INTERNATIONAL COURT OF JUSTICE

CASE CONCERNING
MARITIME DELIMITATION IN THE INDIAN OCEAN

SOMALIA
v.
KENYA

WRITTEN STATEMENT OF SOMALIA CONCERNING THE PRELIMINARY OBJECTIONS OF KENYA

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Annex 1

Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 332 (23 May, 1969), entered into force 27 Jan. 1980

No. 18232

MULTILATERAL

Vienna Convention on the law of treaties (with annex). Concluded at Vienna on 23 May 1969

Authentic texts: English, French, Chinese, Russian and Spanish.
Registered ex officio *on 27 January 1980.*

MULTILATÉRAL

Convention de Vienne sur le droit des traités (avec annexe). Conclue à Vienne le 23 mai 1969

Textes authentiques : anglais, français, chinois, russe et espagnol.
Enregistrée d'office le 27 janvier 1980.

VIENNA CONVENTION[1] ON THE LAW OF TREATIES

The States Parties to the present Convention,

Considering the fundamental role of treaties in the history of international relations,

Recognizing the ever-increasing importance of treaties as a source of international law and as a means of developing peaceful co-operation among nations, whatever their constitutional and social systems,

Noting that the principles of free consent and of good faith and the *pacta sunt servanda* rule are universally recognized,

Affirming that disputes concerning treaties, like other international disputes, should be settled by peaceful means and in conformity with the principles of justice and international law,

Recalling the determination of the peoples of the United Nations to establish conditions under which justice and respect for the obligations arising from treaties can be maintained,

Having in mind the principles of international law embodied in the Charter of the United Nations, such as the principles of the equal rights and self-determination of peoples, of the sovereign equality and independence of all States, of non-interference in the domestic affairs of States, of the prohibition of the threat or use of force and of universal respect for, and observance of, human rights and fundamental freedoms for all,

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[1] Came into force on 27 January 1980, i.e., on the thirtieth day following the date of deposit of the thirty-fifth instrument of ratification or accession with the Secretary-General of the United Nations, in accordance with article 84 (1):

State	*Date of deposit of the instrument of ratification or accession (a)*
Argentina*	5 December 1972
Australia	13 June 1974 *a*
Austria	30 April 1979 *a*
Barbados	24 June 1971
Canada*	14 October 1970 *a*
Central African Republic	10 December 1971 *a*
Cyprus	28 December 1976 *a*
Denmark*	1 June 1976
Finland*	19 August 1977
Greece	30 October 1974 *a*
Holy See	25 February 1977
Honduras	20 September 1979
Italy	25 July 1974
Jamaica	28 July 1970
Kuwait*	11 November 1975 *a*
Lesotho	3 March 1972 *a*
Mauritius	18 January 1973 *a*
Mexico	25 September 1974
Morocco*	26 September 1972
Nauru	5 May 1978 *a*
New Zealand	4 August 1971
Niger	27 October 1971 *a*
Nigeria	31 July 1969
Paraguay	3 February 1972 *a*
Philippines	15 November 1972
Republic of Korea	27 April 1977
Spain	16 May 1972 *a*
Sweden	4 February 1975
Syrian Arab Republic*	2 October 1970 *a*
Togo	28 December 1979 *a*
Tunisia*	23 June 1971 *a*
United Kingdom of Great Britain and Northern Ireland*	25 June 1971
United Republic of Tanzania*	12 April 1976 *a*
Yugoslavia	27 August 1970
Zaire	25 July 1977 *a*

Subsequently, the Convention came into force for the following State on the thirtieth day following the date of deposit of its instrument of ratification or accession with the Secretary-General of the United Nations, in accordance with article 84 (2):

State	*Date of deposit of the instrument of accession (a)*
Rwanda	3 January 1980 *a*

(With effect from 2 February 1980.)

* For the texts of the reservations and declarations made upon ratification or accession, see p. 501 of this volume.

Believing that the codification and progressive development of the law of treaties achieved in the present Convention will promote the purposes of the United Nations set forth in the Charter, namely, the maintenance of international peace and security, the development of friendly relations and the achievement of co-operation among nations,

Affirming that the rules of customary international law will continue to govern questions not regulated by the provisions of the present Convention,

Have agreed as follows:

PART I. INTRODUCTION

Article 1. SCOPE OF THE PRESENT CONVENTION

The present Convention applies to treaties between States.

Article 2. USE OF TERMS

1. For the purposes of the present Convention:

(*a*) "Treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation;

(*b*) "Ratification", "acceptance", "approval" and "accession" mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty;

(*c*) "Full powers" means a document emanating from the competent authority of a State designating a person or persons to represent the State for negotiating, adopting or authenticating the text of a treaty, for expressing the consent of the State to be bound by a treaty, or for accomplishing any other act with respect to a treaty;

(*d*) "Reservation" means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State;

(*e*) "Negotiating State" means a State which took part in the drawing up and adoption of the text of the treaty;

(*f*) "Contracting State" means a State which has consented to be bound by the treaty, whether or not the treaty has entered into force;

(*g*) "Party" means a State which has consented to be bound by the treaty and for which the treaty is in force;

(*h*) "Third State" means a State not a party to the treaty;

(*i*) "International organization" means an intergovernmental organization.

2. The provisions of paragraph 1 regarding the use of terms in the present Convention are without prejudice to the use of those terms or to the meanings which may be given to them in the internal law of any State.

Article 3. INTERNATIONAL AGREEMENTS NOT WITHIN THE SCOPE OF THE PRESENT CONVENTION

The fact that the present Convention does not apply to international agreements concluded between States and other subjects of international law or between such other subjects of international law, or to international agreements not in written form, shall not affect:

(*a*) The legal force of such agreements;

(*b*) The application to them of any of the rules set forth in the present Convention to which they would be subject under international law independently of the Convention;

(*c*) The application of the Convention to the relations of States as between themselves under international agreements to which other subjects of international law are also parties.

Article 4. NON-RETROACTIVITY OF THE PRESENT CONVENTION

Without prejudice to the application of any rules set forth in the present Convention to which treaties would be subject under international law independently of the Convention, the Convention applies only to treaties which are concluded by States after the entry into force of the present Convention with regard to such States.

Article 5. TREATIES CONSTITUTING INTERNATIONAL ORGANIZATIONS AND TREATIES ADOPTED WITHIN AN INTERNATIONAL ORGANIZATION

The present Convention applies to any treaty which is the constituent instrument of an international organization and to any treaty adopted within an international organization without prejudice to any relevant rules of the organization.

PART II. CONCLUSION AND ENTRY INTO FORCE OF TREATIES

SECTION 1. CONCLUSION OF TREATIES

Article 6. CAPACITY OF STATES TO CONCLUDE TREATIES

Every State possesses capacity to conclude treaties.

Article 7. FULL POWERS

1. A person is considered as representing a State for the purpose of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound by a treaty if:

(*a*) He produces appropriate full powers; or

(*b*) It appears from the practice of the States concerned or from other circumstances that their intention was to consider that person as representing the State for such purposes and to dispense with full powers.

2. In virtue of their functions and without having to produce full powers, the following are considered as representing their State:

(*a*) Heads of State, Heads of Government and Ministers for Foreign Affairs, for the purpose of performing all acts relating to the conclusion of a treaty;

(*b*) Heads of diplomatic missions, for the purpose of adopting the text of a treaty between the accrediting State and the State to which they are accredited;

(*c*) Representatives accredited by States to an international conference or to an international organization or one of its organs, for the purpose of adopting the text of a treaty in that conference, organization or organ.

Article 8. SUBSEQUENT CONFIRMATION OF AN ACT PERFORMED WITHOUT AUTHORIZATION

An act relating to the conclusion of a treaty performed by a person who cannot be considered under article 7 as authorized to represent a State for that purpose is without legal effect unless afterwards confirmed by that State.

Article 9. ADOPTION OF THE TEXT

1. The adoption of the text of a treaty takes place by the consent of all the States participating in its drawing up except as provided in paragraph 2.

2. The adoption of the text of a treaty at an international conference takes place by the vote of two thirds of the States present and voting, unless by the same majority they shall decide to apply a different rule.

Article 10. AUTHENTICATION OF THE TEXT

The text of a treaty is established as authentic and definitive:

(*a*) By such procedure as may be provided for in the text or agreed upon by the States participating in its drawing up; or

(*b*) Failing such procedure, by the signature, signature *ad referendum* or initialling by the representatives of those States of the text of the treaty or of the Final Act of a conference incorporating the text.

Article 11. MEANS OF EXPRESSING CONSENT TO BE BOUND BY A TREATY

The consent of a State to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed.

Article 12. CONSENT TO BE BOUND BY A TREATY EXPRESSED BY SIGNATURE

1. The consent of a State to be bound by a treaty is expressed by the signature of its representative when:

(*a*) The treaty provides that signature shall have that effect;

(*b*) It is otherwise established that the negotiating States were agreed that signature should have that effect; or

(*c*) The intention of the State to give that effect to the signature appears from the full powers of its representative or was expressed during the negotiation.

2. For the purposes of paragraph 1:

(*a*) The initialling of a text constitutes a signature of the treaty when it is established that the negotiating States so agreed;

(*b*) The signature *ad referendum* of a treaty by a representative, if confirmed by his State, constitutes a full signature of the treaty.

Article 13. CONSENT TO BE BOUND BY A TREATY EXPRESSED BY AN EXCHANGE OF INSTRUMENTS CONSTITUTING A TREATY

The consent of States to be bound by a treaty constituted by instruments exchanged between them is expressed by that exchange when:

(*a*) The instruments provide that their exchange shall have that effect; or

(*b*) It is otherwise established that those States were agreed that the exchange of instruments shall have that effect.

Article 14. CONSENT TO BE BOUND BY A TREATY EXPRESSED BY RATIFICATION, ACCEPTANCE OR APPROVAL

1. The consent of a State to be bound by a treaty is expressed by ratification when:

(*a*) The treaty provides for such consent to be expressed by means of ratification;

(*b*) It is otherwise established that the negotiating States were agreed that ratification should be required;

(*c*) The representative of the State has signed the treaty subject to ratification; or

(*d*) The intention of the State to sign the treaty subject to ratification appears from the full powers of its representative or was expressed during the negotiation.

2. The consent of a State to be bound by a treaty is expressed by acceptance or approval under conditions similar to those which apply to ratification.

Article 15. CONSENT TO BE BOUND BY A TREATY EXPRESSED BY ACCESSION

The consent of a State to be bound by a treaty is expressed by accession when:

(*a*) The treaty provides that such consent may be expressed by that State by means of accession;

(*b*) It is otherwise established that the negotiating States were agreed that such consent may be expressed by that State by means of accession; or

(*c*) All the parties have subsequently agreed that such consent may be expressed by that State by means of accession.

Article 16. EXCHANGE OR DEPOSIT OF INSTRUMENTS OF RATIFICATION, ACCEPTANCE, APPROVAL OR ACCESSION

Unless the treaty otherwise provides, instruments of ratification, acceptance, approval or accession establish the consent of a State to be bound by a treaty upon:

(*a*) Their exchange between the contracting States;

(*b*) Their deposit with the depositary; or

(*c*) Their notification to the contracting States or to the depositary, if so agreed.

Article 17. CONSENT TO BE BOUND BY PART OF A TREATY AND CHOICE OF DIFFERING PROVISIONS

1. Without prejudice to articles 19 to 23, the consent of a State to be bound by part of a treaty is effective only if the treaty so permits or the other contracting States so agree.

2. The consent of a State to be bound by a treaty which permits a choice between differing provisions is effective only if it is made clear to which of the provisions the consent relates.

Article 18. OBLIGATION NOT TO DEFEAT THE OBJECT AND PURPOSE OF A TREATY PRIOR TO ITS ENTRY INTO FORCE

A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when:

(*a*) It has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or

(*b*) It has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.

SECTION 2. RESERVATIONS

Article 19. FORMULATION OF RESERVATIONS

A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless:

(*a*) The reservation is prohibited by the treaty;

(*b*) The treaty provides that only specified reservations, which do not include the reservation in question, may be made; or

(*c*) In cases not falling under sub-paragraphs (*a*) and (*b*), the reservation is incompatible with the object and purpose of the treaty.

Article 20. ACCEPTANCE OF AND OBJECTION TO RESERVATIONS

1. A reservation expressly authorized by a treaty does not require any subsequent acceptance by the other contracting States unless the treaty so provides.

2. When it appears from the limited number of the negotiating States and the object and purpose of a treaty that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation requires acceptance by all the parties.

3. When a treaty is a constituent instrument of an international organization and unless it otherwise provides, a reservation requires the acceptance of the competent organ of that organization.

4. In cases not falling under the preceding paragraphs and unless the treaty otherwise provides:

(*a*) Acceptance by another contracting State of a reservation constitutes the reserving State a party to the treaty in relation to that other State if or when the treaty is in force for those States;

(*b*) An objection by another contracting State to a reservation does not preclude the entry into force of the treaty as between the objecting and reserving States unless a contrary intention is definitely expressed by the objecting State;

(*c*) An act expressing a State's consent to be bound by the treaty and containing a reservation is effective as soon as at least one other contracting State has accepted the reservation.

5. For the purposes of paragraphs 2 and 4 and unless the treaty otherwise provides, 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 later.

Article 21. LEGAL EFFECTS OF RESERVATIONS AND OF OBJECTIONS TO RESERVATIONS

1. A reservation established with regard to another party in accordance with articles 19, 20 and 23:

(*a*) Modifies for the reserving State in its relations with that other party the provisions of the treaty to which the reservation relates to the extent of the reservation; and

(*b*) Modifies those provisions to the same extent for that other party in its relations with the reserving State.

2. The reservation does not modify the provisions of the treaty for the other parties to the treaty *inter se*.

3. When a State objecting to a reservation has not opposed the entry into force of the treaty between itself and the reserving State, the provisions to which the reservation relates do not apply as between the two States to the extent of the reservation.

Article 22. WITHDRAWAL OF RESERVATIONS AND OF OBJECTIONS TO RESERVATIONS

1. Unless the treaty otherwise provides, a reservation may be withdrawn at any time and the consent of a State which has accepted the reservation is not required for its withdrawal.

2. Unless the treaty otherwise provides, an objection to a reservation may be withdrawn at any time.

3. Unless the treaty otherwise provides, or it is otherwise agreed:

(*a*) The withdrawal of a reservation becomes operative in relation to another contracting State only when notice of it has been received by that State;

(*b*) The withdrawal of an objection to a reservation becomes operative only when notice of it has been received by the State which formulated the reservation.

Article 23. PROCEDURE REGARDING RESERVATIONS

1. A reservation, an express acceptance of a reservation and an objection to a reservation must be formulated in writing and communicated to the contracting States and other States entitled to become parties to the treaty.

2. If formulated when signing the treaty subject to ratification, acceptance or approval, a reservation must be formally confirmed by the reserving State when expressing its consent to be bound by the treaty. In such a case the reservation shall be considered as having been made on the date of its confirmation.

3. An express acceptance of, or an objection to, a reservation made previously to confirmation of the reservation does not itself require confirmation.

4. The withdrawal of a reservation or of an objection to a reservation must be formulated in writing.

SECTION 3. ENTRY INTO FORCE AND PROVISIONAL APPLICATION OF TREATIES

Article 24. ENTRY INTO FORCE

1. A treaty enters into force in such manner and upon such date as it may provide or as the negotiating States may agree.

2. Failing any such provision or agreement, a treaty enters into force as soon as consent to be bound by the treaty has been established for all the negotiating States.

3. When the consent of a State to be bound by a treaty is established on a date after the treaty has come into force, the treaty enters into force for that State on that date, unless the treaty otherwise provides.

4. The provisions of a treaty regulating the authentication of its text, the establishment of the consent of States to be bound by the treaty, the manner or date of its entry into force, reservations, the functions of the depositary and other matters arising necessarily before the entry into force of the treaty apply from the time of the adoption of its text.

Article 25. PROVISIONAL APPLICATION

1. A treaty or a part of a treaty is applied provisionally pending its entry into force if:

(*a*) The treaty itself so provides; or

(*b*) The negotiating States have in some other manner so agreed.

2. Unless the treaty otherwise provides or the negotiating States have otherwise agreed, the provisional application of a treaty or a part of a treaty with respect to a State shall be terminated if that State notifies the other States between which the treaty is being applied provisionally of its intention not to become a party to the treaty.

PART III. OBSERVANCE, APPLICATION AND INTERPRETATION OF TREATIES

SECTION 1. OBSERVANCE OF TREATIES

Article 26. "PACTA SUNT SERVANDA"

Every treaty in force is binding upon the parties to it and must be performed by them in good faith.

Article 27. INTERNAL LAW AND OBSERVANCE OF TREATIES

A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46.

SECTION 2. APPLICATION OF TREATIES

Article 28. NON-RETROACTIVITY OF TREATIES

Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.

Article 29. TERRITORIAL SCOPE OF TREATIES

Unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory.

Article 30. APPLICATION OF SUCCESSIVE TREATIES RELATING TO THE SAME SUBJECT-MATTER

1. Subject to Article 103 of the Charter of the United Nations, the rights and obligations of States parties to successive treaties relating to the same subject-matter shall be determined in accordance with the following paragraphs.

2. When a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier or later treaty, the provisions of that other treaty prevail.

3. When all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated or suspended in operation under article 59, the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty.

4. When the parties to the later treaty do not include all the parties to the earlier one:

(*a*) As between States parties to both treaties the same rule applies as in paragraph 3;

(*b*) As between a State party to both treaties and a State party to only one of the treaties, the treaty to which both States are parties governs their mutual rights and obligations.

5. Paragraph 4 is without prejudice to article 41, or to any question of the termination or suspension of the operation of a treaty under article 60 or to any ques-

tion of responsibility which may arise for a State from the conclusion or application of a treaty the provisions of which are incompatible with its obligations towards another State under another treaty.

SECTION 3. INTERPRETATION OF TREATIES

Article 31. GENERAL RULE OF INTERPRETATION

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

(*a*) Any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty;

(*b*) Any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

(*a*) Any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

(*b*) Any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

(*c*) Any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended.

Article 32. SUPPLEMENTARY MEANS OF INTERPRETATION

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

(*a*) Leaves the meaning ambiguous or obscure; or

(*b*) Leads to a result which is manifestly absurd or unreasonable.

Article 33. INTERPRETATION OF TREATIES AUTHENTICATED IN TWO OR MORE LANGUAGES

1. When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail.

2. A version of the treaty in a language other than one of those in which the text was authenticated shall be considered an authentic text only if the treaty so provides or the parties so agree.

3. The terms of the treaty are presumed to have the same meaning in each authentic text.

4. Except where a particular text prevails in accordance with paragraph 1, when a comparison of the authentic texts discloses a difference of meaning which the application of articles 31 and 32 does not remove, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted.

SECTION 4. TREATIES AND THIRD STATES

Article 34. GENERAL RULE REGARDING THIRD STATES

A treaty does not create either obligations or rights for a third State without its consent.

Article 35. TREATIES PROVIDING FOR OBLIGATIONS FOR THIRD STATES

An obligation arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to be the means of establishing the obligation and the third State expressly accepts that obligation in writing.

Article 36. TREATIES PROVIDING FOR RIGHTS FOR THIRD STATES

1. A right arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to accord that right either to the third State, or to a group of States to which it belongs, or to all States, and the third State assents thereto. Its assent shall be presumed so long as the contrary is not indicated, unless the treaty otherwise provides.

2. A State exercising a right in accordance with paragraph 1 shall comply with the conditions for its exercise provided for in the treaty or established in conformity with the treaty.

Article 37. REVOCATION OR MODIFICATION OF OBLIGATIONS OR RIGHTS OF THIRD STATES

1. When an obligation has arisen for a third State in conformity with article 35, the obligation may be revoked or modified only with the consent of the parties to the treaty and of the third State, unless it is established that they had otherwise agreed.

2. When a right has arisen for a third State in conformity with article 36, the right may not be revoked or modified by the parties if it is established that the right was intended not to be revocable or subject to modification without the consent of the third State.

Article 38. RULES IN A TREATY BECOMING BINDING ON THIRD STATES THROUGH INTERNATIONAL CUSTOM

Nothing in articles 34 to 37 precludes a rule set forth in a treaty from becoming binding upon a third State as a customary rule of international law, recognized as such.

PART IV. AMENDMENT AND MODIFICATION OF TREATIES

Article 39. GENERAL RULE REGARDING THE AMENDMENT OF TREATIES

A treaty may be amended by agreement between the parties. The rules laid down in Part II apply to such an agreement except in so far as the treaty may otherwise provide.

Article 40. AMENDMENT OF MULTILATERAL TREATIES

1. Unless the treaty otherwise provides, the amendment of multilateral treaties shall be governed by the following paragraphs.

2. Any proposal to amend a multilateral treaty as between all the parties must be notified to all the contracting States, each one of which shall have the right to take part in:

(*a*) The decision as to the action to be taken in regard to such proposal;

(*b*) The negotiation and conclusion of any agreement for the amendment of the treaty.

3. Every State entitled to become a party to the treaty shall also be entitled to become a party to the treaty as amended.

4. The amending agreement does not bind any State already a party to the treaty which does not become a party to the amending agreement; article 30, paragraph 4(*b*), applies in relation to such State.

5. Any State which becomes a party to the treaty after the entry into force of the amending agreement shall, failing an expression of a different intention by that State:

(*a*) be considered as a party to the treaty as amended; and

(*b*) be considered as a party to the unamended treaty in relation to any party to the treaty not bound by the amending agreement.

Article 41. AGREEMENTS TO MODIFY MULTILATERAL TREATIES BETWEEN CERTAIN OF THE PARTIES ONLY

1. Two or more of the parties to a multilateral treaty may conclude an agreement to modify the treaty as between themselves alone if:

(*a*) The possibility of such a modification is provided for by the treaty; or

(*b*) The modification in question is not prohibited by the treaty and:

(i) Does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations;

(ii) Does not relate to a provision, derogation from which is incompatible with the effective execution of the object and purpose of the treaty as a whole.

2. Unless in a case falling under paragraph 1(*a*) the treaty otherwise provides, the parties in question shall notify the other parties of their intention to conclude the agreement and of the modification to the treaty for which it provides.

PART V. INVALIDITY, TERMINATION AND SUSPENSION OF THE OPERATION OF TREATIES

SECTION 1. GENERAL PROVISIONS

Article 42. VALIDITY AND CONTINUANCE IN FORCE OF TREATIES

1. The validity of a treaty or of the consent of a State to be bound by a treaty may be impeached only through the application of the present Convention.

2. The termination of a treaty, its denunciation or the withdrawal of a party, may take place only as a result of the application of the provisions of the treaty or of the present Convention. The same rule applies to suspension of the operation of a treaty.

Article 43. OBLIGATIONS IMPOSED BY INTERNATIONAL LAW INDEPENDENTLY OF A TREATY

The invalidity, termination or denunciation of a treaty, the withdrawal of a party from it, or the suspension of its operation, as a result of the application of the present Convention or of the provisions of the treaty, shall not in any way impair the duty of any State to fulfil any obligation embodied in the treaty to which it would be subject under international law independently of the treaty.

Article 44. SEPARABILITY OF TREATY PROVISIONS

1. A right of a party, provided for in a treaty or arising under article 56, to denounce, withdraw from or suspend the operation of the treaty may be exercised only with respect to the whole treaty unless the treaty otherwise provides or the parties otherwise agree.

2. A ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty recognized in the present Convention may be invoked only with respect to the whole treaty except as provided in the following paragraphs or in article 60.

3. If the ground relates solely to particular clauses, it may be invoked only with respect to those clauses where:

(*a*) The said clauses are separable from the remainder of the treaty with regard to their application;

(*b*) It appears from the treaty or is otherwise established that acceptance of those clauses was not an essential basis of the consent of the other party or parties to be bound by the treaty as a whole; and

(*c*) Continued performance of the remainder of the treaty would not be unjust.

4. In cases falling under articles 49 and 50 the State entitled to invoke the fraud or corruption may do so with respect either to the whole treaty or, subject to paragraph 3, to the particular clauses alone.

5. In cases falling under articles 51, 52 and 53, no separation of the provisions of the treaty is permitted.

Article 45. LOSS OF A RIGHT TO INVOKE A GROUND FOR INVALIDATING, TERMINATING, WITHDRAWING FROM OR SUSPENDING THE OPERATION OF A TREATY

A State may no longer invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty under articles 46 to 50 or articles 60 and 62 if, after becoming aware of the facts:

(*a*) It shall have expressly agreed that the treaty is valid or remains in force or continues in operation, as the case may be; or

(*b*) It must by reason of its conduct be considered as having acquiesced in the validity of the treaty or in its maintenance in force or in operation, as the case may be.

SECTION 2. INVALIDITY OF TREATIES

Article 46. PROVISIONS OF INTERNAL LAW REGARDING COMPETENCE TO CONCLUDE TREATIES

1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.

2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.

Article 47. SPECIFIC RESTRICTIONS ON AUTHORITY TO EXPRESS THE CONSENT OF A STATE

If the authority of a representative to express the consent of a State to be bound by a particular treaty has been made subject to a specific restriction, his omission to

observe that restriction may not be invoked as invalidating the consent expressed by him unless the restriction was notified to the other negotiating States prior to his expressing such consent.

Article 48. ERROR

1. A State may invoke an error in a treaty as invalidating its consent to be bound by the treaty if the error relates to a fact or situation which was assumed by that State to exist at the time when the treaty was concluded and formed an essential basis of its consent to be bound by the treaty.

2. Paragraph 1 shall not apply if the State in question contributed by its own conduct to the error or if the circumstances were such as to put that State on notice of a possible error.

3. An error relating only to the wording of the text of a treaty does not affect its validity; article 79 then applies.

Article 49. FRAUD

If a State has been induced to conclude a treaty by the fraudulent conduct of another negotiating State, the State may invoke the fraud as invalidating its consent to be bound by the treaty.

Article 50. CORRUPTION OF A REPRESENTATIVE OF A STATE

If the expression of a State's consent to be bound by a treaty has been procured through the corruption of its representative directly or indirectly by another negotiating State, the State may invoke such corruption as invalidating its consent to be bound by the treaty.

Article 51. COERCION OF A REPRESENTATIVE OF A STATE

The expression of a State's consent to be bound by a treaty which has been procured by the coercion of its representative through acts or threats directed against him shall be without any legal effect.

Article 52. COERCION OF A STATE BY THE THREAT OR USE OF FORCE

A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations.

Article 53. TREATIES CONFLICTING WITH A PEREMPTORY NORM OF GENERAL INTERNATIONAL LAW ("JUS COGENS")

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

SECTION 3. TERMINATION AND SUSPENSION OF THE OPERATION OF TREATIES

Article 54. TERMINATION OF OR WITHDRAWAL FROM A TREATY UNDER ITS PROVISIONS OR BY CONSENT OF THE PARTIES

The termination of a treaty or the withdrawal of a party may take place:

(*a*) In conformity with the provisions of the treaty; or

(*b*) At any time by consent of all the parties after consultation with the other contracting States.

Article 55. REDUCTION OF THE PARTIES TO A MULTILATERAL TREATY BELOW THE NUMBER NECESSARY FOR ITS ENTRY INTO FORCE

Unless the treaty otherwise provides, a multilateral treaty does not terminate by reason only of the fact that the number of the parties falls below the number necessary for its entry into force.

Article 56. DENUNCIATION OF OR WITHDRAWAL FROM A TREATY CONTAINING NO PROVISION REGARDING TERMINATION, DENUNCIATION OR WITHDRAWAL

1. A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless:

(*a*) It is established that the parties intended to admit the possibility of denunciation or withdrawal; or

(*b*) A right of denunciation or withdrawal may be implied by the nature of the treaty.

2. A party shall give not less than twelve months' notice of its intention to denounce or withdraw from a treaty under paragraph 1.

Article 57. SUSPENSION OF THE OPERATION OF A TREATY UNDER ITS PROVISIONS OR BY CONSENT OF THE PARTIES

The operation of a treaty in regard to all the parties or to a particular party may be suspended:

(*a*) In conformity with the provisions of the treaty; or

(*b*) At any time by consent of all the parties after consultation with the other contracting States.

Article 58. SUSPENSION OF THE OPERATION OF A MULTILATERAL TREATY BY AGREEMENT BETWEEN CERTAIN OF THE PARTIES ONLY

1. Two or more parties to a multilateral treaty may conclude an agreement to suspend the operation of provisions of the treaty, temporarily and as between themselves alone, if:

(*a*) The possibility of such a suspension is provided for by the treaty; or

(*b*) The suspension in question is not prohibited by the treaty and:

(i) Does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations;

(ii) Is not incompatible with the object and purpose of the treaty.

2. Unless in a case falling under paragraph 1(*a*) the treaty otherwise provides, the parties in question shall notify the other parties of their intention to conclude the agreement and of those provisions of the treaty the operation of which they intend to suspend.

Article 59. TERMINATION OR SUSPENSION OF THE OPERATION OF A TREATY IMPLIED BY CONCLUSION OF A LATER TREATY

1. A treaty shall be considered as terminated if all the parties to it conclude a later treaty relating to the same subject-matter and:

(*a*) It appears from the later treaty or is otherwise established that the parties intended that the matter should be governed by that treaty; or

(*b*) The provisions of the later treaty are so far incompatible with those of the earlier one that the two treaties are not capable of being applied at the same time.

2. The earlier treaty shall be considered as only suspended in operation if it appears from the later treaty or is otherwise established that such was the intention of the parties.

Article 60. TERMINATION OR SUSPENSION OF THE OPERATION OF A TREATY AS A CONSEQUENCE OF ITS BREACH

1. A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part.

2. A material breach of a multilateral treaty by one of the parties entitles:

(*a*) The other parties by unanimous agreement to suspend the operation of the treaty in whole or in part or to terminate it either:

(i) In the relations between themselves and the defaulting State, or

(ii) As between all the parties;

(*b*) A party specially affected by the breach to invoke it as a ground for suspending the operation of the treaty in whole or in part in the relations between itself and the defaulting State;

(*c*) Any party other than the defaulting State to invoke the breach as a ground for suspending the operation of the treaty in whole or in part with respect to itself if the treaty is of such a character that a material breach of its provisions by one party radically changes the position of every party with respect to the further performance of its obligations under the treaty.

3. A material breach of a treaty, for the purposes of this article, consists in:

(*a*) A repudiation of the treaty not sanctioned by the present Convention; or

(*b*) The violation of a provision essential to the accomplishment of the object or purpose of the treaty.

4. The foregoing paragraphs are without prejudice to any provision in the treaty applicable in the event of a breach.

5. Paragraphs 1 to 3 do not apply to provisions relating to the protection of the human person contained in treaties of a humanitarian character, in particular to provisions prohibiting any form of reprisals against persons protected by such treaties.

Article 61. SUPERVENING IMPOSSIBILITY OF PERFORMANCE

1. A party may invoke the impossibility of performing a treaty as a ground for terminating or withdrawing from it if the impossibility results from the permanent disappearance or destruction of an object indispensable for the execution of the treaty. If the impossibility is temporary, it may be invoked only as a ground for suspending the operation of the treaty.

2. Impossibility of performance may not be invoked by a party as a ground for terminating, withdrawing from or suspending the operation of a treaty if the impossibility is the result of a breach by that party either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

Article 62. FUNDAMENTAL CHANGE OF CIRCUMSTANCES

1. A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless:

(*a*) The existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and

(*b*) The effect of the change is radically to transform the extent of obligations still to be performed under the treaty.

2. A fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty:

(*a*) If the treaty establishes a boundary; or

(*b*) If the fundamental change is the result of a breach by the party invoking it either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

3. If, under the foregoing paragraphs, a party may invoke a fundamental change of circumstances as a ground for terminating or withdrawing from a treaty it may also invoke the change as a ground for suspending the operation of the treaty.

Article 63. SEVERANCE OF DIPLOMATIC OR CONSULAR RELATIONS

The severance of diplomatic or consular relations between parties to a treaty does not affect the legal relations established between them by the treaty except in so far as the existence of diplomatic or consular relations is indispensable for the application of the treaty.

Article 64. EMERGENCE OF A NEW PEREMPTORY NORM OF GENERAL INTERNATIONAL LAW ("JUS COGENS")

If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates.

SECTION 4. PROCEDURE

Article 65. PROCEDURE TO BE FOLLOWED WITH RESPECT TO INVALIDITY, TERMINATION, WITHDRAWAL FROM OR SUSPENSION OF THE OPERATION OF A TREATY

1. A party which, under the provisions of the present Convention, invokes either a defect in its consent to be bound by a treaty or a ground for impeaching the validity of a treaty, terminating it, withdrawing from it or suspending its operation, must notify the other parties of its claim. The notification shall indicate the measure proposed to be taken with respect to the treaty and the reasons therefor.

2. If, after the expiry of a period which, except in cases of special urgency, shall not be less than three months after the receipt of the notification, no party has raised any objection, the party making the notification may carry out in the manner provided in article 67 the measure which it has proposed.

3. If, however, objection has been raised by any other party, the parties shall seek a solution through the means indicated in Article 33 of the Charter of the United Nations.

4. Nothing in the foregoing paragraphs shall affect the rights or obligations of the parties under any provisions in force binding the parties with regard to the settlement of disputes.

5. Without prejudice to article 45, the fact that a State has not previously made the notification prescribed in paragraph 1 shall not prevent it from making such notification in answer to another party claiming performance of the treaty or alleging its violation.

Article 66. PROCEDURES FOR JUDICIAL SETTLEMENT, ARBITRATION AND CONCILIATION

If, under paragraph 3 of article 65, no solution has been reached within a period of twelve months following the date on which the objection was raised, the following procedures shall be followed:

(*a*) Any one of the parties to a dispute concerning the application or the interpretation of article 53 or 64 may, by a written application, submit it to the International Court of Justice for a decision unless the parties by common consent agree to submit the dispute to arbitration;

(*b*) Any one of the parties to a dispute concerning the application or the interpretation of any of the other articles in Part V of the present Convention may set in motion the procedure specified in the Annex to the Convention by submitting a request to that effect to the Secretary-General of the United Nations.

Article 67. INSTRUMENTS FOR DECLARING INVALID, TERMINATING, WITHDRAWING FROM OR SUSPENDING THE OPERATION OF A TREATY

1. The notification provided for under article 65, paragraph 1 must be made in writing.

2. Any act declaring invalid, terminating, withdrawing from or suspending the operation of a treaty pursuant to the provisions of the treaty or of paragraphs 2 or 3 of article 65 shall be carried out through an instrument communicated to the other parties. If the instrument is not signed by the Head of State, Head of Government or Minister for Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers.

Article 68. REVOCATION OF NOTIFICATIONS AND INSTRUMENTS PROVIDED FOR IN ARTICLES 65 AND 67

A notification or instrument provided for in article 65 or 67 may be revoked at any time before it takes effect.

SECTION 5. CONSEQUENCES OF THE INVALIDITY, TERMINATION OR SUSPENSION OF THE OPERATION OF A TREATY

Article 69. CONSEQUENCES OF THE INVALIDITY OF A TREATY

1. A treaty the invalidity of which is established under the present Convention is void. The provisions of a void treaty have no legal force.

2. If acts have nevertheless been performed in reliance on such a treaty:

(*a*) Each party may require any other party to establish as far as possible in their mutual relations the position that would have existed if the acts had not been performed;

(*b*) Acts performed in good faith before the invalidity was invoked are not rendered unlawful by reason only of the invalidity of the treaty.

3. In cases falling under articles 49, 50, 51 or 52, paragraph 2 does not apply with respect to the party to which the fraud, the act of corruption or the coercion is imputable.

4. In the case of the invalidity of a particular State's consent to be bound by a multilateral treaty, the foregoing rules apply in the relations between that State and the parties to the treaty.

Article 70. CONSEQUENCES OF THE TERMINATION OF A TREATY

1. Unless the treaty otherwise provides or the parties otherwise agree, the termination of a treaty under its provisions or in accordance with the present Convention:

(*a*) Releases the parties from any obligation further to perform the treaty;

(*b*) Does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination.

2. If a State denounces or withdraws from a multilateral treaty, paragraph 1 applies in the relations between that State and each of the other parties to the treaty from the date when such denunciation or withdrawal takes effect.

Article 71. CONSEQUENCES OF THE INVALIDITY OF A TREATY WHICH CONFLICTS WITH A PEREMPTORY NORM OF GENERAL INTERNATIONAL LAW

1. In the case of a treaty which is void under article 53 the parties shall:

(*a*) Eliminate as far as possible the consequences of any act performed in reliance on any provision which conflicts with the peremptory norm of general international law; and

(*b*) Bring their mutual relations into conformity with the peremptory norm of general international law.

2. In the case of a treaty which becomes void and terminates under article 64, the termination of the treaty:

(*a*) Releases the parties from any obligation further to perform the treaty;

(*b*) Does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination, provided that those rights, obligations or situations may thereafter be maintained only to the extent that their maintenance is not in itself in conflict with the new peremptory norm of general international law.

Article 72. CONSEQUENCES OF THE SUSPENSION OF THE OPERATION OF A TREATY

1. Unless the treaty otherwise provides or the parties otherwise agree, the suspension of the operation of a treaty under its provisions or in accordance with the present Convention:

(*a*) Releases the parties between which the operation of the treaty is suspended from the obligation to perform the treaty in their mutual relations during the period of the suspension;

(*b*) Does not otherwise affect the legal relations between the parties established by the treaty.

2. During the period of the suspension the parties shall refrain from acts tending to obstruct the resumption of the operation of the treaty.

PART VI. MISCELLANEOUS PROVISIONS

Article 73. CASES OF STATE SUCCESSION, STATE RESPONSIBILITY AND OUTBREAK OF HOSTILITIES

The provisions of the present Convention shall not prejudge any question that may arise in regard to a treaty from a succession of States or from the international responsibility of a State or from the outbreak of hostilities between States.

Article 74. DIPLOMATIC AND CONSULAR RELATIONS AND THE CONCLUSION OF TREATIES

The severance or absence of diplomatic or consular relations between two or more States does not prevent the conclusion of treaties between those States. The conclusion of a treaty does not in itself affect the situation in regard to diplomatic or consular relations.

Article 75. CASE OF AN AGGRESSOR STATE

The provisions of the present Convention are without prejudice to any obligation in relation to a treaty which may arise for an aggressor State in consequence of measures taken in conformity with the Charter of the United Nations with reference to that State's aggression.

PART VII. DEPOSITARIES, NOTIFICATIONS, CORRECTIONS AND REGISTRATION

Article 76. DEPOSITARIES OF TREATIES

1. The designation of the depositary of a treaty may be made by the negotiating States, either in the treaty itself or in some other manner. The depositary may be one or more States, an international organization or the chief administrative officer of the organization.

2. The functions of the depositary of a treaty are international in character and the depositary is under an obligation to act impartially in their performance. In particular, the fact that a treaty has not entered into force between certain of the parties or that a difference has appeared between a State and a depositary with regard to the performance of the latter's functions shall not affect that obligation.

Article 77. FUNCTIONS OF DEPOSITARIES

1. The functions of a depositary, unless otherwise provided in the treaty or agreed by the contracting States, comprise in particular:

(*a*) Keeping custody of the original text of the treaty and of any full powers delivered to the depositary;

(*b*) Preparing certified copies of the original text and preparing any further text of the treaty in such additional languages as may be required by the treaty and transmitting them to the parties and to the States entitled to become parties to the treaty;

(*c*) Receiving any signatures to the treaty and receiving and keeping custody of any instruments, notifications and communications relating to it;

(*d*) Examining whether the signature or any instrument, notification or communication relating to the treaty is in due and proper form and, if need be, bringing the matter to the attention of the State in question;

(*e*) Informing the parties and the States entitled to become parties to the treaty of acts, notifications and communications relating to the treaty;

(*f*) Informing the States entitled to become parties to the treaty when the number of signatures or of instruments of ratification, acceptance, approval or accession required for the entry into force of the treaty has been received or deposited;

(*g*) Registering the treaty with the Secretariat of the United Nations;

(*h*) Performing the functions specified in other provisions of the present Convention.

2. In the event of any difference appearing between a State and the depositary as to the performance of the latter's functions, the depositary shall bring the question to the attention of the signatory States and the contracting States or, where appropriate, of the competent organ of the international organization concerned.

Article 78. NOTIFICATIONS AND COMMUNICATIONS

Except as the treaty or the present Convention otherwise provide, any notification or communication to be made by any State under the present Convention shall:

(*a*) If there is no depositary, be transmitted direct to the States for which it is intended, or if there is a depositary, to the latter;

(*b*) Be considered as having been made by the State in question only upon its receipt by the State to which it was transmitted or, as the case may be, upon its receipt by the depositary;

(*c*) If transmitted to a depositary, be considered as received by the State for which it was intended only when the latter State has been informed by the depositary in accordance with article 77, paragraph 1(*e*).

Article 79. CORRECTION OF ERRORS IN TEXTS OR IN CERTIFIED COPIES OF TREATIES

1. Where, after the authentication of the text of a treaty, the signatory States and the contracting States are agreed that it contains an error, the error shall, unless they decide upon some other means of correction, be corrected:

(*a*) By having the appropriate correction made in the text and causing the correction to be initialled by duly authorized representatives;

(*b*) By executing or exchanging an instrument or instruments setting out the correction which it has been agreed to make; or

(*c*) By executing a corrected text of the whole treaty by the same procedure as in the case of the original text.

2. Where the treaty is one for which there is a depositary, the latter shall notify the signatory States and the contracting States of the error and of the proposal to correct it and shall specify an appropriate time-limit within which objection to the proposed correction may be raised. If, on the expiry of the time-limit:

(*a*) No objection has been raised, the depositary shall make and initial the correction in the text and shall execute a procès-verbal of the rectification of the text and communicate a copy of it to the parties and to the States entitled to become parties to the treaty;

(*b*) An objection has been raised, the depositary shall communicate the objection to the signatory States and to the contracting States.

3. The rules in paragraphs 1 and 2 apply also where the text has been authenticated in two or more languages and it appears that there is a lack of concordance which the signatory States and the contracting States agree should be corrected.

4. The corrected text replaces the defective text *ab initio*, unless the signatory States and the contracting States otherwise decide.

5. The correction of the text of a treaty that has been registered shall be notified to the Secretariat of the United Nations.

6. Where an error is discovered in a certified copy of a treaty, the depositary shall execute a procès-verbal specifying the rectification and communicate a copy of it to the signatory States and to the contracting States.

Article 80. REGISTRATION AND PUBLICATION OF TREATIES

1. Treaties shall, after their entry into force, be transmitted to the Secretariat of the United Nations for registration or filing and recording, as the case may be, and for publication.

2. The designation of a depositary shall constitute authorization for it to perform the acts specified in the preceding paragraph.

PART VIII. FINAL PROVISIONS

Article 81. SIGNATURE

The present Convention shall be open for signature by all States Members of the United Nations or of any of the specialized agencies or of the International Atomic Energy Agency or parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a party to the Convention, as follows: until 30 November 1969, at the Federal Ministry for Foreign Affairs of the Republic of Austria, and subsequently, until 30 April 1970, at United Nations Headquarters, New York.

Article 82. RATIFICATION

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 83. ACCESSION

The present Convention shall remain open for accession by any State belonging to any of the categories mentioned in article 81. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 84. ENTRY INTO FORCE

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the thirty-fifth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the thirty-fifth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 85. AUTHENTIC TEXTS

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

DONE at Vienna, this twenty-third day of May, one thousand nine hundred and sixty-nine.

ANNEX

1. A list of conciliators consisting of qualified jurists shall be drawn up and maintained by the Secretary-General of the United Nations. To this end, every State which is a Member of the United Nations or a party to the present Convention shall be invited to nominate two conciliators, and the names of the persons so nominated shall constitute the list. The term of a conciliator, including that of any conciliator nominated to fill a casual vacancy, shall be five years and may be renewed. A conciliator whose term expires shall continue to fulfil any function for which he shall have been chosen under the following paragraph.

2. When a request has been made to the Secretary-General under article 66, the Secretary-General shall bring the dispute before a conciliation commission constituted as follows:

The State or States constituting one of the parties to the dispute shall appoint:

(*a*) One conciliator of the nationality of that State or of one of those States, who may or may not be chosen from the list referred to in paragraph 1; and

(*b*) One conciliator not of the nationality of that State or of any of those States, who shall be chosen from the list.

The State or States constituting the other party to the dispute shall appoint two conciliators in the same way. The four conciliators chosen by the parties shall be appointed within sixty days following the date on which the Secretary-General receives the request.

The four conciliators shall, within sixty days following the date of the last of their own appointments, appoint a fifth conciliator chosen from the list, who shall be chairman.

If the appointment of the chairman or of any of the other conciliators has not been made within the period prescribed above for such appointment, it shall be made by the Secretary-General within sixty days following the expiry of that period. The appointment of the chairman may be made by the Secretary-General either from the list or from the membership of the International Law Commission. Any of the periods within which appointments must be made may be extended by agreement between the parties to the dispute.

Any vacancy shall be filled in the manner prescribed for the initial appointment.

3. The Conciliation Commission shall decide its own procedure. The Commission, with the consent of the parties to the dispute, may invite any party to the treaty to submit to it its views orally or in writing. Decisions and recommendations of the Commission shall be made by a majority vote of the five members.

4. The Commission may draw the attention of the parties to the dispute to any measures which might facilitate an amicable settlement.

5. The Commission shall hear the parties, examine the claims and objections, and make proposals to the parties with a view to reaching an amicable settlement of the dispute.

6. The Commission shall report within twelve months of its constitution. Its report shall be deposited with the Secretary-General and transmitted to the parties to the dispute. The report of the Commission, including any conclusions stated therein regarding the facts or questions of law, shall not be binding upon the parties and it shall have no other character than that of recommendations submitted for the consideration of the parties in order to facilitate an amicable settlement of the dispute.

7. The Secretary-General shall provide the Commission with such assistance and facilities as it may require. The expenses of the Commission shall be borne by the United Nations.

For Japan:
Pour le Japon :
日本：
За Японию:
Por el Japón:

For Jordan:
Pour la Jordanie :
约旦：
За Иорданию:
Por Jordania:

For Kenya:
Pour le Kenya :
肯尼亚：
За Кению:
Por Kenya:

I. S. Bhoi

For Kuwait:
Pour le Koweït :
科威特：
За Кувейт:
Por Kuwait:

For Laos:
Pour le Laos :
老挝：
За Лаос:
Por Laos:

For Sierra Leone:
Pour le Sierra Leone :
塞拉勒窝内:
За Сьерра-Леоне:
Por Sierra Leona:

For Singapore:
Pour Singapour :
新加坡:
За Сингапур:
Por Singapur:

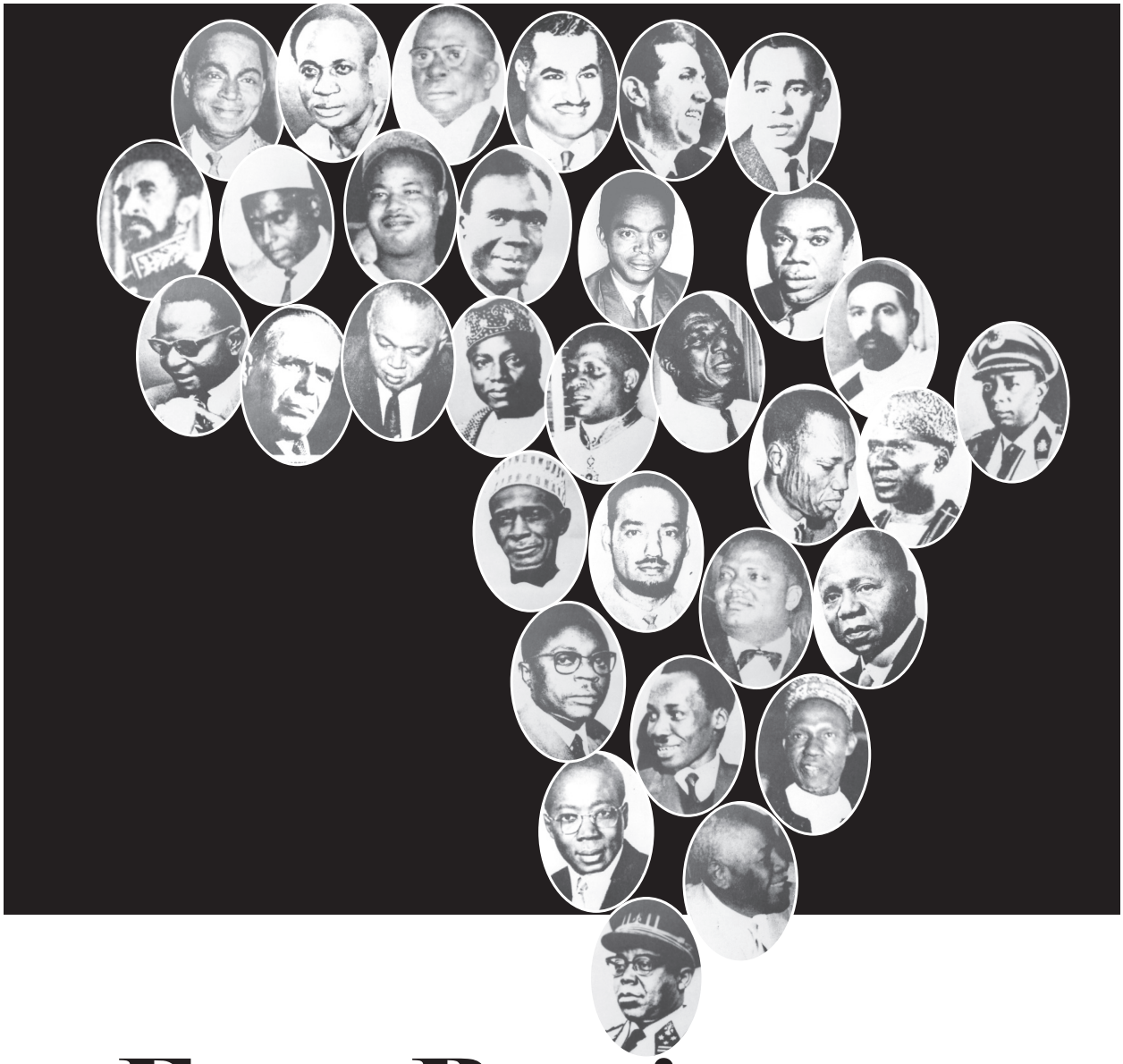
For Somalia:
Pour la Somalie :
索马里:
За Сомали:
Por Somalia:

For South Africa:
Pour l'Afrique du Sud :
南非:
За Южную Африку:
Por Sudáfrica:

For Southern Yemen:
Pour le Yémen du Sud :
南也門:
За Южный Йемен:
Por el Yemen Meridional:

Annex 2

Memorandum of Understanding between the Members of the African Union on Security, Stability, Development and Cooperation in Durban, South Africa (July 2002), *reprinted in* Africa, From Barriers to Bridges: Collection of Official Texts on African Borders from 1963 to 2012 (2013)



From Barriers to Bridges

Collection of Official Texts on African Borders from 1963 to 2012

2nd edition, 2013

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5 This Act, drawn up in four (4) original texts in the Arabic, English, French and Portuguese languages, all four (4) being equally authentic, shall be deposited with the Secretary-General of the OAU and, after its entry into force, with the Chairman of the Commission who shall transmit a certified true copy of the Act to the Government of each signatory State. The Secretary-General of the OAU and the Chairman of the Commission shall notify all signatory States of the dates of the deposit of the instruments of ratification or accession and shall upon entry into force of this Act register the same with the Secretariat of the United Nations.

ii MEMORANDUM OF UNDERSTANDING ON SECURITY, STABILITY, DEVELOPMENT AND CO-OPERATION IN AFRICA, DURBAN, SOUTH AFRICA, JULY 2002

PREAMBLE

We the Member States of the OAU/AU;

1 **Recalling** the objectives and principles of the Constitutive Act of the African Union;
2 **Conscious** of the importance of the Conference on Security, Stability, Development and Cooperation (CSSDCA) and New Partnership for Africa's Development (NEPAD), and the convergence and complementarity of their objectives in the realisation of the goals of the Constitutive Act of the African Union;
3 **Emphasising** the interdependence of security and stability on the one hand and development and cooperation on the other;
4 **Recalling** the CSSDCA Solemn Declaration adopted by the 36th Ordinary Session of the Assembly of Heads of State and Government in Lomé Togo, in July 2000;
5 **Affirming** that in the exercise of our sovereign right to determine our laws and regulations, we shall conform to our legal obligations under the OAU Charter, the Treaty Establishing the African Economic Community (AEC), the Cairo Declaration on the Establishment of a Mechanism for Conflict Prevention, Management and Resolution and the Constitutive Act of the African Union, having due regard to implementing the CSSDCA Solemn Declaration;
6 **Reaffirming** our commitment to the maintenance of security and stability on the continent;

7 **Recognising** that this commitment, which reflects the interests and aspirations of African peoples, constitutes for each participating State a present and future responsibility, heightened by experience of the past;
8 **Committed** to give effect and expression, by all appropriate ways and means to the duty of ensuring security and stability arising from the generally recognised principles and rules of international law and those obligations arising from treaties or other agreements, in accordance with internationally accepted norms, to which we are parties;
9 **Resolved** to subscribe to a set of core values and key commitments to buttress the process of security and stability in Africa and reflecting the common will to act, in the application of the principles set out in the CSSDCA Solemn Declaration;

AGREE AS FOLLOWS:

I. CORE VALUES

To respect and abide by the following indivisible core values, all of primary importance, in guiding our relations:

(a) Every African State is sovereign. Every State respects the rights inherent in the territorial integrity and political independence of all other African States, without prejudice to the provisions of Article 4 of the AU Constitutive Act, sections (h) and (j) and other relevant international instruments.
(b) The centrality of security as a multi-dimensional phenomenon that goes beyond military considerations and embraces all aspects of human existence, including economic, political and social dimensions of individual, family, community and national life.
(c) Peace and security are central to the realisation of development of both the state and individuals. Thus the security of the African people, their land and property must be safeguarded to ensure stability, development and cooperation of African countries.
(d) The security of each African country is inseparably linked to that of other African countries and the African continent as a whole.
(e) The plight of African Refugees and Internally Displaced Persons constitutes a scar on the conscience of African governments and people.
(f) Africa's strategic and natural resources are the property of the people of Africa and the leadership should exploit them for the

common good of the people of the continent, having due regard for the need to restore, preserve and protect the environment.

(g) Uncontrolled spread of small arms and light weapons as well as the problem of landmines constitutes a threat to peace and security on the African continent.

(h) Good governance including, accountability, transparency, the rule of law, elimination of corruption and unhindered exercise of individual rights as enshrined in the African Charter on Human and People's Rights and those of the Universal Declaration of Human Rights is a prerequisite for sustainable peace and security in Africa as well as a necessary condition for economic development, cooperation and integration.

(i) A fundamental link exists between stability, human security, development and cooperation in a manner that each reinforces the other.

(j) Sustainable Stability in Africa demands the establishment and strengthening of democratic structures and good governance based on common tenets.

(k) The rejection of unconstitutional changes of government in any African country as a threat to order and stability in the African continent as a whole.

(l) Respect and promotion of human rights, the rule of law and equitable social order as the foundation for national and continental stability.

(m) The eradication of corruption, which undermines Africa's quest for socio-economic development and the achievement of sustainable stability on the continent.

(n) No political organisation should be created on the basis of religious, sectarian, ethnic, regional or racial considerations. Political life should be devoid of any extremism.

(o) The conduct of electoral processes in a transparent and credible manner and a concomitant obligation by the parties and candidates to abide by the outcome of such processes in order to enhance national and continental stability.

(p) Development is about expanding human freedoms. The effort of Member States at achieving development is aimed at the maximum expansion of the freedoms that people enjoy.

(q) The freedoms that Africans seek and deserve, inter alia, include freedom from hunger, freedom from disease, freedom from ignorance and access to the basic necessities for enhancing the quality of life. These freedoms can best be achieved through expansion of the economic space including the rapid creation of wealth.

(r) Economic development is a combined result of individual action. Africans must be free to work and use their creative energies to improve their well-being in their own countries. The state's involvement in the activities of individual economic actors should be supportive of individual initiatives.

(s) Acknowledgement of the important role of the State in economic development not only in providing regulatory frameworks but also through active cooperation with private sector, and civil society, including business associations and organisations as partners of development to promote economic growth, social and economic justice.

(t) All priorities in economic policy-making shall be geared towards eliminating poverty from the continent and generating rapid and sustainable development in the shortest possible time.

(u) Cooperation and integration in Africa is key to the continent's socio-economic transformation and effective integration into the world economy.

(v) Harmonisation and strengthening of the Regional Economic Communities (RECs) in key areas as an essential component of the integration process, through the transfer of certain responsibilities as well as effective reporting and communication structure involving the RECs in continental initiatives.

(w) Strong political commitment including the involvement of all stakeholders, the private sector, civil society, women and youth as a fundamental principle for the achievement of regional economic integration and development.

(x) Investment in Science and Technology as a fundamental input into the development of all sectors and raising living standards.

II. COMMITMENTS TO GIVE EFFECT TO THE CORE VALUES

To give effect to the above core values, we undertake to:

(a) Develop a collective continental architecture for promoting security and inter-African relations that goes beyond the traditional military definition and embraces imperatives pertaining to human security, principles relating to good governance, the promotion of democracy and respect for human rights and the legitimate rights of leaders after they vacate office.

(b) Promote a policy of good neighbourliness as a foundation for enhancing inter-state relations.

(c) Recommit to the adoption of a comprehensive response for

the prevention and resolution of conflict, with emphasis on the prevention and containment of conflicts before they erupt into violent confrontation and the creation of an African capacity for regional peace-support operations as a measure for conflict resolution. Commit ourselves, within this framework, to operationalise the code of conduct on Inter-African relations adopted by the 30th Ordinary Session of the Summit of Heads of State and Government in Tunis in June 1994.

(d) Strengthen, consolidate and sustain regional and continental conflict management mechanisms, with primary emphasis on the AU Mechanism for Conflict Prevention, Management and Resolution and its early warning system.

(e) Establish a strong cooperation framework for security between the Regional Economic Communities (RECs), the AU and the United Nations (UN).

(f) Undertake to address border problems that continue to threaten the prospects of peace and security in Africa by ensuring the delimitation and demarcation of the borders of Member States in a peaceful manner.

(g) Create and strengthen disaster management mechanisms at national, regional and continental levels.

(h) Implement the OAU Convention on the Prevention and Combating of Terrorism adopted in Algiers in 1999.

(i) Develop additional protocols, as appropriate, as well as an Action Plan to combat the occurrence and spread of terrorism in all its forms and manifestations.

(j) Develop policies to combat the illicit proliferation, trafficking and circulation of small arms and light weapons in Africa.

(k) Take appropriate measures for the implementation of relevant treaties on landmines, including the Ottawa Treaty on anti-personnel mines and the Kempton Park Plan of Action, as well as develop policies pertaining to the prohibition of landmines in Africa and strengthen the African capacity for landmine clearance.

(l) Implement policies and agreements designed to eliminate Mercenarism in Africa and other forms of interventions in the internal affairs of African states including the illegal exploitation of the continent's natural resources, which contributes to the escalation of conflicts on the continent.

(m) Strengthen the mechanisms for the protection of refugees as provided for in the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa through the full implementation of the Comprehensive Implementation Plan drawn

up in Conakry and adopted by the Council of Ministers in Lomé, Togo, in July 2000, with the support and cooperation of the UN and other international agencies.

(n) Develop national, regional and continental strategies to eradicate criminal organisations and syndicates operating in Africa and establish joint cross-border operations to investigate and apprehend criminal elements and stop money laundering, drug and human trafficking.

(o) Adhere to the fundamental tenets of a plural democratic society as contained in the 1990 Declaration on the Political and Socio-Economic Situation in Africa and the Fundamental Changes Taking Place In the World, the 1995 Cairo Agenda for Action, the 1999 Grand Bay (Mauritius) Declaration and Plan of Action on Human Rights in Africa, the Lomé Declaration on Unconstitutional Changes and the CSSDCA Solemn Declaration of 2000, amongst others. These should include: promulgated constitution with a Bill of Rights' provision; free and fair elections at constitutionally stipulated intervals; multiparty political systems; separation of powers; an independent judiciary; a free press and freedom of expression and assembly; effective military subordination to civilian authority, and accountability and popular participation in governance.

(p) Uphold the principle of constitutionalism so that the political class and civil society at all levels, commit themselves to abiding by and respecting the provisions of the constitutions of their states.

(q) Ensure independence of the judiciary, particularly through an effective separation of powers, constitutionally guaranteed tenure of office and adequate funding.

(r) Accept the necessity for significant improvement in the African electoral process including the establishment of truly independent national electoral Commissions and other appropriate mechanisms to ensure transparency, fairness, and credibility of elections.

(s) Observance, protection and promotion of the human rights of all Africans in accordance with the provisions of the African Charter on Human and Peoples Rights, and the Grand Bay (Mauritius) Declaration and Plan of Action on Human Rights in Africa including the speedy establishment of the African Court on Human and People's Rights by signing and/or ratification and respect of this legal instrument as well as of all international instruments on human rights.

(t) Strengthen, improve and practice good governance in public and private domains in Africa to ensure adherence to the rule of law; strict accountability by all and transparency in public affairs as called for in the 1995 Cairo Agenda for Action, and other decisions of the Assembly of Heads of State and Government.

(u) Create conditions for economic stability devoid of economic mismanagement with focus on human security and poverty eradication as called for in the 1995 Cairo Agenda for Action and the Treaty Establishing the African Economic Community (Abuja Treaty).

(v) Encourage and provide enabling conditions for popular participation by all African people in the governance and development of their countries as a basis of a people's empowerment to direct their socio-economic transformation.

(w) Provide appropriate conditions for effective participation at national and continental levels by civil society organisations, in particular women's groups, trade unions, the youth and professional associations as envisaged in the Constitutive Act of the African Union.

(x) Develop institutional and administrative capacity for dealing effectively with corruption and criminality, both of which threaten the stability of Africa.

(y) Establish an impartial, efficient, transparent and accountable civil service.

(z) Provide Central Banks with the necessary autonomy to enable them to perform their roles effectively as vital structures for economic stability.

(aa) Develop a shared vision on development, regional cooperation and integration.

(bb) Pursue accelerated development of our countries as the centre of national policies.

(cc) Promote sustainable economic growth and development through the diversification of the production structure of our economies.

(dd) Create a conducive environment to encourage domestic savings, reverse capital flight and attract foreign savings.

(ee) Ensure popular participation, equal opportunity and equitable access to resources for all our people as the basis of our development objectives and strategies.

(ff) Promote partnership, trust and transparency between leaders and citizens as critical elements of sustainable development, based on mutual responsibilities and a shared vision, and in particular, establish a conducive environment for the private sector to generate wealth.

(gg) Aim at a shared economic growth that provides opportunities to the poor and the disadvantaged groups in society, such as women, the youth and disabled.

(hh) Work out and implement the follow-up and evaluation of reproductive health policies and programmes in order to guarantee a better balance between population and economic growth.

(ii) (ii) Develop and adhere to a code of conduct on good governance aimed at establishing democratic developmental oriented states across the continent in order to foster cooperation and integration.

(jj) Invest in human resource development, particularly in the quality of education, and promote cooperation between African centres of excellence and Research and Development institutions as well as reverse the brain drain.

(kk) Promote and protect the rights and welfare of the African child.

(ll) Provide political support for regional integration by making appropriate institutional arrangements, including legislative measures, process and awareness creation to support integration.

(mm) Provide adequate financial support for regional integration and cooperation by incorporating in our annual national budgets, Member States' contribution to RECs and AU, and/or putting in place a self-financing mechanism to ensure their efficient functioning.

(nn) Involve all national stakeholders in the regional integration process including giving them an appropriate role.

(oo) Develop inter-African communications and transport to ensure economic growth, integration and trade amongst African countries.

(pp) Develop and adhere to a common industrial strategy that takes into account the need for a fair distribution of industries within the RECs.

(qq) Put in place mechanisms for countries that are in a position to do so, to provide additional support to African LDCs in their developmental efforts.

(rr) Consolidate the links between South-South and North-South technical cooperation through triangular models, within the spirit of enhancing collective self-reliance in Africa.

(ss) Pursue continental solidarity in all international negotiations including those on market access, debt relief, FDI, ODA, as well as the setting up of the World Solidarity Fund.

(tt) Promote rural development through a public financing mechanism and public private partnerships.

III. KEY PERFORMANCE INDICATORS

We also agree to adopt the following key performance indicators to evaluate compliance with the commitments we have undertaken in the present Memorandum of Understanding:

A. SECURITY

1) Common definition of security

Establish by 2005 a framework for codifying into national laws and legislations the concept of human security as contained in the CSSDCA Solemn Declaration, in order to build confidence and collaborative security regimes at national, regional and continental levels.

2) Non-aggression pacts

Conclude and ratify bilateral and regional non-aggression pacts (where they do not yet exist) by 2006 on the basis of commonly agreed guidelines.

3) Africa's common defence policy

Define by 2005, in accordance with Article 4 (d) of the Constitutive Act of the African Union, Africa's common defence policy in order to strengthen Africa's capacity for dealing with conflicts including dealing with external aggression.

4) Strengthening Africa's capacity for peace-support operations

Establish by 2003, the modalities or mechanisms for implementing the provisions of Article 4(h) and (j) of the Constitutive Act of the African Union, with emphasis on the enhancement of the capacity of the Peace and Security Council to deal with issues relating to peace-support operations, including standby arrangements that were recommended by African Chiefs of Defence Staff.

5) National and regional crime reduction and prevention programmes

Establish by 2005 and strengthen, in places where they already exist, national and regional crime reduction and prevention programmes to

deal effectively with the scourge of criminality in Africa. Such programmes should, through the harmonisation of criminal and penal codes and effective information sharing system, promote, strengthen and foster joint strategies for the management and control of all forms of crimes within the region. The programme should incorporate a mechanism for annual performance assessment. By 2005, establish effective monitoring of crime statistics by policing agencies in each country.

6) Small arms and light weapons

Take appropriate measures for the effective implementation of the Bamako Declaration on an African Common Position on the illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons and the UN Programme of Action to prevent, combat and eradicate the illicit trade in small arms and light weapons in all its aspects. In particular, Member States must take the following steps by 2003:

- Establish, where they do not exist, national and regional coordination agencies or frameworks and institutional infrastructure for policy guidance, research and monitoring.
- Adopt the necessary legislative and other measures to establish as criminal offences, the illicit manufacture, possession and trade in small arms and light weapons.
- Adopt appropriate national legislations or regulations to prevent the breaching of arms embargo as decided by the UN Security Council.

Establish at national, regional and continental levels, a framework for regular dialogue with arms manufacturers and suppliers with a view to checking illicit supply of Small Arms and Light weapons.

Convene, by 2004, the Second Ministerial Conference on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons to review the status of implementation of the Bamako Declaration, the UN Program of Action and the status of implementation of relevant treaties on landmines, including the Ottawa Treaty on anti-personnel mines and the Kempton Park Plan of Action. Heads of RECs should also provide status reports on the implementation of their regional programmes.

7) National institutions for prevention and management of conflicts

Establish by 2004, national institutions or mechanisms for prevention, management and resolution of conflicts at community and national

levels with active involvement of Civil Society Organisations (CSOs) and Community Based Organisations (CBOs). It should include indigenous conflict resolution mechanisms, Emergency Relief Assistance and confidence building measures between ethnic, racial and national groups. Such institutions could be national focal points for regional and continental early warning.

8) Early Warning System

Operationalise by 2005, requisite infrastructure and capacity for effective Early Warning System to deal with conflicts in Africa. This should be based on a model of indicators that provides a Vulnerability Index of African countries, which would serve as an objective basis for early warning action. That mechanism should incorporate effective interlinkages and coordination at regional, continental, and international levels. As part of this process, Member States undertake to facilitate early response aimed at the prevention of conflicts.

9) Resource-based conflicts

Given the links between illegal exploitation of resources and conflicts, the Peace and Security Council should develop by 2005, a framework for addressing the problem of illegal exploitation of resources in Africa and combating, in a concerted manner, all networks plundering the resources of Africa and using them to fuel conflicts.

10) African borders

In conformity with the Cairo Summit Decision on borders, conclude by 2012, with the assistance of the UN cartographic unit where required, the delineation and demarcation of borders between African states, where it has not been done, to strengthen peaceful inter-state relations. The outcome of such exercises should be deposited with the African Union and the United Nations. Prior to 2012 when the process should be completed, there should be bi-annual review of the state of implementation.

11) Refugees

By 2003, all OAU/AU Member States that have not done so, should ratify or accede to the 1969 OAU Convention on Refugees and take appropriate measures to adopt the necessary national legislations and/or administrative measures to give full effect to its provisions.

By 2005, the OAU/AU should complete the review of the legal scope of the 1969 Convention to adapt it to current circumstances and to strengthen the implementation of the Comprehensive Implementation Plan adopted in Conakry 2000. In particular, the supervisory mechanism and oversight functions of the OAU/AU should be strengthened to ensure that Member States provide the Secretariat with information and statistics concerning the condition of refugees, the protection of their human rights and mechanisms for mitigating the situation of refugees, separating armed elements from the refugee population and devising measures to compel rebel groups to respect the rights of refugees, returnees and displaced persons in territories under their control.

12) Confidence building measures

Strengthen as soon as possible, existing confidence building measures through, among other means, annual border post activities, joint border patrols, joint border development and management, regular consultations amongst security agencies operating along the borders, joint training programmes for personnel operating at the borders, including workshops and seminars to educate them on regional and continental agreements on free movement of persons, goods and services and stabilising measures for localised crisis situations for inter-state relations.

13) Terrorism

All Member States to sign and ratify the OAU Convention on the Prevention and Combating of Terrorism of 1999 so that it can enter into force by the end of 2002 and fully implement the obligations entered into therein by 2004.

To facilitate a comprehensive response to the problem of terrorism in Africa, consider by 2003, an Action Plan and a Protocol which will provide for, among other things, national, regional and continental strategies to eradicate criminal organisations and syndicates operating in Africa, effective monitoring of the movement of persons and goods across borders by utilising crime analysis and information gathering capability and establishment of joint border operations to investigate and apprehend criminal elements and to stop money laundering, drug and human trafficking.

B. STABILITY

14) Tenets of democratic society

By 2004 adopt, and in some cases recommit, to the fundamental tenets of a democratic society as stipulated in the CSSDCA Solemn Declaration as an African common position, namely, a Constitution and a Bill of Rights provision, where applicable, free and fair elections, an independent judiciary, freedom of expression and subordination of the military to legitimate civilian authority; rejection of unconstitutional changes of government; and implement these principles by 2005, where they are not already applicable.

15) Democratisation and good governance

Elaborate by 2004 principles of good governance based on sound management of public finances and commonly agreed set of indicators to be included in national legislations, including decentralisation of administration and effective, transparent control of state expenditure. By 2003, all African countries should enact legislation to provide for the impartiality of public services, the independence of the judiciary and the necessary autonomy of public institutions such as the Central bank and the office of the Auditor-general.

16) Limitation to the tenure of political office holders

Adopt by 2005 a commonly derived Code of Conduct for Political Office Holders that stipulates, among others, an inviolate constitutional limitation on the tenure of elected political office holders based on nationally stipulated periodic renewal of mandates and governments should scrupulously abide by it.

17) Anti-corruption Commission

Adoption, signing and ratification of an OAU Convention on Combating Corruption. Establish by 2004 in each African country (where it is not presently in existence) an independent anti-corruption Commission, with an independent budget that must annually report to the national parliament on the state of corruption in that country.

18) Independent national electoral commissions

Establish by 2003 where they do not exist, independent national electoral commissions and/or other appropriate mechanisms and institutions to ensure free, fair, and transparent elections in all African countries.

19) Election observation

Adopt and standardise by 2003, guidelines for independent and effective observations of elections in AU Member States, with the provision of an effective electoral unit within the AU Commission. The guidelines must include provisions for strengthening civil society and local monitoring groups in individual African countries and the continent as a whole to support the process of ensuring free and fair elections.

The Commission should be gradually equipped and funded to conduct independent election observation by 2003. The reports of the various election observation teams of the AU should be made public.

20) Campaign finance reforms

Conclude by 2004 legal mechanisms for the institution of campaign finance reform including disclosure of campaign funding sources and for proportionate state funding of all political parties, to ensure transparency, equity and accountability in electoral contests.

21) Inclusive systems of governance

Conclude by 2004 appropriate arrangements, including electoral reforms, for the institution of more inclusive systems of government.

22) Popular participation

Implement the provisions of the Charter for Popular Participation for development and transformation in Africa, adopted by the Assembly of Heads of State and Government in 1990 by creating more enabling conditions for increased participation of women, the youth and civil society organisations.

23) Political parties

Adopt by 2004, where it does not exist, enabling legislations on the formation and operation of political parties to ensure that such parties

are not formed and operated on the basis of ethnic, religious, sectarian, regional or racial extremism and establish a threshold of voter support as criteria for public funding, without compromising freedom of association and the principle of multi-party democracy.

24) Rights of the child

By 2003, all Member States should sign and ratify the African Charter on the Rights and Welfare of the Child and by 2005, fully implement the obligations entered into therein.

By 2003, all Member States to ratify the UN Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict, the Protocol on the Trafficking and Sexual Exploitation of Children and all other instruments related to the Rights of the Child and implement the Protocols by 2005, including effective plans of action, in regions where they do not exist, for the demobilisation of child soldiers.

25) Enact key elements of Bill of Rights

By 2004, pending inclusion of a Bill of Rights, including the embedded obligations of citizens, where applicable, in every constitution in Africa, all Member States should incorporate into national codes or laws, where it does not exist, provisions of habeas mandamus and habeas corpus to protect every citizen of Africa from arbitrary arrest or detention without trial and other forms of cruel and degrading treatment and put in place mechanisms for the monitoring and effective implementation of these codes.

26) Observance, protection and promotion of human rights

By 2003, all African countries that have not done so, should ratify the Protocol to the African Charter on Human and People's Rights establishing the African Court on Human and People's Rights, as well as all other relevant international instruments for the protection and promotion of human rights; and vigorously proceed with the implementation of such requirements including all provisions of the Charter on Peoples and Human Rights and the Grand Bay Declaration and Plan of Action on Human Rights in Africa, including the provision of required resources for the work of these bodies.

By 2004, all African countries should submit annual reports on the status of human and peoples' rights within their countries to the African Commission of Human and Peoples Rights. The African Commission on Human and Peoples' Rights should be provided with adequate resources to enable it to produce comprehensive, independent and publicly available annual surveys by 2006.

27) Status of women

By 2005, take measures to promote equality of women, and ensure the representation of women in all national, regional and continental institutions, as well as the elimination of all laws that discriminate against women in African countries. They should also adopt, sign and ratify the Protocol to the African Charter relating to the Rights of Women in Africa as well as other instruments and mechanisms to guarantee and preserve the rights of women.

By 2005, all Member States to sign, ratify and accede to the UN Optional Protocol to the Convention on the Elimination of all forms of Discrimination against Women (CEDAW).

28) The criminal justice system

Set up by 2005 in every African country an independent Commission to determine measures for improving critical aspects of correction, reform and parole in the Criminal justice system, with particular emphasis on improving prison conditions in Africa, setting up, where they do not exist, Parole Boards, increasing the focus on rehabilitation and finding alternatives to incarceration particularly among juvenile offenders, and placing more emphasis on restorative justice.

C. DEVELOPMENT

29) Economic growth and development

Increase the rate of growth of the economies of Africa by an average annual growth rate of 7 %, which is the minimum needed to reduce poverty as stipulated in the International Development Goals and reaffirmed in NEPAD and in previous agreements and commitments.

30) Savings and investments

Increase the savings and investment ratio to the level needed to achieve the 7 % growth rate mentioned above.

31) Capital flight

Reduce levels of capital flight by half by 2008 through appropriate policy measures, with a view to eliminating it by 2015.

32) Foreign direct investment

Increase Africa's share of Foreign Direct Investment (FDI) inflows from the current 1 % of total global FDI, to a minimum of 2 % in 5 years and increase by 2 % every year until it reaches 10 % of total global FDI flows.

33) Infrastructure

Increase investment in physical infrastructure, (transport and telecommunications) as a ratio to GDP to the level that obtains in middle-income countries and social infrastructure to about 10 % of GDP by the year 2020 and the development and interconnection of intra-African transport and communication networks and services.

34) Common standards

Development of a common system of standards and specifications to help foster intra-African exchange of goods and services.

35) Industrialisation

Increase value added in manufacturing in the Continent from the current 17 % to 25 % by the year 2010. For countries that have not achieved the average African level, to double the level of manufacturing every 10 years until it reaches the average for African countries.

36) Intra-African trade

Increase share of intra-African trade to 20 % of the total trade of Member States by 2005 in accordance with various resolutions of OAU and RECs.

37) Trade

Increase Africa's share of world trade from its current 2 % level to 4 % by 2010, as well as diversified Africa's exports to reflect this change in the structure of production.

38) Agricultural productivity

Increase agricultural productivity at a rate twice that of population growth.

39) Poverty alleviation and equitable income distribution

In line with the International Development Goals, and as recognised in the NEPAD, attain the goal of reducing the proportion of people living in extreme poverty by half by the year 2015.

D. COOPERATION

40) Customs Union and common market

Establish a firm and binding commitment by all Member States for all the RECs to attain full Customs Union status by 2005, and full Common Market status by 2010, in line with AU integration objectives and the call by the CSSDCA Solemn Declaration to work towards a shortened timetable for the full realisation of the African Economic Community.

41) Policy harmonisation and market integration

Harmonise macro-economic policies including comprehensive convergence criteria and sectoral policy coordination to be completed by 2005 in all RECs, in order to achieve the goal of 7 % GDP growth rate annually as called for in the NEPAD – within the context of integration arrangement.

42) Investment code

Conclusion and adoption by 2005 of a single investment code in each REC to provide a common enabling environment, in conformity with the projected Customs Union.

43) Physical integration and infrastructure

Adoption by 2005, in regions where they do not exist, of binding Agreements and protocols on all the major physical integration projects that have been identified, including priority access for landlocked countries and the participation of all countries in projects such as the Regional African Satellite Communicating System (RASCOM) being one of the vital African projects prior to the planned launching of RASCOM by the last quarter of 2002. Similarly the implementation by 2005 of the Yamoussoukro Declaration concerning the Liberalisation of Air Transport Markets in Africa.

44) Industrial policy

Binding agreement reached by 2005 on common industrial policy within RECs.

45) Common natural resources

Early take off of the African Energy Commission (AFREC) to assure the completion of the energy development plans by 2003 bearing in mind the NEPAD target of 35 % access to reliable and affordable commercial energy supply for the African population in 20 years; and encouragement of all RECs to conclude plans, binding agreements and protocols by 2003 for the development of other projects on the utilisation of common natural resources. In this connection, immediate steps should be taken to mobilise African entrepreneurs to establish multinational companies for the execution of large scale projects in Africa.

46) Rationalisation of RECS

Complete by 2005, the harmonisation and rationalisation of all RECs, in order to facilitate convergence into the African Union.

47) Intra-RECs cooperation

Strengthened framework and programme for deepening horizontal interactions among RECs starting 2002 in fulfilment of the Protocol on relations between the AEC and the RECs, and, in line with the Lusaka Summit decision on the establishment of the AU.

48) Cooperation in health matters

Strengthened cooperation in health matters, including the adoption of a Health Protocol in all RECs by 2003 and implementation of the binding commitment on allocating 15 % of our national budget to the improvement of the health sector as agreed to in the Abuja Summit Declaration on HIV/AIDS, Tuberculosis and other related Infectious Diseases.

49) Harmonisation and coordination of education policies

Attainment of set targets in the Plan of Action on the Decade of Education as adopted by the Summit of OAU Heads of State and Government in 1999, particularly universal basic education by 2015.

50) Information and Communication Technology (ICT)

Adoption of policy regulatory ICT frameworks that are transparent, predictable, and ensure fair competition and open markets by 2005. Improvement of access for households and firms, with a short-term objective to double teledensity to two lines per 100 people by 2005, with an adequate level of access for households. Simultaneously, lowering of the cost and improvement of reliability of service, and achievement of e-readiness for all countries of Africa.

IV. FRAMEWORK OF IMPLEMENTATION

We further agree to the following framework of implementation as a means of carrying out the commitments contained in this Memorandum of Understanding:

1. To incorporate CSSDCA principles and guidelines in our national institutions that would have responsibility for helping in the monitoring of the CSSDCA activities as prescribed in the Solemn Declaration on the CSSDCA. To this end we shall initiate, appropriate actions, including legislative, executive or administrative actions to bring national laws or regulations in conformity with CSSDCA.
2. To take all necessary measures in accordance with the constitutional procedures, in each of our Member States, to ensure the dissemination of such legislation as may be necessary for the implementation of the fundamental objectives.
3. To designate focal points within our existing national institutions (states, civil society, the private sectors, etc.) for CSSDCA pro-

grammes. The focal point shall be responsible for coordinating and monitoring all activities relating to the CSSDCA. In addition, the focal point shall undertake, on annual basis, monitoring of the country's compliance with the CSSDCA process.

4 To also establish within our existing national institutions a national coordinating committee, consisting of all stakeholders dealing with the various calabashes of the CSSDCA framework, to develop and coordinate the overall strategies and policies towards the four calabashes of the CSSDCA.

5 To create favourable conditions for the development of the African continent, in particular by harmonising our national strategies and policies and refrain from any unilateral action that may hinder the attainment of the general and specific principles of the CSSDCA as contained in the Solemn Declaration and undertakings derived thereof.

6 To provide, within all the RECs, appropriate institutional framework for the implementation of the CSSDCA Solemn Declaration and the Memorandum of Understanding on Security, Stability, Development and Cooperation.

7 To use the monitoring process of the CSSDCA to establish best current knowledge and practices that would strengthen democratic practices, the protection of human rights and the promotion of good governance in the continent.

8 To strengthen and enlarge the CSSDCA Unit, including endowing it with adequate human resources and funds, as well as an enhanced technical analytic capacity to take initiatives within the structure of the envisaged Commission of the African Union and to enable it perform its tasks efficiently and effectively, particularly in respect of coordination and harmonisation of policies of Member States.

9 To ensure that the CSSDCA Process forms part and parcel of the work programme of the Commission of the African Union.

10 To consolidate and strengthen political will among Member States as a necessary and sufficient condition for the attainment of the goals set forth by Member States in the CSSDCA process.

V. MONITORING PERFORMANCE

We finally agree to the following mechanisms for measuring performance:

1 To convene, in accordance with the Solemn Declaration on the CSSDCA, a Standing CSSDCA Conference at Summit level every two years during ordinary sessions of Summit, review meetings of pleni-

potentiaries and senior officials in between sessions of the Standing Conference.

2 The commitments entered into by Member States for the Security and Stability Calabashes shall form part of these reviews. These commitments will serve as agreed benchmark criteria and indices, with key performance indicators as instruments for measurement of compliance in monitoring progress towards agreed goals.

3 In preparing for those reviews, the national mechanisms for monitoring the core values and commitments of the Security and Stability Calabashes shall work closely with the CSSDCA Unit, which will elaborate a comprehensive work programme and time schedule for its activities including, administrative arrangements for overseeing the monitoring process, with diagnostic tools and measurement criteria for assessing performance, as well as deficiencies and capacity restraints that impede them. All stakeholders in providing inputs for the review process will use the diagnostic tools and measurement criteria and highlight capacity restraints or gaps that should be bridged to enable higher standards of performance along with resources that should be mobilised to support this process. This process of peer scrutiny will facilitate the development of best practices and suggest ways in which they can be effectively transferred to where they are not in operation.

4 The national mechanisms for evaluation will, according to predetermined criteria, produce country reports. These inputs shall be obtained from specialised agencies, the private sector, civil society organisations, and parliamentarians as part of a general process of evaluation. The different inputs will be cross-referenced to provide a clear and accurate representation.

5 Regional Economic Communities shall also play a role in these reviews. The Executive Heads of Regional Economic Communities should thus be invited to the Review Meetings of plenipotentiaries and senior officials.

6 In carrying out the tasks of monitoring performance, the Coordinating Unit of the CSSDCA in the OAU/AU shall coordinate closely with the national and regional focal points. It shall seek the cooperation of regional and international bodies in the context of the relevant Calabashes on Security, Stability, Development and Cooperation, as well as support and assistance from other relevant international organisations or institutions and other cooperation agencies especially the ECA, ADB, UNDP, IMF, IOM and IBRD to promote the realisation of the objectives of the CSSDCA process.

7 The CSSDCA Process will also be supported by visitation panels composed of eminent, reputable Africans to carry out professional, independent and objective on spot assessments in two-year circles as part of the preparation for the bi-annual Standing Conferences of the CSSDCA. Such visitation panels will raise the visibility and credibility of the process and augment the permanent and continuous monitoring process.

We express our determination to respect and apply fully the undertakings, as set forth in the present Memorandum of Understanding in all aspects, in our mutual relations and cooperation, in order to assure each of our Member States the benefits resulting from the respect and application of these undertakings by all.

We are convinced that respect for these undertakings will encourage the development of normal and friendly relations and the progress of cooperation among our countries and peoples. We are also convinced that respect for the core values and commitments contained in this Memorandum of Understanding will encourage the development of contacts among our countries, which, in time, would contribute to better mutual understanding of our commitments. We commit ourselves to respect and implement all the above undertakings in conformity with Articles 9 (e) and 23 (2) of the Constitutive Act of the African Union.

iii FIRST DECLARATION ON THE AFRICAN UNION BORDER PROGRAMME AND ITS IMPLEMENTATION MODALITIES AS ADOPTED BY THE CONFERENCE OF AFRICAN MINISTERS IN CHARGE OF BORDER ISSUES, ADDIS ABABA, ETHIOPIA, 4 to 7 JUNE 2007, EX.CL/352(XI)

PREAMBLE

1 We, the Ministers in Charge of Border Issues in the Member States of the African Union, meeting in Addis Ababa, Ethiopia, on 7 June 2007 to deliberate on the African Union Border Programme and its implementation modalities:

(a) Inspired by the conviction that the achievement of greater unity and solidarity among African countries and peoples require the reduction of the burden of borders separating African States;

(b) Convinced that, by transcending the borders as barriers and promoting them as bridges linking one State to another, Africa

Annex 3

Transitional Federal Government of Somalia, *The Transitional Federal Charter of the Somali Republic* (Feb. 2004)

Somalia: Somali Transitional Charter. Transitional Federal Charter for the Somali Republic

Publisher	National Legislative Bodies / National Authorities
Publication Date	February 2004
Cite as	*Somalia: Somali Transitional Charter. Transitional Federal Charter for the Somali Republic* [], February 2004, available at: http://www.refworld.org/docid/4795c2d22.html [accessed 28 January 2016]
Disclaimer	This is not a UNHCR publication. UNHCR is not responsible for, nor does it necessarily endorse, its content. Any views expressed are solely those of the author or publisher and do not necessarily reflect those of UNHCR, the United Nations or its Member States.

PREAMBLE

In the Name of Allah, the most Merciful, the Beneficent.

WE, THE DELEGATES REPRESENTING THE PEOPLE OF THE SOMALI REPUBLIC have solemnly resolved to enact a Transitional Federal Charter for the Somali Republic;

DETERMINED to live in peace and unity as one indivisible, free and sovereign nation;

RECOGNIZING the gross violations of human rights inflicted upon the Somali people and the need to re-establish peace, democracy, the rule of law, social justice, the dignity and integrity of all Somalis;

COMMITTED to establishing and nurturing a Transitional Federal Government for the Somali Republic;

DETERMINED to foster reconciliation, national unity, and good governance;

DO HEREBY ADOPT, ENACT AND GIVE TO THE SOMALI PEOPLE THIS CHARTER.

CHAPTER ONE
SOVEREIGNTY AND TERRITORY

ARTICLE 1
ESTABLISHMENT OF TRANSITIONAL FEDERAL GOVERNMENT

1. There shall be a Transitional Federal Government of the Somali Republic based on the sovereign will of the Somali people.

2. The name of the National Government shall be "The Transitional Federal Government of the Somali Republic."

3. In this charter "Somali Republic" has the same meaning as "Somalia", "The Somali

Republic", "The Somali Democratic Republic".

ARTICLE 1:1
THE SOVEREIGNTY OF THE SOMALI PEOPLE.

1. All the sovereign authority belongs to the people of Somalia and may be exercised directly or indirectly through their representatives, in accordance with this Charter and the laws of the country.

2. The right to exercise sovereignty shall not be delegated to any individual, group or class, and no person shall arrogate to him or herself, or exercise any State authority, which does not emanate from this Charter or any laws of the Land not inconsistent with this charter.

1. The Government shall encourage the unity of the Somali people by promoting their cultures, customs and traditions.

ARTICLE 2
THE TERRITORY OF SOMALIA

1. The Territorial Integrity and Sovereignty of the Somali Republic shall be inviolable and indivisible.

2. The territorial sovereignty of the Somali Republic shall extend to the land, the islands, territorial sea, the subsoil, the air space and the continental shelf.

3. The Somali Republic shall have the following boundaries.

(a) North; Gulf of Aden.
(b) North West; Djibouti.
(c) West; Ethiopia.
(d) South south-west; Kenya.
(e) East; Indian Ocean.

ARTICLE 3
SUPREMACY OF LAW

1. The Transitional Federal Government of the Somali Republic shall be founded on the supremacy of the law and shall be governed in accordance with this Charter.

2. This Charter for the Transitional Federal Government shall be the supreme law binding all authorities and persons and shall have the force of law throughout the Somali Republic. If any law is inconsistent with this Charter the Charter shall prevail.

3. The validity, legality or procedure of enactment or promulgation of this Charter shall not be subject to challenge by or before any court or other State organ.

ARTICLE 4
INTERPRETATION OF THE CHARTER

1. The Charter shall be interpreted in a manner: - (a) That promotes national reconciliation, unity and democratic values;

a) That promotes the values of good governance;
b) That advances human dignity, integrity, rights and fundamental freedoms and the Rule of Law.

2. A person may bring an action in the Supreme Court for a declaration that any Law or

action of the state is inconsistent with, or is in contravention of this Charter.

3. The Supreme Court shall determine all such applications on a priority basis.

CHAPTER TWO
THE SOMALI REPUBLIC

ARTICLE 5
THE CAPITAL CITY

1. The Capital of the Somali Republic shall be Mogadishu (Hamar - Xamar).

2. Parliament shall pass legislation governing the Administration of the Capital City.

ARTICLE 6
THE FLAG AND EMBLEM

1. The National flag for the Transitional Federal Government shall be of rectangular shape, azure in colour with a white star and five equal points emblazoned in the centre.

2. The emblem of Transitional Federal Government shall be composed of an azure escutcheon with a gold border, which shall bear a Silver five-pointed star.

3. The escutcheon shall be surmounted by embattlement with five equal points in Moorish style, two lateral points halved, borne by two leopards rampant in natural form facing each other, resting on two lances crossing under the point of the escutcheon with two palm leaves in natural form interlaced with a white ribbon.

ARTICLE 7
LANGUAGES

1. The official languages of the Somali Republic shall be Somali (Maay and Maxaatiri) and Arabic.

2. The second languages of the Transitional Federal Government shall be English and Italian.

ARTICLE 8
RELIGION

1. Islam shall be the religion of the Somali Republic.

2. The Islamic Sharia shall be the basic source for national legislation.

ARTICLE 9
THE NATIONAL SYMBOLS

1. The national symbols of the Somali Republic shall consist of: -
(a) The National Flag;
(b) The National Anthem
(c) The National Emblem and
(d) The Public Seal.

CHAPTER THREE
CITIZENSHIP

ARTICLE 10
CITIZENSHIP

1. Every person who at the time of the coming into force of this Charter was a citizen of the Somali Republic shall be deemed to be a citizen of the Somali Republic.

2. Every person of Somali origin shall be entitled to citizenship of the Somali Republic provided that: -

(a) He/she was born in the Somali Republic; or
(b) His/her father is a citizen of the Somali Republic;

3. A person who is a citizen of Somalia under this Article cannot be deprived of that citizenship.

4. Every Citizen of the Somali Republic shall be entitled to retain their citizenship notwithstanding the acquisition of the citizenship of any other country.

5. Parliament shall within twelve months pass legislation regulating matters relating to citizenship.

CHAPTER FOUR
THE TRANSITIONAL FEDERAL GOVERNMENT

ARTICLE 11

1. The Transitional Federal Government of the Somali Republic shall have a decentralised system of administration based on federalism.

2. The Somali Republic shall comprise of :-

a) The Transitional federal Government.
b) State Governments (Two or more regions federated, according to their free will)
c) Regional Administrations
d) District Administrations

3. The present Charter shall be the basis for the federal constitution.

a) While the new Constitution is being drafted, a National Census shall be undertaken simultaneously.

b) After which an internationally supervised National Referendum shall be undertaken to approve the new Constitution.

c) The Transitional Federal Government will request the International Community to provide both technical and financial support.

4. The Transitional Federal Government shall promote and develop the State Governments, Regional and District Administrations subject to the legislation and the guidelines of the Federal Constitutional Commission on the formation of the Transitional Federal Government.

5. The State Governments, Regional and District Administrations shall cover all the regions of Somalia.

6. The Council of Ministers of the Transitional Federal Government shall within 90 days of

assuming office propose to the President names of persons to be appointed to an independent Federal Constitution Commission to ensure that a Federation is achieved within the time set out under this charter;

7. Parliament shall make laws relating to the mandate of the Commission and the qualifications and terms of service of its members;

8. Notwithstanding any other provisions in this Charter relating to the formation of government ministries, there shall be established a Ministry of Federal and Constitutional affairs that shall be charged with the task of implementing Constitutional and Federal affairs;

9. The Transitional Federal Government shall ensure that the process of federating Somalia shall take place within a period of two and a half years from the date that the commission is established;

10. In the event that the Transitional Federal Government is unable to complete the process of federalism all over Somalia within the prescribed period of two and half years, the Government shall request Parliament for a vote of confidence, failing which the Transitional Federal Parliament shall withdraw its support and a new Transitional Federal Government shall be formed in the manner set out in this charter;

11. The new Transitional Federal Government formed under Clause (8) herein shall undertake to complete the process of federalism all over Somalia within a period of one (1) year failing which the provisions of article 11(8) above shall apply.

ARTICLE 12
AUXILARY ORGANS

1. There shall be the following support institutions of the Transitional Federal Government: -

(a) Auditor General;

(b) Attorney General;

(c) Accountant General;

(d) Governor of Central Bank.

2. Parliament shall make laws defining the functions of the auxiliary organs set out under (1).

3. The above organs shall execute their functions and responsibilities in the whole country in conformity to their respective mandates established by law.

ARTICLE 13
DISTRIBUTION OF RESOURCES AND POSITIONS

1. The Transitional Federal Government, shall on the coming into force of this charter pass legislation ensuring equitable appropriation and allocation of resources in the country.

2. The Transitional Federal Government shall ensure that all appointments in the service of the Government shall be based on qualifications and fair distribution among the Citizens.

CHAPTER FIVE

PROTECTION OF THE FUNDAMENTAL RIGHTS & FREEDOMS OF THE PEOPLE

ARTICLE 14
HUMAN RIGHTS & DIGNITY.

1. The Somali Republic shall recognize and enforce all international human rights conventions and treaties to which the Republic is a party.

2. Every citizen shall have the right to:

a. Reside, work and travel freely in any part of the country.

b. Organize, form or take part in political, labour, professional or social entities in conformity to the law, without prior government authorization.

c. Vote upon attainment of 18 years of age.

d. Subject to this charter, contest for any vacant seat.

3. There shall be no interference of personal communication.

ARTICLE 15
EQUALITY OF THE CITIZENS BEFORE THE LAW.

1. All citizens of the Somali Republic are equal before the law and provisions of this Transitional Federal Charter and have the right to equal protection and equal benefit of the law without distinction of race, birth, language, religion, sex or political affiliation.

2. Equality shall include the full and equal enjoyment of all rights and freedoms.

ARTICLE 16
RIGHT TO LIFE, PERSONAL LIBERTY AND SECURITY

1. Everyone shall have the right to life and no person shall be deprived of his/her life.

2. No person shall be deprived of his/her personal liberty, personal freedom and personal security.

3. No person shall be subjected to inspection, personal search of his/her house or his/her property without the permission of competent judicial authority related to health and tax. In every case, the self-respect and moral dignity of the person concerned must be preserved.

4. Any physical or moral violence or action against a person subject to restriction of personal liberty shall be punishable as a crime and hence is prohibited.

5. No person shall be liable to any form of detention in prison or other restrictions of personal liberty except when apprehended flagrante delicto or pursuant to any act of the competent judicial authority.

6. As is explicitly defined by any law, any person arrested for suspicion or restricted from his/her personal liberty, shall have access within 48 hours to competent judicial authority and confirmed by it within the time prescribed by law.

ARTICLE 17
RIGHTS RELATING TO LEGAL PROCEEDINGS

1. Every person shall have right to institute legal proceedings in a competent court.

2. Every person who is charged with a criminal offence:-

a) Shall be presumed to be innocent until he/she is proven guilty in a competent court of law;

b) Shall be informed as soon as reasonably practicable, in a language that he/she understands and in detail, of the nature of the offence with which he/she is charged;

c) Shall be given adequate time and facilities for the preparation of his/her defence at any stage of the legal proceedings.

3. Every person detained, imprisoned or restricted shall be permitted the right to defend himself/herself in a court in person or communicate with his/her relatives, lawyer of his/her own choice whenever he/she requires.

4. The Government shall guarantee free legal services for individual citizens who cannot afford them.

5. The penal, civil and administrative liabilities of officials and employees of the Government shall be governed by law.

ARTICLE 18
LABOUR

1. No worker shall be discriminated, as each shall have a right to a salary and equal pay commensurate to the work performed and other fringe benefits as shall be stipulated in the employment and labour laws of the country.

2. Workers shall have the right to weekly rest and annual leave with pay and shall not be compelled to forfeit.

3. The law shall establish working hours for workers.

4. The Government shall establish by law the minimum age employable and minimum salary for workers.

5. The government shall guarantee its employees, Civil and military, the right to pension. It shall also guarantee employees in accordance with the law, assistance in case of accident, illness or incapacity to work. A special law shall guarantee pension for private sector employees.

ARTICLE 19
RIGHT TO ASSEMBLE AND FREEDOM TO STRIKE

1. Every person shall have the right to : -

a) Assemble freely with other persons and in particular to form or belong to trade unions or other associations for the protection of his/her interests;

b) Mobilize and participate in any meeting or demonstration;

c) Freely express his/her opinion orally, in written form, or in any other manner, without censorship.

2. The workers of the Transitional Federal Government of Somalia shall have the right to

form Trade Unions for the protection of their interests as specified by law.

ARTICLE 20
FREEDOM OF INFORMATION AND MEDIA

1. The Transitional Federal Government shall guarantee the freedom of press and independent media in accordance with Law.

2. Every person shall have the rights to freely express his/her own opinion in any manner, subject to any limitation which, may be prescribed by law for the purpose of safeguarding morals and public security.

ARTICLE 21
THE RIGHT TO ESTALISH POLITICAL PARTIES

1. The Transitional Federal Government shall encourage the formation of political parties in the Republic save that it shall be in accordance with the law.

2. In accordance with the laws, all Citizens, shall have the right to associate with political parties, political programs interpreting clearly their national political agenda.

3. The political parties shall be open for all Citizens and be guided by General Principles of Democracy.

4. Any Political party of a military character or tribal nature shall be prohibited.

5. Political parties shall have the right to form alliances before, during and after the election periods.

6. All Citizens possessing the qualifications required by law have the right to vote and be elected to Public Office.

ARTICLE 22
THE RIGHT TO ESTABLISH SOCIAL ORGANIZATIONS

1. Every person has the right to assemble freely and associate with other persons and in particular to establish any social organization in accordance with the law.

2. No person may be compelled to join and / or continue to belong to an association of any kind.

3. Any Non-Governmental organization with an objective of either human rights, environmental protection shall be registered and allowed to operate in the Somali Republic in accordance with international treaties and laws of the country.

4. Nothing contained herein shall permit the establishment of any secret associations or any organization bearing any military defence or para-military nature and / or character.

ARTICLE 23
POLITICAL ASYLUM

1. The state may grant political asylum to a person and his close relatives who flee his or another country on grounds of political religious, and cultural persecution unless such asylum seeker(s) have committed crime(s) against humanity.

2. Extradition may be granted against a person accused of a crime committed in his or another country only if an extradition treaty exists between Somalia and the country

requesting thereof.

ARTICLE 24
EDUCATION

1. Education shall be recognized as a basic right for all Somali citizens

2. All citizens shall have a right to free primary and secondary education.

3. The Government shall give priority to the promotion, expansion and propagation of public education.

4. Education shall be for the interest of the people and shall be extended throughout the whole country.

5. Private schools, institutes and universities may be established according to law and in line with the educational program and academic curriculum of the country.

6. The Government shall encourage the promotion of scientific research, the arts and their advancement as well as the folklore and sports and shall promote positive customs and traditions of the Somali people.

7. The Government shall adopt standardized curriculum for schools of the country and shall oversee its implementation.

8. The Government shall promote higher education and the establishment of Technical Institutes as well as technology and research Institutions.

9. The Government shall develop educational programmes and a united syllabus for all schools.

10. Teaching of Islam shall be compulsory for pupils in both Public and Private Schools.

ARTICLE 25
PROTECTION OF FAMILY

1. The family shall be recognized as the basic unit of the society whereas religion, morals and love of the country shall be the central pillars of the family.

2. The Government shall protect and encourage marriage.

3. Parents shall support their children, education and welfare, as required by law.

4. Children, who are of full age, are obliged to support their parents when the latter are unable to support themselves.

5. It shall be an obligation on parents/guardian to register children upon birth.

ARTICLE 26
SOCIAL WELFARE

The Government shall guarantee public social welfare as follows:

a) It shall be the responsibility of the Government to protect and provide public health, safe motherhood, childcare and control communicable diseases;

b) Welfare of persons with disabilities, orphans, widows, heroes who contributed and

fought in defence of the country and aged persons;

c) The Government shall encourage the establishment of the Civil Society and social development institutions for the public, that is to say, NGOs, women, youth, students, human rights and professional organizations;

d) Forced labour or military service for children under 18 years shall not be permitted.

e) In accordance with the law, no child under 18 years of age shall be imprisoned in the same prison and/or custody as those for adults;

f) The law shall regulate the establishment of private health centres and clinics;

g) The Government shall safeguard public morality of the society;

h) The Government shall endeavour to promote the social welfare and development of the rural population;

i) The Government shall create a positive environment for women to participate effectively in economic, social and political life of the society;

j) The law shall establish the relationship between the Transitional Federal Government and former Government employees.

ARTICLE 27
ECONOMY

1. The system of economy for the country shall be based on free enterprise.

2. The Government shall encourage, support and provide full guarantee to foreign investment in the country as specified by law.

3. The right to own private property shall be guaranteed by law, which shall define its contents and the limits of its exercise.

4. Copyrights pertaining to the arts, science and technology shall be protected and the law shall regulate its contents and the limits of its exercise.

5. Personal property may be expropriated for public interest in exchange for equitable and timely compensation. However, the property shall be returned to the owner or his/her heirs in accordance with the law.

CHAPTER SIX
THE STRUCTURE AND ORGANISATION OF THE STATE

PART 1

ARTICLE 28
PARLIAMENT

1. The legislative powers of the Transitional Federal Government of Somalia shall be vested in Parliament.

2. The Transitional Federal Parliament of the Somali Republic shall have a single Chamber.

3. The members of the Parliament shall represent the unity of the nation.

ARTICLE 29
THE COMPOSITION OF PARLIAMENT

The Transitional Federal Parliament of the Somali Republic shall consist of Two Hundred and Seventy Five (275) Members of which at least Twelve Percent (12%) shall be women.

ARTICLE 30
APPOINTMENT OF MEMBERS OF PARLIAMENT

a) The Parliament envisaged under article 28 above shall be appointed as follows;

a) Selection of the Members of Parliament shall be made at the sub sub-clan level.

b) Any member of a sub sub-clan is eligible for selection as a Member of Parliament irrespective of whether he or she is present at the conference.

c) Selection shall be undertaken in a transparent manner and the Political Leaders, Politicians and Traditional Leaders are called upon to play their roles.

d) Having ensured full endorsement of the traditional leaders to the compiled list of selected MPs, the Somali Management 85 Facilitation Committee will further submit the said list to the IGAD Facilitation Committee within the timeframe specified.

2) Any vacancy that arises after the coming into force of this Charter shall be filled through the same procedure as stated in Article 30(1) above.

ARTICLE 31
ELIGIBILITY CRITERIA FOR MEMBERSHIP OF PARLIAMENT

1. A person shall be eligible to be a Member of Parliament if that person: -

a. Is a citizen of the Somali Republic;

b. Has attained at least twenty five years (25) years of age;

c. Is of good character.

d. Is of sound mind

2) A person shall be disqualified from being a Member of Parliament if that person :-

a) Holds any other public appointment other than as member of the Cabinet;

b) Has been pronounced as being of unsound mind;

c) Has been convicted of an interdictable offence;

d) Has been removed from any public office on grounds of gross misconduct or corruption.

ARTICLE 32
THE TERM OF THE TRANSITIONAL FEDERAL PARLIAMENT

1. The term of the Transitional Federal Parliament shall be five (5) years.

2. The tenure of parliament shall commence from the date of taking the oath of office and shall continue until the date of commencement of the next parliament.

3. Parliament shall meet in its first session within 30 days from the date two-thirds of the members of the Parliament shall have taken the oath of office.

4. The term of the Transitional Federal Parliament shall not be extended.

5. The first meeting of the Parliament shall be chaired by the most senior member in age until a Speaker is elected.

ARTICLE 33
FUNCTIONS OF PARLIAMENT.

Parliament shall discharge the following functions: -

a) Election of the President of the Transitional Federal Government;

b) Election of Speaker and Deputy Speaker

c) Making legislation ;

d) Approval and adoption of the annual budget.

e) Consideration of motions of confidence in the

f) Government;

g) Making of internal parliamentary regulations;

h) Investigate any matter of public interest

i) Hold public hearings

j) Ratification of international agreements and treaties;

ARTICLE 34
PROCEDURES IN PARLIAMENT

1. The Parliament shall hold two (2) ordinary sessions annually.

2. The Parliament may be convened in extraordinary sessions by the Speaker at the request of the President or upon requisition by one third of its members.

3. Meetings of Parliament or its committees shall be valid with the presence of half plus one of its members.

ARTICLE 35
PRIVILEGES AND IMMUNITIES OF PARLIAMENT

1. No member of parliament may be prosecuted for any opinion or Views expressed in parliament.

2. No criminal proceedings shall be instituted against a member of parliament unless in a case of flagranto delicto.

3. No member of parliament shall be interrogated in connection with criminal investigation, nor shall his person or domicile be subjected to search while executing duties of a parliamentarian.

4. Parliament shall make law on the emoluments of its members, which shall be limited to sitting per diem of the parliamentary session and its committees.

ARTICLE 36
LEGISLATION

1) When a Law has been passed by Parliament, it shall be presented to the President for Assent.

2) The President shall, within twenty-one (21) days after the Law has been presented to him/her for assent under sub-section(1), notify the speaker that he/she assents to the Law or refuses to assent to it.

3) Where the President refuses to assent to a Law he/she shall, within fourteen (14) days of the refusal, submit a memorandum to the speaker indicating the specific provisions of the Law which in his/her opinion should be reconsidered for amendments.

4) The Parliament shall reconsider a Law referred to it by the President taking into account the comments of the presidents and shall either :-

a) Approve the recommendations proposed by the President with or without amendment and resubmit the Law to the President for assent; or

b) Refuse to accept the recommendations and approve the Law in its original form by a resolution supported by Votes of not less than sixty –five (65)percent of all the Members of the Parliament in which case the president Shall assent to the Law within fourteen (14) days of the Passing of the resolution. 5.A law made by Parliament and assented to by the president shall not come into operation until it has been published in the official bulletin.

ARTICLE 37
OFFICERS OF PARLIAMENT

Parliament shall have the following officers:

a) The Speaker

b) Two Deputy Speakers

c) Other officers appointed by parliament

Parliament shall elect the Speaker and the two Deputy Speakers from among its members in its first sitting.

ARTICLE 38
PROCEEDINGS OF PARLIAMENT

Every Parliamentary sitting shall be presided over by: -

a) The Speaker or

b) In the absence of the Speaker any of the Deputy Speakers;

c) In the absence of the Speaker or any of the Deputy Speakers, such other Member of Parliament as the members shall elect.

CHAPTER SEVEN

PART II

THE PRESIDENT

ARTICLE 39
1. There shall be a President of the Somali Republic, who shall be

(a) The Head of State

(b) Commander - in - Chief of the Armed Forces

(c) Symbol of National Unity

2. The powers of the President shall be exercised in accordance with the Charter and the laws of the land;

3. The President shall not hold any other office for gain.

ARTICLE 40
QUALIFICATIONS

1. Any person shall be qualified and eligible to be elected the President of the Somali Republic , if the person :-

a) Is a citizen of the Somali Republic;
b) Has attained at least 40 years of age.
c) Is a practicing Muslim whose parents are Somali citizens
d) Is not married to a foreigner nor marry a foreigner during his term of office.
e) Is of sound mind and no criminal conviction for any serious offence.
f) Is of good character.
g) Possess the capacity, competence and experience to discharge the duties of the Presidency.

ARTICLE 41
ELECTION OF THE PRESIDENT

1. The President shall be elected by Parliament through a secret ballot, with a two-thirds (2/3) majority of its members in the first round whereas in the subsequent ballots shall be by simple majority.

2. In the second round of the elections, only the first six candidates shall be eligible whereas in the third round only the first two candidates shall be eligible for the final Presidential election.

ARTICLE 42
OATH OF THE PRESIDENT

Before assuming the office and duties of the President, the President elect shall take and subscribe to the oath of allegiance. Such an oath shall be for the due execution of his/her office in a manner prescribed herein: -

"In the name of Allah I swear that I will discharge faithfully all my duties as President in the interest of the people and that I will abide by the Charter and laws of the Somali Republic".

ARTICLE 43
TENURE OF OFFICE

1. The President shall hold office for a term of four (5) years beginning from the date on which he/she is sworn in as President in accordance with the Oath of Office provided for in this Charter. The President shall, unless his/her office becomes vacant by reason of his/her death, resignation or ceasing to hold office by virtue of the provisions of this Charter, continue to hold office until the person elected as President at a subsequent election assumes office.

2. The President shall be impeached for the violation of the Charter only if a charge against him or her has been preferred to Parliament.

3. Where a motion for impeachment of the President is laid before Parliament -

a) The charge shall be preferred in a resolution moved after at least fourteen (14) days notice in writing and signed by not less than one third of the total number of members of Parliament of their intention to move such a resolution;

b) An investigation shall be conducted of the charge preferred or the cause of the charge and the President shall have the right to appear and to be represented at such investigation;

c) As a result of the outcome of the investigation, such resolution shall be passed and voted by at least two-third majority of the members of Parliament;

d) Such resolution shall have the effect of removing the President from his/her office as from the date on which the resolution is so passed.

ARTICLE 44
RESPONSIBILITIES OF THE PRESIDENT

4. The President shall undertake the following State duties: -

a. Address the opening of the Parliament;

b. Address a special sitting of Parliament once a year;

c. May address Parliament any other time;

d. The President shall nominate the President of the Supreme Court and other Judicial Officers on the proposal of the Council of Ministers;

e. The President shall appoint persons to offices in the public service and Heads of government organs on the proposal of the Council of Ministers;

f. The President shall appoint persons to be, Ambassadors, Diplomatic or Consular representatives to foreign countries on the proposal of the Council of Ministers;

g. The President shall receive foreign Diplomatic or Consular representatives in the country;

h. The President shall confer state honours on the proposal of the Council of Ministers.

2) The President shall appoint and dismiss the Prime Minister and/or dismiss the government if it fails to obtain the required vote of confidence from Parliament.

3) The President shall dismiss Ministers and Assistant Ministers on the proposal of the Prime minister.

4) The President shall have authority to: -

(a) Sign international treaties on the proposal of the Council of Ministers and upon ratification by Parliament;

(b) Assent and Sign into law, legislation passed by the parliament and regulations and decrees approved by the Council of Ministers;

ARTICLE 45
VACANCY IN THE OFFICE OF THE PRESIDENT

If the office of the President becomes vacant by reason of the resignation, death or permanent disability of the President of the Republic, the Speaker of Parliament shall with immediate effect exercise the functions of the President and Parliament shall meet to elect a new President within thirty- (30) days.

CHAPTER EIGHT
PART III

THE EXECUTIVE

ARTICLE 46
THE PRIME MINISTER

1. The Executive power shall vest in the Council of Ministers.

2. The President shall appoint the Prime Minister who shall be the leader and chair of the Council of Ministers.

DEPUTY PRIME MINISTERS AND MINISTERS

3. The Prime Minister shall propose to the President 3 names of persons to be appointed Deputy Prime Ministers;

4. The Prime Minister shall propose to the President names of persons to be appointed Ministers and Assistant Ministers;

5. The Prime Minister shall propose to the President names of persons eligible to be appointed as Ministers and Assistant Ministers.

6. Each Deputy Prime Ministers shall have a ministerial portfolio and shall supervise a group of related ministries in the political, social and economic sectors. Their specific duties shall be specified by legislation.

ARTICLE 47
QUALIFICATION OF THE PRIME MINISTER AND DEPUTY PRIME MINISTERS

1. The Prime Minister, the Deputy Prime Ministers, Ministers and Assistant Ministers shall have the following qualifications:

a) Be a citizen of the Somali Republic;

b) Be a member of Parliament;

c) Have attained the age of forty (40) years in the case of the Prime Minister and the thirty-five (35) years in the case of the Deputy Prime Ministers, Ministers and Assistant Ministers;

d) Have proven leadership qualities and political experience.

ARTICLE 48
RESPONSIBILITIES OF THE PRIME MINISTER

1. The Prime Minster shall have the following responsibilities –

(a) Preside over the meetings of the Council of Ministers.

(b) Be responsible for the promotion, co-ordination and supervision of government policy and general administration.

ARTICLE 49
TENURE OF OFFICE OF THE PRIME MINISTER

1. A person whose appointment as Prime Minister has been confirmed by the Parliament shall assume office upon taking the oath hereunder.

"In the name of Allah I swear that I will discharge faithfully all my duties as Prime Minister in the interest of the people and that I will abide by the Charter and laws of the Somali Republic".

2. The term of office of the Prime Minister shall continue until:

a) He/ She dies, resigns or is dismissed from office; or

b) Until another person is appointed to that office.

ARTICLE 50
RESIGNATION OF THE PRIME/DEPUTY MINISTER

1. The Prime Minister and/or the Deputy Prime Ministers may resign from office by delivering a written statement of resignation to the President.

2. The resignation stated under Clause (1) shall take effect on the date and the time specified in the resignation and upon acceptance by the President.

ARTICLE 51
DISMISSAL OF THE PRIME/DEPUTY PRIME MINISTER (s).

1. If Parliament, by a vote supported by more than fifty per cent (50%) of its members, passes a motion of no confidence in the Prime Minister, the President shall dismiss the Prime Minister, and other Members of the Council of Ministers.

ARTICLE 52
COUNCIL OF MINISTERS

1. There shall be a Council of Ministers, which shall consist of:

a) The Prime Minister

b) The Deputy Prime Ministers

c) The Ministers

2. The Council of Ministers shall: -

a) Develop government policy and implement national budgets;

b) Prepare and initiate Government legislation for introduction to Parliament;

c) Implement and administer Acts of Parliament;

d) Co-ordinate the functions of government Ministries

e) Perform any other functions provided for by the Charter or an Act of Parliament, except those reserved for the President.

3. Each person appointed as Deputy Prime Minister, Minister or Assistant Minister:

a) Assumes office by swearing in the name of Allah and allegiance to the Somali Republic 'and obedience to the Charter.

b) May resign by delivering a written statement of resignation to the Prime Minister and the President;

c) Shall continue in office until he/she dies, resigns or is dismissed or until another person is appointed to that office.

ARTICLE 53
ROLE OF THE COUNCIL OF MINISTERS

1) Unless otherwise stated, the decision of the Council of Ministers shall be in writing.

2) The Deputy Prime Ministers and Ministers shall assist and advise the Prime Minister.

3) The Council of Minister shall be accountable collectively based on the principles of collective responsibility, to Parliament for all things done including:

a) The exercise of their powers and the performance of their functions;

b) The administration and implementation of legislation assigned to them.

4) The Three (3) Deputy Prime Ministers and Ministers shall be individually accountable to the Prime Minister for the exercise of the powers and the performance of the functions assigned to each of them.

5) A Minister shall attend before Parliament, or a Committee of Parliament, when required to do so, and answer any question concerning a matter assigned to that Minister and his/her Ministry.

6) The Council of Ministers shall set the General policy of the Government in accordance with the Charter and laws of the land.

7) If parliament, by a vote supported by more than fifty percent of its members, passes a motion of no confidence against member of the cabinet, except the Prime Minister & his deputies, the President shall dismiss that member.

CHAPTER NINE

PART IV

THE JUDICIARY

ARTICLE 54
JUDICIAL AUTHORITY

1. The judicial power of the Somali Republic shall vest in the courts.

2. The judicial power shall encompass jurisdiction over Civil, Criminal, Administrative and Commercial matters and any matter specified by this Charter or any other laws of the land.

ARTICLE 55
INDEPENDENCE OF THE JUDICIARY

1. The Judiciary shall be independent of the legislative and executive branches of Government and in the exercise of their judicial functions; the members of the judiciary shall be subject only to the law.

2. A Judge shall be removed from office only for inability to perform the functions of his/her office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour, and shall not be removed except in accordance to this Clause.

3. A Judge shall be removed from office by the President if the question of his/her removal has been referred to a Tribunal appointed by the Parliament and the Tribunal has recommended to the Parliament that the Judge ought to be removed from office for inability as aforesaid or misbehaviour.

4. Members of the judiciary shall not hold offices, perform services, or engage in activities incompatible with their functions.

5. Administrative and disciplinary measures relating to members of the judiciary shall be adopted, as provided by law, by decree of the President of the Republic on the proposal of the minister of Justice and Religious Affairs and in conformity to the decision of the Judicial Service Council.

6. The Judiciary shall not be subject to the direction of any other organ or body.

7. The Judiciary shall interpret and implement the law in accordance with the Charter and laws.

8. Parliament shall make law setting the terms of the appointment, dismissal, discipline and terms of service of Judges.

ARTICLE 56
THE JUDICIAL PROCESS

1. Judicial proceedings shall be open to the public, but the court may decide, for reasons of morals, hygiene or public order, that the proceedings be held in camera.

2. No judicial decision shall be taken unless all the parties have had the opportunity of presenting their case.

3. All judicial decisions and measures concerning personal liberty shall state the grounds thereof.

ARTICLE 57

JUDICIAL PRINCIPLES

1. No extraordinary or special courts shall be established, except for military tribunals, which shall have jurisdiction only over military offences committed by members of the armed forces both during war and peacetime.

2. The public, both civilian and military shall directly participate in Judiciary proceedings in conformity with those laws defining such participation.

ARTICLE 58
JUDICIAL IMMUNITY

No criminal proceedings shall be instituted against a sitting judge, nor be interrogated as object of criminal investigation, or his person or domicile be searched nor shall be arrested unless caught in the commission of a crime, or without the authorization of the Judicial Service Council.

ARTICLE 59
APPOINTMENT OF JUDGES

1. All the Judges shall be appointed by the President acting in accordance with the advice of the Judicial Service Council.

2. The appointment of Judges shall be based on legal qualifications and competence.

3. A person shall not qualify to be appointed a Judge of the Supreme Court unless:

I. He/she is, or has been, a Judge of the Appeal Court having unlimited jurisdiction in Civil, Commercial and Criminal matters; or

II. He/she is an advocate of the High Court of Somalia of not less than five (5) years standing; or

4. 4 If the office of a Judge is vacant, or if a Judge for any reason is unable to discharge the functions of his/her office, or a judge retires at the attainment of sixty-five (65) years of age; the a new judge shall be appointed on the proposal of the Judicial Service Council by the President.

ARTICLE 60
THE COURT SYSTEM

1. The court system shall consist of :

(a) The Transitional Supreme Court
(b) The Transitional Appeal Court
(c) Other Courts established by Law

ARTICLE 61
THE SUPREME COURT

1. There shall be a Supreme Court, which shall be the highest court in the Somali Republic and shall have unlimited original jurisdiction in the whole territory in Civil, Criminal, Commercial and such other powers as may be conferred on it by this Charter or any other law.

2. In addition to any other jurisdiction under this Charter or any other law, the Supreme Court shall have the power to hear and determine judgement on any dispute about the

Transitional Federal Charter and other laws.

3. One of the Judges of the Supreme Court shall be the President of the Court and such other Judges as may be prescribed by Law.

4. The Judges of the Supreme Court shall have the security of Tenure while in office.

5. Parliament shall make law regarding the structure and composition of the Supreme Court.

ARTICLE 62
SEAT OF THE SUPREME COURT

The seat of the Supreme Court shall be in the capital of the Somali Republic.

ARTICLE 63
THE JUDICIAL SERVICE COUNCIL

1. There shall be a Judicial Service Council, which shall undertake and direct the General Policy and the Administration of the Judiciary as prescribed by law.

2. The Judicial Service Council shall comprise:-

a) President of the Supreme Court.

b) The Attorney General of the Republic.

c) Three (3) Judges elected from the Supreme Court.

d) Four (4) Lawyers selected from the private law practitioners by the Law Society of Somalia.

3. Members of the Council shall enjoy similar privileges and immunity as that of the Judges.

4. 4. The Council shall be responsible for the appointment, transfers conduct, discipline and remuneration of Judges.

5. The term of each council member shall be four years.

ARTICLE 64
THE OFFICE OF THE ATTORNEY GENERAL.

1. The office of the Attorney General shall be a division of the judicial institution and shall comprise of :-

a) The Attorney General whose duty shall be to safeguard the implementation of the laws in the whole Republic. His duties, responsibilities and scope of duties shall be specified by law ;

b) The Attorney General shall be appointed by the President on the recommendation of the Council of Ministers ;

c) The Attorney General shall be the principal legal adviser to the Transitional Federal Government;

d) (d)The State and Districts Attorney Generals whose powers are limited to specific regions and districts will be appointed as specified in sub section (b).

2. It shall be the responsibility of the Attorney General to promote and uphold the Rule of Law.

CHAPTER TEN

ARTICLE 65
SECURITY AND DEFENCE FORCES

1. The Somali Republic shall have a national armed force consisting of the army and police.

2. The Armed forces shall faithfully abide and preserve the Charter , the laws of the land and unity of the country.

3. The law shall regulate the structure and function of the armed forces and the system of co-operation and co-ordination amongst them in the fulfillment of their institutional duties.

CHAPTER ELEVEN
LAND AND PROPERTY

ARTICLE 66
THE POLICY FOR LAND

1. Land being Somalia's primary resources and the basis of Livelihood for the people shall be held, used and managed in a Manner which is equitable, efficient, productive and sustainable.

2. The Government shall define and keep constant the national Land policy and framework of the land in the Somali Republic which shall ensure the registration, use, ownership, access, occupation, management rights, security, interests and title of the land.

ARTICLE 67
NATURAL RESOURCES AND ENVIRONMENT PROTECTION.

1. The natural resources of the country such as the minerals, water, flora and fauna shall be public property and a law shall be enacted which defines the manner of exploitation for the common good.

2. The Transitional Federal Government shall give priority to the protection, conservation, and preservation of the environment against anything that may cause harm to the natural bio- diversity and ecosystem.

3. Every person in the Somali Republic shall have a duty to safeguard and enhance the environment and participate in the development, execution, management, conservation and protection of the natural resources and environment.

4. The Transitional Federal Government shall adopt urgent measures to clean up the hazardous waste dumped on and off shores of the Somali Republic. Compensation shall be demanded of those found liable for such crimes.

5. The Transitional Federal Government shall take urgent steps to reverse the trend in desertification, deforestation, environmental degradation, illegal charcoal burning and export of endangered wildlife species.

CHAPTER TWELVE

NATIONAL COMMISSIONS

ARTICLE 68
INDEPENDENT COMMISSIONS AND ADMINISTRATIVE COMMITTEES

1. There shall be established such independent Commissions and Committees as may be necessary.

2. The establishment of independent commission s, their structures and functions shall be proposed by the Council of Ministers and approved by Parliament.

3. The respective ministers shall propose the components of these commissions to the Council as stated below: -

a) Federal constitutional Commission
b) National Commission for Reconciliation.
c) National Population and Demographic Census Commission.
d) Civil Service Commission.
e) National Commission for the recovery and registration of public and private property.
f) National Resettlement Commission.
g) Somalia Olympic Commission.
h) State Boundary Demarcation Commission.
i) Disarmament and demobilization Commission.
j) Economic recovery Commission;
k) Land and Property Disputes Commission.
l) Electoral Commission

CHAPTER THIRTEEN
INTERNATIONAL RELATIONS

ARTICLE 69
INTERNATIONAL AND BILATERAL RELATIONS

1. The Transitional Federal Government of the Somali Republic shall uphold the rules of international law and all international treaties applicable to the Somali Republic and subject to the legislative Acts of Parliament, international laws accepted and adopted shall be enforced.

2. The Transitional Federal Government of the Somali Republic shall uphold all bilateral agreements concluded by the Somali Republic

CHAPTER FOURTEEN
AMENDMENT OF THE CHARTER

ARTICLE 70
AMENDMENT OF THE CHARTER.

1. Subject to this Article, Parliament shall have the power to add, amend, alter, vary or otherwise revise this Charter.

2. An Amendment of this Charter may be initiated only by the introduction of a Motion for that purpose supported by not less than one third (1/3) and passed by not less than two-thirds (2/3) of the total members of parliament.

CHAPTER FOURTEEN
TRANSITORY CLAUSE AND ENTRY INTO FORCE OF THE CHARTER

ARTICLE 71
TRANSITIONAL PERIOD

1. The Charter shall have legal effect pending the eventual enforcement of the National Federal Constitution.

2. The 1960 Somalia Constitution and other national laws shall apply in respect of all matters not covered and not inconsistent with this Charter.

3. The Transitional Federal Government shall endeavour to repossess and restore to the state all public properties, either movable or immovable, within or outside the country.

4. In respect of private property currently held illegally, Government shall endeavour to restore it to the rightful owners.

5. The Transitional Federal Government shall devote the necessary efforts to restore peace and security, free movement of people, goods and services, disarmament and collection of illegal weapons in the hands of the public for safekeeping rehabilitation and reintegration of all militia in co-operation
1. with regional administrations, traditional elders and members of the international community.

6. The Transitional Federal Government shall make necessary efforts to resettle refugees and displaced persons.

7. The ongoing development projects in the country may continue, provided they do not infringe on the sovereignty of the state and do not harm the environment. All new projects are subject to Transitional Federal Government guidelines and approval.

8. Effective from the conclusion of the Somali National Reconciliation Conference held in Kenya, all militia organizations, armed groups and factions in the territory of the Somali Republic shall cease to exist and shall turn in their weapons to the Transitional Federal Government.

9. The present Charter shall be the basis for the federal constitution whose draft shall be completed within two and half (2 1/2) years and be adopted by popular referendum during the final year of the transitional period.

10. The Transitional Federal Government shall take all necessary measures to combat tribalism, nepotism, looting of public properties, corruption and all fraudulent activities, which may undermine the functioning of state organs and decent traditions of the society.

11. The Transitional Federal Government shall audit and assess all ongoing foreign funded development projects with a view to establishing whether they infringe on Sovereignty or state security or impair the culture, environment or health of the people.

12. For the avoidance of doubt, this Charter shall come into force on the date the delegates at the Somali National Reconciliation Conference in Kenya approve it and continue to be operational until the approval and enforcement of the federal constitution.

SCHEDULE I

THE POWER OF THE TRANSITIONAL FEDERAL GOVERNMENT

The Transitional Federal Government shall have authority throughout the Somali Republic over the following matters –

1. Foreign Affairs.
2. Defence and Security.
3. Finance and Central Bank.
4. Establishment of State structures.
5. Posts and Telecommunications.
6. Immigration and Naturalization.
7. Ports Administration.
8. Planning and Economic Development.
9. Natural Resources.
10. Acceptance and licensing of private companies specifically at national level.
11. Collecting import/export and indirect taxes.

SCHEDULE II

POWERS OF THE STATE GOVERNMENTS

The State Governments shall control the following functions within their territories :–

1. Education.
2. Health.
3. Regional Roads.
4. Environment protection.
5. Regional police.
6. Housing.
7. Water and Electricity Development.
8. Agricultural Development and Water
9. Management.
10. Livestock and rangeland development.
11. Development of small businesses and states
12. business co-operations
13. Settlement of population.
14. Develop state constitutions their state flags and
15. state emblem.
16. Appoint their state election committees and
17. implement the state elections.
18. Collect all direct taxes
19. Promote sports, arts, literature and folklore.
20. Business licenses.
21. Town planning and construction permits.
22. Public sanitation.
23. Recreation centres and child gardens.
24. General Public Health.

SCHEDULE III

The reports of the six Reconciliation Committees of the Somali National Reconciliation Conference in Kenya 2002-2003.

SCHEDULE IV

List of the delegates, political leaders and political groups.

Annex 4

M. Al-Sharmani and M. Omar, Representatives of the Ministry of Foreign Affairs of the Federal Republic of Somalia, *Report to the File of the Meeting between the Federal Republic of Somalia and the Republic of Kenya On Maritime Boundary Dispute, Nairobi, Kenya, 28-29 July 2014* (5 Aug. 2014)

Report to the File
of the Meeting between
The Federal Republic of Somalia and The Republic of Kenya
On Maritime Boundary Dispute
Nairobi, Kenya, 28-29 July 2014
Prepared by Mona Al-Sharmani and Mohamed Omar for the Somali Ministry of Foreign Affairs
5 August 2014

The Somali delegation met with their Kenyan counterparts in Nairobi, Kenya on 28 and 29 of July 2014 as agreed between both parties during the first negotiation meeting that took place on 26-27 March 2014. The Somali delegation consisted of Ms. Mona Al-Sharmani (Senior Adviser and head of delegation) and Mr. Omar Mohamed (Senior Adviser). The Kenyan delegation was led by Ms. Juster Nkori in addition to several other members from different branches of the Kenyan Government. The two-day meetings took place at the Ministry of Foreign Affairs of Kenya and were also attended by the Somali Minister of Foreign Affairs, H.E. Abdirahaman Beileh and the Kenyan Minister of Foreign Affairs, H.E. Amina Mohamed. The two Ministers had a private meeting in the morning of 28 July 2014 to exchange updates on areas of common interest between the two countries. Thereafter, both Ministers joined the technical teams from both countries in a conference room to start the negotiation. After welcoming remarks by Minister Mohamed and a brief statement by Minister Beileh, the two delegations agreed to allow each technical team to make a presentation on its legal and technical position in the presence of both Ministers. The Somali delegation agreed to go first and made a comprehensive presentation on 28 July 2014.

The Somali delegation recapped the initial discussions that took place between the Somali and Kenyan delegations in Nairobi on 26-27 March 2014 and addressed the deficiencies in the Kenyan legal and technical positions in its advocacy of adopting a parallel of latitude methodology in delimiting the maritime boundary between Somalia and Kenya. The Somali delegation reiterated its position (advocated in the initial meeting between both delegations in March 2014) that the equidistance line is a widely accepted principle of international law and is the cornerstone of international jurisprudence on boundary delimitation between countries. The Somali delegation further proceeded to review case law at the International Court Justice, International Tribunal of the Law of the Sea and ad-hoc arbitrations that demonstrate the centrality of the equidistance line methodology in adjudicating maritime boundary disputes between States. The Somali delegation demonstrated in charts (attached hereto) the fairness of the outcome if both parties used the equidistance line and also demonstrated in a chart the unfairness that would result from using a parallel of latitude method. Following its presentation, the Somali delegation responded to questions from the Kenyan delegation. Both parties engaged in heated discussions as to each delegation's view and understanding of the case law. The Ministers of both countries concluded the meeting by thanking both delegations and asking the Kenyan technical and legal team to deliver

its presentation the following day on 29 July 2014. The meeting was adjourned until the next morning.

On the morning of 29 July 2014, the Somali and Kenyan delegations met again at the Ministry of Foreign Affairs of Kenya. The meeting was again attended by both Ministers. The Kenyan delegation proceeded to make its presentation as agreed. The Kenyan team argued that the principles of equity and fairness demanded the application of the parallel of latitude methodology in delimiting the maritime boundary between both countries. The Kenyan delegation reviewed certain cases particularly the India/Bangladesh case and the Bangladesh/Myanmar case and noted the importance of identifying the correct relevant coastlines for both countries for purposes of determining the fairness of the delimitation exercise. It stated that in the case between Somalia and Kenya, the relevant coastline for Kenya is its entire coastline and for Somalia the coastline starting from the tip of Horn of Africa and going in the southern direction all the way to the land-boundary terminal between both countries. The Kenyan delegation further argued that due to the concavity of the Kenyan coastline, the parallel of latitude method would result in a more equitable and fair solution.

The Somali and the Kenyan delegation engaged in a heated discussion following the completion of the presentation made by the Kenyan delegation. The Somali delegation requested the Kenyan delegating to cite one case that a court or a tribunal applied the parallel of latitude as a legally accepted and widely applied principle in international jurisprudence. The Kenyan delegation mentioned bilateral agreements between certain African countries such as Kenya/Tanzania and Tanzania/Mozambique as examples of the applicability of this principle, particularly in Africa. The Somali delegation responded that the existing agreements between Kenya/Tanzania and Tanzania/Mozambique are bilateral agreements that each country voluntarily agreed to. It further stated that no case law exists where a court or a tribunal adopted the parallel of latitude as an internationally accepted method in the delimitation of maritime disputes unless the disputing parties voluntarily agree to this method in a separate agreement as in the case of Kenya and Tanzania.

Minister Beileh asked Minister Mohamed as to how long would both countries continue to have their delegations entangled in these heated discussions without any possible solution. Minister Mohamed stated that although both delegations are far part, she would like both teams to meet again and to attempt one final time to find an amicable solution. Minister Mohamed further stated that if no agreement could be reached between both countries, both countries might resort to international arbitration.

Minister Beileh stated that his Government would be happy to have both delegations meet one more time to see if an amicable solution could be found but he expressed strong doubts as he stated that the positions of both countries are far apart. Minister Beileh remarked that both delegations can not even agree on the applicable principles of international law that should frame their discussions and believed that an agreed

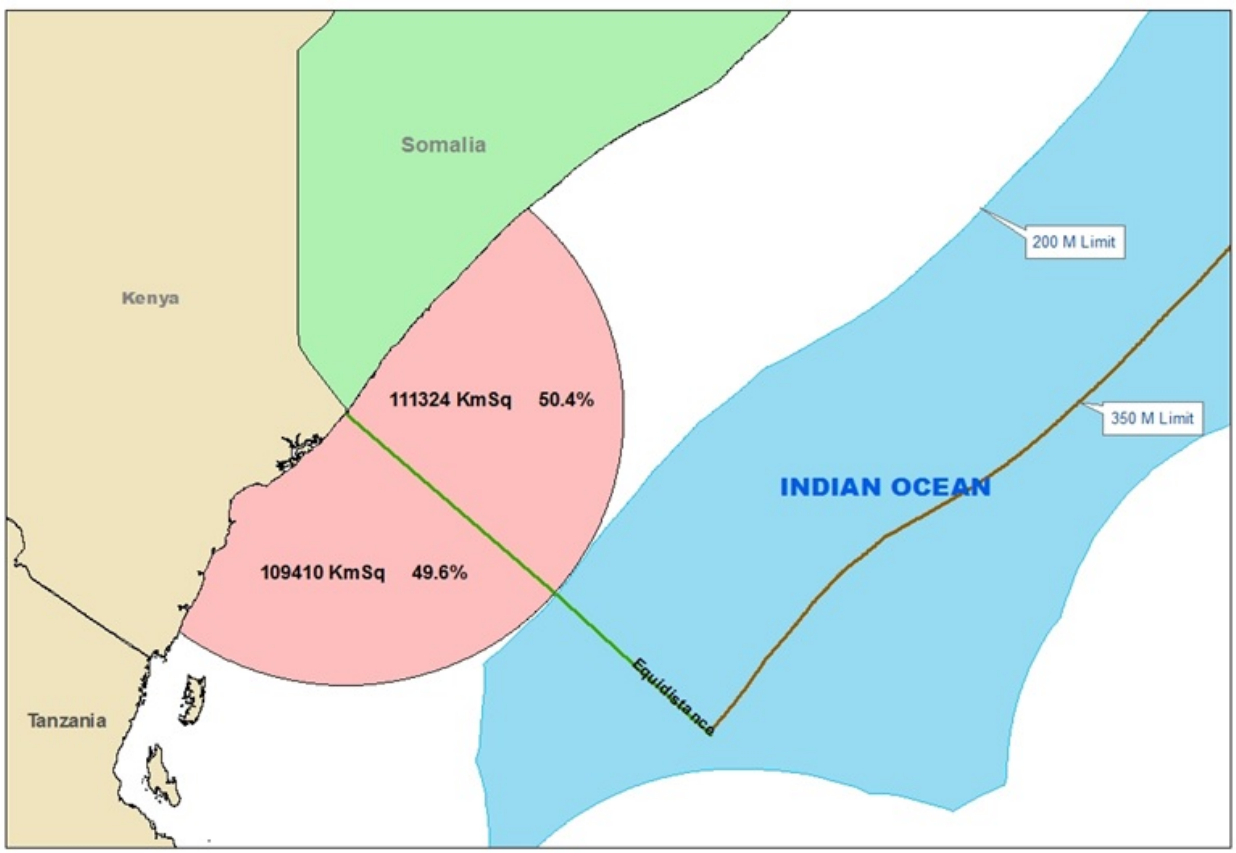
upon solution was difficult to contemplate given the current stalemate but agreed to host the final round of meetings in Mogadishu on 25-26 August 2014. Both Ministers agreed that both delegations had to finalize a draft joint report summarizing the two-day meeting. The Ministers reviewed a draft of the joint report to be signed by both delegations and provided some comments and thereafter departed to have a meeting in private.

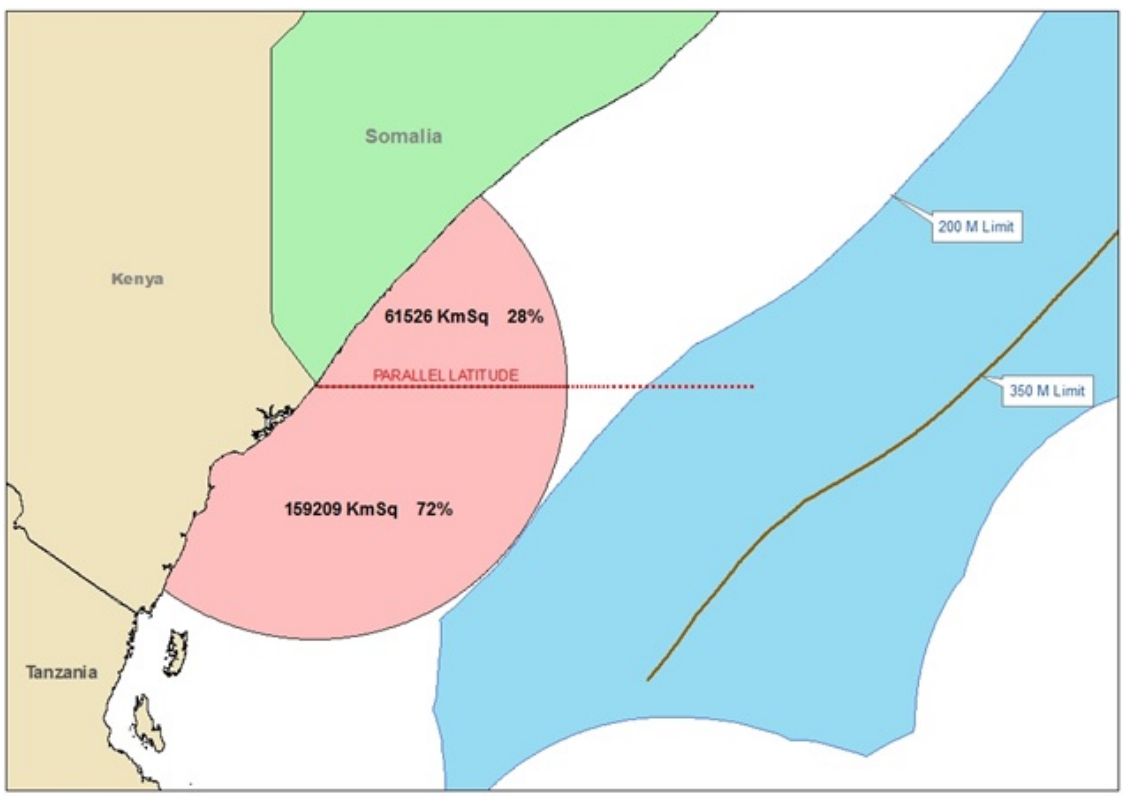
The Somali and Kenyan delegations continued, after the departure of both Ministers, to work on the draft joint report and agreed to sign the final report in the next few days.

The Somali and Kenyan delegations proceeded to outline the issues to be discussed in the upcoming August meetings in Mogadishu. The Somali delegation urged the Kenyan delegation to reconsider its position on the applicability of "parallel of latitude" as an appropriate method used in delimiting boundaries and stated that Kenya's recognition of the "equidistance line" as the applicable principle would enhance the possibilities of having a more meaningful discussion in August.

The Somali delegation ended the meeting by stating that they looked forward to welcoming the entire delegation, this time in Mogadishu as the previous two meetings were held in Nairobi.

Annex 4


Somalia
Kenya
Tanzania
111324 KmSq 50.4%
109410 KmSq 49.6%
200 M Limit
350 M Limit
INDIAN OCEAN
Equidistance


Somalia
Kenya
Tanzania
61526 KmSq 28%
PARALLEL LATITUDE
159209 KmSq 72%
200 M Limit
350 M Limit

Annex 5

National Oil Corporation of Kenya, "Expression of Interest for Provision of a 3D Multi-Client Broadband Seismic Offshore Survey in the Shallow Waters of the Lamu Offshore Basin", NOCK/PRC/03(1057) (25 Sept. 2015)

	National Oil Corporation of Kenya EXPRESSION OF INTEREST FOR PROVISION OF A 3D MULTI-CLIENT BROADBAND SEISMIC OFFSHORE SURVEY IN THE SHALLLOW WATERS OF THE LAMU OFFSHORE BASIN	Ref: NOCK/PRC/03(1057) Page 1 of 6

The National Oil Corporation of Kenya (**National Oil**) invites Expressions of Interest (EOI) from eligible companies to acquire a multi-client 3D broadband seismic survey including processing over the shallow waters of the offshore Lamu basin , Kenya.

Background

National Oil Corporation of Kenya (National Oil) is a company wholly owned by the Government of Kenya charged with the mandate to participate in all aspects of petroleum business with a view to ensure security of supply and stability of pricing of petroleum in the country as well as carrying out exploration activities in Kenya's sedimentary basins.

The corporation works closely with the Ministry of Energy and Petroleum in efforts to promote petroleum exploration activities, often by applying approaches that enhance the quantity and quality of data in areas open for exploration licensing. An effective approach that has proved successful in the recent past is partnership between seismic and other data acquisition contractors and National Oil in conducting surveys on a non-exclusive and a multi-client basis in open acreage at much lowered cost due to the shared mobilization and demobilization costs and ultimately shared exploration risks. The current low price environment whereby exploration spending by many companies has been significantly reduced and the market for the utilization survey vessels is in a slump creates an ideal opportunity to spend the next one-half years putting together a series of multi-client survey and studies that will help de-risk the open acreage, particularly in the offshore area to enhance its attractiveness by lowering initial capital required to de-risk the area, while accelerating exploration programmes that could lead to development and production. Recent drilling particularly in the Sunbird Well has shown encouraging signs of possible oil and gas accumulation in both carbonate (reefs) and clastic depositional settings in Kenya offshore area which is still largely unexplored.

The multi-client surveys and studies are part of the preparation of an open licensing round tentatively scheduled for the year 2017. A formal announcement on the date from the Ministry of Energy and Petroleum is expected soon.

During the past exploration work in the Kenya offshore area seismic surveys have been dominated by 2D data acquisition. 3D data has been acquired in only a few blocks. The intention of National Oil and the Ministry is to increase the amount of 3D data coverage so as to better image drillable structures and accelerate exploration through drilling in the earliest phases of exploration, potentially the Initial Exploration Period of any Block licensed under the new PSC. This strategy coincides with the recent world-class successes encountered offshore East Africa and the growing interest in the region. Kenya which has not witnessed similar success in the offshore area is keen to attract and accelerate exploration in the area while ensuring the cost of investment in the country are comparatively low, fair and conducted on a competitive basis.

Thus, invitations are requested from seismic contractors to present proposals to undertake a 3D broadband seismic survey on a multi-client basis, the detailed terms of which will be

subject to further discussion and negotiations with the successful contractor. The area of planned survey is shown on the attached map and the successful contractor will be granted access to the existing data and its distribution to assist in designing and costing the survey.
The 3D acquisition and processing may include the deep water blocks held by ANADARKO (L12 & L11A) and CAMAC (L27 & L28) and possibly L25 and L26 depending on prior commitments being made by the licensees'.

Project Objectives

National Oil Corporation of Kenya in partnership with Ministry of Energy and Petroleum is promoting Kenya as the next big frontier for oil and gas. In this quest National Oil seeks to engage a competent contactor for the following:

1. Increasing the amount 3D Seismic area over the most prospective blocks previously mapped using 2D Seismic and determining the volume of data that will be required to cover gaps in 3D data coverage while offering a better definition of existing prospective structure.
2. Processing the acquired 3D data and compiling data packages that can be offered for sale to interested companies in a scheme that ensures cost recovery for the contractor and proposes a profit sharing arrangement from the sales with National Oil (this may be subject to further negotiations with the best bidder).
3. Supporting National Oil and the Ministry in brokering and marketing the data prior to and after the licensing and any specialized reprocessing that may be required by the licensees of any block.
4. A preliminary interpretation of the data to demonstrate the prospectivity of each block and rank their relative value
5. Engaging National Oil staff in the acquisition, processing and interpretation of the 3D data as an integral part of technology transfer and capacity building.

Design and Costing of Survey

1. The contractor will be required to provide the seismic data technology it intends to deploy in the survey.
2. Seismic contractors will be permitted to visit National Oil to view existing data to enable them provide a design of the survey as well as the total number of sq. km planned or envisaged for acquisition. This will form a critical criteria in evaluating each proposal received.
3. The contractor will be required to provide a cost of the survey based on (1 and 2) above and which will offer a further basis for proposals for revenue share between the contractor and National Oil.
4. The contractor will be required to propose the revenue sharing scheme.
5. A time frame for the acquisition programme will also be required and will additionally form a criteria for evaluating proposals.

Processing

The contractor will also be required to propose the processing sequence of the acquire data and the duration for its completion, which shall provide sufficient time to avail the data to through brokering and marketing.

Requirements

1. Contractors will be required to submit EOI for both seismic data acquisition and processing.
2. Contractors should have proven experience of 3D multi-client offshore Seismic Data Acquisition and /or processing on schedule within specific timelines.
3. Contractors are required to have sufficient personnel, equipment, management and highly effective QA/QC procedures and organizational processes to conduct the works as required.
4. Contractors should be able to demonstrate a full understanding of internationally accepted Health, Safety and Environmental policies, practices and procedures while carrying out marine seismic data acquisition.
5. Only contractors complying with these requirements and demonstrating successful track record, listing projects, clients and provide client contacts details for reference should respond to this EOI.

Other Requirements

In addition contractors are required to submit the following for both acquisition and processing:

Acquisition

1. Provide the earliest date of 3D seismic crew availability mobilization.
2. Lists of similar 3D offshore seismic data acquisition work undertaken successfully in the last five years and projects currently under execution.
3. Details of any previous experience of a similar type in Kenya.
4. Details of key personnel to be involved in the project including their bio-data
5. Management structure of the company.
6. Acquisition methodology and QA/QC procedures.
7. Detailed list and specification and age of equipment to be utilized in the survey
8. Health, Safety and Environment policies, procedures and statistics covering the last 3 years.
9. Company's financial performance documents (Audited Balance Sheets and Profit and Loss Statements etc.) for last 3 years.
10. Details of any court proceedings against the contractor.
11. Timeline and description of project deliverables.
12. Any other relevant information.

Processing

1. Lists of similar 3D marine seismic processing work successfully completed in the last five years and projects currently under execution
2. Technology available to effectively attenuate marine seismic noise and merge different 3D azimuthal data. Effective technology available to attenuate short period multiple and handle azimuthal anisotropy. Personnel details including bio-data of key personnel.
3. Available software and hardware details.
4. QA/QC procedures (internal and remote) details

Evaluation Criteria

The evaluation criteria below will be used to ascertain the responsiveness of the candidates to the EOI:

No.	EVALUATION CRITERIA FOR THE EOI FOR 3D MULTI-CLIENT BROADBAND SEISMIC SURVEY IN THE SHALLOW LAMU OFFSHORE BASIN	Score
1.	List of similar 3D offshore seismic data acquisition work undertaken successfully in the last 5 years and projects currently under execution	10
2.	Management structure of the company	10
3.	Details of key personnel to be involved in the project including their qualifications (Resumes to be provided)	15
4.	Description of the equipment, giving as a minimum the age of the equipment and its availability	15
5.	List of policies, procedures and quality assurance practices currently in place for the execution of similar work	10
6.	Health, Safety and Environment policies, procedures and statistics covering the last 3years	10
	TOTAL	**70**

To be considered responsive, candidates are to score a minimum of 80% of the total score above (i.e. minimum of 56 out of 70). Those who score the passmark of 80% and above will be invited to submit proposals and will be sent the Requests for Proposals.

Submission of the EOI

National Oil requests interested contractors who can fulfill all of the specifications listed above to submit their EOI along with associated documents (including the details and references stated above) to submit their EOIs as below:

Interested candidates are to view/obtain/download more details of the Expression of Interest (EOI) at www.nationaloil.co.ke on the tenders link or at **Procurement Department, National Oil Corporation of Kenya, AON Minet House, 5th Floor, Mamlaka Road, off Nyerere Road, Nairobi, Kenya.**

Expressions of Interest (EOI) in plain sealed envelopes clearly marked **"Expression of Interest for Provision of 3D Multi-Client Broadband Seismic Offshore Survey in The Shallow Waters of The Lamu Offshore Basin – Ref. No. NOCK/PRC/03(1057)"** with the instructions **"Do not open before 5th October 2015 at 1500hrs (East Africa Time)",** should be addressed to:

The Chief Executive Officer
National Oil Corporation of Kenya
AON Minet House, 7th Floor
Mamlaka Road, off Nyerere Road
P O Box 58567 – 00200, Nairobi

and deposited in the **Tender Box** located at **AON Minet House, 5th Floor, Mamlaka Road, off Nyerere Road, Nairobi** between 0800hrs and 1700hrs (East Africa Time), so as to be received **on or before 5th October 2015 at 1500hrs (East Africa Time).** ***Late submissions shall automatically be disqualified whatever the circumstances.***

Expressions of Interest will be opened soon thereafter at **National Oil Head Office – Boardroom, 5th Floor, AON Minet House, Mamlaka Road, off Nyerere Road, Nairobi,** in the presence of tenderers and/or their representatives who may wish to attend.

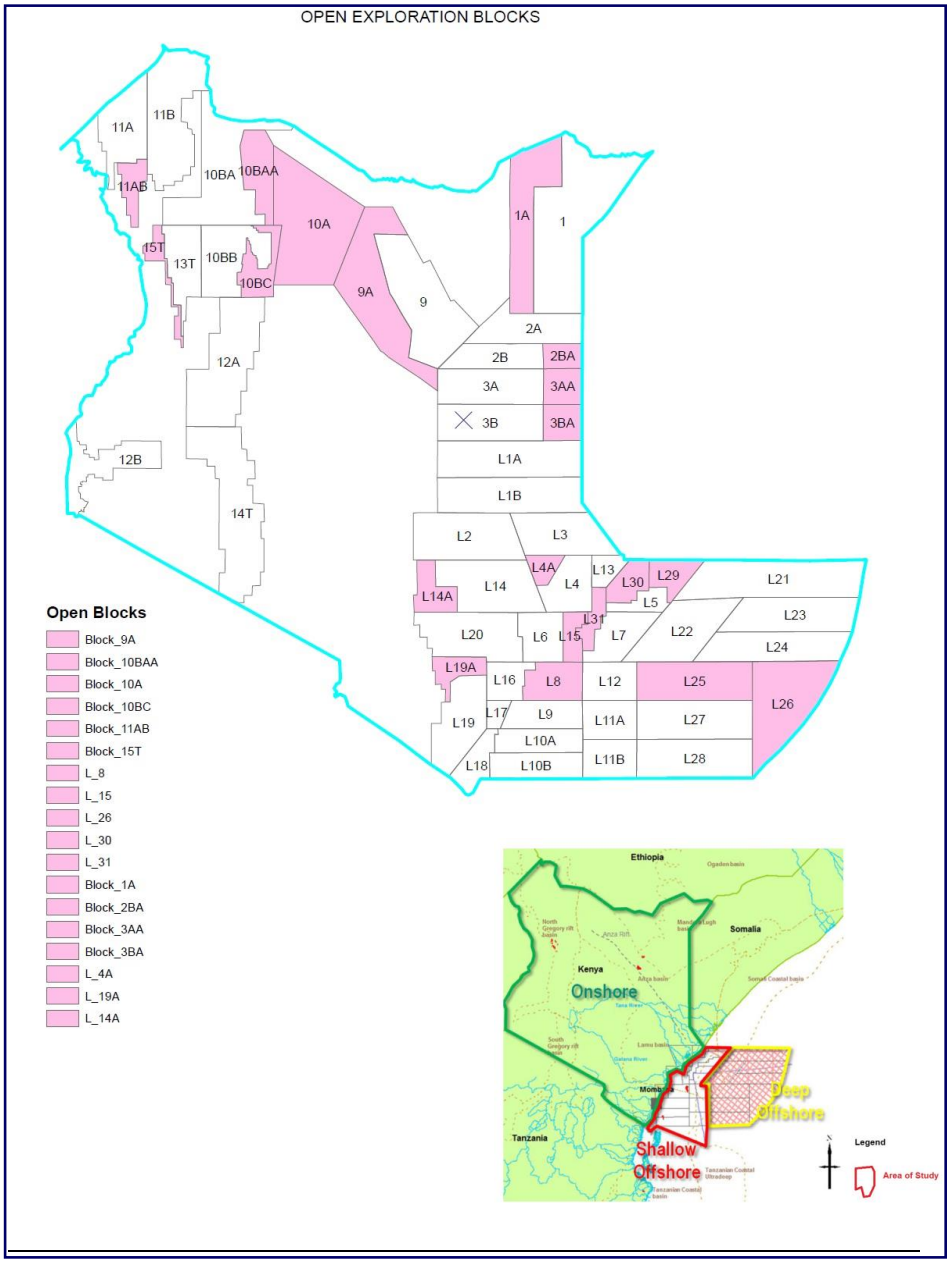
The EOI documents are not transferable.

For CHIEF EXECUTIVE OFFICER

Encl: Appendix 1: Map of the Oil Exploration Blocks in Kenya

Annex 5

	National Oil Corporation of Kenya EXPRESSION OF INTEREST FOR PROVISION OF A 3D MULTI-CLIENT BROADBAND SEISMIC OFFSHORE SURVEY IN THE SHALLLOW WATERS OF THE LAMU OFFSHORE BASIN	Ref: NOCK/PRC/03(1057) Page 6 of 6



Annex 6

U.N. International Law Commission, "Draft Articles on the Law of Treaties" in YEARBOOK OF THE INTERNATIONAL LAW COMMISSION 1966, Vol. II, Part II

A/CN.4/SER.A/1966/Add.1

YEARBOOK OF THE INTERNATIONAL LAW COMMISSION 1966

Volume II

Documents of the second part of the seventeenth session and of the eighteenth session including the reports of the Commission to the General Assembly

UNITED NATIONS

Part II

Report of the International Law Commission on the work of its eighteenth session

Geneva, 4 May - 19 July 1966

CONTENTS

CHAPTER I

Organization of the session

1. The International Law Commission, established in pursuance of General Assembly resolution 174 (II) of 21 November 1947 and in accordance with its Statute annexed thereto, as subsequently amended, held its eighteenth session at the United Nations Office at Geneva from 4 May to 19 July 1966. The Commission thus availed itself of the possibility of extending its session which was granted by the General Assembly at its twentieth session in the interest of allowing the Commission to complete as much work as possible during the term of office of the present members. The work of the Commission during this session is described in this report. Chapter II of the report, on the law of treaties, contains a description of the Commission's work on that topic, together with seventy-five draft articles and commentaries thereto, as finally approved by the Commission. Chapter III, relating to special missions, contains a description of the Commission's work on that topic. Chapter IV relates to the programme of work and organization of future sessions of the Commission, and to a number of administrative and other questions.

A. MEMBERSHIP AND ATTENDANCE

2. The Commission consists of the following members:

Mr. Roberto AGO (Italy)
Mr. Gilberto AMADO (Brazil)
Mr. Milan BARTOŠ (Yugoslavia)
Mr. Mohammed BEDJAOUI (Algeria)
Mr. Herbert W. BRIGGS (United States of America)
Mr. Marcel CADIEUX (Canada)
Mr. Erik CASTRÉN (Finland)
Mr. Abdullah EL-ERIAN (United Arab Republic)
Mr. Taslim O. ELIAS (Nigeria)
Mr. Eduardo JIMÉNEZ DE ARÉCHAGA (Uruguay)
Mr. Manfred LACHS (Poland)
Mr. LIU Chieh (China)
Mr. Antonio DE LUNA (Spain)
Mr. Radhabinod PAL (India)
Mr. Angel M. PAREDES (Ecuador)
Mr. Obed PESSOU (Togo)
Mr. Paul REUTER (France)
Mr. Shabtai ROSENNE (Israel)
Mr. José María RUDA (Argentina)
Mr. Abdul Hakim TABIBI (Afghanistan)
Mr. Senjin TSURUOKA (Japan)
Mr. Grigory I. TUNKIN (Union of Soviet Socialist Republics)
Mr. Alfred VERDROSS (Austria)
Sir Humphrey WALDOCK (United Kingdom of Great Britain and Northern Ireland)
Mr. Mustafa Kamil YASSEEN (Iraq)

3. Except for Mr. Mohammed Bedjaoui, Mr. Marcel Cadieux, Mr. Taslim O. Elias, Mr. Liu Chieh and Mr. Radhabinod Pal, who were unable to be present, all the members attended.

B. OFFICERS

4. At its 844th meeting, held on 4 May 1966, the Commission elected the following officers:

Chairman: Mr. Mustafa Kamil Yasseen
First Vice-Chairman: Mr. Herbert W. Briggs
Second Vice-Chairman: Mr. Manfred Lachs
Rapporteur: Mr. Antonio de Luna

5. At its 845th meeting, held on 5 May 1966, the Commission appointed a Drafting Committee composed as follows:

Chairman: Mr. Herbert W. Briggs

Members: Mr. Roberto Ago; Mr. Erik Castrén; Mr. Abdullah El-Erian; Mr. Eduardo Jiménez de Aréchaga; Mr. Manfred Lachs; Mr. Antonio de Luna; Mr. Paul Reuter; Mr. Shabtai Rosenne; Mr. Grigory I. Tunkin; Sir Humphrey Waldock.

6. Mr. Constantin A. Stavropoulos, Legal Counsel, attended the 878th, 879th and 880th meetings, held on 27, 28 and 29 June 1966 respectively, and represented the Secretary-General at those meetings. Mr. Constantin A. Baguinian, Director of the Codification Division of the Office of Legal Affairs, represented the Secretary-General at the other meetings of the session, and acted as Secretary to the Commission.

C. AGENDA

7. The Commission adopted an agenda for the eighteenth session, consisting of the following items:

1. Law of treaties
2. Special missions
3. Organization of future work
4. Date and place of the nineteenth session
5. Co-operation with other bodies
6. Other business.

8. In the course of the session, the Commission held fifty-one public meetings. In addition, the Drafting Committee held twenty-three meetings. The Commission considered all the items on its agenda. At the invitation of the Legal Counsel of the United Nations and in accordance with suggestions made in the Sixth Committee at the twentieth session of the General Assembly, the Commission discussed the procedural and organizational problems involved in a possible diplomatic conference on the law of treaties, and also the question of the responsibilities of United Nations organs in furthering co-operation in the development of the law of international trade and in promoting its progressive unification and harmonization.

CHAPTER II

Law of treaties

A. INTRODUCTION

1. *Summary of the Commission's proceedings*

9. At its first session in 1949, the International Law Commission at its sixth and seventh meetings placed the law of treaties amongst the topics listed in its report[1]

[1] *Official Records of the General Assembly, Fourth Session, Supplement No. 10* (A/925), para. 16.

the question whether the case of an earlier treaty containing obligations of an "interdependent" or "integral" character should be subject to a special rule, the rules generally applicable in such cases appeared to the Commission to work out automatically as follows:

(*a*) As between States parties to both treaties the same rule applies as in paragraph 3;

(*b*) As between a State party to both treaties and a State party only to the earlier treaty, the earlier treaty governs their mutual rights and obligations;

(*c*) As between a State party to both treaties and a State party only to the later treaty, the later treaty governs their mutual rights and obligations.

The rules contained in sub-paragraphs (*a*) and (*c*) are, again, no more than an application of the general principle that a later expression of intention is to be presumed to prevail over an earlier one; and sub-paragraph (*b*) is no more than a particular application of the rule in article 30. These rules, the Commission noted, are the rules applied in cases of amendment of a multilateral treaty, as in the case of the United Nations protocols for amending League of Nations treaties,[118] when not all the parties to the treaty become parties to the amending agreement.

(11) The rules in paragraph 4 determine the mutual rights and obligations of the particular parties in each situation merely *as between themselves*. They do not relieve any party to a treaty of any international responsibilities it may incur by concluding or by applying a treaty the provisions of which are incompatible with its obligations towards another State under another treaty. If the conclusion or application of the treaty constitutes an infringement of the rights of parties to another treaty, all the normal consequences of the breach of a treaty follow with respect to that other treaty. The injured party may invoke its right to terminate or suspend the operation of the treaty under article 57 and it may equally invoke the international responsibility of the party which has infringed its rights. Paragraph 5 accordingly makes an express reservation with respect to both these matters. At the same time, it makes a reservation with respect to the provisions of article 37 concerning *inter se* modification of multilateral treaties. Those provisions lay down the conditions under which an agreement may be made to modify the operation of a multilateral treaty as between some of its parties only, and nothing in paragraph 4 of the present article is to be understood as setting aside those provisions.

(12) The Commission re-examined, in the light of the comments of Governments, the problem whether an earlier treaty which contains obligations of an "interdependent" or "integral" type should constitute a special case in which a later treaty incompatible with it should be considered as void, at any rate if all the parties to the later treaty were aware that they were infringing the rights of other States under the earlier treaty. An analogous aspect of this problem was submitted to the Commission by the Special Rapporteur in his second report,[119] the relevant passages from which were reproduced, for purposes of information, in paragraph (14) of the Commission's commentary to the present article contained in its report on the work of its sixteenth session.[120] Without adopting any position on the detailed considerations advanced by the Special Rapporteur, the Commission desired in the present commentary to draw attention to his analysis of certain aspects of the problem.

(13) Certain members of the Commission were inclined to favour the idea of a special rule in the case of an earlier treaty containing obligations of an "interdependent" or "integral" character, at any rate if the parties to the later treaty were all aware of its incompatibility with the earlier one. The Commission, however, noted that under the existing law the question appeared to be left as a matter of international responsibility if a party to a treaty of such a type afterwards concluded another treaty derogating from it. The Commission also noted that obligations of an "interdependent" or "integral" character may vary widely in importance. Some, although important in their own spheres, may deal with essentially technical matters; others may deal with vital matters, such as the maintenance of peace, nuclear tests or human rights. It pointed out that in some cases the obligations, by reason of their subject-matter, might be of a *jus cogens* character and the case fall within the provisions of articles 50 and 61. But the Commission felt that it should in other cases leave the question as one of international responsibility. At the same time, as previously mentioned, in order to remove any impression that paragraph 4(*c*) justifies the conclusion of the later treaty, the Commission decided to reorient the formulation of the article so as to make it refer to the priority of successive treaties dealing with the same subject-matter rather than of treaties having incompatible provisions. The conclusion of the later treaty may, of course, be perfectly legitimate if it is only a development of or addition to the earlier treaty.

Section 3: Interpretation of treaties

Article 27.[121] General rule of interpretation

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

(*a*) Any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty;

(*b*) Any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

[118] See Resolutions of the General Assembly concerning the Law of Treaties (document A/CN.4/154, *Yearbook of the International Law Commission, 1963*, vol. II, pp. 5-9).

[119] Commentary to article 14 of that report, paras. 6-30; *Yearbook of the International Law Commission, 1963*, vol. II, pp. 54-61.

[120] *Yearbook of the International Law Commission, 1964*, vol. II, pp. 189-191.

[121] 1964 draft, article 69.

3. There shall be taken into account, together with the context:

(*a*) Any subsequent agreement between the parties regarding the interpretation of the treaty;

(*b*) Any subsequent practice in the application of the treaty which establishes the understanding of the parties regarding its interpretation;

(*c*) Any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended. [122]

Article 28. [123] **Supplementary means of interpretation**

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 27, or to determine the meaning when the interpretation according to article 27:

(*a*) Leaves the meaning ambiguous or obscure; or

(*b*) Leads to a result which is manifestly absurd or unreasonable.

Commentary

Introduction

(1) The utility and even the existence of rules of international law governing the interpretation of treaties are sometimes questioned. The first two of the Commission's Special Rapporteurs on the law of treaties in their private writings also expressed doubts as to the existence in international law of any general rules for the interpretation of treaties. Other jurists, although they express reservations as to the obligatory character of certain of the so-called canons of interpretation, show less hesitation in recognizing the existence of some general rules for the interpretation of treaties. Sir G. Fitzmaurice, the previous Special Rapporteur on the law of treaties, in his private writings deduced six principles from the jurisprudence of the Permanent Court and the International Court which he regarded as the major principles of interpretation. In 1956, the Institute of International Law [124] adopted a resolution in which it formulated, if in somewhat cautious language, two articles containing a small number of basic principles of interpretation.

(2) Jurists also differ to some extent in their basic approach to the interpretation of treaties according to the relative weight which they give to:

(*a*) The text of the treaty as the authentic expression of the intentions of the parties;

(*b*) The intentions of the parties as a subjective element distinct from the text; and

(*c*) The declared or apparent objects and purposes of the treaty.

Some place the main emphasis on the intentions of the parties and in consequence admit a liberal recourse to the *travaux préparatoires* and to other evidence of the intentions of the contracting States as means of interpretation. Some give great weight to the object and purpose of the treaty and are in consequence more ready, especially in the case of general multilateral treaties, to admit teleological interpretations of the text which go beyond, or even diverge from, the original intentions of the parties as expressed in the text. The majority, however, emphasizes the primacy of the text as the basis for the interpretation of a treaty, while at the same time giving a certain place to extrinsic evidence of the intentions of the parties and to the objects and purposes of the treaty as means of interpretation. It is this view which is reflected in the 1956 resolution of the Institute of International Law mentioned in the previous paragraph.

(3) Most cases submitted to international adjudication involve the interpretation of treaties, and the jurisprudence of international tribunals is rich in reference to principles and maxims of interpretation. In fact, statements can be found in the decisions of international tribunals to support the use of almost every principle or maxim of which use is made in national systems of law in the interpretation of statutes and contracts. Treaty interpretation is, of course, equally part of the everyday work of Foreign Ministries.

(4) Thus, it would be possible to find sufficient evidence of recourse to principles and maxims in international practice to justify their inclusion in a codification of the law of treaties, if the question were simply one of their relevance on the international plane. But the question raised by jurists is rather as to the non-obligatory character of many of these principles and maxims. They are, for the most part, principles of logic and good sense valuable only as guides to assist in appreciating the meaning which the parties may have intended to attach to the expressions that they employed in a document. Their suitability for use in any given case hinges on a variety of considerations which have first to be appreciated by the interpreter of the document; the particular arrangement of the words and sentences, their relation to each other and to other parts of the document, the general nature and subject-matter of the document, the circumstances in which it was drawn up, etc. Even when a possible occasion for their application may appear to exist, their application is not automatic but depends on the conviction of the interpreter that it is appropriate in the particular circumstances of the case. In other words, recourse to many of these principles is discretionary rather than obligatory and the interpretation of documents is to some extent an art, not an exact science.

(5) Any attempt to codify the conditions of the application of those principles of interpretation whose appropriateness in any given case depends on the particular context and on a subjective appreciation of varying circumstances would clearly be inadvisable. Accordingly the Commission confined itself to trying to isolate and codify the comparatively few general principles which appear to constitute general rules for the inter-

[122] 1964 draft, article 71.

[123] 1964 draft, article 70.

[124] *Annuaire de l'Institut de droit international*, vol. 46 (1956), p. 359.

pretation of treaties. Admittedly, the task of formulating even these rules is not easy, but the Commission considered that there were cogent reasons why it should be attempted. First, the interpretation of treaties in good faith and according to law is essential if the *pacta sunt servanda* rule is to have any real meaning. Secondly, having regard to the divergent opinions concerning methods of interpretation, it seemed desirable that the Commission should take a clear position in regard to the role of the text in treaty interpretation. Thirdly, a number of articles adopted by the Commission contain clauses which distinguish between matters expressly provided in the treaty and matters to be implied in it by reference to the intention of the parties; and clearly, the operation of such clauses can be fully appreciated and determined only in the light of the means of interpretation admissible for ascertaining the intention of the parties. In addition the establishment of some measure of agreement in regard to the basic rules of interpretation is important not only for the application but also for the drafting of treaties.

(6) Some jurists in their exposition of the principles of treaty interpretation distinguish between law-making and other treaties, and it is true that the character of a treaty may affect the question whether the application of a particular principle, maxim or method of interpretation is suitable in a particular case (e.g. the *contra proferentem* principle or the use of *travaux préparatoires*). But for the purpose of formulating the general rules of interpretation the Commission did not consider it necessary to make such a distinction. Nor did it consider that the principle expressed in the maxim *ut res magis valeat quam pereat* should not be included as one of the general rules. It recognized that in certain circumstances recourse to the principle may be appropriate and that it has sometimes been invoked by the International Court. In the *Corfu Channel* case,[125] for example, in interpreting a Special Agreement the Court said:

> "It would indeed be incompatible with the generally accepted rules of interpretation to admit that a provision of this sort occurring in a Special Agreement should be devoid of purport or effect."

And it referred to a previous decision of the Permanent Court to the same effect in the *Free Zones of Upper Savoy and the District of Gex*[126] case. The Commission, however, took the view that, in so far as the maxim *ut res magis valeat quam pereat* reflects a true general rule of interpretation, it is embodied in article 27, paragraph 1, which requires that a treaty shall be interpreted *in good faith* in accordance with the ordinary meaning to be given to its terms in the context of the treaty *and in the light of its object and purpose.* When a treaty is open to two interpretations one of which does and the other does not enable the treaty to have appropriate effects, good faith and the objects and purposes of the treaty demand that the former interpretation should be adopted. Properly limited and applied, the maxim does not call for an "extensive" or "liberal" interpretation in the sense of an interpretation going beyond what is expressed or necessarily to be implied in the terms of the treaty. Accordingly, it did not seem to the Commission that there was any need to include a separate provision on this point. Moreover, to do so might encourage attempts to extend the meaning of treaties illegitimately on the basis of the so-called principle of "effective interpretation". The Court, which has by no means adopted a narrow view of the extent to which it is proper to imply terms in treaties, has nevertheless insisted that there are definite limits to the use which may be made of the principle *ut res magis valeat* for this purpose. In the *Interpretation of Peace Treaties* Advisory Opinion[127] it said:

> "The principle of interpretation expressed in the maxim: *ut res magis valeat quam pereat,* often referred to as the rule of effectiveness, cannot justify the Court in attributing to the provisions for the settlement of disputes in the Peace Treaties a meaning which... would be contrary to their letter and spirit."

And it emphasized that to adopt an interpretation which ran counter to the clear meaning of the terms would not be to interpret but to revise the treaty.

(7) At its session in 1964 the Commission provisionally adopted three articles (69-71) dealing generally with the interpretation of treaties, and two articles dealing with treaties having plurilingual texts. The Commission's attempt to isolate and codify the basic rules of interpretation was generally approved by Governments in their comments and the rules contained in its draft appeared largely to be endorsed by them. However, in the light of the comments of Governments and as part of its normal process of tightening and streamlining the draft, the Commission has reduced these five articles to three by incorporating the then article 71 (terms having a special meaning) in the then article 69 (general rule of interpretation). and by amalgamating the then articles 72 and 73 (plurilingual treaties) into a single article. Apart from these changes the rules now proposed by the Commission do not differ materially in their general structure and substance from those transmitted to Governments in 1964.

(8) Having regard to certain observations in the comments of Governments the Commission considered it desirable to underline its concept of the relation between the various elements of interpretation in article 27 and the relation between these elements and those in article 28. Those observations appeared to indicate a possible fear that the successive paragraphs of article 27 might be taken as laying down a hierarchical order for the application of the various elements of interpretation in the article. The Commission, by heading the article "General rule of interpretation" in the singular and by underlining the connexion between paragraphs 1 and 2 and again between paragraph 3 and the two previous paragraphs, intended to indicate that the application of the means of interpretation in the article would be a single combined operation. All the various elements, as they were present

[125] *I.C.J. Reports 1949*, p. 24.

[126] *P.C.I.J.* (1929), Series A, No. 22, p. 13; cf. *Acquisition of Polish Nationality, P.C.I.J.* (1923), Series B, No. 7, pp. 16 and 17, and *Exchange of Greek and Turkish Populations, P.C.I.J.* (1925), Series B, No. 10, p. 25.

[127] *I.C.J. Reports 1950*, p. 229.

in any given case, would be thrown into the crucible, and their interaction would give the legally relevant interpretation. Thus, article 27 is entitled "General *rule* of interpretation" in the singular, not "General *rules*" in the plural, because the Commission desired to emphasize that the process of interpretation is a unity and that the provisions of the article form a single, closely integrated rule. In the same way the word "context" in the opening phrase of paragraph 2 is designed to link all the elements of interpretation mentioned in this paragraph to the word "context" in the first paragraph and thereby incorporate them in the provision contained in that paragraph. Equally, the opening phrase of paragraph 3 "There shall be taken into account *together with the context*" is designed to incorporate in paragraph 1 the elements of interpretation set out in paragraph 3. If the provision in paragraph 4 (article 71 of the 1964 draft) is of a different character, the word "special" serves to indicate its relation to the rule in paragraph 1.

(9) The Commission re-examined the structure of article 27 in the light of the comments of Governments and considered other possible alternatives. It concluded, however, that subject to transferring the provision regarding rules of international law from paragraph 1 to paragraph 3 and adding the former article 71 as paragraph 4, the general structure of the article, as provisionally adopted in 1964, should be retained. It considered that the article, when read as a whole, cannot properly be regarded as laying down a legal hierarchy of norms for the interpretation of treaties. The elements of interpretation in the article have in the nature of things to be arranged in some order. But it was considerations of logic, not any obligatory legal hierarchy, which guided the Commission in arriving at the arrangement proposed in the article. Once it is established—and on this point the Commission was unanimous—that the starting point of interpretation is the meaning of the text, logic indicates that "the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose" should be the first element to be mentioned. Similarly, logic suggests that the elements comprised in the "context" should be the next to be mentioned since they form part of or are intimately related to the text. Again, it is only logic which suggests that the elements in paragraph 3—a subsequent agreement regarding the interpretation, subsequent practice establishing the understanding of the parties regarding the interpretation and relevant rules of international law applicable in the relations between the parties—should follow and not precede the elements in the previous paragraphs. The logical consideration which suggests this is that these elements are extrinsic to the text. But these three elements are all of an obligatory character and by their very nature could not be considered to be norms of interpretation in any way inferior to those which precede them.

(10) The Commission also re-examined in the light of the comments of Governments the relation between the further (supplementary) means of interpretation mentioned in former article 70 and those contained in former article 69, giving special attention to the role of preparatory work as an element of interpretation. Although a few Governments indicated a preference for allowing a larger role to preparatory work and even for including it in the present article, the majority appeared to be in agreement with the Commission's treatment of the matter. Certain members of the Commission also favoured a system which would give a more automatic role to preparatory work and other supplementary means in the process of interpretation. But the Commission considered that the relationship established between the "supplementary" elements of interpretation in present article 28 and those in present article 27—which accords with the jurisprudence of the International Court on the matter—should be retained. The elements of interpretation in article 27 all relate to the agreement between the parties *at the time when or after it received authentic expression in the text. Ex hypothesi* this is not the case with preparatory work which does not, in consequence, have the same authentic character as an element of interpretation, however valuable it may sometimes be in throwing light on the expression of the agreement in the text. Moreover, it is beyond question that the records of treaty negotiations are in many cases incomplete or misleading, so that considerable discretion has to be exercised in determining their value as an element of interpretation. Accordingly, the Commission was of the opinion that the distinction made in articles 27 and 28 between authentic and supplementary means of interpretation is both justified and desirable. At the same time, it pointed out that the provisions of article 28 by no means have the effect of drawing a rigid line between the "supplementary" means of interpretation and the means included in article 27. The fact that article 28 admits recourse to the supplementary means for the purpose of "confirming" the meaning resulting from the application of article 27 establishes a general link between the two articles and maintains the unity of the process of interpretation.

Commentary to article 27

(11) The article as already indicated is based on the view that the text must be presumed to be the authentic expression of the intentions of the parties; and that, in consequence, the starting point of interpretation is the elucidation of the meaning of the text, not an investigation *ab initio* into the intentions of the parties. The Institute of International Law adopted this—the textual—approach to treaty interpretation. The objections to giving too large a place to the intentions of the parties as an independent basis of interpretation find expression in the proceedings of the Institute. The textual approach, on the other hand, commends itself by the fact that, as one authority[128] has put it, "*le texte signé est, sauf de rares exceptions, la seule et la plus récente expression de la volonté commune des parties*". Moreover, the jurisprudence of the International Court contains many pronouncements from which it is permissible to conclude that the textual approach to treaty interpretation is regarded by it as established law. In particular, the Court has more than once stressed that it is not the function of inter-

[128] *Annuaire de l'Institut de droit international*, vol. 44, tome 1 (1952), p. 199.

pretation to revise treaties or to read into them what they do not, expressly or by implication, contain. [129]

(12) *Paragraph 1* contains three separate principles. The first—interpretation in good faith—flows directly from the rule *pacta sunt servanda*. The second principle is the very essence of the textual approach: the parties are to be presumed to have that intention which appears from the ordinary meaning of the terms used by them. The third principle is one both of common sense and good faith; the ordinary meaning of a term is not to be determined in the abstract but in the context of the treaty and in the light of its object and purpose. These principles have repeatedly been affirmed by the Court. The present Court in its Advisory Opinion on the *Competence of the General Assembly for the Admission of a State to the United Nations* said: [130]

> "The Court considers it necessary to say that the first duty of a tribunal which is called upon to interpret and apply the provisions of a treaty, is to endeavour to give effect to them in their natural and ordinary meaning in the context in which they occur. If the relevant words in their natural and ordinary meaning make sense in their context, that is an end of the matter."

And the Permanent Court in an early Advisory Opinion [131] stressed that the context is not merely the article or section of the treaty in which the term occurs, but the treaty as a whole:

> "In considering the question before the Court upon the language of the Treaty, it is obvious that the Treaty must be read as a whole, and that its meaning is not to be determined merely upon particular phrases which, if detached from the context, may be interpreted in more than one sense."

Again the Court has more than once had recourse to the statement of the object and purpose of the treaty in the preamble in order to interpret a particular provision. [132]

(13) *Paragraph 2* seeks to define what is comprised in the "context" for the purposes of the interpretation of the treaty. That the preamble forms part of a treaty for purposes of interpretation is too well settled to require comment, as is also the case with documents which are specifically made annexes to the treaty. The question is how far other documents connected with the treaty are to be regarded as forming part of the "context" for the purposes of interpretation. Paragraph 2 proposes that two classes of documents should be so regarded: (*a*) any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty; and (*b*) any instrument which was made in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty. The principle on which this provision is based is that a unilateral document cannot be regarded as forming part of the "context" within the meaning of article 27 unless not only was it made in connexion with the conclusion of the treaty but its relation to the treaty was accepted in the same manner by the other parties. On the other hand, the fact that these two classes of documents are recognized in paragraph 2 as forming part of the "context" does not mean that they are necessarily to be considered as an integral part of the treaty. Whether they are an actual part of the treaty depends on the intention of the parties in each case. [133] What is proposed in paragraph 2 is that, for purposes of interpreting the treaty, these categories of documents should not be treated as mere evidence to which recourse may be had for the purpose of resolving an ambiguity or obscurity, but as part of the context for the purpose of arriving at the ordinary meaning of the terms of the treaty.

(14) *Paragraph 3*(a) specifies as a further authentic element of interpretation to be taken into account together with the context any subsequent agreement between the parties regarding the interpretation of the treaty. A question of fact may sometimes arise as to whether an understanding reached during the negotiations concerning the meaning of a provision was or was not intended to constitute an agreed basis for its interpretation. [134] But it is well settled that when an agreement as to the interpretation of a provision is established as having been reached before or at the time of the conclusion of the treaty, it is to be regarded as forming part of the treaty. Thus, in the *Ambatielos* case [135] the Court said: "...the provisions of the Declaration are in the nature of an interpretation clause, and, as such, should be regarded as an integral part of the Treaty...". Similarly, an agreement as to the interpretation of a provision reached after the conclusion of the treaty represents an authentic interpretation by the parties which must be read into the treaty for purposes of its interpretation.

(15) *Paragraph 3*(b) then similarly specifies as an element to be taken into account together with the context: "any subsequent practice in the application of the treaty which establishes the understanding of the parties regarding its interpretation". The importance of such subsequent practice in the application of the treaty, as an element of interpretation, is obvious; for it constitutes objective evidence of the understanding of the parties as to the meaning of the treaty. [136] Recourse to it as a means of

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[129] E.g., in the *United States Nationals in Morocco* case, *I.C.J. Reports 1952*, pp. 196 and 199.

[130] *I.C.J. Reports 1950*, p. 8.

[131] *Competence of the ILO to Regulate Agricultural Labour*, *P.C.I.J.* (1922), Series B, Nos. 2 and 3, p. 23.

[132] E.g., *United States Nationals in Morocco* case, *I.C.J. Reports 1952*, pp. 183, 184, 197 and 198.

[133] *Ambatielos* case (Preliminary Objection), *I.C.J. Reports 1952*, pp. 43 and 75.

[134] Cf. the *Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter)* case, *I.C.J. Reports 1948*, p. 63.

[135] (Preliminary Objection), *I.C.J. Reports 1952*, p. 44.

[136] In the *Russian Indemnity* case the Permanent Court of Arbitration said: "*...l'exécution des engagements est, entre Etats, comme entre particuliers, le plus sûr commentaire du sens de ces engagements*". *Reports of International Abitral Awards*, vol. XI, p. 433. ("...the fulfilment of engagements between States, as between individuals, is the surest commentary on the effectiveness of those engagements". English translation from J. B. Scott, *The Hague Court* Reports (1916), p. 302.)

interpretation is well-established in the jurisprudence of international tribunals. In its opinion on the *Competence of the ILO to Regulate Agricultural Labour*[137] the Permanent Court said:

> "If there were any ambiguity, the Court might, for the purpose of arriving at the true meaning, consider the action which has been taken under the Treaty."

At the same time, the Court[138] referred to subsequent practice in confirmation of the meaning which it had deduced from the text and which it considered to be unambiguous. Similarly in the *Corfu Channel* case,[139] the International Court said:

> "The subsequent attitude of the Parties shows it has not been their intention, by entering into the Special Agreement, to preclude the Court from fixing the amount of the compensation."

The value of subsequent practice varies according as it shows the common understanding of the parties as to the meaning of the terms. The Commission considered that subsequent practice establishing the understanding of the parties regarding the interpretation of a treaty should be included in paragraph 3 as an authentic means of interpretation alongside interpretative agreements. The text provisionally adopted in 1964 spoke of a practice which "establishes the understanding of all the parties". By omitting the word "all" the Commission did not intend to change the rule. It considered that the phrase "the understanding of the parties" necessarily means "the parties as a whole". It omitted the word "all" merely to avoid any possible misconception that every party must individually have engaged in the practice where it suffices that it should have accepted the practice.

(16) *Paragraph 3*(c) adds as a third element to be taken into account together with the context: "any relevant rules of international law applicable in the relations between the parties". This element, as previously indicated, appeared in paragraph 1 of the text provisionally adopted in 1964, which stated that, *inter alia*, the ordinary meaning to be given to the terms of a treaty is to be determined "in the light of the general rules of international law *in force at the time of its conclusion*". The words in italics were a reflection of the general principle that a juridical fact must be appreciated in the light of the law contemporary with it. When this provision was discussed at the sixteenth session[140] some members suggested that it failed to deal with the problem of the effect of an evolution of the law on the interpretation of legal terms in a treaty and was therefore inadequate. Some Governments in their comments endorsed the provision, others criticized it from varying points of view. On re-examining the provision, the Commission considered that the formula used in the 1964 text was unsatisfactory, since it covered only partially the question of the so-called intertemporal law in its application to the interpretation of treaties and might, in consequence, lead to misunderstanding. It also considered that, in any event, the relevance of rules of international law for the interpretation of treaties in any given case was dependent on the intentions of the parties, and that to attempt to formulate a rule covering comprehensively the temporal element would present difficulties. It further considered that correct application of the temporal element would normally be indicated by interpretation of the term in good faith. The Commission therefore concluded that it should omit the temporal element and revise the reference to international law so as to make it read "any relevant rules of international law applicable in the relations between the parties". At the same time, it decided to transfer this element of interpretation to paragraph 3 as being an element which is extrinsic both to the text and to the "context" as defined in paragraph 2.

(17) *Paragraph 4* incorporates in article 27 the substance of what was article 71 of the 1964 text. It provides for the somewhat exceptional case where, notwithstanding the apparent meaning of a term in its context, it is established that the parties intended it to have a special meaning. Some members doubted the need to include a special provision on this point, although they recognized that parties to a treaty not infrequently employ a term with a technical or other special meaning. They pointed out that technical or special use of the term normally appears from the context and the technical or special meaning becomes, as it were, the ordinary meaning in the particular context. Other members, while not disputing that the technical or special meaning of the term may often appear from the context, considered that there was a certain utility in laying down a specific rule on the point, if only to emphasize that the burden of proof lies on the party invoking the special meaning of the term. They pointed out that the exception had been referred to more than once by the Court. In the *Legal Status of Eastern Greenland* case, for example, the Permanent Court had said:

> "The geographical meaning of the word 'Greenland', i.e. the name which is habitually used in the maps to denominate the whole island, must be regarded as the ordinary meaning of the word. If it is alleged by one of the Parties that some unusual or exceptional meaning is to be attributed to it, it lies on that Party to establish its contention."[141]

Commentary to article 28

(18) There are many dicta in the jurisprudence of international tribunals stating that where the ordinary meaning of the words is clear and makes sense in the context, there is no occasion to have recourse to other means of interpretation. Many of these statements relate to the use of *travaux préparatoires*. The passage from the Court's Opinion on the *Competence of the General Assembly for the Admission of a State to the United Nations* cited in paragraph (12) above is one example,

[137] *P.C.I.J.* (1922), Series B, No. 2, p. 39; see also *Interpretation of Article 3, paragraph 2, of the Treaty of Lausanne*, *P.C.I.J.* (1925), Series B, No. 12, p. 24; the *Brazilian Loans* case, *P.C.I.J.* (1929), Series A, No. 21, p. 119.

[138] *Ibid.*, pp. 40 and 41.

[139] *I.C.J. Reports 1949*, p. 25.

[140] Paragraph (11) of the commentary to articles 69-71; *Yearbook of the International Law Commission, 1964*, vol. II, pp. 202 and 203.

[141] *P.C.I.J.* (1933), Series A/B, No. 53, p. 49.

and another is its earlier Opinion on *Admission of a State to the United Nations*:[142]

> "The Court considers that the text is sufficiently clear; consequently it does not feel that it should deviate from the consistent practice of the Permanent Court of International Justice, according to which there is no occasion to resort to preparatory work if the text of a convention is sufficiently clear in itself."

As already indicated, the Commission's approach to treaty interpretation was on the basis that the text of the treaty must be presumed to be the authentic expression of the intentions of the parties, and that the elucidation of the meaning of the text rather than an investigation *ab initio* of the supposed intentions of the parties constitutes the object of interpretation. It formulated article 27 on that basis, making the ordinary meaning of the terms, the context of the treaty, its object and purpose, and the general rules of international law, together with authentic interpretations by the parties, the primary criteria for interpreting a treaty. Nevertheless, it felt that it would be unrealistic and inappropriate to lay down in the draft articles that no recourse whatever may be had to extrinsic means of interpretation, such as *travaux préparatoires*, until after the application of the rules contained in article 27 has disclosed no clear or reasonable meaning. In practice, international tribunals, as well as States and international organizations, have recourse to subsidiary means of interpretation, more especially *travaux préparatoires*, for the purpose of confirming the meaning that appears to result from an interpretation of the treaty in accordance with article 27. The Court itself has on numerous occasions referred to the *travaux préparatoires* for the purpose of confirming its conclusions as to the "ordinary" meaning of the text. For example, in its opinion on the *Interpretation of the Convention of 1919 concerning Employment of Women during the Night*[143] the Permanent Court said:

> "The preparatory work thus confirms the conclusion reached on a study of the text of the Convention that there is no good reason for interpreting Article 3 otherwise than in accordance with the natural meaning of the words."

(19) Accordingly, the Commission decided to specify in article 28 that recourse to further means of interpretation, including preparatory work, is permissible for the purpose of confirming the meaning resulting from the application of article 27 and for the purpose of determining the meaning when the interpretation according to article 27:

(*a*) Leaves the meaning ambiguous or obscure; or

(*b*) Leads to a result which is manifestly absurd or unreasonable.

The word "supplementary" emphasizes that article 28 does not provide for alternative, autonomous, means of interpretation but only for means to aid an interpretation governed by the principles contained in article 27. Sub-paragraph (*a*) admits the use of these means for the purpose of deciding the meaning in cases where there is no clear meaning. Sub-paragraph (*b*) does the same in cases where interpretation according to article 27 gives a meaning which is "manifestly absurd or unreasonable". The Court has recognized[144] this exception to the rule that the ordinary meaning of the terms must prevail. On the other hand, the comparative rarity of the cases in which it has done so suggest that it regards this exception as limited to cases where the absurd or unreasonable character of the "ordinary" meaning is manifest. The Commission considered that the exception must be strictly limited, if it is not to weaken unduly the authority of the ordinary meaning of the terms. Sub-paragraph (*b*) is accordingly confined to cases where interpretation under article 27 gives a result which is manifestly absurd or unreasonable.

(20) The Commission did not think that anything would be gained by trying to define *travaux préparatoires*; indeed, to do so might only lead to the possible exclusion of relevant evidence. It also considered whether, in regard to multilateral treaties, the article should authorize the use of *travaux préparatoires* only as between States which took part in the negotiations or, alternatively, only if they have been published. In the *Territorial Jurisdiction of the International Commission of the River Oder* case[145] the Permanent Court excluded from its consideration the *travaux préparatoires* of certain provisions of the Treaty of Versailles on the ground that three of the States before the Court had not participated in the conference which prepared the Treaty of Versailles; and in making this ruling it expressly refused to differentiate between published and unpublished documents. The Commission doubted, however, whether this ruling reflects the actual practice regarding the use of *travaux préparatoires* in the case of multilateral treaties that are open to accession by States which did not attend the conference at which they were drawn up. Moreover, the principle behind the ruling did not seem to be so compelling as might appear from the language of the Court in that case. A State acceding to a treaty in the drafting of which it did not participate is perfectly entitled to request to see the *travaux préparatoires*, if it wishes, before acceding. Nor did the rule seem likely to be practically convenient, having regard to the many important multilateral treaties open generally to accession. These considerations apply to unpublished, but accessible, *travaux préparatoires* as well as to published ones; and in the case of bilateral treaties or "closed" treaties between small groups of States, unpublished *travaux préparatoires* will usually be in the hands of all the parties. Accordingly, the Commission decided that it should not include any special provision in the article regarding the use of *travaux préparatoires* in the case of multilateral treaties.

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[142] *I.C.J. Reports 1948*, p. 63.

[143] *P.C.I.J.* (1932), Series A/B, No. 50, p. 380; cf. the *Serbian and Brazilian Loans* cases, *P.C.I.J.* (1929), Series A, Nos. 20-21, p. 30.

[144] E.g., *Polish Postal Service in Danzig*, *P.C.I.J.* (1925), Series B, No. 11, p. 39; *Competence of the General Assembly for the Admission of a State to the United Nations*, *I.C.J. Reports 1950*, p. 8.

[145] *P.C.I.J.* (1929), Series A, No. 23.

Annex 7

U.N. Convention on the Law of the Sea, Eleventh Meeting of States Parties, *Decision regarding the date of commencement of the ten-year period for making submissions to the Commission on the Limits of the Continental Shelf set out in article 4 of Annex II to the U.N. Convention on the Law of the Sea*, U.N. Doc. SPLOS/72 (29 May 2001)

United Nations Convention on the Law of the Sea SPLOS/72

Meeting of States Parties

Distr.: General
29 May 2001

Original: English

Meeting of States Parties
Eleventh Meeting
New York, 14-18 May 2001

Decision regarding the date of commencement of the ten-year period for making submissions to the Commission on the Limits of the Continental Shelf set out in article 4 of Annex II to the United Nations Convention on the Law of the Sea

The States Parties to the United Nations Convention on the Law of the Sea,

Recalling the responsibility of all States Parties to fulfil in good faith the obligations assumed by them under the Convention,

Recalling also that the members of the Commission on the Limits of the Continental Shelf were elected in March 1997 and that the Commission commenced its work as from 16 June 1997,

Recalling further that the first task before the Commission was to complete its organizational work,

Noting that it was only after the adoption by the Commission of its Scientific and Technical Guidelines on 13 May 1999 that States had before them the basic documents concerning submissions in accordance with article 76, paragraph 8, of the Convention,

Considering the problems encountered by States Parties, in particular developing countries, including small island developing States, in complying with the time limit set out in article 4 of Annex II to the Convention,

Decides that:

(a) In the case of a State Party for which the Convention entered into force before 13 May 1999, it is understood that the ten-year time period referred to in article 4 of Annex II to the Convention shall be taken to have commenced on 13 May 1999;

(b) The general issue of the ability of States, particularly developing States, to fulfil the requirements of article 4 of Annex II to the Convention be kept under review.

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Annex 8

U.N. Security Council, *Resolution 1744 (2007): Adopted by the Security Council at its 5633rd meeting, on 20 February 2007*, U.N. Doc. S/RES/1744 (21 Feb. 2007)

United Nations S/RES/1744 (2007)*

Security Council

Distr.: General
21 February 2007

Resolution 1744 (2007)

Adopted by the Security Council at its 5633rd meeting, on 20 February 2007

The Security Council,

Recalling its previous resolutions concerning the situation in Somalia, in particular resolution 733 (1992), resolution 1356 (2001), resolution 1425 (2002) and resolution 1725 (2006), the statements of its President, in particular those of 13 July 2006 (S/PRST/2006/31) and 22 December 2006 (S/PRST/2006/59),

Reaffirming its respect for the sovereignty, territorial integrity, political independence and unity of Somalia,

Reiterating its commitment to a comprehensive and lasting settlement of the situation in Somalia through the Transitional Federal Charter, and stressing the importance of broad-based and representative institutions reached through an all-inclusive political process, as envisaged in the Transitional Federal Charter,

Reiterating its strong support for the Special Representative of the Secretary-General, Mr. François Fall,

Reiterating its appreciation of the efforts of the African Union, the League of Arab States and the Intergovernmental Authority on Development to promote peace, stability and reconciliation in Somalia, and *welcoming* their continued engagement in this regard,

Taking note of the communiqué of the African Union Peace and Security Council of 19 January 2007, which states that the African Union shall deploy for a period of six months a mission to Somalia (AMISOM), aimed essentially at contributing to the initial stabilization phase in Somalia, and that the mission will evolve into a United Nations operation that will support the long-term stabilization and post-conflict restoration of Somalia,

Welcoming the African Union's intention to establish a mission in Somalia and *underlining* the urgency of the development,

Welcoming the decision of Ethiopia to withdraw its troops from Somalia, *taking note* of the fact that Ethiopia has already started withdrawing its troops, and *underlining* that the deployment of AMISOM will help avoid a security vacuum and create the conditions for full withdrawal and the lifting of emergency security measures currently in place,

* Reissued for technical reasons.

07-24531* (E)

Reiterating its support for Somalia's Transitional Federal Institutions, *underlining* the importance of maintaining and providing stability and security throughout Somalia, and *underscoring* in this regard the importance of disarmament, demobilization and reintegration of militia and ex-combatants in Somalia,

Condemning all acts of violence and extremism inside Somalia, *deploring* the recent bombings in Mogadishu, and *expressing* its concern regarding the continued violence inside Somalia,

Determining that the situation in Somalia 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. *Stresses* the need for broad-based and representative institutions reached through an all-inclusive political process in Somalia, as envisaged in the Transitional Federal Charter, in order to consolidate stability, peace and reconciliation in the country and ensure that international assistance is as effective as possible;

2. *Welcomes* the initiative of the Transitional Federal Institutions to pursue an inclusive intra-Somali political process, particularly the announcement made by President Abdullahi Yusuf Ahmed at the African Union Summit of his intention to convene urgently a national reconciliation congress involving all stakeholders including political leaders, clan leaders, religious leaders, and representatives of civil society, *looks forward* to the sustained and all-inclusive political process that is needed as a result of that commitment and that will help pave the way to democratic elections at the local, regional and national levels as set out in Somalia's Transitional Federal Charter, and *encourages* those in the Transitional Federal Government and the other Transitional Federal Institutions to unite behind efforts to promote such an inclusive dialogue;

3. *Requests* the Secretary-General to assist the Transitional Federal Institutions with the national reconciliation congress, and, more widely, promoting an ongoing all-inclusive political process, working together with the African Union, the League of Arab States and the Intergovernmental Authority on Development, *requests* the Secretary-General to report back to the Security Council within sixty (60) days of adoption of this resolution on progress made by the Transitional Federal Institutions in pursuing an all-inclusive political process and reconciliation, and *reiterates its intention* to consider taking measures against those who seek to prevent or block a peaceful political process, threaten the Transitional Federal Institutions by force, or take action that undermines stability in Somalia or the region;

4. *Decides* to authorize member States of the African Union to establish for a period of six months a mission in Somalia, which shall be authorized to take all necessary measures as appropriate to carry out the following mandate:

(a) To support dialogue and reconciliation in Somalia by assisting with the free movement, safe passage and protection of all those involved with the process referred to in paragraphs 1, 2 and 3;

(b) To provide, as appropriate, protection to the Transitional Federal Institutions to help them carry out their functions of government, and security for key infrastructure;

(c) To assist, within its capabilities, and in coordination with other parties, with implementation of the National Security and Stabilization Plan, in particular the effective re-establishment and training of all-inclusive Somali security forces;

(d) To contribute, as may be requested and within capabilities, to the creation of the necessary security conditions for the provision of humanitarian assistance;

(e) To protect its personnel, facilities, installations, equipment and mission, and to ensure the security and freedom of movement of its personnel;

5. *Urges* member States of the African Union to contribute to the above mission in order to create the conditions for the withdrawal of all other foreign forces from Somalia;

6. *Decides* that the measures imposed by paragraph 5 of resolution 733 (1992) and further elaborated in paragraphs 1 and 2 of resolution 1425 (2002) shall not apply to:

(a) Supplies of weapons and military equipment, technical training and assistance intended solely for the support of or use by the mission referred to in paragraph 4 above; or

(b) Such supplies and technical assistance by States intended solely for the purpose of helping develop security sector institutions, consistent with the political process set out in paragraphs 1, 2 and 3 above and in the absence of a negative decision by the Committee established pursuant to resolution 751 (1992) within five working days of receiving the notification described in paragraph 7 below;

7. *Decides* that States providing supplies or technical assistance in accordance with paragraph 6 (b) above shall notify the Committee established pursuant to resolution 751 (1992) in advance and on a case-by-case basis;

8. *Urges* Member States to provide personnel, equipment and services if required, for the successful deployment of AMISOM, and *encourages* Member States to provide financial resources for AMISOM;

9. *Requests* the Secretary-General to send a Technical Assessment Mission to the African Union headquarters and Somalia as soon as possible to report on the political and security situation and the possibility of a UN Peacekeeping Operation following the AU's deployment, and to report to the Security Council within sixty (60) days of the adoption of this resolution with recommendations covering the UN's further engagement in support of peace and security in Somalia, as well as further recommendations on stabilization and reconstruction;

10. *Emphasizes* the continued contribution made to Somalia's peace and security by the arms embargo, *demands* that all Member States, in particular those of the region, fully comply with it, and *reiterates* its intention to consider urgently ways to strengthen its effectiveness, including through targeted measures in support of the arms embargo;

11. *Expresses its deep concern* over the humanitarian situation in Somalia, *demands* that all parties in Somalia ensure complete and unhindered humanitarian access, as well as providing guarantees for the safety and security of humanitarian aid workers in Somalia, and *welcomes* and *encourages* the ongoing relief efforts in Somalia;

12. *Decides* that, having regard to the establishment of AMISOM, the measures contained in paragraphs 3 to 7 of resolution 1725 (2006) shall no longer apply;

13. *Decides* to remain actively seized of the matter.

Annex 9

African Union Border Programme, *Declaration on the African Union Border Programme and its Implementation Modalities as Adopted by the Conference of African Ministers in Charge of Border Issues held in Addis Ababa, Ethiopia* (7 June 2007)

AFRICAN UNION

DECLARATION ON THE AFRICAN UNION BORDER PROGRAMME AND ITS IMPLEMENTATION MODALITIES AS ADOPTED BY THE CONFERENCE OF AFRICAN MINISTERS IN CHARGE OF BORDER ISSUES HELD IN ADDIS ABABA (ETHIOPIA), ON 7 JUNE 2007

DECLARATION ON THE AFRICAN UNION BORDER PROGRAMME AND ITS IMPLEMENTATION MODALITIES AS ADOPTED BY THE CONFERENCE OF AFRICAN MINISTERS IN CHARGE OF BORDER ISSUES HELD IN ADDIS ABABA (ETHIOPIA), ON 7 JUNE 2007

PREAMBLE

1. We, the Ministers in charge of Border Issues in the Member States of the African Union, meeting in Addis Ababa, Ethiopia, on 7 June 2007 to deliberate on the African Union Border Programme and its implementation modalities:

a) **Inspired by** the conviction that the achievement of greater unity and solidarity among African countries and peoples require the reduction of the burden of borders separating African States;

b) **Convinced that**, by transcending the borders as barriers and promoting them as bridges linking one State to another, Africa can boost the on-going efforts to integrate the continent, strengthen its unity, and promote peace, security and stability through the structural prevention of conflicts;

c) **Guided by**:
(i) the principle of the respect of borders existing on achievement of national independence, as enshrined in the Charter of the Organization of African Unity (OAU), Resolution AHG/Res.16(I) on border disputes between African States, adopted by the 1st Ordinary Session of the Assembly of Heads of State and Government of the OAU, held in Cairo, Egypt, in July 1964, and article 4 (b) of the Constitutive Act of the African Union,

(ii) the principle of negotiated settlement of border disputes, as provided for notably in Resolution CM/Res.1069(XLIV) on peace and security in Africa through negotiated settlement of boundary disputes, adopted by the 44th Ordinary Session of the Council of Ministers of the OAU, held in Addis Ababa, in July 1986, as well as in the relevant provisions of the Protocol relating to the establishment of the Peace and Security Council of the African Union,

(iii) the shared commitment to pursue the work of border delimitation and demarcation as factors for peace, security and economic and social progress, as affirmed notably in Resolution CM/Res.1069(XLIV), as well as in the Memorandum of Understanding on Security, Stability, Development and Cooperation in Africa (CSSDCA), adopted by the Assembly of Heads of State and Government,

held in Durban (South Africa), in July 2002, which provides for the delimitation and demarcation of African boundaries by 2012, where such an exercise has not yet taken place,

(iv) the will to accelerate and deepen the political and socio-economic integration of the continent and provide it with a popular base, as stipulated in the Constitutive Act, and

(v) the decision adopted by the 8th Ordinary Session of the Assembly of Heads of State and Government of the African Union, held in Addis Ababa in January 2007, encouraging the Commission to pursue its efforts at structural prevention of conflicts, especially through the implementation of the Border Programme of the African Union;

d) **Having considered** the report of the meeting of government experts [BP/EXP/3(II)], held in Addis Ababa from 4 to 5 June 2007, and on the basis of the Summary Note on the African Union Border Programme and its Implementation Modalities [BP/EXP/2(II)].

HAVE AGREED AS FOLLOWS:

On the justification of the AU Border Programme

2. We underscore the relevance of the African Union Border Programme, based on the need:

a) to address the persistence of the border delimitation and demarcation issue: Subject to an inventory to be undertaken, it is estimated that less than a quarter of African borders have been delimited and demarcated. This situation is fraught with risks, as the lack of delimitation and demarcation gives rise to 'undefined zones', within which the application of national sovereignty poses problems, and constitutes a real obstacle to the deepening of the integration process;

b) to address cross-border criminal activities;

c) to consolidate the gains made in the regional integration process, as demonstrated by the existence of the Regional Economic Communities (RECs) and of numerous large-scale cooperation initiatives; and

d) to facilitate the development of cross-border integration dynamics, which are sustained by local stakeholders.

3. We stress the need to put in place a new form of pragmatic border management, aimed at promoting peace, security and stability, but also at facilitating

the integration process and sustainable development in Africa.

On the objectives of the AU Border Programme

4. We request the Commission of the African Union to coordinate the implementation of this Programme whose overall goal is the structural prevention of conflicts and the promotion of regional and continental integration and, more specifically:

a) the facilitation of, and support to, delimitation and demarcation of African boundaries where such exercise has not yet taken place;

b) the reinforcement of the integration process, within the framework of the RECs and other large-scale cooperation initiatives;

c) the development, within the framework of the RECs and other regional integration initiatives, of local initiative cross-border cooperation; and

d) capacity building in the area of border management, including the development of special education and research programmes.

On the implementation principles of the AU Border Programme

5. We note that the implementation of the AU Border Programme will be effected at several levels – national, regional and continental, and that the responsibility of each of these levels should be determined on the basis of the principle of subsidiarity and respect of the sovereignty of States.

a) *Border delimitation and demarcation*

(i) The delimitation and demarcation of boundaries depend primarily on the sovereign decision of the States. They must take the necessary steps to facilitate the process of delimitation and demarcation of African borders, including maritime boundaries, where such an exercise has not yet taken place, by respecting, as much as possible, the time-limit set in the Solemn Declaration on the CSSDCA. We encourage the States to undertake and pursue bilateral negotiations on all problems relating to the delimitation and demarcation of their borders, including those pertaining to the rights of the affected populations, with a view to finding appropriate solutions to these problems.

(ii) The Regional Economic Communities and the African Union should assist the States in mobilizing

the necessary resources and expertise, including by facilitating exchange of experiences and promoting inexpensive border delimitation and demarcation practices.

(iii) The Commission of the African Union should conduct a comprehensive inventory of the state of African boundaries and coordinate the efforts of the Regional Economic Communities, and launch a large-scale initiative aimed at sensitizing the international community on the need to mobilize the required resources and any other necessary support. On their part, the former colonial powers should submit all information in their possession regarding the delimitation and demarcation of African borders.

b) *Local cross-border cooperation*

(i) The local stakeholders should be the direct initiators of cross-border cooperation under the auspices of the States.

(ii) The States should, with the assistance of the African Union, facilitate local initiatives and mandate the Regional Economic Communities to implement regional support programmes for cross-border cooperation.

(iii) The Regional Economic Communities should provide the legal framework necessary for the formalization of cross-border cooperation and establish regional funds for financing such cooperation.

(iv) The Commission of the African Union should take the necessary steps to ensure that cross-border cooperation is included in the major international initiatives launched in favour of the continent, as well as play a coordination role and facilitate the exchange of information and good practices between the Regional Economic Communities.

c) *Capacity building*

The African Union Border Programme should, on the basis of close coordination between the different levels concerned, carry out an inventory of African institutions that offer training in this domain, explore avenues for collaboration with relevant training centres outside Africa, and, on the basis of the above, design a capacity building programme in the area of border management.

On partnership and resource mobilization

6. We request the Commission of the African Union to coordinate and implement the Border Programme on the basis of an inclusive governance in-

volving the member States, the Regional Economic Communities, parliamentarians, locally elected representatives and civil society, as well as the European border movement, particularly the Association of European Border Regions, the United Nations and other African Union partners having experience in cross-border cooperation.

On the initial measures for launching the Border Programme and the follow-up of this Declaration

7. We request the Commission of the African Union to take the following initial measures:

a) launching of a Pan-African survey of borders, through a questionnaire to be sent to all member States, in order to facilitate the delimitation and demarcation of African borders;

b) identification of pilot regions or initiatives for the rapid development of regional support programmes on cross-border cooperation, as well as support for the establishment of regional funds for financing local cross-border cooperation;

c) working out modalities for cooperation with other regions of the world to benefit from their experiences and to build the necessary partnerships;

d) initiating an assessment with regard to capacity building;
e) initiating the preparation of a continental legal instrument on cross-border cooperation; and

f) launching a partnership and resource mobilization process for the implementation of the AU Border Programme.

8. We recommend to institutionalize the Conference of African Ministers in charge of Border Issues, which should be held on a regular basis.

9. We request the Chairperson of the Commission of the African Union, as soon as the present Declaration is endorsed by the Executive Council, to take the necessary steps for its implementation, including the enhancement of the capacity of the Conflict Management Division of the Peace and Security Department of the Commission, and to report regularly to the relevant organs of the African Union on the status of implementation.

DECISION ON THE CONFERENCE OF AFRICAN MINISTERS IN CHARGE OF BORDER ISSUES HELD IN ADDIS ABABA, ON 7 JUNE 2007

The Executive Council:

1. **TAKES NOTE** of the Report of the Conference of African Ministers in charge of Border Issues held in Addis Ababa, Ethiopia, on 7 June 2007;

2. **ENDORSES** the Declaration on the African Union Border Programme and its implementation modalities as adopted by the Ministerial Conference;

3. **REQUESTS** the Chairperson of the Commission and Member States to take all appropriate measures to implement the Declaration and to submit regular reports thereon to the policy organs of the African Union.

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Annex 9

AFRICAN UNION

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June 2008

Annex 10

U.N. General Assembly, Sixty-Fourth Session, Thirtieth Plenary Meeting, *Agenda Item 72: Report of the International Court of Justice*, U.N. Doc. A/64/PV.30 (29 Oct. 2009)

United Nations A/64/PV.30

General Assembly

Sixty-fourth session

Official Records

30th plenary meeting
Thursday, 29 October 2009, 3 p.m.
New York

President: Mr. Ali Abdussalam Treki . . . . . (Libyan Arab Jamahiriya)

The meeting was called to order at 3.20 p.m.

Agenda item 72

Report of the International Court of Justice

Report of the International Court of Justice (A/64/4)

Report of the Secretary-General (A/64/308)

The President (*spoke in Arabic*): May I take it that the General Assembly takes note of the report of the International Court of Justice for the period 1 August 2008 to 31 July 2009?

It was so decided.

The President (*spoke in Arabic*): In connection with this item, the Assembly also has before it a report of the Secretary-General on the Secretary-General's Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice, which has been circulated in document A/64/308.

It is now my pleasure to give the floor to Mr. Hisashi Owada, President of the International Court of Justice.

Mr. Owada: Before I turn to the report of the International Court of Justice (ICJ), I wish on behalf of the Court that I represent to convey our deepest sympathy and condolences to the families of the five United Nations staff members who were killed in the recent shocking and shameless raid by terrorists in Afghanistan. I join the Secretary-General and the President of the General Assembly in condemning all threats and acts of violence against humanitarian personnel and United Nations personnel. The International Court of Justice is engaged in the promotion of the rule of law in the international community and it is important to reaffirm the need to hold accountable those who are responsible for such acts of atrocity.

It is an honour and a privilege for me to address the General Assembly for the first time as President of the International Court of Justice on the report of the International Court of Justice for the period from 1 August 2008 to 31 July 2009 (A/64/4).

I take this opportunity to congratulate you, Mr. Treki, on your election as President of the General Assembly at its sixty-fourth session and to wish you every success in that distinguished office.

Over the course of the last decades, the trust and respect of the international community for the activities of the Court as the principal judicial organ of the United Nations has been growing. This growth is reflected in the increased number and broadened subject matter of the cases brought before the Court by Members of the United Nations. The past year was no exception.

To give the Assembly a schematic view of the judicial activities of the Court over the period under review: the Court had more than 16 cases on its docket and rendered two judgments on the merits — one judgment in a request for interpretation and one judgment on preliminary objections — and two orders on requests for the indication of provisional measures.

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adequate resources to discharge its role effectively and efficiently.

In conclusion, Singapore has and will continue to place great emphasis on the rule of law. My delegation will continue to support the work of the Court and to monitor with great interest every decision of the Court. We wish the Court every success in the coming year.

Mr. Repetto (Chile) (*spoke in Spanish*): At the outset, I should like to express my thanks to the President of the International Court of Justice, Judge Hisashi Owada, for his detailed presentation of the Court's report on the period from 1 August 2008 to 31 July 2009 (A/64/4).

My country recognizes the important work undertaken by the International Court of Justice as the principal judicial organ of the United Nations and its role under the Charter in the peaceful resolution of disputes and advisory matters. My country believes that its work makes an ongoing contribution to the construction and strengthening of a multilateral system that promotes an international legal order based on respect for the rule of law, which contributes to the maintenance of international peace and security.

As an expression of my Government's recognition of the important functions of the International Court of Justice, Chile has accepted the jurisdiction of the Court to resolve all disputes relating to the interpretation and application of the many multilateral treaties to which it is party. We also believe that the advisory role of the International Court of Justice is of particular relevance, as demonstrated by its many opinions on various spheres of international law. Our country shares the view that the Court should be granted the necessary means and material and human resources to effectively undertake its growing workload.

We should also like to commend the efforts of the International Court of Justice to publicize its work through modern methods that are broad and accessible to the international public. International law is strengthened by such efforts, and we express our firm support for continued funding to the Court to ensure that it has sufficient resources for administration and so that it can continue publicizing its work effectively both through its yearbook and by electronic means. My country also appeals to the International Court of Justice to issue Spanish-language versions of its judgments.

In relation to the case before the International Court of Justice to which Chile has been summoned, my Government affirms that it will set out its position on that topic before the Court at the appropriate time.

Let me conclude by reiterating our appreciation for the work of the Court and its invaluable contribution to the development of and compliance with international law.

Mr. Muita (Kenya): I would like at the outset to join previous speakers in commending you, Madam Vice-President, for the excellent manner in which you are guiding our deliberations.

I would also like to take this opportunity to thank Judge Rosalyn Higgins for her successful tenure and to congratulate Judge Hisashi Owada on his election as President of the International Court of Justice and for his very comprehensive report. I wish to reiterate Kenya's support.

Kenya has consistently supported the International Court of Justice and its international adjudication mechanisms. We highly value the Court's contribution to the development of international law and its important work in the judicial settlement of international disputes. The high number and scope of cases submitted to the Court for judicial settlement, highlighted in the report, and the number of parties that have submitted cases are testimony of the Court's universality as the main judicial organ of the United Nations. We therefore urge Member States to actively utilize the Court for settling any emerging international disputes.

The steps the Court has taken to expedite the global administration of justice are encouraging. The determination of cases by summary procedure at the request of parties and the ongoing review of the Court's procedures and working methods are all positive developments.

My delegation welcomes the presentations of the Court's Registrar and the Information Department on the activities of the Court to a broad-based audience. Equally significant is the work of the Publication Division in disseminating the Court's decisions and other documents. We believe all those efforts will contribute immensely to creating greater awareness of the work of the Court.

As we are all aware, in this century the International Court of Justice is facing new and

challenging developments that are emerging from areas which have previously not been of concern to international jurisdiction. That change has been brought on by increasing global interdependence. However, considering the number of years it has taken us to reach our current position, and taking into account the fact that the development of international law is by nature a process, Kenya is confident that the Court and parties will be able to address the issue of the role of national jurisdiction in the context of the implementation of international norms.

Finally, my delegation urges all parties to engage positively in the law-making process in international law. It is only by doing so that all our voices can be heard, thereby ensuring the legitimacy and universality of international law and institutions. It is important that we support and utilize the adjudication mechanisms of the International Court of Justice.

Mr. Sher Bahadur Khan (Pakistan): I wish to thank Judge Owada, President of the International Court of Justice, for his excellent report on the work of the Court over the past year.

The ever increasing globalization and interdependence of our societies constantly remind us that justice and the rule of law are keys to an orderly international society. They are critical to the realization of all human rights and the noble aspirations of peace, sovereign equality of States and justice. The International Court of Justice, being the principal judicial organ of the United Nations, provides the best platform to Member States and the United Nations organs for this endeavour.

According to the latest report of the Court (A/64/4), 192 States are party to its Statute, but only 66 States have accepted compulsory jurisdiction of the Court. Pakistan is one of those 66 countries.

The United Nations Charter recognizes that settlement of international disputes by peaceful means and in conformity with the principle of justice and international law is one of the basic purposes of the United Nations. Under Chapter VI, the Charter offers vast possibilities for the United Nations and its organs to play an important role in the pacific settlement of disputes and in conflict prevention.

Article 36 of the Charter gives the role of the Court in the settlement of disputes. The Court's advisory opinions and jurisdiction, in accordance with Chapter IV of its Statute, covers consultations by the General Assembly and the Security Council on legal questions arising within the scope of their activities. In addition, some 300 bilateral or multilateral treaties provide for the Court to have jurisdiction in the resolution of disputes arising from their application and interpretation. States may also submit a specific dispute to the Court by way of special agreement. The Court also enjoys jurisdiction in forum prorogatum situations.

Yet these possibilities remain grossly under-utilized. We strongly believe that better utilization of the Court for the peaceful settlement of disputes and conflict prevention can serve as the basis for long-term peaceful coexistence in the international community.

The Court plays a valuable role in its handling of cases related to its primary jurisdiction. We are happy to note that the number of cases decided by the Court in the last few years has substantially increased, due to the efficient handling of the cases brought before it. However, problems come from States that are reluctant to accept the Court's jurisdiction in dispute settlement due to political considerations. We hope that with time even those reluctant today will accept the Court's jurisdiction for the peaceful settlement for disputes and conflict prevention.

In cases of non-compliance with the judgment of the Court, Article 94, paragraph 2, of the Charter sets out a procedure to address such situations. The Secretary-General, through his good offices and upon request of the party or parties concerned, should play an ever more active role in facilitating and securing the due implementation of the judgments.

We have noted with appreciation that the Court has been regularly and systematically re-examining its ongoing proceedings and working methods. The Court's efforts to enhance its productivity, especially through regular meetings devoted to strategic planning of its work, deserve our appreciation. We also note that the Court has set for itself a particularly demanding schedule of hearings and deliberations and has cleared its case backlog. We appreciate the Court's assurance to Member States that oral proceedings on cases can now be started in a timely manner, immediately after the completion of the written exchanges.

We believe that the Court should have at its disposal all the resources necessary to perform the tasks assigned to it. The General Assembly should

Annex 11

African Union, Second Conference of African Ministers in Charge of Border Issues, Preparatory Meeting of Governmental Experts, Addis Ababa, Ethiopia, *AUBP/EXP_MIN/2 Concept Note* (22-25 Mar. 2010)

AFRICAN UNION
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2nd CONFERENCE OF AFRICAN MINISTERS IN CHARGE OF BORDER ISSUES, PREPARATORY MEETING OF GOVERNMENTAL EXPERTS

ADDIS ABABA, ETHIOPIA
(United Nations Conference Centre)
22-25 March 2010

AUBP/EXP-MIN/2 (II)
Original: English

CONCEPT NOTE

Annex 11

CONCEPT NOTE

I. INTRODUCTION

1. At its 11th Ordinary Session held in Accra, Ghana, from 25 to 29 June 2007, the Executive Council endorsed the Declaration on the African Union Border Programme (AUBP) and its Implementation Modalities, as adopted by the Conference of African Ministers in charge of Border Issues, held in Addis Ababa, on 7 June 2007. The Council requested the Chairperson of the Commission and Member States to take all necessary steps for the implementation of the AUBP and submit regular reports thereon to the AU policy organs.

II. BACKGROUND

2. Since African countries gained independence, the borders – which were drawn during the colonial period in a context of rivalries between European countries and their scramble for territories in Africa – have been a recurrent source of conflicts and disputes in the continent. Most of the borders are poorly defined. The location of strategic natural resources in cross-border areas poses additional challenges.

3. This challenge was taken up early enough by African leaders who were inspired by the conviction that the achievement of greater unity and solidarity among African States and peoples requires the reduction of the burden of borders separating them. They were thus convinced that by transcending the borders as barriers and promoting them as bridges linking one State to another, Africa can boost the ongoing efforts to integrate the continent, strengthen its unity and promote peace, security and stability through the structural prevention of conflicts.

4. It is against this background that the Member States adopted a number of political and legal instruments to guide their efforts in the management of border issues. In this respect, the following are worth mentioning:

- the principle of the respect of borders existing on achievement of national independence, as enshrined in the Charter of the Organization of African Unity (OAU), resolution AHG/Res.16(I) on border disputes between African States, adopted by the 1st Ordinary Session of the Assembly of Heads of State and Government of the OAU, held in Cairo, Egypt, in July 1964, and Article 4 (b) of the AU Constitutive Act;

- the principle of negotiated settlement of border disputes, as provided for in resolution CM/Res.1069(XLIV) on peace and security in Africa through negotiated settlement of boundary disputes, adopted by the 44th Ordinary Session of the Council of Ministers of the OAU, held in Addis Ababa, in July 1986; and

- the Memorandum of Understanding on Security, Stability, Development and Cooperation in Africa (CSSDCA), adopted by the OAU Assembly of Heads of State and Government held in Durban, South Africa, in July 2002 [Decision CM/Dec.666(LXXVI)], which provides for the delineation and demarcation of

inter-African borders by 2012, with the assistance of the UN Cartographic Unit, where required.

5. During the 8th Ordinary Session of the Assembly of the Union, held in Addis Ababa from 29 to 30 January 2007, the Commission was encouraged to pursue its efforts with regard to the structural prevention of conflicts, including through the implementation of the AUBP [Decision Assembly/AU/ Dec.145(VIII)]. As a follow-up to this decision, the Commission convened, in Addis Ababa, on 7 June 2007, the first-ever Conference of African Ministers in charge of border issues. The Conference adopted a Declaration on the AUBP and its Implementation Modalities, which, as indicated above, was endorsed by the Executive Council in Accra.

III. KEY ELEMENTS OF THE AUBP

6. As spelt out in the Declaration, the AUBP aims at:

- addressing the issue of border delimitation and demarcation;
- consolidating the gains made in the regional integration process, as demonstrated by the existence of the Regional Economic Communities (RECs) and of numerous large-scale cooperation initiatives; and
- facilitating the development of cross-border integration dynamics sustained by local stakeholders.

7. In the Declaration, the Ministers stressed that the implementation of the AUBP should be effected at several levels - national, regional and continental - and that the responsibility of each of these levels should be determined on the basis of the principle of subsidiarity and respect for the sovereignty of States. In this regard, the Declaration specifies the respective roles to be played by Member States, RECs and the AU with respect to the various components of the AUBP, namely border delimitation and demarcation, local cross-border cooperation and capacity building.

8. With respect to resource mobilization and partnership, the Ministers requested the Commission to coordinate and implement the AUBP on the basis of an inclusive governance involving the Member States, the RECs, parliamentarians, locally elected representatives and civil society, as well as the European border movement, particularly the Association of European Border Regions (AEBR), the United Nations and other AU partners having experience in cross-border cooperation.

9. In order to launch the AUBP, the Ministers identified a number of initial measures to be taken by the Commission. These are the following:

- launching of a Pan-African survey of borders, through a questionnaire to be sent to all Member States, in order to facilitate the delimitation and demarcation of African borders;
- identification of pilot regions or initiatives for the rapid development of regional support programmes on cross-border cooperation, as well as support for the establishment of regional funds for local cross-border cooperation;

- working out modalities for cooperation with other regions of the world to benefit from their experiences and to build the necessary partnerships;
- initiation an assessment with regard to capacity building;
- preparation of a continental legal instrument on cross-border cooperation; and
- launching of a partnership and resource mobilization process for the implementation of the AUBP.

10. At the 14th Ordinary Session of the Executive Council held in Addis Ababa, from 29 to 30 January 2009, the Commission presented a report on the implementation of the AU Border Programme(Document EX.Cl/459 XIV). On its part, the Council adopted the decision (EX.CL/461 (XIV), in which:

- welcomed the progress made in the implementation of the AUBP;
- encouraged the Commission to persevere in its efforts, in particular through the pursuit of the enhancement of its capacities, notably in terms of human resources, the sensitization campaign on the AUBP, the launching of consultancies on the key components of the AUBP, the elaboration of a legal instrument on cross-border cooperation, the initiation of a programme of exchange of experiences and best practices and the convening of the Second Conference of African Ministers in charge of Border Issues;
- invited Member States to take all the necessary measures to fully play their role in the implementation of the AUBP; and
- encouraged the Commission to take initiatives to develop cross-border cooperation, both as an indispensable complement of delimitation and demarcation of African borders, where this has not yet been done.

IV. IMPLEMENTATION OF THE AU BORDER PROGRAMME

11. Three years into the implementation of the AUBP, the Commission has recorded milestone achievements. These include**:**

- Adoption of a Declaration on the AUBP by African Ministers in charge of border issues on 7 June 2007;
- Endorsement of the Declaration and its Implementation Modalities at the 11th Session of AU Executive Council on 27 June 2007;
- Establishment of a special unit within the Conflict Management Division of the Peace and Security Department of AU Commission in charge of the implementation of the Programme;
- Articulation and systematic sensitization of the AUBP at RECs and member states' levels by means of Joint Sensitization Workshops with the RECs;
- Launching of a continent-wide survey of African borders by means of a questionnaire sent to all member states;
- Establishment of the Boundary Information System (BIS) - a data bank of information on African boundaries;
- Partnership with development partners such as the German Technical Cooperation (GTZ) and specialized institutions such as the United Nations (UN), the European Union (EU), OAS, etc.;

- Securing direct GTZ support for some Member States' efforts towards delimitation and demarcation of their boundaries and for capacity building;
- Organizing along with the Republic of Mozambique of the Second International Symposium on Land, River and Lake Boundaries Management in December 2008;
- Publication of books on AUBP entitled "**From Barriers to Bridges**…" and a **Good Practice Handbook on Delimitation of African Boundaries** (in Press);
- Organizing the first ever Pan African Conference on Maritime Boundaries and the Continental Shelf in Accra, Ghana, 9-10 November 2009;
- Preparation of a Draft Convention for Cross-Border Corporation.

V. THE SECOND CONFERENCE OF AFRICAN MINISTERS IN CHARGE OF BORDER ISSUES

12. As a follow-up to the aforementioned activities, the Commission is organizing the Second Conference of African Ministers in Charge of Border Issues in Addis Ababa, Ethiopia, from 22 to 25 March 2010, which will be preceded by a meeting of Governmental experts. The Conference is expected to:

- review the progress of the implementation of the AU border Programme;
- devise, where necessary, further implementation strategies for the programme; and
- prepare and adopt an Action Plan for the Implementation of the programme for the period 2010-2012.

Annex 12

U.N. General Assembly, Sixty-Sixth Session, *Report of the International Law Commission on the work of its sixty-third session (26 April-3 June and 4 July-12 August 2011)*, U.N. Doc. A/66/10/Add.1 (2011)

A/66/10/Add.1

United Nations

Report of the International Law Commission

Sixty-third session
(26 April-3 June and 4 July-12 August 2011)

General Assembly
Official Records
Sixty-sixth Session
Supplement No. 10

Annex 12

General Assembly
Official Records
Sixty-sixth Session
Supplement No. 10

Report of the International Law Commission

Sixty-third session
(26 April-3 June and 4 July-12 August 2011)

United Nations • New York, 2011

Note

Symbols of United Nations documents are composed of letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

The word *Yearbook* followed by suspension points and the year (e.g. *Yearbook ... 1971*) indicates a reference to the *Yearbook of the International Law Commission*.

A typeset version of the report of the Commission will be included in Part Two of volume II of the *Yearbook of the International Law Commission 2011*.

ISSN 0251-822X

Contents

Chapter IV
Reservations to treaties (*continued*)

F. Text of the Guide to Practice on Reservations to Treaties, adopted by the Commission at its sixty-third session

1. Text of the guidelines constituting the Guide to Practice, followed by an annex on the reservations dialogue (*A/66/10, para. 75*)

1. The text of the guidelines constituting the Guide to Practice on Reservations to Treaties adopted by the Commission at its sixty-third session, followed by an annex on the reservations dialogue, is reproduced below:

Guide to Practice on Reservations to Treaties

1. Definitions

1.1 Definition of reservations

1. "Reservation" means a unilateral statement, however phrased or named, made by a State or an international organization when signing, ratifying, formally confirming, accepting, approving or acceding to a treaty, or by a State when making a notification of succession to a treaty, whereby the State or organization purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State or to that international organization.

2. Paragraph 1 is to be interpreted as including reservations which purport to exclude or to modify the legal effect of certain provisions of a treaty, or of the treaty as a whole with respect to certain specific aspects, in their application to the State or to the international organization which formulates the reservation.

1.1.1 Statements purporting to limit the obligations of their author

A unilateral statement formulated by a State or an international organization at the time when that State or that organization expresses its consent to be bound by a treaty, by which its author purports to limit the obligations imposed on it by the treaty, constitutes a reservation.

1.1.2 Statements purporting to discharge an obligation by equivalent means

A unilateral statement formulated by a State or an international organization at the time when that State or that organization expresses its consent to be bound by a treaty, by which that State or that organization purports to discharge an obligation pursuant to the treaty in a

2. A State or an international organization that intends to treat an interpretative declaration as a reservation should take into account guidelines 1.3 to 1.3.3.

2.9.4 Right to formulate approval or opposition, or to recharacterize

An approval, opposition or recharacterization in respect of an interpretative declaration may be formulated at any time by any contracting State or any contracting organization and by any State or any international organization that is entitled to become a party to the treaty.

2.9.5 Form of approval, opposition and recharacterization

An approval, opposition or recharacterization in respect of an interpretative declaration should preferably be formulated in writing.

2.9.6 Statement of reasons for approval, opposition and recharacterization

An approval, opposition or recharacterization in respect of an interpretative declaration should, to the extent possible, indicate the reasons why it is being formulated.

2.9.7 Formulation and communication of approval, opposition or recharacterization

Guidelines 2.1.3, 2.1.4, 2.1.5, 2.1.6 and 2.1.7 are applicable *mutatis mutandis* to an approval, opposition or recharacterization in respect of an interpretative declaration.

2.9.8 Non-presumption of approval or opposition

1. An approval of, or an opposition to, an interpretative declaration shall not be presumed.

2. Notwithstanding guidelines 2.9.1 and 2.9.2, an approval of an interpretative declaration or an opposition thereto may be inferred, in exceptional cases, from the conduct of the States or international organizations concerned, taking into account all relevant circumstances.

2.9.9 Silence with respect to an interpretative declaration

An approval of an interpretative declaration shall not be inferred from the mere silence of a State or an international organization.

3. Permissibility of reservations and interpretative declarations

3.1 Permissible reservations

A State or an international organization may, when signing, ratifying, formally confirming, accepting, approving or acceding to a treaty, formulate a reservation unless:

(a) the reservation is prohibited by the treaty;

(b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or

(c) in cases not falling under subparagraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.

3.1.1 Reservations prohibited by the treaty

A reservation is prohibited by the treaty if it contains a provision:

(a) prohibiting all reservations;

(b) prohibiting reservations to specified provisions to which the reservation in question relates; or

(c) prohibiting certain categories of reservations including the reservation in question.

3.1.2 Definition of specified reservations

For the purposes of guideline 3.1, the expression "specified reservations" means reservations that are expressly envisaged in the treaty to certain provisions of the treaty or to the treaty as a whole with respect to certain specific aspects.

3.1.3 Permissibility of reservations not prohibited by the treaty

Where the treaty prohibits the formulation of certain reservations, a reservation which is not prohibited by the treaty may be formulated by a State or an international organization only if it is not incompatible with the object and purpose of the treaty.

3.1.4 Permissibility of specified reservations

Where the treaty envisages the formulation of specified reservations without defining their content, a reservation may be formulated by a State or an international organization only if it is not incompatible with the object and purpose of the treaty.

3.1.5 Incompatibility of a reservation with the object and purpose of the treaty

A reservation is incompatible with the object and purpose of the treaty if it affects an essential element of the treaty that is necessary to its general tenour, in such a way that the reservation impairs the *raison d'être* of the treaty.

3.1.5.1 Determination of the object and purpose of the treaty

The object and purpose of the treaty is to be determined in good faith, taking account of the terms of the treaty in their context, in particular the title and the preamble of the treaty. Recourse may also be had to the preparatory work of the treaty and the circumstances of its conclusion and, where appropriate, the subsequent practice of the parties.

3.1.5.2 Vague or general reservations

A reservation shall be worded in such a way as to allow its meaning to be understood, in order to assess in particular its compatibility with the object and purpose of the treaty.

3.1.5.3 Reservations to a provision reflecting a customary rule

The fact that a treaty provision reflects a rule of customary international law does not in itself constitute an obstacle to the formulation of a reservation to that provision.

3.1.5.4 Reservations to provisions concerning rights from which no derogation is permissible under any circumstances

A State or an international organization may not formulate a reservation to a treaty provision concerning rights from which no derogation is permissible under any circumstances, unless the reservation in question is compatible with the essential rights and obligations arising out of that treaty. In assessing that compatibility, account shall be taken of the importance which the parties have conferred upon the rights at issue by making them non-derogable.

3.1.5.5 Reservations relating to internal law

A reservation by which a State or an international organization purports to exclude or to modify the legal effect of certain provisions of a treaty or of the treaty as a whole in order to preserve the integrity of specific rules of the internal law of that State or of specific rules of that organization in force at the time of the formulation of the reservation may be formulated only insofar as it does not affect an essential element of the treaty nor its general tenour.

3.1.5.6 Reservations to treaties containing numerous interdependent rights and obligations

To assess the compatibility of a reservation with the object and purpose of a treaty containing numerous interdependent rights and obligations, account shall be taken of that interdependence as well as the importance that the provision to which the reservation relates has within the general tenour of the treaty, and the extent of the impact that the reservation has on the treaty.

3.1.5.7 Reservations to treaty provisions concerning dispute settlement or the monitoring of the implementation of the treaty

A reservation to a treaty provision concerning dispute settlement or the monitoring of the implementation of the treaty is not, in itself, incompatible with the object and purpose of the treaty, unless:

(i) the reservation purports to exclude or modify the legal effect of a provision of the treaty essential to its *raison d'être*; or

(ii) the reservation has the effect of excluding the reserving State or international organization from a dispute settlement or treaty implementation monitoring mechanism with respect to a treaty provision that it has previously accepted, if the very purpose of the treaty is to put such a mechanism into effect.

3.2 Assessment of the permissibility of reservations

The following may assess, within their respective competences, the permissibility of reservations to a treaty formulated by a State or an international organization:

- contracting States or contracting organizations;
- dispute settlement bodies;
- treaty monitoring bodies.

3.2.1 Competence of the treaty monitoring bodies to assess the permissibility of reservations

1. A treaty monitoring body may, for the purpose of discharging the functions entrusted to it, assess the permissibility of reservations formulated by a State or an international organization.

2. The assessment made by such a body in the exercise of this competence has no greater legal effect than that of the act which contains it.

3.2.2 Specification of the competence of treaty monitoring bodies to assess the permissibility of reservations

When providing bodies with the competence to monitor the application of treaties, States or international organizations should specify, where appropriate, the nature and the limits of the competence of such bodies to assess the permissibility of reservations.

3.2.3 Consideration of the assessments of treaty monitoring bodies

States and international organizations that have formulated reservations to a treaty establishing a treaty monitoring body shall give consideration to that body's assessment of the permissibility of the reservations.

3.2.4 Bodies competent to assess the permissibility of reservations in the event of the establishment of a treaty monitoring body

When a treaty establishes a treaty monitoring body, the competence of that body is without prejudice to the competence of the contracting States or contracting organizations to assess the permissibility of reservations to that treaty, or to that of dispute settlement bodies competent to interpret or apply the treaty.

3.2.5 Competence of dispute settlement bodies to assess the permissibility of reservations

When a dispute settlement body is competent to adopt decisions binding upon the parties to a dispute, and the assessment of the permissibility of a reservation is necessary for the discharge of such competence by that body, such assessment is, as an element of the decision, legally binding upon the parties.

3.3 Consequences of the non-permissibility of a reservation

3.3.1 Irrelevance of distinction among the grounds for non-permissibility

A reservation formulated notwithstanding a prohibition arising from the provisions of the treaty or notwithstanding its incompatibility with the object and purpose of the treaty is impermissible, without there being any need to distinguish between the consequences of these grounds for non-permissibility.

3.3.2 Non-permissibility of reservations and international responsibility

The formulation of an impermissible reservation produces its consequences pursuant to the law of treaties and does not engage the international responsibility of the State or international organization which has formulated it.

3.3.3 Absence of effect of individual acceptance of a reservation on the permissibility of the reservation

Acceptance of an impermissible reservation by a contracting State or by a contracting organization shall not affect the impermissibility of the reservation.

3.4 Permissibility of reactions to reservations

3.4.1 Permissibility of the acceptance of a reservation

Acceptance of a reservation is not subject to any condition of permissibility.

3.4.2 Permissibility of an objection to a reservation

An objection to a reservation by which a State or an international organization purports to exclude in its relations with the author of the reservation the application of provisions of the treaty to which the reservation does not relate is only permissible if:

(1) the provisions thus excluded have a sufficient link with the provisions to which the reservation relates; and

(2) the objection would not defeat the object and purpose of the treaty in the relations between the author of the reservation and the author of the objection.

3.5 Permissibility of an interpretative declaration

A State or an international organization may formulate an interpretative declaration unless the interpretative declaration is prohibited by the treaty.

3.5.1 Permissibility of an interpretative declaration which is in fact a reservation

If a unilateral statement which appears to be an interpretative declaration is in fact a reservation, its permissibility must be assessed in accordance with the provisions of guidelines 3.1 to 3.1.5.7.

3.6 Permissibility of reactions to interpretative declarations

An approval of, opposition to, or recharacterization of, an interpretative declaration shall not be subject to any conditions for permissibility.

4. Legal effects of reservations and interpretative declarations

4.1 Establishment of a reservation with regard to another State or international organization

A reservation formulated by a State or an international organization is established with regard to a contracting State or a contracting organization if it is permissible and was formulated in accordance with the required form and procedures, and if that contracting State or contracting organization has accepted it.

4.1.1 Establishment of a reservation expressly authorized by a treaty

1. A reservation expressly authorized by a treaty does not require any subsequent acceptance by the other contracting States and contracting organizations, unless the treaty so provides.

2. A reservation expressly authorized by a treaty is established with regard to the other contracting States and contracting organizations if it was formulated in accordance with the required form and procedures.

4.1.2 Establishment of a reservation to a treaty which has to be applied in its entirety

When it appears, from the limited number of negotiating States and organizations and the object and purpose of the treaty, that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation to this treaty is established with regard to the other contracting States and contracting organizations if it is permissible and was formulated in accordance with the required form and procedures, and if all the contracting States and contracting organizations have accepted it.

4.1.3 Establishment of a reservation to a constituent instrument of an international organization

When a treaty is a constituent instrument of an international organization, a reservation to this treaty is established with regard to the other contracting States and contracting organizations if it is permissible and was formulated in accordance with the required form and procedures, and if it has been accepted in conformity with guidelines 2.8.8 to 2.8.11.

4.2 Effects of an established reservation

4.2.1 Status of the author of an established reservation

As soon as a reservation is established in accordance with guidelines 4.1 to 4.1.3, its author becomes a contracting State or contracting organization to the treaty.

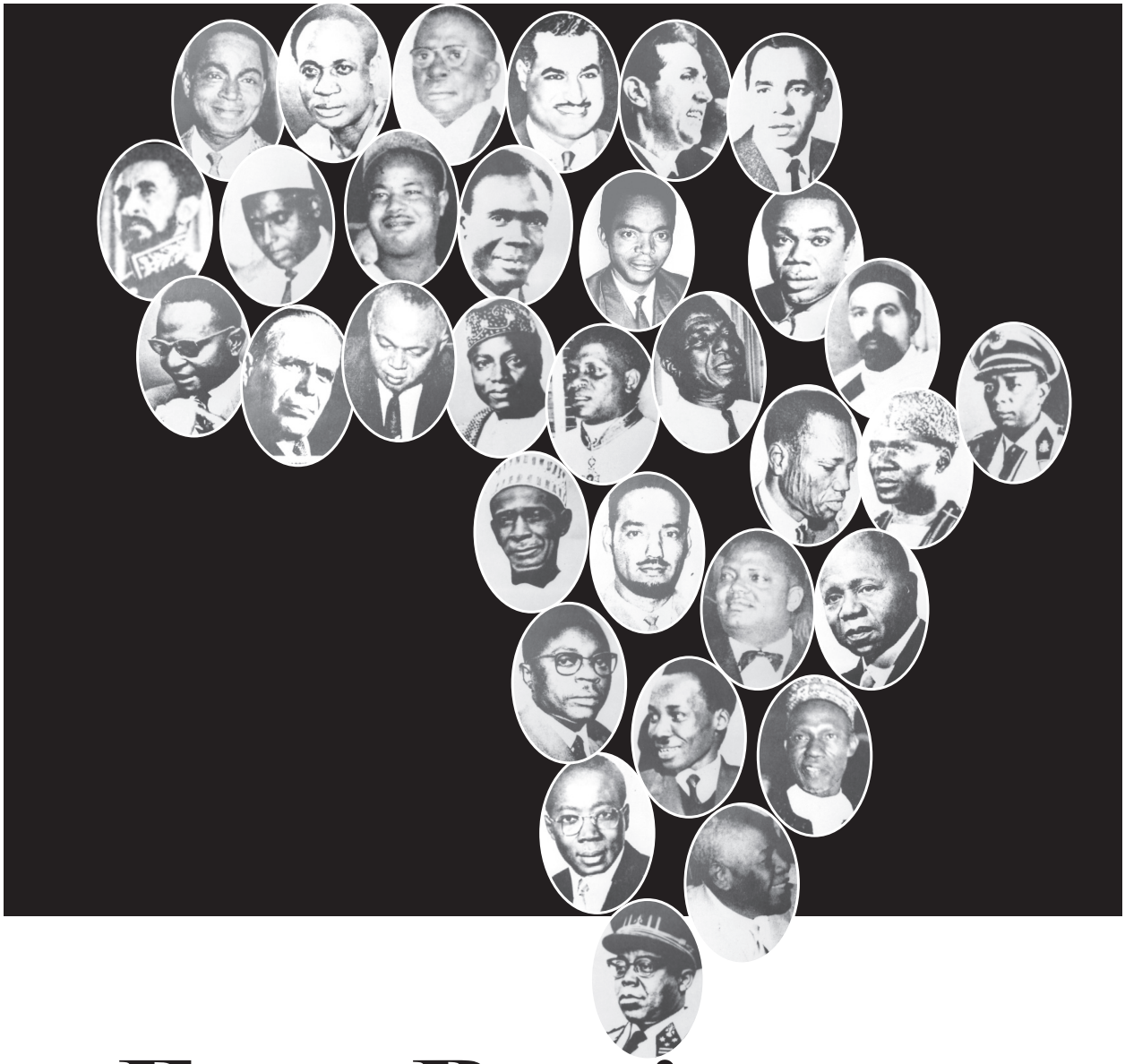
4.2.2 Effect of the establishment of a reservation on the entry into force of a treaty

1. When a treaty has not yet entered into force, the author of a reservation shall be included in the number of contracting States and contracting organizations required for the treaty to enter into force once the reservation is established.

2. The author of the reservation may however be included at a date prior to the establishment of the reservation in the number of contracting States and contracting organizations required for the treaty to enter into force, if no contracting State or contracting organization is opposed.

Annex 13

African Union Border Programme, *Third Declaration on the African Union Border Programme Adopted by the Third Conference of African Ministers in Charge of Border Issues, Niamey, Niger, AUBP/EXP-MIN/7* (17 May 2012), *reprinted in* Africa, From Barriers to Bridges: Collection of Official Texts on African Borders from 1963 to 2012 (2013)



From Barriers to Bridges

Collection of Official Texts on African Borders from 1963 to 2012

2nd edition, 2013

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implementation of the AUBP, and ENCOURAGES them to continue to provide and step up their support;

4 URGES Member States to take appropriate measures to implement the Declaration, especially the components relating to delimitation/demarcation, cross-border cooperation and capacity building;

5 REQUESTS the Commission, in collaboration with the Regional Economic Communities to fully play their respective roles in the implementation and monitoring of the AUBP;

6 ENDORSES the recommendation by the Second Conference of African Ministers in charge of Border Issues to institute an "African Day for Borders" so as to further highlight the importance of the AUBP and encourage additional efforts towards its implementation;

7 RECOMMENDS to the Assembly that the "African Day for Borders" be celebrated every year on 7 June, in reference to the date of the First Conference of African Ministers in charge of Border Issues;

8 REQUESTS the Commission and Member States to take advantage of the activities programmed within the framework of "2010: The Year of Peace and Security in Africa" to underscore the importance of the AUBP and the contribution expected from its implementation towards enhancing the structural prevention of conflicts;

9 ALSO REQUESTS the Commission to report regularly to the Executive Council on the implementation of this Decision.

viii THIRD DECLARATION ON THE AFRICAN UNION BORDER PROGRAMME ADOPTED BY THE THIRD CONFERENCE OF AFRICAN MINISTERS IN CHARGE OF BORDER ISSUES, NIAMEY, NIGER, 17 MAY 2012, AUBP/EXP-MIN/7 (5)

1 We, the Ministers of Member States of the African Union (AU) in Charge of Border Issues, have held our 3rd Conference in Niamey, Niger, on 17 May 2012, to deliberate on the status of implementation the AU Border Programme (AUBP). Our Conference was preceded by a preparatory meeting of experts, from 14 to 16 May 2012. It also witnessed the participation in its deliberations, for the first time, of the Republic of South Sudan, after its accession to independence in July 2011, which we warmly welcome.

2 Our Conference was held as the follow-up to the implementation of Declarations BP/MIN/Decl.(II) and AUBP/EXP-MIN/7(II), issued at the end of the First and Second Conferences of African Ministers in Charge of Border Issues, held in Addis Ababa, Ethiopia, on 7 June 2007 and 25 March 2010, respectively, and the relevant decisions of the Executive Council and the Assembly of the Union. More generally, our Conference took place against the background of the implementation of the various resolutions and decisions adopted by African leaders on peace and security issues, as well as on regional integration.

3 We have reviewed the status of the implementation of the AUBP. In this regard, we welcome the gradual ownership of the Programme by the Member States and other stakeholders, for this is a prerequisite for attaining the AUBP objectives. We are also pleased that the AUBP, after an initial phase of popularisation and sensitisation, has now entered an operational phase, marked by increased support for the delimitation and demarcation exercises, the promotion of cross-border cooperation and capacity building. We note with satisfaction the progress made in the field, with the multiplication of initiatives by the Member States to implement the various aspects of the AUBP, and the celebration, on 7 June 2011, of the First African Border Day.

4 We also note the emergence of new security challenges, as particularly illustrated by the crisis in the Sahelo-Saharan region, which, beyond the delimitation and demarcation of boundaries, highlight the need for States to ensure the effective control of their territories and to enhance inter-African cooperation in the field of border security. Similarly, we note, with concern, the persistent "thickness" of African borders, which largely explains the low rate of intra-African trade and the problems faced in the free movement of persons. These constraints weigh heavily on landlocked countries that depend greatly on major transport corridors for their international trade and, therefore, impede economic development efforts. Finally, the lack of delimitation of maritime boundaries constitutes a hindrance to the development of energy, fishery and other marine resources by the coastal states.

5 In this context, we stress the relevance of the principles underlying the AUBP, as stated in the relevant instruments of the AU, particularly the principle of the respect of borders existing at the time of accession of our countries to independence; the principle of peaceful settlement of border disputes; and the commitment to delimit and demarcate African boundaries, as factors of peace, security and economic and social progress.

6 In light of the above, we reaffirm our commitment to make renewed efforts for the effective implementation of the different components of AUBP, aware as we are of the fact that clearly demarcated and well managed borders are necessary to maintain peace, security and stability, enhance economic integration, facilitate trade and transform borders from barriers to bridges, in particular through local cross-border cooperation initiatives.

7 At the same time, we recognise the huge tasks that have to be carried out to attain all the objectives we set for ourselves, as demonstrated by:

- (i) the inadequate responses to the questionnaire that was sent to Member States within the framework of the survey on the status of African borders (five years after its launch, twenty-two Member States have not yet responded to the questionnaire), which does not make it possible to have a comprehensive view of delimitation and demarcation needs;
- (ii) the fact, based on responses received to date, that only 35 % of African borders are delimited and demarcated, while this operation was originally to be completed in 2012, in conformity with the Memorandum of Understanding on the Conference on Security, Stability, Development and Cooperation in Africa(CSSDCA);
- (iii) the persistence of border disputes, which can degenerate into serious conflicts;
- (iv) the low rate of cross-border cooperation, whether at local level or within the framework of large scale integration projects; and
- (v) the inappropriate ratio between existing human capacity and technical and financial resources, considering the needs for the effective implementation of the AUBP.

8 We stress the need, given the current challenges, of integrated border management, to tackle, in a holistic way, development and security challenges in the border areas. We, therefore, encourage Member States to develop integrated national policies and strategies in this regard, and to establish, where appropriate, the necessary institutional structures. We request the Commission to finalise, as soon as possible, the strategy, currently being prepared, on integrated border management.

9 As part of such an approach, we reiterate the urgent need for the effective implementation of the various components of the AUBP.

On delimitation, demarcation and reaffirmation of boundaries:

10 Bearing in mind the need to do everything to successfully complete the delimitation and demarcation of African boundaries, where such an exercise has not yet taken place, in compliance with the new deadline of 2017 set by the Assembly of the Union, at its session in Malabo, in July 2011, we agree to the following:

(i) the completion of the collection of all the data for the survey of African borders by July 2012 at the latest. Member States, which have not yet done so are requested to respond to the questionnaire sent by the Commission within the time specified;

(ii) the submission by each Member State of an annual report on the progress made in the demarcation of its borders based on the format designed by the Commission;

(iii) the acceleration by the Member States of the delimitation and demarcation of their boundaries, where this exercise has not yet taken place, taking, if necessary, all appropriate legal, financial, institutional and other measures for this purpose, so as to comply with the new deadline of 2017. Likewise, we urge Member States involved in border disputes, to do everything for their early resolution, through peaceful means, with the support, if necessary, of the AU and other appropriate African mechanisms;

(iv) the adoption of concrete measures for regular maintenance and, where appropriate, the densification of boundary pillars, so as to make them more visible and consequently reduce the risk of disputes;

(v) the inclusion of a component on the destruction of antipersonnel mines in the delimitation and demarcation plan; and

(vi) the speedy finalisation of the Guide currently under preparation, on good practices in the delimitation and demarcation of boundaries.

On cross-border cooperation:

11 For the purpose of attaining our strategic objective on cross-border cooperation, we agree on the following measures:

(i) the adoption of the AU Convention on Cross-Border Cooperation. We call upon all the Member States to sign, ratify or accede to this Convention and ensure its rapid entry into force;
(ii) the effective implementation, by the AU and the Regional Economic Communities (RECs), of an exchange programme on cross-border cooperation among African states and other stakeholders;
(iii) the preparation by the AU Commission, in close collaboration with the RECs, of a Plan of Action to encourage and support local initiative cross-border cooperation, being understood that Member States will take all the necessary measures to facilitate this cooperation;
(iv) the enhancement of cross-border cooperation in the prevention and fight against terrorism, cross-border crime and other threats, including illegal fishing, piracy and other related acts, within the framework of the relevant instruments of the AU. In this regard, we stress the importance of sharing information and intelligence, and the proper role of the African Centre for Study and Research on Terrorism (ACSRT);
(v) the implementation and adoption, as appropriate, by Member States of measures aimed at reducing the time of transit and removing non-tariff barriers at the borders so as to facilitate easy movement of goods and persons, in accordance with the relevant decisions of the AU and the RECs;
(vi) the encouragement of joint management of transboundary resources, based on relevant African and international experiences;
(vii) the finalisation of the "Guide on Enhancing Cross-border Cooperation", currently being prepared by the Commission; and
(viii) the application of specific arrangements to the situation of Island States.

On capacity building:

12 Aware of the critical importance of capacity building, we have identified the following priorities:

(i) the acceleration of the implementation of the provisions agreed upon during our Second Conference, in particular regarding the inventory of experts and research and training institutions on the continent dealing with border issues, networking of existing institutions, both among themselves and between them and similar institutions outside Africa, and development of curricula and training programmes on border issues;

(ii) the establishment by the Member States, which have not yet done so, of National Boundary Commissions;

(iii) the organisation of training workshops for African border institutions. In this regard, we request our international partners, particularly the German Government through the GIZ, the European Union (EU), the United Nations (UN) and other bilateral and multilateral partners, to provide the necessary support; and

(iv) the adoption by the Commission of a more integrated approach, considering the multidimensional nature of the AUBP.

On the popularisation of the AUBP

13 To enhance the popularisation of the AUBP and consequently facilitate ownership at all levels, we have agreed as follows:

(i) the preparation of a communication and sensitisation plan to raise greater awareness about the AUBP and specify the respective roles of national, regional and continental partners; and

(ii) the adoption of practical measures by Member States to celebrate effectively the Africa Border Day.

On partnership and resource mobilisation:

14 We express our gratitude to the international partners that support the AUBP and whose assistance has enabled us to achieve significant results. We, particularly, welcome the support from the German Government through the GIZ. We also appreciate the support of the United Kingdom regarding the demarcation of the border between The Sudan and South Sudan.

15 To strengthen existing partnerships, we have agreed as follows:

(i) the continuation and intensification of interaction with the international partners concerned, in particular the GIZ, the EU, the UN, the Association of European Border Regions (AEBR) and other partners, to facilitate the exchange of experiences and mobilise their support;

(ii) the organisation, at the latest in December 2012, of the Conference on resource mobilisation to support the implementation of AUBP, to which the private sector shall be invited; and

(iii) the urgent establishment, pending the signing and entry into force of the AU Convention on Cross-Border Cooperation, of a Fund to support the activities of the AUBP. In this respect, we call upon the Member States to contribute significantly to the funding of the AUBP.

On the follow-up of this declaration:

16 We request the Executive Council to endorse this Declaration. We call upon Member States, RECs and other stakeholders concerned to take the necessary measures for the implementation of the provisions of this Declaration.

17 We call upon the Commission to ensure the follow-up to this Declaration. In particular, we urge the Commission to finalise, in consultation with Member States and other stakeholders concerned, the Strategic Plan for the implementation of AUBP for the period 2013 to 2017.

18 We agree to hold our next Conference in 2014 to consider the status of the implementation of the AUBP and take any necessary action.

Annex 14

U.N. Commission on the Limits of the Continental Shelf, *Progress of work in the Commission on the Limits of the Continental Shelf: Statement by the Chair*, U.N. Doc. CLCS/90 (1 Oct. 2015)

United Nations Convention on the Law of the Sea CLCS/90

Commission on the Limits of the Continental Shelf

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New York, 20 July-4 September 2015

Progress of work in the Commission on the Limits of the Continental Shelf

Statement by the Chair

Summary

The present statement provides information on the work carried out by the Commission on the Limits of the Continental Shelf and its subcommissions during its thirty-eighth session. In particular, it contains an overview of the progress made in the examination of the submissions made by Uruguay; the Cook Islands, in respect of the Manihiki Plateau; Argentina; Iceland, in respect of the Ægir Basin area and the western and southern parts of Reykjanes Ridge; Norway, in respect of Bouvetøya and Dronning Maud Land; South Africa, in respect of the mainland of the territory of the Republic of South Africa; the Federated States of Micronesia, Papua New Guinea and Solomon Islands, jointly, concerning the Ontong Java Plateau; France and South Africa, jointly, in the area of the Crozet Archipelago and the Prince Edward Islands; and Mauritius, in the region of Rodrigues Island. The statement also contains information about the newly established subcommissions and the initial examination of the submission made by Nigeria, as well as information about presentations to the Commission of new or revised submissions made by Brazil, Angola, Spain and, jointly, by Cabo Verde, the Gambia, Guinea, Guinea-Bissau, Mauritania, Senegal and Sierra Leone. In addition, it provides information about presentations made by the Cook Islands and Argentina and other issues dealt with by the Commission during the thirty-eighth session.

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9. The Commission reiterated its view that, when matters pertaining to the conditions of service were addressed, no distinction should be made between members of the Commission from developing and developed States, and that the concerns of the Commission went well beyond adequate medical coverage.[4]

10. The Commission restated its understanding that the reimbursement of the costs of medical travel insurance for those members who benefited from the trust fund established pursuant to General Assembly resolution 55/7 for facilitating the participation of members of the Commission from developing countries in the meetings of the Commission was an interim measure and that a more permanent solution would be presented in the future.[5]

11. The Commission also expressed its expectation that the Meeting of States Parties would satisfactorily address other conditions of service of its members, as reflected in paragraph 77 of the report of the twenty-third Meeting of States Parties (SPLOS/263), before the end of the term of office of the current Commission in June 2017.

Reconstitution and establishment of subcommissions

12. In the light of the progress in its work, the Commission decided to proceed with the further consideration of three new or revised submissions by reconstituting or establishing subcommissions, on the basis of its rules of procedure (CLCS/40/Rev.1), in particular rule 42, paragraphs 1 and 2, and practice regarding the establishment of subcommissions.

13. In doing so, the Commission took into account the decision taken at its twenty-sixth session whereby revised submissions would be considered on a priority basis notwithstanding the queue (see CLCS/68, and Corr.1, para. 57). Therefore, in view of the receipt of the partial revised submission made by Brazil in respect of the Southern Region on 10 April 2015,[6] the Commission first proceeded to fill certain vacancies in the subcommission for consideration of the submission made by Brazil on 17 May 2004. These vacancies had resulted from the partial change in the membership of the Commission since the adoption of the recommendations in respect of the submission made by Brazil on 17 May 2004.[7]

14. In this connection, the Commission noted that Messrs. Awosika, Carrera (Chair of the subcommission for consideration of the submission made by Brazil on 17 May 2004), Lyu and Park, members of the subcommission established in 2004, were still members of the Commission. Following consultations, the Commission appointed Messrs. Heinesen, Madon and Oduro to fill the three vacancies. In addition, the Commission decided that Mr. Lyu would no longer serve as a member of the subcommission, so that he could be appointed as a member of another subcommission with a view to ensuring an even distribution of the workload among

[4] See CLCS/83, para. 10; CLCS/85, para. 11; and CLCS/88, para. 9.
[5] See CLCS/88, para. 9.
[6] See also the section of the present report concerning item 14.
[7] See www.un.org/depts/los/clcs_new/submissions_files/submission_bra.htm. See also rule 42, paragraph 2, of the rules of procedure of the Commission, according to which "the term of a subcommission shall extend from the time of its appointment to the time that the submitting coastal State deposits, in accordance with article 76, paragraph 9, of the Convention, the charts and relevant information, including geodetic data, regarding the outer limits for that part of the continental shelf for which the submission was originally made".

the members of the Commission, (see para. 23 below). In this regard, the Commission agreed that the seventh member of the subcommission would be appointed at a subsequent stage.[8] The subcommission met and elected Messrs. Oduro and Park as Vice-Chairs. The Commission decided that the meetings of the subcommission during the thirty-ninth session would be held from 2 to 13 November 2015.

15. Subsequently, the Commission, in accordance with its practice, reviewed the other submissions at the head of the queue, namely, those made by Myanmar; Yemen, in respect of south-east of Socotra Island; the United Kingdom of Great Britain and Northern Ireland, in respect of Hatton-Rockall Area; Ireland, in respect of Hatton-Rockall Area; Fiji; Malaysia and Viet Nam, jointly, in respect of the southern part of the South China Sea; Kenya; and Viet Nam, in respect of North Area.

16. Noting that, except in the case of the submission made by Kenya, there had been no developments communicated by States to indicate that consent existed on the part of States concerned which would allow for the consideration of those submissions, the Commission decided to defer further the establishment of the respective subcommissions. The Commission also decided that, since those submissions remained next in line for consideration, as queued in the order in which they had been received, it would review the situation at the time of establishment of its next subcommission (see CLCS/76, paras. 22-24).

17. With regard to the submission made by Kenya, the Commission recalled the decision taken during the thirty-fifth session (see CLCS/85, paras. 64 and 65) to revert to the consideration of that submission at the plenary level at the time when it would be next in line for consideration as queued in the order in which it had been received. In this regard, the Commission took note of a communication received since the thirty-fifth session, namely, the communication from Somalia dated 7 July 2015. In the light of that communication, the Commission determined that it was in a position to proceed with the establishment of a subcommission.

18. After consultations, the Commission appointed Messrs. Awosika, Carrera, Heinesen, Madon, Marques, Oduro and Park as members of the subcommission. The subcommission met and elected Mr. Park as Chair and Messrs. Awosika and Marques as Vice-Chairs. The Commission decided that the meetings of the subcommission during the thirty-ninth session would be held from 19 to 30 October and from 16 to 20 November 2015.

19. In relation to the submission by Kenya, the Commission also recalled the communication from Sri Lanka dated 22 July 2009 (see CLCS/64, para. 96), in which it was stated, inter alia, that:

> Sri Lanka also wishes to confirm its position that the application of the Statement of Understanding and the Commission's mandate to make recommendations under the said Statement, as per paragraph 1 (a) of article 3 of annex II to the Convention on the Law of the Sea, is limited to the States in the southern part of the Bay of Bengal, as reflected in paragraph 5 of the Statement of Understanding.

[8] Thus, the current composition of the subcommission is as follows: Messrs. Awosika, Carrera, Heinesen, Madon, Oduro and Park.

20. In addition, the Commission recalled the communication from Kenya dated 29 October 2013 (see CLCS/83, and Corr.1, para. 18), in which it was stated, inter alia, that:

> Kenya wishes to reiterate and affirm her position in regard to the application of the Statement of Understanding as stated in her note verbale dated 30 April 2009 that referred to the Secretary-General's circular CLCS.16.2008.LOS (Continental Shelf Notification) dated 23 December 2008. Further, Kenya observes that consideration of practice and principles of international Law including, but not limited to, the Vienna Convention on the Law of Treaties, hold with esteem the equality and fairness in treatment of States. In this regard Kenya's position in application of the Statement of Understanding concerning a specific method to be used in establishing the outer edge of the continental margin (Statement of Understanding) as provided for in annex II to the United Nations Convention on the Law of the Sea is that of a general nature provided that the submitting State's continental margin exhibits special characteristics and that application of article 76 occasions an inequity.

21. The Commission concluded that there was a difference of views as to the interpretation and applicability of the provisions relating to the implementation of the Statement of Understanding among States. It also acknowledged that States, not the Commission, interpreted the Convention. While recalling its need to be kept informed about any further developments on this matter, and bearing in mind the definition of its mandate contained in paragraph 1 (a) and (b) of article 3 of annex II to the Convention, the Commission instructed the subcommission to consider the submission made by Kenya on a scientific and technical basis under the provisions of article 76 of the Convention and the Statement of Understanding.

22. The Commission then proceeded with the establishment of a subcommission for the consideration of the submission next in line, as queued in the order in which it had been received, namely, the submission made by Nigeria.

23. After consultations, the Commission appointed Messrs. Heinesen, Lyu, Mahanjane, Njuguna, Paterlini and Urabe as members of the subcommission. The Commission agreed that the seventh member of the subcommission would be appointed at a subsequent stage. The subcommission met and elected Mr. Mahanjane as Chair and Messrs. Heinesen and Lyu as Vice-Chairs (see also paras. 85-89).

24. Subsequently, in order to optimize the distribution of work among its members, the Commission appointed Mr. Marques as the seventh member of the subcommission established to consider the joint submission made by France and South Africa in respect of the area of the Crozet Archipelago and the Prince Edward Islands.

Annex 15

U.N. Peacekeeping, "U.N. Operation in Somalia I (UNOSOM I)", *available at* http://www.un.org/en/peacekeeping/missions/past/unosomi.htm (last accessed 11 Jan. 2016)

UNITED NATIONS OPERATION IN SOMALIA I (UNOSOM I)

Completed Peacekeping Operations — Somalia

UNITED NATIONS OPERATION IN SOMALIA I
UNOSOM I (April 1992 - March 1993)

UNOSOM I was established to monitor the ceasefire in Mogadishu and escort deliveries of humanitarian supplies to distribution centres in the city. The mission's mandate and strength were later enlarged to enable it to protect humanitarian convoys and distribution centres throughout Somalia. It later worked with the Unified Task Force in the effort to establish a safe environment for the delivery of humanitarian assistance

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UN Home Page

Annex 16

U.N. Peacekeeping, "U.N. Operation in Somalia II (UNOSOM II)", *available at* http://www.un.org/en/peacekeeping/missions/past/unosom2.htm (last accessed 11 Jan. 2016)

UNITED NATIONS OPERATION IN SOMALIA II (UNOSOM II)

Completed Peacekeping Operations — Somalia

UNITED NATIONS OPERATION IN SOMALIA II
UNOSOM II (March 1993 - March 1995)

UNOSOM II was established in March 1993 to take appropriate action, including enforcement measures, to establish throughout Somalia a secure environment for humanitarian assistance. To that end, UNOSOM II was to complete, through disarmament and reconciliation, the task begun by the Unified Task Force for the restoration of peace, stability, law and order. UNOSOM II was withdrawn in early March 1995

Mandate | Facts and Figures
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Annex 17

U.N. Peace Operations, "UNSOM United Nations Assistance Mission in Somalia", *available at* https://unsom.unmissions.org/ (last accessed 11 Jan. 2016)

ABOUT US

UNSOM

United Nations Assistance Mission in Somalia

LATEST NEWS | 11 Jan 2016 - UN General Assembly –'Parliament for all people' – celebrates 70th anniversary; 11 Jan 2016 - UN rights experts urge US to

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FEATURED NEWS IMAGES

Sharif Hassan Sheikh Adan (center), the leader of the Interim South West Administration (ISWA) and clan elders jubilate after successfully convening a reconciliation conference aimed at stopping inter-clan fighting in Afgoye, Somalia. 27January 2015. UN Photo

Xafiiska UNSOM wuxuu qirayaa guulo waawayn oo Soomaliya ay gaartay sanadka 2015

Muqdisho, 31 Disember 2015 – Iyadoo sanadka 2015 uu sii dhamaanayo, ayaa Xafiiska Hawlgalka Kaalmaynt Qaramada Midoobay ee Soomaaliya (UNSOM) wuxuu dadka iyo Dowladda Soomaaliyeed ugu hambalyaynayaa horumark ballaaran ee ay ka gaareen dadaalladooda ku aaddan dhismaha dalka iyo nabadda ee toban iyo labadii bilood ee lasoo dhaafay.

More >>

The United Nations Assistance Mission in Somalia underlines major achievements of Somalia in 2015

Mogadishu, 31 December 2015 - As 2015 comes to a close, the United Nations Assistance Mission in Somalia (UNSOM) congratulates the Government and people of Somalia on the significant progress they have made in their state building and peacebuilding efforts over the past twelve months.

More >>

UN Special Representative for Somalia condemns attack in Mogadishu

Mogadishu, 20 December, 2015– The Special Representative of the UN Secretary-General for Somalia (SRSG), Nicholas Kay, condemns, in the strongest terms, yesterday's car bomb attack on a busy road in Mogadishu that resulted in the death and injury of many people. Al-Shabab has claimed responsibility for the attack.

More >>

International community welcomes Mogadishu Declaration on 2016 electoral process

Mogadishu, 17 December 2015 – The United Nations, the African Union, the Inter-Governmental Authority on Development, the European Union, the United States, the United Kingdom, Sweden and Italy welcomed the Mogadishu Declaration issued yesterday at the end of the second plenary of the National

Enter Keyword(s)

FOLLOW UNSOM

SECURITY COUNCIL

The Security Council, decides to establish the United Nations Assistance Mission in Somalia (UNSOM) by 3 June 2013, under the leadership of a Special Representative of the Secretary-General (SRSG), for an initial period of twelve months with the intention to renew for further periods as appropriate, and in accordance with the recommendation of the Secretary-General. [S/RES/2102 (2013)]

SURVEY

Who is most responsible for making peace and reconciliation in Somalia?

Vote | Results

Past Opinion Polls

PHOTO OF THE WEEK

First National Consultative Forum, Mogadishu, Somalia on 19 October 2015. UN Photo

MAP

ABOUT US

Consultative Forum on next year's electoral process in Somalia.
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Annex 18

U.N. Commission on the Limits of the Continental Shelf "Membership of the Commission", *available at* http://www.un.org/Depts/los/clcs_new/commission_members_1997_2012.htm (last accessed 11 Jan. 2016)

OCEANS & LAW OF THE SEA
UNITED NATIONS
DIVISION FOR OCEAN AFFAIRS AND THE LAW OF THE SEA

Commission on the Limits of the Continental Shelf (CLCS)
Membership of the Commission from 1997 to 2007

Last updated: 26 June 2012

In accordance with the provisions of article 2 of Annex II to the Convention, "the Commission shall consist of twenty-one members who shall be experts in the field of geol hydrography, elected by States Parties to the Convention from among their nationals, having due regard to the need to ensure equitable geographical representation, who sh personal capacities".

2007-2012

On 14 and 15 June 2007, the Seventeenth Meeting of States Parties to the United Nations Convention on the Law of the Sea elected 21 members of the Commission on t Continental Shelf for a term of five years, commencing from 16 June 2007. These members were:

2007-2012 MEMBERSHIP OF THE COMMISSION ON THE LIMITS OF THE CONTINENTAL SHELF

(elected on 14 and 15 June 2007 for a term of five years (2007 - 2012), commencing from 16 June 2007

Name	Nationality
[Albuquerque, Alexandre Tagore Medeiros de - passed away on 29 March 2012]*	(Brazil)
Astiz, Osvaldo Pedro	(Argentina)
Awosika, Lawrence Folajimi	(Nigeria)
Brekke, Harald	(Norway)
Carrera Hurtado, Galo	(Mexico)
Charles, Francis L.	(Trinidad and Tobago)
Croker, Peter F.	(Ireland)
Fagoonee, Indurlall	(Mauritius)
German, Mihai Silviu	(Romania)
Jaafar, Abu Bakar	(Malaysia)
Jaoshvili, George	(Georgia)
Kalngui, Emmanuel	(Cameroon)
Kazmin, Yuri Borisovitch	(Russian Federation)
Lu, Wenzheng	(China)
Oduro, Isaac Owusu	(Ghana)
Park, Yong-Ahn	(Republic of Korea)
Pimentel, Fernando Manuel Maia	(Portugal)
Rajan, Sivaramakrishnan	(India)
Rosette, Michael Anselme Marc	(Seychelles)
Symonds, Philip Alexander	(Australia)
[Tamaki, Kensaku - passed away on 5 April 2011]*	(Japan)
Urabe, Tetsuro [elected on 11 August 2011 for the remainder of Mr. Tamaki's term of office]	(Japan)

Note: The curricula vitae of the candidates have been circulated in document SPLOS/151.

Officers of the Commission 2009-2012

Chairman: Galo Carrera Hurtado (elected on 9 April 2012 for the rest of Mr. Albuquerque's term of office)

Vice-Chairmen: Lawrence Folajimi Awosika, Harald Brekke, Yuri Borisovitch Kazmin, Yong-Ahn Park.

Subsidiary bodies:

- **Committee on Confidentiality**

At its twentieth session, the Commission appointed Messrs. Astiz, Croker, Kazmin, Rosette and [Tamaki]* to the Committee on Confidentiality. The Committee elected Mr. C and Messrs. Rosette and [Tamaki]* as Vice-Chairmen. At its twenty-eighth session, the Commission appointed Mr. Urabe as member of the Committee.

- **Committee on provision of scientific and technical advice to coastal States**

At its twentieth session, the Commission appointed Messrs. Charles, German, Kalngui, Rajan and Symonds to the Standing Committee on provision of scientific and technic States. The Committee elected Mr. Symonds as Chairman and Messrs. Kalngui and Rajan as Vice-Chairmen.

- **Editorial Committee (open-ended)**

The Editorial Committee has open-ended membership. Nevertheless, at its twentieth session, the Commission decided that Messrs. [Albuquerque]*, Astiz, Awosika, Carrera Jaafar, Kalngui, Kazmin, Lu, Oduro, Park, Rajan and Rosette would form the core group of the Editorial Committee. The Committee elected Mr. Jaafar as Chairman and Mes Rajan as Vice-Chairmen.

- **Training Committee (open-ended)**

The Training Committee has open-ended membership. Nevertheless, at its twentieth session, the Commission decided that Messrs. Awosika, Brekke, Carrera, Charles, Ger Oduro, Park, Rosette and [Tamaki]* would form the core group of the Training Committee. The Committee elected Mr. Carrera as Chairman and Messrs. Oduro and Park as

---

Second membership of the Commission - 2002-2007

On 23 April 2002, the Twelfth Meeting of States Parties to the United Nations Convention on the Law of the Sea elected 21 members of the Commission on the Limits of the for a term of five years, commencing from 16 June 2002. These members were:

2002-2007 MEMBERSHIP OF THE COMMISSION ON THE LIMITS OF THE CONTINENTAL SHELF

(elected on 23 April 2002 for a term of five years (2002 - 2007), commencing from 16 June 2002 and ending on 15 June 2007

Name	Nationality
Al-Azri, Hilal Mohamed Sultan	(Oman)
Albuquerque, Alexandre Tagore Medeiros de	(Brazil)
Astiz, Osvaldo Pedro	(Argentina)
Awosika, Lawrence Folajimi	(Nigeria)
Betah, Samuel Sona	(Cameroon)
Brekke, Harald	(Norway)
Carrera Hurtado, Galo	(Mexico)
Croker, Peter F.	(Ireland)
Fagoonee, Indurlall	(Mauritius)
Francis, Noel Newton St. Claver	(Jamaica)
German, Mihai Silviu	(Romania)
Jaafar, Abu Bakar	(Malaysia)
Juračić, Mladen	(Croatia)
Kazmin, Yuri Borisovitch	(Russian Federation)
Lu, Wenzheng	(China)
Park, Yong-Ahn	(Republic of Korea)
Pimentel, Fernando Manuel Maia	(Portugal)
Symonds, Philip Alexander	(Australia)
Tamaki, Kensaku	(Japan)
Thakur, Naresh Kumar	(India)
Woeledji, Yao Ubuénalè	(Togo)

Officers of the Commission 2004-2007

At its fourteenth session, held at United Nations Headquarters in New York, from 30 August to 3 September 2004, the Commission reelected **Peter Croker** as its **Chai**

The Commission also elected Messrs. **Francis, Juračić, Park, and Woeledji** as Vice-Chairmen.

Their term of office commences in December 2004 and expires in June 2007.

It is recalled that, at its eleventh session, held at United Nations Headquarters in New York, from 24 to 28 June 2002, the Commission had elected Peter Croker as it

It further recalled that at the eleventh session, the Commission had elected three Vice-Chairmen, Osvaldo Pedro Astiz, Lawrence Folajimi Awosika and Mladen Jurac Rapporteur, Yong-Ahn Park. All officers had been elected to a term of two and a half years.

Subsidiary bodies: 2004-2007

Committee on Confidentiality

At its eleventh session, the Commission had appointed the following members to the **Committee on Confidentiality**: Osvaldo Pedro Astiz, Samuel Sona Betah, Hara Abu Bakar Jaafar and Yuri Borisovitch Kazmin.

During the fourteenth session of the Commission, the Committee met briefly on 3 September 2004 and re-elected **Mr. Jaafar** as **Chairman**, and **Mr. Astiz** and **Mr. Br Vice-Chairmen.**

It is recalled that, at the eleventh session of the Commission, the Committee had elected Mr. Jaafar as Chairman, Mr. Brekke as Vice-Chairman and Mr. Astiz as Rapp

Committee on provision of scientific and technical advice to coastal States

At its eleventh session, the Commission had also appointed the following as members of the **Standing Committee on provision of scientific and technical advice States**: Lawrence Folajimi Awosika, Noel Newton St. Claver Francis, Mihai Silviu German, Philip Alexander Symonds and Kensaku Tamaki.

During the fourteenth session of the Commission, a brief meeting of the Committee was held on 3 September 2004, during which it proceeded with the election of its C and other officers. The Committee re-elected **Mr. Symonds** as **Chairman**, and **Mr. Awosika** and **Mr. Tamaki** as Vice-Chairmen.

It is recalled that, at the eleventh session of the Commission, the Committee had elected Mr. Symonds as Chairman, Mr. Tamaki as Vice-Chairman and Mr. Awosika a Rapporteur.

Editorial Committee (open-ended)

During the fourteenth session of the Commission, **Mr. Fagoonee** was elected **Chairman** of the Editorial Committee for the next two-and-a-half-years.

It is recalled that, at its eleventh session, the Editorial Committee had elected Harald Brekke as Chairman.

Training Committee (open-ended)

During the fourteenth session of the Commission, **Mr. Brekke** was elected **Chairman** of the Training Committee for the next two-and-a-half-years.

It is recalled that, at its eleventh session, the Training Committee had elected Indurlall Fagoonee as Chairman.

First membership of the Commission - 1997-2002

Twenty-eight candidates for membership to the Commission were nominated by States Parties for the first election, which took place at the Sixth Meeting of States P United Nations Convention on the Law of the Sea (New York, 10 - 14 March 1997). The election was conducted in accordance with article 2, paragraph 3, of Annex II Convention (see document SPLOS/20).

On 13 March 1997, the 21 members of the Commission were elected for a term of five years and began their term of office on the date of the first meeting of the Co 16 June 1997. On that date, each of them made a solemn declaration to perform his duties as a member of the Commission honourably, faithfully, impartially and con The members of the Commission may be re-elected in accordance with Annex II, article 2(4) of the Convention.

MEMBERSHIP OF THE COMMISSION ON THE LIMITS OF THE CONTINENTAL SHELF FROM 1997-2002
(elected for a term of five years (1997 - 2002)

Name	Nationality
Mr. Alexandre Tagore Medeiros de Albuquerque	Brazil
Mr. Osvaldo Pedro Astiz	Argentina
Mr. Lawrence F. Awosika	Nigeria
Mr. Aly Ibrahim Beltagy	Egypt
Mr. Samuel Sona Betah	Cameroon
Mr. Harald Brekke	Norway
Mr. Galo Carrera Hurtado	Mexico
Mr. André C.W. Chan Chim Yuk	Mauritius
Mr. Peter F. Croker	Ireland
Mr. Noel Newton St. Claver Francis	Jamaica
Mr. Kazuchika Hamuro	Japan
Mr. Karl H.F. Hinz	Germany
Mr. A. Bakar Jaafar	Malaysia
Mr. Mladen Juracic	Croatia
Mr. Yuri Borisovitch Kazmin	Russian Federation
Mr. Iain C. Lamont	New Zealand
Mr. Wenzheng Lu	China
Mr. Chisengu Leo M'Dala	Zambia
Mr. Yong-Ahn Park	Republic of Korea
Mr. Daniel Rio	France
Mr. Krishna-Swami Ramachandran Srinivasan	India

Annex 19

Email from Amb. Hans Wilhelm Longva to Hon. Prof. Abdirahman Haji Adan Ibbi, Deputy Prime Minister and Minister of Fisheries and Marine Resources of Somalia (27 Mar. 2009)

Subject: Somalia oversendelsesbrev.doc
Attachments: Somalia oversendelsesbrev.doc

On Friday, March 27, 2009 11:47 AM, Longva Hans Wilhelm <hans.wilhelm.longva@mfa.no> wrote:

Dear Mr Minister,

Please find enclosed as agreed a draft letter from the Transitional Federal Government of the Somali Republic to the Secretary-General of the United Nations submitting preliminary information indicative of the outer limits of the continental shelf beyond 200 natical miles.

I look forward to see you in Nairobi next week and to my forthcoming visit to Mogadishu.

I send you my best personal regards

Yours sincerely

Hans Wilhelm Longva

With reference to article 76 of the United Nations Convention on the Law of the Sea (hereinafter referred to as ”the Convention”), and article 4 of its Annex II, as well as the decisions of the eleventh and eighteenth Meetings of States Parties contained i SPLOS/72, paragraph (a), and SPLOS/183, paragraph 1 (a), respectively, the Transitional Federal Government of the Somali Republic has the honour to submit to the Secretary-General of the United Nations preliminary information indicative of the outer limits of the continental shelf beyond 200 nautical miles and a description of the status of preparation and intended date of making a submission in accordance with the requirements of article 76 of the Convention and with the Rules of Procedure and the Scientific and Technical Guidelines of the Commission on the Limits of the Continental Shelf (hereinafter referred to as “the Commission”)..

The present submission is made in accordance with SPLOS/183, paragraph 1 (a). Its purpose is to ensure that Somalia satisfies the time period referred to in article 4 of Annex II to the Convention and the decision contained in SPLOS/72. The present submission is without prejudice to the future submission to be made by Somalia in accordance with the requirements of article 76 of the Convention and with the Rules of Procedure and the Scientific and Technical Guidelines of the Commission, and the future consideration by the Commission.

The data provided in the present submission show that Somalia passes the test of appurtenance as described in the Scientific and Technical Guidelines of the Commission. In all eight Foot of the Slope Points (FOS-Points) have been identified on the Somali continental slope that makes it clear that Somalia’s continental shelf extends beyond 200 nautical miles from the normal baselines.

In accordance with SPLOS/183, paragraph 1 (d), it is requested that the Secretary-General inform the Commission and notify member states of the receipt from Somalia of preliminary information in accordance with SPLOS/183, paragraph 1 (a), and make this information publicly available, including on the website of the Commission.

Annex 20

Email from Amb. Hans Wilhelm Longva to Hon. Prof. Abdirahman Haji Adan Ibbi, Deputy Prime Minister and Minister of Fisheries and Marine Resources of Somalia (3 Apr. 2009)

Subject: Somalia/Kenya. Signing of MoU.

On Friday, April 3, 2009 2:29 PM, Longva Hans Wilhelm <hans.wilhelm.longva@mfa.no> wrote:

H.E. Professor Adirahman Haji Adan Ibbi
Deputy Prime Minister and Minister of Fisheries and Marine Resources
Transitional Federal Government of the Somali Republic
Mogadishu

Dear Mr. Minister,

With reference to our telephone conversation this morning, I would suggest that the letter of authorisation to be signed by your Prime Minister read as follows:

I the undersigned Omar Abdirashid Ali Sharmarke, Prime Minister of the Transitional Federal Government of the Somali Republic, hereby authorise and empower Professor Abdirrahman Haji Adan Ibbi, Deputy Prime Minister and Minister of Fisheries and Marine Resources, to sign a *Memorandum of Understanding between the Government of Kenya and the Transitional Federal Government of the Somali Republic to grant No-Objection in respect of submissions on the the Outer Limits of the Continental Shelf beyond 200 nautical miles to the Commission on the Limits of the Continental Shelf.*

Mogadishu, --- April 2009

The authorisation should be signed by the Prime Minister. Underneath the signature should be the official seal of the Prime Minister.

I hope this is helpful.

With my best regards

Yours sincerely

Hans Wilhelm Longva

Annex 21

Email from Hon. Prof. Abdirahman Haji Adan Ibbi to Hon. Abdurahman Abdishakur Warsame, Minister of Planning and International Cooperation of Somalia (7 Apr. 2009)

From: abdurahman aden <ibbismp@yahoo.com>
Date: 7 April 2009 at 14:06:43 GMT+3
To: cabdirahman@hotmail.com
Cc: Longva Hans Wilhelm <hans.wilhelm.longva@mfa.no>
Subject: Re: FROM IBBI

Excellency,

This is the authoriuzation letter for Minister of Planning and International Cooperation of the TFG of Somalia

Ibbi

Annex 21

Xukuumadda Federaaliga KMG ah
ee Jamhuuriyadda Soomaaliya
Xafiiska Ra'iisul Wasaaraha

الحكومة الانتقالية الفيدرالية
لجمهورية الصومال
مكتب رئيس الوزراء

The Transitional Federal Government of the Somali Republic
Office of the Prime Minister

XRW/0064/06/09

I, the undersigned, Omer Abdirashid Ali Shermarke , the Prime Minister of the Transitional Federal Government of the Somali Republic here by authorized and empowered Hon. Abdurahman Abdishakur Warsame Minister of the planning and the International Co operations to Sign a memorandum of understanding between the Government of the Republic of Kenya and the Transitional Government of the Somali Republic to grant no-objection to each other in respect of submission on the outer limits of the Continental Shelf beyond 200 Nautical Miles to the Commission on the Limits of the Continental Shelf.

Mogadishu on this Sixth day of April
Two Thousand and Nine

Annex 22

Note Verbale from H.E. Omar Abdirashid Ali Sharmarke, Prime Minister of the Transitional Federal Government of the Somali Republic, to H.E. Ban Ki-Moon, Secretary-General of the United Nations, No. XRW/0065/06/09 (8 Apr. 2009)

Xukuumadda Federaaliga KMG ah ee
Jamhuuriyadda Soomaaliya
Xafiiska Ra'iisul Wasaaraha

الحكومة الانتقالية الفيدرالية
لجمهورية الصومال
مكتب رئيس الوزراء

The Transitional Federal Government of the Somali Republic

Office of the Prime Minister

XRW/0065/06/09 Mogadishu 8th April 2009

Excellency,

With reference to article 76 of the United Nations Convention on the Law of the Sea (hereinafter referred to as "the Convention"), and article 4 of its Annex II, as well as the decisions of the eleventh and eighteenth Meetings of States Parties contained in SPLOS/72, paragraph (a), and SPLOS/183, paragraph 1 (a), respectively, the Transitional Federal Government of the Somali Republic has the honour to submit to the Secretary-General of the United Nations preliminary information indicative of the outer limits of the continental shelf beyond 200 nautical miles and a description of the status of preparation and intended date of making a submission in accordance with the requirements of article 76 of the Convention and with the Rules of Procedure and the Scientific and Technical Guidelines of the Commission on the Limits of the Continental Shelf (hereinafter referred to as "the Commission")..

The present submission is made in accordance with SPLOS/183, paragraph 1 (a). Its purpose is to ensure that Somalia satisfies the time period referred to in article 4 of Annex II to the Convention and the decision contained in SPLOS/72. The present submission is without prejudice to the future submission to be made by Somalia in accordance with the requirements of article 76 of the Convention and with the Rules of Procedure and the Scientific and Technical Guidelines of the Commission, and the future consideration by the Commission.

The data provided in the present submission show that Somalia passes the test of appurtenance as described in the Scientific and Technical Guidelines of the Commission. The location of eight Foot of the Slope Points (FOS-Points) identified on the Somali continental slope makes it clear that Somalia's continental shelf extends beyond 200 nautical miles from the normal baselines.
In accordance with SPLOS/183, paragraph 1 (d), it is requested that the Secretary-General inform the Commission and notify member states of the receipt from Somalia of preliminary information in accordance with SPLOS/183, paragraph 1 (a), and make this information publicly available, including on the website of the Commission.

Please accept Excellency, the assurances of my highest considerations.

Omer Abdirashid Ali Sharmarke
The Prime Minister

H. Excellency Ban Ki Moon
Secretary General of the United Nations
New York, USA

Annex 23

Note Verbale from the Ministry of Foreign Affairs and International Trade of the Republic of Kenya to the Embassy of the Federal Republic of Somalia in Nairobi, No. MFA. PROT/7/8/1 (7 Mar. 2014)

Telephone: +254 20 318888
Fax: +254 20 2240066/341935/344333
Email: communication@mfa.go.ke
Website: www.mfa.go.ke
When replying please quote Ref. No. and date

URGENT

HARAMBEE AVENUE
P.O. Box 30551-00100
NAIROBI, KENYA

MINISTRY OF FOREIGN AFFAIRS AND INTERNATIONAL TRADE

Ref. No.....

MFA. PROT/7/8/1

The Ministry of Foreign Affairs and International Trade of the Republic of Kenya presents its compliments to the Embassy of the Federal Republic of Somalia and has the honour to inform as follows;

Amb. Amina Mohamed, CBS, CAV, Minister for Foreign Affairs and International Trade of the Republic of Kenya wishes to hold bilateral talks with Hon. Abdirahman Duale Beileh, Minister of Foreign Affairs of the Federal Republic of Somalia, during the week of 17th to 24th March, 2014 in Nairobi. The Ministry of Foreign Affairs and International Co-operation would appreciate receiving an invitation as to when the meeting can take place.

The Ministry of Foreign Affairs and International Trade of the Republic of Kenya avails itself of this opportunity to renew to the Embassy of the Federal Republic of Somalia the assurances of its highest consideration.

NAIROBI, 7th March, 2014

MINISTRY OF FOREIGN AFFAIRS NAIROBI

Embassy of the Federal Republic of Somalia
NAIROBI

Embassy of the Federal Republic of Somalia
Nairobi, Kenya
10 MAR 2014
RECEIVED
P.O. Box 623 - 00606 Sarit Centre

Annex 24

Note Verbale from the Ministry of Foreign Affairs and International Trade of the Republic of Kenya to the Ministry of Foreign Affairs & Investment Cooperation of the Federal Republic of Somalia, No. MFA/REL/13/21A (24 July 2014)

MFA/REL/13/21A

The Ministry of Foreign Affairs and International Trade of the Republic of Kenya presents its compliments to the Ministry of Foreign Affairs and Investment Promotion of the Federal Government of Somalia and has the honour to refer to the negotiations between the Government of the Republic of Kenya and the Federal Republic of Somalia on the delimitation of our overlapping maritime boundary.

The Ministry of Foreign Affairs and International Trade of the Republic of Kenya further informs that Amb. Amina C. Mohamed, Cabinet Secretary, Foreign Affairs and International Trade has the honour to invite H.E. Dr. Abdirahman Dualeh Beileh, Minister of Foreign Affairs of the Federal Republic of Somalia to Nairobi, on **Monday 28th July 2014**, to discuss the issue on the delimitation of the two countries overlapping maritime boundary.

The Ministry of Foreign Affairs and International Trade of the Republic of Kenya avails itself of this opportunity to renew to the Ministry of Foreign Affairs and Investment Promotion of the Federal Republic of Somalia assurances of its highest consideration.

24th July, 2014 **NAIROBI**

MINISTRY OF FOREIGN AFFAIRS
NAIROBI

MINISTRY OF THE FOREIGN AFFAIRS & INVESTMENT COOPERATION
MOGADISHU

Copy to: **EMBASSY OF THE FEDERAL REPUBLIC OF SOMALIA**
NAIROBI

Annex 25

M. H. Nordquist, S. Nandan, & S. Rosenne (eds.), United Nations Convention on the Law of the Sea 1982, A Commentary, Vol. V (1989)

Center for Oceans Law and Policy
University of Virginia

UNITED NATIONS CONVENTION ON THE LAW OF THE SEA 1982

A COMMENTARY

Volume V

Articles 279 to 320
Annexes V, VI, VII, VIII and IX
Final Act, Annex I, Resolutions I, III and IV

Myron H. Nordquist
Editor-in-Chief
Shabtai Rosenne and Louis B. Sohn
Volume Editors

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Article 282

Obligations under general, regional or bilateral agreements

If the States Parties which are parties to a dispute concerning the interpretation or application of this Convention have agreed, through a general, regional or bilateral agreement or otherwise, that such dispute shall, at the request of any party to the dispute, be submitted to a procedure that entails a binding decision, that procedure shall apply in lieu of the procedures provided for in this Part, unless the parties to the dispute otherwise agree.

SOURCES

1. A/AC.138/97, article 3, reproduced in II SBC Report 1973, at 22 (U.S.A.).
2. A/CONF.62/.L.7 (1974), section 3, III Off. Rec. 85 (Australia et al.)
3. A/CONF.62/WP.9 (ISNT, Part IV, 1975), article 3, V Off. Rec. 111, 112 (President).
4. A/CONF.62/WP.9/Rev.1 (ISNT, Part IV/Rev.1, 1976), article 3, V Off. Rec. 185, 187 (President).
5. A/CONF.62/WP.9/Rev.2 (RSNT, Part IV, 1976), article 3, VI Off. Rec. 144, 145 (President).
6. A/CONF.62/WP.10 (ICNT, 1977), article 282, VIII Off. Rec. 1, 45.
7. A/CONF.62/WP.10/Rev.1 (ICNT/Rev.1, 1979, mimeo.), article 282. Reproduced in I Platzöder 375, 490.
8. A/CONF.62/WP.10/Rev.2 (ICNT/Rev.2, 1980, mimeo.), article 282. Reproduced in II Platzöder 3, 119.
9. A/CONF.62/WP.10/Rev.3* (ICNT/Rev.3, 1980, mimeo.), article 282. Reproduced in II Platzöder 179, 296.
10. A/CONF.62/L.78 (Draft Convention, 1981), article 282, XV Off. Rec. 172, 218.

Drafting Committee

11. A/CONF.62/L.75/Add.1 (1981, mimeo.).
12. A/CONF.62/L.82 (1981), XV Off. Rec. 243 (Chairman, Drafting Committee).

Informal Documents

13. SD.Gp/2nd Session/No.1/Rev.5 (1975, mimeo.), article 3; reissued as A/CONF.62/Background Paper 1 (1976, mimeo.), article 3 (Co-Chairmen, SD.Gp). Reproduced in XII Platzöder 108 and 194.

COMMENTARY

282.1. While it has been argued that the dispute settlement provisions of the Law of the Sea Convention should prevail over earlier arrangements between States Parties to that Convention,[1] the text of article 282 reflects

[1] It was pointed out, for instance, that article 219 of the Treaty establishing the European Economic Community provided that "Member States undertake not to submit a dispute

the prevailing view that parties would normally prefer to have the dispute settled in accordance with a procedure previously agreed upon by them.[2]

282.2. There are several kinds of international agreements containing obligations for the settlement of disputes between States. The parties to a dispute might have concluded a general bilateral agreement for the settlement of international disputes (a treaty of judicial settlement of international disputes). Similarly, there are multilateral agreements providing various means for the settlement of international disputes (e.g., the General Acts for the Pacific Settlement of International Disputes of 1928 and 1949).[3] Frequently, a bilateral agreement relating to a particular subject, or a broad category of topics (e.g., a treaty of friendship, commerce and navigation), might contain a so-called compromissory clause for the settlement of disputes arising under that agreement. There are also multilateral agreements, such as those concluded under the auspices of the International Maritime Organization (IMO), which provide for arbitration of disputes arising under them. In some regions of the world, there are additional arrangements for the settlement of disputes arising between States belonging to a particular regional organization (e.g., the American Treaty on Pacific Settlement of 1948 (the Pact of Bogotà), of the Organization of American States;[4] the European Convention for the Peaceful Settlement of Disputes of 1957;[5] and the Protocol of the Commission of Mediation, Conciliation and Arbitration of 1964, of the Organization of African Unity[6]). Finally, by a special agreement the parties may decide that a particular dispute or a particular group of disputes should be referred to a specific tribunal.

282.3. Article 282 mentions that an agreement to submit a dispute to a specified procedure may be reached "otherwise."[7] This reference was

concerning the interpretation or application of this Treaty to any method of settlement other than those provided for in this Treaty," 298 UNTS 11, 87 (1958); for the Treaty as amended see UKTS 15 (1979), Cmnd. 7460. See also Source 2, section 3.

[2] As the Japanese delegation emphasized in the debate, "when an agreement existed between parties to a dispute whereby they had assumed an obligation to settle any given dispute by recourse to a particular method, that agreement should have precedence over the procedures agreed upon in the new Convention," 60th plenary meeting (1976), para. 55, V Off. Rec. 27. Or as delegation of Argentina put it, "any system or machinery established by the [C]onvention should be ancillary to other means of settlement which States might choose by mutual agreement," 59th plenary meeting (1976), para. 46, ibid. 18.

[3] 93 LNTS 345 (1929); 71 UNTS 101 (1950); IOI, Vol. I.A, at I.A.7.a.ii.

[4] 30 UNTS 55 (1949); IOI, Vol. II.B-II.J, at II.E.1.c.

[5] 320 UNTS 241 (1959); V Eur. YB 347 (1959).

[6] 3 ILM 1116 (1964); IOI, Vol. II.B-II.J, at II.H.1.a.i. In another connection, a group of African States suggested that disputes relating to the delineation of the economic zone between adjacent and opposite States shall be settled in conformity with the Charter of the United Nations and "any other relevant regional arrangements." A/AC.138/SC.II/L.40, Article IX, reproduced in III SBC Report 1973, at 89. See also the Declaration on the Issues of the Law of the Sea by the Organization of African Unity, A/AC.138/89, section D, reproduced in II SBC Report 1973, at 5.

[7] Earlier drafts also contained a reference to the possibility of the acceptance of a procedure through "some other instrument or instruments." This phrase was changed to "otherwise" on recommendation of the Drafting Committee. See Source 11, at 19; and Source 12.

meant to include, in particular, the acceptances of the jurisdiction of the International Court of Justice by declarations made under Article 36, paragraph 2, of the Statute of that Court.

282.4. Article 282 applies only when the previously accepted procedure "entails a binding decision," and does not apply if the other agreement provides only for mediation or conciliation that terminates in a nonbinding report. (With respect to conciliation, see article 284.)

282.5. There has been some disagreement as to whether article 282 should apply only in cases where the other agreement for the settlement of disputes has been concluded prior to the entry into force of the Law of the Sea Convention. The prevailing view seems to be that it would apply in all cases in which the other treaty has entered into force before a party to a dispute has decided to submit the dispute to a dispute settlement procedure. According to that view, even if the other treaty has been concluded (or has entered into force) after the date of the entry into force of the Law of the Sea Convention, it may be invoked instead of Part XV by any party to the dispute. In addition, the parties to the dispute can always agree to conclude a special agreement submitting the dispute to a particular tribunal. This is consistent with the basic principle of Part XV that the parties can agree "at any time" to settle a dispute between them by any peaceful means of their own choice (article 280). (See also para. 311.8 below.)

282.6. The other consequence of this right of the parties to select any procedure they prefer is that the parties are not bound to use the procedure under some other treaty if both of them agree at any time to use the procedure under Part XV (article 280). Therefore, as stated in the final clause of article 282, even if one party has referred the dispute to a procedure under some other treaty, the parties to the dispute may still agree at any time to resort to Part XV instead. The consultations that are mandated by article 283 may facilitate such an agreement.

282.7. President Amerasinghe has interpreted the phrase "unless the parties agree otherwise" as meaning that

> "if the parties to a dispute have assumed the obligation referred to [in article 282], there can be no release from that obligation without the concurrence of all parties to the dispute who have entered into the special agreement or other instrument referred to there. Any other interpretation would weaken the effect of the provision. Its strength and merit would lie in its binding character."[8]

[8] A/CONF.62/WP.9/Add.1 (1976), para. 13, V Off. Rec. 122.

Annex 26

H. Owada, *Introductory Remarks at the Seminar on the Contentious Jurisdiction of the International Court of Justice* (26 Oct. 2010)

SPEECH BY H.E. JUDGE HISASHI OWADA, PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE, TO THE LEGAL ADVISERS OF UNITED NATIONS MEMBER STATES

Introductory Remarks at the Seminar on the Contentious Jurisdiction of the International Court of Justice

26 October 2010

Mr. Secretary-General

Madame Deputy-Secretary-General,

Madame Legal Counsel,

Legal Advisers and distinguished guests,

I am delighted to address this conference of the Legal Advisers taking place within the framework of the International Legal Week of the United Nations. This is the second time since my appointment as President of the International Court of Justice that I have the honour to deliver this address. I am especially pleased this year to address you in close relationship with the opening of a seminar, organized by the United Nations Office of Legal Affairs, which is focused on the issue of jurisdiction of the International Court of Justice. I understand that the present seminar is expected to be the first in a three-year schedule of seminars organized by the Office of Legal Affairs concerning the role of the Court in the rule of law at the national and international level.

Presenting my remarks primarily as an address to the Conference of the Legal Advisers during "International Legal Week", but taking advantage of this occasion by way of an introduction to today's seminar on the jurisdiction of the Court, I would like to make a few comments on some specific aspects of this topic. As you may be aware, the last few years have been among the very busiest in the Court's history. Yet, while States have been increasingly inclined to come to the Court to resolve their disputes, by judicial means, there is also an incessant tendency of States to circumscribe the conditions for their acceptance of the Court's jurisdiction. I would like to focus my comments today on the issue of compulsory jurisdiction of the Court and especially the issue of conditions attached to clauses providing for the compulsory jurisdiction of the Court, and their legal implications.

As you know, the jurisdiction of the Court is based on the consent of the Parties coming before it. This consent may manifest itself either in the form of a *compromis* (special agreement) relating to a specific dispute, or a State may accept the "compulsory jurisdiction" of the Court more generally under Article 36 of the Statute in one of two ways. First, under Article 36, paragraph 1, of the Statute, States may express their consent to the Court's jurisdiction by entering into a conventional agreement that contains a compromissory clause to the effect that disputes as to the interpretation or application of that agreement are to be adjudicated by the Court. Second, under Article 36, paragraph 2, — commonly known as the "optional clause" of the Statute — States may make a unilateral declaration that they recognize as compulsory *ipso facto* the jurisdiction of the Court in all legal disputes concerning certain categories of questions mentioned therein. (There is exceptionally the third means of conferring jurisdiction upon the Court, namely through the institution of *forum prorogatum*, but today I am not going to touch upon this issue.)

I will begin first by discussing compromissory clauses and the problem of reservations thereto; second, I will turn to the problem of conditions attached to optional clause declarations. I should emphasize at the outset, in disclaimer, that these comments are made entirely in my personal capacity, and are not to be attributed to, nor do they reflect, the view of the Court of which I am President.

1. Reservations to compromissory clauses

The compromissory clause has become an increasingly important part of the Court's jurisdictional toolbox in recent years, due to a combination of two trends: While the number of States making optional clause declarations has declined in comparative terms, the number of States signing treaties containing compromissory clauses has increased significantly. For example, in the era of the Permanent Court of International Justice, 76 per cent of States party to the Statute had made optional clause declarations (42 out of 55). Today, only 34 per cent of States have made such a declaration (66 of 192). In contrast to this marked decline in the acceptance of the optional clause, the number of States entering into treaties containing compromissory clauses providing the Court jurisdiction has increased significantly. Some 300 bilateral or multilateral treaties at present provide for compulsory recourse to the International Court of Justice in the resolution of disputes concerning the interpretation and application of the treaty in question. This is reflected also in the increase in the number of cases brought before this Court each year, relying as their jurisdictional basis on one or more compromissory clauses. The proportion of pending cases brought under a compromissory clause has risen from 15 per cent in the 1980's, to 40 per cent at the end of the last century, to more than 50 per cent in this past decade.

This trend seems to point to the fact that the inclusion of a compromissory clause in a multilateral convention or a bilateral treaty can have quite a significant result, because the combination of all such clauses has indeed begun to create a new avenue to the compulsory jurisdiction of the ICJ. This may not be what was envisioned at the time of the creation of the PCIJ but is nevertheless significant and now represents a substantial share of the total bases for the Court's jurisdiction, that is: half of its pending cases. In considering ways to strengthen the role of the Court in the international judicial landscape of the twenty-first century, therefore, the compromissory clause is an important tool to be utilized.

While the number of treaties containing compromissory clauses has thus been on the increase, the jurisdiction offered by these clauses has not always been as broad as it could be. This is due to the fact that an increasing number of reservations are entered by States when signing those international conventions that contain such compromissory clauses[1]. Those reservations have taken multiple forms. Some place limitations on the Court's jurisdiction *ratione temporis*. Others limit the Court's jurisdiction *ratione materiae*. Yet others attempt to limit the Court's jurisdiction *ratione personae*.

With some international conventions, the compromissory clause itself is stipulated as a separate optional protocol, allowing State parties to a convention to opt for the acceptance of the compulsory jurisdiction or its total rejection. A positive aspect of this last device — a separate optional protocol containing the compromissory clause — might be that States may become parties to the substantive provisions, while remaining free to reject the compulsory jurisdiction of the Court contained in the compromissory clauses and thus they may sign treaties that they otherwise would not have signed, thus increasing the substantive obligations they have undertaken. It could be argued on this point that, by consequence, at least the goal of the Court to strengthen the

[1]The problem does not usually arise in relation to bilateral treaties containing compromissory clauses for the obvious reason that the parties, in agreeing to insert such clauses, will agree on the exact scope of the clause.

international legal order has been achieved[2]. However, this view ignores the important role of the Court in the international legal order created by those substantive obligations. The Court plays a crucial role in ensuring the application of the conventions in question, without which the substantive obligations contained in the conventions would be reduced to mere words. The Court provides a forum where State parties can raise situations of non-compliance in a concrete case, and it thus serves to contribute to the consolidation, clarification and development of the law contained in the conventions in question. (For this reasoning, see the joint separate opinion of five judges in the *Congo* v. *Rwanda* case.)

It is therefore critically important that the international community of States take a fresh look at the issue of reservations with a view to consolidating the jurisdictional reach of the Court. This question has a long history before the Court, dating back to its 1951 Advisory Opinion on *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*. In that opinion, the Court stated that:

> "[I]t is the compatibility of a reservation with the object and purpose of a Convention that must furnish the criteria for the attitude of a State in making the reservation on accession as well as for the appraisal by a State in objecting to the reservation"[3].

This concept was subsequently codified in Article 19 *(c)* of the Vienna Convention on the Law of Treaties, and has served as an important guide to States and commentators concerning the scope of permissible reservations[4].

In applying this rule in the context of reservations to compromissory clauses, two questions immediately arise. First, who decides whether a reservation to a compromissory clause is contrary to the object and purpose of the convention containing that clause — the State making the reservation, the State opposing it, or the international Court, tribunal, or body to which the compromissory clause refers disputes? Second, how should this question be resolved, i.e., is a reservation to a compromissory clause providing for dispute settlement contrary to the object and purpose of the treaty? I will consider each of these questions in turn.

First, the question of who decides whether a reservation to a compromissory clause is contrary to the object and purpose of the treaty is more complicated than it may initially seem. The 1951 Advisory Opinion states that the test is meant to "furnish the criterion for the attitude of a State in making the reservation on accession as well as for the appraisal by a State in objecting to the reservation"[5]. This language could be read as implying that the test is meant to be applied *prima facie* by the States themselves in making the reservation. Article 19 *(c)* of the Vienna Convention, however, contains no language that would allow such an interpretation. Moreover, the compromissory clause itself would empower the Court or monitoring body in question to resolve this question as an issue of interpretation or application of the treaty.

A variety of human rights bodies have already concluded that reservations preventing third-party review of human rights conventions are invalid. Regarding reservations to the International Covenant on Civil and Political Rights of 1966, the Human Rights Committee explained in General Comment 24 that "a reservation that rejects the Committee's competence to interpret the requirements of any provisions of the Covenant would also be contrary to the object

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[2]See for example the ruling in: *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951.*

[3]*I.C.J. Reports 1951*, p. 24.

[4]Vienna Convention on the Law of Treaties, opened for signature 23 May 1969, Art. 19 *(c)*, 1155 *UNTS* 331.

[5]*I.C.J. Reports 1951,* p. 24.

and purpose of that treaty"[6]. Similarly, the Human Rights Committee concluded that a reservation made by one State party to the ICCPR excluding the Committee's competence to consider communications relating to a prisoner under sentence of death was not valid[7]. The European Court of Human Rights determined, in *Loizidou* v. *Turkey*, that States may not qualify their acceptance of the Convention so as to "effectively exclude[e] areas of their law and practice within their 'jurisdiction' from supervision by the Convention institutions" because such practice would violate the object and purpose of the European Convention on Human Rights[8].

The International Court of Justice is not a human rights monitoring body, and until recently the question remained whether it had the same power to review reservations in light of the object and purpose of the treaty containing the relevant compromissory clause. This question was effectively answered in the recent case of *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo* v. *Rwanda)*. In that case, the Applicant had put forward the compromissory clauses in numerous treaties as a basis for the Court's jurisdiction, including several human rights treaties and the Convention on the Prevention and Punishment of the Crime of Genocide. The Respondent had entered a reservation in the case of several of these compromissory clauses, and argued before the Court that, consequently, the Court lacked jurisdiction. The Applicant argued that the reservation either had been subsequently withdrawn, or conflicted with the object and purpose of the treaty, or both, and that the Court had jurisdiction to hear the case by virtue of the compromissory clauses.

Although the Court found that it lacked jurisdiction under each compromissory clause put forward by the Applicant, the very fact that the Court considered the claims demonstrates that the answer to the question of whether a State's reservation is contrary to the object and purpose of the treaty is not a matter to be left exclusively to the States making that reservation. This demonstrates that the Court has a role to play in determining whether a reservation to a compromissory clause is contrary to the object and purpose of the treaty at issue. With respect to the Respondent's reservation to Article IX of the Genocide Convention, the Court stated that:

> "Rwanda's reservation to Article IX of the Genocide Convention bears on the jurisdiction of the Court, and does not affect substantive obligations relating to acts of genocide themselves under that Convention. In the circumstances of the present case, the Court cannot conclude that the reservation of Rwanda in question, which is meant to exclude a particular method of settling a dispute relating to the interpretation, application or fulfilment of the Convention, is to be regarded as being incompatible with the object and purpose of the Convention."[9]

In their joint separate opinion, five judges observed that the Court had "gone beyond noting a reservation by one State and a failure by the other to object"[10]. It is to be noted that in this quoted passage, the Court could be said to have taken the position that the validity of such reservations fell to be determined not simply by the States themselves, but ultimately by the Court.

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[6]Human Rights Committee, General Comment No. 24, para. 11.

[7]Communication No. 845/1999, *Kennedy* v. *Trinidad and Tobago*, CCPR/C/67/D/845/1999, Report of the Human Rights Committee (A/55/40), Vol. 3, Ann. XI.A, para. 6.7.

[8]European Court of Human Rights, *Loizidou* v. *Turkey*, Judgment of 23 March 1995 (Preliminary Objections), Publication of the European Court of Human Rights, Series A., Vol. 310, paras. 77-78. See also *Belilos* v. *Switzerland*, Judgment of 29 April 1988, Publication of the European Court of Human Rights, Series A, Vol. 132.

[9]*Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo* v. *Rwanda), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006,* para. 67.

[10]*Ibid.*, joint separate opinion of Judges Higgins, Kooijmans, Elaraby, Owada and Simma, para. 21.

Even when the Court has the power to examine whether a reservation to a compromissory clause is contrary to the object and purpose of the treaty, another more difficult issue arises: what should the Court conclude following examination of such reservations? In this regard, the draft guidelines with regard to reservations prepared by the International Law Commission provide in Section 3.1.13, entitled "Reservations to treaty clauses concerning dispute settlement or the monitoring of the implementation of the treaty" as follows:

> "A reservation to a treaty clause concerning dispute settlement or the monitoring of the implementation of the treaty is not, in itself, incompatible with the object and purpose of the treaty."[11]

The guideline then provides exceptions to this general rule, most notably in relation to dispute settlement provisions that constitute "the *raison d'être* of the treaty"[12]. The question which arises, here, is in what context would a dispute settlement clause constitute the very "*raison d'être* of the treaty", so that a reservation may be said to be contrary to the object and purpose of that treaty? I would like to submit that because compromissory clauses are playing an increasingly crucial role as a primary method for providing the Court with jurisdiction to resolve disputes between States, these clauses must be considered as more likely to constitute part of the "*raison d'être* of the treaty" and thus such reservations would not be permissible. These reservations are fracturing and dividing the web of consent created by the increasing number of compromissory clauses, with the result that the Court is made unable to adjudicate upon disputes submitted to it — as was the case with *Congo* v. *Rwanda* case.

Arguably, Article IX of the Genocide Convention provides an example of a dispute settlement clause which might be considered to constitute part of the "*raison d'être* of the treaty" to the extent that Article IX speaks not only of disputes over the interpretation and application of the Convention, but also disputes over the "fulfilment of the Convention, including those relating to the responsibility of a State for genocide". Given the nature of the crime, it is difficult to imagine how genocide could be committed without some form of state complicity or involvement. Article IX offers the only mechanism in the Convention for the punishment of State violations of the crimes listed in Article III of that Convention (which include genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, attempt to commit genocide, and complicity in genocide). It is for this reason that, while the Court concluded in *Congo* v. *Rwanda* that the Respondent's reservation to Article IX was not contrary to the object and purpose of the Convention, the Joint Separate Opinion emphasized as follows:

> "It is a matter for serious concern that at the beginning of the twenty-first century it is still for States to choose whether they consent to the Court adjudicating claims that they have committed genocide. It must be regarded as a very grave matter that a State should be in a position to shield from international judicial scrutiny any claim that might be made against it concerning genocide. A State so doing shows the world scant confidence that it would never, ever, commit genocide, one of the greatest crimes known."[13]

It is my submission that the time has come to recognize the importance of compromissory clauses as a whole and the value inherent in the dispute settlement procedures before the Court. It would strengthen the international rule of law in a world which is increasingly governed by a web of multilateral conventions, many of which provide for dispute settlement before the Court.

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[11] Tenth Report on reservations to treaties, doc. A/CN.4/558/Add.1 (14 June 2005), para. 99, Sec. 3.1.13.

[12] *Ibid.,* Sec. 3.1.13 (i). See also *ibid.*, Sec. 3.1.13 (ii) (providing a second exception when "[t]he reservation has the effect of excluding its author from a dispute settlement or treaty implementation monitoring mechanism with respect to a treaty provision that the author has previously accepted, if the very purpose of the treaty is to put such a mechanism into effect").

[13] Joint separate opinion of Judges Higgins, Kooijmans, Elaraby, Owada and Simma, *supra*, para. 25.

2. Conditions attached to optional clause declarations

As I said at the outset, in addition to compromissory clauses, the compulsory jurisdiction of the Court also includes optional clause declarations made under Article 36, paragraph 2, of the Statute. By making such a declaration, States recognize "as compulsory *ipso facto* and without special agreement the jurisdiction of the Court"[14]. Parallel to the increasing trend to attach reservations to compromissory clauses, States have also been increasingly attaching conditions to their optional clause declarations, including some which have the effect of excluding certain categories of disputes from the jurisdiction of the Court.

Since this form of acceptance of the Court's jurisdiction is, in reality, a unilateral declaration, the Court has concluded that it is not strictly speaking subject to the Vienna Convention on the Law of Treaties or other rules governing reservations to treaties[15]. In the case of a reservation to a compromissory clause, that compromissory clause has already been negotiated by the States taking part in a multilateral negotiation. The reserving State can thus be considered to disrupt a balance that has been struck through compromise among all the States participating in that treaty negotiation. By contrast, in the case of a condition attached to an optional clause declaration made under Article 36, paragraph 2, of the Statute, the State begins with a *tabula rasa*: it may decide to accept the jurisdiction of the Court and, if it does, the State is free to decide whether to do so with restrictions or unconditionally. As the Court stated in *Military and Paramilitary activities in and against Nicaragua*,

> "Declarations of acceptance of the compulsory jurisdiction of the Court are facultative, unilateral engagements, that states are absolutely free to make or not to make. In making the declaration a state is equally free either to do so unconditionally and without limit of time for its duration, or to qualify it with conditions or reservations."[16]

They are thus truly "optional" declarations, as they have come to be known. However, when States limit their acceptance of the compulsory jurisdiction of the Court in the optional clause declaration, the ultimate effect for the Court's jurisdiction is the same as when they enter reservations to treaties containing compromissory clauses: the overall jurisdiction of the Court is weakened.

In principle, States are free to condition their optional clause declarations in any number of ways, and there are several such conditions which States include in their declarations with increasing frequency. Let me introduce some of the most typical ones.

First, out of the 66 such declarations, 63 States explicitly refer to reciprocity, i.e., that they accept the jurisdiction of the Court only in relation to other States accepting the same obligation. This reference to reciprocity is of course made *ex abundanti cautela*. The principle is implicit in the provisions of Article 36, paragraph 2, where it speaks of "any other State accepting the same obligation".

Second, 32 States limit their consent to jurisdiction *ratione temporis*, such as specifying that the declaration covers only disputes which arose after it was made or only disputes in relation to situations which arose after that date. I would like to elaborate on this in more detail in a moment.

Third, 27 States have qualified their optional clause declarations by excluding matters within their domestic jurisdiction. In theory, this again can be said to be to a large extent *ex abundanti cautela.* This condition really adds very little protection for the State because, if a dispute truly

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[14]Statute of the Court, Art. 36, para. 2.

[15]*Fisheries Jurisdiction (Spain* v. *Canada), Jurisdiction of the Court, Judgment, I.C.J. Reports 1998*, para. 46.

[16]*I.C.J. Reports 1984,* p. 418, para 59.

concerns matters that are exclusively within the domestic jurisdiction of the State, then it would be outside the scope of Article 36, paragraph 2, of the Statute and the Court would lack jurisdiction in any case. States could thus consider eliminating this condition with little or no change to their consent to the Court's jurisdiction.

Fourth, 18 States have included a condition in their declaration that the Court may not have jurisdiction unless all parties to any treaty affected by the decision are also parties to the case before the Court. This is the case of the "Vandenberg reservation" introduced by the United States, which prevented the Court from applying the United Nations Charter in the case between Nicaragua and the United States[17]. Five other States have opted for similar language in their declarations.

Fifth, 40 States have limited their optional clause declarations by stipulating that any other mechanisms of dispute settlement as agreed between the parties will prevail over the general jurisdiction of the Court. In the few cases where this condition has been at issue, the Court found that it did not exclude recourse to ICJ adjudication[18].

Finally, certain States exclude some specific issues or categories of issues from the jurisdiction they grant the Court in their declarations, such as territorial disputes, maritime disputes, disputes concerning their armed forces, or "disputes between members of the British Commonwealth of Nations"[19]. These are explicit conditions in the sense those issues are excluded *eo nomine* from the scope of jurisdiction of the Court.

There is thus no question that a great variety of conditions have been attached to optional clause declarations. This situation is further multiplied by the principle of reciprocity, which has the effect of making the limitation applicable both for and against the State making it.

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It is one of the fundamental principles of contemporary international law that the jurisdiction of the Court International Court of Justice is based on the consent of States. It follows that any conditions attached to the declaration accepting the jurisdiction of the Court are left to the will of that State making that declaration. As I stated earlier, in this sense, the "optional clause" is indeed "optional". Moreover, as with reservations to compromissory clauses, the case could be made that the option of attaching conditions to optional clause declarations has provided a necessary flexibility to States, without which they may not have been able to make the declaration in the first place. However, it must be admitted that such reservations and conditions may also complicate the work of the Court, and serve to weaken its overall jurisdictional reach. I would like to offer in closing one such example of a difficulty the international Court of Justice may face in this regard. This is the common inclusion of conditions *ratione temporis* limiting the jurisdiction of the Court to disputes arising after the making of the declaration. The most common formulation of this type of condition excludes "disputes prior to the date of the declaration, including any dispute the

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[17] *I.C.J. Reports 1986*, p. 38, para. 56, and p. 97, para 182.

[18] *Electricity Company of Sofia and Bulgaria, Judgment, 1939, P.C.I.J., Series A/B, No. 77*, p. 76; Case concerning the *Arbitral Award of 31 July 1989 (Guinea-Bissau* v. *Senegal), Judgment, I.C.J. Reports 1991*, pp. 61-62, paras. 22-24.

[19] The declarations of six members of the British Commonwealth contained such a declaration with regard to the jurisdiction of the PCIJ: Australia, Canada, India, New Zealand, South Africa and the United Kingdom. The declarations of eight States currently contain this reservation with regard to the jurisdiction of the ICJ: Barbados, Canada, Gambia, India, Kenya, Malta, Mauritius, United Kingdom.

foundations, reasons, facts, causes, origins, definitions, allegations or bases of which existed prior to that date, even if they are submitted or brought to the knowledge of the Court thereafter"[20].

The difficulty that has arisen with such a condition is that it can be nearly impossible to determine exactly how far back to consider the foundations, reasons, and causes of the dispute to have begun, since ultimately everything in history is related to and results from that which happened before it. The Permanent Court dealt with this question in the *Phosphates in Morocco*[21] and *Electricity Company of Sofia and Bulgaria*[22] cases, developing a test whereby the Court would begin the clock at what it considers to be the "real cause" of the dispute. The current Court has followed this approach in the *Right of Passage* case. In that case, the Court determined that although the Applicant's right of passage existed prior to 5 February 1930 — the date of Respondent's optional clause declaration which contained a condition making it non-retroactive — the dispute had not arisen until the date when the Applicant contended that Respondent had taken measures to prevent the exercise of that right[23]. This issue came up again in more recent cases, such as the case concerning *Certain Properties (Liechtenstein* v. *Germany)* and *Jurisdictional Immunities of the State (Germany* v. *Italy)*.

Certainly, there are cases when one or more parties to a treaty may wish to limit the temporal scope of the treaty's application. However, it cannot be denied that this comes at a cost in terms of resources, both of the parties and of the Court, in order to determine if such a temporal limitation applies in the case under consideration. It may be the case that certain States, in entering this type of reservation, have in mind a very specific dispute existing prior to the optional clause declaration, which they are interested in excluding. In such a case, a reservation drafted in more specific terms could facilitate judicial efficiency, as it would be easier to determine whether it was applicable.

(c) ***Concluding comments***

Mr. Secretary-General

Madame Deputy-Secretary-General,

Madame Legal Counsel,

Legal Advisers and distinguished guests,

By way of conclusion, I may recall that the importance of the Court's compulsory jurisdiction has been a priority within the United Nations for many years. The Manila Declaration on the Peaceful Settlement of International Disputes, adopted by the General Assembly on 15 November 1982, placed a particular emphasis on the significance of recognizing the jurisdiction of the Court. In its Article 5, the Declaration provides that "legal disputes should as a general rule

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[20]See, for example, the Reservation of India.

[21]*Phosphates in Morocco, Judgment, 1938, P.C.I.J., Series A/B, No. 74*, pp. 23-24.

[22]*Electricity Company of Sofia and Bulgaria, Judgment, 1939, P.C.I.J., Series A/B, No. 77*, pp. 63, 82.

[23]Case concerning *Right of Passage over Indian Territory (Merits), Judgment of 12 April 1960, I.C.J. Reports 1960*, pp. 33-35. Most recently, in the case concerning *Jurisdictional Immunities of the State (Germany* v. *Italy)* earlier this year, the Court also followed this approach, but with the opposite result. In that case the temporal limitation did not come from a reservation to an optional clause declaration but was included directly in a treaty containing a compromissory clause providing for jurisdiction of the Court. The Court decided that the dispute that Italy intended to bring before the Court by way of its counter-claim related to facts and situations existing prior to the entry into force of that treaty (*Jurisdictional Immunities of the State (Germany* v. *Italy)*, Order of 6 July 2010, para. 30). The Court therefore found that what Italy claimed to be the cause of the dispute was not the "real cause" of the dispute and concluded that the counter-claim presented by Italy did not come within its jurisdiction. *Ibid.,* paras. 26-31.

be referred by the parties to the International Court of Justice"[24]. It urges States to "[c]onsider the possibility of inserting in treaties, whenever appropriate, clauses providing for the submission to the International Court of Justice of disputes which may arise from the interpretation or application of such treaties"[25]. It further stresses that States should "[s]tudy the possibility of choosing, in the free exercise of their sovereignty, to recognize as compulsory the jurisdiction of the International Court of Justice in accordance with Article 36 of its Statute"[26].

In 1992, Secretary-General Boutros-Ghali called on States to submit to the compulsory jurisdiction of the Court, emphasizing that that acceptance should be "without reservation"[27]. Secretary-General Kofi Annan made a similar plea to States to accept the compulsory jurisdiction of the Court in 2001, emphasizing that "the more States that accept compulsory jurisdiction of the Court, the higher the chances that potential disputes can be expeditiously resolved through peaceful means"[28]. Taking note of these efforts, a Member of the Court in his Declaration in a recent case observed that

> "[W]hile consent forms the cornerstone of the system of international adjudication, States have a duty under the Charter to settle their disputes peacefully. Recognition of the compulsory jurisdiction of the Court fulfils this duty."[29]

Today, in 2010, recognition of the Court's compulsory jurisdiction is as important as ever before. It is the inter-connected web of optional clause declarations and compromissory clauses which create a foundation upon which the Court can develop a continuous jurisdiction that does not have to be re-established with each new dispute as does jurisdiction by special agreement. Yet, as I have discussed today, both the compromissory jurisdiction and the optional clause jurisdiction of the Court are riddled with many reservations and conditions, limiting the role that the Court can have in upholding the rule of law. I am thus very happy to remain as a participant in the seminar which will now be launched by the Office of Legal Affairs on the contentious jurisdiction of the Court, and I look forward to hearing your ideas on ways in which that contentious jurisdiction could be strengthened. Thank you very much for the opportunity to address you today.

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[24]Manila Declaration on the Peaceful Settlement of International Disputes, adopted by the General Assembly in resolution 37/10 of 15 November 1982.

[25]*Ibid.*

[26]*Ibid.*

[27]*An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-keeping*, Report of the Secretary-General adopted by a summit meeting of the Security Council on 31 January 1992, A/47/277-S/24111, para. 39.

[28]*Prevention of Armed Conflict*, Report of the Secretary-General, 7 June 2001, A/55/985-S/2001/574, para. 48.

[29]*Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo* v. *Rwanda), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006*, declaration of Judge Elaraby, paras. 8-9.

Annex 27

P. Chandrasekhara Rao, "Law of the Sea, Settlement of Disputes", *Max Planck Encyclopedia of Public International Law* (last updated Mar. 2011)

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Law of the Sea, Settlement of Disputes

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A. Traditional Dispute Settlement Procedures

1 Generally speaking, the procedures for the settlement of all types of disputes in the field of international law were, until recently, the same (Peaceful Settlement of International Disputes). Dispute settlement in international law involved recourse to such traditional methods as negotiation, inquiry (Fact-Finding), good offices, conciliation, mediation, arbitration, and judicial settlement (Judicial Settlement of International Disputes). The Permanent Court of International Justice (PCIJ) as well as the International Court of Justice (ICJ) decided a number of cases where questions of the law of the sea were involved. The landmark decisions rendered by these courts and the results of other dispute settlement procedures mentioned above include the Alabama Arbitration (1872), the *Bering Sea Fur Seals Arbitration* (1893; Bering Sea), the *Case of the SS Wimbledon* (1923) (Wimbledon, The), the *Case of the SS Lotus* (1927) (Lotus, The), the Palmas Island Arbitration (1928), the Corfu Channel Case (1949), the Fisheries Case (United Kingdom v Norway) (1951), the North Sea Continental Shelf Cases (1969), the Fisheries Jurisdiction Case (Spain v Canada) (1974), the Continental Shelf Arbitration (France v United Kingdom) (1977), the Beagle Channel Dispute (1977), the Continental Shelf Case (Libyan Arab Jamahiriya/Malta) (1985), the Maritime Boundary between Guinea and Guinea-Bissau Arbitration (Guinea v Guinea-Bissau) (1985), the Fisheries Jurisdiction Cases (United Kingdom v Iceland; Federal Republic of Germany v Iceland) (1998), and the Land and Maritime Boundary between Cameroon and Nigeria Case (Cameroon v Nigeria) (2002).

2 These traditional dispute settlement procedures are still available for the settlement of law of the sea disputes, as they are for other disputes. None of the traditional procedures are compulsory. The ICJ has dealt with law of the sea disputes on the basis of its jurisdiction as provided for in its Statute: jurisdiction conferred on the ICJ by a special agreement or by means of the 'optional clause' in Art. 36 (2) ICJ Statute (Compromis; International Court of Justice, Optional Clause). It is noteworthy that the ICJ handed down several judgments, by which it made a significant contribution to the jurisprudence on the law of the sea, especially on issues concerning the delimitation of territorial sea[s], the continental shelf, and the exclusive economic zone.

3 The 1907 Hague Convention relative to the Establishment of an International Prize Court ((1908) 2 AJIL Supp 174) to deal with the specific problem of capture of foreign vessels at sea by belligerents (Belligerency), which included specific dispute settlement provisions, never came into force (International Prize Court [IPC]). The States at the First United Nations Conference on the Law of the Sea ('UNCLOS I' 1958; Conferences on the Law of the Sea) agreed upon the 1958 Geneva Conventions on the Law of the Sea and the Optional Protocol of Signature concerning the Compulsory Settlement of Disputes (other than those covered by the 1958 Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas; Marine Living Resources, International Protection). The 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas provided for the settlement of fishing disputes by a special commission whose decisions would be binding on the States concerned, unless the parties agreed to seek a solution by another method of peaceful settlement. None of the dispute settlement procedures contained in the 1958 Geneva Conventions proved effective.

4 However, the initiative taken by Arvid Pardo, the then Ambassador of Malta to the United Nations, in the UN General Assembly in 1967 set in motion a process that involved deliberations on all aspects of the law of the sea, including dispute settlement procedures, first in an Ad Hoc Committee to Study the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction (1967; International Seabed Area), then in the Committee on the Peaceful Uses of the Sea-Bed and Ocean Floor Beyond the Limits of National Jurisdiction ('Sea-Bed Committee' 1969–73; Peaceful Purposes), and finally in the Third United Nations Conference on the Law of the Sea ('UNCLOS III' 1973–82). In the Sea-Bed Committee, proposals were made for dealing in a piecemeal fashion with disputes that might arise on

various issues, such as seabed mining, fisheries (Fisheries, Coastal; Fisheries, High Seas; Fisheries, Sedentary), protection of the marine environment (Marine Environment, International Protection), conduct of marine scientific research, high seas, continental shelf, territorial sea, and straits (Straits, International). Some proposals, however, provided for the settlement of law of the sea disputes in general, and the most prominent among them was the proposal made by the United States on the last day of the last session of the Sea-Bed Committee in August 1973. This proposal envisaged, inter alia, the establishment of a Law of the Sea Tribunal with jurisdiction to settle disputes falling under compulsory dispute settlement procedures and to handle cases requiring urgent action including requests for prompt release of vessels and crews (International Tribunal for the Law of the Sea [ITLOS]). This proposal served as a basis for informal consultations in the latter part of the second session of UNCLOS III held in Caracas in 1974. The Caracas session established an informal working group, which prepared a working paper on dispute settlement, including a draft statute of the proposed tribunal. This paper served as a basis for further deliberations at the Conference's third to tenth sessions and their negotiating texts. It was only at the fifth session of the Conference held in New York in 1976 that general approval was found for the establishment of a Seabed Disputes Chamber within the proposed Law of the Sea Tribunal. The dispute settlement provisions took their final form only when the UN Convention on the Law of the Sea as a whole was adopted in 1982.

B. Part XV of the UN Convention on the Law of the Sea

5 The UN Convention on the Law of the Sea was opened for signature on 10 December 1982. More than 100 of its articles deal with dispute settlement in a comprehensive manner. The dispute settlement provisions constitute an integral part of the Convention. It establishes both voluntary and compulsory procedures for dispute settlement. The drafters of the UN Convention on the Law of the Sea considered that effective dispute settlement was essential to balance the delicate compromises incorporated in the Convention and to guarantee that it would be interpreted both consistently and equitably (Equity in International Law; Interpretation in International Law). For the first time, the UN Convention on the Law of the Sea provides for the access of entities other than States to an international tribunal in their disputes with a State or international organization (International Courts and Tribunals, Standing).

6 The dispute settlement procedures in the UN Convention on the Law of the Sea are set out in its Part XV. Part XV is analogous to the procedure of the ICJ under its Statute. It makes no difference whether a dispute concerning the law of the sea is submitted to the ICJ either under Part XV UN Convention on the Law of the Sea or under the Statute of the ICJ. The choice of procedure has, however, an important effect on interim (provisional) measures of protection as Art. 290 (1) UN Convention on the Law of the Sea permits the court or tribunal to prescribe provisional measures to prevent serious harm to the marine environment, pending the final decision of that court or tribunal, a possibility which is not contemplated in Art. 41 ICJ Statute. Part XV UN Convention on the Law of the Sea contains three sections; they evolve logically from one to the other and are thus well structured.

1. Voluntary Dispute Settlement Procedures

7 Section 1 of Part XV (Arts 279–285 UN Convention on the Law of the Sea) contains dispute settlement procedures well known in general international law. The basic principle embodied in Art. 279 UN Convention on the Law of the Sea declares that States Parties are required to settle any dispute between them concerning the interpretation or application of the Convention by peaceful means, as specified in Art. 33 (1) UN Charter, ie, through negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice. Thus, recourse to non-peaceful means is impermissible for the settlement of any dispute under the UN Convention on the Law of the Sea. The Convention does not prefer one peaceful means of dispute settlement over another.

8 The parties are given complete autonomy to choose 'at any time' the peaceful means of their own choice to settle a dispute between them; as a consequence, they may by agreement discontinue any procedure and have recourse to an alternative peaceful means of dispute settlement (Art. 280 UN Convention on the Law of the Sea).

9 In further elaboration of the principle of parties' autonomy, the UN Convention on the Law of the Sea provides that in respect of a dispute concerning the 'interpretation or application of this Convention', if the States Parties have agreed to seek settlement of their dispute by a peaceful means of their own choice, the procedures provided for in Part XV apply 'only where no settlement has been reached by recourse to such means and the agreement between the parties does not exclude any further procedure' or upon the expiration of the time limit agreed upon by the parties for reaching a settlement by a peaceful means of their choice (Art. 281 UN Convention on the Law of the Sea). The peaceful means chosen by the parties may even fall outside the Convention. Differences between the parties over whether or not the procedure chosen by the parties precludes the possibility of settlement will have to be decided by the court or tribunal to which the dispute is submitted.

10 The exclusion of the procedures provided for in Part XV will arise only if the agreement between the parties contains procedures different from those referred to above for resolving disputes concerning 'the interpretation or application of this Convention'. The fact that the agreement contains provisions similar to the provisions of the UN Convention on the Law of the Sea is not material in this regard: *Southern Bluefin Tuna Cases (New Zealand v Japan; Australia v Japan) (Provisional Measures)* (27 August 1999; Southern Bluefin Tuna Cases). Further, the words 'and the agreement between the parties does not exclude any further procedure' in Art. 281 (1) UN Convention on the Law of the Sea signify that even if the dispute is not settled by the chosen procedure, if the parties agreed to exclude any further procedure, then the procedures provided for in Part XV do not apply. In its Award on Jurisdiction and Admissibility of 4 August 2000, the first Arbitral Tribunal to be established under Annex VII to the UN Convention on the Law of the Sea, in the *Southern Bluefin Tuna Cases*, held that non-binding dispute settlement provisions of a regional fisheries agreement applied to the exclusion of the procedures provided for in Part XV (International Courts and Tribunals, Jurisdiction and Admissibility of Inter-State Applications). The view of the Arbitral Tribunal that the agreement to exclude 'any further procedure' may be inferred from the provisions of the regional fisheries agreement has been widely criticized. The more widely shared view is that such exclusion of any further procedure should follow from clear wording in the agreement lest the compulsory dispute resolution provisions of the UN Convention on the Law of the Sea be undermined.

11 The UN Convention on the Law of the Sea also provides that a dispute must be submitted to a procedure that entails a binding decision if the parties have so agreed, through a general, regional, or bilateral agreement or otherwise; and in that event the procedure provided for in Part XV would not apply, unless the parties otherwise agree (Art. 282 UN Convention on the Law of the Sea). This allows any party to a dispute to have the dispute settled in accordance with a procedure previously agreed upon if such procedure entails a binding decision. It matters little whether such agreement was reached prior to the entry into force of the Convention or thereafter. The agreement referred to in Art. 282 UN Convention on the Law of the Sea may be recorded 'otherwise', for example, through separate declarations, such as declarations made under Art. 36 (2) ICJ Statute. To fall within the ambit of Art. 282 UN Convention on the Law of the Sea, the agreement shall provide for the settlement of disputes concerning what the Convention calls 'the interpretation or application of this Convention' and not of any other instrument (*MOX Plant [Ireland v United Kingdom] [Provisional Measures]* [3 December 2001] para. 38; MOX Plant Arbitration and Cases). Even if the other instrument contains rights or obligations similar to or identical with the rights or obligations set out in the UN Convention on the Law of the Sea, the rights and obligations under that instrument have a separate existence from those under the UN Convention on the Law of the Sea. Consequently, the interpretation or application of that instrument cannot be said to be a case concerning 'the interpretation or application' of the UN Convention on the Law of the Sea (at paras 39–53).

12 When a dispute arises between States Parties to the UN Convention on the Law of the Sea, the Convention requires the parties to the dispute to proceed 'expeditiously' to an exchange of views regarding its settlement by negotiation or other peaceful means. Further, the obligation to exchange views expeditiously also applies where a procedure for dispute settlement has been terminated without a settlement or where a settlement has been reached and the circumstances require consultation regarding the manner of implementing the settlement (Art. 283 UN Convention on the Law of the Sea). A State Party to a dispute is not obliged to pursue negotiation or other peaceful means under Part XV, section 1, when it concludes that the possibilities of settlement have been exhausted (*Southern Bluefin Tuna Cases* [27 August 1999] para. 60). The obligation to exchange views is not an empty formality, to be dispensed with at the whim of a disputant.

13 Where the parties agree to submit a dispute to voluntary conciliation, they may do so in accordance with the procedure under Annex V, section 1 UN Convention on the Law of the Sea or another conciliation procedure. Once the dispute has been submitted to a conciliation procedure, the proceedings may be terminated only in accordance with such procedure, unless the parties agree otherwise. If one party or the other does not agree to submit the dispute to conciliation or the parties do not agree upon the conciliation procedure, the conciliation proceedings are deemed to be terminated (Art. 284 UN Convention on the Law of the Sea).

14 Section 1 of Part XV also applies to any dispute, which pursuant to Part XI, section 5 UN Convention on the Law of the Sea is to be settled in accordance with procedures provided for in this part. If an entity other than a State Party (including state enterprises and natural or juridical persons) is a party to such a dispute, section 1 applies *mutatis mutandis* (Art. 285 UN Convention on the Law of the Sea). Thus, Art. 285 makes the means indicated in Art. 33 (1) UN Charter applicable to disputes between non-State entities, such as international organizations and multinational corporations, as well as between those entities and States.

15 Notwithstanding section 1 or section 3 of Part XV, there is no bar to the parties, by agreement, directly taking recourse to a compulsory procedure that entails a binding decision under Part XV, section 2 UN Convention on the Law of the Sea. There is no limitation on the freedom of the parties to agree to settle any dispute between them by compulsory dispute settlement procedures (Art. 299 UN Convention on the Law of the Sea). Section 1 of Part XV applies only where there is no such agreement between the parties.

2. Compulsory Dispute Settlement Procedures

16 If parties fail to settle a dispute by voluntary means, they are obliged to resort to compulsory procedures entailing binding decisions provided for in section 2 of Part XV, subject to the limitations and exceptions contained in the UN Convention on the Law of the Sea. States Parties to the Convention are deemed to have accepted these compulsory procedures by becoming parties to the Convention. Section 2 of Part XV starts off with Art. 286, which states the conditions subject to which the compulsory procedures embodied therein come into play. By virtue of this article, the questions that need to be answered are whether the 'limitations' on the applicability of section 2 set out in Art. 297 UN Convention on the Law of the Sea apply to the dispute in question; and whether the disputant State has made a declaration that it does not accept any one or more of the compulsory procedures provided for in section 2 with respect to one or more of the categories of disputes specified in Art. 298 of the Convention. Arts 297 and 298 UN Convention on the Law of the Sea do not, however, stand in the way of the States concerned arriving at an agreement for submitting their dispute to any of the compulsory procedures specified in section 2. A further requirement of Art. 286 UN Convention on the Law of the Sea is that compulsory dispute settlement procedures can be invoked only 'where no settlement has been reached by recourse to section 1', unless, of course, the parties to the dispute otherwise agree. In short, if the limitations and exceptions to the applicability of section 2 as specified in section 3 are not applicable and if the requirements of section 1

are satisfied, under Art. 286 UN Convention on the Law of the Sea, any dispute concerning the interpretation or application of the Convention 'shall ... be submitted at the request of any party to the dispute to the court or tribunal having jurisdiction' under section 2. It is not a requirement that both the parties shall agree to such submission.

17 Art. 287 UN Convention on the Law of the Sea specifies which court or tribunal will have jurisdiction under the Convention. It deals with 'choice of procedure', and, in its para. 1, it provides that a State is free to choose one or more of the following four compulsory procedures entailing binding decisions for the settlement of disputes concerning the interpretation or application of the UN Convention on the Law of the Sea: a) the ITLOS; b) the ICJ; c) an arbitral tribunal constituted in accordance with Annex VII; d) a special arbitral tribunal constituted in accordance with Annex VIII for one or more of the categories of disputes specified therein. Annexes VII and VIII to the UN Convention on the Law of the Sea deal with the mechanics of institutional arrangements concerning arbitration and special arbitration, respectively. Whereas the special arbitral procedure provided for in Annex VIII may be invoked in a dispute concerning the interpretation or application of the Convention relating to a) fisheries, b) protection and preservation of the marine environment, c) marine scientific research, or d) navigation, including pollution from vessels and by dumping (Marine Pollution from Ships, Prevention of and Responses to; Navigation, Freedom of), there is no such limitation with regard to invocation of the arbitral procedure in Annex VII.

18 The 'Montreux Compromise' embodied in Art. 287 UN Convention on the Law of the Sea, which provides for a plurality of adjudicating bodies of equal standing, made agreement on the Convention in general, and procedures for the settlement of disputes in particular, possible. The availability of a plurality of options to choose the appropriate means of dispute settlement is seen by some as a step that could undermine the unity of international law (Fragmentation of International Law). Such a view runs counter to what the drafters of the UN Convention on the Law of the Sea had intended. There is also no material to suggest that judicial decentralization has inhibited the coherence of international law. The Resolution on the United Nations Decade of International Law, adopted by the UN General Assembly at its 54th Session (UNGA Res 54/28 UN Doc A/RES/54/28 [17 November 1999]), recognizes that the establishment of tribunals in recent times constitutes 'significant events' within the United Nations Decade. Besides, the entry of non-State disputants in international adjudication made the ICJ unsuitable for litigation of disputes in respect of the international seabed area.

19 Resort to the ITLOS is listed as the first of a number of means for the settlement of disputes in Art. 287 UN Convention on the Law of the Sea, which the Member States are free to choose from. This was probably due to several factors. Among others, the jurisdiction of the ITLOS under the UN Convention on the Law of the Sea is wider than that of any other court or tribunal referred to in Art. 287. Unless the parties agree otherwise, the ITLOS has a residual compulsory jurisdiction in regard to the prescription of provisional measures under Art. 290 (5) UN Convention on the Law of the Sea and prompt release of vessels and crews under Art. 292. The Seabed Disputes Chamber of the ITLOS has compulsory jurisdiction in disputes with respect to activities in the international seabed area to the extent provided for in Part XI, section 5 UN Convention on the Law of the Sea. At the request of any party to the dispute, such disputes can also be decided by an ad hoc chamber of the Seabed Disputes Chamber. The Seabed Disputes Chamber is also authorized to give advisory opinions at the request of the Assembly or the Council of the International Seabed Authority (ISA) on legal questions arising within the scope of its activities.

20 The choice of procedure may be affected by means of a written declaration submitted when signing, ratifying, or acceding to the UN Convention on the Law of the Sea or 'at any time thereafter'. Such declarations do not, however, affect the jurisdiction of the Seabed Disputes Chamber of the ITLOS as provided for in Part XI, section 5 UN Convention on the Law of the Sea.

21 Art. 287 (3) UN Convention on the Law of the Sea provides that a State Party which is a party to a dispute not covered by a declaration in force is deemed to have accepted arbitration in accordance with

Annex VII. Art. 287 (4) UN Convention on the Law of the Sea provides that if the parties to a dispute have accepted 'the same procedure' for the settlement of the dispute, it may be submitted only to that procedure, unless the parties otherwise agree. Art. 287 (5) UN Convention on the Law of the Sea provides that, if the parties to a dispute have not accepted 'the same procedure', it may be submitted only to arbitration in accordance with Annex VII, unless the parties otherwise agree. Out of the present 160 States Parties to the UN Convention on the Law of the Sea, only 43 have filed declarations under Art. 287. When no declaration is made, a preference for arbitration under Annex VII is presumed. It is doubtful whether the consequences of not filing a declaration have been fully considered by States. It may be for this reason that the UN General Assembly has, in its annual resolutions on Oceans and the Law of the Sea (eg UNGA Res 65/37 [7 December 2010] UN Doc A/RES/65/37), been encouraging States Parties to the UN Convention on the Law of the Sea that have not yet done so to consider making a written declaration choosing from the means for the settlement of disputes set out in Art. 287 UN Convention on the Law of the Sea.

22 Art. 288 UN Convention on the Law of the Sea determines the scope of the jurisdiction of a court or tribunal referred to in Art. 287. That jurisdiction extends primarily to disputes concerning 'the interpretation or application' of the UN Convention on the Law of the Sea. It further extends over any dispute concerning 'the interpretation or application of an international agreement related to the purposes of this Convention, which is submitted to it in accordance with the agreement'. It is not necessary that parties to such agreements be parties to the UN Convention on the Law of the Sea before a court or tribunal exercises its jurisdiction under Art. 288. There are currently ten such agreements. The prominent example is the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks ('Straddling Fish Stocks Agreement'), which provides that the provisions relating to the settlement of disputes set out in Part XV UN Convention on the Law of the Sea apply *mutatis mutandis* to any dispute arising out of the interpretation or application of these agreements. The Straddling Fish Stocks Agreement also makes its dispute settlement mechanism applicable to disputes concerning sub-regional, regional, or global fisheries agreements relating to straddling or highly migratory fish stocks which are the subject of these agreements. Art. 288 UN Convention on the Law of the Sea further provides that the Seabed Disputes Chamber and any other chamber or arbitral tribunal referred to in Part XI, section 5 UN Convention on the Law of the Sea shall have jurisdiction in any matter which is submitted to them in accordance therewith. In the event of a dispute as to whether a court or tribunal has jurisdiction, the matter shall be settled by that court or tribunal.

23 Provision is made for the appointment of scientific or technical experts to sit with the court or tribunal but without the right to vote (Art. 289 UN Convention on the Law of the Sea). Their role is similar to that of assessors in the ICJ. If a court or tribunal to which a dispute has been duly submitted considers prima facie that it has jurisdiction under Part XV or Part XI, section 5, it may prescribe, at the request of a party, any provisional measures to 'preserve the respective rights of the parties to the dispute or to prevent serious harm to the marine environment, pending the final decision' (Art. 290 (1) UN Convention on the Law of the Sea). An obligation is imposed on the parties to 'comply promptly' with such measures. The ITLOS may also prescribe provisional measures to prevent damage to fish stocks in accordance with Art. 31 (2) Straddling Fish Stocks Agreement. Provision is also made for securing prompt release of vessels or crews upon the posting of a reasonable bond or other financial security (Art. 292 UN Convention on the Law of the Sea).

24 A court or tribunal having jurisdiction under section 2 of Part XV is required to apply the UN Convention on the Law of the Sea and other rules of international law not incompatible with the Convention. It may decide a case ex aequo et bono, if the parties so agree (Art. 293 UN Convention on the Law of the Sea). If a court or tribunal exercising compulsory jurisdiction determines that a claim

'constitutes an abuse of legal process or is prima facie unfounded', it is called upon to take no further action in the case (Art. 294 UN Convention on the Law of the Sea). Whatever the rules of international law relating to the exhaustion of local remedies might be, they would apply also to disputes concerning the law of the sea (Art. 295 UN Convention on the Law of the Sea; Local Remedies, Exhaustion of). It has been held that it is not logical to read the requirement of exhaustion of local remedies into Art. 292 UN Convention on the Law of the Sea (*'Camouco' Case [Panama v France] [Prompt Release]*). It is declared that any decision rendered by a court or tribunal exercising compulsory jurisdiction under section 2 of Part XV shall be final and shall be complied with by all the parties to the dispute. However, such decision binds only the parties to the dispute and then only in respect of that particular dispute (Art. 296 UN Convention on the Law of the Sea). It is interesting to note that Art. 21 of Annex III to the UN Convention on the Law of the Sea provides that any final decision rendered by a court or tribunal having jurisdiction under the Convention relating to the rights and obligations of the ISA and of a contractor shall be enforceable in the territory of each State Party.

3. Limitations and Exceptions

25 Part XV, section 3 UN Convention on the Law of the Sea contains limitations and exceptions to the applicability of the compulsory dispute settlement procedures contained in section 2 of the Convention. Art. 297 (1) provides that disputes with regard to the exercise by a coastal State of its sovereign rights or jurisdiction shall be subject to the compulsory procedures provided in section 2 in three types of cases:

> **a)** when it is alleged that a coastal State has acted in contravention of the Convention in regard to the freedoms and rights of navigation, overflight, or the laying of submarine cables and pipelines, or in regard to other internationally lawful uses of the sea specified in Art. 58 UN Convention on the Law of the Sea;
>
> **b)** when it is alleged that a State exercising these freedoms, rights, or uses has acted in contravention of this Convention or of laws or regulations enacted by the coastal State; and
>
> **c)** when it is alleged that a coastal State has acted in contravention of specified international rules and standards for the protection and preservation of the marine environment.

26 Art. 297 (2) and (3) UN Convention on the Law of the Sea, while providing for the application of compulsory dispute settlement procedures to marine scientific research and fisheries, exempt a coastal State from the obligation of submitting to such procedures any dispute arising out of its exercise of certain rights with respect to marine scientific research in the exclusive economic zone or on the continental shelf, or any dispute relating to its sovereign rights with respect to the living resources in the exclusive economic zone (see also Arts 264 and 265 UN Convention on the Law of the Sea).

27 Provision is made in Art. 297 (2) (b) and (3) (b) UN Convention on the Law of the Sea, for obligatory recourse to conciliation under Annex V, section 2, in the following circumstances: in regard to a dispute arising from an allegation by a researching State that with respect to a specific marine scientific project the coastal State is not exercising its rights under Arts 246 and 253 in a manner compatible with the Convention (Art. 297 (2) (b) UN Convention on the Law of the Sea); and in regard to allegations of manifest failure by a coastal State to comply with its obligations or of arbitrary action on its part with respect to the living resources in its exclusive economic zone (Art. 297 (3) (b) UN Convention on the Law of the Sea). The recommendations of the conciliation commission are not, however, binding (Annex V, Arts 7 (2) and 14). A disagreement as to whether a conciliatory commission has jurisdiction 'shall be decided by the commission' (Annex V, Art. 13).

28 In negotiating agreements pursuant to Arts 69 and 70 UN Convention on the Law of the Sea with respect to access to coastal fisheries, coastal States and land-locked States and geographically

disadvantaged States shall include sufficient measures for minimizing the possibility of disagreement concerning the interpretation or application of these agreements, as well as measures on how they shall proceed if a disagreement nevertheless arises (Art 297 (3) (e) UN Convention on the Law of the Sea).

29 Art. 298 UN Convention on the Law of the Sea deals with three types of disputes, which States may exclude by written declaration from any or all of the compulsory dispute settlement procedures provided for in section 2 of Part XV. These are:

> **a)** disputes concerning Arts 15, 74 and 83 UN Convention on the Law of the Sea relating to sea boundary delimitations or historic bays or titles;
>
> **b)** disputes concerning military activities or law enforcement activities by a coastal State with respect to fisheries and marine scientific research in areas subject to its jurisdiction; and
>
> **c)** disputes in respect of which the UN Security Council is exercising its functions under the UN Charter. When a State makes a declaration that it does not accept any one or more of the procedures in section 2 of Part XV with respect to disputes referred to in a) above, it shall, when such a dispute arises subsequent to the entry into force of this Convention and where no agreement within a reasonable period of time is reached in negotiations between the parties, at the request of any party to the dispute, accept submission of the matter to conciliation under Annex V, section 2, provided that 'any dispute that necessarily involves the concurrent consideration of any unsettled dispute concerning sovereignty or other rights over continental or insular land territory shall be excluded from such submission'. This proviso clearly suggests that where no declarations are made under Art. 298 UN Convention on the Law of the Sea, any of the adjudicating bodies mentioned in Art. 287 are competent to deal with sea boundary delimitations even when they involve consideration of disputes mentioned in the proviso.

30 Disputes excluded by Art. 297 UN Convention on the Law of the Sea or exempted by Art. 298 from application of the compulsory dispute settlement procedures provided for in Part XV, section 2, may be submitted to such procedures 'only by agreement of the parties to the dispute'. The parties are, however, free to agree to some other procedure for the settlement of such disputes or to reach an amicable settlement (Art. 299 UN Convention on the Law of the Sea).

C. Other Instruments

31 The UN Convention on the Law of the Sea is by no means a complete code on the subject of settlement of law of the sea disputes, although it is undoubtedly the main instrument in that regard. Art. 288 UN Convention on the Law of the Sea confers jurisdiction on a court or tribunal referred to in Art. 287 to deal with disputes concerning the interpretation or application of other international agreements related to the 'purposes of the Convention'. The Statute of the ITLOS contained in Annex VI to the UN Convention on the Law of the Sea confers jurisdiction on the ITLOS over all matters provided for in 'any other agreement' (Art. 21 ITLOS Statute).

32 There are several bilateral and multilateral agreements giving effect to one aspect or the other of the UN Convention on the Law of the Sea or to the broad principles set out therein. This is so especially in relation to fisheries and environmental matters. Such agreements may also involve obligations arising under them as also under the Convention. Difficult problems may arise where two dispute settlement procedures—one under the UN Convention on the Law of the Sea and the other under another agreement—run in parallel in respect of the same or substantially the same dispute or of different aspects of the same dispute.

33 Questions may arise as to how to avoid a conflict of decisions on the same issue. The problems are less severe in cases where 'self-contained' and 'distinct' disputes may be made out of the provisions concerning

resolution by different adjudicating bodies. Where such distinct disputes cannot be made out, and where both adjudicating bodies are simultaneously called upon to determine rights and obligations of the parties, each body may have to examine, on an objective basis, which body would be required to deal with the 'most acute' or 'main' elements of the dispute and then take a decision on suspending the proceedings before it until such a time as the other body has had occasion to decide the most acute elements of the dispute. No clear judicial guidelines have yet emerged in this regard. It may be that each case will have to be dealt with on its merits, bearing in mind considerations of mutual respect and comity which should prevail between judicial bodies (see *MOX Plant Case [Ireland v United Kingdom] [Order No 3] [Suspension of Proceedings on Jurisdiction and Merits and Requests for Further Provisional Measures]* para. 28).

D. Evaluation

34 The system established by the UN Convention on the Law of the Sea with regard to the settlement of law of the sea disputes certainly constitutes a step forward in comparison with the traditional dispute settlement mechanisms. It forms an integral part of the Convention and includes compulsory procedures entailing binding decisions. Of course, several major disputes are exempted from compulsory dispute settlement. This cannot be seen as a negative development. Some disputes require political decisions within the framework of the UN Convention on the Law of the Sea. Direct negotiations between the parties to a dispute play a great role in this regard.

35 While providing for more than one adjudicating body, the drafters of the UN Convention on the Law of the Sea did not perceive any danger to the unity of international law. These bodies fulfil complementary needs. It is to be hoped that each body, although autonomous in itself, will have due regard to the decisions rendered by the other adjudicating bodies, thus ensuring the harmonious development of the law of the sea. At the same time, it may be noted that the UN Convention on the Law of the Sea does not foresee uniformity of interpretation as a necessary objective.

36 Little information is available regarding the extent to which States Parties have made use of the dispute settlement mechanisms provided for in the UN Convention on the Law of the Sea. The effect of the provisions in Part XV, section 1 is necessarily a matter of speculation. There has been very limited invocation of the compulsory procedures provided for in Part XV, section 2. Whereas, as of January 2011, 18 cases have been submitted to the ITLOS (of these, only four cases were instituted by special agreement of the parties and the remaining on account of the compulsory jurisdiction of the ITLOS), five cases involving important issues concerning the law of the sea have been submitted to arbitration. It is doubtful as to how far these submissions to arbitration may be seen as preferred procedure of States Parties. The frequency with which dispute settlement mechanisms are invoked is not the only way to measure their significance. In some cases the very existence of these mechanisms has acted as a restraint on arbitrary actions of States or promoted voluntary compliance.

37 Under-utilization of the dispute settlement provisions, if any, is not due to any serious shortcomings or ambiguity in such provisions. The underlying reasons for this are political rather than legal. In the final analysis, these provisions, however perfect they are, can come to life only when litigants make use of them. It is worth noting that the dispute settlement mechanisms in the UN Convention on the Law of the Sea, when tested, have underlined their usefulness in the resolution of law of the sea disputes 'by peaceful means in accordance with Article 2, paragraph 3, of the Charter of the United Nations' (Art. 279 UN Convention on the Law of the Sea). What is also important to realize is that all disputing parties under the UN Convention on the Law of the Sea, whether they be States, international organizations, or multinational corporations, can seek redress through independent judicial institutions. This is a step forward in the development of a coherent international legal order based on justice and equity.

38 States Parties could also usefully explore having recourse to a dispute-settlement body as a partner in preventive diplomacy rather than as an alternative of last resort. The experience of the ITLOS in this regard is a useful pointer in this direction.

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Annex 28

C. Lathrop, "Continental Shelf Delimitation Beyond 200 Nautical Miles: Approaches Taken by Coastal States before the Commission on the Limits of the Continental Shelf" in INTERNATIONAL MARITIME BOUNDARIES (D.A. Colson & R.W. Smith eds., 2011)

Continental Shelf Delimitation Beyond 200 Nautical Miles: Approaches Taken by Coastal States before the Commission on the Limits of the Continental Shelf

COALTER LATHROP

I INTRODUCTION

In the introductory note to Volume V of this series, David Colson wrote that "the promotion and resolution of claims to the outer continental shelf beyond 200 n.m. from the coast – a feature of maritime delimitation now in its infancy – is likely to become an important component of many maritime boundary negotiations that are waiting in the wings."[1] David Anderson made note in the same volume that "[t]he delimitation, as between neighboring states, of the continental shelf beyond 200 n.m. is a topic that will doubtless receive greater attention as the work of the Commission gathers momentum."[2] In the five years since the publication of Volume V, the work of the Commission on the Limits of the Continental Shelf (the CLCS or the Commission) has indeed gathered momentum and delimitation of the continental shelf beyond 200 n.m. from the coast has started to take shape, primarily through the implicit promotion of claims embedded in submissions to the Commission and, to a lesser extent, the resolution by agreement of overlapping claims to extended continental shelf.[3] Because there is, as yet, so little State practice in the actual delimitation of the extended continental shelf, this essay focuses on the CLCS submission process and the place of boundary delimitation in that process.

In the extended continental shelf game, States have two goals: (1) to maximize, bolster and protect their claims to extended continental shelf

1 David A. Colson, *Introduction, in* V INTERNATIONAL MARITIME BOUNDARIES xxvii, xxx (David A. Colson & Robert W. Smith eds., 2005).

2 David Anderson, *Developments in Maritime Boundary Law and Practice, in* V International Maritime Boundaries 3199, 3215 (David A. Colson & Robert W. Smith eds., 2005).

3 The term "extended continental shelf" is used here to indicate those areas of seabed and subsoil of the continental shelf, slope and rise located beyond 200 n.m. from the baseline. The term "outer continental shelf" is often used to refer to these same areas, but should be distinguished from the same term as it is used in United States statutory language and which refers to the continental shelf beginning at the outer limit of each federated states' submerged lands (usually 3 n.m. from shore) and extending to the outer limit of federal jurisdiction. *See* Outer Continental Shelf Lands Act, 43 U.S.C. §1301.

D.A. Colson and R.W. Smith (eds.), International Maritime Boundaries, 4139-4160.

with respect to both the delineation of outer limits and the delimitation of shelf boundaries with opposite or adjacent States, and (2) to receive the Commission's imprimatur on their outer limit claim made pursuant to Article 76. In some circumstances these two goals are in tension. This essay examines the intersection between delimitation and delineation of the continental shelf through the lens of submissions made to the Commission and focuses on the approaches submitting States have taken to reduce the tension created by delimitation issues embedded in those submissions.

It should be emphasized at the start that bilateral *delimitation* of the continental shelf between opposite or adjacent coastal States is a distinct and wholly separate process from the unilateral *delineation* and establishment of the outer limits of the continental shelf beyond 200 n.m. from shore on the basis of Commission recommendations: the former requires agreement between two or more States on the division of areas encompassed by overlapping continental shelf claims, the latter requires individual coastal States to comply with the substantive and procedural terms of Article 76 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS or the Convention). While these two processes – boundary delimitation and outer limit delineation – are separate, the issues involved are often closely linked. And, although efforts have been made to insulate the Article 76 delineation process from related delimitation disputes, most submissions lodged with the CLCS implicate one or more boundary relationships.

A brief overview is provided in Part II. The submission process, the role of the Commission on the Limits of the Continental Shelf, and the attempt to separate bilateral delimitation issues from the Commission delineation process is described in more detail in Part III. The approaches taken by States to address delimitation issues embedded in extended shelf claims are described in Part IV. Part V contains some concluding remarks.

II OVERVIEW

The Commission on the Limits of the Continental Shelf is an international treaty body formed pursuant to Annex II of UNCLOS and composed of 21 experts in the fields of geology, geophysics or hydrography.[4] The first members of the Commission were elected in March 1997, the Commission adopted its initial rules in June 1997, and the Commission's Scientific and

4 1982 Law of the Sea Convention, Annex II, Art. 2(1).

Technical Guidelines were adopted in May 1999. The Commission received its first submission, from the Russian Federation, in December 2001. The primary function of the Commission is "to consider the data and other material submitted by coastal States concerning the outer limits of the continental shelf in areas where those limits extend beyond 200 nautical miles, and to make recommendations in accordance with article 76."[5] It is then for the coastal State to establish its continental shelf outer limit on the basis of those recommendations.[6]

As predicted, the work of the Commission has indeed gathered momentum. During the first ten years of the Commission's existence coastal States made only 11 submissions. In the 12 months leading up to the May 2009 deadline for many States, 40 additional submissions were lodged.[7] At the time of writing, 51 submissions have been made to the Commission with an additional 45 submissions of preliminary information documents which function – essentially – as placeholders for future submissions.[8] In total, 74 coastal States have either lodged submissions or indicated their intent to make a submission. Although this group represents the bulk of all possible submitting States, undoubtedly other States will submit in the future. They could include some of the approximately 30 States Parties to the Convention

5 *Id.* Annex II, Article 3(1)(a).

6 *Id.* Article 76(8).

7 Annex II, Article 4 of the Convention calls upon coastal States to make submissions "within 10 years of the entry into force of [the] Convention for that State." Recognizing that the Commission did not begin its work until mid-1997 and had not adopted Scientific and Technical Guidelines until May 13, 1999, thereby creating "the basic documents concerning submissions in accordance with article 76, paragraph 8, of the Convention," the States Parties to the Convention decided to push the commencement date for the ten-year period up to May 13, 1999, thus creating a deadline of May 13, 2009 for any State Party for which the Convention had entered into force by May 13, 1999. *Decision regarding the date of commencement of the ten-year period for making submissions to the Commission on the Limits of the Continental Shelf set out in article 4 of Annex II to the United Nations Convention on the Law of the Sea*, SPLOS/72 (May 29, 2001).

8 A current list of submissions, recommendations and preliminary information documents along with all executive summaries of submissions, preliminary information documents, diplomatic notes reacting to submissions and other materials related to the Commission's work are available through the website of the CLCS http://www.un.org/Depts/los/clcs_new/clcs_home.htm (last visited May 24, 2010).

During the eighteenth meeting of the States Parties to the Convention it was decided that the submission deadline may be met by submitting "preliminary information documents indicative of the outer limits of the continental shelf beyond 200 nautical miles and a description of the status of preparation and intended date of making a submission." *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 United Nations Convention on the Law of the Sea, as well as the decision contained in SPLOS/72, paragraph (a)*, SPLOS/183 (June 20, 2008), para. 1(a).

for which the submission deadline has not yet passed.[9] Also, non-Party States do not have access to the Commission process unless and until they accede to the Convention. It can be hoped that at least some non-Party States will accede and could then make claims before the Commission to extended shelf.[10]

To date, the area of shelf encompassed by submissions has topped 23 million square kilometers.[11] Submissions of preliminary information documents made through 2009 indicate at least an additional 4 million square kilometers of continental shelf will eventually come under Commission review.[12] In addition to the areas that will be added by new submitting States and as preliminary information documents transform into full-fledged submissions, more than half of the submissions made thus far are only "partial" submissions, implying that more area may be tacked on in future submissions by those submitting States. To a greater or lesser extent, depending on the submission, the Commission has pushed back against coastal State expansion by rejecting some of the scientific and technical bases on which submissions have been made.[13] However, considering all of these factors, we can expect to see a net increase in the area coming under Commission review in the future.

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9 Those States for which the Convention was not yet in force as of the modified commencement date created in SPLOS/72 are still subject to the original terms of Annex II, Article 4: ten years from date of entry into force for that State. Several of these States are likely to make submissions, including for example Madagascar, Morocco, Canada, Denmark, and Bangladesh.

10 A partial list of non-landlocked, non-Party States includes, for example, the United States of America and Venezuela.

11 CONTINENTAL SHELF: THE LAST MARITIME ZONE, (Tina Schoolmeester & Elaine Baker eds., UNEP/GRID-Arendal 2009), at 28, *available at* http://www.unep.org/dewa/pdf/AoA/Continental_Shelf.pdf (last visited May 24, 2010).

The area encompassed in submissions has already far outstripped even recent estimates of the total area of continental shelf beyond 200 n.m. Prescott and Schofield estimated 14.9 million square kilometers of wide margin shelf around continents other than Australia. Victor Prescott & Clive Schofield, THE MARITIME POLITICAL BOUNDARIES OF THE WORLD 187 (2d ed. 2005).

12 CONTINENTAL SHELF, *supra* note 11. Submissions of preliminary information documents often do not contain enough specific information to know the exact contours of the contemplated future submission.

13 The average return rate (i.e. area adopted after recommendations compared to area claimed in the submission) on the first seven recommendations that have been made public is approximately 97%. CONTINENTAL SHELF, *supra* note 11. That is to say approximately 3% of the area of extended continental shelf claimed in those submissions has been deemed to be beyond the outer limit allowed under the terms of Article 76. In the most recent recommendations adopted by the Commission, Barbados appears to have been denied approximately 2,500 square kilometers or 5% of the area it claimed while the Commission rejected, in total, the submission made by the United Kingdom on behalf of Ascension Island. *See Summary of Recommendations of the Commission on the Limits of the Continental Shelf in Regard to the Submission Made by Barbados on 8 May 2008* (Apr. 15, 2010); *Summary of Recommendations of the Commission on the Limits of the Continental Shelf in Regard to the Submission made by the United Kingdom of Great Britain and Northern Ireland in Respect of Ascension Island on 9 May 2008* (Apr. 15, 2010).

It follows that the greater the number of coastal States making submissions, and the more expansive the areas of continental shelf covered by those submissions, the greater the likelihood that claimed area will overlap with area claimed by a neighboring State. The effect has been the extension beyond 200 n.m. of existing boundary relationships and, in some instances, the creation of entirely new boundary relationships beyond 200 n.m.[14] With few exceptions the submissions made thus far implicate one or more boundary relationship with a neighboring State and many of those relationships involve a dispute regarding overlapping claims to continental shelf that arises either from a sovereignty dispute over territory that forms the basis of the claim or from differing perspectives on the location of the maritime boundary that should separate overlapping areas of extended shelf. Of the approximately 23 million square kilometers encompassed by the first 51 submissions, ten percent of that area is included in two or more submissions and is therefore subject to overlapping claims.[15]

III ROLE OF THE COMMISSION ON THE LIMITS OF THE CONTINENTAL SHELF

The Commission on the Limits of the Continental Shelf plays an important supervisory role in the otherwise unilateral process of establishing the outer limits of the continental shelf pursuant to Article 76 of the Convention. However, the Commission is not an arbiter of sovereignty or boundary disputes between coastal States and is not competent to consider the merits of lines of division between opposite or adjacent coastal States with overlapping claims. Above all, the Commission is a scientific and technical body tasked with a narrowly circumscribed review role. The Commission's focus and sole mandate is on the seaward outer limit of wide margin shelves claimed on the basis of the geologic, geomorphologic, hydrographic and geographic criteria provided for in Article 76 of the Convention and elaborated in the Commission's Scientific and Technical Guidelines.[16] Nonetheless, as indicated above, land and maritime disputes are present in

14 For example, assuming Commission recommendations that conform with the submissions and likely future submissions of the following States, we can expect to see new boundary relationships that exist only beyond 200 n.m. between Russia and Denmark (Greenland) and Canada in the Arctic Ocean; France (Crozet Archipelago) and South Africa (Prince Edward Islands) in the Indian Ocean; New Zealand and Tonga; and perhaps several others in the south Pacific Ocean.

15 CONTINENTAL SHELF, *supra* note 11.

16 *See Scientific and Technical Guidelines of the Commission on the Limits of the Continental Shelf*, CLCS/11 (May 13, 1999).

many of the submissions before the Commission. This intersection between delineation of outer limits based on a review of scientific and technical data and delimitation of a lateral or opposite boundary based on legal arguments and political considerations creates an obvious tension. It is a tension that was anticipated by the drafters of the Convention and which is addressed in the text of the Convention and in the Commission's Rules of Procedure.

The text of Article 76 and related provisions attempts to insulate the Commission from concerns related to overlapping claims to continental shelf. Beginning with Article 76, the Convention is quite clear that "the provisions of [that] article are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts."[17] Annex II of the Convention further provides that "the actions of the Commission shall not prejudice matters relating to delimitation of boundaries between States with opposite or adjacent coasts."[18] Rule 46 of the Commission's Rules of Procedure contains substantially similar language.[19] Finally, Annex I to the Rules of Procedure emphasizes and expands this point: "The submissions made before the Commission and the recommendations approved by the Commission thereon shall not prejudice the position of States which are Parties to a land or maritime dispute."[20]

Taken at face value this language should eliminate the concerns of neighboring States with potentially overlapping claims and allow the Commission to conduct its review of the scientific and technical merits of a submission without regard to those outstanding disputes. Despite assurances that the work of the Commission will be without prejudice to their boundary positions, States appear wary of depending on this protection to safeguard their interests. The Commission process provides an opportunity for States to both maximize their outer limit as against the international community (the Area) and to maximize, promote or preserve territorial sovereignty and maritime boundary positions *vis-a-vis* neighboring or competing States. Many States have taken advantage of this opportunity to try to advance their interests. This self-serving but rational behavior, while not unexpected, has the effect of placing at the Commission's feet extremely contentious international disputes which the Commission is not in a position to resolve and has the potential to freeze the Commission's work.

17 1982 Law of the Sea Convention, Art. 76(10).

18 *Id.* Annex II, Art. 9.

19 *Rules of Procedure of the Commission on the Limits of the Continental Shelf*, CLCS/40/Rev.1 (Apr. 17, 2008), Rule 46(2).

20 *Id.* Annex I, para. 5(b).

The Commission adopted Annex I to its Rules of Procedure in an attempt to balance, on the one hand, the interest in allowing the Commission to carry out its delineation work with, on the other hand, the interest in avoiding prejudice to Parties involved in unresolved disputes. Annex I – titled "Submissions in case of a dispute between States with opposite or adjacent coasts or in other cases of unresolved land or maritime disputes" – requires submitting States to inform the Commission of disputes and to assure the Commission that the submission will not prejudice such disputes.[21] It then sets out a menu of options for submitting States involved in disputes which includes making a partial submission in order to avoid the area in dispute,[22] or making a joint submission by two or more coastal States covering the area in dispute.[23] Both of these approaches are designed to allow the Commission's review process to move forward despite the existence of a dispute: the former through coastal State self-restraint and the latter through cooperation. Where self-restraint or cooperation is not forthcoming, the Commission process can become stuck. Article 5(a) of Annex I reads: "In cases where a land or maritime dispute exists, the Commission shall not consider and qualify a submission made by any of the States concerned in the dispute. However, the Commission may consider one or more submissions in the areas under dispute with prior consent given by all States that are Parties to such a dispute." The practical result of this provision is that States are in a position to block Commission consideration of their neighbors' submissions.[24]

In addition to the requirement that the submitting State make the Commission aware of unresolved disputes, other States have the opportunity to inform the Commission of the existence of a dispute. The executive summary of each submission, which is made public soon after receipt of the full submission, must contain, among other things, charts and coordinates indicating the outer limit claimed by the submitting State.[25] Information in the executive summary should be sufficient to allow other States to determine the location of the outer limit, the general basis of the claim, and whether the submission involves an area which they also claim. Other States may then react by written communication to the Commission

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21 *Id.* Annex 1, para. 2.

22 *Id.* Annex 1, para. 3.

23 *Id.* Annex 1, para. 4.

24 For a thorough investigation of the impact other States can have on the CLCS process, see A.G.O. Elferink, *The Establishment of Outer Limits of the Continental Shelf Beyond 200 N.m.s by the Coastal State: The Possibilities of Other States to have an Impact on the Process*, 24 Int'l J. Marine & Coastal L. 535 (2009).

25 *Scientific and Technical Guidelines, supra* note 16, para. 9.1.4.

via the Secretary-General of the United Nations. In addition to the executive summaries, these written communications are also made public. The majority of the submissions to date have elicited written communications from other States. These communications fall into three general categories: (1) communications expressing concerns about the scientific or technical basis of the outer limit,[26] (2) communications expressing concerns related to undermining Article 4 of the Antarctic Treaty,[27] and (3) communications related to unresolved disputes.

This last category is the largest of the three and it is the category of direct relevance to the topic at hand. These written communications manifest the intersection between the Commission's delineation process and the separate but intertwined boundary delimitation process. In communications related to unresolved disputes States have either (1) expressly consented to the Commission's consideration of the submission, notwithstanding the unresolved dispute, (2) reserved their position without giving express consent, or (3) expressly objected to Commission consideration of the submission. It is with the last of these possible reactions in mind that States must approach the submission process and the related boundary issues.

IV APPROACHES TAKEN BY STATES

States need not effect a complete delimitation of their extended continental shelf or resolve all outstanding disputes prior to making a submission to the Commission. In fact, in some instances it is only after full consideration of a submission that a State will know whether or to what extent boundaries need be agreed with neighbors. Nonetheless, if an unresolved dispute is

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26 *See, e.g.*, the reaction of the United States to the 2001 submission by the Russian Federation. *Note verbale* of the Representative of the United States of America to the United Nations to the Under-Secretary-General for Legal Affairs, United Nations (Feb. 28, 2002).

27 *See, e.g.*, the reactions of the United States, Russia, Japan, the Netherlands, Germany, and India to Australia's 2004 submission. Diplomatic note of the United States Mission to the United Nations to the Secretary-General of the United Nations (Dec. 3, 2004); *Note verbale* No. 739/n of the Permanent Mission of the Russian Federation to the United Nations to the Secretary-General of the United Nations (Dec. 9, 2004); *Note verbale* No. SC/05/039 of the Permanent Mission of Japan to the United Nations to the Secretary-General of the United Nations (Jan. 19, 2005); *Note verbale* No. NYV/2005/690 of the Permanent Mission of the Netherlands to the United Nations to the United Nations Division for Ocean Affairs and the Law of the Sea (Mar. 31, 2005); *Note verbale* No. 88/2005 of the Permanent Mission of Germany to the United Nations to the United Nations Division for Ocean Affairs and the Law of the Sea (Apr. 5, 2005); *Note verbale* No. NY/PM/443/1/98 of the Permanent Mission of India to the United Nations to the Secretary-General of the United Nations (July 5, 2005).

present in the area encompassed by a submission, the submitting State must be cognizant of the possibility that its submission could be blocked.[28] With this in mind, States have engaged in behavior to avoid this outcome. The different approaches taken by States to address unresolved disputes are to (1) settle delimitations prior to making a submission; (2) make a partial submission that avoids unresolved disputes; (3) make a joint submission among several States, thereby internalizing any unresolved disputes within the group of submitting States; (4) make a separate submission after consultation with neighboring States in order to avoid objection; and (5) make a separate submission without assurances of no objection.

Before launching into a more complete description of these approaches, several general comments are in order. First, a single submission may embody more than one approach. A State may have an agreed boundary with one neighboring State but may need to take a different approach in the same submission with respect to another neighbor.[29] Second, a significant amount of time can pass between lodging a submission and receiving recommendations from the Commission.[30] Relationships with neighboring

28 After lodging a submission, the submitting State is scheduled to present the submission to the Commission. This may happen not less than three months after the publication of a submitting State's executive summary in order that other States may react to the submission in writing. When the Commission hears the submitting State's presentation it will also have before it the reactions of other States, including, any objections raised by neighbors. Where there have been objections, the Commission has used the following rather cryptic language: "Taking into account these notes verbales and the presentation made by the delegation, the Commission decided to defer further consideration of the submission and the notes verbales until such time as the submission is next in line for consideration as queued in the order in which it was received. The Commission took this decision in order to take into consideration any further developments that might occur throughout the intervening period during which States may wish to take advantage of the avenues available to them including provisional arrangements of a practical nature as contained in annex I to its rules of procedure." *Statement by the Chairman of the Commission on the Limits of the Continental Shelf on the progress of work in the Commission*, CLCS/64 (Oct. 1, 2009), paras. 40, 46, 52, 71, 92, 106 regarding, respectively, the deferral of submissions by Myanmar, United Kingdom, Ireland, Fiji, Malaysia/Viet Nam, and Viet Nam. Deferral at this stage of the process is in lieu of forming a subcommission: the necessary next step on the winding road toward Commission endorsement.

29 For example, Australia succeeded in delimiting boundaries with France, New Zealand and the Solomon Islands prior to its submission. *Continental Shelf Submission of Australia; Executive Summary* (Nov. 15, 2004). However, at the time of submission there was an outstanding delimitation issue in the Three Kings Ridge Region. While agreeing with the principles used to measure Australia's outer limit in the undelimited area of that Region, the Commission noted that "the establishment of the final outer limit of the continental shelf of Australia in this Region may depend on delimitation between States." *Summary of the Recommendations of the Commission on the Limits of the Continental Shelf (CLCS) in regard to the Submission Made by Australia on 15 November 2004* (Apr. 9, 2008), para. 117.

30 One assessment indicates that the Commission will not finish its review of Cuba's Submission – the 51st – until 2030. At the nineteenth meeting of the States Parties, the Chairman of the Commission "projected a schedule for consideration of the submissions received to date and for the adoption of

States could change during that time increasing or decreasing the tension between delimitation and outer limit delineation. Concurrently, submissions may also be changed to reflect new developments.[31] Third, it should be noted that the bulk of the Commission process is conducted in private. The only written documents that are made public are the executive summaries of the submissions, written reactions submitted by other States, and – eventually – summaries of the Commission's recommendations.[32] The other parts of the submissions and the full recommendations are not made public and meetings between the Commission (or its sub-commissions) and submitting States – meetings in which it appears that a substantial dialogue may occur on a number of topics related to the submission, including, presumably, the topic of unresolved disputes with neighbors – are held in private.[33] Even with relatively little information, it is still possible to differentiate the following five approaches taken by States and to find in the State practice to date some examples of each.[34]

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recommendations, based on current working practice of the Commission and availability of its members in the work of the subcommissions. According to that projection, the recommendations regarding the submission made by Cuba, the last submission received by the Commission to date, would be adopted in or about 2030." *Report of the nineteenth Meeting of States Parties*, SPLOS/203 (July 24, 2009), para. 83, *available at* http://www.un.org/Depts/los/meeting_States_Parties/SPLOS_documents.htm (last visited May 24, 2010).

31 For example, France, requested "the Commission to refrain from consideration of the portion of the submission related to the area in the southeastern part of New Caledonia" after receiving Vanuatu's reaction to the French submission in regard to New Caledonia. Letter No. 547/SGMER of the French Secretary-General of the Sea to the Chairperson of the Commission on the Limits of the Continental Shelf (July 18, 2007). In that written communication, Vanuatu – referencing the sovereignty dispute over Matthew and Hunter Islands – asked the Commission to consider the territorial dispute and related claims to maritime area "very seriously." Letter from Vanuatu Ministry of Foreign Affairs and External Trade to the Chairman of the Commission on the Limits of the Continental Shelf (July 11, 2007). *See also, Summary of Recommendations of the Commission on the Limits of the Continental Shelf in regard to the Submission made by France in respect of French Guiana and New Caledonia Regions on 22 May 2007* (Sept. 2, 2009), paras. 43-44.

32 To date only nine summary recommendations have been made public: Australia, Ireland (Porcupine Abyssal Plain), New Zealand, France/Ireland/Spain/United Kingdom (Celtic Sea and Bay of Biscay), Norway (North East Atlantic and Arctic), France (French Guiana and New Caledonia), Mexico (Western Gulf of Mexico), Barbados, and the United Kingdom (Ascension Island). Recommendations have been adopted but not made public for the submissions of the Russian Federation and Brazil.

33 The Commission process, if not entirely opaque, is, at the very least, Byzantine. For a useful road map to this intricate and complex process the reader is directed to the Commission's Rules of Procedure, Annex III *Modus operandi for the consideration of a submission made to the Commission on the Limits of the Continental Shelf* available on the CLCS website.

34 In a few instances the geography alone is such that a submission does not implicate any international boundary relationship. That is, no other State may conceivably encompass within its outer limit any of the area encompassed in these rare submissions. This requires a combination of a wide margin and a relatively isolated position on the world map. The United Kingdom's submission on behalf of its territory of Ascension Island provides one, rare example.

A *Delimitation prior to submission*

States may avoid unresolved delimitation issues in submissions before the CLCS by resolving disputes in advance of the submission. However, no boundaries beyond 200 n.m. have been settled by adjudication or arbitration and only a small handful have been settled by agreement at the time of this writing.[35] Some of these delimitations may have been carried out with the submission process specifically in mind. It has been reported that the submission process was the main motivator for Australia and New Zealand to complete the delimitation of their boundaries beyond 200 n.m.[36]

Another example of cooperation resulting in delimitations in anticipation of submission was demonstrated by the three States – Iceland, Norway, and Denmark (Faroes) – with overlapping claims to extended continental shelf in the southern part of the so called Banana Hole. Before any of the three States lodged a submission, they negotiated agreed minutes that established the three boundaries among them, identified their shared tripoint, and secured an agreement to not object to Commission consideration of subsequent submissions in the area.[37] The three States have since made submissions claiming extended continental shelf in the Banana Hole.[38] Notably, the outer limits in these submissions do not correspond to the agreed boundaries, instead they stretch beyond them. The States recognized that, in addition to agreeing the boundaries that would divide overlapping areas of extended continental shelf, they must also demonstrate an entitlement to those areas of shelf under the terms of the Convention in the Commission process. The agreed minutes provide for the event that one or more of the States is unable to demonstrate "that the area of its continental shelf beyond 200 nautical miles corresponds in size, as a minimum, to the area that falls

35 *See, e.g.*, Report Numbers 1-5(2) (Mexico-United States), 2-13(3) (Trinidad and Tobago-Venezuela), 5-1 (Australia-France (New Caledonia)), 5-4 (Australia-Solomon Islands), 5-26 (Australia-New Zealand), 6-1 (Australia (Heard and McDonald Islands)-France (Kerguelen Islands)), 9-7 (Ireland-United Kingdom), and 9-26 (Denmark-Iceland-Norway).

36 *See, e.g.*, Report Number 5-26 (Australia-New Zealand), at 3760 ("the impetus for undertaking and completing the process was provided by the impending submission, by both countries, of their proposed continental shelf coordinates to the [Commission]").

37 *See* Report Number 9-26 (Denmark-Iceland-Norway) in this volume.

38 *See Submission of Norway in respect of areas in the Arctic Ocean, the Barents Sea and the Norwegian Sea; Executive Summary* (Nov. 27, 2006); *The Icelandic Continental Shelf: Partial Submission to the Commission on the Limits of the Continental Shelf pursuant to article 76, paragraph 8 of the United Nations Convention on the Law of the Sea in respect of the Aegir Basin area and Reykjanes Ridge; Executive Summary* (Apr. 29, 2009); *Partial Submission of the Government of the Kingdom of Denmark together with the Government of the Faroes to the Commission on the Limits of the Continental Shelf; Executive Summary* (Apr. 29, 2009).

to the same State according" to the agreed boundaries.[39] If this were to occur, the boundaries would be adjusted on the basis of previously agreed terms also found in the minutes.

In 2000 the United States and Mexico settled their boundary beyond 200 n.m. in the "western gap" of the Gulf of Mexico.[40] There is no evidence that this delimitation was carried out in anticipation of submissions to the Commission. Nonetheless, in 2007 Mexico lodged a submission regarding this same area and used the negotiated boundary as its outer limit.[41] This is a different approach to that used by the three States around the Banana Hole. Unlike the agreed minutes among Denmark, Norway and Iceland, the agreement between the United States and Mexico does not contemplate adjustments to the boundary on the basis of demonstrated entitlement to the respective areas of extended continental shelf under international law. This may reflect a high level of confidence that the States can both demonstrate entitlement up to the agreed line. This has certainly turned out to be true for Mexico. Recommendations were quickly forthcoming endorsing in full Mexico's claimed outer limit. Mexico has since accepted the recommendations and established its outer limit on the basis of those recommendations in accordance with Article 76. Mexico is now one of only a small number of States to have taken the Commission process through to this final and binding step. The complete delimitation of the area under consideration is one factor that allowed the Mexican Submission to move quickly through the process.

It can be expected that some boundaries will be agreed during the Commission's consideration of related submissions. The review process can be quite drawn out giving Parties to a dispute some time to reach agreement. For example, Russia made its initial submission in 2001 and received recommendations from the Commission in 2002. Those recommendations are not public and a summary of the recommendations has also not yet been made public. From what information is available it is to be assumed that Russia accepted some but not all of the recommendations and is now in the process of revising its submission. In the meantime, press reports indicate that Russia and Norway have reached agreement on their boundary in the Barents Sea. At the current pace the Commission is not expected to adopt recommendations on Cuba's Submission – the 51st and last in

39 Report Number 9-26 (Denmark-Iceland-Norway) in this volume.

40 Report Number 1-5(2) (Mexico-United States).

41 *A Partial Submission of Data and Information on the Outer Limits of the Continental Shelf of the United Mexican States pursuant to Part VI of and Annex II to the United Nations Convention on the Law of the Sea* (Dec. 13, 2007).

line – until 2030, giving the United States, Mexico, and Cuba twenty more years to complete their respective boundaries in their shared area in the "eastern gap" of the Gulf of Mexico.

It is expected that if States reach agreement on boundaries related to their submission while the submission is still before the Commission, they will update their submissions accordingly.[42] For now, delimited boundaries beyond 200 n.m. remain the exception.

B *Partial submission*

Where disputes have not been resolved in advance of a submission, some submitting States have elected to make partial submissions intended to avoid areas in dispute. The Commission provides for this approach in Annex I, paragraph 3 which reads in part: "A submission may be made by a coastal State for a portion of its continental shelf in order not to prejudice questions relating to the delimitation of boundaries between States in any other portion or portions of the continental shelf for which a submission may be made later." More than half of the 51 submissions have been partial submissions.[43] Other reasons exist for making partial submissions,[44] but avoiding areas in dispute is the reason given in several of the executive summaries. Ireland, in one of the earliest submissions, noted "ongoing discussions with neighbouring States" and elected to make a partial submission "in order not to prejudice unresolved questions relating to the delimitation of boundaries between Ireland and some of its neighbours in other portions of the extended continental shelf claimed by Ireland."[45] In a more recent submission, the Philippines explained that its partial submission

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42 *See, e.g.*, the reporting on Commission recommendations to Russia regarding future entry into force of boundaries. "In the case of the Barents and Bering seas, the Commission recommended to the Russian Federation, upon entry into force of the maritime boundary delimitation agreements with Norway in the Barents Sea, and with the United States of America in the Bering Sea, to transmit to the Commission the charts and coordinates of the delimitation lines as they would represent the outer limits of the continental shelf of the Russian Federation extending beyond 200 nautical miles in the Barents Sea and the Bering Sea respectively." *Oceans and the law of the sea: Report of the Secretary-General*, A/57/57/Add.1 (Oct. 8, 2002), para. 39.

43 CONTINENTAL SHELF, *supra* note 11, at 20.

44 States with several, non-contiguous parcels of territory, such as France, the United Kingdom, and South Africa, have made multiple, partial submissions for different parcels of territory. For other States partial submissions have been necessary where preparation for a complete submission has not been politically or technically possible by the submission deadline.

45 *Submission to the Commission on the Limits of the Continental Shelf pursuant to Article 76, paragraph 8 of the United Nations Convention on the Law of the Sea 1982 in respect of the area abutting the Porcupine Abyssal Plain; Executive Summary* (May 25, 2005), at 4.

relating only to the Benham Rise was made "as a gesture of good faith... to avoid creating or provoking maritime boundary disputes where there are none, or exacerbating them where they may exist."[46]

For the submitting State this approach has the advantage of removing one possible roadblock to Commission consideration. The approach requires only minimal communication or coordination with neighbors: only enough to ascertain the spatial extent of their claims in the area under consideration. A potential drawback of this approach is that it has the submitting State asserting less than its maximum claim to area before an international body. While these omissions have no direct legal effect on the claims of the submitting State and could in fact contribute to regional peace and stability, this self restraint could also, depending on the domestic climate, be politically unpalatable if it appears to leave the submitting State open to criticism by neighbors in future negotiations or other proceedings.

C *Joint submission*

Annex I also refers to the possibility of joint submissions by two or more coastal States "without regard to the delimitation of boundaries between those States."[47] Five of the 51 submissions have been joint submissions.[48]

In the first joint submission, and the only one for which recommendations have been adopted, the spokesperson for the four submitting States – France, Ireland, Spain, and the United Kingdom – noted "that all four coastal States could have made potentially overlapping, separate submissions. However, they considered it more appropriate to avail themselves of the possibility of making a joint submission since, upon the issuance of recommendations by the Commission, the four coastal States would be able to establish the outer limit of their continental shelf in the region prior to

46 *A Partial Submission of Data and Information on the Outer Limits of the Continental Shelf of the Republic of the Philippines Pursuant to Article 76(8) of the United Nations Convention on the Law of the Sea; Executive Summary* (Apr. 8, 2009) at 11.

47 *Rules of Procedure, supra* note 19, Annex I, para. 4.

48 *See* the Joint Submission by France, Ireland, Spain and the United Kingdom of Great Britain and Northern Ireland (Celtic Sea and Bay of Biscay) (May 19, 2006); Joint Submission by the Republic of Mauritius and the Republic of Seychelles (Mascarene Plateau) (Dec 1, 2008); Joint Submission by the Federated States of Micronesia, Papua New Guinea and Solomon Islands (Ontong Java Plateau) (May 5, 2009); Joint Submission by Malaysia and Viet Nam (southern South China Sea) (May 6, 2009); and the Joint Submission by France and South Africa (Crozet Archipelago and Prince Edward Islands) (May 6, 2009).

Several preliminary information documents have also been submitted jointly by two or more States.

its delimitation among themselves."[49] This submission was both joint and partial, so while it encompassed areas claimed by more than one submitting State, the scope was limited to avoid area claimed by non-submitting States. The result of this approach is that the four States have moved quickly through the Commission process, ascertained the size and scope of their shared area, and may now set about splitting it up through the usual bilateral processes and at their leisure.

This will not necessarily be the outcome in all joint submissions. The joint submission by Malaysia and Viet Nam in the southern part of the South China Sea might have allayed Commission concerns with respect to unresolved disputes between the two submitting States, but because it did not include all interested Parties, it has been blocked by neighbors. This submission elicited an immediate reaction from China, invoking Annex I, Article 5(a), and "request[ing] the Commission not to consider the Joint Submission."[50] The Philippines soon followed suit "request[ing] the Commission to refrain from considering the aforementioned [submission], unless and until after the Parties have discussed and resolved their disputes."[51] The disputes referred to are of the most contentious and intractable kind involving conflicting claims to sovereignty over insular territory in the South China Sea and parts of the island of Borneo and overlapping claims to the associated maritime areas. These disputes are long-standing, multi-State, and involve valuable resources in addition to other strategic considerations. The fact of cooperation in this environment between Malaysia and Viet Nam is noteworthy, but was not sufficient to overcome conflicting positions held by other States. The Joint Submission was presented to the Commission by the submitting State representatives in August 2009 at which time the Commission also considered the flurry of written communications it had received from the submitting States, China, and the Philippines. At that meeting "the Commission decided to defer further consideration of the submission and the notes verbale until such time as the submission is next in line for consideration."[52] One would expect that until China and the Philippines withdraw their objections or join the submission, consideration of this joint submission will continue to be deferred.

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49 *Statement by the Chairman of the Commission on the Limits of the Continental Shelf on the progress of work in the Commission*, CLCS/62 (Apr. 20, 2009), para. 12.

50 *Note verbale* No. CML/17/2009 of Permanent Mission of China to the United Nations to the Secretary-General of the United Nations, (May 7, 2009).

51 *Note verbale* No. 000819 of the Permanent Mission of the Philippines to the Secretary-General of the United Nations (Aug. 4, 2009).

52 *Statement by the Chairman* CLCS/64, *supra* note 28, para. 92.

Joint submissions require significant cooperation and forethought. This will increase some transaction costs, but may result in efficiencies as well.[53] In the right circumstances the effort can remove unresolved disputes from the equation. However, as demonstrated above, without all necessary Parties a joint submission may still fail to overcome the obstacle presented by uncooperative neighboring States willing to invoke unresolved disputes to block Commission consideration.

D *Separate submissions: cooperation*

The preponderance of all submissions and preliminary information documents are lodged separately by single States. As noted above, many of these separate submissions are only partial submissions, and some of those submissions are made in that form expressly to avoid unresolved disputes. Very few of these separate submissions involve areas of extended shelf that are already fully delimited by agreement with neighboring States. Mexico's submission and the submissions related to the Banana Hole provide examples of this small subset. This leaves a large group of separate submissions that are not partial and which cover areas subject to as yet unresolved delimitations. States making separate submissions under these conditions take one of two general approaches to unresolved disputes. The first involves pre-submission cooperation that might include data exchange, an exchange of views on extended shelf boundary positions, the beginnings of the negotiation of those boundaries, or securing some form of pre-submission agreement from neighbors not to object. The second approach involves lodging a separate submission that will create areas of overlap but without pre-submission cooperation and despite the lack of a "no objection" agreement. The first approach is addressed here, the second in the following section.

Cooperation that does not result in an agreed boundary or amount to a joint submission can be difficult to detect or confirm. In some instances such cooperation is made apparent in the executive summaries and related written communications. In others it requires some speculation. Moreover, cooperation can take many forms.

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53 Murphy lists several advantages to joint submissions including: overcoming unresolved boundaries, combined datasets, pooled expertise and division of labor. *See* Alain Murphy, *Coordinated, Harmonized or Joint Submissions to the Commission on the Limits of the Continental Shelf*, presented at 5th ABLOS Conference, Difficulties in Implementing the Provisions of UNCLOS, Monaco, 15-17 October 2008, *available at* http://www.gmat.unsw.edu.au/ablos/ABLOS08Folder/ablos08_papers.htm (last visited May 21, 2010).

In a relatively well-documented example, several ECOWAS member States including Benin, Cote d'Ivoire, Ghana, Nigeria, and Togo met in February 2009 and agreed that "issues of the limit of adjacent/opposite boundaries shall continue to be discussed" and that "member States would therefore write "no objection note" to the submission of their neighboring States."[54] With the exception of the recent agreement between Benin and Nigeria, no boundaries have been agreed among these five States either within or beyond 200 n.m.[55] Since the February 2009 multilateral "no objection" agreement, Ghana, Nigeria and Cote d'Ivoire have lodged submissions with the Commission and Togo and Benin have submitted separate and joint preliminary information documents. The areas claimed by Benin, Ghana, Nigeria, and Togo all overlap to some degree, but, presumably on the basis of the no prejudice language of the Convention and the Agreement of February 2009, none of the States has objected to consideration by the Commission.

In the complex political geography of northeastern South America multiple submissions and preliminary information documents have been lodged with the Commission including submissions by Brazil, France (French Guiana), Barbados, Suriname, and Trinidad and Tobago. Guyana has submitted preliminary information documents and Venezuela – non-Party to the Convention – has indicated a claim to extended shelf in an area included in other submissions.[56] Here, several of the boundaries within 200 n.m. and one delimiting areas beyond 200 n.m. have been settled by negotiation.[57] Two have been the subject of recent arbitration.[58] Unresolved disputes in the region include a long-standing sovereignty dispute between Venezuela and Guyana to territory that includes coastal area that could influence maritime entitlements and boundaries. Some of the boundaries within and most of the boundaries beyond 200 n.m. are also undelimited. In addition, there is significant disagreement between Trinidad and Tobago and Barbados

54 Minutes of Experts Meeting of ECOWAS member States on the Outer Limits of the Continental Shelf, Accra, 24-26 February 2009, Appendix A, *quoted in Submission by Government of the Republic of Ghana for the Establishment of the Outer Limits of the Continental Shelf of Ghana pursuant to Article 76, paragraph 8 of the United Nations Convention on the Law of the Sea; Executive Summary* (Apr. 28, 2009), para. 5.2.

55 *See* Report Number 4-14 (Benin-Nigeria) in this volume.

56 *Note verbale* No. 00766 of the Ministry of the People's Power for Foreign Affairs of Venezuela to the Secretary-General of the United Nations (Sept. 9 2008) ("Venezuela…has rights over the continental shelf in the area referred to in the summary of Barbados as the 'southern area'.")

57 *See* Report Numbers 2-13(3) (Trinidad and Tobago-Venezuela), 3-3 (Brazil-France (French Guiana)), and 2-27 (Barbados-Guyana).

58 *See* Report Numbers 2-26 (Barbados-Trinidad and Tobago), 3-10 (Guyana-Suriname).

about the effect of their boundary award on entitlement to extended continental shelf.

Considering the many outstanding issues in this region it is not surprising that the submissions and preliminary information documents lodged to date indicate several areas of significant overlap. Despite these overlaps and in the absence of a regional multilateral "no objection" agreement, no neighboring State has objected to Commission consideration of submissions in this region. This level of cooperation appears to have been accomplished through a network of bilateral consultations and agreements to not object. For example, Suriname indicates that it held consultations with all of its neighbors, including France, Guyana, Barbados, Trinidad and Tobago, and Venezuela and secured agreements from all of them not to object to Suriname's submission.[59] Written communications from Barbados, France, and Trinidad and Tobago confirm some of these agreements. Barbados refers to no objection agreements with Suriname, Guyana, and France.[60] Trinidad and Tobago refers to consultations with and agreements to not object from Venezuela, Suriname, and Guyana.[61]

Less complex examples of pre-submission consultation and apparent cooperation are available. South Africa noted an exchange of letters with Madagascar agreeing that "their respective submissions may be considered by the Commission on the understanding that this shall not prejudice future delimitation."[62] New Zealand noted, with respect to its unresolved delimitation with Tonga, that it "has made extensive efforts to resolve the boundary both prior to and since presenting its submission and that negotiations between New Zealand and Tonga remain ongoing."[63] In its submission, Kenya refers to a memorandum of understanding between Kenya and Somalia "granting each other no objection in respect of submissions."[64]

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59 *Government of the Republic of Suriname Submission on the Outer Limits of the Continental Shelf; Executive Summary* (Dec. 5, 2008), at 2.

60 *Government of Barbados Continental Shelf Submission; Executive Summary* (May 8, 2008), para. 1.4.1.

61 *Submission to the Commission on the Limits of the Continental Shelf pursuant to the Article 76, paragraph 8 of the United Nations Convention on the Law of the Sea, Republic of Trinidad and Tobago; Executive Summary* (May 12, 2009), at 16.

62 *Republic of South Africa Partial Submission to the Commission on the Limits of the Continental Shelf pursuant to Article 76, paragraph 8 of the United Nations Convention on the Law of the Sea 1982 in respect of the area of the South African Mainland; Executive Summary* (May 5, 2009), at 2-3.

63 *Note verbale* No. 07/08/41 of the Permanent Mission of New Zealand to the United Nations to the Secretary-General of the United Nations (July 31, 2008).

64 *Republic of Kenya Submission on the Continental Shelf beyond 200 n.m.s to the Commission on the Limits of the Continental Shelf in accordance with requirement of the United Nations Convention on the Law of the Sea; Executive Summary* (May 6, 2009), para 7.3 The Transitional Federal

Norway, in its written reaction to the 2001 Russian submission, noted that the undelimited boundary between Norway and Russia in the Barents Sea was "the object of ongoing consultations" and gave its consent "to an examination by the Commission of the Russian submission."[65] The common thread running through these examples is the avoidance of objection by neighboring States through prior consultation despite the existence of significant overlapping claims to areas of extended continental shelf.

E *Separate submission: conflict*

Separate submissions made to areas claimed by neighbors and without prior consultation or assurances of no objection are at risk of being blocked by any neighboring State that objects to Commission consideration under Annex I, para 5(a).[66] As demonstrated above, even joint submissions are vulnerable to this reaction. In addition to the joint submission by Malaysia and Viet Nam in the South China Sea, several separate submissions are currently on hold as a result of objections.

Overlapping areas of extended continental shelf in the Bay of Bengal are subject to the separate submissions by Myanmar, Sri Lanka, and India. Despite significant overlap among these claims, these three submitting States have not objected to the submissions by the other two. However, Bangladesh – the fourth coastal State on the Bay of Bengal – has not yet lodged its own submission, but it has objected to the submissions of India and Myanmar.[67] In written reactions to both submissions, Bangladesh invoked Annex I, para. 5(a), noted unresolved delimitations with both neighbors, and objected to Commission consideration of the submissions.[68]

Parliament of Somalia subsequently refused to ratify the memorandum of understanding, but Somalia has not submitted a written communication objecting to consideration of Kenya's submission by the Commission. *See Note verbale* No. OPM/IC/00./016/09 from the Prime Minister of Somalia to the Secretary-General of the United Nations (Oct. 10, 2009).

65 *Note verbale* of the Permanent Mission of Norway to the United Nations to the Secretary-General of the United Nations (Mar. 20, 2002).

66 A lack of prior consultation does not necessarily result in objections from neighbors anymore than prior consultation can guaranty protection against objections. There are instances of possible overlap in which no apparent pre-submission consultations have been carried out and in which neighboring States have also not objected. *See, e.g.*, the French Submission in respect of La Reunion Island, the undelimited boundary with Madagascar beyond 200 n.m., and the apparent lack of reaction from Madagascar.

67 Bangladesh has until 2011 to make its submission or to lodge preliminary information documents.

68 *Note verbale* No. PMBNY-UNCLOS/2009 of the Permanent Mission of Bangladesh to the United Nations to the Secretary-General of the United Nations (Oct. 29, 2009); *Note verbale* No.

During its twenty-fourth session held from August 10 to September 11, 2009, the Commission, taking note of the views expressed by Bangladesh in its note verbale, "decided to defer further consideration of the [Myanamar] submission."[69] A month later, on October 8, 2009, Bangladesh instituted arbitral proceedings against both Myanmar and India pursuant to Annex VII of the Convention, asking separate tribunals to delimit its territorial sea, exclusive economic zone, and continental shelf boundaries with its two neighbors.[70] Although India was initially scheduled to present its submission during the twenty-fifth session of the Commission in March and April 2010, for reasons that are undoubtedly related to the Bangladesh objection and the ongoing delimitation case, India has not been given the opportunity to present its submission to the Commission.

The United Kingdom and Argentina have both lodged claims to extended shelf on the basis of conflicting claims to sovereignty over territory in the South Atlantic Ocean.[71] The United Kingdom reacted to Argentina's Submission writing that it "rejects those parts of Argentina's submission which claim rights to the seabed and subsoil of the submarine areas appurtenant to the Falkland Islands, South Georgia and the South Sandwich Islands, and requests that the Commission does not examine those parts of the Argentine submission."[72] Likewise, Argentina reacted to the United Kingdom Submission writing that it "categorically rejects the British submission and expressly requests that the Commission...neither consider nor qualify it."[73] The Commission took note of some of the reactions directed at the Argentine Submission that were related to Antarctica. There is no evidence that the Commission considered the British note verbale regarding the Argentine Submission, however, this submission appears

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PMBNY-UNCLOS/2009 of the Permanent Mission of Bangladesh to the United Nations to the Secretary-General of the United Nations regarding Myanmar (July 23, 2009).

69 *Statement by the Chairman* CLCS/64, *supra* note 28, para. 40.

70 *See* Report Numbers 6-23 and 6-24 in this volume. The Parties to the Bangladesh/Myanmar arbitration issued parallel declarations accepting the jurisdiction of the International Tribunal on the Law of the Sea. That case is now before ITLOS. The Bangladesh/India case is in its early stages before an Annex VII tribunal.

71 *See Outer Limit of the Continental Shelf, Argentine Submission; Executive Summary* (Apr. 21, 2009); *Submission to the Commission on the Limits of the Continental Shelf pursuant to Article 76, paragraph 8 of the United Nations Convention on the Law of the Sea 1982 in respect of the Falkland Islands, and of South Georgia and the South Sandwich Islands; Executive Summary* (May 11, 2009).

72 *Note verbale* No. 84/09 of the Permanent Mission of the United Kingdom to the Secretary-General of the United Nations (Aug. 6, 2009).

73 *Note verbale* No. 290/09/600 of the Permanent Mission of Argentina to the United Nations to the Secretary-General of the United Nations (Aug. 20, 2009).

to be on hold.[74] The fate of the British Submission is clearer: "the Commission decided that, in accordance with its rules of procedure, it was not in a position to consider and qualify the submission."[75]

Several other submissions have suffered a similar fate. For example, the separate submissions by Ireland and the United Kingdom in respect of the Hatton-Rockall Area – an area in which these two States have settled their boundary by agreement – elicited express objections from the neighboring States of Denmark and Iceland.[76] Vanuatu expressed an objection to Fiji's Submission on the basis of Vanuatu's claims to Matthew and Hunter Islands.[77] China and the Philippines have both asked the Commission not to consider Viet Nam's separate Submission in the South China Sea.[78] The Philippines has also asked the Commission to refrain from considering Palau's Submission.[79] The Commission has deferred consideration of the submissions by Ireland, the United Kingdom, Fiji, and Viet Nam.[80] Palau's Submission has not yet been presented to the Commission.

V CONCLUSION

The Commission process under the terms of the Convention and the Commission's Rules of Procedure has attempted to strike a workable balance between the establishment of the outer limits of extended continental shelf and the process of agreeing or adjudicating the lines that divide areas of shelf claimed by two or more States. The language in the Convention and related texts that provides that the Commission process is without

74 *See Statement by the Chairperson of the Commission on the Limits of the Continental Shelf on the progress of work in the Commission*, CLCS/66 (Apr. 30, 2010), para. 37.

75 *Id.* para. 60.

76 *Note verbale* No. FNY09050022/97.B.512 of the Permanent Mission of Iceland to the United Nations to the Secretary-General of the United Nations (May 27, 2009); *Note verbale* No. 119.N.8 of the Permanent Mission of Denmark to the United Nations to the Secretary-General of the United Nations (May 27, 2009); *Note verbale* No. FNY09050023/97.B.512 of the Permanent Mission of Iceland to the United Nations to the Secretary-General of the United Nations (May 27, 2009); *Note verbale* No. 119.N.8 of the Permanent Mission of Denmark to the United Nations to the Secretary-General of the United Nations (May 27, 2009).

77 *Note verbale* of the Permanent Mission of Vanuatu to the United Nations to the Secretary-General of the United Nations (Aug. 12, 2009).

78 *Note verbale* No. CML/18/2009 of the Permanent Mission of China to the United Nations to the Secretary-General of the United Nations (May 7, 2009); *Note verbale* No. 000818 of the Permanent Mission of the Philippines to the United Nations to the Secretary-General of the United Nations (Aug. 4, 2009).

79 *Note verbale* No. 000820 of the Permanent Mission of the Philippines to the United Nations to the Secretary-General of the United Nations (Aug. 4, 2009).

80 *Statement by the Chairman* CLCS/64, *supra* note 28.

prejudice to delimitation and sovereignty disputes appears to have allowed the process of reviewing data related to outer limit claims to move forward without significant interference from neighboring States. However, in some instances neighboring States have – despite this language – objected to Commission consideration of submissions that contain competing claims and have been able to freeze the Commission process with respect to those submissions.

Submitting States are aware of this possibility and have made efforts to forestall interference by agreeing their boundaries before submitting, making a partial submission that avoids boundary issues, making a joint submission, or reaching an agreement to disagree and, importantly, to refrain from objection. In a handful of highly contentious situations, these efforts – to the extent they have been made at all – have proved insufficient and the clearly non-prejudicial nature of the Commission process has proved unconvincing, resulting in deferred consideration of these submissions.

Deferred consideration of a submission is a bad result for the submitting State. Deferral represents the total failure of one of the two main goals in the extended continental shelf game: completing the Commission process with favorable recommendations for establishing an outer limit. And it may do nothing to increase the likelihood of success with respect to the other goal: maximizing area of extended continental shelf. For States that have not yet submitted, attempts can be made to avoid this bad result using the approaches discussed in this essay. For States that find themselves in Commission purgatory, there are opportunities for atonement. When deferring a submission for future consideration the Commission has noted that it is taking this step "in order to take into consideration any further developments that might occur throughout the intervening period during which States may wish to take advantage of the avenues available to them including provisional arrangements of a practical nature as contained in annex I to its rules of procedure."[81] Considering the rather extended time line over which the Commission process is likely to unfold, this will give submitting States and their objecting neighbors ample time to apply more successful approaches to the unresolved disputes embedded in their submissions.

81 *Id.* paras. 40, 46, 52, 71, 92, 106.

Annex 29

C. Majtenyi, "Somali President in Capital for Consultations", *VOA* (8 Jan. 2007)

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Somali President in Capital for Consultations

By Cathy Majtenyi
Nairobi
08 January 2007

Listen to Listen to VOA's exclusive interview with Jendayi Frazer

Somalia's president Monday arrived in the capital Mogadishu to hold consultations with representatives from religious, civil society, business and other groups. Somalia's foreign minister says the meetings are, in part, to pave the way for the government to move its base from Baidoa to Mogadishu. Cathy Majtenyi reports for VOA from Nairobi.

This is the first time Abdullahi Yusuf stepped into the capital since he took office more than two years ago.

Until now, he and other members of the transitional government, commonly known as the TFG, cited security concerns as being the main reason why the government chose to be based in Baidoa, rather than Mogadishu.

But, says Somali foreign affairs minister Esmael Mohamud Hurreh, things are different at this time.

"It [Yusuf's visit] is a very symbolic and very important move. It symbolizes that a president of the TFG is moving into Mogadishu. There has been an absence of governance in Mogadishu for a long period, and I think this signals the end of the absence of governance in Mogadishu."

Sources tell VOA the reason for Yusuf's visit to Mogadishu was to soothe tensions between the Hawiya and Darod clans, in part arising from the government's disarmament exercise.

The historical rivalry between the two clans was exacerbated in recent months with the Hawiya clan said to support the Islamic Courts Union and the Darod clan said to back the transitional government.

Foreign Minister Hurreh denies that the president is there primarily to ease clan tensions.

He said, "The purpose of the visit is to make clear to anybody that the TFG has got every intention of moving into the capital."

Until about two weeks ago, the capital was controlled by militiamen from the Islamic Courts Union, which rose to power in the middle of last year and took control over much of southern Somalia.

During two weeks of air raids and combat fighting at the end of December, the Islamists abandoned areas they held as Ethiopian-backed government troops advanced.

Now, the government and officials from the International Contact Group on Somalia among others are looking for ways to move forward, including holding reconciliation talks with a cross-section of Somalis, sending in a peacekeeping force, reducing the number of guns, and developing the country.

But the capital is still volatile. There were reports of gunmen firing on Ethiopian forces Sunday following anti-Ethiopian protests in which two people died.

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Annex 30

E. Mutai, "Kenya, Somalia border row targeted in Sh5.6bn mapping plan", *Business Daily* (20 Apr. 2014)

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BUSINESS DAILY

POLITICS AND POLICY

Kenya, Somalia border row targeted in Sh5.6bn mapping plan

President Uhuru Kenyatta. Photo/FILE

IN SUMMARY

- Kenya is under obligation to carry out the exercises in conjunction with her neighbours-Uganda, Tanzania, Ethiopia and South Sudan— a report by President Uhuru Kenyatta says.

Kenya will spend more than Sh5.6 billion over the next five years to carry out survey, mapping and maintenance of its international boundaries.

The country is under obligation to carry out the exercises in conjunction with her neighbours-Uganda, Tanzania, Ethiopia and South Sudan— a report by President Uhuru Kenyatta says.

The report titled "Progress Made in Fulfilling the International Obligations of the Republic", tabled by Mr Kenyatta in Parliament two weeks ago says the country is required to submit International Boundary Surveys to the African Union (AU) and the United Nations (UN) by 2017 together with accompanying treaties.

"Kenya has to be in agreement with her neighbouring countries as regards the common international boundaries," Mr Kenyatta said .

"The challenges include ambiguous description of boundaries, inadequate funding for the survey and capacity building and the fact that Kenya cannot carry out surveys alone but must do so in liaison with her neighbours."

Mr Kenyatta says the declaration on the African Union Border Programme (AUBP) was demanded by the persistence of border delimitation and demarcation issues in Africa where only less than a quarter of the boundaries have been delimitated and demarcated.

Kenya has been conducting a joint border demarcation with Uganda after a dispute arose over the control of the fish-rich Migingo and Ugingo islands.

The Administration and National Security committee chaired by Tiaty Member of Parliament Asman Kamama told Parliament last week that the only clearly demarcated boundary between Kenya and her neighbours is the border with Ethiopia.

Kenya is already involved in a row with Somalia over the maritime border, raising concern that the feud may deter multinational oil companies from exploring for oil and gas offshore.

READ: Kenya, Somalia border row threatens oil exploration *<URL: http://www.businessdailyafrica.com/Kenya--Somalia-border-row-threatens-oil-exploration/-/539546/1390440/-/ephkc5z/-/index.html>*

The two nations disagree over the location of their boundary in the Indian Ocean.At stake are legal claims to sell rights for exploration and collect revenue from any discovery.

Kenya had identified eight new offshore exploration blocks available for licensing, and all but one of them are located in the contested area.

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President Kenyatta says in his report that the AUBP declaration was also informed by the need to address cross-border crime.

Back to **Business Daily: Kenya, Somalia border row targeted in Sh5.6bn mapping plan** *<URL: javascript:history.go(-1)>*

Annex 31

"U.N. Secretary Council makes historic visit to Somalia", *Dhanaanmedia.com* (13 Aug. 2014)

UN Security Council makes historic visit to Somalia

August 13, 2014 // admin1 // News in English95 Views

Mogadishu, 13 August 2014 – Members of the United Nations Security Council arrived in Mogadishu this morning on a landmark visit to Somalia to review progress made by the Federal Government with assistance from the international community, and to demonstrate their continued support for the country's efforts to ensure a sustainable peace.

The visit by the fifteen-member body is led by the UK Permanent Representative to the United Nations, Ambassador Mark Lyall-Grant, and Ambassador Usman Sarki of Nigeria. During the visit the Council members met with President Hassan Sheikh Mohamud, Prime Minister Abdiweli Sheikh Ahmed, senior members of the Government and the Federal Parliament, and the leaders of the Interim Jubba Administration and Galmudug, Ahmed Islaan Madobe and Abdi Hassan Awale Qeybdid. They also held discussions with the senior leadership of the United Nations Assistance Mission in Somalia (UNSOM), the African Union Mission in Somalia (AMISOM) and members of Somalia's civil society.

The visit comes at an important time for Somalia as the country prepares to launch the next phase of

military operations against Al-Shabaab, addresses a worsening humanitarian situation and pushes forward with political reforms to agree a federal system of governance.

Speaking at Mogadishu International Airport, the UK's Permanent Representative, Ambassador Mark Lyall-Grant said, "We are pleased to have this opportunity to visit Somalia. Our visit underlines the commitment of the international community to Somalia's progress toward peace and stability. The Council welcomes recent political agreements to form interim regional administrations, including the establishment of the Interim Jubba Administration and agreements on the Interim South West State Administration and on the Central Regions.

"Members of the Council also expressed their expectation that the Federal Government of Somalia will urgently establish a national independent electoral commission, lead a process to revise the constitution and hold a referendum on it by the end of 2015, and hold elections in 2016. The members of the Security Council stand ready to support the people and government of Somalia to deliver this vision. The members of the Security Council also underlined the importance of women being represented at all levels of the political process in Somalia." Ambassador Lyall-Grant added.

The UN Security Council delegation includes representatives from Argentina, Australia, Chad, Chile, China, France, Jordan, Lithuania, Luxembourg, Nigeria, Republic of Korea, Russian Federation, Rwanda, UK and USA.

Source:UNSOM.UNMISSION.ORG

Readers Comments (0)

Comments are closed.

Media News

Madaxda Soomaalidu Gacan maroojin shisheeye kama maaranto!

Himilada shirka Kismaayo iyo Humaaga dul heehaaban

Annex 32

"IGAD Foreign Affairs Ministers Arrive in Mogadishu", *AMISOM* (10 Jan. 2015)

IGAD Foreign Affairs Ministers Arrive in Mogadishu

Four Foreign Affairs Ministers from Djibouti, Ethiopia, Kenya, and South Sudan are in Mogadishu for a historic IGAD Ministerial meeting, last held in Somalia in 1985.

Ethiopia's Foreign Affairs Minister and current chairman of the IGAD Council of Ministers Dr. Tedros Adhanom is leading the delegation which includes Kenya's Cabinet Secretary for Foreign Affairs Amina Chawahir Mohamed, South Sudan Foreign Affairs Minister Dr. Barnaba Marial Benjamin, Uganda's State Minister of Foreign Affairs Asuman Kiyingi and Djibouti's Foreign Affairs Minister Mahamud Ali Yusuf. Sudan is represented by a senior government official.

The IGAD Executive Secretary Eng. Mahboub Maalim and IGAD Special Envoy to Somalia Ambassador Mohamed Abdi Affey are accompanying the ministers.

The Acting Somalia Minister of Foreign Affairs and Investment Promotion Dr. Abdirahman Beileh, senior Somali government officials and AMISOM commanders received the delegation at Aden Abdule International Airport shortly after 4pm on Thursday.

Dr. Beileh thanked the visiting ministers for accepting Somalia's request to host the precedent setting meeting and promised successful deliberations.

"It is an honor for us. As you know such a conference has never taken place in Somalia. I understand the last IGAD meeting held in Mogadishu was in 1985," said Dr. Beileh.

Ethiopia's Dr. Tedros Adhanom expressed gratitude that Somalia was hosting this meeting and added that the ministers were impressed by the achievements of the Federal Government of Somalia.

"The reason for hosting this IGAD meeting here is to discuss on the progress so far and also to consult on the implementation of vision 2016. IGAD believes that vision 2016 will be implemented as planned because as I said earlier the progress is commendable and we don't expect any problems to implement the vision 2016. Hosting the IGAD Ministerial meeting is to show our solidarity first and also to give our full support for the progress Somalia is making," Dr. Tedros said.

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IGAD Foreign Affairs Ministers Arrive in Mogadishu - AMISOM

Annex 33

"Speaker of the Somali Parliament receives parliamentary delegation from Kenya", *Radio Muqdisho* (3 Feb. 2015)

208 Views

Speaker of the Somali Parliament receives parliamentary delegation from Kenya

Posted on Tuesday 3rd February 2015 by radio muqdisho in NEWS // 0 Comments


Speaker, Jawari

Mogadishu(RM) Speaker of the Somali federal Parliament, Hon. Mohamed Osman Jawari received a delegation from neighboring Kenya and arrived in the capital Mogadishu a day before.

Osman Jawari, the speaker and members from Kenyan parliament had meeting over strengthening relations and collaboration between the parliaments and discussed other issues including trade, economics of the two nations.

Speaking to Radio Mogadishu, Mohamed Osman Jaware after the meeting said he was very much pleased with talks he had Somali Kenyan members of parliament and their wishes over the two states' perspective in the future.

The lawmakers from Kenya arrived in Mogadishu yesterday to visit and meet their counterparts with Somalia and they are expected to have meeting with some commissions of Somali parliament tomorrow and then go home.

On the other hand, the Speaker met with Swedish ambassador to Somalia, Ambassador Maka'el here in Mogadishu today.

By Cobra