,

The relatively high percentage of agreements based on equidistance in this study may be partly explained by the inclusion of territorial boundaries in several of the 134 agreements taken into account.

whole, maritime delimitations taking into account the continental shelf and the territorial sea amount to 83 per cent of the agreements in opposite constellations, and 51 per cent in adjacent agreements to be based upon equidistance.⁶⁷

A comparison of the results of the different studies suggests that the conclusions found in the present examination are roughly appropriate. Equidistance is mainly applied in opposite and mixed configurations, while adjacent coastal configurations are often dealt with on the basis of different methods. For those, as well as for modified equidistance, additional guidance is required that goes beyond the method of equidistance.

This analysis concludes that the widespread perception of a strongly predominant, almost exclusive use of the combined equidistance-special circumstances rule, as codified in Article 6 of the 1958 Shelf Convention, has not been supported by state practice. There are clearly more agreements than generally thought which refer to methods other than equidistance.⁶⁸ Whatever the percentages in detail, and regardless of possible fluctuations, it should be emphasized that the application of strict mathematical equidistance or median line methods did not produce acceptable results for the coastal states in 50 to 60 per cent of all the agreements examined. Other considerations prevailed in these

⁶⁷ Yoshifumi Tanaka, Predictability and Flexibility in the Law of Maritime Delimitation (Cambridge University Press, 2006) pp. 134-5.

But see e.g. Elisabeth Zoller, arguing that practically all agreements have used the model of equidistance-special circumstances in one way or another to establish the boundary line. Elisabeth Zoller, 'Recherche sur les méthodes de délimination du plateau continental: à propos de l'Affaire Tunisie/Libye' (1982) 86 Revue generale de droit international public, 645, 673.

delimitations. Since negotiations need not rely upon principled arguments, it often cannot be said which specific criteria governments actually used.⁶⁹

E. Protracted negotiations

Besides successfully concluded agreements, it is of equal interest to look at state practice in difficult negotiations. There are a number of disputes that have been pending for many years and decades. Unsettled negotiations in Europe, for example, still include boundary delimitations between Poland and Denmark, between Sweden and Denmark in the Baltic Sea, and the case of Greece and Turkey in the Mediterranean, despite agreed procedures for negotiations and litigation before the ICJ in 1978. Other negotiations were concluded after great difficulties, in particular in the Barents Sea between Russia (the former Soviet Union) and Norway, only settled in 2010. There are, of course, many different reasons that cause the complexity, protraction, or even the failure, of maritime boundary delimitation at great political and economic cost. The overall relationship of the states concerned is certainly an important factor. While friendly relations and mutual trust ease the way for negotiated solutions of complex cases, tensions, distrust or hostility

Note that Indiana American Sea Boundaries' in Charney et al., International Maritime Boundaries, n. 1, vol. V (Colson and Smith), p. 3508.

Greece-Turkey: Agreement on Procedures for Negotiation of Aegean Continental Shelf Issue (Done at Berne, 11 November 1976) (1977) 16 ILM 13; *Aegean Sea Continental Shelf (Greece v. Turkey)*, Judgment, ICJ Reports 1978, p. 3. See Chapter 12.

⁷² See Pål Jakob Aasen, 'The Law of Maritime Delimitation and the Russian–Norwegian Maritime Boundary Dispute', Fridtjof Nansen Institute, February 2010, www.fni.no/publ/marine.html#pja (last accessed 1 February 2012). The boundary was eventually settled by agreement on 27 April 2010, Denis Dyomkin, Gwladys Fouche, 'UPDATE 1 – Russia and Norway reach Barents Sea border deal, 27 April 2010 *Reuters*, www.reuters.com/article/idUSLDE63Q14D20100427?type=marketsNews (last accessed 27 April 2010); Wikipidia, n. 48.

The ASIL study has considerably expanded the knowledge made available to the community on motivation and factors determining single lines in the 137 agreements. Nevertheless, the study concluded that in particular political, strategic and historic factors often remain undisclosed in the agreements and remain within the diplomatic process in hidden agendas. See Charney, 'Introduction' in Charney et al., *International Maritime Boundaries*, n. 1, vol. I (Charney and Alexander), p. xxxv; Bernard H. Oxman, 'Political, Strategic, and Historical Considerations' in Charney et al., *International Maritime Boundaries*, n. 1, vol. I (Charney and Alexander), pp. 3–40, in particular pp. 24, 25; p. 13 ('It is often difficult to discern what, if any, effect political considerations had on the location of an agreed maritime boundary'); p. 39 ('It is often difficult to demonstrate what particular influence political factors have on the precise location of a specific boundary').

may prevent the solution even under simple geographical configurations. 73 There is some evidence that the model of equidistance, as applied as a rule of delimitation in negotiations, plays a significant part in these failures on a technical level. Equidistance tends to frustrate other approaches and models, particularly schemes of co-operation, because it tends to prejudice negotiations. States are inclined not only to start negotiations on the basis of equidistance, but then to stick to it as a basis for a settlement without flexibility. Typically, one party, relying on the widespread use of equidistance in state practice, invokes this method and then shows little readiness to discuss other approaches or substantial modifications claimed by the other party under the title of special circumstances. Thus, while one party sticks to the narrow line of equidistance, the other is left without much guidance, and is therefore in a weaker negotiating position. This tends to result in its subsequent withdrawal from the negotiating process, as the weaker party then prefers to leave the dispute unresolved. Examples of this dynamic are easily found in history. In one instance it was reported that no agreement was reached in the Baltic Sea between Norway and the Soviet Union (Russia) because Norway insisted on applying a strict equidistance approach and the Soviet Union claimed, under special circumstances, a more westerly boundary due to their important naval facilities at Kola Peninsula.⁷⁴ Similarly, negotiations between Greece and Turkey, pending for many years, broke down because of Greece's insistence on the median line, taking full account of the Greek islands. 75 In the dispute between Canada and France over the maritime areas around the Island of St. Pierre et Miquelon, France at first insisted on the application of strict equidistance. It is reported that a provisional agreement was only reached in 1972, after this claim was modified in return for substantial special access

⁷³ John R. Prescott, *The Maritime Political Boundaries of the World* (London: Methuen, 2004), pp. 384-92; see also the assessments of the general relationships of any states concerned in the reports in Charneyet al., International Maritime Boundaries, 5 vols., n. 1.

For a detailed account see Aason, n. 72; Kim Traavik and Willy Ostreng, 'Security and Ocean Law: Norway and the Soviet Union in the Barents Sea' (1977) 4 Ocean Development & International Law, 343; Willy Ostreng, 'Norwegen und die Sovietunion in der Barentsee' (1980) 35 Europa Archiv, 711. In 1987, it was reported that Norwegian satellite-controlled exploration buoys disappeared, allegedly removed by the Soviet Union, Neue Zürcher Zeitung, 3 September 1987, No. 203, p. 3 col. 3.

See Prescott, n. 73, pp. 215 ff.; see Aegean Sea Continental Shelf (Greece v. Turkey), Judgment, ICJ Reports 1978, p. 45, para. 109.

rights off the Canadian coast and in the Gulf of St Lawrence.⁷⁶ Negotiations, however, failed with regard to the boundaries off the south and west coasts, and it was necessary to revert to arbitration.

In conclusion, equidistance and the median line are successful approaches as long as both or all of the parties involved regard their interests to be sufficiently protected by this model, and negotiations are limited to smaller or larger modifications of that line. However, in cases of fundamental differences, the approaches tend to act as catalysts of logjams and breakdowns. Thus, what is on the face of it a clear and well-defined legal model at times rather complicates the process of maritime boundary negotiations and settlement.⁷⁷ In shaping appropriate approaches, legal principles and rules of maritime boundary delimitation, it will therefore be appropriate to take into account not merely quantitative elements, but also the qualitative elements of the different models. In addition to the findings that more than half of all agreements somehow deviate from equidistance, due account must be given to the primary goal that legal principles and rules should be able to assist foremost in the solution of complex cases and protracted negotiations.

III. The functional approach in co-operation agreements

Schemes of co-operation are a significant aspect of state practice related to the allocation of marine resources. Pioneered by the Arabian Gulf states, the concept of co-operation in the exploitation of mineral and living resources is more advanced in treaty practice than legal discussions on general maritime boundary law seem to suggest.⁷⁸ Agreements

See Clive R. Symmons, 'The Canadian 200 mile Fishery Limit and the Delimitation of Maritime Zones around St. Pierre and Miquelon' (1980) 12 Ottawa Law Review, 145; Anglo-French Channel arbitration, Chapter I, notes 39, 88, para. 77; Charney et al., International Maritime Boundaries, n. 1, vol. I (Charney and Alexander), Report Number 1-2, pp. 387, 389.

⁷⁷ The point is further elaborated in Chapter 6 et passim.

For the most part, general treatises on maritime boundaries have not dealt with cooperation arrangements and their implementation in a very systematic manner; cf. Jagota, n. 57; Prescott n. 73; Marques Antunes, Towards the Conceptualisation of Maritime Delimitation: Legal and Technical Aspects of a Political Process (Leiden: Brill Academic Publishers, 2003); see, however, Yoshifumi Tanaka, Predictability and Flexibility in the Law of Maritime Delimitation, (Oxford: Hart, 2006). More specifically see Thomas A. Mensah, 'Joint Development Zones as an Alternative Dispute Settlement Approach in Maritime Boundary Delimitation' in Rainer Lagoni and Daniel Vignes (eds.), Maritime Delimitation (Leiden: Martinus Nijhoff 2006), p. 143; Sun Pyo Kim, Maritime Delimitation and Interim Arrangements in North East Asia (Dordrecht: Martinus

Annex 125

R. Kolb, *Good Faith in International Law* (Hart 2017) pp. 92–5.

Good Faith in International Law

Robert Kolb



PUBLISHING
OXFORD AND PORTLAND, OREGON
2017

Hart Publishing

An imprint of Bloomsbury Publishing Plc

Hart Publishing Ltd
Kemp House
Chawley Park
Cumnor Hill
Oxford OX2 9PH
UK
Bloomsbury Publishing Plc
50 Bedford Square
London
WC1B 3DP
UK

www.hartpub.co.uk www.bloomsbury.com

Published in North America (US and Canada) by Hart Publishing c/o International Specialized Book Services 920 NE 58th Avenue, Suite 300 Portland, OR 97213-3786 USA

www.isbs.com

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First published 2017

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British Library Cataloguing-in-Publication Data

A catalogue record for this book is available from the British Library.

ISBN: HB: 978-1-50991-409-8 ePDF: 978-1-50991-406-7 ePub: 978-1-50991-407-4

Library of Congress Cataloging-in-Publication Data

Typeset by Compuscript Ltd, Shannon Printed and bound in Great Britain by CPI Group (UK) Ltd, Croydon CR0 4YY

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the promise.²⁰⁷ This is a judgment based on reasonableness rather than on effectiveness. To be sure, both criteria can be useful according to the concrete legal question posed; but the objective criterion is the one interesting us here.

The next question is which doctrine of legitimate protection applies in this context? The stricter one centred upon estoppel, or the larger one centred directly upon good faith? Both legal instruments are based on the protection of legitimate expectations, ie ultimately on the principle of good faith. But estoppel is a more special doctrine, supposing a 'detrimental reliance' by the addressees in the specific case. For the reasons exposed above, the binding force of legal acts such as promises cannot be based on the idiosyncratic reactions of single members of the international society. For this reason, the ICJ in the *Nuclear Test* cases was right to entirely forgo the notion of estoppel and to rely on the larger notion of good faith.

Overall, it can be seen that the foundation of the binding force of unilateral legal acts which have a law-creating effect relies importantly on the notion of good faith-reliance. The aim of the principle is to explain the basis of the legal obligation and also the precise extent to which such an act can be said to be legally binding. The intention to confer a binding force to such an act is the starting point of a positive law analysis. But this criterion has to be integrated in a larger whole, taking into account the extent to which third states or other addressees could rely on the assertions made. In case of incongruence between the two circles, will and reliance, the latter shall prevail and create obligations even where the real will could not be established. This 'surplus' of obligation is the most distinctive effect of good faith in the context of unilateral acts. It also shows once more that it is wrong to claim that good faith does not create obligations where there existed none before.

XI. Good Faith and Acquiescence

Legal life is dominated by innumerable facts. The legal order must establish which of these facts have what effect. In a decentralised society such as the one regulated by international law, where the law shifts and metabolises by a continuous exchange of demands and responses rather than by centralised legislative acts and regular judicial qualifications, the disorder created by facts is greater than in the more significantly tamed municipal legal order. In international law, 'facts' will not normally be opposable to subjects of the law, unless accepted by them. Their sovereignty precludes the possibility to bind states to facts which they have not contributed to produce or which they have not recognised. In this context, the

²⁰⁷ See correctly JD Sicault, 'Du caractère obligatoire des engagements unilatéraux en droit international public' (1979) 83 *RGDIP*, 684: 'La confiance dont il s'agit ici n'est pas, en effet, la confiance effective des destinataires de la promesse (*reliance*) mais la confiance qu'ils doivent pouvoir avoir dans le caractère obligatoire de la promesse'.

doctrine of normative acquiescence²⁰⁸ has an eminent role to play as an alternative to formal and express recognition. It creates a device for the opposability of facts to a subject and therefore oils and smoothens the wheels of the international legal order.

There are different concepts of acquiescence. At the lowest level, acquiescence may simply mean an express or tacit acceptance.²⁰⁹ It is then designating a real or fictional expression of will. The concept here is synonymous to 'consent' or to 'recognition'. It is certainly better to avoid the term 'acquiescence' in this context so as to prevent any confusion; the better word here is clearly consent. There are also authors²¹⁰ considering acquiescence as part and parcel of a complex set of presumptions of acceptance. Thus, for example, silence in the face of a mandatory notification of facts is tantamount to acceptance; if the notification was merely optional, there is no more than a rebuttable presumption of acceptance; if a state

²⁰⁸ On acquiescence in international law, see notably: A Cavaglieri, 'Il decorso del tempo ed i suoi effetti sui rapporti giuridici internazionali' (1926) 18 RDI 169ff, 184ff; IC McGibbon, 'The Scope of Acquiescence in International Law' (1954) 31 BYIL 143ff; DW Bowett, 'Estoppel Before International Law and its Relations to Acquiescence' (1957) 33 BYIL 197ff; IC McGibbon, 'Customary International Law and Acquiescence' (1957) 33 BYIL 115ff; G Sperduti, 'Prescrizione, consuetudine, acquiescenza' (1961) 44 RDI 3ff; M Waelbroeck, 'L'acquiescement en droit des gens' (1961) 44 RDI 38ff; KJ Partsch, 'Qualifiziertes Stillschweigen' in K Strupp and HJ Schlochauer (eds), Wörterbuch des Völkerrechts, vol III (Berlin, 1962) 391-92; J Bentz, 'Le silence comme manifestation de volonté en droit international public' (1963) 67 RGDIP 44ff; J Barale, 'L'acquiescement dans la jurisprudence internationale' (1965) 11 AFDI 389ff; P Cahier, 'Le comportement des Etats comme source de droits et d'obligations', Essays in Honor of P Guggenheim (Geneva, 1968) 237ff; FV Kramer, 'Actos convencionales y no convencionales—Ratificación, acquiescencia y estopell', Essays in Honor of E Jiménez de Aréchaga (El derecho internacional en un mundo en transformación), vol II (Montevideo, 1994) 963ff; I Sinclair, 'Estoppel and Acquiescence' Essays in Honor of RY Jennings (Cambridge, 1996) 104ff; H Das, 'L'estoppel et l'acquiescement: assimilations pragmatiques et divergences conceptuelles' (1997) 30 RBDI 607ff; NS Marques Antunes, 'Acquiescence' in R Wolfrum (ed), The Max Planck Encyclopedia of Public International Law, vol I (Oxford, 2012) 53ff. See further: H Lauterpacht, 'Sovereignty over Submarine Areas' (1950) 27 BYIL 393ff; GG Fitzmaurice, 'The Law and Procedure of the ICJ, 1951–54: General Principles and Sources of Law' (1953) 30 BYIL 27ff; E Suy, Les actes juridiques unilatéraux en droit international public (Paris, 1962) 61ff; RY Jennings, The Acquisition of Territory in International Law (Manchester, 1963) 36ff; G Venturini, 'La portée et les effets juridiques des attitudes et des actes unilatéraux des Etats' (1964-II) 112 RCADI 374ff; YZ Blum, Historic Titles in International Law (The Hague, 1965) 38ff, 129ff; G Zimmer, Gewaltsame territoriale Veränderungen und ihre völkerrechtliche Legitimation (Berlin, 1971) 31ff; JP Jacqué, Éléments pour une théorie de l'acte juridique en droit international public (Paris, 1972) 210ff; W Karl, Vertrag und spätere Praxis im Völkerrecht (Berlin, 1983) 276ff; H Thirlway, 'The Law and Procedure of the ICJ (1960-1989): General Principles and Sources of Law' (1989) 60 BYIL 29ff; VD Degan, Sources of International Law (The Hague, 1997) 348ff; M Kohen, Possession contestée et souveraineté territoriale (Paris, 1997) 355-56; G Distefano, L'ordre international entre légalité et effectivité (Geneva, 2002) 201ff; C Tams, 'Waiver, Acquiescence and Extinctive Prescription' in J Crawford, A Pellet and S Olleson (eds), The Law of International Responsibility (Oxford, 2010) 1035ff. In the context of good faith, see in particular: Müller, Vertrauensschutz 35ff; Kolb, Bonne 339ff. See also the study of PCW Chan, 'Acquiescence and Estoppel in International Boundaries: Temple of Preah Vihear Revisited' (2004) 3 Chinese Journal of International Law 421ff.

²⁰⁹ See eg Blum, op cit, 131–32; A Orakhelashvili, *Peremptory Norms in International Law* (Oxford, 2006) 398ff.

²¹⁰ See eg A Cavaglieri, 'Il decorso del tempo ed i suoi effetti sui rapporti giuridici internazionali' (1926) 18 *RDI* 188ff.

has accidental knowledge of a fact, its acceptance of that fact by silence depends upon the circumstances and there is at best a reasonable presumption of acceptance in case of silence. It must however be said that there are no precise norms of international law establishing such presumptions.²¹¹ The system of presumptions thus presented hardly deserves that name. It is at best a set of elements for interpretation.

The notion of acquiescence which interests us here has been aptly defined in the following terms: '[proposition] of binding effect resulting from passivity and inaction with respect to foreign claims which, according to the general practice of States usually call for protest in order to assert, preserve or safeguard rights'.212 In other words, acquiescence is a principle of law attributing certain effects to silence when certain conditions are met, and not the mere fact of consent. It is a doctrine of 'qualified silence', ie of silence to which legal effects are attributed. These legal effects flow from the need of a proper functioning of the legal order, and in particular from the necessity of some stability of legal relations,²¹³ and most importantly also from the need of protecting legitimate expectations of the actors of the international arena.²¹⁴ Whence: qui tacet consentire videtur si loqui potuisset ac debuisset.²¹⁵ The reader will notice that this type of acquiescence is not based on a legal act; it is not an expression of will. Therefore, a real will of a subject to accept the facts at stake is not required. Rather, this type of acquiescence is based on a legal norm which imputes to a subject the consequences which would have flown from its acceptance of a set of facts when this subject has remained silent for a prolonged time once confronted with these facts and where there was

²¹¹ G Cansacchi, La notificazione internazionale (Milan, 1943) 285–86.

²¹² JP Müller and T Cottier, 'Acquiescence' in *EPIL* (2nd edn), vol 7, p 5. In the words of G Sperduti, 'Prescrizione, consuetudine e acquiescenza in diritto internazionale' (1961) 44 *RDI* 8: 'l'acquiescenza è un comportamento pratico che si limita ad attestare l'assenza di volontà contraria ad un'altrui pretesa o ad una certa situazione quando, tenuto conto delle circostanze del caso, ed anzitutto della pubblicità della pretesa e della notorietà della situazione, era da attendersi la manifestazione ... di una volontà contraria...'.

²¹³ H Lauterpacht, 'Sovereignty over Submarine Areas' (1950) 27 BYIL 395–96: 'The far-reaching effect of the failure to protest is not a mere artificiality of the law. It is an essential requirement of stability—a requirement even more important in the international than in other spheres; it is a precept of fair dealing in as much as it prevents States from playing fast and loose with situations affecting others; and it is in accordance with equity in as much as it protects a State from the contingency of incurring responsibilities and expense, in reliance on the apparent acquiescence of others, and being subsequently confronted with a challenge on the part of those very States'.

Müller, *Vertrauensschutz* 38–39. See also the precise words of ML Alaimo, 'Natura del consenso nell'illecito internazionale' (1982) 65 *RDI* 269: 'Tutte le volte in cui viva è apparsa la preoccupazione di considerare prevalente il comportamento anteriore di uno Stato rispetto a quello successivamente tenuto ... si è fatto ricorso al principio generale della buona fede, intesa nel senso oggettivo di affidamento. L'esigenza della certezza del diritto nelle relazioni internazionali ha comunque indotto la giurisprudenza a ritenere preminente la circostanza che uno Stato ha lasciato sorgere da un certo suo comportamento l'affidamento di un altro Stato piuttosto che ricercare l'eventuale coincidenza fra quel comportamento ed un'effettiva volontà'.

²¹⁵ Corpus iuris canonici, Liber Sextus, regula iuris 43. See Dig 19, 2, 13, § 11 (Ulpien). Is, qui tacet, non fatetur sed nec utique negare videtur (Liber Sextus, regula 46; Dig, 50, 17, 142, Paulus).

a legal duty to react in order to uphold the position of non-opposability of these facts. Acquiescence taken in this sense is consequently normative: it is a legal norm flowing from the principle of good faith-reliance and accepted as a free-standing rule of international law in relevant practice. It is therefore appropriate to call it a doctrine of 'normative acquiescence', in contradistinction to acquiescence as a real consent. Plainly, if the word 'acquiescence' was not frequently used to mean a form of consent, it would be superfluous to add the epithet 'normative' to it. Since that is not the case, the epithet is not unnecessary.

This doctrine of 'qualified silence' operates through the conjunction of three legal elements: time (prolonged silence), knowledge of the facts and duty to speak.

A. Time

The backbone of acquiescence lies in the prolonged silence or passivity opposed to the claims of another subject. Thus, the time-dimension is an essential element of the principle.²¹⁶ The loss of subjective rights induced by its application is justified only because some fault can be imputed to the passive subject: it had time to react but did not do it; there was moreover a duty to react, and it was not honoured; the reliance and stability thus created shall not now, after considerable time has elapsed, be disturbed. In this sense, acquiescence is often linked to legal processes such as prescription, the consolidation of imperfect titles and the emergence of local customary law.²¹⁷ The amount of time required for the operation of the principle depends on the circumstances. There is a certain length of time which must pass; but the exact amount of time required varies according to factors such as:

- (i) the frequency and intensity of the conduct to be opposed (the greater it is, the quicker a reaction can be reasonably expected);
- (ii) the nature of the legal relationship and the degree to which the need of stability, security and confidence is felt within that relationship (the greater these needs and the quicker a reaction is necessary: eg close ties of cooperation versus loose obligations of coexistence);
- (iii) the importance of the interests and rights at stake (the greater their importance, the more time may be required: eg sensitive territorial rights, eg important amounts of investment made);
- (iv) the intensity of the relationship between the parties (the closer it is and the more quickly a protest may be necessary: eg neighbouring relations);

²¹⁶ Thus, if the period of time may be short, it cannot be entirely absent. There is no 'instant acquiescence'. If there indeed is an instantaneous 'acquiescence' this is tantamount to finding a tacit consent. Notice however that 'instantaneous acquiescence' has sometimes been sustained: see eg JP Müller and T Cottier, 'Acquiescence' in *Encyclopedia of Public International Law* (2nd edn) vol 7 (1984) 6.

²¹⁷ See RY Jennings, *The Acquisition of Territory in International Law* (Manchester, 1963) 36ff; DHN Johnson, 'Acquisitive Prescription in International Law' (1950) 27 *BYIL* 347–48.

(v) the effective knowledge of the facts rather than the constructive knowledge of the fact (calling for a quicker reaction, eg when a state has been put on notice by a diplomatic note).²¹⁸

In a curious ontogenesis, time itself becomes a relevant factor: the more it has already elapsed, and the stronger the acquiescence argument.²¹⁹ Overall, the acid test is whether at a given time a legitimate expectation in the consolidation of the attitude has emerged, or alternatively whether it would now appear abusive to allow a party which for that time had been silent to now change its attitude to the detriment of the other party/ies. It has also to be noted that in practice most often a set of actions and deeds is added to a set of abstentions and passivity. The deeds may reinforce the legal meaning of passivity: eg, if a boundary is not only not protested against, but certain official visits take place, compliments are exchanged, etc., acquiescence appears to be all the more established.²²⁰

Some examples of the case law may now be given. First, in the *Norwegian Fisheries* case (1951), the peculiar system of maritime boundaries practised by Norway had been the object of a general tolerance for more than 60 years.²²¹ This state of affairs was sufficient to find an acquiescence. Second, in the Arbitral Award Made by the King of Spain case (1960), it was held that the validity of an arbitral award could not be impugned after six years of silence accompanied by many acts signalling its positive acceptance.²²² Third, in the *Temple of Preah Vihear* case (1962), the silence in the face of a boundary drawn contrary to the relevant provision in the delimitation treaty was considered to have been accepted, through a tolerance of more than 50 years.²²³ Fourth, in the Territorial and Maritime Dispute case (Nicaragua v Colombia, Preliminary Objections, 2007), Nicaragua had been silent for more than 50 years on the validity of a treaty. It had at the same time conducted itself in a way which was incompatible with a belief that the treaty was void. Hence its claim that the treaty was invalid could not be heard.²²⁴ In the first case (*Norwegian* Fisheries), the passivity had been upheld for a very long time; thus, a legitimate expectation in the acceptance could build up. In the second case (King of Spain),

²¹⁸ On such factors, see P Reuter, 'Pleadings for Cambodia, *Temple of Preah Vihear* case' (1962) I *ICJ Pleadings* 203; Müller, *Vertrauensschutz* 39; G Sperduti, 'Prescrizione, consuetudine e acquiescenza in diritto internazionale' (1961) 44 *RDI* 9.

²¹⁹ G Schwarzenberger, 'The Fundamental Principles of International Law' (1955-I) 87 *RCADI* 257: 'With the passing of time, the probability that passivity means acquiescence increases'.

²²⁰ See *Temple of Preah Vihear* (1962) *ICJ Reports* 6ff. On this case in our context: Müller, *Vertrauensschutz* 22ff; JP Cot, 'L'affaire du *Temple de Préah Vihéar* (fond)' (1962) 8 *AFDI* 217ff; E Pecourt Garcia, 'El principio del 'estoppel' y la sentencia del Tribunal Internacional de Justicia en el caso del *Templo de Preah Vihear*' (1963) 16 *REDI* 153ff; JHW Verzijl, 'Case Concerning the Temple of Préah Vihéar' (1962) 9 *NTIR* 238.

Norwegian Fisheries case (1951) ICJ Reports 138–39. In particular, the UK has not protested against these limits from 1869 to 1933.

²²² Arbitral Award Made by the King of Spain (1960) ICJ Reports 203, 210ff, the period spanning from 1906 to 1912.

²²³ Temple of Preah Vihear (1962) ICJ Reports 23, 27ff, the period spanning from 1908 to 1958.

²²⁴ Territorial and Maritime Dispute (Nicaragua v Colombia, Preliminary Objections) (2007-II) ICJ Reports 859, § 79–80.

the validity of an arbitral award was at stake; the needs of stability are at their apogee with regard to such legal acts;²²⁵ and therefore, a relatively short period of passivity, but also accompanying deeds, appeared to be entirely sufficient to allow the argument of acquiescence. In the third case (*Preah Vihear*), the passivity was accompanied by a series of active deeds, which pointed in the same direction, namely acceptance; thus, fifty years seemed a time long enough to build up a legitimate expectation, even if in this case national territory (ie a sensitive matter) was at stake. The same is true for the fourth case (*Territorial and Maritime Dispute*).

B. Knowledge of the Facts

It is reasonable and fair to expect a reaction to facts (and also to sanction passivity) only when a subject has knowledge of those facts. If it had not, it could not be expected to react. This is the main meaning of the formula si loqui potuisset: one can speak only if one knows the underlying facts. However, a subject may not protect its rights by simply failing to take notice of the facts surrounding it. Thus, according to a significant doctrinal opinion, the silence remains imputable to a subject if it should have known the facts by using the usual standards of due diligence (presence of non-excusable negligence). ²²⁶ To the real knowledge of facts is thus added the 'constructive knowledge' of facts. Both lead to an imputation of silence and to the operation of normative acquiescence. Notice that the addition of constructive knowledge is itself a matter of good faith: it would be preposterous to allow a subject to plead its ignorance of the facts if that ignorance is due to its proper fault (no one can take advantage of its own fault). Such a course would moreover incentive the subjects not to take cognisance of international facts—a truly inappropriate doctrine for international affairs. A precedent for constructive knowledge can be found in the famous Norwegian Fisheries case (1951). To the argument of acquiescence presented by Norway, the UK had responded with the argument that it had ignored the particular system of baselines practised by Norway. The Court had this to respond:

The Court is unable to accept this view. As a coastal State on the North Sea, greatly interested in the fisheries in this area, as a maritime Power traditionally concerned with the law of the sea and concerned particularly to defend the freedom of the seas, the United Kingdom could not have been ignorant of the Decree of 1869 which had at once provoked a request for explanations by the French Government.²²⁷

²²⁵ Expedit rei publicae, ut finis sit litium: Codex Justinianum, 7, 52, 2, Caracalla.

²²⁶ See eg Müller, *Vertrauensschutz* 41; J Bentz, 'Le silence comme manifestation de volonté en droit international public' (1963) 67 *RGDIP* 86ff; J Barale, 'L'acquiescement dans la jurisprudence internationale' (1965) 11 *AFDI* 402ff; *contra*, with hardly convincing arguments, P Cahier, 'Le comportement des Etats comme source de droits et d'obligations', *Essays in Honor of P Guggenheim* (Geneva, 1968) 237ff. For many further references, see Kolb, *Bonne* 346.

Norwegian Fisheries case (1951) ICJ Reports 139. See also, in support of that position, Separate Opinion Alvarez, ibid, 152 and Dissenting Opinion McNair, ibid, 171ff.

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The due diligence standard is evidently open to contextual interpretation. Could the standard of negligence be softened when a state is generally underdeveloped and when it is moreover in the midst of a bloody civil war? This had been pleaded in the Territorial Dispute (Eritrea v Yemen) case (1998).²²⁸ This precedent tends to show that tribunals will be slow to lower the applicable standard, so much as there is a need for a certain international stability. The fault of ignorance will be extinguished only when there is some force majeure or material impossibility which can be shown to the satisfaction of the judge or arbitrator (ad impossibile nemo tenetur). An improper organisation of the state is thus not an argument for dispensing that state from the internationally applicable legal duties. A civil war or other events of the same type may certainly be more easily be accepted as excuses under the mentioned standards, but as such they are not recognised as factors inhibiting the operation of the doctrine of normative acquiescence. If no constructive knowledge is imputed, and if there is no real knowledge of facts, the silence will not lead to an acquiescence. Ultimately, the arbitral tribunal in the Territorial Dispute case accepted constructive knowledge with regard to a published Petroleum Agreement between Yemen and Shell, since 'with a sufficient diligence it could have been known to Ethiopia', which however failed to issue a protest.²²⁹ The argument that Ethiopia was a poor country ridden by civil war did not alter this finding. This precedent thus perfectly fits the Norwegian Fisheries jurisprudence.

C. Silence in Face of a Duty to React

There is no general rule in international law according to which each silence leads to acquiescence.²³⁰ In other words, acquiescence attaches legal consequences not to silence in general, but to a 'qualified silence', ie to a silence held although there was a legal duty to react in order to protect one's own rights.²³¹ The silence is relevant si loqui potuisset ac debuisset; note the conjunctive in the past, 'if it could and should have spoken' at the relevant time in the past (and not: si loqui debuit ac

²²⁸ Territorial Dispute (Eritrea v Yemen) (1998) 114 ILR 102.

²³⁰ Such a rule has however been—rarely—upheld: see eg J Kunz, 'Protest' in: K Strupp (ed), Wörterbuch des Völkerrechts, vol II (Berlin, 1924) 329. Contra, rightly, D Anzilotti, Corso di diritto internazionale (Rome, 1928) 309.

²³¹ See the many references in Kolb, *Bonne* 347. See the *Pulau Ligitan and Pulau Sipadan* case (2002) ICJ Reports 650, § 48, the Court holding that the UK had no duty to react when a document had not been officially communicated to it. By the same token, a state has no duty to protest against maps deprived of probative value: see Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (2007-II) ICJ Reports 692, § 97, argument of Nicaragua. Contrariwise, silence kept during the negotiations of a peace treaty on the issue of reparations can be interpreted as a waiver: see P d'Argent, Les réparations de guerre en droit international public (Brussels, 2005) 224, fn 757, for the '2+4 Treaty' on Germany (1990). If a state fails to object to a certain course of conduct, but indicates that in its view the question is not yet settled, no acquiescence can be derived: Polish Postal Service at Danzig advisory opinion (1925) PCIJ ser B, no 11, pp 31–32.

potuit, 'if it could and should speak' now). The silence is relevant only if there is a legal duty to oppose a claim or to react to an adverse fact by way of protest.²³² Customary international law provides for such a duty to react in three cases. The first two cases are based on specific norms while the last is based on a general clause.

- *First*, the duty to react can be based on a norm contained in a treaty, eg in opting out-systems,²³³ or article 20, § 5, of the VCLT of 1969 requiring a reaction to a reservation within 12 months if some other treaty party does not want to accept it.²³⁴ Similarly, under article 89, § 2, of the Rules of Court (1978), the ICJ shall in some circumstances fix a time-limit within which the respondent may state whether it opposes a discontinuance of the proceedings; if there is no objection before the expiration of that time-limit, acquiescence will be presumed.²³⁵ Still, article 5, § 1, of the Vienna Convention on Diplomatic Relations of 1961, stipulates that absence of objection to the multiple accreditation of a diplomat within a reasonable time is tantamount to acquiescence.²³⁶
- Second, such a duty may flow from some generally accepted practice within an institutional setting. Thus, the interpretations of the Secretariat of the ILO on international conventions on labour, communicated to the member states, are considered to have been accepted by the latter if there is no objection.²³⁷
- *Third*, the duty to react can flow directly from general international law under the aegis of the principle of good faith.²³⁸ There is such a duty to react each time, according to the circumstances, it appears to be contrary to good faith to keep silent and thereafter to claim that certain facts cannot be opposed to

²³² H Lauterpacht, 'Sovereignty over Submarine Areas' (1950) 27 BYIL 393ff. See the Palmas case (1928) II RIAA 866; Honduras Boundaries (1933) II RIAA 1327ff; Pensions of Officials of the Saar Territory (1934) III RIAA 1563; Venezuelan Preferential Rights (1904) IX RIAA 109; Fabiani (1905) X RIAA 120; the Cravairola Alp case, in H La Fontaine, Pasicrisie internationale (Bern, 1902) 208.

²³³ See J Klabbers, *An Introduction to International Institutional Law*, 2nd edn (Cambridge, 2009) 199–200.

²³⁴ '[A] reservation is considered to have been accepted by a State if it shall have raised no objection to the reservation by the end of a period of twelve months after it was notified of the reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is the later'. See the short commentary in ME Villiger, *Commentary on the 1969 Vienna Convention on the Law of Treaties* (Leiden, 2009) 293.

²³⁵ See, under the old art 69 of the Rules of Court of 1948, the *Barcelona Traction* case (New Application, Preliminary Objections), (1964) *ICJ Reports* 20.

²³⁶ See the Legal Note of the Swiss Directorate of Public International Law to the Department of Foreign Affairs, 2 December 1980, (1981) 37 ASDI 263.

²³⁷ See CW Jenks, 'The Interpretation of International Labour Conventions by the International Labour Office' (1939) 20 *BYIL* 133; CW Jenks, 'The Corpus Iuris of Social Justice' in: CW Jenks, *Law, Freedom and Welfare* (London and New York, 1963) 121–22; N Valticos, *Droit international du travail*, 2nd edn (Paris, 1983) 134–35.

²³⁸ J Bentz, 'Le silence comme manifestation de volonté en droit international public' (1963) 67 *RGDIP* 59.

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oneself. There are different contextual factors to be considered in establishing this duty:

- (i) the past pattern of conduct of the concerned state, which can lead to a legitimate expectation that in similar circumstances a similar attitude will be followed, eg that a protest will be voiced where it had been analogously voiced in the past;
- the nature of the legal relationship, when the need of legal stability and (ii) certainty is particularly important as for example for the validity of arbitral awards:
- (iii) the closeness of the relations of the parties between or among themselves, which can sharpen the expectations (eg neighbourhood, alliances, vassalage, etc);
- the importance and gravity of the interests at stake for the third state, eg when the latter engages in onerous and intense activities in the belief of the existence of its rights;
- if the claim of a third entity affects the legally protected interests of another subject of law there is a duty to react.²³⁹
- As can be seen, these factors correspond in part to the ones which are to be taken into account for the computation of the relevant time-span for admitting an acquiescence. Notice that there is no duty to react if and when the attitude of the other subject of law remains ambiguous, unclear and uncertain. A protest may here be entered ex abundante cautela, but there is no legal disadvantage if none is made. A protest could not be expected in good faith in the face of such an unclear attitude.²⁴⁰

In the formula si loqui potuisset ac debuisset (which the ICJ used in the Temple case of 1962),²⁴¹ there are two limbs: can and shall. The 'can' refers to the knowledge of the relevant facts (see above) but also to the absence of coercion. If there is coercion or impossibility,²⁴² a subject cannot speak (freely); and thus the silence will not be imputed to that subject for the purposes of an acquiescence. It would also be possible to say that in such cases there is simply no duty to speak out. The second term is 'shall'. This is the truly controlling concept. It explains that we are dealing here with a normative doctrine, not simply with a tacit but real intent. Thus, for example, a state must not react to a writ from a municipal tribunal to appear, since it can rely on the general understanding that it is the matter of the territorial state to respect its jurisdictional immunities. Silence in face of the summation to appear cannot therefore be interpreted as acquiescence. There cannot

²³⁹ See eg M Akehurst, 'Custom as a Source of International Law' (1974/75) 47 BYIL 40; L Oppenheim (R Jennings and A Watts, eds), International Law, 9th edn (London, 1992) 1195.

²⁴⁰ See the Mount Fitzroy Boundary (Argentina/Chile) (1994) 113 ILR 78–79.

²⁴¹ Temple (1962) ICJ Reports 23.

²⁴² Thus, for example, the doctrine of acquiescence cannot be applied to the UN Security Council. The fact that the Council does not react to an armed aggression does not mean that it acquiesces into it; the Council may just be impeded to speak out by a veto, possibly that of the state being itself the aggressor. See Y Dinstein, War, Aggression, Self-Defense, 3rd edn (Cambridge, 2001) 272.

be any legitimate expectation to that end, and international practice buttresses this position. 243

International case law illustrates the preceding positions. In the *Grisbadarna* case (1909), Sweden's passivity had a particular relevance in regard of the neighbourhood of the two concerned states and of the considerable investments on the spot made by Norway.²⁴⁴ In the *Norwegian Fisheries* case (1951), the long-standing maritime power tradition of the UK and its particular interest in the fisheries of the concerned region founded—and also increased—the expectation of a reaction on its part.²⁴⁵ In the already quoted *King of Spain Award* case of 1960, as well as in the *Temple* case of 1962, the duty flowed from a particular exigency of legal stability with regard to the arbitral awards on the one side, and the stability of boundaries on the other.²⁴⁶

A further interesting precedent is the *Territorial Dispute* arbitration between Eritrea and Yemen (1998). The duty to react was here qualified by a series of contextual factors:²⁴⁷ (i) the remoteness of the island whose sovereignty was contested, its uninhabited character and the lack of lines of communication near the island; (ii) the fact that patrols took place at night during darkness; (iii) the fact that many patrols were conducted at high speed; (iv) the fact that civil hostilities were in progress. It may be asked whether all these factors really impacted on the duty to protest (or the significance of lack of protest), or whether they should not rather have been analysed under the heading of knowledge of the relevant facts.

There are two arguments cautioning for a limitation or for exceptions to this overall approach on the duty to react. First, it has been argued that states sometimes abstain from protesting because they know that their protest will be ineffective.²⁴⁸ This statement manifestly begs the question. In reality, the protest may well be wholly ineffective in the sense that it is unable to reverse the facts created by some other entity. But it is not ineffective from the legal point of view, in that it protects the protesting state from being considered to have acquiesced in the facts. Second, it has been said that a protest is often omitted in order not to strain the relations with some other state, eg a powerful ally or enemy, or some other subjectively important state.²⁴⁹ But the price to pay for such policy-considerations is the possible loss of a right through acquiescence.²⁵⁰ Good faith-reliance is stronger than equity-considerations related to power, which remain legally elusive. The need

²⁴³ See eg H Damian, Staatenimmunität und Gerichtszwang (Berlin, 1985) 40.

²⁴⁴ Grisbadarna (1909) XI RIAA 147ff.

²⁴⁵ Norwegian Fisheries (1951) ICJ Reports 139.

²⁴⁶ On the stability of boundaries, see G Abi-Saab, 'La pérennité des frontières en droit international' (1990) 64 *Relations internationales* 341ff. For a critical analysis, see G Giraudeau, *Les différends territoriaux devant le juge international, Entre droit et transaction* (Leiden, 2013) 281ff.

²⁴⁷ Territorial Dispute (1998) 114 ILR 84, § 306.

²⁴⁸ A D'Amato, The Concept of Custom in International Law (Ithaca NY, 1971) 195–96.

²⁴⁹ See eg the argument of France (through A Gros) in the *Minquiers and Ercrehos* case, (1953) II *ICJ Pleadings* 261ff (he however also quotes some protests).

As has been rightly noted: La concezione dell'acquiescenza ... comporta che, se acquiescenza si è avuta, non valga poi a privarla di efficacia la dimostrazione che essa fu dovuta a questa o quella particolare ragione': G Sperduti, 'Prescrizione, consuetudine, acquiescenza' (1961) 44 *RDI* 8.

for clarification and reliance is pre-eminent with respect to the various possible calculi of foreign policy which a state can make. This is borne out by international practice, the *Temple* case of 1962 being authority for that.

International case law is extremely rich with regard to judgments or awards making some place to acquiescence arguments. For example, the following cases can be mentioned: *Montijo* (1875),²⁵¹ *Grisbadarna* (1909),²⁵² *Palmas* (1928),²⁵³ *Sovereignty over Certain Frontier Land* (1959),²⁵⁴ *Arbitral Award Made by the King of Spain* (1960),²⁵⁵ *Temple of Preah Vihear* (1962),²⁵⁶ *Rann of Kutch* (1968),²⁵⁷ *Continental Shelf (Tunisia/Libya)* (1982),²⁵⁸ *Delimitation of the Maritime Boundary in the Gulf of Maine Area* (1984),²⁵⁹ *Fileting in the Gulf of Saint-Laurent* (1985),²⁶⁰ *Land, Island and Maritime Frontier Dispute* (*El Salvador/Honduras*) (1992);²⁶¹ etc.

The norms on acquiescence are not *jus cogens*. Acquiescence can be altered by a contrary treaty provision; and it can also be altered by practice of the concerned states. Thus, article 4, § 2, of the Antarctic Treaty of 1959 excludes acts or omissions (silences) for territorial claims over that continent. The land shall remain subjected to the regime provided for in the treaty itself.²⁶² By the same token, practice has accepted that provisional de facto or *modus vivendi* lines in maritime spaces, pending the final delimitation of the boundary, shall not give rise to binding obligations under the doctrine of acquiescence. If it were otherwise, no state would any more agree to such provisional lines for fear of being thereafter trapped. Consequently, the provisional administration and exploitation of such areas would thus be jeopardised. An acquiescence can however operate as to the *provisional* nature of such lines; but it cannot be transformed, if there are no special circumstances, into an acquiescence as to the *final* boundary.²⁶³

- ²⁵¹ PM Eisemann and V Coussirat-Coustère, *Repertory of International Arbitral Jurisprudence*, vol I (Dordrecht, 1991) 45–46.
 - ²⁵² Grisbadarna (1909) XI RIAA 155ff.
 - ²⁵³ Palmas (1928) II RIAA 866. Müller, Vertrauensschutz 51ff.
 - ²⁵⁴ Sovereignty over Certain Frontier Land (1959) ICJ Reports 209.
- ²⁵⁵ Arbitral Award Made by the King of Spain (1960) ICJ Reports 209, 213–14. See also Separate Opinion Spender, ibid, 219–20; Separate Opinion Urrutia Holguín, ibid, 222.
- ²⁵⁶ Temple of Preah Vihear (1962) ICJ Reports 23–24, 32 and Separate Opinion Fitzmaurice, ibid, 62–63. Müller, Vertrauensschutz 43ff.
 - ²⁵⁷ Rann of Kutch (1968) 50 ILR 8ff. Müller, Vertrauensschutz 48ff.
 - ²⁵⁸ Continental Shelf (Tunisia/Libya) (1982) ICJ Reports 83–84, 87; Separate Opinion Ago, ibid, 95ff.
 - ²⁵⁹ Delimitation of the Maritime Boundary in the Gulf of Maine Area (1984) ICJ Reports 304–05.
- ²⁶⁰ Fileting in the Gulf of Saint-Laurent (1985) 82 ILR 619, § 37. See also Dissenting Opinion Pharand, ibid, 652, § 47: 'France's acceptance and compliance with the Canadian regulatory system constitutes an acquiescence in that system'.
- ²⁶¹ Land, Island and Maritime Frontier Dispute (El Salvador/Honduras) (1992) ICJ Reports 408–09, and also 577–79, with regard to the island of Meanguera. See E Decaux, 'Le différend frontalier terrestre, insulaire et maritime (El Salvador/Honduras)' (1992) 38 AFDI 409ff, 418ff.
 - ²⁶² See the text of the Treaty, (1960) 54 *AJIL* 476ff.
- ²⁶³ See Continental Shelf case (Tunisia and Libya) (1982) ICJ Reports 83–84, 87; and Maritime Delimitation in the Area between Greenland and Jan Mayen case (1993) ICJ Reports 53–56. See also the Newfoundland and Nova Scotia arbitration (Second Phase, 2002) 128 ILR 544, § 3.6. For a series of different maritime activities and estoppel and acquiescence, see the Barbados and Trinidad and Tobago arbitration (2006) 139 ILR 553–54, § 361–66.

As a last aspect, it must be noticed that acquiescence can also be used for other purposes than the one to bind a state to a certain legal position. Thus, the absence of protest can be a hint that a state does not regard itself as having sovereignty over a certain land or island, since otherwise it would in all probability have protested adverse action. Similarly, the failure to protest to some petroleum agreements of the adverse party may be read by a tribunal as a further element in support for a median line min the delimitation exercise.

Overall, acquiescence is a powerful legal tool for the stabilisation of international legal relations. It flows directly from the genetic code of the principle of reliance on good faith.

XII. Good Faith and Estoppel

Analogously to acquiescence, estoppel aims at stabilising bilateral legal relationships. Legitimate expectations deliberately created by some conduct should not lead to a detriment for the relying party. ²⁶⁶ Contrary to acquiescence, which can be collective (the Court in the *Norwegian Fisheries* case of 1951 spoke of the 'general

²⁶⁴ Territorial Dispute arbitration between Eritrea and Yemen (1998) 114 ILR 84, § 307.

²⁶⁵ ibid, 114, § 438.

²⁶⁶ On the notion of estoppel in international law, see: W Friede, 'Das Estoppel-Prinzip im Völkerrecht' (1935) 5 ZaöRV 517ff; DW Bowett, 'Estoppel Before International Tribunals and its Relations to Acquiescence' (1957) 33 BYIL 176ff; IC McGibbon, 'Estoppel in International Law' (1958) 7 ICLQ 468ff; E Menzel, 'Estoppel', in K Strupp and HJ Schlochauer (eds), Wörterbuch des Völkerrechts, 2nd edn, vol I (Berlin, 1960) 441-42; F Mosconi, 'La dottrina dell'estoppel in diritto internazionale' (1962) 16 (4) Diritto internazionale 388ff; E Pecourt Garcia, 'El principio del 'estoppel' en el derecho internacional público' (1962) 15 REDI 98ff; E Pecourt Garcia, 'El principio del 'estoppel' y la sentencia del Tribunal internacional de Justicia en el caso del Templo de Preah Vihear' (1963) 16 REDI 153ff; JV Louis, 'L'estoppel devant la Cour internationale de Justice' (1965) 42 Revue de droit international et de droit comparé 212ff; M Akehurst, 'Le principe de l'estoppel en droit administratif international' (1966) 92 JDI 285ff; C Dominicé, 'A propos du principe de l'estoppel en droit des gens', in Essays in Honor of P Guggenheim (Geneva, 1968) 327ff; C Vallée, 'Quelques observations sur l'estoppel en droit des gens' (1973) 77 RGDIP 949ff; A Martin, L'estoppel en droit international public (Paris, 1979); YI Youakim, 'Estoppel in International Law' (PhD thesis, Cornell University, Michigan, 1985; published 1994); T Nöcker and G French, 'Estoppel: What's the Government's Word Worth? An Analysis of German Law, Common Law Jurisdiction and of the Practice of International Arbitral Tribunals' (1990) 24 International Lawyer 409ff; FV Kramer, 'Actos convencionales y no convencionales—Ratificación, acquiescencia y estopell' Essays in Honor of E Jiménez de Aréchaga (El derecho internacional en un mundo en transformación), vol II (Montevideo, 1994) 963ff; C Brown, A Comparative and Critical Assessment of Estoppel in International Law' (1996) 50 University of Miami Law Review 369ff; I Sinclair, 'Estoppel and Acquiescence' in Essays in Honor of RY Jennings (Cambridge, 1996) 104ff; KS O'Brien, 'Representation in the Doctrine of Estoppel in International Law' (2011) 3 Irish Yearbook of International Law 69ff; JP Müller and T Cottier, 'Estoppel' in R Wolfrum (ed), The Max Planck Encyclopedia of Public International Law, vol III (Oxford, 2012) 671ff; A Kulick, 'Estoppel im Völkerrecht: Antworten auf drei dogmatische Fragen' (2014) 52 AVR 522ff; See also Separate Opinion Alfaro, Temple of Preah Vihear case (1962) ICJ Reports 39ff; and Concurring Opinion Cançado Trindade, Right to Information on Consular Assistance advisory opinion (1999) 154, ILR 339-41 (IACtHR). See further: H Lauterpacht, Private Law Sources and Analogies of International Law (London, 1927) 203ff; B Cheng, General Principles of Law—As Applied by International Courts and Tribunals (London, 1953) 141ff; H Lauterpacht,

Annex 126 M. Kamto, "Considérations actuelles sur la méthode de délimitation maritime devant la Cour internationale de Justice. De charybde en scylla ?" in *Mélanges Momtaz* (Brill Nijhoff 2017).

Considérations actuelles sur la méthode de délimitation maritime devant la Cour internationale de Justice. De charybde en scylla?

Maurice Kamto

Ceci n'est pas un discours de la méthode; c'est, plus modestement, un discours sur la méthode: celle de la Cour internationale de Justice en matière de délimitation maritime. Nul n'ignore l'importante contribution du dédicataire de la présente contribution au droit de la mer: à son élaboration au cours des négociations sans précédent de la IIIe Conférence des Nations Unies sur le droit de la mer comme à son éclairage doctrinal sur divers aspects de cette matière. Jeter un regard sur la question complexe de la méthode de délimitation maritime devant la Cour internationale de Justice pour lui rendre un hommage mérité, ne m'a pas paru incongru.

La tâche de la Cour en la matière n'est pas facile, car la délimitation consiste en l'application d'une méthode ou d'une combinaison de méthodes techniques prévues dans un texte juridique particulier ou en droit international en général, en vue de la détermination des espaces maritimes respectifs de deux ou plusieurs Etats. Elle mêle considérations juridiques et données géographiques et factuelles.

La Cour a été vivement critiquée dans la passé sur sa méthode, ou plutôt sur son manque de méthode en matière de délimitation maritime. Cette critique semble avoir influencé significativement l'évolution de sa jurisprudence en la matière. Au fil de sa riche jurisprudence, elle a changé de cap tout en revendiquant la continuité. D'aucuns diront qu'elle a affiné sa méthode. Tout montre aujourd'hui qu'elle en a changé. L'exercice de composition a progressivement cédé la place à une construction géométrique structurée en phases. La Cour croit désormais avoir trouvé, enfin, une méthode satisfaisante de délimitation maritime. Elle semble s'y tenir d'autant plus fermement qu'elle est suivie en la matière par d'autres juridictions internationales. Pour autant, la méthode qui prévaut aujourd'hui devant elle est-elle vraiment en accord avec la lettre et l'esprit du droit de la délimitation maritime telle qu'il se dégage de sa jurisprudence de la seconde moitié du xxe siècle, consacrée par la Convention des Nations Unies sur le Droit de la Mer¹ (CNUDM)?

¹ Nations Unies, Recueil des traités, vol. 1834, p. 3.

de définir les moyens par lesquels la délimitation peut être fixée de manière à être reconnue comme équitable⁸⁹.

Sur la toile de fond de cette jurisprudence inaugurale, deux positions s'affrontèrent au cours des négociations à la IIIe Conférence sur le droit de la mer. En dépit de l'arrêt de 1969, certains Etats ont continué à soutenir que la délimitation du plateau continental devrait se faire par application de la ligne médiane ou de l'équidistance couplée avec les circonstances spéciales. Au contraire, dans le sillage de cette jurisprudence, d'autres Etats ont soutenu que la délimitation devait mettre l'accent sur l'affirmation des principes équitables. Les propositions reflétant ces deux positions furent faites dès la session de 1973 du Comité des fonds marins. A la deuxième session de la Conférence en 1974, plusieurs nouvelles propositions furent faites avec des différences sur le point de savoir dans quelle mesure le principe d'équidistance, les principes équitables, les circonstances spéciales et le droit international devraient être pris en compte. Une proposition de la Turquie - remplaçant sa proposition au Comité des fonds marins – centrée sur la délimitation faite conformément aux principes équitables et consacrant en définitive la primauté de ces principes dans la méthode de délimitation du plateau continental, fut clairement affirmée lors des négociations de la Convention de Montego Bay90.

Ainsi, en retenant la méthode de l'équidistance-circonstances pertinentes avec primauté évidente à l'équidistance, la Cour valide une position qui n'avait pas pu s'imposer lors des négociations de la CNUDM, en particulier s'agissant de la délimitation du plateau continental⁹¹. Certes, elle s'ouvre quelquefois à d'autres méthodes. Mais cela est si rare qu'il s'agit de l'exception qui confirme la règle. C'est bien à tort, car le choix d'une méthode ne doit pas être prédéterminé; c'est chaque cas qui dicte la méthode pertinente au regard de la fin ultime de toute délimitation qui est le résultat équitable.

2.2 L'ouverture judicieuse à d'autres méthodes et approches de délimitation

Des alternatives à la méthode de l'équidistance, ajustée ou non, existent et sont consacrées par le droit de la délimitation maritime (1). La Cour n'est évidemment pas ignorante de cela puisqu'elle a eu à appliquer une méthode différente de celle

⁸⁹ Ibid., p. 50, par. 92.

⁹⁰ Voir, United Nations Convention on the Law of the Sea 1982 A Commentary, op. cit., note 76, p. 953 et s.

Sur les tentatives pour faire triompher cette position, voir *United Nations Convention on the Law of the Sea 1982 A Commentary*, ibid., p. 965.

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partant de l'équidistance, fut-ce à titre exceptionnelle. On ne peut manquer de relever son souci d'améliore sa méthode; il y a lieu de mettre à ce compte la récente nomination par la Cour des experts dans une affaire de délimitation avant la détermination de la méthode qu'elle appliquera dans l'espèce en question (2).

2.2.1 Des alternatives à l'équidistance/équidistance-circonstances spéciales

Il ressort de l'examen du droit positif de la mer, deux constats à propos de la délimitation maritime : d'une part, l'objectif de toute délimitation maritime est – ou doit être – la recherche d'une solution équitable (a) ; d'autre part, l'équidistance n'est pas une méthode objective dans tous les cas, ni une méthode prioritaire (b).

2.2.1.1 L'objectif de toute délimitation maritime est la recherche d'une solution équitable

Alors que l'article 15 de la CNUDM prescrit, comme on l'a vu, le recours à la méthode d'équidistance – laquelle ne s'applique pas en cas d'accord contraire entre les États concernés ou en raison de l'existence de titres historiques ou d'autres circonstances spéciales ou pertinentes – les articles 74 sur la ZEE et 83 sur le plateau continental, aux dispositions parfaitement symétriques, sont dépourvus de tout caractère normatif. Ils se contentent de déterminer le but à atteindre. Comme la Cour le dira dans son arrêt du 3 juin 1985 en l'affaire du Plateau continental (Jamahiriya arabe libyenne/Malte), « [1]a Convention fixe le but à atteindre, mais elle est muette sur la méthode à suivre pour y parvenir. Elle se borne à énoncer une norme et laisse aux États et au juge le soin de lui donner un contenu précis »92. Le but à atteindre est une solution équitable, qui tient compte notamment des caractéristiques géographiques des côtes pertinentes. C'est bien ce que la Cour a établi dès son arrêt de 1969. Elle le réaffirme dans son arrêt du 14 juin 1993 en l'affaire de la Délimitation maritime dans la région située entre le Groenland et Jan Mayen (Danemark c. Norvège) en indiquant que « [1]e but, dans toute situation, quelle qu'elle soit, doit être d'aboutir à un « résultat équitable » »93. La sentence arbitrale rendue en l'affaire de la Délimitation du plateau continental entre le Royaume-Uni de Grande-Bretagne et la République française contient un dictum similaire⁹⁴. Comme l'a dit un commentateur de cet arrêt « [l]e droit n'est pas à lui-même son propre but,

⁹² Affaire du *Plateau continental (Jamahiriya Arabe Libyenne/Malte), op. cit.*, note 17, p. 30, par. 28.

⁹³ Affaire de la Délimitation maritime dans la région située entre le Groenland et Jan Mayen, op. cit., note 21, p. 62, par. 54.

⁹⁴ Recueil des Sentences Arbitrales, vol. xVIII, p. 188, par. 97.

mais est destiné à accomplir la justice, à parvenir à des résultats équitables »⁹⁵. La jurisprudence internationale en matière de délimitation maritime restera pendant près de deux décennies dans cette logique finaliste de la délimitation.

L'objectif de la délimitation étant ainsi déterminé, il n'est pas impératif de baser la délimitation sur une ligne provisoire d'équidistance quitte à vérifier ensuite si elle est particulièrement préjudiciable pour un État, afin de l'ajuster voire de la corriger, ou de l'écarter purement et simplement au profit d'une autre ligne tracée en application d'une autre méthode. La Cour peut choisir d'emblée cette autre méthode ou même une combinaison de méthodes de délimitation. Une telle démarche trouverait appui dans la jurisprudence de la Cour, notamment dans un autre dictum contenu dans l'arrêt rendu en l'affaire de la Délimitation du plateau continental dans la région du Golfe du Maine (Canada/Etats-Unis) selon lequel:

[1]a pratique, d'ailleurs, bien qu'encore peu abondante à cause de la nouveauté relative de la matière, est là pour démontrer que chaque cas concret est finalement différent des autres, qu'il est un *unicum*, et que les critères les plus appropriés et la méthode ou la combinaison de méthodes la plus apte à assurer un résultat conforme aux indications données par le droit, ne peuvent le plus souvent être déterminés que par rapport au cas d'espèce et aux caractéristiques spécifiques qu'il présente⁹⁶.

2.2.1.2 L'équidistance n'est ni une méthode obligatoire ni une méthode prioritaire

Les différentes méthodes de délimitation doivent poursuivre la finalité de la solution équitable; car, faut-il le rappeler, il existe plusieurs autres méthodes de délimitation en dehors de l'équidistance-circonstances spéciales. Par exemple, la perpendiculaire à la direction générale de la côte, l'adoption de parallèles de latitude ou des méridiens de longitude, la méthode de la bissectrice, la méthode de couloir qui permet à l'État côtier de jouir de l'ensemble des zones maritimes que génère sa côte, ou encore la méthode d'enclavement des îles, en cas de délimitation dans une zone comportant des îles. Il est à noter qu'il n'existe pas, juridiquement, de hiérarchie entre les différentes méthodes de délimitation. Par ailleurs, rien n'empêche aux États ou au juge international

⁹⁵ F. Monconduit, « Affaires du Plateau continental de la Mer du Nord : République fédérale d'Allemagne c. Danemark et République fédérale d'Allemagne c. Pays-Bas, arrêt du 20 février 1969 », *Annuaire français de droit international*, vol. 15, 1969, p. 238.

⁹⁶ Affaire de la *Délimitation du plateau continental dans la région du Golfe du Maine, op. cit.*, note 14, p. 290, par. 81.

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de recourir à une combinaison de ces méthodes dans le cadre d'une délimitation maritime.

Bien que la méthode d'équidistance (circonstances-spéciales) semble aujourd'hui la plus utilisée, l'on ne doit pas perdre de vue qu'en référence à cette méthode, la CIJ avait déclaré: dans l'arrêt de 1969, dans un *dictum* resté célèbre, qu'

il est probablement exact qu'aucune autre méthode de délimitation ne combine au même degré les avantages de la commodité pratique et de la certitude dans l'application. Toutefois cela ne suffit pas à transformer une méthode en règle de droit et à rendre obligatoire l'acceptation de ses résultats chaque fois que les parties ne se sont pas mises d'accord sur d'autres dispositions ou que l'existence de circonstances spéciales ne peut être établie. Juridiquement, si une telle règle existe, sa valeur en droit doit tenir à autre chose qu'à ces avantages, si importants soient-ils. La réciproque n'est pas moins vraie : que l'application de la méthode de l'équidistance soit obligatoire ou non, ses avantages pratiques resteront les mêmes⁹⁷.

Dans le même sens, la Cour a relevé dans l'affaire *Tunisie/Libye* que « [l]es Parties reconnaissent qu'il n'existe pas en droit international de méthode de délimitation unique et obligatoire et que l'on peut appliquer plusieurs méthodes dans une même délimitation »⁹⁸.

Il apparaît ainsi que lorsque le juge international recourt à la méthode de l'équidistance, il mobilise une méthode, sans cependant obéir à une règle de droit; il peut donc, le cas échéant, écarter la ligne d'équidistance provisoire, et utiliser toute autre méthode qui, à ses yeux, serait la plus à même d'aboutir à une solution équitable. La Cour s'est à nouveau exprimée en ce sens dans l'arrêt qu'elle a rendu le 8 octobre 2007 en l'affaire du *Différend territorial et maritime entre le Nicaragua et le Honduras dans la mer des Caraïbes (Nicaragua c. Honduras)*. Selon la Cour « la méthode de l'équidistance n'a pas automatiquement la priorité sur les autres méthodes de délimitation et, dans certaines circonstances, des facteurs peuvent rendre son application inappropriée »99. Dans cette espèce, elle a écarté purement et simplement la méthode de l'équidistance-circonstances pertinentes et a recouru à la méthode de la bissectrice,

⁹⁷ Affaire du Plateau continental de la mer du Nord, op. cit., note 2, par. 23.

⁹⁸ Affaire du Plateau continental (Tunisie/Libye), op. cit., note 36, p. 79, par. 111.

Affaire du Différend territorial et maritime entre le Nicaragua et le Honduras dans la mer des Caraïbes, op. cit., note 55, p. 741, par. 272.

considérant que les circonstances de l'espèce ne se prêtaient pas à la mise en œuvre de la première.

Mais deux ans plus tard seulement, la même Cour a déclaré, dans son arrêt rendu à l'unanimité de ses membres le 3 février 2009 en l'affaire de la Délimitation maritime en mer Noire (Roumanie c. Ukraine), que « [1] orsqu'il s'agit de procéder à une délimitation entre côtes adjacentes, une ligne d'équidistance est tracée, à moins que des raisons impérieuses propres au cas d'espèce ne le permettent pas »100. La Cour a insisté sur le caractère impérieux des raisons pouvant l'amener à écarter la méthode de l'équidistance-circonstances pertinentes et a renvoyé pour justifier cette position au paragraphe 281 de l'arrêt Nicaragua/Honduras ci-dessus cité. De la sorte, elle a confirmé que l'équidistance était à ses yeux la méthode, celle qui a la primauté sur les autres, auxquelles elle ne peut recourir qu'exceptionnellement, pour des « raisons impérieuses ». Une telle position contredit sa jurisprudence antérieure qui affirme, comme on l'a vu, qu'aucune méthode n'est obligatoire ou prioritaire!

Théoriquement, un nombre indéterminé de circonstances pertinentes sont susceptibles d'être prises en considération aux fins d'une délimitation équitable. Néanmoins, il ressort tant de la pratique des Etats que de la jurisprudence que ce sont les caractéristiques géographiques de la côte pertinente qui jouent un rôle crucial dans la détermination des facteurs à prendre en considération aux fins de la délimitation. Il s'agit, en général, de la configuration générale de la côte, de la longueur relative des côtes des États en cause et de l'influence de la présence des îles. Les autres considérations – économiques, politiques ou historiques – ne sont souvent invoquées que pour étayer les considérations géographiques.

Ces considérations géographiques constituent des données brutes à prendre comme telles par le juge. Dans l'arrêt rendu en 1984 en l'affaire de la Délimitation de la frontière maritime dans la région du golfe du Maine golfe du Maine, la Chambre de la Cour a indiqué que « les faits géographiques ne sont pas le produit d'une activité humaine passible d'un jugement positif ou négatif, mais le résultat de phénomènes naturels et ne peuvent donc qu'être constatés tels qu'ils sont »¹⁰¹. Dans l'affaire de la Frontière terrestre et maritime entre le Cameroun et le Nigéria (Cameroun c. Nigéria; Guinée équatoriale (intervenant)), la Cour a résumé sa philosophie en la matière en ces termes : « La configuration géographique des espaces maritimes que la Cour est appelée à délimiter est une donnée. Elle ne constitue pas un élément que la Cour pourrait modifier,

¹⁰⁰ Affaire Roumanie c. Ukraine, op. cit., note 47, p. 101, par. 116 (non souligné dans l'original).

¹⁰¹ Affaire de la *Délimitation de la frontière maritime dans la région du golfe du Maine, op. cit.*, note 14, p. 271, par. 31.

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mais un fait sur la base duquel elle doit opérer la délimitation ». Comme la Cour a eu l'occasion de le dire dans les affaires du Plateau continental de lu mer du Nord, « [1]'équité n'implique pas nécessairement l'égalité », et lors d'un exercice de délimitation « [i]l n'est jamais question de refaire la nature entièrement »102. Si certaines particularités géographiques des espaces maritimes à délimiter peuvent être prises en compte par la Cour, c'est uniquement au titre de circonstances pertinentes aux fins, le cas échéant, d'ajuster ou de déplacer la ligne provisoire de délimitation. Ici encore, comme la Cour l'a décidé dans les affaires du Plateau continental de la mer du Nord, toutes les particularités géographiques ne doivent pas être nécessairement prises en compte par la Cour pour ajuster ou déplacer la ligne de délimitation provisoire : « [il ne s'agit donc pas de refaire totalement la géographie dans n'importe quelle situation de fait mais, en présence d'une situation géographique de quasi-égalité entre plusieurs États, de remédier à une particularité non essentielle d'où pourrait résulter une injustifiable différence de traitement » (CIJ Recueil 1969, p. 50, par. 91) »103.

Le choix de la méthode pertinente dans un cas donné est tributaire d'une bonne appréciation des caractéristiques géographiques des côtes des Etats considérés dans la zone à délimiter. Un moyen sûr pour la Cour de prendre l'exacte mesure de la configuration géographique des espaces maritimes en question est de s'appuyer sur l'avis des experts (géographes, topographes, cartographes etc.) avant de se déterminer sur une méthode. C'est ce que la Cour a fait récemment dans l'affaire Délimitation maritime dans la mer des Caraïbes et l'océan Pacifique (Costa Rica c. Nicaragua) dont elle a été saisie en 2014.

2.2.2 Le recours à l'éclairage des experts avant le choix d'une méthode, une démarche susceptible d'aider à l'atteinte d'un résultat équitable

Suite à l'instance introduite par la Costa Rica contre le Nicaragua, par requête déposée au Greffe de la Cour le 25 février 2014, au sujet d'un différend relatif à la délimitation maritime dans la mer des Caraïbes et l'océan Pacifique, la Cour a informé les Parties que, conformément aux articles 48 et 50 de son Statut, elle envisageait « de faire procéder à une expertise dans le cadre de laquelle un ou plusieurs experts seraient chargés de rassembler, en se rendant sur place, l'ensemble des éléments factuels relatifs à l'état de la côte entre le point situé sur la rive droite du fleuve San Juan à son embouchure et le point de la côte le plus proche de Punta de Castilla, tels que ces deux points peuvent être identifiés

¹⁰² Affaire du *Plateau continental de la mer du Nord, op. cit.*, note 2, p. 49, par. 91.

¹⁰³ Affaire de la Frontière maritime (Cameroun c. Nigéria), op. cit., note 26, p. 444-445, par. 295.

questions des agents, conseils et avocats des Parties, et le cas échéant à celles de la Cour elle-même¹¹⁰.

Conclusion

La méthode de délimitation en trois étapes dégagée par la Cour paraît rationnelle; elle est en tout cas rassurante pour ceux qui croient que la délimitation maritime, même par une juridiction internationale, peut donner lieu à une mathématique juridique ou à de la géométrie judiciaire, où la perfection des tracés est la preuve d'une justice bien rendue. On peut avoir des doutes face à une telle conception du droit de la délimitation maritime. En effet, si l'on peut s'accorder sur ce qu'est géométriquement une ligne d'équidistance, l'équité de la ligne d'arrivée n'offre pas moins d'incertitude que le choix de toute autre méthode. Le contrôle de l'équité du résultat est un exercice complexe, dont on ne peut garantir la certitude technique. Le recours à la fois aux principes équitables et aux circonstances pertinentes dépend largement de l'appréciation de chaque cas particulier par le juge. L'identification des circonstances pertinentes est une tâche juridictionnelle et non une détermination normative : ces circonstances ne sont pas énoncées par une règle de droit, et même si c'était le cas, leur pondération, c'est-à-dire la manière de les prendre en considération, en l'occurrence le poids accordé à chacune d'elles, dépendrait toujours du juge.

Il n'existe pas de méthode absolue en matière de délimitation maritime; et s'il en existait une, celle qui met l'équidistance ou la médiane en son centre ne serait assurément pas la meilleure. Comme l'a dit cette Court il y a bien long-temps, chaque cas de délimitation maritime est un *unicum*, tant les situations géographiques et les circonstances pertinentes sont rarement identiques. La CNUDM donne à la Cour une boussole dans ses articles 15, 74 et 83: le tracé de la ligne de limitation doit « aboutir à une solution équitable ». Rarement l'équidistance ou la médiane permettent de parvenir à un tel résultat dès que la situation géographique et les autres circonstances à prendre en compte présentent une complexité.

Les parties à un litige porté devant la Cour n'attendent pas de celle-ci qu'elle fasse ce qu'elles-mêmes peuvent faire, mais que la Cour fasse ce qu'elles n'ont pas pu ou su faire. Certes, là où la solution du litige est contenue soit dans l'équidistance ou la médiane, soit dans la position de l'une des parties, la Cour ne peut pas faire de la distorsion juridique pour inventer une solution : elle ne peut décider d'elle-même, nous le savons, de statuer *ex aequo et bono*, ni de

¹¹⁰ Ordonnance du 31 mai 2016, *op. cit.*, note 104, par. 10.

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choisir une équité *contra legem*. Donc, s'il se trouve que la solution est inévitablement l'équidistance, comme il peut arriver dans certains cas, la Cour doit s'y tenir. Mais, là où il en va différemment, comme cela a été le cas dans plus d'une affaire portée devant cette Cour depuis *Libye/Malte*, les parties attendent de la Cour qu'elle déploie son art de juger.

En tournant le dos à sa jurisprudence antérieure à cette affaire *Libye/Malte*, la Cour espérait peut-être échapper à la critique selon laquelle elle créait le droit, parce que ses décisions manquaient de base juridique, entraînant de la sorte une incertitude chez les justiciables. Mais, ce faisant, elle s'est éloignée des acquis de sa jurisprudence depuis les affaires du *Plateau continental de la mer du Nord*. Elle s'est surtout écartée de la lettre et plus encore de l'esprit de la Convention de Montego Bay et des négociations de la IIIe Conférence des Nations Unies qui l'a produite et qui étaient animées par l'esprit de répartition équitable des espaces maritimes communs à plusieurs Etats et non pas par la solution du « *winner take all* ». La Cour semble ne plus soumettre ses décisions en la matière au test du « résultat équitable » ou de la « solution équitable », mais seulement au test de « disproportionnalité » ; ce n'est pas exactement la même chose.

Cela dit, il est heureux que la Cour, dont le pragmatisme judiciaire a toujours contribué à la qualité de ses décisions soit attentive aux vues extérieures exprimées sur ses décisions à ce sujet. Le recours à des experts pour l'aider à comprendre la géographie côtière avant de choisir ou d'appliquer une méthode doit être saluée. Même s'il est probable qu'un tel recours ne sera pas systématique, le principe en est, comme on l'a vu, désormais établi. Le plus important est que ce précédent existe. Il n'y a aucune raison pour que la Cour n'y recourt pas à nouveau si elle en éprouvait le besoin. Cela ne peut qu'améliorer et conforter la méthode qu'elle appliquera dans les cas où la zone à délimiter présente une complexité géographique, en particulier, dans les golfe à la concavité prononcée et où les côtes de plus de deux Etats se font face, ou lorsqu'il y a une présence insulaire. On peut donc espérer que la même subtile évolution ramènera la Cour sur une voie plus en accord avec la lettre et l'esprit du droit contemporain de la délimitation maritime tel qu'il est sorti des négociations de la IIIe Conférence des Nations Unies sur le droit de la mer, et a été suivi pendant un certain temps par sa propre jurisprudence.

Annex 127 Costa Rica–Nicaragua Boundary ("Cleveland Award") (1888) 2 J.B. Moore, History and Digest of the Arbitrations to which the US has been a Party 1945, p. 1961.

CHAPTER XLVII.

THE COSTA RICAN-NICARAGUAN BOUNDARY TREATY OF DECEMBER 24, 1886.

By a treaty concluded December 24, 1886, Proceedings. the republics of Costa Rica and Nicaragua agreed to submit to the President of the United States. as sole arbitrator, the question which had long been pending between them as to the validity of the "Treaty of Limits" of April 15, 1858. The acceptance by the President of the office of arbitrator was duly solicited by the ministers of the two republics at Washington, by means of notes addressed to the Secretary of State, who on the same day informed them of the President's compliance.

By one of the provisions of the treaty of arbitration, the President was authorized to delegate his powers, subject to the limitation that he should directly participate in the pronouncement of the final decision. Under this authority the President on January 16, 1888, empowered Mr. George L. Rives, Assistant Secretary of State, to examine the arguments and evidence submitted on both sides, and to make thereon, as soon as might be, a report on which his decision of the question in dispute might rest.

For. Rel. 1887, 267-268.

²The instrument by which the President delegated the authority in question to Mr. Rives was as follows:

[&]quot;[GROVER CLEVELAND, President of the United States.]

[&]quot;Whereas by convention of arbitration between the government of the republics of Costa Rica and Nicaragua, signed at Guatamala City on the 24th day of December, 1886, the high contracting parties agreed to submit to arbitration the question pending between them in regard to the validity of the treaty of limits of 15th April 1858, between the said governments, together with such other points of doubtful interpretation as may require decision in the event of the said treaty of limits being found valid.

[&]quot;And whereas under the terms of the said convention of arbitration the contracting parties have solicited my acceptance of the office of arbitrator

A copy of this order was communicated by Mr. Rives to the representatives of Costa Rica and Nicaragua on the day on which it was made.

On March 22, 1888, Mr. Bayard, as Secretary of State, inclosed to the same representatives a copy of the President's award and of Mr. Rives's report; and in due course he received from them the customary acknowledgments.

Mr. Rives's Report. The report of Mr. Rives was as follows.

"REPORT TO THE ARBITRATOR, THE PRESIDENT OF THE UNITED STATES.

"By George L. Rives, Assistant Secretary of State.

"To the PRESIDENT.

"SIR. On the 24th day of December 1886 the Republics of Costa Rica and Nicaragua, by a treaty signed on that day agreed that the question pending between the Contracting

to decide such question or questions, and the charge has been accepted by me;

"And whereas within the periods named in the said convention of arbitration the parties to the arbitration have submitted to me their respective arguments, which have been duly communicated to the opposing parties as required by said convention, and, further, the respective replies of each of the parties to the argument of the other have been laid before me in due time, so that all the evidence and arguments necessary to a decision of the point or points in dispute are before me as arbitrator thereof;

"And whereas by the final paragraph of the fifth article of the said convention of arbitration of December 24, 1886, it is provided that 'the arbitrator may delegate his powers, provided that he does not fail to intervene directly in the pronunciation of the final decision'

"Now, therefore, I, Grover Cleveland, President of the United States of America, in the capacity of arbitrator as aforesaid between the governments of the republics of Costa Rica and Nicaragua, and to the end that the fullest examination of the point or points in dispute between those governments shall be made to enable me to reach a just and equitable conclusion in the premises and pronounce a final decision or award thereon, do by this present instrument delegate my powers to George L. Rives, Assistant Secretary of State, to the extent contemplated and permitted by the aforesaid convention of arbitration, hereby enjoining the said George L. Rives to use all due circumspection and diligence in examining the arguments and evidence submitted on both sides, and to make to me, as soon as may be, report thereon for my consideration and upon which my decision of the matter in contention may rest.

Given under my hand and the scal of the United States this 16th day of January in the year of our Lord one thousand eight hundred and eighty-eight, and the Independence of the United States the one hundred and twelfth.

"GROVER CLEVELAND.

[SEAL.]
By the President:

"T. F BAYARD,

"Secretary of State.

¹For. Rel. 1888, part 1, pp. 455-456.

Governments in regard to the validity of the 'Treaty of Limits' of the 15th April 1858 should be submitted to arbitration. It was further agreed that the Arbitrator of that question should be the President of the United States of America, that within sixty days from the ratification of the Treaty of Arbitration the Contracting Governments should solicit of the Arbitrator his acceptance of the charge; that within ninety days from the notification to the parties of the acceptance of the Arbitrator, they should present to him their allegations and documents, that the arbitrator should communicate to the representative of each Government, within eight days after their presentation, the allegations of the opposing party in order that the opposing party might be able to answer them within thirty days following that upon which the same should have been communicated, that the decision of the Arbitrator must be pronounced within six months from the date upon which the term allowed for the answers to the allegations should have expired, and that the Arbitrator might delegate his powers, provided he did not fail to intervene directly in pronouncing the final decision. It was further provided that if the Arbitrator's award should determine that the Treaty of the 15th April 1858 was valid, the same award should also declare whether Costa Rica has the right of navigation of the river San Juan with vessels of war or of the revenue service; and that he should in the same manner decide, in case of the validity of the Treaty upon all the other points of doubtful interpretation which either of the parties might find in the Treaty and communicate to the other within thirty days after the exchange of ratifications of the Treaty of Arbitration.

"In accordance with the procedure thus agreed on, the Republic of Nicaragua communicated to the Republic of Costa Rica a statement of eleven points of doubtful interpretation in the Treaty of the 15th April 1858 which it proposed to submit to the decision of the Arbitrator. The Government of Costa Rica did not communicate any corresponding statement, and now declares that it finds nothing in that Treaty which is not perfectly clear and intelligible.

"The two Governments having thereafter solicited your acceptance of the charge, you were pleased, on the 30th day of July 1887, to signify your acceptance of it, and the representatives of both Governments were duly notified of that fact.

"On the 27th day of October 1887 both Governments presented to you their allegations and documents. These were duly communicated to the opposing parties, and on the 3d day of December 1887 they both presented answers to the allegations of their opponents. The Spanish documents were subsequently translated and printed.

"On the 16th day of January 1888, by an instrument in writing, you were pleased to delegate your powers as Arbitrator to me, in pursuance of the provisions contained in the last sentence of Article V of the Treaty of Arbitration, and to

direct me to examine into the questions at issue and report my conclusions to you.

"In accordance with these directions, and after a careful consideration of the allegations of the respective parties, of their answers, and of the documents submitted by each, I have now the honor to submit the following:

"REPORT.

"The questions to be passed upon by the Arbitrator, as will be observed from the foregoing statement of the Treaty of Arbitration, are capable of being classified under two heads.

"First. Whether the Treaty of Limits of the 15th of April

1858 ıs valid.

"Second. If valid, what is its true meaning in respect of the right of Costa Rica to navigate the River San Juan with vessels of war or of the revenue service, and also in respect of the eleven points submitted for decision by the Government of Nicaragua?

"If the first of these questions is decided in the negative—that is, if the Treaty of Limits is decided to be invalid—it will not be necessary to consider at all the questions under the

second head.

"Before discussing the grounds urged by the Government of Nicaragua, on the one hand, as proving the invalidity of the Treaty of Limits, and those urged by the Government of Costa Rica on the other as establishing its validity it will be essential to consider briefly the evidence submitted to show what were the recognized boundaries prior to the date of the Treaty and what were the powers of the respective Governments in regard to it. This historical enquiry it must be remembered, is not a matter of immediate concern, nor is it directly involved in the decision of the questions now submitted to arbitration, but it is important as elucidating the nature of the principal controversy and as showing the facts upon which the parties base their respective arguments."

The argument of Costa Rica cited, on the question of boundaries: Torres de Mendoza, Colección de Documentos Ineditos de Indias publicada bajo los auspicios del Gobierno Espanol, IV Peralta, Costa Rica, Nicaragua y Panama, en el siglo XVI. Madrid, 1883, Leon Fernandez, Coleccion de Documentos para la Historia de Costa Rica, San José, 1882, II. 226-227 Herrera, Descripcion de las Indias Occidentales, V. 55, Chaps. XIII. XXXI., Archivo de Indias de Sevilla, Registro de Reales Cédulas, Cartas y Expedientes del Presidente y Oidores de la Audiencia de Guatemala, files for 1694-1696, 1726-1736, 1758-1771, Descripcion del Reino de Guatemala, printed at Guatemala, 1850; Molina, Bosquejo de Costa Rica, New York, 1850; Spanish Manuscripts, British Museum, add. 17,566, Deposito hidrográfico, Madrid, Peralta, El Canal Interoceanico, Brussels, 1887, 64, Peralta, The River San Juan de Nicaragua, in S. Ex. Doc. 50, 49 Cong. 2 sess. 36-42; Juarros, History of Guatemala, I. part 1, ch. 3; Torquemada, Monarquia Indiana, Peralta, Costa Rica y Colombia; Streber, Census of Costa Rica, 1864, Walker, War in Nicaragua, Gaceta de Nicaragua, No. 15, May 28, 1851, Anuario de Ambos Mundos, Nicaragua.—J. B. M.

"Two questions, essentially distinct in their character, were in discussion in 1858 touching the boundary of the two Republics. The first of these was the question whether the District of Nicoya lawfully belonged to Costa Rica or to Nicaragua, the second, as to the true boundary line between the Republics from the Caribbean Sea to the borders of Nicoya. The evidence in regard to each of these disputed questions must be reviewed in its order.

"The District of Nicoya lies on the Pacific side of the Continent, and-roughly speaking-is triangular in shape, its apex lying toward the South. It is bounded on the Westward by the Pacific Ocean, and on the Eastward by the Gulf of Nicoya and the Rio del Salto, or Tempisque, a small stream emptying into the head of the Gulf and having its sources not far from the Southerly shore of Lake Nicaragua. The Northerly boundary or base of the triangle, seems to have never been accurately fixed, and its position is a matter of dispute between the Governments of Costa Rica and Nicaragua. The argument of Nicaragua, submitted to the Arbitrator, cites the authority of Don Antonio Alcedo and the historian Juarros to the effect that it is bounded by the Lake of Nicaragua on the North, which seems to imply a further boundary line running from the Southern end of the Lake to the Pacific Ocean. The arguments of the Costa Rican Government, on the other hand, place the Northern boundary as far up as the La Flor River. and the records of land titles, and the statements of Stephens and Baily, are cited in support of this view. It is wholly unimportant, however, for the present purpose, to decide which of these opposing views is correct. It is only needful to point out that a diversity of opinion exists, and that there is no grant or agreement precisely fixing the boundaries of the District.

"As to the title to the District, the facts are plainer. Nicoya, or, as it is sometimes called, Guanacaste, was undoubtedly recognized as a part of Nicaragua prior to 1826. It is asserted by Costa Rica that at times Nicoya was temporarily united with it, or placed under the control of its authorities; and some evidence is produced tending to show that such a change was made in 1573, 1593, 1692, the middle of the XVIIIth century and even as late as 1812. But any such connection with Costa Rica can have been but temporary and it may be regarded as settled that at the time of the Declaration of Independence from Spain in September 1821, Nicoya formed a part of Nica-This condition of things seems to be distinctly recognized in the Constitution of Costa Rica, adopted 21st January 1825, in which it is stated that—the territory of the State extends at present from West to East, from the Rio del Salto. which divides it from Nicaragua, etc.

"It would seem, however, that about 1824 the inhabitants of Nicoya, or some of them, asked to be annexed to Costa Rica. This question was referred to the Federal Congress of Central America, the Federal Republic of Central America having

been theretofore formed and its Constitution adopted 22nd November 1824, and that body on the 9th December 1825,

passed the following decree:

"The Federal Congress of the Republic of Central America, taking into consideration, firstly the reiterated petitions of the authorities and municipal bodies of the towns of the District of Nicoya, asking for their separation from Nicaragua and their annexation to Costa Rica, and, secondly that the said towns and people actually annexed themselves to Costa Rica at the time in which the political troubles of Nicaragua took place; and, thirdly the topographical situation of the same district, has been pleased to decree, and does hereby decree:

"Article 1. For the time being, and until the demarcation of the territory of each State provided by Article VII of the Constitution is made, the District of Nicoya shall continue to be separated from Nicaragua and annexed to Costa Rica.

" Article 2. In consequence thereof, the District of Nicoya shall recognize its dependence upon the authorities of Costa Rica, and shall have, in the Legislature of the latter, such

representation as corresponds to it.

"It further appears that the Government of Costa Rica thereupon took possession of Nicoya, and has been continuously in possession of it ever since; and was so at the date of the

Treaty of 1858.

"The Government of Nicaragua, however, has not always acquiesced in the validity of this act of annexation. It has, on the contrary on several occasions protested against it, and in its arguments, now before the Arbitrator, it contends that the decree above referred to was not recognized at the time; that Nicaragua was not then represented in the Federal Congress, that the decree was, by its terms, only temporary and that the municipalities of Nicoya as well as the Legislature of Nicaragua protested against the action of Congress as soon as they were aware of it.

"Here again, it is not necessary for the Arbitrator to decide the question of title. But it is clear that in 1858 Costa Rica had been continuously in possession of the District of Nicoya,

under a claim of title, for more than thirty-two years.

"As to the boundary line between the Rio del Salto and the Caribbean Sea, the question was purely one of fact, and it can hardly be said that any very clear or satisfactory answer was

nossible.

"The Government of Costa Rica, in the arguments submitted to the Arbitrator, has presented an elaborate historical review of the two Provinces of Costa Rica and Nicaragua under Spanish rule, which, it may be assumed, contains a reference to all the important documents bearing upon the question of boundaries. Passing over the history of the discovery and first settlement of this region in the early part of the XVIth century it appears that in 1541 the Emperor Charles V decreed that the upper fifteen leagues of the San Juan River, should belong to the Province of Nicaragua, that the lower, or remain-

ing portion of the river, should belong to the Government of Costa Rica, and that the use of the river and lake, for purposes of navigation and fishing, should be common to both Provinces. In 1561 King Philip II. appointed Licentiate Don Juan Cavallon to be Alcalde Mayor' of the Province of New Cartago and Costa Rica, describing it in the preamble of the letter of appointment as extending along the Northern Sea up to the Outlet, this being included' (hasta el Desaguadero inclusive). In 1573, by articles of agreement between the Spanish Crown and Diego de Artieda, who was appointed Governor and Captain-General of Costa Rica, the boundaries of that Province were defined substantially as they continued to be down to 1821. The limits of Artieda's jurisdiction are thus defined.

"From the Northern to the Southern Sea in width, and in length from the boundary of Nicaragua, on the side of Nicoya, right to the Valleys of Chiriqui, as far as the Province of Veragua on the Southern side; and on the Northern side, from the mouths of the Outlet, which is towards Nicaragua (desde las bocas del Desaguadero, que es a las partes de Nicaragua), the

whole tract of land as far as the Province of Veragua.

"No subsequent grant or decree by the Spanish Crown is cited, and—apart from some evidence of acts of possession by the respective Government—there is nothing further to define the boundaries of the two Provinces.

"Soon after the Declaration of Independence, Costa Rica and Nicaragua, then States of the Republic of Central America, adopted Constitutions defining generally their respective boundaries.

"The Constitution of Costa Rica, adopted the 21st January

1825, provides as follows.

"Article 15. The territory of the State extends at present from West to East, from the River del Salto, which divides it from that of Nicaragua, up to the River Chiriqui, the boundary of the Republic of Colombia, and North and South from one to the other sea, the limits being on the North [Sea] the mouth of the San Juan River and the Escudo de Veraguas, and on the South [Sea] the mouth of the River Alvarado and that of the Chiriqui.

"Nicaragua, by the Constitution adopted the 8th April 1826,

defines her boundaries thus.

"'On the East, the sea of the Antilles; on the North, the State of Honduras; on the West, the Gulf of Conchagua, on the South, the Pacific Ocean, and on the Southeast, the free State of Costa Rica.

"These are the last declarations ante litem motam. It will be observed that all these documents leave the precise boundary vague and undetermined. Indeed, the line to be followed between the Rio del Salto and the mouths of the Outlet, is nowhere laid down. Nicaragua contends that a straight line from the mouth of the Rio del Salto to the mouth of the Colorado, the most Southerly of the three mouths of the San Juan,

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is intended. This is met by the argument that as the Rio del Salto was the boundary that river in its whole length, and not the mouth or any other part of it, was the dividing line; and that the San Juan River proper—the Northernmost of the three channels at the mouth of that stream—formed the end of the line on the Caribbean Sea. Costa Rica further contends that the boundary line was not straight, but that it followed the course of the San Juan in its whole length and the Southern shore of Lake Nicaragua, and she alleges that she was in possession of the territory up to that line—an allegation not

admitted by Nicaragua.

"In my judgment the evidence establishes that the boundary of Costa Rica, under the terms of the Spanish grants (leaving Nicoya out of the question), began at the head of the Gulf of Nicoya, ran northerly along the River del Salto to its source, and thence ran to the mouth of the San Juan River at the port of San Juan del Norte—this being, at the time, the mouth of the principal channel or outlet of the stream. But the evidence is not sufficient to form the basis for any satisfactory judgment as to how this line was to be drawn between the source of the del Salto and the mouth of the San Juan. I per ceive no reason for thinking that it should have been a straight line.

"No decision of this question is, however, necessary for it is only important, for present purposes, to point out that no precise line of demarcation can be found in any of the earlier documents. Nor is this surprising in view of the fact, to be inferred from the evidence, that the region through which the line ran was a rough, densely wooded and thinly settled country where no need was felt of any exact delimitation in the days of the Spanish dominion.

"But with the establishment of the Federal Republic, and, still more, with its dissolution, the questions of boundary began

to assume importance.

"The Federal Constitution seems to have provided by its Article VII. for the demarcation of each State; but nevertheless nothing was done towards the establishment of the line

between Costa Rica and Nicaragua.

"In 1838 Costa Rica seems to have urged upon Nicaragua—then assuming the rank of an independent State upon her withdrawal from the Federation—a desire for a recognition of the annexation of Nicoya. In 1846, 1848, and 1852 other fruitless negotiations were undertaken with a view to settling the boundary and in 1858, when the Treaty of Limits was signed, the question, in one form or another, had been before the two Governments for at least twenty years.

"That the documentary evidence was slight and unsatisfactory has been already shown, and that Costa Rica had for nearly the same period of twenty years laid claim to more ter ritory than she obtained under the Treaty of Limits, fully appears from her decree of 'Basis and Guarantees' of the 8th March 1841—which asserts as the boundaries of Costa Rica the line of the River La Flor, the Shore of Lake Nica-

ragua and the River San Juan.

"I now proceed to state the history of the negotiations which resulted in the Treaty in question, and of the executive and legislative acts which are relied on by Costa Rica as consti-

tuting a sufficient ratification.

"The long and bitter struggle in which Nicaragua and other Central American States had been involved, and of which the part played by Walker and the filibusters was the most notorious incident, came to an end in 1857. The Republic of Costa Rica had taken part in that struggle, and her case states as a fact that at the close of the contest the Costa Rican troops held military positions on both sides of the San Juan. The argument of Nicaragua seems to imply that such possession was not taken until after the close of the war but the fact itself is not in dispute. It was regarded by Nicaragua, at the time, as constituting a casus belli, and Costa Rica having failed to withdraw her troops, war was declared by Nicaragua on the 25th November 1857—although negotiations for a settlement of the difficulty still continued, but without success.

"In this posture of affairs the Republic of San Salvador offered mediation through its Minister, Colonel Don Pedro Romulo Negrete. Owing principally as it would seem, to Colonel Negrete's earnest efforts, the opposing Governments appointed Ministers Plenipotentiary who met with the Salvadorian Minister at San José de Costa Rica, and there concluded the Treaty of Limits,—the validity of which is now

under examination.

"By that instrument, the boundary line is made to begin at Punta de Castilla, at the mouth of the San Juan River. thence it follows the right or Southern bank of that stream to a point three miles below the Castillo Viejo. thence it runs along the circumference of a circle drawn round the outworks of the Castle as a center, with a radius of three miles, to a point on the

¹In support of the validity of the Treaty of Limits, the Costa Rican argument cited. Calvo, Droit Int. I. sec. 711, Convención Internacional entre los Gobiernos de Nicaragua y Costa Rica y Don Felix Belly para la canalización del Istmo, Managua, Imprenta del Progreso, frente al Palacio Nacional, 1859 · Code of Nicaragua, Tit. I. Book IV Documentos relativos á las últimas negociaciones entre Nicaragua y Costa Rica sobre limites territoriales, Canal interocéanico, Managua, 1872; For. Rel. of the U.S. 1873, II. 738, Gaceta de Nicaragua, No. 15, of May 8, 1858; Ayon, The Question of Territorial Limits between the Republics of Nicaragua and Costa Rica, Managua, 1872; Parsons on Contracts, Book I. ch. II. sec. 1, Dalloz, Répertoire, "Cautionnement, "Obligation, Traité International;" Ayon, Consideraciones sobre la cuestion de límites territoriales, entre las Repúblicas de Nicaragua y Costa Rica, Managua, 1872, Imprenta de "El Centro Americano;" Savigny, Droit Romain, III. 126; Calvo. Droit Int. I. sec. 729.—J. B. M.

Western side of the Castle, distant two miles from the Riverthence parallel to the San Juan and the lake, at a distance of
two miles therefrom, to the Sapoa River- and thence in a
straight line to the center of Salinas Bay on the Pacific Ocean.
The Treaty further provides that surveys shall be made to
locate the boundary—that the Bay of San Juan del Norte and
Salinas Bay shall be common to both Republics; and that Nicaragua shall have, exclusively dominion and supreme control of
the waters of the San Juan,—Costa Rica having the right of
free navigation for the purposes of commerce in that part of the
River on which she is bounded. It was further agreed that in
the event of war between Costa Rica and Nicaragua, no act of
hostility was to be practiced in the Port or River of San Juan,
or on the Lake of Nicaragua, and the observance of this article
of the Treaty was guaranteed by the Republic of San Salvador.

"It is admitted by the parties to the present arbitration that the Treaty was duly ratified by Costa Rica on the 16th April 1858; and that it was not ratified at all by San Salvador. It is further established that there was some ratification by representatives of Nicaragua,—but whether or not such ratification was sufficient is one of the points now in controversy and it is therefore necessary to examine fully the powers and the pro-

ceedings of the Nicaraguan authorities.

"The Republic of Nicaragua, as appears from the evidence, was a Constitutional Government of limited powers, which were defined by a written Constitution. Nicaragua, as one of the States of the Central American Republic, adopted her first Constitution on the 8th April 1826. Upon the dissolution of the Federal Republic she assumed the rank of an independent nation, and in 1838 adopted a new Constitution, which her representatives now contend was in full force and vigor at the time of the execution of the Treaty of Limits. The full text of the Nicaraguan Constitution of 1838 is not contained in the arguments which have been laid before the Arbitrator but it sufficiently appears that power was vested in an elective President and a Congress. It also appears that by Article 2 (cited in full below), the boundaries of the State were defined, and that by Article 194, quoted in the argument of Nicaragua, a complicated method of amendment was provided, of which the only feature now necessary to notice is that no proposed amendment shall take effect until it has been approved by two successive Legislatures.

"In 1857 the necessity for a complete revision of the Constitution of 1838 seems to have been generally recognized. The long and exhausting conflicts which had been waged from 1854 to 1857, and the existence, during the greater part of that time, of two hostile governments, each claiming to exercise constitutional and supreme power throughout the country had demonstrated, to the satisfaction of the inhabitants, the importance of changes in the organic law Accordingly a Constituent

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Assembly with ample powers, was duly elected. The due election, and the full constituent powers of this body are facts not disputed in the arguments now submitted on behalf of Nicaragua.

"In November 1857, the Constituent Assembly met, and addressed itself at once to the task of framing a new Constitution for Nicaragua, as well as of legislating upon the ordinary

affairs of the nation.

"On the 18th of January 1858, the previous negotiations with Costa Rica having failed, the Assembly ordered new Commissioners to be appointed to negotiate treaties of peace, limits, friendship and alliance between Nicaragua and Costa Rica.

"On the 5th February 1858, a further and supplemental decree on the same subject was adopted, which is as follows:

"'The Constituent Assembly of the Republic of Nicaragua, in use of the legislative faculties with which it is invested, decrees:

"'Article 1. For the purpose that the Executive may comply with the decree of January 18th instant, the said Executive is hereby amply authorized to act in the settlement of the difficulties with Costa Rica in such manner as it may deem best for the interest of both countries, and for the independence of Central America, without the necessity of ratification by the legislative power.

"Article 2. Such treaties of limits as it may adjust shall be final, if adjusted in accordance with the bases which separately will be given to it, but, if not, they shall be subject to the

ratification of the Assembly,

"What were the separate bases of negotiation given to the Nicaraguan Executive does not appear from any of the documents submitted to the Arbitrator. But it is not distinctly asserted by the representatives of Nicaragua that such instructions were disregarded in the negotiation of the Treaty the arguments relied on to prove its invalidity resting upon entirely different grounds, which will be stated hereafter.

"On the 15th April 1858, the Treaty of Limits was signed by the Plenipotentiaries of Costa Rica, Nicaragua and San Salvador and on the 26th April 1858, ratifications were personally exchanged by the Presidents of Costa Rica and Nicaragua. who met for the purpose on Nicaraguan territory at the City of The Treaty had not then been passed upon by the Assembly the decree of ratification being by the President alone. It is as follows.

"'Tomas Martinez, the President of the Republic of Nicaragua.

"'Whereas General Máximo Jerez, Envoy Extraordinary and Minister Plenipotentiary of Nicaragua to the Republic of Costa Rica, has adjusted, agreed upon and signed, on the 15th instant, a Treaty of Limits, fully in accordance with the bases

which, for that purpose, were transmitted to him by way of instructions; finding that said Treaty is conducive to the peace and prosperity of the two countries, and reciprocally useful to both of them, and that it facilitates, by removing all obstacles that might prevent it, the mutual alliance of both countries, and their unity of action against all attempts of foreign conquest; considering that the Executive has been duly and competently authorized, by legislative decree of February 26th ultimo, to do everything conducive to secure the safety and independence of the Republic, and by virture, furthermore, of the reservation of faculties spoken of in the executive decree of the 17th instant

"Does hereby ratify each and all of the articles of the Treaty of Limits made and concluded by Don Jose Maria Canas, Minister Plenipotentiary of the Government of Costa Rica, and Don Maximo Jerez, Minister Plenipotentiary of the Supreme Government of Nicaragua, signed by them on the 15th instant, and ratified by the Costa Rican Government on the 16th. And the additional act of the same date is likewise ratified.

"On the 28th May 1858, thirty-two days after the ratification, and forty three days after the signature of the Treaty of Limits, the following decree was passed by the Constituent Assembly.

"'The Constituent Assembly of the Republic of Nicaragua,

in the use of legislative powers vested in it, decrees:

"Sole Article. The Treaty of Limits concluded at San Jose on the 15th of April, instant, between General Don Máximo Jerez, Minister Plenipotentiary from this Republic, and General Don Jose Maria Cañas, Minister Plenipotentiary from the Republic of Costa Rica, with the intervention of Colonel Don Pedro Romulo Negrete, Minister Plenipotentiary from Salvador, is hereby approved.

"On the 19th August 1858, the Constituent Assembly adopted the new Constitution, of which it is only needful to

cite the first article, viz.

"The Republic of Nicaragua is the same which was, in ancient times, called the Province of Nicaragua, and, after the independence, State of Nicaragua. Its territory is bounded on the East and Northeast by the Sea of the Antilles; on the North and Northwest by the State of Honduras; on the West and South by the Pacific Ocean and on the Southeast by the Republic of Costa Rica. The laws on special limits form part of the Constitution.

"No further formal ratification of the Treaty of Limits was ever had, but the arguments submitted by Costa Rica cite a number of instances in which the Government of Nicaragua, during the period between 1858 and 1870, recognized the Treaty

as a valid and binding instrument.

"Since 1870 the Government of Nicaragua has contended that the Treaty is invalid, and that view is now urged upon

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three distinct grounds, which are stated as follows in the argument submitted on its behalf:

" The Government of Nicaragua affirms the invalidity of the Treaty of 1858, and insists that it ought not to be bound thereby for the reason—

" First. That it has not received that sanction which the Constitution of the State of Nicaragua requires to give effect

to, and validate, a treaty of its character.

" Second. It has not been ratified by the Government of San Salvador, so as to give effect to the guarantees on behalf

of that Government of the tenth article of the Treaty

" Third. That the pretended ratifications of the Treaty were exchanged before the Treaty had been submitted to the Congress of Nicaragua, and it was not approved by the first Congress of Nicaragua until after the expiration of the forty days provided for the exchange of ratifications in Article XII.

"I shall consider each of these three reasons in order.

"I.

"The argument very forcibly presented on behalf of Nicaragua to establish the first ground of objection,—the lack of such a sanction as was required by the Constitution to give effect to, and validate, a Treaty of the character of the one in question. is as follows: The Constitution of 1838 was in full force on the 15th April 1858, that Constitution fixed the boundaries of Nicaragua, the Treaty of Limits curtailed the boundaries so fixed by the Constitution, it was therefore, in direct and flagrant violation of the fundamental law of the State, and to have validity must receive the same formal ratification that an amendment to the Constitution itself demands;' the Constitution provides that an amendment adopted by one Legislature in the manner prescribed, by a two-thirds vote of both houses, 'shall not be considered as valid nor form part of the Constitution until it has received the sanction of the next Legislature; the Treaty of Limits was never sanctioned by a second Legislature; therefore it is not valid.

"This argument, it will be perceived, rests wholly upon the fundamental assumptions that the Constitution of 1838 was in force, and that it fixed the boundaries of Nicaragua. If, as a matter of fact, that Constitution was not in force, or if the boundaries were not definitely fixed by its provisions, then the whole argument falls; for the Treaty is then a mere treaty of limits, settling disputed boundaries, and is not one involving a concession of territory and an amendment to the Constitution. It is not pretended that a treaty fixing boundaries requires, on

general principles, any extraordinary sanction.

"The general doctrine that in determining the validity of a treaty made in the name of a state, the fundamental laws of such state must furnish the guide for determination, has been fully and ably discussed on the part of Nicaragua, and its correctness may certainly be admitted. But it is also certain that where a treaty has been approved by a government, and an effort is subsequently made to avoid it for the lack of some formality the burden is upon the party who alleges invalidity to show clearly that the requirements of the fundamental law have not been complied with. In my judgment, Nicaragua has failed in establishing a case under this rule.

"In the first place, it may well be doubted whether the Constitution of 1838 can be said to have been in full force and effect at the time of the execution of the Treaty on the 15th April 1858. The legislative power was then vested in a Constituent Assembly—a body it would seem, expressly chosen for the purpose of amending the Constitution in any way it saw fit. To say that such a body could not adopt a decree which in effect modified the Constitution, is to deny to it the power

to carry out the very objects for which it existed.

"Moreover, the Constitution framed by the Assembly and promulgated on the 19th August 1858, defining the boundaries of Nicaragua, adds that the laws on special limits form part of the Constitution. If therefore the decree of the 28th May 1858, and the other acts of the Assembly were in any respect insufficient as involving some unconstitutionality the defect was supplied by practically embodying the Treaty of Limits, and the decree approving it, in the new Constitution,—thus giving the highest sanction possible to this legislation.

"But whether or not the Constitution of 1838 was in full force in April and May 1858, I am clearly of opinion that it did not definitely fix the boundaries of the State. The power of defining absolute boundaries by a Constitution is not denied. The question is merely whether the Constitution of 1838 did in fact contain such a definition of the boundaries of Nicaragua

as to preclude their adjustment by an ordinary treaty

"The provisions of that Constitution, respecting boundaries,

are as follows.

"Article 2. The territory of the State is the same as was formerly given to the Province of Nicaragua, its limits being on the East and Northeast the Sea of the Antilles; on the North and Northwest the State of Honduras; on the West and South the Pacific Ocean and on the Southeast the State of Costa Rica. The dividing lines with the bordering States shall be marked by a law which will make a part of the Constitution.

"Thus it appears that the dividing lines with the bordering States' were expressly not defined. It was plainly the intention to leave the Constitution incomplete in this respect, though a means of completing it was provided, by allowing the passage of an ordinary law by a single Legislature. It is not pretended that any law marking the boundary on the side of Costa Rica, was passed before the execution of the Treaty of Limits. The decree approving the Treaty is the only attempt,

so far as appears, to comply with this provision of the Constitution. The statement that the boundary is, 'on the Southeast, the State of Costa Rica,' defines nothing. What were the limits of Costa Rica in 1838, was a matter of dispute. No precise decision was possible, and I have already expressed my opinion that the evidence laid before the Arbitrator is altogether too vague to afford grounds for any satisfactory judgment. The Constitution of 1838 therefore did not fix the boundaries of Nicaragua definitely

"These views are strengthened by a consideration of the evidence adduced on the part of Costa Rica to prove acquiescence by Nicaragua for ten or twelve years in the validity of the Treaty I do not regard such acquiescence as a substitute for ratification by a second Legislature, if such had been needed. But it is strong evidence of that contemporaneous exposition which has ever been thought valuable as a guide in

determining doubtful questions of interpretation.

"I conclude therefore that the first ground of objection stated by Nicaragua is untenable.

"TT.

"The second ground of objection urged by Nicaragua to the validity of the Treaty is that it has not been ratified by the Government at San Salvador, so as to give effect to the guarantees on behalf of that Government of the *tenth* article of the Treaty

"It is argued, in support of this objection, that the guarantee of the mediating Government against hostilities on the River and Lake was of great importance to Nicaragua, that it might well have been the controlling consideration in the mind of the negotiator of the Treaty that led him to agree to the relinquishment of claims to great tracts of territory that the failure of San Salvador to ratify this Treaty took from it one of the chief considerations moving to Nicaragua, and that the consideration never having taken effect, the Treaty never became of valid or binding force. It is added that this was, in effect, a tripartite Treaty and unless all the parties became bound, neither of them was.

"In my opinion this argument is unsound. The Treaty was not tripartite, but was between Costa Rica and Nicaragua only with an independent and separable clause of guarantee, as to a single feature of the arrangement, on the part of San Salvador. Without the guarantee, the Treaty was complete as between the two principals, if they saw fit to accept it in that shape. The non-ratification by the Republic of San Salvador was known to the Government of Nicaragua when ratifications were exchanged with Costa Rica. It follows therefore that Nicaragua never lost any of the considerations which

induced her to consummate, by an exchange of ratifications, the negotiations for the Treaty

"The facts may be briefly recalled.

"On the 15th April 1858 the Treaty of Limits was signed. In form it is a Convention agreed upon by the representatives of Costa Rica and Nicaragua, and declares that they having exchanged their respective powers, which were examined by Hon. Señor Don Pedro R. Negrete, exercising the function of fraternal mediator in these negotiations, had agreed to and adjusted the terms of the Treaty The Treaty itself, after reciting the desire of Costa Rica and Nicaragua for peace, fixes the boundary line between them, provides for a survey of the line, and for the common use and defense of the Bay of San Juan del Norte and Salinas Bay and of that portion of the San Juan River on which Costa Rica borders, grants the use in common of the Punta de Castilla until Nicaragua recovers full possession of all her rights in the Port of San Juan del Norte: forbids the levying of custom duties at Punta de Castilla while San Juan del Norte remains a free port, defines the jurisdiction over, and right of navigation on, the waters of the San Juan River · secures existing contracts of canalization or public transit made by the Government of Nicaragua, and regulates the execution of future contracts; and neutralizes the Port and River of San Juan and the Lake of Nicaragua in the event of war between Costa Rica and Nicaragua. Then

"'Article X. The stipulation of the foregoing article (that relating to neutrality) being essentially important for the proper custody of both the Port and the River against foreign aggression, which would affect the general interests of the country, the strict performance thereof is left under the special guar antee, which in the name of the mediator Government, its Minister Plenipotentiary herein present is ready to give, and does hereby give, in use of the faculties vested in him for that

purpose by his Government.

"Finally Costa Rica and Nicaragua mutually give up all claims against each other, and the two contracting parties' waive all claims for damages which either might have against

the other.

"This instrument is plainly neither in form nor in substance, tripartite. The two Governments, the two contracting parties' spoken of in the Treaty are always Costa Rica and Nicaragua, never San Salvador. San Salvador is not in form a contracting party at all. And in substance that Government is not a party to the agreement—the clause containing the guarantee being entirely separable from all the rest.

"As a proposition of international law it may be regarded as settled that a guarantee is always merely subsidiary to the principal contract. Le traite par lequel un état se porte garant d'un traite conclu entre deux autres puissances, est un traité accessoire destiné a assurer l'execution du traité principal.' (Bluntschli, 430 note, Lardy's trans.) 'La garantie peut être comprise dans les stipulations annexées au traité principal qu'on vent garantir, et devient alors une obligation accessoire.' (Vattel, Droit des Gens, Ed. 1863, Liv II, ch. 16, §240· note by Pradier Fodéré, the editor.) 'Lorsque la garantie est destinée à assurer l'inviolabilité d'un traité elle forme toujours une obligation et un traité accessoire (pactum accessorium), meme quand elle ferait partie de l'acte principal.' (Klüber, Droit des Gens, §158.) It follows that the clause of guarantee in the Treaty of Limits is no part of the principal agreement, and that on general principles the rest of the Treaty would not stand or fall with this subsidiary or accessory contract.

"The necessity for ratification by contracting powers may be freely admitted. But even conceding to it as high an importance as the execution of deeds by individuals, the failure of a guaranteeing state to ratify will not necessarily invalidate a treaty which the principal contracting parties have concluded by an exchange of ratifications as between themselves.

"The analogy of individual deeds may serve to illustrate the point now under discussion. The case may readily be imagined of a deed between two parties as principals with a third party as guarantor. Leases of this character are not infrequent. If such a deed were prepared by the agents of the three parties, and if the two principal parties were to sign, seal, acknowledge, and formally deliver to each other duly executed duplicates of the deed, without waiting for the signature of the guarantor, it is too plain for argument that neither could subsequently object, and claim the right to rescind, because the deed had not been executed and delivered by the guarantor.

The Presidents of Costa Rica and Nica-"So in this case. ragua in person, on the 26th April 1858 formally exchanged ratifications of the Treaty, without waiting for San Salvador. The arguments now advanced by Nicaragua, as establishing the invalidity of the Treaty, might perhaps have been urged as reasons for refusing to exchange the ratifications until San Salvador was ready to unite in the act. But the Government of Nicaragua was silent when it ought to have spoken, and so waived the objection now made. It saw fit to proceed to the exchange of ratifications without waiting for San Salvador. The Treaty was complete without Article X. To all the other articles and stipulations it contained Costa Rica and Nicaragua alone might fully bind themselves. They did so, irrevocably by a formal exchange of ratifications; and neither may now be heard to allege, as reasons for rescinding this completed Treaty any facts which existed and were known at the time of its consummation.

"I conclude therefore that the second ground of objection stated by Nicaragua is untenable.

"III.

"The the third ground of objection urged by Nicaragua to the validity of the Treaty is that the pretended ratifications of the Treaty were exchanged before the Treaty had been submitted to the Congress of Nicaragua, and it was not approved by the first Congress of Nicaragua until after the expiration of the forty days provided for the exchange of ratifications in Article XII.

"It will be remembered that on the 5th February 1858 the Constituent Assembly of Nicaragua passed a decree by which the Executive was 'amply authorized' to treat with Costa Rica without the necessity of ratification by the legislative power' and that it was further decreed that such treaties of limits as the Executive might adjust should be final,—if in accordance with certain separate instructions. Acting under this grant of power, the President of Nicaragua concluded and ratified the present Treaty on the 26th April 1858, eleven days after its signature by the Plenipotentiaries, without ratification by the legislative power. On the 28th of May 1858 the Constituent Assembly adopted a decree approving the Treaty and this decree was signed by the President on the 4th June 1858.

"The argument now presented by Nicaragua is twofold, and raises two points, first, that the Treaty is invalid because ratifications were exchanged before approval by the Assembly and, second, that it is invalid because such approval was given

more than forty days after signature.

"As to the first of these points, it would perhaps be enough to say that Nicaragua can not now seek to invalidate the Treaty on any mere ground of irregularity in the order of its own proceedings. If its Legislature did in fact approve the Treaty that is enough for the present purpose. Whether such approval was expressed before or after the exchange of ratifications is an immaterial matter now—certainly so far as

Nicaragua is concerned.

"But it does not appear that there was any real irregularity in these proceedings. The full text of the Nicaraguan Constitution of 1838 not being contained in the arguments submitted to the Arbitrator, it is not made clear just what restrictions upon the treaty making power that instrument imposed. Ratification by legislative authority is not always required, even in constitutional governments. The necessity for legislative ratification is not to be presumed, but must be established as a fact. Still less can there be any presumption as to the form and manner in which the legislative sanction is to be expressed. In the present instance, the Constituent Assembly a body of extensive powers, expressed in advance its approval of any treaty of limits that might be concluded by the Executive upon certain bases. It is not shown that the

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authority so given was exceeded, and it can not be said, in the absence of an express prohibition, that this mode of dealing

with the subject was improper.

"Again, the fact of the subsequent approval of the Treaty by the Assembly is satisfactory proof that that body approved not only the terms of the instrument, but also the manner in which the Executive had executed the authority conferred by the decree of the 5th February 1858. The time and manner of exchange of ratifications was before the Assembly and it was fully aware that the time agreed upon for exchange had passed. Its action, under these circumstances, shows that it was of the opinion that the Treaty had been legally and in due time ratified by the President, in pursuance of the special powers conferred upon him.

"In any event, all irregularities would seem to have been effectually cured by this subsequent approval of the Constituent Assembly Ratihabitio retrotrahitur et mandato equiparatur is a recognized maxim of municipal law and the reasons of that rule may fairly be regarded as applying to cases like

the present.

"That irregularities and defects in the formalities of ratification may be supplied and made good by subsequent acquiescence in and approval of the treaty, is laid down by Heffter (Droit International, § 87 fin.)

"'Mais il est constant qu'elle (i. e., ratification) peut être supplee par des actes equivalents, et notamment par l'exé-

cution tacite des stipulations arrêtées.

"And this opinion is cited by Pradier-Fodéré in his translation of Grotius (Vol. II., p. 270, note 1). See also Hall's Inter

national Law page 276.

"The second point—that the legislative sanction was not given until after the expiration of the forty days fixed by the Treaty for the exchange of the ratifications—seems clearly untenable. Costa Rica, and not Nicaragua, might have complained of this delay Assuming that subsequent legislative approval was needed, Costa Rica might, if it had desired to do so, have declared the negotiations at an end on the expiration of the forty days. But it was not bound to do so. It had a perfect right to waive this limitation of time. Either party to a Treaty may extend the time of the other, either by express agreement or by acts indicating acquiescence. Nicaragua cannot be permitted to say as she does in effect say in this branch of her argument—'it is true that this Treaty was approved unreservedly by both the executive and legislative branches of the Government; but such approval is worthless, as it was expressed not forty but forty-three days after the signature of the Treaty

"The fact of approval being established, the time of approval is immaterial, provided the other party by its acquiescence has

seen fit to waive delay

"I conclude therefore that the third ground of objection

stated by Nicaragua is untenable.

"And having examined in detail the three reasons urged by Nicaragua for holding the Treaty invalid, and finding all these reasons untenable, I conclude that the Arbitrator should decide in favor of the validity of this Treaty"

The Award. The award of the President was as follows.

"Grover Cleveland, President of the United States, to whom

it shall concern, Greeting

"The functions of Arbitrator having been conferred upon the President of the United States by virtue of a Treaty signed at the City of Guatemala on the 24th day of December one thousand eight hundred and eighty-six, between the Republics of Costa Rica and Nicaragua, whereby it was agreed that the question pending between the contracting Governments in regard to the validity of their Treaty of Limits of the 15th day of April one thousand eight hundred and fifty-eight, should be submitted to the arbitration of the President of the United States of America, that if the Arbitrator's award should determine that the Treaty was valid, the same award should also declare whether Costa Rica has the right of navigation of the River San Juan with vessels of war or of the revenue service; and that in the same manner the Arbitrator should decide. in case of the validity of the Treaty upon all the other points of doubtful interpretation which either of the parties might find in the Treaty and should communicate to the other party within thirty days after the exchange of the ratifications of the said Treaty of the 24th day of December one thousand eight hundred and eighty six,

"And the Republic of Nicaragua having duly communicated to the Republic of Costa Rica eleven points of doubtful interpretation found in the said Treaty of Limits of the 15th day of April one thousand eight hundred and fifty-eight, and the Republic of Costa Rica having failed to communicate to the Republic of Nicaragua any points of doubtful interpretation

found in the said last-mentioned Treaty.

"And both parties having duly presented their allegations and documents to the Arbitrator, and having thereafter duly presented their respective answers to the allegations of the other party as provided in the Treaty of the 24th day of De-

cember one thousand eight hundred and eighty-six,

"And the Arbitrator pursuant to the fifth clause of said last-named Treaty having delegated his powers to the Honor able George L. Rives, Assistant Secretary of State, who, after examining and considering the said allegations, documents and answers, has made his report in writing thereon to the Arbitrator.

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"Now therefore I, Grover Cleveland, President of the United States of America, do hereby make the following decision and award.

"First. The above-mentioned Treaty of Limits signed on the 15th day of April one thousand eight hundred and fifty-

eight, is valid.

"Second. The Republic of Costa Rica under said Treaty and the stipulations contained in the sixth article thereof, has not the right of navigation of the River San Juan with vessels of war· but she may navigate said river with such vessels of the Revenue Service as may be related to and connected with her enjoyment of the purposes of commerce' accorded to her in said article, or as may be necessary to the protection of said enjoyment.

"Third. With respect to the points of doubtful interpretation communicated as aforesaid by the Republic of Nicaragua,

I decide as follows:

"1. The boundary line between the Republics of Costa Rica and Nicaragua, on the Atlantic side, begins at the extremity of Punta de Castilla at the mouth of the San Juan de Nicaragua River, as they both existed on the 15th day of April 1858. The ownership of any accretion to said Punta de Castilla is to be governed by the laws applicable to that subject.

"2. The central point of the Salinas Bay is to be fixed by drawing a straight line across the mouth of the Bay and determining mathematically the centre of the closed geometrical figure formed by such straight line and the shore of the Bay

at low-water mark.

"3. By the central point of Salinas Bay is to be understood the centre of the geometrical figure formed as above stated. The limit of the Bay towards the ocean is a straight line drawn from the extremity of Punta Arranca Barba, nearly true South to the Westernmost portion of the land about Punta Sacate.

"4. The Republic of Costa Rica is not bound to concur with the Republic of Nicaragua in the expenses necessary to prevent the Bay of San Juan del Norte from being obstructed, to keep the navigation of the River or Port free and unembarrassed, or to improve it for the common benefit.

"5. The Republic of Costa Rica is not bound to contribute any proportion of the expenses that may be incurred by the Republic of Nicaragua for any of the purposes above men-

tioned.

"6. The Republic of Costa Rica cannot prevent the Republic of Nicaragua from executing at her own expense and within her own territory such works of improvement, provided such works of improvement do not result in the occupation or flooding or damage of Costa Rica territory or in the destruction or serious impairment of the navigation of the said River

or any of its branches at any point where Costa Rica is entitled to navigate the same. The Republic of Costa Rica has the right to demand indemnification for any places belonging to her on the right bank of the River San Juan which may be occupied without her consent, and for any lands on the same bank which may be flooded or damaged in any other way in consequence of works of improvement.

"7. The branch of the River San Juan known as the Colorado River must not be considered as the boundary between the Republics of Costa Rica and Nicaragua in any part of its

course.

"8. The right of the Republic of Costa Rica to the navigation of the River San Juan with men-of-war or revenue cutters is determined and defined in the Second Article of this award.

"9. The Republic of Costa Rica can deny to the Republic of Nicaragua the right of deviating the waters of the River San Juan in case such deviation will result in the destruction or serious impairment of the navigation of the said River or any of its branches at any point where Costa Rica is entitled to

navigate the same.

"10. The Republic of Nicaragua remains bound not to make any grants for canal purposes across her territory without first asking the opinion of the Republic of Costa Rica, as provided in Article VIII. of the Treaty of Limits of the 15th day of April one thousand eight hundred and fifty-eight. The natural rights of the Republic of Costa Rica alluded to in the said stipulation are the rights which, in view of the boundaries fixed by the said Treaty of Limits, she possesses in the soil thereby recognized as belonging exclusively to her the rights which she possesses in the harbors of San Juan del Norte and Salinas Bay and the rights which she possesses in so much of the River San Juan as lies more than three English miles below Castillo Viejo, measuring from the exterior fortifications of the said castle as the same existed in the year 1858, and perhaps other rights not here particularly specified. rights are to be deemed injured in any case where the territory belonging to the Republic of Costa Rica is occupied or flooded, where there is an encroachment upon either of the said harbors injurious to Costa Rica, or where there is such an obstruction or deviation of the River San Juan as to destroy or seriously impair the navigation of the said River or any of its branches at any point where Costa Rica is entitled to navigate the same.

"11. The Treaty of Limits of the 15th day of April one thousand eight hundred and fifty-eight does not give to the Republic of Costa Rica the right to be a party to grants which Nicaragua may make for inter-oceanic canals; though in cases where the construction of the canal will involve an injury to the natural rights of Costa Rica, her opinion or advice, as mentioned in Article VIII. of the Treaty should be more than "advisory" or "consultative." It would seem in such cases

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that her consent is necessary and that she may thereupon demand compensation for the concessions she is asked to make; but she is not entitled as a right to share in the profits that the Republic of Nicaragua may reserve for herself as a compensation for such favors and privileges as she, in her turn, may concede.

"In testimony whereof, I have hereunto set my hand and have caused the Seal of the United States to be hereunto

affixed.

"Done in duplicate at the City of Washington, on the twenty-second day of March, in the year one [SEAL.] thousand eight hundred and eighty-eight, and of the Independence of the United States the one hundred and twelfth.

"GROVER CLEVELAND.

"By the President.

"T. F BAYARD, "Secretary of State."

Though the foregoing award established the Further Arbitration. validity of the Treaty of Limits of 1858, and defined the boundary thereunder, yet, when the contracting parties came to consider the line thus determined, they were confronted with new difficulties. By interpretation of the Treaty of Limits, the President decided that the boundary between the Republics of Costa Rica and Nicaragua began "at the extremity of Punta de Castilla, at the mouth of the San Juan de Nicaragua River, as they both existed on the 15th day of April 1858," the "ownership of any accretion to said Punta de Castilla" to be "governed by the laws applicable to that subject." On the question thus presented the commissioners of the two republics were unable to agree, it being perhaps practically impossible, owing to the shiftings of the sands, to determine where Punta de Castilla, which had since disappeared, actually lay in 1858. Another difficulty arose out of the shifting of the mouth of the San Juan River and yet another out of the rules laid down in the award for the determination of the center of Salinas Bay 1 In this dilemma the two governments accepted the mediation of the Government of Salvador, through whose good offices they concluded at San Jose, April 8, 1896, a convention for the demar cation of their boundary By this convention another arbitral proceeding is instituted. Each of the contracting governments engages to appoint two engineers or surveyors for the purpose

¹Mr. Rodriguez to Mr. Olney, December 26, 1896, For. Rel. 1896, 371. 5627—Vol. 2——62

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INTERNATIONAL ARBITRATIONS.

of tracing and marking the boundary "pursuant to the provisions of the treaty of April 15, 1858, and the arbitral award of the President of the United States. When these commissioners may be unable to agree, it is provided that the point or points in dispute shall be submitted to a fifth engineer, named by the President of the United States; that this engineer "shall have ample authority to decide any kind of dispute that may arise;" and that "his decision shall be final as to the operations in question." The execution of this convention has been duly begun.

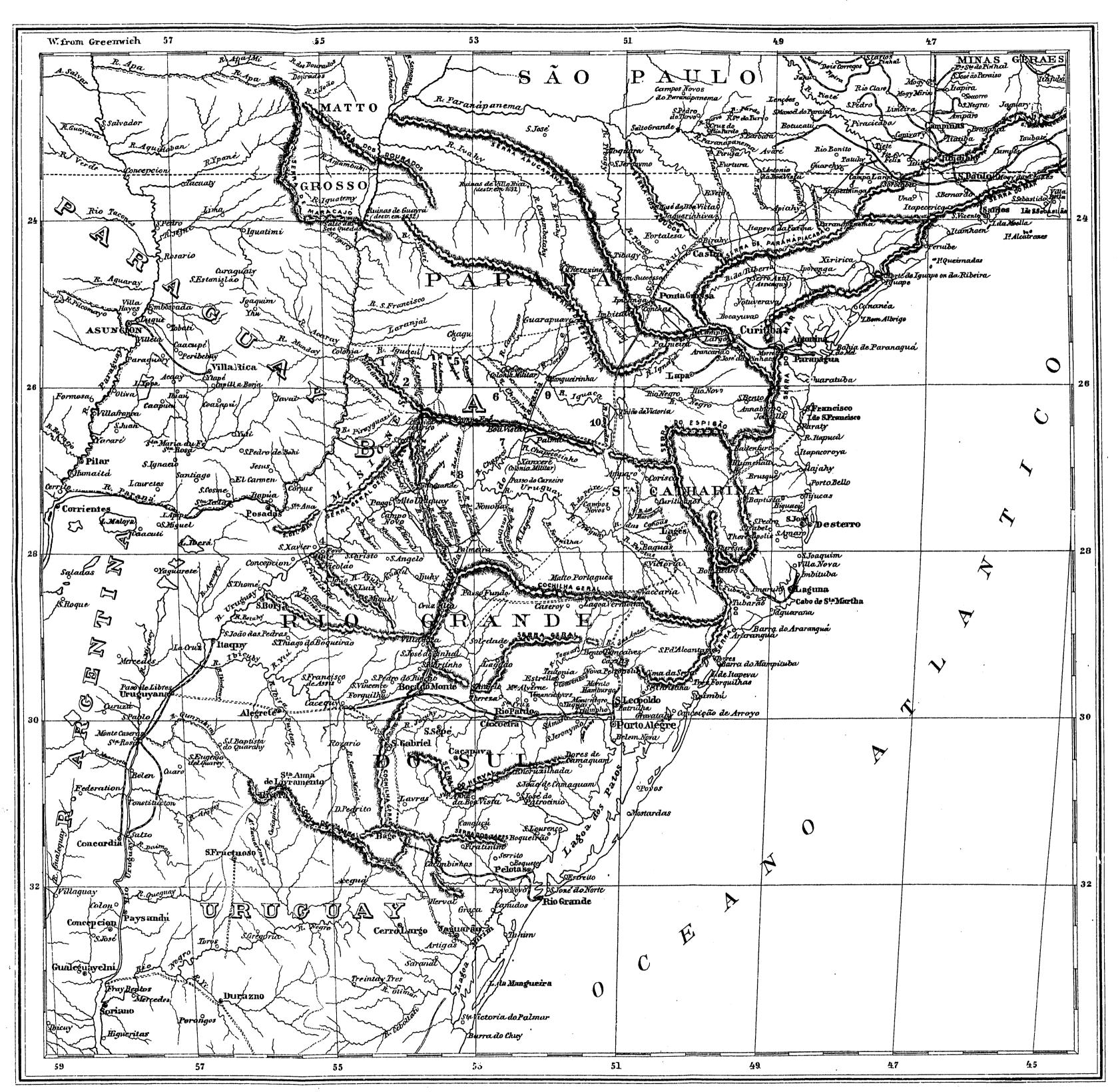
For. Rel. 1896, 100-102.

MAP OF SOUTHERN BRAZIL,

showing that part of its territory claimed by the Argentine Republic.

MAPPA DO BRAZIL MERIDIONAL,

mostrando a parte do seo territorio reclamada pela Republica Argentina.



EXPLANATIONS.

- 1, 2, 3 & 4. BOUNDARY BETWEEN BRAZIL AND THE ARGENTINE REPUBLIC.
- 6 & 7. EASTERN LIMIT OF THE ARGENTINE CLAIM PRIOR TO 1888.
- 7 & 10. EASTERN LIMIT OF THE ARGENTINE CLAIM SINCE 1888.

BY THE TREATY OF SEPT. 7, 1889, THE ARBITRATOR IS INVITED TO AWARD ONE OF THE TWO LINES: (a) 2 & 3. THE S. ANTONIO AND PEPIRY-GUAÇO, THE PRESENT BOUNDARY OF BRAZIL: OR (b) 7 & 10, THE CHAPECÓ (OR PEQUIRY-GUAÇO) AND JANGADA (OR S. ANTONIO GUAÇÛ) AS CLAIMED BY THE ARGENTINE REPUBLIC.

A. THE TERRITORY CLAIMED BY THE ARGENTINE REPUBLIC, FORMING THE GREATEST PART: OF THE JUDICIAL DIVISION OF PALMAS, STATE OF PARANÁ, U. S. OF BRAZIL. AREA, 991 SQ. LEAGUES, OR 11,827 ENG. SQ. MILES. POPULATION (1890), 5793, OF WHOM 5763 ARE BRAZILIANS AND 30 FOREIGNERS, BUT NOT A SINGLE ARGENTINE CITIZEN.

B. TERRITORY OF MISIONES OCCUPIED BY THE ARGENTINES AFTER THE PARAGUAYAN

WAR.

EXPLICAÇÕES.

- 1, 2, 3 & 4. LIMITE ENTRE O BRAZIL E A REPUBLICA ARGENTINA.
- 6 & 7. LIMITE ORIENTAL DA PRETENÇÃO ARGENTINA ANTES DE 1888.
- 7 & 10. LIMITE ORIENTAL DA PRETENÇÃO ARGENTINA DESDE 1888.

PELO TRATADO DE 7 DE SET. DE 1889, O ARBITRO É CONVIDADO A PRONUNCIAR-SE POR UMA DAS DUAS LINHAS: (a) 2 & 3, O S. ANTONIO E O PEPIRY-GUAÇÛ. LIMITE ACTUAL DO BRAZIL; OU (b) 7 & 10, O CHAPECÓ (OU PEQUIRY-GUAÇÛ) E JANGADA (OU S. ANTONIO GUAÇÛ), COMO PRETENDE A REPUBLICA ARGENTINA.

🛕 TERRITORIO RECLAMÁDO PELA REPUBLICA ÁRGENTINA, FORMANDO A MAIOR PARTE 🤚 DA COMARCA DE PALMAS, ESTADO DO PARANÁ, E. U. DO BRAZIL. AREA, 901 LEGUAS Q. OU 11,827 MILHAS INGL. Q. POPULAÇÃO (1890), 5793, DOS QUAES 5763 BRAZILEIROS E 30 ESTRANGEIROS, MAS NENHUM CIDADÃO ARGENTINO.

B. TERRITO 110 DE MISIONES OCCUPADO PELOS ARGENTINOS DEPOIS DA GUERRA DO PARAGUAY.



No. 14758

CHILE, ECUADOR and PERU

Declaration on the maritime zone. Signed at Santiago on 18 August 1952

Authentic text: Spanish.

Registered by Chile, Ecuador and Peru on 12 May 1976.

CHILI, ÉQUATEUR et PÉROU

Déclaration sur la zone maritime. Signée à Santiago le 18 août 1952

Texte authentique : espagnol.

Enregistrée par le Chili, l'Équateur et le Pérou le 12 mai 1976.

1976

[TRANSLATION — TRADUCTION]

DECLARATION: ON THE MARITIME ZONE

- 1. Governments have the obligation to ensure for their peoples the necessary conditions of subsistence, and to provide them with the resources for their economic development.
- 2. Consequently, they are responsible for the conservation and protection of their natural resources and for the regulation of the development of these resources in order to secure the best possible advantages for their respective countries.
- 3. Thus, it is also their duty to prevent any exploitation of these resources, beyond the scope of their jurisdiction, which endangers the existence, integrity and conservation of these resources to the detriment of the peoples who, because of their geographical situation, possess irreplaceable means of subsistence and vital economic resources in their seas.

In view of the foregoing considerations, the Governments of Chile, Ecuador and Peru, determined to conserve and safeguard for their respective peoples the natural resources of the maritime zones adjacent to their coasts, formulate the following Declaration:

- The geological and biological factors which determine the existence, conservation and development of marine fauna and flora in the waters along the coasts of the countries making the Declaration are such that the former extension of the territorial sea and the contiguous zone are inadequate for the purposes of the conservation, development and exploitation of these resources, to which the coastal countries are entitled.
- In the light of these circumstances, the Governments of Chile, Ecuador and Peru proclaim as a norm of their international maritime policy that they each possess exclusive sovereignty and jurisdiction over the sea along the coasts of their respective countries to a minimum distance of 200 nautical miles from these coasts.
- The exclusive jurisdiction and sovereignty over this maritime zone shall also encompass exclusive sovereignty and jurisdiction over the seabed and the subsoil thereof.
- In the case of island territories, the zone of 200 nautical miles shall apply to the entire coast of the island or group of islands. If an island or group of islands belonging to one of the countries making the declaration is situated less than 200 nautical miles from the general maritime zone belonging to another of those countries, the maritime zone of the island or group of islands shall be limited by the parallel at the point at which the land frontier of the States concerned reaches the sea.
- This declaration shall be without prejudice to the necessary limitations to the exercise of sovereignty and jurisdiction established under international law to allow innocent and inoffensive passage through the area indicated for ships of all nations.
- VI) For the application of the principles contained in this Declaration, the Governments of Chile, Ecuador and Peru hereby announce their intention to sign agreements or conventions which shall establish general norms to regulate and protect hunting and fishing within the maritime zone belonging to them, and to regulate and co-

¹ Came into force on 18 August 1952 by signature.

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ordinate the exploitation and development of all other kinds of products or natural resources existing in these waters which are of common interest.

Santiago, 18 August 1952.

[Signed]
JULIO RUIZ BOURGEOIS
Delegate of Chile

[Signed]
JORGE FERNÁNDEZ SALAZAR
Delegate of Ecuador

[Signed]
Dr. Alberto Ulloa
Delegate of Peru

[Signed]
FERNANDO GUARELLO
Secretary-General

Annex 129

Agreement relating to a Special Maritime Frontier Zone (Chile, Ecuador and Peru), 4
December 1954, 2274 UNTS 527.

No. 40521

Chile, Ecuador and Peru

Agreement relating to a Special Maritime Frontier Zone. Lima, 4 December 1954

Entry into force: 21 September 1967 by the exchange of instruments of ratification

Authentic text: *Spanish*

Registration with the Secretariat of the United Nations: Chile, 24 August 2004

Chili, Équateur et Pérou

Accord relatif à une zone frontière maritime spéciale. Lima, 4 décembre 1954

Entrée en vigueur : 21 septembre 1967 par échange des instruments de ratification

Texte authentique: espagnol

Enregistrement auprès du Secrétariat des Nations Unies : Chili, 24 août 2004

[SPANISH TEXT — TEXTE ESPAGNOL]

CONVENIO SOBRE ZONA ESPECIAL FRONTERIZA MARITIMA

Los Gobiernos de las Repúblicas de Chile, Ecuador y Perú, de confermidad con lo acordado en la Resolución Nº X, de 8 de Octubre de 1954, sescrita en Santiago de Chile por la Comisión Permanente de la Conferencia sobre Explotación y Conservación de las Riquezas Marítimas del Pacífico Sur,

Después de conocer las proposiciones y recomendaciones aprobadas en Octubre del año en curso por dicha Comisión Permanente,

Han nombrado a los siguientes Plenipotenciarios:

Su Excelencia el señor Presidente de la República de Chile, al Exemo. señor don Alfonso Bulnes Calvo, Embajador Extraordinario y Plenipotenciario de Chile en el Perú;

Su Excelencia el señor i residente de la República del Ecuador, al Exemo señor don Jorge Salvador Lara, Encargado de Negocios a.i. del Ecuador en el Perú; y

Su Excelencia el señor Presidente de la República del Perú, al Exemo. señor don David Aguilar Cornejo, Ministro de Relaciones Exteriores del Perú,

Quienes;

CONSIDERANDO:

Que la experiencia ha demostrado que debido a las dificultades que encuentran las embarcaciones de poco porte tripuladas por gente de mar con escasos conocimientos de náutica o que carecen de los instrumentos necesarios para determinar con exactitud su posición en alta mar, se producen con frecuencia, de modo inocente y accidental, violaciones de la frontera marítima entre los Estados vecinos;

Que la aplicación de sanciones en estos casos produce siempre resentimientos entre los pescadores y fricciones entre los países que pueden afectar al espíritu de colaboración y de unidad que en todo momento debe animar a los países signatarios de los acuerdos de Santiago; y

Que es conveniente evitar la posibilidad de estas involuntarias infracciones cuyas consecuencias sufren principalmente los pescadores;

CONVIENEN:

PRIMERO: Establécese una Zona Especial, a partir de las 12 millas marinas de la costa, de 10 millas marinas de ancho a cada lado del paralelo que constituye el límite marítimo entre los dos países.

SEGUNDO: La presencia accidental en la referida zona de las embarcaciones de oualquiera de los países limitrofes, aludidas en el primer considerando, no será considerada como violación de las aguas de la zona marítima, sin que esto signifique reconocimiento de derecho alguno para ejercer faenas de pesca o caza con propósito preconcebido en dicha Zona Es-

TERCERO: La pesca o caza dentro de la zona de 12 millas marinas a partir de la costa está reservada exclusivamente a los nacionales de cada

CUARTO: Todo lo establecido en el presente Convenio se entenderá ser parte integrante, complementaria y que no deroga las resoluciones y acuerdos adoptados en la Conferencia sobre Explotación y Conservación de las Riquezas Marítimas del Pacífico Sur, celebrada en Santiago de Chile, en Agosto de 1952.

EN FE DE LO CUAL, los respectivos Representantes Plenipotenciarios de los Gobiernos de Chile, Ecuador y Perú, firman este documento en tres ciemplares, en Lima, a los cuatro días del mes de Diciembre de mil novecientos cincuenticuatro.

POR EL GOBIERNO DE CHILE:

POR EL GOBIERNO DEL ECUADOR:

POR EL GOBIERNO DEL PERU: J. J. Aquilia David Aguilar Cornejo.

Chich

Rima, 11 de gebrero de 1955.

Remitase al Congreso para los exectos de la atribución que le consiere el inciso 21, del artículo 123 De la Constitución Rolitica De la República.

Registrese.

[TRANSLATION — TRADUCTION]

AGREEMENT RELATING TO A SPECIAL MARITIME FRONTIER ZONE

The Governments of the Republics of Chile, Ecuador and Peru, in conformity with the provisions of Resolution X of 8 October 1954, signed at Santiago de Chile by the Standing Committee of the Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific,

Having noted the proposals and recommendations approved in October of this year by the said Standing Committee,

Have appointed as their Plenipotentiaries:

His Excellency the President of the Republic of Chile: His Excellency Mr. Alfonso Bulnes Calvo, Ambassador Extraordinary and Plenipotentiary of Chile in Peru;

His Excellency the President of the Republic of Ecuador: His Excellency Mr. Jorge Salvador Lara, Chargé d'affaires a.i. of Ecuador in Peru; and

His Excellency the President of the Republic of Peru: His Excellency Mr. David Aguilar Cornejo, Minister for Foreign Affairs of Peru,

who.

Considering that:

Experience has shown that innocent and inadvertent violations of the maritime frontier between adjacent States occur frequently because small vessels manned by crews with insufficient knowledge of navigation or not equipped with the necessary instruments have difficulty in determining accurately their position on the high seas;

The application of penalties in such cases always produces ill-feeling in the fishermen and friction between the countries concerned, which may affect adversely the spirit of cooperation and unity which should at all times prevail among the countries signatories to the instruments signed at Santiago; and

It is desirable to avoid the occurrence of such unintentional infringements, the consequences of which affect principally the fishermen;

Have agreed as follows:

- 1. A special zone is hereby established, at a distance of 12 nautical miles from the coast, extending to a breadth of 10 nautical miles on either side of the parallel which constitutes a maritime boundary between the two countries.
- 2. The accidental presence in the said zone of a vessel of either of the adjacent countries, which is a vessel of the nature described in the paragraph beginning with the words "Experience has shown" in the preamble hereto, shall not be considered to be a violation of the waters of the maritime zone, though this provision shall not be construed as recognizing any right to engage, with deliberate intent, in hunting or fishing in the said special zone.
- 3. Fishing or hunting within the zone of 12 nautical miles from the coast shall be reserved exclusively to the nationals of each country.

4. All the provisions of this Agreement shall be deemed to be an integral and supplementary part of, and not in any way to abrogate, the resolutions and decisions adopted at the Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific, held in Santiago de Chile in August 1952.

In witness whereof, the respective Plenipotentiaries of the Governments of Chile, Ecuador and Peru have signed this Agreement in three copies at Lima on 4 December 1954.

For the Government of Chile: ALFONSO BULNES CALVO

For the Government of Ecuador: JORGE SALVADOR LARA

For the Government of Peru: DAVID AGUILAR CORNEJO

[TRANSLATION — TRADUCTION]

ACCORD RELATIF À UNE ZONE FRONTIERE MARITIME SPÉCIALE

Le Gouvernement de la République du Chili, le Gouvernement de l'Equateur et le Gouvernement du Pérou, conformément aux dispositions de la Résolution X du 8 octobre 1954, signée à Santiago du Chili par la Commission permanente de la Conférence sur l'exploitation et la conservation des ressources maritimes du Pacifique Sud,

Ayant pris note des propositions et recommandations approuvées en octobre de cette année par la Commission permanente,

Ayant désigné leurs Plénipotentiaires :

Son Excellence le Président de la République du Chili : Son Excellence M. Alfonso Bulnes Calvo, Ambassadeur extraordinaire et plénipotentiaire du Chili au Pérou,

Son Excellence le Président de la République de l'Equateur : Son Excellence M. Jorge Salvador Lara, Chargé d'affaires par intérim de l'Equateur du Pérou,

Son Excellence le Président de la République du Pérou : Son Excellence M. David Aguilar Cornejo, Ministre des affaires étrangères du Pérou.

qui,

Considérant que l'expérience a montré que la frontière maritime entre des Etats adjacents était fréquemment violée de manière innocente et par inadvertance parce que les navires de petite taille dont l'équipage ne connaît pas suffisamment la navigation ou qui ne sont pas équipés des instruments nécessaires ont du mal à déterminer précisément leur position en haute mer.

Considérant que l'application de peines en pareils cas créée toujours un malaise chez les pêcheurs et des frictions entre les pays intéressés, ce qui peut nuire à l'esprit de coopération et d'unité qui devrait en tout temps régner entre les pays signataires des instruments signés à Santiago,

Considérant qu'il est souhaitable d'éviter que ne se produisent de telles violations involontaires dont les conséquences sont principalement ressenties par les pêcheurs,

Sont convenus de ce qui suit :

- 1. Une zone spéciale est créée par le présent Accord à une distance de 12 milles marins de la côte et avec une largeur de 10 milles marins de part et d'autre du parallèle qui constitue la frontière maritime entre les deux pays.
- 2. La présence accidentelle dans cette zone d'un navire soit d'un pays adjacent du type décrit à l'alinéa du préambule du présent Accord commençant par les mots : " Considérant que l'expérience a montré " ne sera pas considérée comme une violation des eaux de la zone maritime, cette disposition ne devant toutefois pas être interprétée comme reconnaissant un droit quelconque de s'adonner délibérément à la chasse ou la pêche dans cette zone spéciale.
- 3. La pêche et la chasse dans la zone de 12 milles marins à partir de la côte sont réservées exclusivement aux ressortissants de chaque pays.

4. Toutes les dispositions du présent Accord sont réputées faire partie intégrante et complémentaire des résolutions et décisions adoptées à la Conférence sur l'exploitation et la conservation des ressources maritimes du Pacifique Sud tenue à Santiago du Chili en août 1952 et n'approcher en aucun cas ces résolutions et décisions.

EN FOI DE QUOI les Plénipotentiaires respectifs du Gouvernement du Chili, du Gouvernement de l'Equateur et du Gouvernement du Pérou ont signé le présent Accord en trois exemplaires à Lima, le 4 décembre 1954.

Pour le Gouvernement du Chili : ALFONSO BULNES CALVO

Pour le Gouvernement de l'Equateur :

JORGE SALVADOR LARA

Pour le Gouvernement du Pérou : DAVID AGUILAR CORNEJO

Annex 130

Agreement between Norway and the Soviet Union Concerning the Sea Frontier in the Varangerfjord, 15 February 1957, JI Charney & LM Alexander (eds), *International Maritime Boundaries II* (Nijhoff 1993) p. 1786.

Norway-Soviet Union

Report Number 9-6

Agreement between Norway and the Soviet Union Concerning the Sea Frontier in the Varangerfjord of 15 February 1957 and Protocol of 29 November 1957

(1) Agreement

Signed: 15 February 1957

Entered into force: 24 April 1957

(2) Descriptive Protocol

Signed: 29 November 1957

Entered into force: 17 March 1958

Published at: Limits in the Seas No. 17 (1970)

I Canadian Annex 77 (1983)II Libyan Annex No. 4 (1983)I Conforti & Francalanci 3 (1979)

I SUMMARY

This agreement established a relatively short, partial maritime boundary between Norway and the Soviet Union. There are three agreed points and two straight lines between them. The boundary is 24.35 nautical miles (n.m.) long, composed of 12.6 n.m. of territorial sea boundary between the first two agreed points and 11.75 n.m. of continental shelf boundary between the second and third agreed points, all within the mouth of the Varangerfjord. The two countries are never much more than 24 n.m. apart. The boundary does not extend into the Barents Sea: negotiations about the delimitation of the Barents Sea have been held for many years, but no agreement has been signed. The methods of delimitation were influenced by special factors, notably a Norwegian baseline and the shape of the fjord's mouth. Equidistance was used at the northernmost of the three defined points. The agreement established a pragmatic boundary in an unusual legal and geographical situation in the mouth of a major gulf.

II CONSIDERATIONS

1 Political, Strategic, and Historical Considerations

As a result of the cession by Finland of the Petsamo area to the Soviet Union, the latter acquired a frontier with Norway. Norway is a member of NATO; the Soviet Union is a member of the Warsaw Pact. The entire boundary runs through an area which is politically and strategically sensitive. Possibly for that reason, the maritime boundary was demarcated by reference marks. The boundary begins at the end point (frontier mark No. 415) of the land frontier drawn in 1947 by agreement between the two states.

2 Legal Regime Considerations

The areas delimited are, first, territorial sea and then a narrow 'neck' of continental shelf. The legal regime was important in that a turning point was fixed at the intersection of the Norwegian 4 n.m. territorial sea with the Soviet 12 n.m. territorial continental shelf. Provisions for the settlement of disputes were not included, but provision was made for the establishment of a joint boundary commission, charged with the tasks of marking the boundary. The Commission drew up a detailed protocol, setting out calculations and known as the 'Descriptive Protocol' in English.

3 Economic and Environmental Considerations

These considerations did not affect the course of the boundary. Both sides had fishing interests in the general area but factors to do with the territorial sea, frontiers, and baselines predominated. In January 1978, a fisheries agreement was concluded, creating the so-called gray zone where fisheries claims overlapped in the area to the north of Varangerfjord.

4 Geographic Considerations

The Varangerfjord is a major gulf off the Barents Sea: the Norway/Soviet Union land frontier reaches the sea on the southern side of the fjord's wide mouth. The coasts are straight and adjacent at Marker No. 415, which is the end point of the land boundary, situated half a nautical mile offshore. The Soviet coast runs east before curving around to the north, with the result that the coasts become opposite in the vicinity of the third point. The second point of the maritime boundary is the place where the 4 n.m. territorial sea of Norway (measured from a straight baseline from Cape Kibergnes to Marker No. 415) intersects with the 12 n.m. territorial sea of the Soviet Union measured from an unnamed cape just to the east of Marker No. 415. The boundary is a straight line between the point of intersection and Marker No. 415, running on a bearing of 30° 04.7". The final point of the boundary is the midpoint on a straight

line drawn from Cape Kibergnes (Norway) to Cape Nemetsky (Soviet Union) where the two coasts have become opposite. This line is 27 n.m. long so that the midpoint is joined to the center point of the boundary by a straight line, running between opposite coasts across a narrow 'neck' or wedge of continental shelf. Coastal configurations were not relevant in establishing the continental shelf boundary, except to the extent that the third point lies half way between two opposite capes.

5 Islands, Rocks, Reefs, and Low-Tide Elevations Considerations

No such features were relevant in this case. Had the method of equidistance been used, the question of the weight to be accorded to a Soviet island called Kheynya-Saar might have arisen.

6 Baseline Considerations

Norway had established a straight baseline, about 30 n.m. long, across the mouth of the Varangerfjord from Marker No. 415 to Cape Kibergnes. (Drawing a straight baseline to the border marker may be considered unusual.) From this baseline, Norway measured its 4- n.m. territorial sea. However, in the southern part of the area, Norway could not claim the Soviet Union's territorial sea, measured from the coast. The Soviet Union subsequently drew straight baselines along its own coast. The Norwegian baseline gave the terminus of the land boundary. The baseline was used in fixing the position of the second point on the maritime boundary. The Soviet baseline did not affect the agreed boundary.

7 Geological and Geomorphological Considerations

The bed of the fjord's mouth, which descends deeper than 200 meters, is featureless. Geological and geomorphological considerations were not taken into account in deciding upon the precise course of the boundary.

8 Method of Delimitation Considerations

The method used was to draw straight lines between the three agreed points: (i) Marker No. 415; (ii) the intersection of the Norwegian 4 n.m. limit (measured from the Norwegian baseline) with the Soviet 12 n.m. limit (measured from the coast); and (iii) the midpoint between two capes.

The method used for establishing the line between the first two points is unprecedented. As regards the third point, the choice of the midpoint on the closing line amounts to a use of equidistance. However, the boundary itself is not an equidistance line. Proportionality was not a factor, although the boundary does not appear disproportionate from a glance at the map. The boundary runs, broadly speaking, across the broad mouth of the gulf,

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leaving plenty of water on either side for access from the fjord to the Barents Sea.

9 Technical Considerations

The Joint Commission calculated the coordinates of the three defined points on the 1932 Pulkova system in the sixth six-degree zone having as its axis the meridian of 33° E. Norwegian and Soviet charts on the scale of 1:100,000 were annexed to the agreement.

10 Other Considerations

None.

III CONCLUSIONS

This is a special case in that the boundary runs through or very close to the territorial seas of the parties in the mouth of a gulf. It responds to the situation caused by drawing a straight baseline to a previously agreed boundary marker. The boundary is not based on equidistance, but it represents a pragmatic solution acceptable to both sides in the circumstances which prevailed.

IV RELATED LAW IN FORCE

A Law of the Sea Conventions

None existed when the agreement was signed

B Maritime Jurisdiction Claimed at the Time of Signature

Norway: 4-n.m. territorial sea

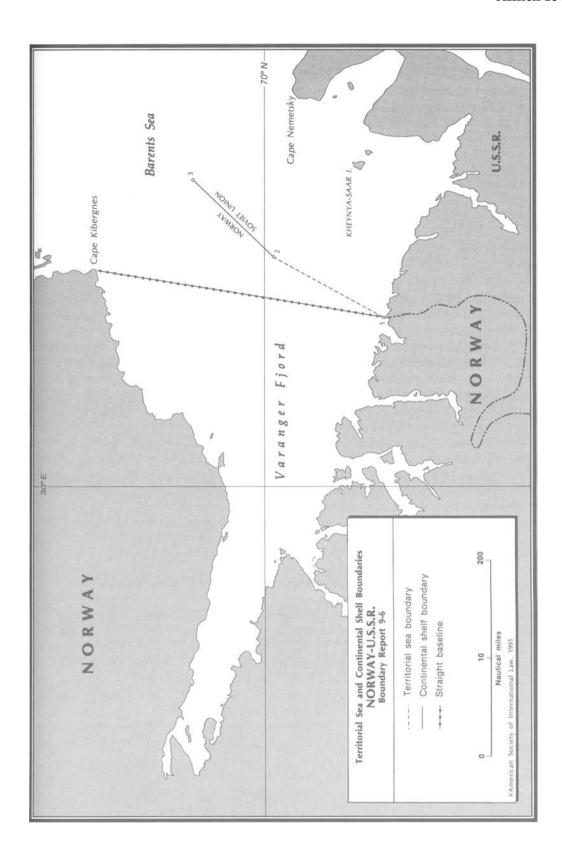
Soviet Union: 12-n.m. territorial sea

C Maritime Jurisdiction Claimed Subsequent to Signature

No change has taken place in the breadth of the respective territorial seas; both states have enacted legislation about the continental shelf and have claimed exclusive economic zones of 200 n.m.

V REFERENCES AND ADDITIONAL READING

J.R.V. Prescott, The Maritime Political Boundaries of the World 264–66(1985)



Agreement between Norway and the Soviet Union Concerning the Sea Frontier in the Varangerfjord

Article 1

The sea frontier between Norway and the Union of Soviet Socialist Republics in the Varangerfjord shall follow a straight line from frontier mark No. 415 (spar buoy), which is the terminal point of the frontier drawn in 1947, to the intersection of the outer limits of Norwegian and Soviet territorial waters. The said frontier is indicated on the attached Soviet chart, which is drawn on the scale 1: 100,000.

Neither of the Contracting Parties shall extend its territorial waters beyond the straight line extending from the intersection referred to in the first paragraph of this article to the median point of the line between Cape Nemetsky and Cape Kibergnes. The said straight line is indicated on the aforementioned chart by a dotted line.

Article 2

The Contracting Parties shall establish, on a footing of equality, a Joint Soviet-Norwegian Boundary Commission, which shall calculate the geographical co-ordinates of the point of intersection of the outer limits of the territorial waters and of the median point of the line between Cape Nemetsky and Cape Kibergnes, which are referred to in article 1, shall set up reference marks whereby the location of the Norwegian-Soviet sea frontier in the Varangerfjord can be determined, and shall prepare the necessary documents.

The Joint Commission shall begin its work not later than May 1957 and shall endeavor to complete it before the end of the same year.

All expenses incurred in connection with the said work shall be equally apportioned between the Contracting Parties.

Article 3

This Agreement shall be ratified and shall enter into force on the date of the exchange of the instruments of ratification.

The instrument of ratification shall be exchanged at Moscow as soon as possible.

DONE at Oslo on 15 February 1957 in two copies in the Norwegian and Russian languages, both texts being equally authentic.

By authorization of the Royal Norwegian Government: Peder Holt By authorization of the Government of the Union of Soviet Socialist Republics:
G. I. Tunkin

The Descriptive Protocol of November 29, 1957, set forth the following principles:

The Joint Soviet-Norwegian Commission for the Demarcation of the Sea Frontier between the USSR and Norway hereby declares that, in conformity with the Agreement of 15 February 1957 between the Royal Norwegian Government and the Government of the Union of Soviet Socialist Republics concerning the sea frontier between Norway and the USSR in the Varangerfjord, it has calculated the geographical and rectangular co-ordinates of the point of intersection of the outer limits of the Norwegian and Soviet territorial waters and of the median point of the line between Cape Nemetsky and Cape Kibergnes and has also set up reference marks indicating the location of the Norwegian-Soviet sea frontier.

The initial point of the sea frontier between Norway and the USSR in the Varangerfjord is frontier mark No. 415 (spar buoy), which is also the terminal point of the Norwegian-Soviet frontier demarcated in 1947. The geographical and rectangular co-ordinates of frontier mark No. 415 (spar buoy) according to the documents for the demarcation of the State frontier between Norway and the USSR signed at Moscow on December 1947 are as follows:

Latitude = $69^{\circ} 47' 46.14''$ Longitude = $30^{\circ} 49' 09.85''$ x = 7,746,912.1y = 6,415,943.7

From frontier mark No. 415 (spar buoy), the sea frontier between Norway and the USSR runs in a straight line in a north-north-easterly direction to the terminal point of this frontier, which is the point of intersection between the outer limit of the Norwegian territorial waters, situated four nautical miles to the east of and parallel with a straight line between Cape Kibergnes and frontier mark No. 415 (spar buoy), and the outer limit of the Soviet territorial waters,

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situated twelve nautical miles from the northern extremity of the unnamed cape on the Soviet coast east of the frontier river Grense Jakobselv (Vorema).

The geographical and rectangular co-ordinates of the terminal point of the sea frontier, having been calculated analytically, are as follows:

```
Latitude = 69^{\circ} 58' 50.22''

Longitude = 31^{\circ} 06' 23.11''

x = 7,767,110.9

y = 6,427,642.7
```

The bearing angle of the Norwegian-Soviet sea frontier from frontier mark No. 415 (spar buoy) to the point of intersection of the outer limits of the Norwegian and the Soviet territorial waters in the Varangerfjord (the terminal point of the sea frontier) is 30° 04.7" or 33 g. 4199.

The length of the sea frontier is 12.6 nautical miles.

The co-ordinates of the terminal point of the sea frontier were calculated on the basis of the co-ordinates of frontier mark No. 415 (spar buoy), as determined in 1947, and of the co-ordinates of Cape Kibergnes and of the unnamed Soviet Cape, as determined by the Joint Commission in 1957.

The geographical and rectangular co-ordinates of Cape Kibergnes are as follows:

```
Latitude = 70^{\circ} 17′ 17.79″

Longitude = 31^{\circ} 03′ 51.00″

x = 7,801,466.0

y = 6,427,119.0
```

The geographical and rectangular co-ordinates of the unnamed Soviet Cape are as follows:

```
Latitude = 69^{\circ} 47' 07.25''

Longitude = 30^{\circ} 59' 29.92''

x = 7,745,479.8

y = 6,422,541.3
```

In the demarcation of the Norwegian-Soviet sea frontier in the Varangerfjord in 1957, the Joint Soviet-Norwegian Commission also calculated the co-ordinates of the median point of the line between Cape Nemetsky and Cape Kibergnes. The co-ordinates of this point are as follows:

```
Latigude = 70° 07′ 19.98″

Longitude = 31° 30′ 27.29″

x = 7,782,476.8

y = 6,443,355.5
```

The co-ordinates of this point were calculated on the basis of the above-mentioned co-ordinates of Cape Kibergnes and the following co-ordinates of Cape Nemetsky.

```
Latitude = 69^{\circ} 57' 18.28''

Longitude = 31^{\circ} 56' 38.11''

x = 7,763,488.5

y = 6,459,592.0
```

All the geographical and rectangular co-ordinates calculated by the Joint Commission and referred to in this Descriptive Protocol are given in the 1932 Pulkova System in the sixth six-degree zone having as its axis the meridian thirty-three degrees east of Greenwich. If converted to other systems, these co-ordinates will differ from the figures given here. These co-ordinates were calculated on the same geodetic basis as was used for the 1947 demarcation. The geographical co-ordinates are given in north latitude and in longitude east of Greenwich. The terminal point of the sea frontier and the median point of the line between Cape Nemetsky and Cape Kibergnes have been calculated with a margin of error of ten meters. With regard to the calculation of the other points the co-ordinates of which are given in this Protocol, the degree of accuracy corresponds to that of the geodetic network on which the calculation is based.

The annexes to this Descriptive Protocol are as follows:

- (1) Norwegian and Soviet charts on the scale 1: 100,000 showing the sea frontier between Norway and the USSR.
- (2) Protocol relating to the reference marks, together with a sketch map.
- (3) Sketches of the reference marks.
- (4) Photographs of the reference marks.
- (5) Topographical map on the scale 1: 10,000 of the area in which the reference marks are situated.
- (6) Description of the beacon apparatus, with a diagram of the light-sectors of the reference marks on the reverse side.
- (7) Instructions for the servicing and maintenance of the reference marks.

This Descriptive Protocol together with all the annexes thereto shall require the approval of the Royal Norwegian Government and the Government of the Union of Soviet Socialist Republics and shall enter into force on the date on which the notices of such approval are exchanged.

DONE at Moscow on 29 November 1957 in two copies in the Norwegian and Russian languages, both texts being equally authentic.

Annex 131

Exchange of Notes between France and Portugal Regarding the Maritime Boundary between Senegal and Portuguese Guinea, 26 April 1960, JI Charney & LM Alexander (eds), *International Maritime Boundaries I* (Nijhoff 1993) p. 873.

Guinea-Bissau-Senegal*

Report Number 4-4

(1) Exchange of Notes between France and Portugal of 26 April 1960

Published at: Limits in the Seas No. 68 (1976)

I Canadian Annex 89 (1983) II Libyan Annex No. 6 (1983)

(2) Award of Arbitral Tribunal of 31 July 1989

Published at: Annex to the Application of Guinea-Bissau to the International

Court of Justice of 23 August 1989

(3) Case Concerning the Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal) Request for Indication of Provisional Measures Order

Published at: 1990 ICJ Reports 64

29 ILM 624 (1990)

I SUMMARY

The delimitation dispute between Guinea-Bissau and Senegal was submitted to arbitration since the parties had failed to reach a negotiated settlement. They maintained conflicting positions on the first question which they referred to the Arbitral Tribunal; the question was whether the agreement concluded by an exchange of letters on 26 April 1960 between France and Portugal and which relates to the maritime frontier has the force of law in the relations between Guinea-Bissau and Senegal. This agreement establishes as the boundary for the territorial sea, contiguous zone, and continental shelf 'a straight line, running at 240°, starting from the intersection of the extension of the land boundary and the low water mark.'

Guinea-Bissau was of the view that the agreement could not be invoked

^{*} This delimitation has been included here for purposes of completeness. At the time of completion of this summary, the case was pending before the International Court of Justice.

J.I. Charney and L.M. Alexander (eds), International Maritime Boundaries, 867–874. © 1993 The American Society of International Law. Printed in the Netherlands.

868 Report Number 4-4

against it, while Senegal was of the view that the agreement had the force of law between the parties. The second question of the 'compromis' was the following: 'in the event of a negative answer to the first question, what is the course of the line delimiting the maritime territories appertaining to the Republic of Guinea-Bissau and the Republic of Senegal respectively?'

On 31 July 1989, the Tribunal rendered an award by a majority of two to one that the 1960 agreement did have the force of law between the parties. Since the first question was answered affirmatively, the Tribunal did not answer the second question. The President, who voted in favor of the award, made a declaration stating that he would have answered the first question of the 'compromis' by adding that the agreement of 1960 did not have force of law with respect to the exclusive economic zone and that such an answer would have empowered the Tribunal to deal with the second question.

Guinea-Bissau instituted proceedings with the International Court of Justice on 23 August 1989, asking the Court to declare the award nonexistent because 'one of the two arbitrators making up the appearance of a majority in favour of the text of the "award" has, by a declaration appended to it, expressed a view in contradiction with the one apparently adopted by the vote' and to declare it also void because the Tribunal did not give a complete answer to the questions raised and the boundary of the exclusive economic zone was still undetermined.

II CONSIDERATIONS

1 Political, Strategic, and Historical Considerations

Upon the initiative of Guinea-Bissau, negotiations concerning the delimitation of the maritime boundary between the two countries began in 1977, against a background of conflicting national claims reflecting their different positions on the question of applicability of the exchange of letters (agreement) of 26 April 1960 between France and Portugal. This exchange of letters established the boundary of the territorial sea, contiguous zone, and continental shelf demarcated by 'a straight line running at 240°, starting from' the intersection of the extension of the land boundary and the low water mark.

Negotiations continued from 1977 and failed to yield any results. On 12 March 1985, a 'compromis' was signed by the two states submitting the dispute to an Arbitral Tribunal which rendered its decision on 31 July 1989, agreeing with Senegal that the treaty of 1960, establishing the said boundary, had the force of law between the parties. The Tribunal thus answered only the first question.

2 Legal Regime Considerations

In the award, the Tribunal recognized that in 1960, when the boundary was established by the said agreement, the concept of the exclusive economic

zone had not been established. Accordingly, the legal regime of the 1960 boundary only comprised territorial sea, contiguous zone, and continental shelf.

3 Economic and Environmental Considerations

While economic issues were considered by the Tribunal on the basis of claims by Guinea-Bissau asserting that the application of the 1960 boundary was a violation of the principle of permanent sovereignty over natural resources, the Tribunal rejected this claim.

4 Geographic Considerations

Since the Tribunal decided that the 1960 agreement and the boundary established had the force of law between the parties, it did not have to take into account the geographic considerations of the two adjacent states. However, an analysis of the 240° azimuth used by the 1960 exchange of letters and the coastline in the area suggests that the azimuth reflects a compromise based upon the general direction of the coasts of the two territories. The azimuth of 240° bisects the angle formed by lines approximating the general directions of the coasts of Senegal and of Guinea-Bissau.

5 Islands, Rocks, Reefs, and Low-Tide Elevations Considerations

Similarly, the Tribunal did not consider these questions since it only answered the first question upholding the 1960 agreement. However, the choice of the 240° azimuth in an area in which numerous islands are present suggests that islands played no role in the instant delimitation even though they do affect the location of the hypothetical equidistant line.

6 Baseline Considerations

While the Tribunal did not raise the question of baselines, the 240° azimuth used in the 1960 exchange of notes is not drawn by the use of baselines. Nor do closing lines or other straight baselines appear relevant to this line.

7 Geological and Geomorphological Considerations

The Tribunal did not consider these issues. In any case, the 1960 line does not appear to coincide with any geological or geomorphological feature.

8 Method of Delimitation Considerations

The Tribunal upheld the delimitation by the 1960 agreement which was a straight line running at 240°, starting from the intersection of the extension of the land boundary and the low water mark.

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9 Technical Considerations

The Tribunal was of the view that the boundary line demarcated by the 1960 agreement was not geodetic, but loxodromic.

10 Other Considerations

None.

III CONCLUSIONS

Since the Tribunal only considered and answered the first question submitted to it by the parties, concerning the applicability or non-applicability of the agreement of 1960, the award dealt primarily with legal issues relating to this question. Accordingly, it did not consider other issues relating to delimitation of a maritime boundary which would have confronted it had it answered the second question.

However, an analysis by this author of the 1960 line established by the exchange of notes suggests that it reflects a compromise based upon a division of the angle formed by the general direction of the coasts of the two territories.

IV RELATED LAW IN FORCE

A Law of the Sea Conventions

Guinea-Bissau: Ratified the 1982 LOS Convention Senegal: Ratified the 1982 LOS Convention

B Maritime Jurisdiction Claimed at the Time of Signature

Guinea-Bissau: 12-mile territorial sea, 200-mile exclusive economic zone Senegal: 12-mile territorial sea, 200-meter depth for the outer edge of the continental shelf

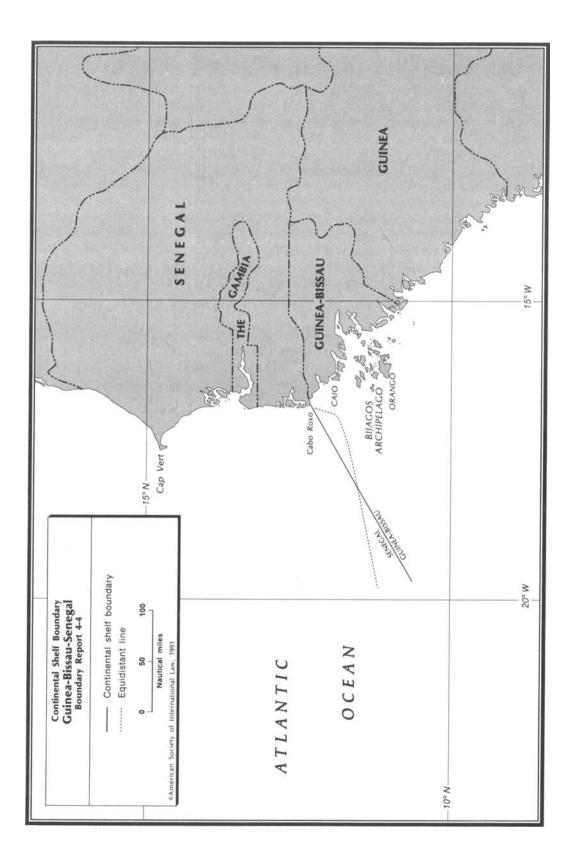
C Maritime Jurisdiction Claimed Subsequent to Signature

Guinea-Bissau: No change

Senegal: 200-mile exclusive economic zone

V REFERENCES

None.



Ministry of Foreign Affairs Decree No. 60-504 of May 25, 1960, Publishing the Exchange of Notes between France and Portugal Regarding the Maritime Boundary between Senegal and Portuguese Guinea, Signed April 26, 1960.

On the report of the Prime Minister and the Minister of Foreign Affairs; Considering Articles 52–55 of the Constitution;

Considering Decree No. 53-192 of March 14, 1953, concerning the ratification and publication of international commitments undertaken by France, The President of the Republic hereby decrees:

Article 1

The Exchange of Notes between France and Portugal regarding the maritime boundary between Senegal and Portuguese Guinea, signed April 26, 1960, shall be published in the *Journal Officiel* of the French Republic.

Article 2

The Prime Minister and the Minister of Foreign Affairs shall be responsible for carrying out this decree.

Done at Paris, May 25, 1960.

C. de Gaulle

By the President of the Republic: Michel Debre Prime Minister

> Maurice Couve de Murville Minister of Foreign Affairs

Embassy of France in Portugal

Lisbon, April 26, 1960

His Excellency Antonio de Oliveira Salazar, President of the Council, Acting Minister of Foreign Affairs Lisbon.

Mr. President:

Pursuant to the talks held in Lisbon September 8–10, 1959, with a view to defining the maritime boundary between the Republic of Senegal and the Portuguese Province of Guinea, taking into account the Geneva Conventions of April 29, 1958, drafted by the United Nations Conference on the Law of the Sea, I have the honor, on behalf of the French Republic and the Community, to propose to Your Excellency the following:

To the external limit of the territorial seas, the boundary would be defined by a straight line, running at 240°, starting from the intersection of the extension of the land boundary and the low-water mark, represented for that purpose by the Cape Roxo light.

With regard to the contiguous zones and the continental shelf, the delimitation would consist of the straight line extension in the same direction of the territorial sea boundary.

In the spirit of friendship and neighborly relations that has always existed between our countries, the competent authorities would favor, as appropriate, mutual cooperation between natural or juristic persons authorized to exercise rights on one side or the other of the line defined above.

I should be grateful if Your Excellency would inform me whether these proposals meet with the approval of the Portuguese Government.

Accept, Mr. President, the assurances of my very high consideration.

Signed: B. de Menthon

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Ministry of Foreign Affairs

Office of the Minister

Lisbon, April 26, 1960

Mr. Ambassador:

I have the honor to acknowledge receipt of Your Excellency's note of April 26, 1960, which reads as follows:

[Same text as above note]

I have the honor to inform Your Excellency that the terms of your note transcribed above meet with the approval of the Portuguese Government, with the understanding that the aforesaid note and this reply shall constitute the instruments of the agreement reached on the subject between the two Governments.

I take this opportunity to present to you, Mr. Ambassador, the assurance of my highest consideration.

A. O. Salazar Minister of Foreign Affairs

Annex 132 Agreement between The Gambia and the Republic of Senegal, 4 June 1975, JI Charney & LM Alexander (eds), International Maritime Boundaries I (Nijhoff 1993) p. 854.

The Gambia-Senegal

Report Number 4-2

Agreement between The Gambia and the Republic of Senegal

Signed: 4 June 1975

Entered in force: 27 August 1976

Published at: Limits in the Seas No. 85 (1979)

Maritime Boundary Agreements (1970-84) 100 (1987)

I Canadian Annex 377 (1983)
II Libyan Annex No. 43 (1983)
II Conforti & Francalanci 39 (1987)
VIII New Directions 104 (1980)

I SUMMARY

This agreement establishes the northern and southern maritime boundaries of The Gambia and Senegal. The northern boundary follows the parallel of latitude 13° 35′ 36″ N. The southern boundary follows, after a small curve, the parallel of latitude 13° 03′ 27″ N. The parties deliberately chose to use this delimitation method instead of the equidistance method which could have had a cut-off effect on the Gambian exclusive economic zone.

II CONSIDERATIONS

1 Political, Strategic, and Historical Considerations

There was no particular political, historical, or strategic reason which led to the actual delimitation of the boundary in question. As indicated in the agreement, the two governments were motivated to fix the maritime boundary between them in an effort to establish and maintain favorable conditions for development and cooperation between them and to preempt possible future problems.

2 Legal Regime Considerations

The agreement establishes both the northern and the southern maritime boundaries between The Gambia and Senegal, without distinguishing between the different zones of jurisdiction. It may be considered as an all-purpose boundary. No outer limit to the boundaries is specified in the delimitation.

3 Economic and Environmental Considerations

There is no evidence that specific economic or environmental considerations influenced the decision of the parties regarding the locations of the boundaries.

4 Geographic Considerations

The coasts of The Gambia and Senegal are adjacent and, apart from the Gambia River, the coasts of the two parties run in a roughly north—south direction. Since Senegalese territory extends both north and south of The Gambia, two maritime boundaries were established. To avoid a cut-off effect on the Gambian maritime area, the equidistant line method of delimitation was not used.

5 Islands, Rocks, Reefs, and Low-Tide Elevations Considerations

The decision to use parallels of latitude in the delimitation in order to achieve an equitable delimitation was intended to avoid the influence which offshore features would have on the location of the boundary had other methods of delimitation been used

6 Baseline Considerations

There is no evidence that baselines other than those from which the territorial sea is normally measured were taken into account in the delimitation of the boundaries in question. Since the boundary was based on parallels of latitude and not on the use of the equidistance method, no baseline controled the course of the boundary beyond the starting point.

7 Geological and Geomorphological Considerations

If the equidistant line were used, the coastal configuration of the two adjacent states would have dictated a delimitation that was bound to cut off the maritime area of The Gambia close to shore. There is no evidence that known subsoil resources influenced the choice of the delimitation method for the boundary.

8 Methods of Delimitation Considerations

The northern boundary is a straight line following the parallel of latitude 13° 35′ 36″ N and is an extension of the land boundary. The southern boundary, except for a very small portion at its beginning which constitutes a slight curve, extends along the parallel of latitude 13° 03′ 27″ N.

9 Technical Considerations

The boundaries were defined on the basis of the French chart No. 6125 on the scale of 1: 300,500 (latitude 13° 40′).

10 Other Considerations

None.

III CONCLUSIONS

This is another example of a maritime boundary delimitation negotiated by the parties outside the context of a specific dispute. By agreeing to use the parallels of latitude, instead of an equidistance method, which could have resulted in a cut-off of the Gambian maritime area, the parties confirmed their aim of achieving an equitable delimitation. The delimitation was to be considered permanent and not to have an adverse effect on the delimitation of the maritime boundary between Senegal and Guinea-Bissau, which was the subject of a third party procedure which also resulted in a boundary aimed at avoiding cut-off effects ((1989) No. 4-4). It also indicates that parties may agree to use the land boundary in the delimitation of their maritime boundary.

IV RELATED LAW IN FORCE

A Law of the Sea Conventions

The Gambia: Ratified the 1982 LOS Convention

Senegal: Party to all four 1958 Geneva Conventions; ratified the 1982 LOS Convention

B Maritime Jurisdiction Claimed at the Time of Signature

The Gambia: 12-mile territorial sea, 18-mile contiguous zone, 100-mile fishing zone

852 Report Number 4–2

Senegal: 12-mile territorial sea, 200-meter depth for the outer edge of the continental shelf

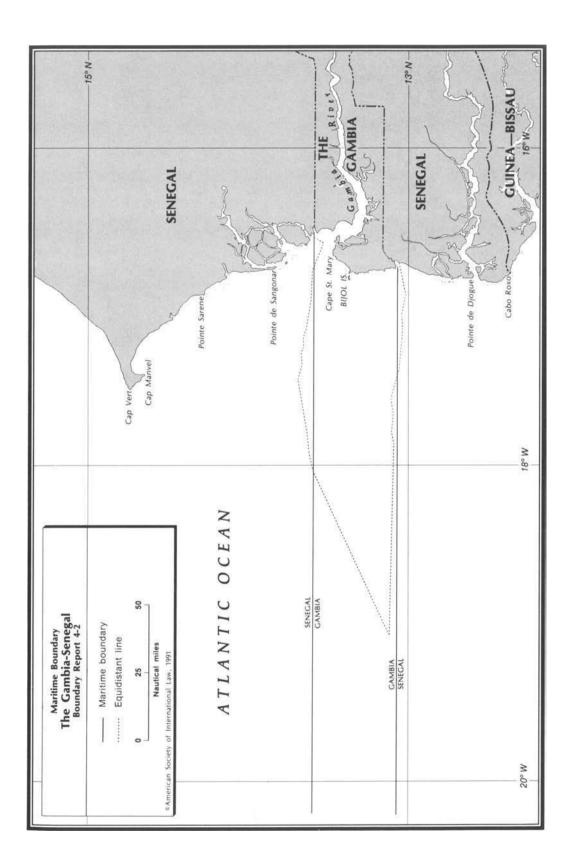
C Maritime Jurisdiction Claimed Subsequent to Signature

The Gambia: 200-mile exclusive economic zone Senegal: 200-mile exclusive economic zone

V REFERENCES AND ADDITIONAL READINGS

LIMITS IN THE SEAS No. 85 (1979)

Prepared by Andronico O. Adede



Agreement between The Gambia and the Republic of Senegal

The Government of the Republic of Senegal and The Government of the Republic of The Gambia

Considering the ties of friendship existing between their two nations;

Being motivated by the principles of the Charter of the United Nations and the Charter of the Organisation of African Unity;

Determined to establish and to maintain between them conditions favourable for the development of co-operation between the Republic of Senegal and the Republic of The Gambia;

Desiring to settle peacefully the problem of the maritime boundaries between States:

Have concluded between them the present Treaty fixing the maritime boundaries between the Republic of Senegal and the Republic of The Gambia, and have agreed as follows:

Article One

The maritime boundary to the North commences from the point of intersection of the land boundary with the coast and follows the parallel of latitude 13° 35′ 36″ North.

Article Two

The maritime boundary to the South commences from the point T of intersection of the land boundary situated to the South of the River Allahein (or San Pedro) with the coast and of which the co-ordinates are:

Latitude: 13° 03′ 51″ North; Longitude: 16° 44′ 49″ West. From point T, the maritime boundary proceeds in a south-westerly direction as far as point M of which the co-ordinates are:

Latitude: 13° 01′ 21″ North; Longitude: 16° 45′ 19″ West.

From point M, the maritime frontier proceeds in a northerly direction as far as point P of which the co-ordinates are:

Latitude: 13° 03′ 27″ North; Longitude: 16° 45′ 22″ West.

From point P, the maritime frontier follows the parallel of latitude 13° 03′ 27″ North.

Article Three

The boundaries defined in Articles One and Two above have been delimited on the basis of the French Chart No. 6125 on the scale of 1:300,500 (latitude 13° 40') agreed by the Government of the Republic of The Gambia and the Government of the Republic of Senegal and of which an enlarged extract is annexed to the present Treaty.

PART II - GENERAL PROVISIONS

Article Four

The present Treaty will be ratified by each State according to its own constitutional procedures.

It will enter into force from the date of the exchange of instruments of ratification.

Article Five

The Treaty will be registered at the Secretariat-General of the United Nations Organisation at the Secretariat-General of the Organisation of African Unity and at the Permanent Senegalo-Gambian Secretariat.

Done at Banjul, on 4th June 1975 in two original texts in the French language and the English language, both texts being equally authentic.

On behalf of the Republic of Gambia: Sir Dawda Kairaba JAWARA

For the Republic of Senegal: Leopold Sedar SENGHOR.



No. 14582

colombia and ECUADOR

Agreement concerning delimitation of marine and submarine areas and maritime co-operation. Signed at Quito on 23 August 1975

Authentic text: Spanish.

Registered by Colombia and Ecuador on 13 February 1976.

COLOMBIE et ÉOUATEUR

Accord relatif à la délimitation des zones marines et sousmarines et à la coopération maritime entre les deux Etats. Signé à Quito le 23 août 1975

Texte authentique : espagnol.

Enregistré par la Colombie et l'Equateur le 13 février 1976.

[TRANSLATION — TRADUCTION]

AGREEMENT' CONCERNING DELIMITATION OF MARINE AND SUBMARINE AREAS AND MARITIME CO-OPERATION BETWEEN THE REPUBLICS OF COLOMBIA AND ECUADOR

The Governments of the Republics of Colombia and Ecuador, having regard to the productive friendship prevailing in relations between their two countries, and considering:

that their identical interests in the South Pacific region make it necessary to establish the closest co-operation between them, with a view to adopting appropriate measures for the preservation, conservation and rationalization of the resources to be found in the marine and submarine areas over which they currently exercise or may in future exercise sovereignty, jurisdiction or surveillance;

that it is their duty to ensure for their people the necessary conditions for subsistence and to provide them with means for their economic development, and that they must therefore use the resources they possess for their benefit and prevent their despoliation;

that it is expedient to delimit their respective marine and submarine areas; have for that purpose appointed as their Plenipotentiaries:

His Excellency the President of Colombia: Mr. Indalecio Liévano Aguirre, Minister for Foreign Affairs;

His Excellency the President of Ecuador: Mr. Antonio José Lucio Paredes, Minister for Foreign Affairs;

Who have agreed:

- Article 1. To designate the line of the geographical parallel traversing the point at which the international land frontier between Ecuador and Colombia reaches the sea as the boundary between their respective marine and submarine areas, which have been established or may be established in the future.
- Article 2. To establish, beyond the twelve-mile limit from the coast, a special zone, ten miles wide, on either side of the parallel forming the sea boundary between the two countries, to ensure that the fortuitous presence of small private fishing craft from either country in the aforesaid zone is not considered a violation of the maritime frontier. This does not imply recognition of any right to engage in fishing or hunting in the special zone.
- Article 3. To recognize and respect the conditions for the current or future exercise by each of the two States of sovereignty, jurisdiction or surveillance in the marine and submarine areas adjacent to their coasts up to a distance of 200 miles, in accordance with the requirements established or to be established by each country and with the provisions of their respective laws.
- Article 4. To recognize the right of each of the two countries to establish the base lines from which the width of the territorial sea is to be measured, using the

¹ Came into force on 22 December 1975 by the exchange of the instruments of ratification, which took place at Bogotá, in accordance with article 10.

system of straight base lines connecting the most salient points on their coasts, and to abide by the provisions which they have adopted or may adopt for that purpose.

- Article 5. To develop the broadest possible co-operation between the two countries for the protection of the renewable and non-renewable resources to be found in the marine and submarine areas over which they exercise or may in the future exercise sovereignty, jurisdiction or surveillance and for the use of such resources for the benefit of their peoples and for their national development.
- Article 6. To afford each other all possible facilities for activities connected with the exploitation and use of the living resources of their respective territorial sea areas, through the exchange of information, co-operation in scientific research, technical collaboration and encouragement of the establishment of joint enterprises.
- Article 7. To co-ordinate, as far as possible, the enactment of laws and regulations by each country in the exercise of its sovereignty, concerning the issue of fishing licences and permits.
- Article 8. To extend the fullest possible international co-operation for the co-ordination of the conservation measures applied by each State in the sea areas under its sovereignty or jurisdiction, particularly in respect of species travelling beyond the areas under its national jurisdiction, taking into account the recommendations of the regional agencies concerned and the most accurate and up-to-date scientific data. Such international co-operation shall not affect the sovereign right of each State to adopt, within the framework of its maritime jurisdiction, such rules and regulations as it deems appropriate.
- Article 9. To extend the fullest possible co-operation to promote the expeditious conduct of international shipping operations in the seas under the sovereignty or jurisdiction of each State.
- Article 10. This Agreement shall enter into force on the date of the exchange of instruments of ratification, which shall take place at Bogotá.
- Article 11. This Agreement is signed in duplicate, both texts being equally authentic.

Done at Quito, on 23 August 1975.

For the Government of the Republic of Colombia:

[Signed]

INDALECIO LIÉVANO AGUIRRE Minister for Foreign Affairs For the Government of the Republic of Ecuador:

[Signed]

Antonio José Lucio Paredes Minister for Foreign Affairs

Annex 134 Convention concerning the State frontier line established between the Islamic Republic of Mauritania and the Kingdom of Morocco (with map), 14 April 1976, 1035 UNTS 120.

No. 15406

MAURITANIA and MOROCCO

Convention concerning the State frontier line established between the Islamic Republic of Mauritania and the Kingdom of Morocco (with map). Signed at Rabat on 14 April 1976

Authentic text: French.

Registered by Mauritania and Morocco on 9 February 1977.

MAURITANIE et MAROC

Convention relative au tracé de la frontière d'État établie entre la République islamique de Mauritanie et le Royaume du Maroc (avec carte). Signée à Rabat le 14 avril 1976

Texte authentique: français.

Enregistrée par la Mauritanie et le Maroc le 9 février 1977.

1977

[TRANSLATION — TRADUCTION]

CONVENTION¹ CONCERNING THE STATE FRONTIER LINE **ISLAMIC** REPUBLIC ESTABLISHED BETWEEN THE MAURITANIA AND THE KINGDOM OF MOROCCO

His Excellency the President of the Islamic Republic of Mauritania and His Majesty the King of Morocco,

With reference to the Advisory Opinion given by the International Court of Justice on 16 October 1975² recognizing the existence of legal ties of allegiance between the King of Morocco and some of the tribes living in the territory of the Sahara and the existence of rights, including some rights relating to land, which constituted legal ties with the Mauritanian entity.

In conformity with the Declaration of Principles signed at Madrid on 14 November 1975,3 transferring the responsibilities and powers held by Spain over the Sahara to the Interim Administration in which Morocco and Mauritania would participate in collaboration with the Jemaa.

Bearing in mind the view expressed by the Jemaa meeting in special session on 26 February 1976,

Have decided to conclude this Convention and, to that end, have appointed as their plenipotentiaries:

Mr. Hamdi Ould Mouknass, Minister of State for Foreign Affairs, and

Dr. Ahmed Laraki, Minister of State for Foreign Affairs,

Who, having exchanged their full powers, found to be in good and due form, have agreed as follows:

The High Contracting Parties have decided by common agreement that the State frontier established between the Islamic Republic of Mauritania and the Kingdom of Morocco shall be defined by a straight line running from the point at which the Atlantic coastline intersects the 24th parallel North to the point of intersection of the 23rd parallel North and the 13th meridian West; the intersection of that straight line with the present frontier of the Islamic Republic of Mauritania constituting the south-eastern limit of the frontier of the Kingdom of Morocco.

From the latter point the frontier shall follow the present frontier of the Islamic Republic of Mauritania northwards to a point represented by the co-ordinates 824/500 and 959 as shown on the initialled map annexed to this Convention.

Article II. The State frontier between the Islamic Republic of Mauritania and the Kingdom of Morocco, as defined in article I above, shall constitute the land frontier and shall also represent the vertical delimitation of sovereignty over air space and the subsoil. The continental shelf shall be delimited by the 24th parallel North.

¹ Came into force on 10 November 1976 by the exchange of the instruments of ratification, which took place at Rabat, in accordance with article V.

² Western Sahara, Advisory Opinion, I.C.J. Reports 1975, p. 12.

³ United Nations, Treaty Series, vol. 988, p. 257.

⁴ See insert in a pocket at the end of this volume.

- Article III. A Moroccan-Mauritanian Mixed Commission is hereby established with a view to proceeding to the demarcation on the ground of the frontier between the two countries as defined in article I above.
- Article IV. On the conclusion of its work, the Mixed Commission shall draw up an instrument stating that the Moroccan-Mauritanian frontier has been marked. The said instrument shall be annexed to this Convention.
- Article V. This Convention shall enter into force on the date of the exchange of the instruments of ratification in conformity with the constitutional procedures in force in the two countries.
- Article VI. On entry into force, this Convention shall be registered with the Secretariat of the United Nations in conformity with Article 102 of the Charter of the United Nations.

In witness whereof the plenipotentiaries have signed and sealed both copies of this Convention.

Done at Rabat on 14 Rabii Attani 1396 (14 April 1976)

For the Islamic Republic of Mauritania:

[Signed]

HAMDI OULD MOUKNASS

For the Kingdom of Morocco:
[Signed]
Ahmed Laraki