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Transboundary natural resource disputes in Africa

Policies, institutions and management experiences

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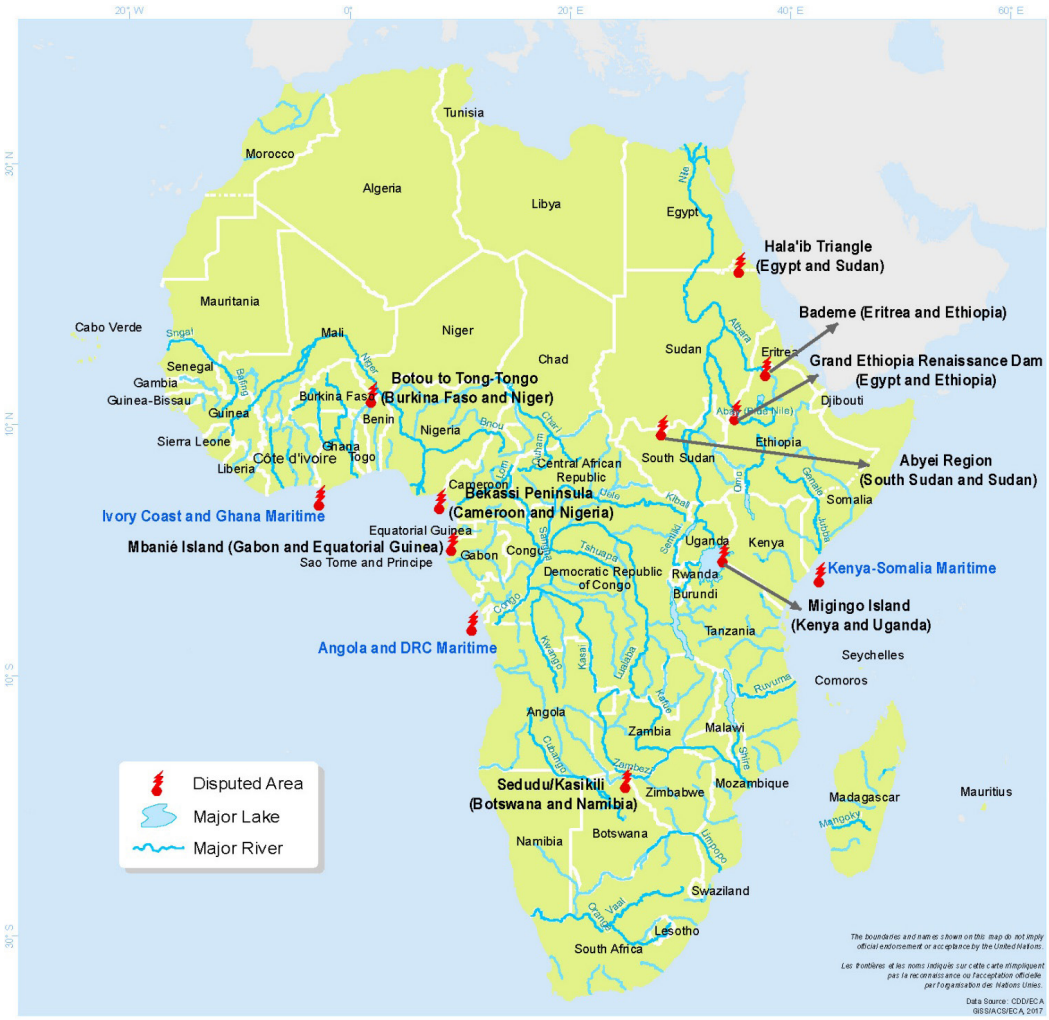

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1. Executive summary

1.1 Background

Africa is endowed with considerable strategic renewable and non-renewable natural resources, of which only a fraction has been exploited for the benefit of the African people. The role of natural resources as major contributors to economic growth and poverty reduction cannot be overstated. However, natural resources can be a curse or a blessing, depending on the quality of governance, institutions and governments' capacity and willingness to manage them for development and the public good.

While intra-State conflicts over natural resources have dominated much of the policy and academic debate on the root causes of conflicts, little attention has been given to current and potential interstate conflicts over transboundary resources. It is worthwhile noting that competition over, and the scramble for, natural resources between the industrialized and industrializing countries has created an incentive for the control of these resources by national and international players. As Africa has embarked on the path of structural economic transformation and industrialization, its demand for raw materials and natural resources will also increase, with the potential for the re-emergence of old boundary disputes or the emergence of new disputes over transboundary resources.

To be sure, as the demand for commodities and natural resources increases, so too does competition between States over transboundary natural resources for domestic use, national development and export. For example, the evolution of the conflict of the Democratic Republic of Congo from a domestic conflict to a regional one engulfing the Great Lakes region is testimony to the proposal that intra-State disputes can develop into interstate conflicts. For example, the war of 2012 (a year after South Sudan gained independence from the Sudan) and protracted conflicts between the Sudan and South Sudan over the oil-rich Abyei region have typically been transboundary resource conflicts that have dominated the geopolitics of the two countries. Or consider, for example, the dispute between Ghana and Côte d'Ivoire over their maritime border, which ensued as Ghana began oil exploration and production in the Tweneboa-Enyenra-Ntomme and Jubilee oil fields in the Atlantic Ocean. Similarly, Somalia and Kenya have engaged in disputes over maritime borders, potentially rich in oil and gas resources. The present report presents only a few examples of transboundary[1] disputes over natural resources, with the aim of drawing on relevant experiences and offering lessons on policy and practice.

1 In the present report, we use several terms interchangeably, such as boundaries, borders, frontiers, cross-border and transboundary. Boundaries generally refer to physical borders, while transboundary resources refer to natural resources located at the borders of two or more countries. However, in this report, the term frontier is used by the French-speaking countries of Burkina Faso and the Niger in their submissions to the International Court of Justice in their border dispute claims. Borders created by human agency may follow a river or mountain range. Such features do not automatically define the political border. The term boundary has a wider meaning than borders and may be political, physical, social, economic or cultural. Frontiers are lines or borders that separate two countries or are the extreme limit of settled land beyond which there lies another country. Frontier generally means border, territory or boundary.

1.2 Rationale

a) In some countries, the exploration, production and marketing of transboundary natural resources have become a conflict trigger, therefore making it difficult, if not impossible, for these countries to exploit their resources. Moreover, conflict undermines development, peace and security;

b) Current conflicts over transboundary resources have demonstrated their high human and economic cost, not only to the countries directly involved, but also to the neighbouring countries (for example, the Democratic Republic of the Congo/Great Lakes and South Sudan/Sudan conflicts);

c) There is a pressing need for developing continental policies and protocols pertaining to the management of conflict-sensitive transboundary resources. Such management also requires concerted efforts on an urgent basis to sensitize policymakers to the lurking security dangers emanating from increasing competition over transboundary resources;

d) Production and export of transboundary resources often require cross-country infrastructures (transport, storage facilities, marketing and processing) that traverse two or more countries. It has become evident that cooperation is needed in managing transboundary natural resources before they degenerate into conflicts, having detrimental effects on the economies and societies of several countries;

e) If left unchecked, conflicts over transboundary resources may potentially undermine Africa's aspirations for sustainable development, structural economic transformation and regional integration.

1.3 Objectives

The objectives of the research project from which this Report has emanated are as follows:

a) Map the magnitude and patterns of conflict-sensitive transboundary resources;

b) Analyse and explain the current policies and practices pertaining to the management of transboundary resources;

c) Draw up conclusions and recommendations relevant to the prevention and management of conflicts over transboundary resources;

d) Organize country-specific and cross-country high-level policy dialogues to sensitize the major stakeholders (governmental and intergovernmental, private sector, civil society and non-governmental organizations and

development partners) on the research messages, findings and policy recommendations;

e) Explore the possibility of publishing a handbook to be used for capacity development in transboundary conflict prevention and management.

1.4 Approach and methods

This report elucidates the current policy and academic debates on the role of transboundary resources in African economic growth, and introduces the current practices of transboundary resources management. The focus of the report is on mapping Africa's protocols and strategies on transboundary resources management, with special reference to minerals, oil and gas, on the basis of eight case studies. The scope of the report is limited to transboundary natural resources management, focused on the management of disputes over transboundary natural resources, with specific reference to gas, oil, minerals and fresh water.

The research team adopted a three-pronged approach. First, it took stock of the existing literature on the role of natural resources in African economic growth and current African transboundary resource management, introducing transboundary pastoral movement, transboundary game reserves and parks, transboundary freshwater resources and transboundary minerals, oil and gas resources. An inception report was presented to examine the efficacy of the approach and to be better prepared for the field research.

Second, the research team corroborated the latest available data from reports on land, minerals and extractive industries published by multilateral development institutions such as the African Development Bank, African Natural Resources Centre, the World Resources Institute and the World Mineral Organization, among others. The cases of the Republic of South Sudan/Sudan and production delays caused by the Côte d'Ivoire/Ghana dispute over the Jubilee oil fields are used to demonstrate the economic impacts of transboundary natural resources management.

Third, the methods to be used include a thorough literature review and field visits to the countries selected for fieldwork. While in the field, the team members adopted multiple research methods to collect qualitative and quantitative data. They interviewed policymakers, Governments, the African Union and the regional economic communities, and the African Development Bank, civil society and non-governmental organizations, members of an informed public, opinion leaders and researchers in the field of transboundary natural resources management.

Fourth, the research team decided to conduct field visits to update and validate the documentation written in the form of a draft report, which included preliminary findings and recommendations. The field visits gave the team members the opportunity to validate the documentation and literature review.

The report includes eight case studies on the management of transboundary minerals, oil and gas resources. The case studies will deal with four types of natural resource

sectors: first, border disputes emanating from the failure of decolonization; second, fresh water resources; third, offshore and inland minerals, oil and gas; and, fourth, transboundary pastoralist migratory patterns and trade centres in the Horn of Africa and the Sahel. Essentially, the scope of the report is limited to only a few case studies intended to shed light on the dire consequences of conflicts over transboundary natural resources.

1.5 Conclusions and recommendations

1.5.1 Conclusions

a) Africa's natural resources are an important catalyst for economic development in supporting the continent's aspiration to gear its economies towards structural transformation. If adequately managed, the wealth generated by natural resources can propel Africa's transition from low-value primary commodity exports to high value-added, labour-intensive manufacturing economies;

b) During the past two decades, owing to the increasing global demand for primary commodities, African natural resources (minerals, oil, gas, water, game parks, grazing resources and forests) have become contributing factors to intra- and interstate disputes. As explained in this report, transboundary disputes have multiplied and endangered peace, security and development in several countries;

c) African continental (African Union) and regional economic commissions have developed several institutions, conventions, policies and legal and administrative frameworks for natural resources, management development and cooperation (see annex I). These institutions have often been called upon to mediate in transboundary resources disputes. Major continental and regional institutions, policy thrusts, protocols and declarations devoted to the management of a myriad of transboundary resources are introduced in the report.

d) The African Union Border Programme, which aims to "address the problems posed by the lack of delimitation and demarcation of African borders"[2], is commendable. Other strategic objectives consistent with Africa's aspiration for peace, security and development include reinforcing the integration process and developing local cross-border cooperation within the framework of the regional economic communities, and other regional integration initiatives;

e) Despite the proliferation of continental and regional institutions dealing with transboundary resources, disputes over these resources have been spurred by an increasing number of middle-income countries and other emerging economies. During the past two decades, Africa has witnessed an unprecedented push for resource discovery and extraction, resulting in

2 Declaration on The African Union Border Programme and the Modalities for the Pursuit and Acceleration of its Implementation, article 4, page 4. http://www.peaceau.org/uploads/aubp-dec-e.pdf.

considerable rents and investment flows, which have significantly changed the economic prospects of some countries. Border disputes, which have been dormant since the advent of colonialism, have recently proliferated, leading to claims and counter-claims over ownership, as illustrated in the case studies in this report;

f) Very few countries, where field visits were conducted, have national institutes, policies or a legal framework concerned with internal or international border disputes. None of the transboundary disputes referred to in the case studies has been handled by an African continental or regional court. In one sense, this makes reliance on arbitration or dispute management through international institutions, such as the International Court of Justice, imperative;

g) Some border disputes have been settled within a relatively short span of time, while other disputes have become protracted and continued for decades, with no end in sight. For example, the dispute between South Sudan and the Sudan over Abyei and the dispute between Egypt and the Sudan over Hala'ib (see sect. 5 for case studies), which have lingered since the end of colonial rule;

h) There are exemplary cases of African transboundary resource management and dispute settlement that could be used as reference points for best practices, namely, the resolution of the border dispute between the Sudan and Ethiopia, Mali and Burkina Faso, Nigeria and Cameroon (see case studies in sect. 5). In all cases of successful border dispute management, borders are treated as integrative multipliers of opportunities and bridges between communities. Given that most critical natural resources are transboundary or located in border areas, peace and security in border areas will become an increasingly vital ingredient in the transformation of Africa;

i) Transboundary disputes can erupt into full-scale wars, which involve high human and economic costs. For example, the cost of the border dispute between Eritrea and Ethiopia (1998-2000) is documented in the report. The Arbitration Commission awarded Eritrea compensation of $161,455,000 in respect of its own claims against the violations of Ethiopia and another $2,065,865 was awarded for claims made by individual claimants.[3] The Arbitration Commission also awarded Ethiopia a total of $174,036,520 for its claims against Eritrea (see annex III).[4]

j) The cost of the 2012 war between South Sudan and the Sudan over the oil-rich Abyei region was estimated at 15 per cent of the GDP of South

3 See Eritrea-Ethiopia Claims Commission, Final Award - Eritrea's Damages Claims between the State of Eritrea and the Federal Democratic Republic of Ethiopia, The Hague, 17 August 2009, pp. 95-96. Available at http://www.haguejusticeportal.net/Docs/Court%20Documents/PCA/ER%20Final%20Damages_Award_complete.pdf.

4 See Eritrea-Ethiopia Claims Commission, Final Award - Ethiopia's Damages Claims between the Federal Democratic Republic of Ethiopia and the State of Eritrea. The Hague, 17 August 2009, pp. 105-106. Available at http://www.haguejusticeportal.net/Docs/Court%20Documents/PCA/ET_Final_Damages_Award_complete.pdf.

Sudan for 2014. If the conflict had continued for another one to five years, it would have cost South Sudan between $22.3 billion and $28 billion. If the effects of the conflict were measured over 20 years to allow for flow-on effects, the loss would have been even greater, at between $122 billion and $158 billion. The results of Frontier Economics suggest that the costs of the conflict were likely to flow across the region, and at an increasing rate the longer the conflict lasted. The Eastern Africa region could save between $31 billion to $53 billion in avoided GDP loss by ensuring that the conflict was resolved within a year, and did not turn into a prolonged civil war of five years or more;[5]

k) In the case of Ghana and Côte d'Ivoire, a partial projection of the economic cost to Ghana was flagged, if Côte d'Ivoire were successful in its submission to the Special Chamber to suspend its oil exploration and production in the Tweneboa-Enyenra-Ntomme and Jubilee oil fields. Ghana claimed that: "The provisional measures sought by Côte d'Ivoire would deliver a crippling blow to Ghana's petroleum industry, cause major dislocations throughout Ghana's economy and set back its economic development for many years". (Ghana, Government of (2015). As part of the projected cost, Ghana presented the Tullow Oil (the major oil company operating in the disputed area) Statement, which determined that the cost of exploration and appraisal work in the Tweneboa-Enyenra-Ntomme field from January 2006 to November 2012 was approximately $1 billion. The planned development of the field for production required "the investment of approximately a further $ 4 billion (not including very substantial leasing costs for the long-term contracted FPSO) by Tullow and its co-venturers before first oil, scheduled in mid-2016." **(**International Tribunal for the Law of the Sea (Ghana/Côte d'Ivoire) 2015)**.** A large part of the $4 billion has already been committed through a series of lump sum contracts with world-class major contractors around the globe, with around $2 billion having already been expended. One of the many long-term contractual commitments, for example, is for the semi-submersible drilling unit reported on in the Tullow Statement, stating that it "drills and completes the wells … at a cost of over $ 1.25 million per day" (for the rig and associated service contracts)**.** (International Tribunal for the Law of the Sea (Ghana/Côte d'Ivoire) (2015: 25). Tullow Oil estimates the "additional cost that would result from a suspension of operations in the disputed area would be in the order of $ 1–2 billion, before account is taken of the significant financing implications such a decision could have on Tullow, its co-venturers and the contractor companies involved in the project (International Tribunal for the Law of the Sea (Ghana/Côte d'Ivoire) (2015: 26).The Economic Impact Statement, for example, just announced that Côte d'Ivoire was seeking to implement provisional measures, which caused the Tullow Oil share price to drop by over 6 per cent (or $308 million) in one day;[6]

5 See Frontier Economics, "South Sudan: The Cost of War, an estimation of the economic and financial costs of ongoing conflict" (2015). Prepared in collaboration with the Center for Conflict Resolution and the Centre for Peace and Development Studies. Available at http://www.frontier-economics.com/documents/2015/01/south-sudan-cost-war.pdf.

6 See Reuters, "Tullow falls on worries legal dispute could delay Ghana project", 2 March 2015. Available at http://af.reuters.com/article/investingNews/idAFKBN0LY1K720150302. Accessed 19 March 2015.

l) Transboundary disputes do not concern only oil, gas, minerals and other natural resources with high rent contribution to the GDP. It is also demonstrated in this report that pastoralists pursue a way of life that is, in most cases, dependent on transboundary activities. However, despite the issuance of several declarations of the importance of pastoral transboundary movements and the role of pastoralists as major contributors to food security and inter- and intra-regional trade, these pastoralists still face several challenges in pursuing their delicate mode of livelihood.

1.5.2 Recommendations

a) The landscape of transboundary natural resources management is rapidly changing, while the normative, institutional and collaborative, as well as financial, framework governing these resources have lagged behind and remain inadequate. Therefore, there is an urgent need to develop a "Continental Transboundary Resource Sharing Protocol/Policy Framework". Such a protocol should also identify the associated normative, institutional, collaborative and financial frameworks;

b) There is an urgent need to revamp the Joint Border Commissions with greater mandates, more resources and regular meetings and functions. This should involve three major developments: (i) developing a Model National Border Governance Policy and Strategy based on African Union Strategies; (ii) accelerating the ratification and implementation of the Niamey Convention; and (iii) developing a strategy for sharing trans-boundary natural resources;

c) There is a need to establish an overarching continental institution responsible for coordinating transboundary regional institutions, support capacity development and use of shared resources and implement the objectives of the Continental Transboundary Resource Sharing Protocol/Policy Framework. A continental institutional framework should be established (perhaps by upgrading the existing African Union Border Programme), tasked with building trustworthy communication and cooperation among African States through shared resources;

d) The current heightened political and economic tensions over transboundary resources underscore the added significance of prudent border governance. Africa must lead and own the policy framework on the paradigm shift in the border governance agenda. Therefore, it is imperative that Africa develop multi-layered (local, national, regional and continental) transboundary resources governance regimes that are responsive to current and future dispute settlement;

e) Given the speed needed to settle transboundary disputes, it is recommended that the African Union establish a high panel on transboundary natural resources dispute management. The panel should be empowered to intervene in a timely manner when disagreements on shared resources arise between States. The panel should be empowered through continental and regional frameworks, as mentioned in recommendation (a) above;

f) To manage transboundary resources effectively, there is an urgent need to consolidate the fair and equitable use and sharing of transboundary natural resources. The implementation of the African Union Border Programme, the Niamey Convention and the relevant declarations and aspects of the 2050 AIM Strategy and Agenda 2063, should be given pride of place at the African Union and the regional economic communities and among Member States;

g) African countries should be encouraged to develop institutions, policies and administrative and legal frameworks focusing on sharing and cooperating in transboundary natural resources development. Such institutional and policy frameworks should be developed in collaboration with existing continental and regional transboundary natural resource management and development;

h) Border disputes are not only inter-State: the discovery of highly valued natural resources within countries and between provinces and countries has also contributed to disputes over internal borders within countries;

i) African research institutes of higher learning should give attention to the issues emanating from the political economy of national and transboundary natural resource management and their relationship with continental, regional and international environmental law, politics, economics and policies;

j) Transboundary pastoral resources are as important to the African economy and society as are oil, gas, minerals and other natural resources, which are high rent contributors to GDP. It is recommended that African countries and regional economic communities make good on their declaration and policies that aim at facilitating pastoral transboundary movements as part of efforts leading to the free movement of people, goods and services;

k) Community-based approaches to transboundary resources management and dispute settlement should be mindful of the realities on the ground and the experiences of border communities in peaceful coexistence and local dispute management mechanisms.

1.6 Structure of the report

The report consists of six sections. Sections 1 and 2 contain an executive summary and an introduction, detailing the objectives, rationale, conclusions and recommendations of the report. Section 3 provides a synoptic analysis of the role of natural resources in economic development and Africa's recent economic growth. It delineates types of transboundary resource management and identifies policy gaps at the continental and regional levels. It also defines conflict-sensitive transboundary natural resources and the factors contributing to the proliferation of disputes over them during the past two decades. Section 4 offers eight case studies, representing Central, Eastern, Northern, Southern and Western Africa. The economic cost of transboundary disputes over

natural resources is explicated in section 5, using three case studies (South Sudan-Sudan dispute over Abyei; Eritrea-Ethiopia dispute over Badme; and the Ghana-Côte d'Ivoire dispute over transboundary oil and gas resources in the Tweneboa-Enyenra-Ntomme and Jubilee oil fields off the Atlantic Ocean). Section 6 elucidates success stories and general and case study-specific lessons learned. There are also three annexes and a comprehensive list of references included with the report.

2. Natural resources and the African economies

2.1 Contribution of natural resources to the economies of Africa

Africa is blessed with abundant renewable resources (water, forests and fisheries) and non-renewable resources (minerals, coal, gas and oil), which provide revenue, sources of livelihood and employment, and are principal sources of national wealth and government revenue. Arguably, Africa has the largest arable land mass and is home to the second-largest and longest rivers in the world (the Nile and the Congo). There are 63 international river basins covering approximately 64 per cent of the continent's land area.[7] In addition, 38 out of 54 African countries are coastal States, which have maritime zones within national jurisdiction totalling about 13 million km^2, including territorial seas and exclusive economic zones (EEZs) and approximately 6.5 million km^2 for the continental shelves.[8] As evident from the case studies explored in this report, some of the transboundary disputes over natural resources have occurred with regard to these maritime zones with national jurisdiction, which are rich in natural resources.

However, only 5 per cent of the cultivated land of Africa is irrigated, and less than 10 per cent of hydropower potential is utilized for electricity generation.[9] In terms of tropical forests, Africa has the world's second-largest tropical forests, whereas 18 per cent of the world's remaining rainforests are located in the Democratic Republic of the Congo and the Republic of Congo.[10] Despite low levels of exploitation, the total value added by the fisheries and aquaculture sector is estimated at $24 billion.[11]

Minerals account for an average of 70 per cent of total African exports.[12] The contribution of extractives to public finance is significant, with the public revenue of some African States, such as South Sudan, being almost entirely dependent on oil (i.e. 89% of government revenue). In 2015, the African Development Bank estimated that Africa's extractive resources will contribute over $30 billion annually in government revenue for the next 20 years.[13]

7 For more details, see United Nations Environment Programme, "Africa: Atlas of Our Changing Environment" (2008). Available at http://www.unep.org/dewa/Africa/AfricaAtlas/PDF/en/TOC.pdf.

8 Ibid; see also *Africa's Blue Economy A policy handbook*, United Nations, Economic Commission for Africa (2016), p.4. Available at https://www.uneca.org/publications/africas-blue-economy-policy-handbook.

9 See *United Nations World Water Development Report 2015. Water for a Sustainable World* (United Nations Educational, Scientific and Cultural Organization (2015).

10 See Pipa Elias and Calen May-Tobin, "Tropical Forest Regions" in "The Root of the Problem: What is Driving Tropical Deforestation Today", Union of Concerned Scientists. Available at http://www.ucsusa.org/sites/default/files/legacy/assets/documents/global_warming/UCS_DriversofDeforestation_Chap3_ForestRegions.pdf.

11 See Gertjan de Graaf and Luca Garibaldi Food and Agriculture Organization of the United Nations, "The Value of African Fisheries", FAO Fisheries and Aquaculture Circular No. 1093 (Food and Agriculture Organization of the United Nations, 2014). Available at http://www.fao.org/3/a-i3917e.pdf.

12 See African Development Bank Group, "African Natural Resources Centre Draft Strategy 2015-2020" (May 2015). Available from http://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/Draft_African_Natural_Resources_Center_Strategy_for_2015_%E2%80%93_2020.pdf.

13 According to the African Development Bank and the Bill and Melinda Gates Foundation, "Updated esti-

Table 2.1: Natural resources rent (as % of GDP), 1990, 2000, 2008, 2010 and 2015

Country	1990	2000	2008	2010	2013	2015
Angola	36.1	61.8	58.1	39.0	34.9	11.3
Benin	7.9	4.5	5.0	4.7	4.8	--
Botswana	2.1	9.3	6.0	4.9	3.6	2.7
Burkina Faso	6.8	6.0	10.4	14.9	--	5.5
Burundi	13.4	15.1	33.4	24.1	--	
Cameroon	14.4	12.5	12.6	8.4	9.4	6.2
Cabo Verde	0.6	0.4	0.5	0.5	--	17.1
Central African Republic	6.4	11.2	11.8	8.6	--	--
Chad	7.5	10.6	35.7	24.5	23.9	13.1
Congo, Republic of	47.0	62.6	54.0	49.2	45.4	23.4
Democratic Republic of the Congo	--	7.6	32.1	35.3	40.6	34.0
Djibouti	0.6	0.4	0.8	0.8	0.7	0.9
Eritrea	--	4.8	4.3	1.9	--	--
Ethiopia	11.9	18.4	18.9	16.1	14.4	14.3
Gabon	36.0	44.2	43.2	33.5	35.7	
Gambia	4.4	4.9	5.2	4.6	--	--
Guinea Bissau	18.1	11.9	16.1	15.0	--	37.9
Kenya	5.0	3.3	3.6	3.1	3.0	3.3
Lesotho	3.9	3.5	5.1	3.7	--	--
Liberia	51.6	29.4	44.7	29.1	--	--
Mauritius	12.7	12.5	54.1	48.8	41.1	--
Mozambique	13.9	7.0	10.1	9.9	10.8	13.1
Namibia	--	0.5	3.1	2.9	2.2	2.3
Nigeria	50.3	38.1	29.1	13.8	12.8	4.7
Rwanda	4.7	6.0	8.8	6.7	--	
Senegal	2.4	3.1	4.3	4.2	5.0	14.8
Somalia	--	--	--	--	--	--
South Africa	6.0	2.9	12.9	7.7	6.9	4.2
South Sudan	--	--	--	--	26.3	15.9
Sudan	--	--	--	--	8.6	4.2
Swaziland	5.6	3.0	3.9	2.3	2.3	2.9
Tanzania (United Republic of)	11.5	4.6	7.2	7.5	7.0	6.9
Uganda	15.8	12.o	16.8	10.7	--	--
Zambia	21.0	5.5	17.9	21.4	17.1	14.4
Zimbabwe	4.2	3.6	19.5	9.9	9.4	8.7

Source: Compiled and aggregated according to statistics from the World Bank 2016. Total natural resources rents (% of GDP). Estimates based on sources and methods described in The Changing Wealth of Nations: Measuring Sustainable Development in the New Millennium (World Bank, 2011). http://data.worldbank.org/indicator/NY.GDP.TOTL.RT.ZS.

mates indicate that revenues from recent discoveries could contribute between nine and 31 per cent of additional government revenues for countries such as Ghana, Liberia, Mozambique, Sierra Leone, United Republic of Tanzania and Uganda over the first 10 years of production. If it is smoothed, Mozambique's projected natural resource revenues could fund around half of the country's need for financing in health over the next decade. In Ghana, they could potentially meet about a third of the country's combined health and education funding gaps over the same period", "Delivering on the Promise: Leveraging natural resources to accelerate human resources in Africa", vol. 6 (2015).

Table 2.1 shows Africa's total natural resource rent as a percentage of GDP. Although the contribution of natural resources to GDP fluctuates (in response to changes in demand for primary commodities, some countries can be described as natural resources-dependent. For example, the share of natural resources rent to the GDP of Angola declined from 36.1 per cent, 61.8 per cent, 58.1 per cent, 39 per cent and 34.9 per cent in 1990, 2000, 2008, 2010 and 2013, respectively, to 11.3 per cent in 2015. This pattern can also be observed in the cases of the Democratic Republic of the Congo, the Republic of Congo, Gabon, Nigeria and Zambia, among others.

Ethiopia, whose economy is rated among the fastest growing in the world, should be mentioned for non-dependence on mineral, oil or gas production. Nevertheless, it achieved an annual average growth rate of well over 5 per cent for the period 2000-2015. It is also worth mentioning that, owing to the 2009 financial crisis, countries that are well integrated into the global economy have fared worse than less integrated countries. For example, Africa's large minerals producers such as Algeria, Botswana, Namibia, Nigeria, South Africa and Zambia registered lower average annual GDP growth rate (between 3% and 4.7%), than non-mineral producers such as Ethiopia.[14]

2.2 Curse or blessing

There is a commonly held conviction that natural resources, along with skilled human capital, investment, technology and science, are major contributors to economic development. However, in developed and developing countries, natural resources, both renewable and non-renewable, and ecosystem services are part of the natural capital out of which other forms of capital are made. In addition to their environmental functions (life support, production, waste absorption, regulatory and aesthetic functions), natural resources contribute to fiscal revenue, food, income, jobs and several sources of employment (OECD, 2011). Evidently, because of Africa's natural resource-dependent economies, its natural wealth has been a major contributor to the current upsurge in economic growth and entry into bold investments in physical and social infrastructures.

As Africa's recent experience shows, the windfall from high commodity prices, such as the one experienced before the last price decline, benefitted capital and foreign exchange, thus providing the required fuel for economic growth. In other words, despite the fact that little value has been added to commodity exports, African countries have focused on commodities where they apparently have a comparative advantage and where natural resources are relatively abundant. It has also been argued that natural resources attract foreign direct investment, which in turn fosters economic growth in circumstances where prevailing favourable macro-economic policies and institutions can pave the way for the efficient allocation of capital. In such favourable circumstances, natural resources can stimulate new investment and generate sustained economic growth. In other words, in developing economies, rents generated from natural resources can enable a country to acquire the necessary human capital, technology and science necessary for economic growth.

14 See World Bank, DataBank. World Bank national accounts data, 2016. Available at http://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG. Accessed 10 September 2016.

The role of natural resources in economic development is not as obvious as it appears. Countering the perspective on the positive role of natural resources in economic development, a well-entrenched contention has developed that associates resource abundance with subdued economic growth. Proponents of this strand of thought argue that resource abundance is a disincentive to economic development because resource-abundant economies rarely reinvest the rents generated from natural resources in development. In the literature, this is widely known as "the resource curse", which purports that resource abundance has damaging effects on economic performance.[15] Similarly, the assumed negative role of natural resource abundance in slowing growth is attributed to several economic and economic-related factors, essentially claiming that crop-led resource and mineral-driven economies would register lower growth than manufacturing-dependent countries owing to differences in prices resulting from additional value.[16] Other factors include fluctuations in commodity prices leading to growth volatility, weak institutions, corruption and bureaucratic inefficiency.[17] Many cases have shown that severe governance deficit tends to induce violent resistance to the status quo.[18]

Contrary to the argument that natural resource abundance is a curse is the argument that resource scarcity, rather than abundance, has causal effects linking natural resource scarcity to conflict. The most prominent findings using this perspective argue that environmental scarcity or scarcity of renewable resources such as scarcity of agricultural land, forests, water and fish contribute to violence, (Homer-Dixon, 1999), but only under certain circumstances; there is no inevitable or deterministic connection between these variables. The nature of the ecosystem, the social relations within society and the opportunities for organized violence all affect causal linkages. According to Homer-Dixon, environmental scarcity arises in three ways: demand-induced scarcity is a result of population growth in a region; supply-induced scarcity arises from the degradation of resources; and structural scarcity occurs because of the unequal social distribution of these resources. These three types of scarcity are not mutually exclusive. They often occur simultaneously and interact with one another (Homer-Dixon, 1999). Despite critique and counter critique, the debate linking the scarcity of natural resources and security remains central to academic and policy debates, particularly so in the realm of both inter- and intra-State disputes over transboundary resources.

15 See J. Sachs and D. Warner (2001) "The curse of natural resources". ***European Economic Review***, vol. 45, pp. 827-838 (2001); R Hodler. "The curse of natural resources in fractionalized countries", *European Economic Review,* vol. 50, pp. 1367-1386; P. Collier and J. W. Gunning, "Why Has Africa Grown so Slowly?", *Journal of Economics Perspectives*, vol. 13, pp. 324-376 (1999); C. Brunnschweiler and E. Bulte, ?Natural resources and violent conflict: resource abundance, dependence, and the onset of civil wars", *Oxford Economic Papers*, vol. 61, No. 4, pp. 651-674 (10 October 2009). Available at https://doi.org/10.1093/oep/gpp024; A. Boschini amd J. Pettersson and J. Roine, "Resource Curse or Not: A Question of Appropriability", Scandinavian Journal of Economics, vol. 109, pp. 593-617 (2007).

16 Paul Stevens, "The Resource Curse Revisited. Energy: Appendix: A Literature Review" (Chatham House, 2015).

17 Frederick van der Ploeg and Steven Poelhekke 2009, "Volatility and the natural resource curse", *Oxford Economic Papers*, vol. 61, No. 4, pp. 727-760. First published online 29 July 29 2009. Available at https://doi.org/10.1093/oep/gpp027.

18 William Zartman and others, *Governance as Conflict Management* (Brookings Institution Press, December 1996).

Overall, the debate linking natural resources abundance or scarcity to conflicts can be related to at least four factors:[19] (i) the prevalence of poverty, and the poor record of resource- abundant countries in poverty alleviation, which creates grievances of a large sway of disfranchised excluded communities; (ii) near exclusive use of natural resource revenues by the elite to the exclusion of the poor, which tends to alienate local populations and encourages separatist tendencies;(iii) resource abundance retards political change and significantly weakens nascent democratic institutions by repressing opposition parties, encouraging corruption among the elite, and bureaucracy; (iv) it widens the inequality gap between the central and regional government by channelling the flow of revenues from natural resources to the centre at the expense of the already underdeveloped periphery.

During the 1990s, conflicts waged during the struggle for democracy and the restoration of human rights often developed into resource conflicts (Chad, Democratic Republic of the Congo and Liberia). Algeria offers an example of a war between secularists and radical Islamists gradually taking the character of resource conflicts involving government and radical Islamists such as Al-Qaeda in the Islamic Maghreb, Libya and Somalia, and the Niger and Mali.

Conflicts have multiple causes and no single explanation can provide an all-encompassing explanatory factor. In other words, resource conflicts are intertwined with ethnic, religious, clan and regional conflicts.

Conflicts triggered by ethnic or religious issues have assumed the nature of resource conflicts in recent years. For example, South Sudan's prolonged conflict for self-determination has been increasingly transformed into a conflict over oil – both with the Sudan and as a factor in the civil war in South Sudan. Similarly, the civil war in Libya began as a result of democratization failure and soon descended into a war between secular and religious forces, conflicts between centralists and regionalists and a war between insurgency groups and the central government over the control of oil.

Elite competition is not merely about ethnicity and protecting ethnic folk; it is also about the use of ethnicity for political mobilization to control the State and natural resources rent, which the State controls (for example, Angola, Chad, Congo, Kenya, Mozambique, the Niger, Nigeria and South Sudan).

Of particular relevance to this report is that the conflicts in the 17 countries presented in table 2.1 are not exclusively intra-State. Some of the conflicts are regional or subregional (e.g. Democratic Republic of the Congo, Somalia, South Sudan and Mali); others involve disputes over transboundary resources (e.g. Kenya/Uganda, Somalia/Kenya, Sudan/South Sudan and Angola/Democratic Republic of the Congo).

19 Stevens, op. cit.

Table 2.2: Intra-State disputes and conflicts directly or indirectly linked to natural resources

No	Country	Dispute duration	Disputes directly or indirectly related to natural resources	Explanatory notes
1.	Angola (civil war ended in 2002) and Cabinda secessionist movement since 1975	1975-2002	Oil, diamonds, timber	Although the civil war has been explained in ideological/ethnic terms, materially, it was also for the control of the mineral-rich regions such as Cabinda.
2.	Chad	1994-	Oil, water	In addition to political grievances, the two largest rebel groups aimed at preventing the Government from exploiting oil in the Logone and Doba Basin in southern Chad. Conflicts between farmers and pastoralists from the Sahelian countries over Lake Chad.
3.	Congo	1993 (protracted)	Oil	Offshore oil wealth fuelled conflict between rival political elites who created militia to battle government and protect their interests.
4.	Democratic Republic of the Congo	1993 (protracted)	Copper, cobalt, diamonds, gold, timber	A combination of "resource conflicts" and mismanagement of natural resources.
5.	Ethiopia	1991-	Water, land	Conflict over land between large-scale development projects and subsistence farmers, disputes over acquisition of peri-urban lands for urban development and interstate with Egypt over the Blue Nile waters' development.
6.	Kenya	1991 and 2007-2008 (post-election violence)	Land, water	Conflict over land and water resources in the Rift Valley and the north, which can also explain the post-election violence in 2008.
7.	Liberia	1989-2003	Iron, diamonds, rubber, timber	The minerals, timber and rubber sectors are managed (or mismanaged) for the benefit of the elite to the exclusion of the poor.
8.	Libya	2011-	Oil	A year after the eruption of the Libya civil war, armed opposition groups divided the country into nine regions vying to control Libya's oil wealth.
9.	Mozambique	Civil war (1976-1996) and protracted conflict between the opposition (Renamo) and the Government (Frelimo)	Timber, coal, iron ore	During the first decade of the twenty-first century, Mozambique discovered large deposits of iron ore, oil and gas and the allocation of large land concessions fuelled conflict between the Government and the opposition.

No	Country	Dispute duration	Disputes directly or indirectly related to natural resources	Explanatory notes
10.	Morocco/ Western Sahara	1975 (protracted)	Phosphate, oil	Conflict caused by Morocco's claims of sovereignty over the phosphate-rich territory and oil (Kosmos, an American oil company signed agreements with Morocco to exploit oil in Cap Boujdor Block) in Western Sahara
11.	Niger	2007-2009	Uranium	The Tuareg rebellion was partly to pressurize the Government for a better share of uranium resources produced in what they consider their homeland.
12.	Nigeria	1973 (protracted)	Land, oil	What began as the Biafra war (1967-1970) developed into a conflict of attrition between some groups in the Niger Delta. Land conflicts have also intensified between pastoralists and the settled farming populations.
13.	Sierra Leone	1991-1999	Diamonds, bauxite, timber	The diamond, bauxite, gold and timber sectors are managed (or mismanaged) for the benefit of the elite to the exclusion of the poor.
14.	Somalia	1991 (protracted)	Land and piracy over fishing rights	Post-1988 Somalia witnessed a combination of the rise of radical Islamists groups such as Al-Shabab; there were land conflicts in the southern rich regions and piracy.
15.	South Sudan	2012 to date (protracted)	Land, water and oil	The construction of the Jongolei Canal to manage the White Nile waters against the interests of the people of South Sudan was considered one of the causes of the second civil war, 1983-2005.
16.	Sudan	1983 (protracted)	Land, water and oil	Land dispossession owing to the establishment of large-scale mechanized agricultural schemes in South Kordofan and oil in the contested Abyei region between South Sudan and the Sudan.

Sources: Because of the large volume of sources used in compiling this table, references are inserted in the list of references.

Table 2.2 shows that eight or half of the 16 conflicts and disputes have been directly or indirectly over oil (Angola, Chad, Congo, Libya, Morocco, Nigeria, South Sudan and the Sudan). There are six similar cases of conflicts or disputes over land and water (Chad, Ethiopia, Kenya, Nigeria, South Sudan and the Sudan) and five cases of conflicts or disputes over timber and rubber resources (Angola, Congo, Liberia, Mozambique and Sierra Leone). The remaining cases of conflicts or disputes involve bauxite, copper, diamonds (Angola, Democratic Republic of the Congo, Liberia and Sierra Leone), gold and cobalt (Democratic Republic of the Congo), iron ore and uranium (Niger), among other natural resources, as table 2.2 shows. Piracy in the

Indian Ocean off the Somali coast is directly related to the collapse of the Somali State and its failure to protect the rights of Somali fishing folks.

This section has shown that natural resources play a significant role in the African economies. It has also shown that disputes over transboundary resources have increased during the past two decades, and if not contained, they will have some negative economic and political consequences on the African States and subsequently African continental aspirations for economic and political integration. As the case studies show, African conflicts and disputes are intra-State, but some have been transformed into interstate transboundary disputes, owing to the existence of the same ethnic groups in the borders of two or more States, and natural resources that criss-cross disputed territories between States.

3. Transboundary natural resources management

3.1 African Union Border Programme

This section defines natural transboundary resources and elucidates recent African transboundary natural resources conflicts and management, and the lessons learned from these experiences. It refers only to interstate boundaries, rather than to intra-State disputes over natural resources. More specifically, the section introduces four types of transboundary resources (pasturelands, fresh water, minerals, oil and gas) and takes stock of regional and sector-specific transboundary resource institutions and policies and their role in promoting peace and regional integration. In this respect, the management of transboundary resources is treated as an activity that takes place within a composite of a broad set of policies, legal and administrative instruments and approaches used to manage interstate disputes over these resources or attract investments to develop cross-border tourism. In short, it entails policies concerned with cross-border activities, processes and policies developed with the aim of enhancing cooperation between two or more States, as well as among regional and continental entities.

Transboundary natural resources are not only about conflicts and disputes. They can also be sources of cooperation and shared benefits between neighbouring States and communities. For example, a number of benefits are associated with engaging in collaborative transboundary resource management through ecological collaboration to promote the sustainable use of natural resources (e.g. through collaborative control of resource exploitation and trade, control of invasive species, integrated river basin management, fire management and livestock and range management for transhumant pastoralists) (Linde and others, 2001). Such collaboration reduces transboundary threats and politically lays a foundation for deeper cooperation between neighbouring communities and possibly nations, which can help to reduce tensions and conflicts, improve security for communities in border areas and rebuild divided communities. Economically, this collaboration can facilitate the use of existing and developing regional economic opportunities that can provide incentives to invest in transboundary natural resource management activities and make use of potential efficiencies and economies of scale by working across borders such as sharing human, material and financial resources to control illegal activities, research, monitoring and evaluation (Linde and others, 2001).

The scope of this section is limited to exploring current policies and institutions governing transboundary natural resources focusing on pastoralist movement, fresh water, offshore and inland minerals, oil and gas. Therefore, the section is informed by the broader framework of the quest for border cooperation activities spearheaded by the African Union. It must, therefore, be noted that at the continental level, the African Union has given considerable attention to, and recognition of, the importance of cooperation and the peaceful management of border cooperation. A testimony to this is the African Union Border Programme, which was launched during the first Conference of African Ministers in Charge of Border Issues in Addis Ababa on 7 June

2007. The Border Programme aims to facilitate the delimitation and demarcation of African borders where such an exercise has not yet taken place; promote cross-border cooperation; strengthen African capacity for border management; and develop partnerships and mobilize resources to support the efforts of African States (see annex II for more information on the Border Programme).[20]

In reviewing the progress made in the implementation of the African Union Declaration on the African Union Border Programme and the Modalities for the Pursuit and Acceleration of Its Implementation,[21] the second conference to deliberate on the African Union Border Programme that, "in spite of the strides thus made, we observe that there is still much to be done in order to translate into reality the commitments enshrined in our Declaration of June 2007 and contribute effectively to the realization of the objectives of the Border Programme, namely the structural prevention of conflicts and the strengthening of the integration processes on the continent". The Niamey Convention (17 May 2012)[22] reiterated that cross-border cooperation should be guided by a noble aim to: (a) facilitate cross-border cooperation at local, subregional and regional levels; (b) facilitate the delimitation and demarcation of African borders where such an exercise has not yet taken place; (c) facilitate the peaceful settlement of border disputes; (d) transform border areas into catalysts for growth, as well as for integration on the continent; and (e) promote peace and stability in Africa.

Concomitantly, the African Union Border Programme has recognized the challenges confronting the implementation of its noble objectives. Three years following the 2007 Declaration, the Border Programme noted that the implementation of the Programme faces many challenges, including: (i) inadequate technical and financial support for the delimitation and demarcation of African borders; (ii) a lack of a holistic view of the needs in terms of delimitation and demarcation owing to the limited number of responses received from member States to the questionnaire sent to them. This situation hinders efforts for resource mobilization; (iii) an absence of a continental legal framework for the development of cross-border cooperation and a lack of funds to finance local initiative cross-border cooperation activities; (iv) lack of sustained interaction between neighbouring States for the implementation of the various aspects of the Border Programme; and (v) inadequacy of existing human and technical capacities for the effective implementation of the Border Programme. Since 2016, the African Union has also presented a draft African Union Border Governance Strategy to the African Union Ministerial Conference in Charge of Borders.[23]

In short, while the African Union Border Programme deals with broader boundary disputes, this study focuses on transboundary resources, institutions, policies and disputes, using case studies as a knowledge source that is complementary to Border Programme efforts.

20 See African Union, "From Boundaries to Bridges. Addis Ababa", African Union Border Brogramme, 2010. Available at https://www.giz.de/en/downloads/AUBP_Brochure_ENG_June2016.pdf.

21 Declaration on the African Union Border Programme and the Modalities for the Pursuit and Acceleration of Its Implementation (2012). Available at http://www.peaceau.org/uploads/aubp-dec-e.pdf.

22 Report of the African Union Conference of African Ministers in Charge of Border Issues, Niamey, Niger, 17 May 2012. Available at http://www.peaceau.org/uploads/ex-cl-726-xxi-e.pdf. An earlier Conference of African Ministers in Charge of Border Issues was held in Addis Ababa on 25 March 2009.

23 Ibid. 2012.

3.2 Transboundary fresh water resources

Africa is endowed with immense water resources, such as rivers, lakes, wetlands and aquifers/groundwater. Africa has 17 major rivers, with catchment areas as large as 100,000 km^2 and more than 160 lakes, with surface areas exceeding 27,000 km^2. Most of the lakes are located around the equatorial region and the sub-humid East African Highlands within the Rift Valley. Despite this impressive imagery of the abundance of water resources, more than 300 million Africans still lack access to safe water and adequate sanitation.[24] In 2010, only 61 per cent of the population of sub-Saharan Africa had access to safe water. In the same year, only 45 per cent of the African population had access to sanitation.[25] It is estimated that by 2025 almost 50 per cent of Africans will be living in an area of water scarcity or water stress. Five African countries – Kenya, Morocco, Rwanda, Somalia and South Africa – are expected to face water scarcity within the next 10 years.[26] These specific estimates on the lack of access to safe drinking water should be tempered against the broader role of water as part of the environmental life-support system and its pivotal domestic, agricultural and industrial uses.

Table 3.1 shows that improvements in access to clean drinking water and sanitation in Africa have not coped with the number of people in need of these life- and health-support necessities. The rapid increase of urban populations has created a burgeoning demand for water and sanitation, hence putting more pressure on the overstretched water supply.

Increases in population size are destined to increase levels of water use for domestic, agricultural and industrial purposes, as shown in table 3.1. The relationship between intra-State conflicts and water scarcity has been documented elsewhere. "Water conflicts" or "water wars", occur owing to the centrality of water for agriculture (food security), as well as its use for the sustenance of other economic and natural resource sectors such as energy, livestock and forestry.

Water issues are so interlinked to other major policy and governance issues that the African Union (2014) in the Sharm El-Sheikh Commitments, outlined seven major challenges related to the Sustainable Development Goals: (i) water infrastructure for

Table 3.1: Urban population with access to water supply and sanitation, in 2000 and 2010 (in thousands)

Year	Population		Drinking water		Sanitation facilities	
	Urban	National	Urban improved	National improved	Urban improved	National improved
2000	217 803	668 379	79 482 (82%)	367 661 (55%)	92 917 (43%)	185 808 (28%)
2010	318 383	855 477	263 195 (83%)	24 264 (61%)	135 402 (43%)	261 505 (31%)

Source: World Bank, 2012. Future of Water in African Cities. Available from https://openknowledge.worldbank.org/bitstream/handle/10986/12273/NonAsciiFileName0.pdf, accessed 25 September 2016.

24 World Bank (2012), "The Future of Water in African Cities: Why Waste Water?"
25 Ibid.
26 Ibid.

economic growth; (ii) managing and protecting water resources; (iii) achieving water supply and sanitation Millennium Development Goals; (iv) global changes and risk management in Africa; (v) water governance and management; (vi) financing the water and sanitation sector; and (vii) education, knowledge, capacity development and water information.[27]

Transboundary management is part of water governance and management and its relevance to peace and security by preventing intra- and interstate conflicts over water resources. The definition of transboundary fresh water resources of the African Union Charter is clear: These are fresh water resources located in the sovereign territories of two or more countries. This definition falls within the remit of the generic definition of transboundary resources often occupied by communities that share similar ethnic, cultural, social and economic traits and interests. Africa's major transboundary river basins, lakes and aquifers by region are as follows:

Southern Africa: Limpopo, Okavango, Orange and Zambezi River Basins, Basement Aquifers, Coastal Areas and Karoo Groundwater Basins, Lake Malawi. Eastern Africa: Abbay (Lake Tana and the Blue Nile), Awash, Pangani and Rufiji River Basins, Lake Tanganyika, Lake Turkana and Lake Victoria Basins. Central Africa: Congo and Sanaga River Basins, Lake Chad Basin and the Douala Multi-Aquifer System. Western Africa: Gambia, Komadugu-Yobe, Mano, Niger, Senegal and the Volta River Basins, Nigerian Coastal Areas Aquifer System and Sokoto Groundwater Basin; and Northern Africa: Moulouya, Nile, Sebou, Seybouse, Souss, Tafna and the Tensift River Basins, North Western Sahara and Nubian Sandstone Aquifer Systems (map). Most African rivers and lakes are transboundary (shared by two or more countries). Table 3.2 shows major catchment areas and shared river basins and lakes.

Geographic location and regional groupings are closely associated with river basins and lakes management regimes. It can be claimed that each regional economic community has a number of river basin authorities or commissions with strategic objectives and action plans; for example, the Southern Africa Development Community Hydrological Cycle Observing System, the Zambezi Watercourse Commission and the Zambezi River Basin Authority, Limpopo Watercourse Commission, the Orange-Senqu River Commission, the Okavango Basin Steering Committee and the Permanent Okavango River Basin Water Commission, the Niger Basin Authority, the Niger River Commission, the Lake Victoria-basin Commission (linked to the Nile Basin Initiative), the Lake Chad Basin Commission, the East African Communities Organization for the Management of Lake Victoria.

The continental institutional setup for transnational resources includes the African Union Transboundary Water Resources Strategic Framework and Action Plan, which was developed as part of NEPAD. The transboundary water resources' strategic goal is thus to strengthen the enabling environment for the effective cooperative management and development of transboundary water resources and

27 These commitments have been informed by a number of earlier continental policies and declarations such as The New Partnership for Africa's Development (NEPAD) Action Plan, and the Abuja Declaration of the African Ministers' Council on Water (AMCOW) and the United Nations Secretary-General's Advisory Board on Water and Sanitation and the International Decade "Water for Life" (2005-2015), proclaimed by the General Assembly in its resolution 58/217.

Table 3.2: Examples of some major catchment areas and shared river basins and lakes

No	River or Lake	Countries	No. of countries
1.	River Nile	Burundi, Democratic Republic of the Congo, Egypt, Eritrea, Ethiopia, Kenya, Rwanda, South Sudan, Sudan, Uganda, United Republic of Tanzania	11
2.	River Congo	Angola, Burundi, Cameroon, Central African Republic, Congo, Democratic Republic of the Congo, Rwanda, United Republic of Tanzania, Zambia	9
3.	Niger-Benue	Benin, Burkina Faso, Cameroon, Chad, Côte d'Ivoire, Guinea, Mali, Niger, Nigeria	9
4.	Zambezi River Basin	Angola, Botswana, Malawi, Mozambique, United Republic of Tanzania, Zambia, Zimbabwe	7
5.	Volta	Benin, Burkina Faso, Côte d'Ivoire, Ghana, Mali, Togo	6
6.	Orange River	Lesotho, Namibia, South Africa	3
7.	Okavango	Angola, Botswana, Namibia, Zimbabwe	3
8.	Senegal	Guinea, Mali, Mauritania, Senegal	4
9.	Lake Chad	Central African Republic, Chad, Cameroon, Niger, Nigeria	5
10.	Lake Victoria	Kenya, Uganda, United Republic of Tanzania	4
11.	Lake Turkana	Ethiopia, Kenya, Sudan, Uganda	4
12.	Limpopo	Botswana, Mozambique, South Africa, Zimbabwe	4
13.	Ogooue	Congo, Cameroon, Gabon, Equatorial Guinea	4
14.	Juba–Shebelli	Ethiopia, Kenya, Somalia	3
15.	Ruvuma	Malawi, Mozambique, United Republic of Tanzania	3
16.	Cunene	Angola, Namibia, Zimbabwe	3
17.	Awash	Djibouti, Ethiopia	2
18.	Sabie	Mozambique, Zimbabwe	2
19.	Baraka	Eritrea, Sudan	2
20.	Cavally	Côte d'Ivoire, Guinea, Liberia	3
21.	Comoe	Burkina Faso, Côte d'Ivoire	2
22.	Cross	Cameroon, Nigeria	2
23.	Gambia	Gambia, Guinea, Guinea-Bissau, Senegal	4
24.	Gash	Eritrea, Sudan	2
25.	Komati	Mozambique, South Africa, Swaziland	3
26.	Maputo	Mozambique, South Africa, Swaziland	3
27.	Oueme	Benin, Nigeria, Togo	3
28.	Pangani	Kenya, United Republic of Tanzania	2
29.	Sassandra	Côte d'Ivoire, Guinea	2

Source: UNEP 2010: Africa Water Atlas, Nairobi: United Nations Environment Programme pp. 35-121. Accessed July 15, 2016 from http://www.unep.org/pdf/africa_water_atlas.pdf.

the initiation of the implementation of prioritized programmes, thereby contributing to socioeconomic development and poverty reduction. This would be achieved by facilitating political support and action, facilitating resource mobilization, fostering partnerships and developing strategic frameworks and capacity-building in regional economic communities and River Basin Organizations (RBOs).[28] The African Union Transboundary Water Resources Strategic Framework and Action Plan was part of

28 Accessed 15 November 2016. See also African Union (NEPAD), "African Development Bank, NEPAD Short-term Action Plan (STAP) for Transboundary Water Resources", 2004. Accessed 15 November 2016. Available at http://www.cap-net.org/documents/2004/09/5923.pdf accessed 2 March 2 2018.

Africa's Infrastructure Plan developed jointly by the African Union and the African Development Bank, which gave impetus to the significance of transboundary water resources for African development.

3.3 Transboundary pastoral mobility

Pastoralists survive by exploiting wet and dry season grazing lands as they move within Africa's arid and semi-arid lands. Their seasonal movements date back millions of years, and some have been crossing into neighbouring countries long before the colonial powers created the current boundaries in Africa.

Pastoralists also move along well-worn routes within and between countries in order to access markets. Bouslikhane describes their major transboundary routes (Bouslikhane (2015)) as follows:

a) West African livestock trade routes were developed for the export of live cattle and small ruminants from the Sahel to the coastal countries. Animals leave from Mali and Burkina Faso to supply Benin, Côte d'Ivoire, Ghana and Togo ("the central corridor"); from Burkina Faso, the Central African Republic, Chad, Mali, the Niger and the Sudan to supply Benin, Cameroon, Nigeria and Togo; and from Mali and Mauritania to Côte d'Ivoire, Gambia, Guinea-Bissau and Senegal ("the western route");

b) Central African route (export of live animals from the Sahel to equatorial forest countries);

c) Horn of Africa route (export of live animals to the Gulf States and Middle East countries);

d) East Africa route (export of live animals and dairy products between countries in the Great Lakes region);

e) Indian Ocean route (export of live animals and meat from East Africa to Indian Ocean countries);

f) Southern Africa route (exports of deboned meat to Europe);

g) North Africa route (informal trade in live small ruminants and camelids from the Sahel to countries of North Africa).

The dynamics of informal trade across the border between the Lagos area and southern Benin have been described at length: huge volumes of fuel are smuggled out, while inward flows include a wide range of consumer goods, vehicles and food imported through the Cotonou port. However, this coastal corridor is only one of numerous trading circuits that connect Nigeria to its neighbours, where a large proportion of trade activities passes unrecorded by government agencies. Barely captured in official data are entire cross-border regional economies and sectoral patterns of trade, such

as the flow of Sahelian livestock into the Nigerian north and imports of dried fish from Lake Chad or food crops from Benin. Outbound business includes a major trade in grain trucked northwards to the Niger and Mali, and the export of Nigerian-manufactured products to markets across West and Central Africa. Trade flows are affected by regional instability across the Sahel, in countries such as Mali, or in the Lake Chad basin; these can generate additional import demand, as local output is disrupted, but insecurity also naturally disrupts traffic along some trade routes.

Large numbers of livestock also transit across the Niger-Nigeria border. There are two main components of this activity. In traditional patterns of transhumance, nomadic pastoralists moved their animals between the Niger grazing areas to the south in Nigeria, Chad and even the Central African Republic through a seasonal cycle in response to patterns of rainfall and resulting fluctuations in the availability of grazing in different regions. In eastern areas, this traffic has been partially disrupted by the insecure conditions created by the presence of Boko Haram, putting strain on more central and western transhumance corridors. Moreover, there is also a huge export trade in animals raised in the Niger, the largest livestock producer in West Africa. An estimated 80 per cent of these exports go to Nigeria, particularly the populous urban consumer markets.

This trade is culturally distinct from the transhumance of pastoralists, who regard their animals as a foundation of their wealth and social standing and only sell them occasionally. The importance of the Nigerian market for the livestock sector of the Niger, and the pull that it exerts on trade patterns may be reflected in the fact that meat prices are generally lower in Abuja than they are in Niamey. However, the influences on price are hard to gauge accurately; meat is also cheaper in the capitals of other countries that import it from the Niger, even though they are much smaller markets. Business and government infrastructure in the Niger has developed to support the livestock trade. Large volumes of both formal and informal livestock trade pass through Nigerian border posts, with official figures collected by the Government encompassing both. This close oversight of the traffic is possible because of the infrastructure that the Niger has developed to support a sector that is critical for the economy and for individuals' livelihoods. The Niger has 635 livestock markets, 80 of which are monitored by the Government, which has also established a network of veterinary posts. Likewise, the Economic Community of West African States (ECOWAS**)** operates a system of livestock passports to keep records of the size of herds, vaccinations and other welfare data. As noted above, major border markets, such as the Illéla border town in Sokoto, Nigeria, and Konni in the Niger, have developed as markets for grain and livestock (Odozi, 2015; Fredrik and others, 2007).

African regional economic commissions and multilateral financial institutions are active in promoting and improving pastoral livelihood resilience through market access, information systems and secure transboundary trade. In most cases, attention has increasingly been given to pastoralists' views or their participation in policy deliberations, which in many cases has complicated, rather than improved, livestock trade – traditionally conducted independent of governments' trade institutions. Calls for "formalizing" regional markets such as Moyale in the Horn of Africa or in the Sahel have not been received with enthusiasm by pastoral traders and communities.

The Nouakchott Declaration (2013) is the most ambitious continental policy thrust on pastoralism mobilizing jointly an ambitious effort to ensure pastoralism without borders.[29] The objectives of the Nouakchott Declaration on Pastoralism Mobilizing Jointly an Ambitious Effort to Ensure Pastoralism without Borders are to secure the lifestyle and means of production of pastoral populations and to increase the gross output of livestock production by at least 30 per cent in the six concerned countries (Burkina Faso, Chad, Mali, Mauritania, the Niger and Senegal) over the next five years, with a view to significantly increasing the incomes of pastoralists within a period of 5 to 10 years. The programme of action involves three pillars: (i) enhancing production services; (ii) improving the competitiveness of the livestock sector and market access; and (iii) strengthening the security of the assets, rights and lifestyles of pastoral people, including access to basic services and political inclusion.

The current shifts towards implementing integrated regional pastoral development programmes show that policymakers have come to realize the transboundary nature of pastoral production. There is also the recognition that skewed pastoral development policies are among the major factors fuelling conflicts that have plagued pastoral regions in the Horn of Africa and the Sahel. Often, land policies and reforms intended to enhance economic development through the exploitation of natural resources, have been implemented without consultation with, or the compensation of, pastoralists.

Some pastoral development policy reforms have contributed to forced settlement and the distortion and undermining of customary laws governing land rights and access, making pastoralists vulnerable to market and climate shocks. Development projects requiring large-scale land concessions for agricultural expansion or the exploitation of minerals, gas and oil have intensified land dispossession and engendered grievances among large numbers of pastoral communities across the Horn of Africa and the Sahel. Land alienation has contributed to the intensification of conflicts among pastoralists, between pastoralists and farmers and between pastoralists and national and international investors in almost all of the Horn of Africa and Sahel countries. An emergent trend is responding to the intensification of transboundary conflicts over pasture and agricultural resources, which have become increasingly scarce for pastoralist compromised by large-scale land concessions. Experimenting with region-wide and transboundary natural resources management policies rather than continuing with conventional national pastoral development should be fostered as an additional layer for regional economic development integration.

3.4 Transboundary minerals, oil and gas resources

It is estimated that Africa accounts for about 30 per cent of all proven global mineral reserves with some of these resources located in African internal and offshore maritime zones.[30] Its oil reserves account for 8 per cent of the world's reserves, and natural gas accounts for 7 per cent of the world's reserves. Africa produces 6.5 per

29 See Nouakchott Declaration on Pastoralism: Mobilizing Jointly an Ambitious Effort to Ensure Pastoralism without Borders, October 29, 2013. Available from http://www.rr- africa.oie.int/docspdf/en/2013/NOUAKCHOTT.pdf.

30 BP Statistical Review of World Energy, June 2016. Available from https://www.bp.com/content/dam/bp/pdf/energy-economics/statistical-review-2016/bp-statistical-review-of-world-energy-2016-full-report.pdf..

cent of the world's minerals, mainly gold, diamonds, platinum, phosphate, cobalt and copper. The mining and quarrying of some 60 mineral products currently represents around 20 per cent of Africa's economic activity, while minerals are the continent's second-largest export category – worth 10 per cent of the continent's total exports – exceeded only by hydrocarbons. More than 80 per cent of the value of these mineral commodities originate in just five countries: platinum leader South Africa; diamond-rich Botswana; and gold producers Burkina Faso, Ghana, South Africa and the United Republic of Tanzania.[31]

Africa supplies about 12 per cent of the world's oil. Nigeria, Libya, Algeria, Egypt and Angola produce 81 per cent of African oil. The continent has proven natural gas reserves of 513 trillion cubic feet, with 91 per cent of the annual natural gas production of 7.1 trillion cubic feet coming from Nigeria, Libya, Algeria and Egypt.[32] Seventeen African countries are oil and/or gas exporters, namely. Nigeria, Angola, Libya, Algeria, Sudan, South Sudan, Equatorial Guinea, Congo, Gabon, Ghana, Chad, Egypt, Tunisia, Cameroon, Côte d'Ivoire, the Democratic Republic of the Congo and Mauritania.[33]

Table 3.3: Africa's share of total proven oil reserves and reserves to production ratio, 1995-2015

Country	At end 1995 (thousand million barrels)	At end 2005 (thousand million barrels)	At end 2014 (thousand million barrels)	At end 2015			
				Thousand million barrels	Thousand million tonnes	Share of total reserves (%)	Reserves to production ratio
Algeria	10.0	12.3	12.2	12.2	1.5	0.7	21.1
Angola	3.1	9.0	12.7	12.7	1.7	0.7	19.0
Chad	-	1.5	1.5	1.5	0.2	0.1	52.4
Congo	1.3	1.5	1.6	1.6	0.2	0.1	15.8
Egypt	3.8	3.7	3.7	3.5	0.5	0.2	13.2
Equatorial Guinea	0.6	1.8	1.1	1.1	0.1	0.1	10.4
Gabon	1.5	2.1	2.0	2.0	0.3	0.1	23.5
Libya	29.5	41.5	48.4	48.4	6.3	2.8	306.8
Nigeria	20.8	36.2	37.1	37.1	5.0	2.2	43.2
South Sudan	n/a	n/a	3.5	3.5	0.5	0.2	64.9
Sudan	0.3	0.6	1.5	1.5	0.2	0.1	39.2
Other African countries	0.4	0.6	0.4	0.4	0.1	Less than 0.05	12.0
Total Africa	72.0	111.3	129.3	129	17.1	7.6	42.7
Total World	1126.2	1374.4	1700.0	1697.6	239.4	100	50.7

Source: BP Statistical Review of World Energy June 2016, 65th edition, p. 6. https://www.bp.com/content/dam/bp/pdf/energy-economics/statistical-review-2016/bp-statistical-review-of-world-energy-2016-full-report.pdf.

31 Data corroborated from KPMG (2013) and Economic Commission for Africa (ECA) 2011.

32 PricewaterhouseCoopers (PWC), vol. 5, 2013.

33 For a more comprehensive list, refer to "Oil and Natural Gas in Sub-Saharan Africa", U.S. Energy Information Administration – Independent Statistics and Analysis. 1 August 2013. Available from https://www.eia.gov/press-room/presentations/howard_08012013.pdf.

Table 3.4: Africa's share of total proven natural gas reserves and reserves to production ratio 1995-2015

Country	At end 1995 (trillion m^3)	At end 2005 (trillion m^3)	At end 2014 (trillion m^3)	At end 2015			
				Trillion m^3	Trillion cubic feet	Share of total reserves (%)	Reserves to Production ratio
Algeria	3.7	4.5	4.5	4.5	159.1	2.4	54.3
Egypt	0.6	1.9	1.8	1.8	65.2	1.0	40.5
Libya	1.3	1.3	1.5	1.5	53.1	0.8	118.0
Nigeria	3.5	5.2	5.1	5.1	180.5	2.7	102.1
Other African countries	0.8	1.2	1.2	1.1	38.8	0.6	53.9
Total Africa	9.9	14.1	14.1	14.1	496.7	7.5	66.4
Total World	119.9	157.3	187.0	186.9	6599.4	100.0	52.8

Source: BP Statistical Review of World Energy June 2016, 65th edition, p. 20. Available from https://www.bp.com/content/dam/bp/pdf/energy-economics/statistical-review-2016/bp-statistical-review-of-world-energy-2016-full-report.pdf.

Table 3.3 shows Africa's share of total proven oil reserves and the ratio of reserves to production (1995-2015). Africa has 7.6 per cent of the world's total oil reserves, with Libya and Nigeria holding almost 79 per cent of Africa's oil reserves.

Table 3.4 shows Africa's share of total proven natural gas reserves and the ratio of the reserves to production (1995-2015). Africa's total natural gas reserves have increased from 9.9 trillion cubic metres in 1995 to 496.7 trillion cubic metres in 2015. In 2015, it is estimated that Africa held 7.5 per cent of the world's natural gas.

Other reports have shown that in 2011 Africa was estimated to have proven natural gas reserves of 14.53 trillion cubic metres, 6.97 per cent of the world's reserves and equivalent to 71.7 years of current production. In 2011, natural gas production was about 202.65 billion cubic metres, a change of -5.1 per cent (owing to reduction in consumption caused by the 2009 financial crisis), compared with 2010, and equivalent to 6.17 per cent of the world total. Furthermore, recent further discoveries of sizable natural gas reserves in the United Republic of Tanzania and Mozambique point to significant upward potential for these products.[34]

Table 3.5: Total mineral production (in metric tons), 1995-2014

Africa/World	1995	2000	2005	2010	2014
Africa	686 913 821	765 702 531	943 073 723	1 004 257 828	943 381 466
World	10 774 060 610	11 311 062 175	13 712 349 398	15 705 547 167	17 434 662 951
%	6.37	6.76	6.88	6.39	5.42

Source: Reichl, C., M. Schatz, G. Zsak. World Mining Data, Minerals Production, vol. 31, International Organizing Committee for the World Congresses (2016), pp. 21-23. https://www.bmwfw.gv.at/EnergieUndBergbau/WeltBergbauDaten/Documents/WMD2016.pdf.

34 PWC 2013: "From promise to performance: Africa oil and gas review", PricewaterhousCoopers, Johannesburg, from https://www.pwc.com/ng/en/pdf/pwc-africa-oil-and-gas-review.pdf accessed 14 June 2017.

It is also worth mentioning that there are several other African protocols, initiatives and policy frameworks that can be referred to as examples of the proliferation of African responses to disputes and cooperation in transboundary resources management. These include Africa Mining Vision, the African Union Pastoralist Policy Framework and the IGAD Pastoralist Initiative, as well as the IGAD Regional Environment and Natural Resources Management Strategy, the IGAD Water Programme and Regional Water Resources Policy, the IGAD Drought Resilience and Sustainability Initiative and the IGAD Transboundary Resource Sharing Protocol.

3.5 Main factors contributing to disputes and conflicts over transboundary resources

Disputes over transboundary natural resources are part of Africa's broad border problems, which have been acknowledged as an artificial colonial creation. The consequences of the late nineteenth-century scramble for Africa and the effect of the Berlin Treaty of 1884 are still lingering and used as a reference point in assessing every African border dispute. Many of the treaties and agreements on African boundaries were not made between European powers, on the one hand, and African rulers, on the other, but between two or more European powers. This has created a division between independent African States, as some have argued that European powers were not competent to dispose of and divide African peoples' territory without their consent. Other African States acknowledged colonial boundary treaties and agreements and subsequently used them to support territorial claims against their neighbours.

What is more relevant is the fact that the departing colonial powers left behind vaguely demarcated or non-demarcated borders, which became a major contributing factor to African border disputes. Generally, a bone of contention after independence and the transformation of some African colonial territories into sovereign States, has been the emergence of secessionist movements contesting the colonial-engineered borders.[35] The Organization of African Unity supported the position that colonial boundaries should be respected. It affirmed in the Charter of the Organization of Unity the principle that independent African States should have "respect for the sovereignty and territorial integrity of each State and for its inalienable right to independent existence" (OAU, 1963: 3).

35 Examples are the struggle of Eritrea for independence from Ethiopia, which it achieved in 1993, the South Sudan struggle for self-determination until it won independence in 2011, the Biafra war, which was waged without success, and the Western Sahara struggle for independence from Morocco.

Table 3.6: Major border disputes in Africa (in alphabetical order), 1960-2016

No	Claimants	Territory	Explanatory notes
1.	Algeria-Libya	Ghat region, south-east Algeria	There is an agreement (1956) on border demarcation, but the actual border alignment is in a state of confusion.
2.	Angola-Democratic Republic of the Congo		Although this was an old disputed territory in 2014, the Government of the Democratic Republic of the Congo contested Angola's request to extend the length of its continental shelf over a narrow rectangular corridor of sea, about 12 miles wide and 200 miles long, from the mouth of the River Congo, where the Democratic Republic of the Congo meets the Atlantic Ocean coast.
3.	Benin-Burkina Faso	Koualou Village	In 1914, Koalou Village was part of Burkina Faso, but was attributed to Benin in 1938. A Joint Management Committee was established in 1985. In September 2007, ECOWAS intervened in an attempt to resolve the dispute over two villages along the Benin-Burkina Faso border that remained from the 2005 decision of the International Court of Justice.
4.	Benin-Nigeria	Several villages adjacent to the Okpara River	Only 35 km of the 436 km border between Benin and Nigeria is demarcated. The Okopara River joins the Oueme River in Benin. It forms part of the border between Benin and Nigeria. What is at stake is water and the prospect of producing hydroelectric power before being discharged into the Atlantic Ocean annually.
5.	Burkina Faso-Mali	The pool of Toussougou, N'Gouma, Kabia ford, the pool of Soum to Mount Tabakarech and a number of border villages	In 1986, the Heads of State of Burkina Faso and the Republic of Mali agreed to withdraw all their armed forces from either side of the disputed area and to return to their respective territories. The dispute was resolved, by arranging a change of hands of border villages and an agreement to allow the population within both sides of the border to choose citizenship within five years.
6.	Burundi-Rwanda	Rukurazo Valley and Sabanerwa	Burundi and Rwanda dispute 2 km2 (0.8 sq. mi) of Sabanerwa, a farmed area in the Rukurazi Valley, where the Akanyaru/Kanyaru River shifted its course southward after heavy rains in 1965.
7.	Cameroon-Equatorial Guinea	Several islands on the River Ntem	The dispute emanates from an exclusive maritime economic zone boundary dispute with Cameroon. The dispute is before the International Court of Justice.
8.	Cameroon-Nigeria	Bakassi Peninsula	The Joint Border Commission with Cameroon reviewed the 2002 ruling of the International Court of Justice on the entire boundary and bilaterally resolved differences, including the June 2006 Greentree Agreement, which immediately ceded sovereignty of the Bakassi Peninsula to Cameroon, with a phase-out of Nigerian control within two years while resolving partition issue.
9.	Democratic Republic of the Congo-Congo	Several islands on the River Congo	The location of the boundary between the Democratic Republic of the Congo and the Congo in the broad Congo River is demarcated, except in the Malebo/Stanley area. With prospects of oil and gas in the area, there is a fear that violent disputes may erupt.
10.	Democratic Republic of Congo-Zambia	Lunchinda-Pweto Province	A boundary commission continues discussions over a Congolese-administered triangle of land on the right bank of the Lunchinda River, which is claimed by Zambia near the Democratic Republic of the Congo village of Pweto.

No	Claimants	Territory	Explanatory notes
11.	Democratic Republic of the Congo-Uganda	Rukwanzi Island and the Semliki River Valley	Uganda and the Democratic Republic dispute Rukwanzi Island in Lake Albert and other areas on the Semliki River. These territories are alleged to have oil and gas potential.
12.	Djibouti-Eritrea	Ras Doumeira and Doumeira Island	In 2008, Eritrean troops moved across the border on the Ras Doumeira Peninsula and occupied Doumeira Island, which Djibouti considers its sovereign territory.
13.	Egypt-Sudan	Hala'ib Triangle/Bir Tawil	Sudan claims, but Egypt de facto administers security and the economic development of the Hala'ib region north of the 22nd parallel boundary; Egypt no longer shows its administration of the Bir Tawil trapezoid in the Sudan on its maps.
14.	Equatorial Guinea-Gabon	Three disputed islands: Mbanie, Coctiers and Conga.	Gabon occupied the islands in order to establish a maritime boundary in the oil- and gas rich-rich Corisco Bay.
15.	Ethiopia-Eritrea	Badme	The dispute goes back to the aftermath of Italian colonialism and the ambiguity it left behind in relation to the borders between Eritrea and Ethiopia. Claims and counter claims over the actual borders (after Eritrea independence 1993) contributed to the 1998-2000 war between Ethiopia and Eritrea.
16.	Ethiopia-Somalia	Somali Region	Ogaden, known as the Somali region after 1994, is part of Ethiopia, but in the past Somalia considered the territory part of Greater Somalia. The dispute receded after the defeat of Somalia in the 1978 war and subsequent collapse of the Somali State.
17.	Ethiopia-Kenya-South Sudan	Ilemi Triangle	Kenya has administered the Ilemi Triangle since colonial times; Ethiopia and South Sudan dispute Kenya's territorial claim.
18.	Ghana-Côte d'Ivoire	Jubilee and Tweneboa-Enyenra-Ntomme maritime oil fields	Ghana discovered oil in the Jubilee maritime oil field in 2007. In 2013, Côte d'Ivoire accused Ghana of encroaching on its territory and requested that Ghana stop oil explorations and production. Ghana request International Court of Justice arbitration. In 2015. the Court declined the request of Côte d'Ivoire, pending the final resolution of the dispute.
19.	Guinea-Sierra Leone	Yenga, a small village on the Makona River that serves as a border between Guinea and Sierra Leone	Guinea's forces came to Yenga in the mid-1990s to help the Sierra Leone military during the civil war. Both countries signed a 2005 agreement acknowledging that Yenga belonged to Sierra Leone; in 2012, the two sides signed a declaration agreeing to demilitarize the area.
20.	Kenya-Somali irredentism	Northern Frontier District	The ***Shifta War*** (1963–1967) was a secessionist ***dispute*** in which ethnic Somalis in the ***Northern Frontier District*** of ***Kenya*** attempted to join Somalia.
21.	Kenya-Uganda	Lake Victoria islands (Migingo, Lolwe, Oyasi, Remba, Ringiti and Rigulu)	The dispute over these islands has been brewing since 2004. Kenya and Uganda both claim ownership of the islands.
22.	Malawi-United Republic of Tanzania	The dispute concerns the location of the border between the two States on, or at, the perimeter of Lake Nyasa/Malawi.	Although the dispute has its colonial origins, the border dispute escalated in 2011 when Malawi awarded oil exploration licenses covering the disputed part of the Lake to Surestream Petroleum.

No	Claimants	Territory	Explanatory notes
23.	Morocco-Western Sahara	Morocco laid claims to the Western Sahara as part of its territory prior to the Spanish occupation.	In 1975, Morocco occupied the Morocco region despite opposition from Algeria and the Western Sahara national liberation movement, the Polisario Front.
24.	Namibia-South Africa	Orange River border line.	On the basis of a 1890 treaty, South Africa claims that the border runs along the north bank of the Orange River. Namibia claims that it follows the middle of the river. The Constitution of Namibia explicitly claims the territory up to the middle of the river, while South Africa's Recognition of Namibia Independence Act does not recognize this claim.
25.	Rwanda-Uganda	Part of the Kabale District	In 2007, the border between Uganda and Rwanda was re-demarcated in an effort to solve land disputes between Ugandan farmers at the Katuna border post in Kabale, the Rwandan counterpart. Both countries cooperated in demarcating the border, which locals complained about because it separated families and neighbours.
26.	South Africa-Swaziland	KaNgwane	Swaziland claims that some of its territory was confiscated during colonial times, but this area is now part of local municipalities in KwaZulu-Natal.
27.	South Sudan-Sudan	Abyei, Bebnis, Jordha, Kaka, Kafia Kingi, Jebel Megenis, 14 Mile area	South Sudan claims that the territory was annexed to the Sudan during British colonial rule. Heglig was controlled by South Sudan, but the Sudan retook it after the 2012 war between the Sudan and South Sudan. Both countries claim rights to the other areas.
28.	South Sudan-Uganda	Dispute over part of the Logoba/Moyo District	Claimed by both South Sudan and Uganda
29.	Zambia-Zimbabwe	Sindabezi Island	Claimed by both Zambia and Zimbabwe. However, in 2004, Zimbabwe dropped its objection to building a bridge over the Zambezi river. This decision is considered de facto recognition by Zambia and Zimbabwe of that part of the border.

Sources: The sources for all these cases are inserted in the list of references.

A common notion among the border disputes elucidated in this report is that they are largely due to the failure of decolonization to acknowledge customary boundaries and to hastily acquire as much territory as possible, regardless of the existing nations, nationalities or ethnic groups. Such border disputes are inter-State and should therefore be distinguished from secessionist movements. They should equally be distinguished from intra-State border disputes such as disputes between counties and provinces or between communal groups such as pastoralists and farmers or within peasant and pastoral groups.

As mentioned in section 2.1, minerals, oil and gas contribute significantly to the GDP of many African countries, and resources are also major contributors to government revenue and economic growth. Some of these resources are found at contested boundaries, and their location at these boundaries often lead to the eruption of tensions and transboundary disputes. The accelerated demand for minerals, oil and gas between 2000 and 2013, before the current economic growth slowdown in Brazil and China, was clear from a 2013 report of that stated, "the South has risen at an unprecedented speed and scale. For example, the current economic take off in China and India began with about one billion people in each country and doubled

output per capita in less than 20 years – an economic force affecting a much larger population than the Industrial Revolution did. By 2050, Brazil, China and India combined are projected to account for 40 per cent of world output in purchasing power parity terms".[36]

The period from 2000 to 2013 also witnessed the discovery, exploration and production of minerals, gas and oil in many countries. As a result, border disputes, which had been dormant for years, began to surface. Resource-rich border disputes erupted either as a result of the discovery of minerals, oil and gas or in the expectation that such resources probably existed in these border areas. The following section traces the main factors that contributed to transboundary resource conflicts or disputes in Africa.

Among the factors contributing to transboundary disputes has been competition between upstream and downstream countries over river basins, lakes and aquifers. Increasing demand for water for human consumption, agriculture and industry, coupled with significant population growth and urbanization, can also cause tension between riparian States. This report examines the dispute involving Ethiopia and Egypt over the Nile and Ethiopia's Great Renaissance Dam. Other water projects that have been completed are the Gilgel Gibe I, II and III and Tana Beles dams. Demands for water in both countries has increased owing to population growth. For example, the total population in Ethiopia increased from about 22.2 million in 1960 to about 99.4 million people in 2015 (i.e. more than four times in 56 years). Likewise, the population of Egypt has increased during the same period from 27.9 million in 1960 to 93.9 million people in 2015. The population increases put considerable pressure on water resources because of increased consumption, as well as on agriculture resources to meet increasing demand for food. There were also unprecedented levels of industrialization and urbanization in both countries to meet consumer demand.

Some of the disputes explored in this report have erupted over the location of political boundaries in transboundary lakes. An example is the dispute between Kenya and Uganda over Migningo in Lake Victoria. This dispute did not erupt over right of irrigation or drinking, but over fishing rights and rumoured existence of oil and gas deposits. Table 3.6 shows that most disputes are caused by the undetermined location of political boundaries of rivers or lakes, often owing to changes in size or course over time. The borders of rivers and lakes can also change owing to population movement into border territories that they consider a natural extension of the territory of their kin on the other side of the border.

The following section (sect. 5) of the report introduces eight case studies that focus on the causes of disputes, the disputants, attempts to manage the disputes and the outcomes. The overall and case study-specific lessons are elaborated in section 6.

36 PricewaterhouseCoopers (PWC) (2017) The Long View How will the global economic order change by 2050?, page 4. Downloaded on August 2017 from https://www.pwc.com/gx/en/world-2050/assets/pwc-the-world-in-2050-full-report-feb-2017.pdf.

4. Case studies

4.1 Jubilee and Tweneboa-Enyenra-Ntomme maritime dispute: Côte d'Ivoire/Ghana

Background

The long-running disagreement over the maritime border between the countries escalated after Ghana discovered oil in the Jubilee offshore field in 2007. In 2010, Côte d'Ivoire called on the United Nations to get involved.[37] Ghana began arbitration to settle the dispute. On 19 September 2014, arbitration proceedings between the Republic of Ghana and the Republic of Côte d'Ivoire commenced under United Nations Convention on the Law of the Sea, annex VII.[38] Subsequently, the two parties formed a Special Agreement to submit the maritime boundary dispute to a special chamber of the International Tribunal for the Law of the Sea. On 12 January 2015, the Tribunal granted the request to form a special chamber and, on 27 February 2015, it received a request for the prescription of provisional measures (Request) from Côte d'Ivoire, pursuant to United Nations Convention on the Law of the Sea, article 290 (International Tribunal for the Law of the Sea, 25 April 2015).

In February 2015, Côte d'Ivoire filed for preliminary measures and urged the Tribunal to suspend all activities in the disputed area until a definitive determination of the case was made (International Tribunal for the Law of the Sea (2015). Special Chamber). Ghana, on its part, claimed that although no line had been formally delimited, both countries had observed the maritime boundary for decades and that Côte d'Ivoire had not objected to the oil-related activities Ghana had been carrying out for many years (International Tribunal for the Law of the Sea, 2015).

Côte d'Ivoire requested that the Special Chamber prescribe provisional measures that required Ghana to suspend all exploration and exploitation in the disputed area; refrain from granting any new permits that allowed exploration and exploitation in the disputed area; prevent information gathered pursuant to exploration in the disputed area from being used in any detrimental way against Côte d'Ivoire; take all steps necessary to preserve the continental shelf, its waters and its subsoil; and abstain from any unilateral activity that would prejudice the rights of Côte d'Ivoire or aggravate the dispute. In particular, it noted that: "The exploration and exploitation activities, as planned by Ghana, may cause irreparable prejudice to the sovereign and exclusive rights invoked by Côte International Tribunal for the Law of the Sea (2015) Special Chamber, noting that if it allowed Ghana to explore in untouched areas, the "significant and permanent modification of the physical character" of the seabed and subsoil could not be undone.

37 According to Bening (2014:1), a territorial dispute between Ghana and Côte d'Ivoire since 2010 has led to the formation of Boundary Demarcation Commissions in the two countries to jointly define the maritime boundary.

38 See United Nations, Treaty Series, vol. 1833, No. 31363.

A "Written Statement" by Ghana (23 March 2015) claimed that since the 1960s, it had been active in dividing the maritime area under its sovereign jurisdiction into concessions with the knowledge of Côte d'Ivoire (Asenmaya, 2006).

On 25 April 2015, the Special Chamber of the International Tribunal for the Law of the Sea declined to suspend production activities in the disputed area, saying that "in the view of the Special Chamber, the suspension of ongoing activities conducted by Ghana in respect of which drilling has already taken place would entail the risk of considerable financial loss to Ghana, and its concessioners and could also pose serious danger to the marine environment resulting, in particular, from the deterioration of equipment" (International Tribunal for the Law of the Sea, 2017).

Pending the final decision, the Special Chamber prescribed the following provisional measures under United Nations Convention on the Law of the Sea, article 290, paragraph 1: (a) Ghana shall take all necessary steps to ensure that no new drilling either by Ghana or under its control takes place in the disputed area as defined in paragraph 60; (b) Ghana shall take all necessary steps to prevent information resulting from past, ongoing or future exploration activities conducted by Ghana, or with its authorization, in the disputed area that is not already in the public domain from being used in any way whatsoever to the detriment of Côte d'Ivoire; (c) Ghana shall carry out strict and continuous monitoring of all activities undertaken by Ghana or with its authorization in the disputed area with a view to ensuring the prevention of serious harm to the marine environment; (d) the parties shall take all necessary steps to prevent serious harm to the marine environment, including the continental shelf and its waters, in the disputed area and shall cooperate to that end; (e) the parties shall pursue cooperation and refrain from any unilateral action that might lead to aggravating the dispute (International Tribunal for the Law of the Sea, 2017).

Dispute settlement: In short, the Special Chamber, however, found that Côte d'Ivoire had not sufficiently demonstrated that Ghanaian oil activity created such an imminent risk of irreparable harm to the maritime environment that the only viable way to preserve the parties' rights was to halt completely all unilateral oil-related activity in the disputed area. The Special Chamber accepted Ghana's claim that shutting down its offshore oil industry would have a detrimental environmental effect because production was so advanced that stopping it would lead to the degradation of the equipment in the water (International Tribunal for the Law of the Sea, 2017).

The Special Chamber also accepted Ghana's proposition that suspension of drilling already in progress would entail such a substantial financial loss to Ghana as to prejudice its own rights and impose an undue burden (International Tribunal for the Law of the Sea, 2017).

Therefore, until a final decision is reached, Ghana may continue to develop existing oil-related activity, but it must also take all steps necessary to prevent any new drilling, ensure that no information derived from oil exploration be used to the detriment of Côte d'Ivoire and strictly monitor all activity in the disputed area. Both parties agreed to take all steps necessary to protect the marine environment, to refrain from any unilateral activity that may aggravate the dispute and to submit initial reports to the Special Chamber by 25 May 2015 (International Tribunal for the Law of the Sea, 2015).

Contested resources: The main resources are maritime oil and gas resources. It is expected that if developed, the Deepwater Tano Block will be the largest oil investment ever undertaken in Ghana. This section is fully developed in section 5 of this report on the potential economic and developmental cost to Ghana should the Special Chamber suspend exploration and production as requested by Côte d'Ivoire.

Settlement: The September 2017, the Special Chamber of the International Tribunal for the Law of the Sea (2017: 180-181), unanimously, finds that Ghana did not violate the sovereign rights of Côte d'Ivoire (judgement 5); did not violate article 83, paragraphs 1 and 3, of the Convention (judgement 6); and that Ghana did not violate the provisional measures prescribed by the Special Chamber in its Order of 25 April 2015 (judgement 6). In other words, Ghana and Côte d'Ivoire have agreed to implement the decision of the Special Chamber of the Tribunal delimiting the territorial sea, exclusive economic zone and continental shelf boundaries of the parties, including the boundary of the continental shelf beyond 200 nautical miles.

On the Newsletter of the Special Chamber of the International Tribunal for the Law of the Sea reported that a joint communiqué issued by President Akufo-Addo of Ghana and President Ouattara of Côte d'Ivoire, at the close of the latter's visit to Ghana on 16 and 17 October 2017, "acknowledged the spirit of brotherliness with which the maritime dispute between the two countries was handled from the beginning" and "expressed their commitment to ensure the smooth implementation of the ruling by the Special Chamber of the International Tribunal of the Law of the Sea (ITLOS) on the delimitation of the maritime boundaries between the two countries." In order to achieve this, the two leaders announced the establishment of a joint committee for the implementation of the judgment.[39]

4.2 Bakassi and Lake Chad Dispute: Cameroon/Nigeria

After its independence in October 1960, Nigeria emerged as a leader on Anglophone West Africa, which brought it into direct rivalry with Francophone countries, partly owing to the French influence in West Africa. The Anglophone-Francophone rivalry kept emerging in various forums, but was magnified by the Nigerian-Cameroon dispute first over Lake Chad Basin and second over the Bakassi Peninsula.

Cameroon accused the Nigerian Government of using its influence through the Lake Chad Basin Commission to entrench its leading regional position, and that Nigerian fisherfolk were fishing on its side of Lake Chad to the detriment of the Cameroonian fisherfolk (Asenmaya, 2006).

Disputed transboundary resources: While issues of sovereignty are important to every country, the border dispute between Cameroon and Nigeria, which was relatively dormant during the immediate post-independence era, could not have reached such a heightened level of hostility without the presence of significant strategic natural resources such as water and oil (Tarlebbea and Baroni, 2000).

39 Reproduced from ITLOS Newsletter 2018/1 Available at https://outlook.office365.com/owa/projection.aspx ccessed 4 March 2018.

In 1981, Cameroon and Nigeria clashed over Lake Chad waters which were directly responsible for interstate conflict. As the waters receded from the shoreline of Nigeria, villagers followed the waters to neighbouring Cameroon, eventually establishing 33 villages under Nigerian civil and military administration (Wallensteen and Sollenberg, 1999).

Oil was discovered in Nigeria during the early nineteenth century, while Cameroon entered the oil production phase in 1977 along the basin of Rio del Rey. By 1987, Cameroon had become the third-largest oil-exporting country in West Africa after Angola and Nigeria (Raji and Abejide, 2014). Apart from oil, gas had also been discovered in commercial quantities in the region of Rio del Rey, Douala and Kribi. Competition over border territories intensified with the discovery of oil and gas, adding to the maritime importance of the Bakassi Peninsula, which gave Cameroon unrestricted access to international waters (Anene, 1970 and Asenmaya, 2006).

Dispute settlement: In 1993, Nigerian troops occupied several Cameroonian localities in the Bakassi Peninsula. Late in 1993, Cameroon, in an Additional Application, requested the International Court of Justice to specify definitively the frontier between the two States, from Lake Chad to the sea, and asked it to join the two Applications (Bakassi Peninsula and Lake Chad) and to examine the whole equation in a single case. The main issue here is that the delimitation of the maritime boundary remained partial, and that despite many attempts to complete it, the two parties were unable to do so. Accordingly, Cameroon requested the International Court of Justice to determine the course of the maritime boundary between the two States beyond the line fixed in 1975.[40]

In 1994, Cameroon asked the International Court of Justice to rule on a dispute relating essentially to the question of sovereignty over the Bakassi Peninsula, which it claimed was partly under military occupation by Nigeria, and to determine the maritime boundary between the countries. Later, in 1994, the Government of Cameroon extended the case to a further dispute relating to the question of sovereignty over a part of the territory of Cameroon in the area of Lake Chad, which it claimed was also occupied by Nigeria.[41]

On 13 December 1995, Nigeria raised preliminary objections challenging the jurisdiction of the Court and the admissibility of Cameroon's claims. On 21 October 1999, the Court noted "that the geographical location of the territories of the other States bordering the Gulf of Guinea, and in particular Equatorial Guinea and Sao Tome and Principe, demonstrates that it is evident that the prolongation of the maritime boundary between the Parties ... will eventually run into maritime zones where the rights and interests of Cameroon and Nigeria will overlap those of third States. It thus appears that the rights and interests of third States will become involved if the Court accedes to Cameroon's request ... The Court cannot, therefore, in the present case, give a decision on the eighth preliminary objection as a preliminary matter. In

40 See International Court of Justice, Application instituting proceedings filed in the Registry of the Court on 29 March 1994, Land and Maritime Boundary between Cameroon and Nigeria (*Cameroon vs. Nigeria*), Application of Nigeria, General List No. 94.

41 International Court of Justice, Reports of Judgments, Advisory Opinions and Orders, Case Concerning the Land and Maritime Boundary between Cameroon and Nigeria (*Cameroon vs. Nigeria*), Order of 16 June.

order to determine where a prolonged maritime boundary ... would run, where and to what extent it would meet possible claims of other States, and how its judgment would affect the rights and interests of these States, the Court would of necessity have to deal with the merits of Cameroon's request. At the same time, the Court cannot rule out the possibility that the impact of the judgment required by Cameroon on the rights and interests of third States could be such that the Court would be prevented from rendering it in the absence of these States, and that consequently Nigeria's eighth preliminary objection would have to be upheld at least in part. ... The Court, Unanimously, (1) Decides that the Republic of Equatorial Guinea is permitted to intervene in the case, pursuant to Article 62 of the Statute, to the extent, in the manner and for the purposes set out in its Application for permission to intervene; (2) Fixes the following time limits for the filing of the written statement and the written observations referred to in Article 85, paragraph 1, of the Rules of the Court: 4 April 2001 for the written statement of the Republic of Equatorial Guinea; 4 July 2001 for the written observations of the Republic of Cameroon and of the Federal Republic of Nigeria; (3) Reserves the subsequent procedure for further decision".[42]

1. In Bakassi, the Court decided that the boundary was delimited by the Anglo-German Agreement of 11 March 1913 (arts. XVIII-XX) and that sovereignty over the Bakassi Peninsula lay with Cameroon. It decided that in that area the boundary followed the thalweg of the River Akpakorum (Akwayafe), dividing the Mangrove Islands near Ikang in the way shown on map TSGS 2240, as far as a straight line joining Bakassi Point and King Point.

2. As regards the maritime boundary, the Court, having established that it had jurisdiction to address that aspect of the case, which Nigeria had disputed, fixed the course of the boundary between the two States' maritime areas.

3. In its Judgment, the Court requested Nigeria, expeditiously and without condition, to withdraw its administration and military or police forces from the area of Lake Chad falling within Cameroonian sovereignty and from the Bakassi Peninsula. It also requested Cameroon to withdraw, expeditiously and without condition, any administration or military or police forces that might be present along the land boundary from Lake Chad to the Bakassi Peninsula on territories that, pursuant to the Judgment, fell within the sovereignty of Nigeria. The latter had the same obligation in regard to territories in that area that fell within the sovereignty of Cameroon. The Court took note of Cameroon's undertaking, given at the hearings, to "continue to afford protection to Nigerians living in the [Bakassi] peninsula and in the Lake Chad area". Finally, the Court rejected Cameroon's submissions regarding the State responsibility of Nigeria, as well as Nigeria's counter-claims.[43]

42 For more on the merits of the case, see International Court of Justice Year 2002, 10 October 2002, General List No. 94, Case Concerning the Land and Maritime Boundary Between Cameroon and Nigeria (*Cameroon V. Nigeria: Equatorial Guinea Intervening*).

43 See Request for Interpretation of the Judgment of 11 June 1998 in the Case Concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon V. Nigeria), Preliminary Objections (Nigeria v. Cameroon), Judgment of 25 March 1999. Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), *I.C.J. Reports* 1999, p. 31.

The Secretary-General has led the United Nations efforts to help resolve the stalemate over the Bakassi Peninsula, which is located in the Gulf of Guinea, and has been the subject of intense disputes between the two countries for years.

On 5 September 2002, Secretary-General of the United Nations Kofi Annan met with the two presidents in Paris. Both promised to respect and implement whatever decision the International Court of Justice might hand down on the case. The Court essentially awarded Cameroon rights to the oil-rich peninsula. Shortly after that, Nigeria said in a position paper that the judgment did not consider "fundamental facts" about the Nigerian inhabitants of the territory, whose "ancestral homes" the Court judged to be in Cameroonian territory.

At another summit called by Mr. Annan on 15 November 2002, the two heads of State agreed to establish a United Nations-backed implementation mechanism, the Cameroon-Nigeria Mixed Commission, which would be chaired by the Special Representative of the Secretary-General, Ahmedou Ould-Adballah. The panel would consider all the implications of the decision of the International Court of Justice, including the need to protect the rights of the affected populations in both countries.

The Mixed Commission,[44] which met alternately in the two countries' capitals, Abuja and Yaoundé, was also entrusted with the task of demarcating the land boundary between the two countries and making recommendations on additional confidence-building measures, such as the holding of regular meetings between local authorities, Government officials and heads of State. Such measures also included the development of joint-venture projects, the avoidance of inflammatory statements on Bakassi, troop withdrawals along the land boundary, demilitarization of the peninsula and the reactivation of the Lake Chad Basin Commission (Egede and Igiehon, 2017). Bakassi Dispute and the International Court of Justice: Continuing Challenges, 2017. In June 2006, Cameroon and Nigeria signed a historic treaty, the Green Tree Agreement, a legal instrument setting the modalities and time frame for the implementation of the 2002 ruling of the International Court of Justice transferring the Bakassi Peninsula from Nigeria to Cameroon[45] (Egede and Igiehon, 2017).

4.3 Maritime borders and oil reserves dispute: Angola/ Democratic Republic of the Congo

Background

In 1884, Portugal and England concluded a treaty that recognized Portuguese sovereignty over both banks of the Congo River. Meanwhile, in 1885, Portugal and the International Association of the Congo, founded by King Leopold II of Belgium, signed an agreement that granted Portugal a coastal enclave consisting of Landana,

44 The goal of the Cameroon-Nigeria Mixed Commission is to facilitate the implementation of the 10 October 2002 judgment of the International Court of Justice on the Cameroon-Nigeria boundary dispute. The Special Representative of the Secretary-General for West Africa and the Sahel also serves as Chairman of the Cameroon-Nigeria Mixed Commission, established in November 2002 by the Secretary-General, at the request of Presidents Paul Biya and Olusegun Obasanjo, of Cameroon and Nigeria, respectively.

45 "Agreement Transferring Authority over Bakassi Peninsula from Nigeria to Cameroon 'Triumph for the Rule of Law', Secretary-General Says in Message for Ceremony," United Nations Press Release SG/SM/11745-AFR/1737, August 2008.

Cabinda and Molembo in exchange for Ponta Banana and Boma.[46] Portugal acquired the Cabinda enclave, where Landana is geographically located on the side of the Democratic Republic of the Congo. These borders remained until independence, and the Democratic of the Congo, then known as Congo Kinshasa, was renamed Congo Zaire by President Mobutu Sese Seko upon independence. Because the country is rich in cobalt, gold and diamonds, the Mobutu Government did not pay much attention to maritime oil resources as potential sources of wealth, although oil exploration had begun already during the 1960s.[47]

The oil resources currently being exploited in the Democratic Republic of the Congo are located on the Atlantic Ocean coastline in Bas-Congo Province. There has been a revival in exploration in Bas-Congo since 2000 and in eastern Congo since 2006. In both regions, the oil reserves straddle the borders with Angola and Uganda, respectively. However, the demarcation of the incredibly long borders of the Democratic Republic of the Congo has contributed to already turbulent and contentious relations with its neighbours.[48]

In May 2009, the Democratic Republic of the Congo parliament approved a new map-laying claim to parts of the disputed territories off the Atlantic Ocean. Angola disputed the claim and reacted by expelling the Congolese migrants working in the diamond fields in northern Angola. However, in September 2009, the Commission on the Limits of the Continental Shelf decided to postpone considering the assessment of the legality of the extension of the maritime borders of Angola, which were disputed by the Democratic Republic of the Congo.[49]

Disputed resources: Angola's attempts to extend an area over which it claims to have exclusive maritime rights have been blocked by an ongoing dispute with the Democratic Republic of the Congo. Both countries claim they have rights over a narrow rectangular corridor of sea, about 12 miles wide and 200 miles long, from the mouth of the Congo River, where the Democratic Republic of the Congo meets the Atlantic Ocean coast (between Angola and Cabinda). The disputed area incorporates some of Angola's most lucrative oil concessions, including blocks 14 and 15, which are expected to produce almost 350,000 barrels a day in two years' time. (ICG, 2012 and Moudachirou, 2015).

On its part, the Democratic Republic of the Congo laid claims on the present maritime shelf extending from 40 km off the coast to 200 km, or an expanse of 4,000 km^2, an area that covers the oil zone from which Angola draws 500,000 barrels per day, while the Democratic Republic of the Congo produces only 20,000 barrels per day.

46 This case study benefitted enormously from the article by D. Moudachirou entitled "Memorandum of Understanding between Angola and the Democratic Republic of the Congo as a Provisional Arrangement for their Maritime Boundaries Delimitation's Dispute – Reality or Myth?", *Global Journal of Politics and Law Research*, vol. 3, No.4, pp. 96-103.

47 According to the International Cricis Group (2012:2), "President Mobutu Sese Seko did not take issue with these contentious divisions and the Democratic Republic of the Congo vaguely defined its maritime borders in 1974 and accepted the status quo. As a result, Angolan oil blocks surround Congolese territorial waters. In the light of developments in the offshore oil industry, Kinshasa is now challenging these colonial arrangements.

48 The information is also relayed in the new oil and gas legislation of the Democratic Republic of the Congo.

49 See Democratic Republic of the Congo Law delimiting the maritime areas of the Democratic Republic of the Congo Kinshasa (2009). Available from http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/cod_2009_law09.pdf.

Through its claims, the Democratic Republic of the Congo aims to receive its fees and take possession of half of the oil deposits from two blocks exploited by several multinational companies for Angola. To prevent the Democratic Republic of the Congo from extending its maritime borders to the oil-rich zone, Angola proposed an agreement on the delimitation of its maritime borders with the Democratic Republic of the Congo on the condition that the Democratic Republic of the Congo respected the provisions of the agreements signed between Portugal and Belgium. To counteract this claim, the Democratic Republic of the Congo decided to extend its continental shelf within what it claimed were its maritime borders (Moudachirou, 2015).

Attempts to manage the dispute: In June 2003, Angola and the Democratic Republic of the Congo signed their first memorandum of understanding, which aimed to establish joint technical committees mandated to prepare proposals to resolve maritime border disputes. In 2004, the two countries created, in principle, a common interest zone as a new special exploration area in the lower Congo Basin, pending delimitation of their maritime boundaries. The memorandum of understanding provides that both States shall agree to the granting of rights to operators and that each country shall appoint experts to prepare the agreements that define the modalities for the joint development of hydrocarbon deposits.[50]

In 2007, the Governments of Angola and the Democratic Republic of the Congo signed a cooperation agreement to create a common interest zone, a maritime corridor between the two countries in which they would jointly look for hydrocarbons; however, the Governments struggled to make further progress.[51] Although the Democratic Republic of the Congo only ratified the memorandum of understanding in November 2007, the decision was not unanimous because some senators opposed the deal, claiming that the area and coordinates of the Zone were imprecise. Similarly, some members of the Congolese Assembly claimed that they had not been provided with sufficient information about the quantity and quality of hydrocarbon reserves in the blocks where production was already under way.[52] The Democratic Republic of the Congo believed it was disadvantaged because the memorandum of understanding had not mentioned any compensation for the loss of the share of royalties that accrued to Angola from blocks under production.

As the implementation of the memorandum of understanding stalled, both Angola and the Democratic Republic of the Congo, respectively, submitted in May 2009 their preliminary information to the Commission on the Limits of the Continental Shelf with regard to their outer continental shelves beyond 200 nautical miles[53] (Egede, 2012). Angola and the Democratic Republic of the Congo then filed notes verbales in July 2009 and June 2010, respectively, indicating some concerns with the preliminary information filed by the other State.[54] By December 2013, Angola progressed to making

50 Becker-Weinberg 2014: 127.

51 See ICG 2012 and Wilson and Mendes 2016.

52 ICG 2012:3.

53 This was pursuant of the 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 (1982), as well as the decision contained in decision SPLOS/72, paragraph (a), adopted by eighteenth Meeting of States Parties to the Law of the Sea Convention. For more on preliminary information and actual submissions to the Commission on the Continental Shelf.

54 See Preliminary information indicative of the outer limits of the continental shelf beyond 200 nautical miles filed with the Commission on the Limits of the Continental Shelf. Available at http://www.un.org/depts/los/

a submission to the Commission requesting a delineation of its outer continental shelf, which included the maritime areas in dispute. The Democratic Republic of the Congo, on the other hand, is yet to make its actual submission to the Commission. However, it submitted two communications in April 2014 and October 2015 requesting that the Commission refrain from considering Angola's submission because the areas were under consideration were disputed[55] (Moudachirou, 2015). It is important to note the decision of the International Tribunal for the Law of the Sea in the Delimitation of the Maritime Boundary in the Bay of Bengal, where the Tribunal stressed that the role of the Commission does not include delimitation, stated as follows:

- "There is a clear distinction between the delimitation of the continental shelf under article 83 and the delineation of its outer limits under article 76. Under the latter article, the Commission is assigned the function of making recommendations to coastal States on matters relating to the establishment of the outer limits of the continental shelf, but it does so without prejudice to delimitation of maritime boundaries. The function of settling disputes with respect to delimitation of maritime boundaries is entrusted to dispute settlement procedures under article 83 and Part XV of the Convention [United Nations Convention of the Law of the Sea, 82], which include international courts and tribunals".[56]

Despite the creation of the common interest zone, there have been some concerns about its effectiveness. For instance, in 2013, the two countries begun negotiations on a production-sharing agreement for the common interest zone, which led to an agreement in 2015, whereby they could start production from the shared block within 36 months. It is interesting to note that the details of the 2015 commercial agreement between Angola (via Sonangol Oil Company) and the Democratic Republic of the Congo were never made public in the Democratic Republic of the Congo, even though a 2011 decree by the Government of the Democratic Republic of the Congo requires that contracts for any cession, sale or rental of the State's natural resources should by published within 60 days of execution. There has been some tension as to the implementation of the production-sharing agreement as the oil minister of Angola had accused the Democratic Republic of the Congo of wrecking the Agreement by failing to respect the terms of the Agreement.[57] It is interesting to note that, though the Angola/Democratic Republic of the Congo joint development arrangements are fraught with problems, there are examples of joint development arrangements in Africa that have been quite successful when there is the political will on both sides. A notable example is the Nigeria-Sao Tome and Principe Joint Development Zone.[58]

clcs_new/commission_preliminary.htm.

55 See article 76 (10), article 9, of Annex II to United Nations Convention on the Law of the Sea (82), and para. 5 of Annex I to the Commission on the Limits of the Continental Shelf Rules of Procedure, CLCS/40/Rev.1 of 17 April 2008.

56 See International Tribunal for the Law of the Sea, Reports of Judgments, Advisory Opinion and Orders, Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar), List of Cases: No, 16, Judgment of 14 March 2012, p.99, para. 376. See Ted L. McDorman, "The Role of the Commission on the Limits of the Continental Shelf: A Technical Body in a Political World", *International Journal of Marine and Coastal Law*, vol. 17, pp. 301-324 (2012); and Egede Edwin, "The Outer Limits of the Continental Shelf: African States and the 1982 Law of the Sea Convention", *Ocean Development and International Law*, vol. 35, pp. 157-178 (2004).

57 ICG 2012and Wilson and Mendes 2016.

58 See http://www.nstpjda.com.

4.4 Hala'ib 'Triangle': Egypt/Sudan

Background

The Hala'ib (Halayib) Triangle is an area of land measuring 20,580 km^2 on the Red Sea coast at the border between Egypt and the Sudan. It is an area that includes three small towns: Hala'ib, Shalataun and Abu Ramad.

Discrepancies in the interpretation of an 1899 agreement between Britain and the Khedive of Egypt for shared administration of the Sudan (Anglo-Egyptian Condominium) led to a dispute over the Hala'ib Triangle and associated offshore areas. The 1899 agreement defined the Sudan as "all the territories south of the 22nd parallel of latitude". However, in a 1902 decree, the lands of the Ababda tribe, south of latitude 22°N, were placed under Egyptian administration, while grazing lands of the Beja tribe, north of latitude 22°N (the Hala'ib Triangle) were placed under Sudanese administration (Dzurek (2001)).Egypt insists that the 1902 document was concerned only with areas of temporary administrative jurisdiction and that actual Egyptian sovereignty had been established by the 1899 treaty.

When the Sudan became independent in 1956, Egypt treated the 22nd parallel as its international boundary. In 1958, when the Sudan prepared to hold elections in areas north of the 22nd parallel, the Government of Egypt asserted sovereignty over the territory. The Sudan replied in a letter to the United Nations Security Council on 20 February 1958, that the territories claimed by Egypt resided under the sovereignty of the Sudan. The territorial dispute became more pertinent as other issues, such as water-sharing, aggravated bilateral relations[59] (Brownlie, 1979). Egypt denied the people of the Hala'ib region the opportunity to take part in the Sudanese election, not because of its claim of sovereignty, but because of President Gamal Abdel Nasser's disinterest in the election of the President of the Sudan (Warburg, 1994). Egyptian-Sudanese interstate relations were amicable between 1969 and 1985. Sudanese President Ja'far Muhammad al-Numayri was at the centre of Egyptian-Sudanese peaceful cooperation. For instance, both countries agreed to operate a joint defence force in 1976 (Ronen, 2003).

In 1985, the coup in the Sudan altered Egyptian-Sudanese relations and led the countries to become foes. Yehudit Ronen reported that relations between the two countries hit an all-time low when General Bashir-al-Turabi came to power in 1989. There are five main reasons for the countries' low level of cooperation: first, cooperation with Bashir-al-Turabi[60] threatened the expansion of Islamic extremist ideology into Egypt because of his support for the Muslim Brotherhood. Secondly, the decision of the Government of the Sudan to give sanctuary to Umar abd al-Rahman, a leader of the banned Islamic Jihad organization, was one of the core factors for the deterioration of Egypt's relations with the Sudan. Thirdly, President Bashir of the Sudan was building some strong ties with the Iranian leaders, who were considered to be a threat to Egypt. Fourth, the Sudan was very close to the leaders of Libya, who were not on good terms with Egypt. Fifthly, unlike Egypt, the Sudan supported Iraq's

59 S/3963.

60 Dr. Hassan al-Turabi was the most influential Sudanese legal and Islamic scholar who strongly supported the Muslim Brotherhood.

intervention in Kuwait. It was also alleged that the Sudan had allowed Iraq to station some of its fighter aircraft in the Sudan. These differences in foreign policy between Egypt and the Sudan became even more bitter than when the Sudan continued its advocacy in favour of Islamic leadership and its very strong ties with rogue leaders in Tripoli, Baghdad and Teheran. Both countries accused each other of supporting enemies of the international community and the Arab world (Ronen, 2003).

In late 1992, the Egyptian Air Force attacked Hala'ib, with support from Egyptian ground troops, in an attempt to control the area. The Sudan responded that the actions of Egypt violated the international treaties and norms on which the two countries depended to resolve the issue through negotiation. In 1991, the Sudan reiterated its sovereignty claim and granted a Canadian company permission to conduct exploration work in the disputed area; however, Egypt intervened by sending in troops. The Canadian company consequently left the area, noting that it would not be able to work, unless the issue of sovereignty was settled.

In response, in 1992, the Sudan petitioned the United Nations, stating that Egypt was extending its borders in Hala'ib and sending its troops to assume control over the area. The Sudan reacted by "taking over Egyptian institutions of learning in the Sudan… [and by] fully opening the Rahad and Kafana canals, using more water than permitted in its agreement with Egypt". (Warburg, 1994). In May 1993, the dispute reached its tipping point, whereby both countries closed their respective consulates. On 25 June 1993, the Sudan alleged that Egypt was settling Egyptians on land within the Hala'ib Triangle.

After the attempted assassination of the President of Egypt, Hosni Mubarak, in Ethiopia on 26 June 1995, and allegations of Sudanese complicity, Egyptian forces expelled Sudanese police and officials from the Hala'ib area that year. It also seized Egyptian property within the Hala'ib region, including the Khartoum branch of Cairo University. The Sudan claimed that the Egyptian authorities in the Hala'ib Triangle were pressing Sudanese civilians to leave the area. On 31 January 1996, the Security Council passed resolution 1044 (1996), calling on the Sudan to extradite three suspects connected with the assassination attempt in Ethiopia.

In 1998, the Sudan restored Egyptian-owned properties that had been nationalized. Bilateral relations improved and President Omar al-Bashir visited Egypt in December 1999. During the visit, the countries agreed to normalize relations and issued a joint communiqué pledging to resolve the Hala'ib issue "in an integrational brotherly context that would form a lead in the process of full integration between the two countries (Dzurek, 2001). In January 2000, the Sudan withdrew its forces from the area, effectively ceding control to Egypt.

In 2004, Sudanese President Al-Bashir claimed that despite the withdrawal of Sudanese forces in 2000 and Egypt's de facto control of the triangle, the area still rightfully belonged to the Sudan, which had never relinquished the territory. Al-Bashir reiterated the Sudanese claim of the area in a speech given in 2010 in Port Sudan, saying that Hala'ib was Sudanese and would always remain Sudanese.

In October 2009, the Sudan electoral commission prepared a comprehensive plan for the 2010 general election and declared Hala'ib to be one of the Red Sea state electoral districts. However, voter registration was not conducted, as the Egyptian authorities refused entry to the electoral commission team.

The area still remains contested, although it is under the effective control of Egypt. The Egyptian Government is also investing in electrification and transport infrastructures to connect the area with the Egyptian mainland. On 27 November 2013, the Egyptian cabinet formed a special committee tasked with implementing an urgent plan to develop the Hala'ib area, through investments totalling $110 million to complete road and water networks and housing projects for the settlement of the region's inhabitants.[61]

Types of transboundary resources: Hala'ib is a desert area without fertile land for agriculture. However, the main resources causing the dispute appear to be the potential oil and gas reserves it harbours both on and off shore. The region may also be useful as territory for military and other purposes. Other issues raised above, which contributed to the tension between the Sudan and Egypt are considered as causes and accelerators of the disputes in Hala'ib (Ronen, 2003). Ronen stated "the Hala'ib dispute had clearly become a valve for deeper resentments, stemming from the fact that each of the two regimes perceived the other as a threat to its vital interests and even survival" (Ronen, 2003). Gabriel Warburg also argued that the root cause of the dispute was far beyond a desire to own a piece of land, namely, the Hala'ib Triangle. Hala'ib is the symbolic and actual focal point of entrenched animosity between the Sudan and Egypt dating back to the colonial era (Warburg, 1994).

Parties to the disputes and claims: The Governments of Egypt and the Sudan are the parties to the dispute over Hala'ib. Egypt has effective administrative control over the Hala'ib region, while the Sudan constituently claims Hala'ib as a territory within its sovereignty (Ronen, 2003). In 1992, both countries offered to negotiate a solution. The countries formed a joint legal committee tasked with resolving the border dispute. Nonetheless, the tension between the countries has continued and the Sudan has requested that mediation take place between them (Warburg, 1994). In 2014, Cairo signed contracts with companies for gold exploration in the area, which led to Khartoum deploying a force of marines.

Efforts and mechanisms to resolve the disputes: In 1994, the Sudan proposed submitting the dispute to the International Court of Justice, but that did not happen, owing to manoeuvres by Egypt which sought to dampen the Sudan's fears, arguing that the dispute should be settled in a cooperative manner. Since then, the Sudan has been requesting the United Nations Security Council to intervene so that Egypt will accept international arbitration.

61 See Ayah Aman, "Egypt, Sudan rhetoric escalates over disputed region", Egyptian Pulse. Available at http://www.al-monitor.com/pulse/originals/2014/02/egypt-sudan-halayeb-shalateen-border-region.html.

4.5 Abyei boundary dispute: Sudan/South Sudan

Background

Located on the border between the Sudan and South Sudan, Abyei covers 10,877 km^2 between north and South Sudan. It is approximately the size of Kosovo (Verjee, 2010). The population of Abyei is estimated to be 50,000, and it is composed mainly of two ethnic groups that form the majority.

The estimated date of arrival of the Ngok Dinka in the Abyei area varies historically, but it is generally agreed that they arrived from the Upper Nile and settled in the riverine area between Bahr al-Arab/Kiir River and Ngol/Ragabaez Zarga in the eighteenth century **(**Muna, 2010).The relationship between the two ethnic groups oscillated between peace and conflict, where both were triggered by events taking place under the Turco-Egyptian (1821-1981), Madist (1981-1898) and the Anglo-Egyptian colonial rule (1989-1956).

Following the independence of the Sudan on 1 January1956, however, the first Sudanese civil war (1955-1972) created a deeper division between the Humr-Misseriya and the Ngok Dinka, as the former were increasingly recruited into the Government militias, and the latter joined their compatriots in the Anya Nya II rebel movement (Johnson, 2010). In 1965, this division was aggravated when 71 Ngok Dinka civilians were burned alive in Babanusa. A year after the Babanusa massacre, for the first time the Humr Misseriya claimed parts of the Abyei up to the River Ngol as an exclusive Humr Misseriya territory; and a few among them began permanently settling in the northern part of the area.

In 1972, the Addis Ababa Agreement, which ended the first civil war, promised a referendum in Abyei to determine the status as either part of the north or South. However, the Government of the Sudan under President Jaafer Al Niemeri's leadership did not allow the referendum to take place. That refusal encouraged some Ngok Dinka to join the Anya Nya II guerrilla group (successors of a southern Sudanese separatist rebel army formed during the first Sudanese Civil War) and was instrumental in the formation of the Sudan People's Liberation Movement/Army in 1983. During the beginning of the second civil war, the Government of the Sudan and the Humr Misseriya militias launched a series of attacks against their southern neighbours, including the Ngok Dinka. As a result, many members of the Ngok Dinka became affiliated with the South Sudan Liberation Movement/Army (SPLMA/A). Invariably, Abyei had long been a critical flashpoint, but a new dynamic was added when oil was discovered in 1979 (Global Security, 2016). The Abyei area is rich in different renewable resources, including gum Arabica, pastures, water and large areas of unexploited arable land. With the Kirr River flowing all year round, Abyei is suitable for large irrigation and commercial agriculture. While Abyei provides abundant resources suitable for the livelihood of the Humr Misseriya pastoralists, resource depletion in other areas, such as south-western Kordofan, has pushed them to frequently visit the Abyei region, thereby leading to fierce competition and conflict with the Ngok Dinka.

The 55-year-old civil war between the Sudan People's Liberation Army and the National Congress Party of the Sudan ended in 2005, after the signing of the Comprehensive Peace Agreement between the Government of the Sudan and the Sudan People's Liberation Army. Both countries disputed the issues surrounding Abyei frontier and some other border areas (see table 3.6, examples of some major border disputes in Africa). The Agreement paved the way for southern Sudan to achieve statehood in July 2011 through a referendum. However, some unresolved issues still linger.

Transboundary resources: Some observers, particularly western writers such as H. Douglas Johnson, who was a member of the Abyei Boundary Commission in 2005, have reduced the root causes of the disputes over Abyei to discrimination based on identity and bad governance (Johnson, 2011). Nevertheless, bad governance and identity discrimination do explain the disputes and conflicts in the region to a limited extent.

Deeply embedded in the dispute between the Sudan and South Sudan over Abyei are the natural resource reserves, mainly oil (Wendl, 2016) (Omeje and Minde, 2015). The oil-rich area of Heglig/`Panthou, located near Abyei, became a new area of conflict (Wendl, 2016) (Global Security, 2016). Nevertheless, other resource disputes, including those over water and land, fuelled the conflict. In recent years, gum Arabica has become another important resource in the border areas of the Sudan and South Sudan, including Abyei. Although identity and communal disputes existed previously, they were peacefully managed until the discovery of oil and the onset of the identity-based civil (Johnson, 2011) (Global Security, 2016).

The Government of the Sudan, which was previously one of the top three oil exporters in Africa, has lost 75 per cent of its potential oil wealth since the secession of South Sudan. Today 95 per cent of South Sudan's public revenues come from the export of oil. Owing to internal and external crises, South Sudan is now facing serious economic stagnation and decline, which may lead to total economic collapse. The country's economic fragility may even result in public servants not being paid their salaries. The economic dependence of the Sudan and South Sudan on oil revenues put them under increased pressure to get access to foreign currency. Abyei and other border areas with critical natural resources will increasingly become sources of contention.

Parties to disputes and claims: There are two categories of direct parties to the conflict in Abyei: the communities, namely, the Misseriya and Ngok Dinka tribes, and the Governments of the Sudan and of South Sudan. The Misseriya identify themselves as Arab Muslim Sudanese and belong to the Sudan.[62] SPLM and South Sudan consider that the Abyei area was wrongly taken from South Sudan because of an agreement with a local chief before 1956. The Ngok Dinka community culturally, religiously, ethnically and linguistically believe that they belong to South Sudan, and consider Abyei their historic home (Jumbert and Øystein, 2013). The Misseriya have begun to claim significant parts of Abyei, and have started to assert their dominance in Abyei through force. In contrast, the Misseriya community claims it has been betrayed by the arrangements regarding Abyei and accuses the Government of the Sudan of betrayal, an attitude that could create a political legitimacy crisis in the Sudan.

62 Cunnison 1966.

The Governments of the Sudan and of South Sudan now claim ownership of the Abyei area. While Abyei is not only a territory, but also a symbol of sovereignty for South Sudan, the communities have been and are currently directly supported by the respective States, and are affiliated with the Government of the Sudan in support of the Misseriya, the South Sudanese forces and now the Government in support of the Ngok Dinka (Bockenforde, 2010).

In terms of specific concerns about the boundary, the Sudan insists that Abyei consists of only the area called the Bahr el-Arab River, and, in effect, the Sudan claims the major portion of Abyei, including Abyei town (see Map). South Sudan claims not only the entirety of Abyei, but also South Kordofan and South of Keilka as part of Abyei, areas that are not even included in the current Abyei territory.

While there is agreement that a referendum is the solution to the Abyei issue, the Sudan and South Sudan have yet to agree on who constitutes a resident of Abyei who is eligible to vote in the referendum, given that the Misseriya are pastoralists. The determination of the traditional abode of the Dinka and their right to vote is not disputed, while that of the Misseriya is disputed (Daase, 2011). The Sudan considers the Misseriya to be residents of Abyei and that therefore they have the right to cast their vote for the referendum, while South Sudan is opposed to that view. Moreover, the determination of how the Misseriya pastoralists are likely to vote is not clear.

Efforts and mechanisms to resolve the disputes: Abyei has received significant attention, and since 1972 several initiatives have been undertaken by the Organization of African Unity, African Union, the Intergovernmental Authority for Development (IGAD) and the United Nations to resolve the issue. The United States of America, the European Union and other actors such as the Abyei Boundary Commission and the Permanent Court of Arbitration are also heavily involved in efforts to resolve not only the Abyei issue, but also other similar disputes over border areas.

In early 1993, the new Government of the Sudan, led by Omar al-Bashir and Hassan al-Turabi, requested IGAD peace mediation to end the long-running war in southern Sudan. Ethiopia, based on its earlier mediation efforts, in 1972 and 1982, under the Organization of African Unity, presented its Declaration of Principles. Following the Addis Ababa summit of 7 September 1993, a Peace Committee was established, comprising the heads of State of Ethiopia, Eritrea, Uganda and Kenya. In July 1994, the Peace Committee considered the Declaration of Principles, which sought to identify the essential elements necessary to end the civil war in the Sudan and bring a just and comprehensive peace settlement to South Sudan, including Abyei. The Declaration includes the right to self-determination of the people of South Sudan. For that very reason, the Government of the Sudan rejected the Declaration until the early 2000s.

Beginning in 1998, the political landscape began to change in Khartoum. The 2001 War on Terror focused all efforts on regime change in Khartoum, and the fight against terrorist groups in Somalia and elsewhere in the region. These developments hastened the removal of the religious ideologue, Al-Turabi, and enhanced support for the peace process in the Sudan by the Government of the Sudan led by Al-Bashir. In the same year, 2001, IGAD, with the support of IGAD Partners Forum, relaunched

the Sudan peace process. In 2002, the ninth IGAD Summit decided to resume the IGAD Sudan Peace Process.

On 18 June 2002, that IGAD-led process resulted in the signing of the Machakos Protocol, which embodied the three areas of transformation necessary for the peaceful resolution of the various Sudanese conflicts: (i) self-determination for the South Sudanese population through a referendum; (ii) non-applicability of Sharia Law to the people of South Sudan; and (iii) the creation of a transitional national unity government inclusive mainly of South Sudan Liberation Movement/Army leaders. An arm of the IGAD Peace Process for the Sudan, the Verification and Monitoring Team, was constituted as a mechanism to oversee the implementation of the Cessation of Hostilities Agreement and memorandum of understanding. The Declaration of Principles and the Machakos Protocol culminated in the signing of the Comprehensive Peace Agreement in early 2005.

In May 2004, the United States of America brokered a peace deal to resolve the disagreement on Abyei. In March 2005, for instance, the Security Council, by its resolution 1590 (2015) authorized the United Nations Mission in the Sudan (UNMIS) to support the implementation of the 2005 Comprehensive Peace Agreement.

In 2005, the issue of Abyei was considered settled following the establishment of the Abyei Boundary Commission. The Bounday Commission was based on the Abyei Protocol and Abyei Appendix (Johnson, 2011). Accordingly, it was decided to get the case to an international arbitration tribunal. However, the decision of the International Arbitration Commission did not resolve the issue of Abyei (Daase, 2011).The report of the Boundary Commission of July 2015 established the boundary area at 87 km north of Abyei, which included three oil fields (Heglig, Diffra and Bamboo) within the Ngok Dinka-inhabited area (Sansculotte-Greenidge, 2011).The Ngok Dinka and the Government of South Sudan accepted the proposals contained in the report, but the Humr Misseriya and the Government of the Sudan rejected the proposals. Although the Boundary Commission tried to propose alternative solutions, which were considered to be part of the Comprehensive Peace Agreement, the Government of the Sudan refused to accept the findings of the Boundary Commission because it felt that the Commission had exceeded its mandate.

The Protocol for the Resolution of the Conflict in Abyei, in terms of the Comprehensive Peace Agreement, defined the territory of the nine Ngok Dinka chiefdoms and established an interim period of special administration for Abyei, during which time residents of the Abyei were to become citizens of both Western Kordofan State and Bahr el-Ghazi State, with representation in the legislatures of both States. It was also declared that the net oil revenues from Abyei would be divided among all the stakeholders during the interim period. At the end of the interim period, the residents of Abyei would cast a separate ballot, simultaneously with the South Sudan referendum**,** to decide whether Abyei should remain in the South Kordofan region or join the Bahar el-Ghazal State in South Sudan. The Abyei Boundaries Commission was established, specifically to define and demarcate the boundary of Abyei.

In 2008, both Governments signed the Abyei Roadmap Agreement under the guidance of the African Union, a document which, among other provisions, prescribed that both

parties would look to the Permanent Court of Arbitration for a final binding decision (Sansculotte-Greenidge, 2011).The main purpose of the Court was to determine whether the Abyei Boundary Commission experts had exceeded their mandate in defining the area of the nine Ngok Dinka chiefdoms.

In 2009, the Permanent Court of Arbitration announced its final decision, which reduced the size of the area and allotted only the Diffra oil field to Abyei. It also accorded Humr Misseriya pastoralists the right to use the Abyei region for grazing their cattle (Sansculotte-Greenidge, 2011). Reversing the findings of the Abyei Boundary Commission report, that decision had allocated two more Sudanese oil fields to Abyei. It is believed that the Diffra oil field has the potential of producing 18,000 barrels per day (Zeru, 2015). It is also believed that the possibility of finding other oil fields in the region is highly possible, if properly explored. In 2011, as soon as South Sudan declared its independence, the Security Council adopted resolution 1996 (2011), establishing the United Nations Mission in the Republic of South Sudan.

The Sudan had crossed the border into Abyei and displaced the Ngok Dinka population twice in recent years (Global Security, 2016). In 2012, South Sudan responded by refusing to allow the Misserya (pastoralists) to access grazing land and pledged to repeat its stance in 2013. Accordingly, the United Nations had to organize a peacekeeping mission to secure peace in the Abyei area (Lyman, 2013). The parties also signed an agreement in March 2013 to establish a safe demilitarized border zone and implement the deployment of joint border verification units to secure the area (Jumbert and Øystein, 2013).

In 2011, the United Nations Interim Security Force for Abyei, a peacekeeping mission composed solely of Ethiopian troops, was deployed at the behest of the two parties and with the approval of the United Nations to prevent a possible border war (Maru, November 2013). As a result, the Security Council unanimously authorized the deployment of 4,200 Ethiopian peacekeeping forces to Abyei.

In 2012, Sudanese and South Sudanese leaders signed a peace agreement in Addis Ababa. In that agreement, they agreed to demilitarize and also agreed on a set of demarcation principles that would ensure the role of South Sudan in making decisions about oil exports. However, both countries failed to agree on how much South Sudan should pay to utilize the pipelines when exporting oil. Nevertheless, owing to the hefty amount agreed upon, without any inputs by experts, the sale of oil did not take place in accordance with the peace accord (Themner and Wallensteen, 2013).

In 2013, upon the request of the Governments of the Sudan and South Sudan, the African Union set up the African Union High-level Implementation Panel, led by President Thabo Mbeki, former President of South Africa, and President Pierre Buyoya, former President of Burundi, to produce a non-binding advisory opinion on how the disputes should be resolved. The Panel proposal stipulated, among other points, that eligible voters in the Abyei referendum should be those residents with a permanent abode (AUHIP for Sudan, 2012). The proposal indirectly, but exclusively, referred to the majority of the Ngok Dinka (Zeru, 2015). The proposal granted the Humr Misseriya migratory rights and created a Common Economic Development Zone to help curtail the conflict. (McNeil, 2012).The proposal was rejected by the

Humr Misseriya and the Government of the Sudan who believed the members of this tribe to be legitimate settlers in the Abyei region who were also entitled to vote in the proposed referendum. The Mbeki panel is still working on this case. Furthermore, the AU BBP has also been assisting the two countries to demarcate and delimitate their borders (Maru, 2016).

Owing to these disputes on the issue of the legitimate abode of the Misseriya, the official Abyei referendum, as stipulated under the Comprehensive Peace Agreement, did not take place. Though not recognized by any national, regional or international institutions, in October 2013. the Abyei community conducted a referendum in which more than 99 per cent of the residents voted to be part of South Sudan (Jumbert and Øystein, 2013).

4.6 Great Ethiopian Renaissance Dam dispute: Egypt/ Ethiopia

The Grand Ethiopian Renaissance Dam, which was being built on the Nile River, is Africa's biggest hydroelectric project and the tenth largest in the world. This $5 billion project was expected to increase the country's hydroelectric power capacity fivefold when completed. The construction of the dam, which started in April 2011, was a source of controversy between Egypt and the other riparian countries. With a reservoir area of 1, 874 km^2 the dam has a total storage volume of 74 billion m^3 of water, of which 59.2 billion m^3 will discharge water to the turbines. The dam wall is 145 metres high and 1,708 metres wide, with its turbines having the capacity to generate 6,000 MW of electricity and an annual energy generation of 15,692 GW hours annually (International Panel of Experts, 2013). That is clean energy that will help mitigate the human impact on climate change globally and, according to the International Panel of Experts, will enable Egypt, the Sudan and Ethiopia to benefit most from the dam (International Panel of Experts, 2013).

Some observers consider that the Grand Ethiopian Renaissance Dam could lead to inter-State war between Ethiopia and Egypt (Abdelhady and others, 2015). Others downplay the potential for violent conflict over the dam and counter-argue that the dam could facilitate enhanced cooperation (Cascão and Alan, 2016) (Brozek, 2013) (Cascão, 2009) (Yohannes and Yohannes, 2012) (Yihdego, Rieu-Clarke and Cascão, 2016)). Very few argue that, despite the possibility of dispute or cooperation, such changes in the exploitation of the resources of the Nile River are due to changing relations and the need to address long-standing unfair and hegemonic approaches to transboundary resource sharing (Maru, 2016).

Types of transboundary resources: Water allocation from the Nile River is the main trans-boundary resource causing disputes. In past centuries, it was a serious source of instability, destabilization and mutually assured animosity. In recent decades and years, the dispute has taken on a normative element in the form of the Cooperation Framework Agreement. But the building of the Grand Ethiopian Renaissance Dam constitutes the most practical and far-reaching project to date. It also exhibits the extent of the differences of opinion about the usage of the water resources of the Nile River.

Deep within the dispute are the growing water demands, the impact of climate change and the triad of insecurities in the form of water insecurity, food insecurity and energy insecurity. For this reason, water is becoming one of the major factors leading States toward increased tensions and, at times, violent conflicts. The increasing effects of climate change and population growth trigger the demand for more water and irrigated farms, thereby increasing the water requirements of States (Food and Agriculture Organization of the United Nations, 2011).

Parties to the disputes and claims: While all the riparian countries could be considered as parties to the disputes over the Nile River and the Cooperation Framework Agreement, with regard to the construction of the Grand Ethiopian Renaissance Dam, Egypt, Ethiopia and the Sudan are the main parties to that dispute.

There are two kinds of disputes over the Nile River. The first relates to the Cooperation Framework Agreement and its basic tenets of water allocation and water security. The second relates to the Grand Ethiopian Renaissance Dam and its impact on water volume, water quality and dam safety.

Egypt's concerns about the Grand Ethiopian Renaissance Dam: According to the report of the International Panel of Experts, the main concerns of Egypt about the impact of the dam can be summarized in terms of the following three factors: reduction of the volume of water (water security), safety of the dam and quality of the water. During the initial years, the filling of the dam may result in low levels of water mainly for hydropower generation in the High Aswan Dam of Lake Nasser. Indeed, the Panel calculated that there would be a maximum of 6 per cent reduction in hydropower generation, while the water flow reduction would be less than 3 per cent (International Panel of Experts, 2013). What is more, the Panel has also raised some questions related to the economic cost benefits of the dam, particularly the inclusion of the costs of main loading and transmitting power generated by the dam (International Panel of Experts, 2013). However, this concern could be easily addressed by consulting about the optimal time for filling the dam during the rainy season. Moreover, the Panel recommended some further measures to ensure the safety of the dam. Concerns the Panel raised about the dam's safety will be important for the Sudan and Egypt, but vital for Ethiopia. Of all the riparian countries, the dam's safety would mostly benefit Ethiopia by ensuring the prudent usage of its $4.8 billion investment. Moreover, in the words of the Panel itself, the contractor building the dam is a world-class company that has "designed and constructed over 200 large dams around the globe (International Panel of Experts, 2013). After several discussions, field visits, surveys and document analyses, the Panel confirmed that the ongoing construction of the dam complies with international standards. The Panel also raised some minor concerns about the impact of the vegetation around the dam on the quality of the water. The methane gas produced by decaying vegetation and soil in the lake owing to flooding could threaten the water quality and biosafety of the basin. This, according to the Panel, will have implications for the aqua life, including fishing and agriculture. Accordingly, the Panel recommended that Ethiopia speed up the clearing of vegetation to reduce sedimentation and methane gas in the river.

The Panel has overwhelmingly agreed that the dam will not cause significant harm to the water security of Egypt and the Sudan. While there were many recommendations

for further studies on climate change and environmental impact, sedimentation, the need for different impounding options and the equilibrium of water levels in downstream countries, the Panel attested that the dam could actually benefit all riparian and neighbouring countries, particularly Ethiopia, the Sudan and Egypt. According to some estimates, the dam will generate $27 million per day for Ethiopia, and increase total electricity access in Ethiopia to 50 per cent (Salini Construction, 2014).

At the same time, the benefits of the dam will be enormous. High-level evaporation in the swamps of Jonglei in South Sudan will also significantly reduce the water volume of the Nile. Currently, the High Aswan Dam loses more than 10 billion m^3 of water through evaporation (Bitsue, 2017). Consequently, a dam built in the Ethiopian Highlands will save more than 20 billion m^3 of water from evaporation and prevent further damage caused to the riverbanks during overflooding. It will also significantly reduce sedimentation in the downstream countries. Enhancing the resistance of the basin to climatic change-induced extremes such as floods and drought, the dam will also serve as a management resource regarding the flow of water to the Sudan and Egypt. The dam will help to create a stable flow of water downstream. When the rainfall and water level are low, the dam could also serve as a backup water supply, while saving tens of millions of dollars for the Sudan and Egypt owing to the damage caused to the riverbanks during over-flooding. While riparian countries need to use their water resources without harming downstream countries whenever possible, harm may be unavoidable in some instances. For example, as the International Panel of Experts has identified, the dam may result in low levels of water for hydroelectric generation and irrigation in Egypt. However, compared to the benefits from the dam for the region as a whole, these individual disadvantages are relatively minor.

All countries except Egypt have supported the building of the Renaissance Dam. Officially declaring its aspiration and intention to make use of the Nile for its development, South Sudan announced its support for the building of the dam and totally rejected colonial treaties about the use of the Nile's water (Sudan Tribune, 2014). South Sudan backs Ethiopia's Nile Dam. Although, President Al Bashir of the Sudan has criticized the Cooperation Framework Agreement many times as a work of the World Bank (Sudan Tribune, 2014). Sudan's Bashir leaves door open for re-election, backs Ethiopia's dam including in his report to his National Congress Party on 21 June 2013, he has fully supported the construction of the dam. Joining the rest of the riparian countries, the Sudan believes that cooperation among the Nile basin countries is inevitable (Sudan Tribune, 2014). The Sudan says Egypt suspended participation in activities of Nile Basin Initiative). As reported in the Daily News of Egypt of 14 June 2013, the President of Uganda called upon Egypt's new leaders to stop hurting African countries (Salman, 2013), (The Renaissance Dam V. Fallouts of the Nile Water Agreement, 1959. Sudan Now).

Until 2015, Ethiopia, Egypt and the Sudan had agreed on the technicalities of the Grand Ethiopian Renaissance Dam and other aspects (Hassan and Ahmad al- Rasheedy, 2007). For instance, in March 2015, they signed an agreement on the construction of the dam and the need for a study on its environmental impact (Karyabwite, 2000).

Efforts and mechanisms to resolve the disputes: The riparian countries, including Egypt, established the Nile Basin Initiative in May 1999.[63] The institutional metamorphosis towards the creation of the Initiative began in 1967, with the commencement of cooperation on the hydrological and meteorological survey. Nevertheless, the Initiative was the first inclusive, relatively effective and acceptable basin-wide cooperation mechanism. The previous initiatives were either ineffective or exclusive. A formal and international institution, supported by the United Nations and the World Bank, the Initiative provides a permanent political and technical mechanism for dialogue and cooperation.[64] All riparian States are members of the Initiative, including Eritrea as an observer.

Tacitly intended to reduce potential dispute over the Nile's waters, the Nile Basin Initiative could also be regarded as a conflict management and resolution mechanism. The Initiative aims to provide evidence-based water governance, supported by the political will of the riparian States. Confronted by the difficulty of showing gains from preventive approaches, the Initiative has provided a diplomatic and technical platform for a civil management of differences. Ethiopia and Egypt were both able to play an important role in the Initiative and the Cooperation Framework Agreements.

The Nile Basin Initiative has succeeded in establishing cooperation among the riparian States and has produced two most significant outputs: (i) in 2010, 10 years after its establishment, the Initiative presented the Cooperation Framework Agreement for ratification; and (ii) a strategic and standing institutional framework, in the form of the Nile River Basin Commission, will be established once the Agreement enters into effect (Nile Basin Initiative, 2010).

In 2010, in a bid to replace the old treaties and take on new issues such as climate change, and after a decade of trust-building discussions and negotiations, the Nile Basin Initiative proposed ratification of the Cooperation Framework Agreement of Nile Basin Initiative (2010).

The Agreement not only reinforced previously established principles of international law, but also introduced new ones, such as the concept of water security, with a view to sharing opportunities and challenges among all riparian countries. The Agreements aims to achieve equitable and fair use of the Nile waters by establishing multilateral basin-wide permanent institutional mechanisms of consultation and collaboration in the development of projects on the Nile. Of the 11 Nile basin countries, 8 (Burundi, Ethiopia, Kenya, Rwanda, South Sudan, the Sudan, Uganda and the United Republic of Tanzania) have signed the Agreement. Ethiopia, Rwanda and the United Republic of Tanzania have ratified the Agreement. The Democratic Republic of the Congo has repeatedly expressed its intention to sign the Agreement.

In 2010, Egypt refused to ratify the Cooperation Framework Agreement and requested three major substantive amendments, namely: (i) upstream countries had to secure

63 See Memorandum of Understanding, Nile Basin Initiative, 22 February 1999, Dar es Salaam, United Republic of Tanzania. Available at http://extwprlegs1.fao.org/docs/pdf/uga80648.pdf accessed 2 March 2018.

64 Salman, Mohamed Ahmed, "The Nile Basin Cooperative Framework Agreement: a peacefully unfolding African spring?", Water International, vol. 38, No. 1, pp. 17-29, 21 November 2012. Available at http://doi.org/10.1080/02508060.2013.744273. Accessed 22 June 2016.

Egypt's approval for all their projects on the Nile basin; (ii) upstream countries had to guarantee a fixed annual water quota of 55.5 billion m^3 of the 84 billion estimated annual flow; and (iii) article 14 (b) of the Initiative that stipulates the Nile Basin States must agree "not to significantly affect the water security of any other Nile Basin State" (Nile Basin Initiative, 2010) to be rephrased as "not to adversely affect the water security and current uses and rights of any other Nile Basin State" (Nile Basin Initiative, 2010).

Secondly, Egypt effectively required the Cooperation Framework Agreement to guarantee a fixed annual water quota of 55.5 billion m^3 for use by Egypt, irrespective of water shortages experienced by upstream States. Thirdly, the proposed amendment to article 14 (b) amounted to an indirect approval of the old colonial treaties and the legalization of what is an unfair allocation of the Nile waters. To resolve differences concerning the interpretation of the meanings of terms such as "no significant harm"[65], "no-harm" and "equitable and reasonable use",[66] the Agreement introduced the principle of water security for all riparian countries.

The Cooperation Framework Agreement applies the principle of "water security" to ensure the "right of Nile Basin States to use water" in an "equitable and reasonable"[67] manner with "no significant harm"[68] to the other riparian countries. Water security under the Agreement refers to reliable access to water and the use of water for activities specifically related to "health, agriculture, livelihoods, production and environment".[69] Substantively, this provision makes no significant change apart from building trust among the riparian countries, as the definition of water security substantively refers to the equitable and fair sharing of water. The additional consideration in this definition is that climate change is one of the factors considered in deciding what constitutes "equitable and reasonable" use of water resources.[70] Under its article 11, the Agreement stipulates the need to prevent and mitigate harmful conditions, including the impact of climate change such as floods and drought. Climate change-related emergency situations could be inferred from article 12.

In 2013, Ethiopia and Egypt appointed international experts to review the various impacts of the dam on the Nile River and its basin. First, they established an International Panel of Experts to conduct an assessment of the impact of the construction of the dam.[71] The Panel evaluated the dam and its socioeconomic, hydrological and environmental impact on Egypt, the Sudan and Ethiopia.

According to the report of the International Panel of Experts, the main concerns of the riparian countries on the impact of the dam can be summarized into the following three areas: reduction of the volume of water (water security), safety of the dam and quality of the water. During the initial years, the filling of the dam may result in low

65 Cooperative Framework Agreement, art. 3 (5).
66 Ibid, art. 3 (4) and art. 4.
67 Ibid, art. 3 (4).
68 Ibid, art. 3 (5).
69 Ibid, art. 2 (f).
70 Ibid, art. 4 (2) (a).
71 See "Sudan agree to establish a Tripartite Committee to assess the impacts of the Ethiopian Renaissance Dam". Available at http://ethiopiaforums.com/sudan-agrees-to-tripartite-committee-over-ethiopia%e2%80%99s-nile-dam. Accessed 24 June 2016.

levels of water mainly for hydroelectric power generation by the High Aswan Dam of Lake Nasser. Indeed, the Panel calculated that there would be a maximum of a 6 per cent reduction in hydroelectric power generation, while the water flow reduction would be less than 3 per cent (International Panel of Experts, 2013). However, this concern could be easily addressed by consulting about the optimal time for filling the dam during the rainy season. Moreover, the Panel recommended some further measures to ensure the safety of the dam. The concerns raised by the Panel about the safety of the dam will be important for the Sudan and Egypt, but vital for Ethiopia, as it has invested heavily in the construction of the dam. Of all the riparian countries, Ethiopia would benefit most from ensuring the safety of the dam. The Panel also raised some minor concerns about the impact of the vegetation around the dam on the quality of the water. The methane gas produced from the decay of flooding vegetation and soil in the lake threatens the water quality and biosafety of the basin. This potential problem, according to the Panel, if not addressed effectively, would have implications for the aqua life, including fishing and agriculture. Consequently, the Panel recommended that Ethiopia take the necessary measures to prevent such eventualities.

The International Panel of Experts has overwhelmingly agreed that the dam will not result in significant harm to the water security of Egypt and the Sudan. There were also many recommendations for further studies on climate change and environmental impacts, sedimentation, different impounding options and the equilibrium of water levels in downstream countries. The Panel attested to the fact that the dam could benefit all riparian and neighbouring countries, particularly Ethiopia, the Sudan and Egypt. According to some estimates, the dam will generate significant amounts of income for Ethiopia (close to half a billion dollars annually, according to one estimate), and increase the total electricity access in Ethiopia to 50 per cent (Kebede, 2015), (Salini Construction, 2014). Despite the dam's anticipated positive contributions, however, tens of millions of Ethiopians will remain without electricity for decades.

At the same time, other benefits of the dam are enormous. The dam will save more than 20 billion m^3 of water from evaporation in the swamps of Jonglei in South Sudan and the High Aswan Dam (Bitsue, 2017). It will also prevent damage caused to the riverbanks during over-flooding and significantly reduce sedimentation in the downstream countries. Enhancing the resilience of the basin to climatic change-induced extremes such as floods and drought, the dam will serve as a management tool on the flow of water to the Sudan and Egypt (Tan, Erfani and Erfani, 2017).

In November 2013, the Nile countries' ministerial meeting considered the recommendations of the International Panel of Experts on the dam. Nevertheless, Egyptian politicians were not willing to accept the expert opinions for various reasons (Sudan Tribune, 2014). The Sudan says Egypt suspended participation in activities of Nile Basin Initiative. Egypt disagrees with the implementation of some of the recommendations of the Panel (Hailu, 2014).

4.7 Migingo Island: Disputes over fishing, Kenya/ Uganda

Background

Lake Victoria is the world's second-largest freshwater lake. Kenya, Uganda and the United Republic of Tanzania, respectively, share 6 per cent, 49 per cent and 45 per cent of the lake. Migingo Island, an uneven, rocky outcrop covering less than one acre on Lake Victoria, lies on the border between Uganda and Kenya. The islanders live in a crowded slum of rusted shacks. Kenya has assumed its 6 per cent ownership in terms of the 1926 border demarcation.

Two Kenyan fishermen, Dalmas Tembo and George Kibebe, claim to have been the first inhabitants of the island in modern times. When they settled there in 1991, it was covered with weeds and infested with birds and snakes. Joseph Nsubuga, a Ugandan fisherman, says he settled on Migingo in 2004, when all he found on the island was an abandoned house. Subsequently, other fishermen from Kenya, Uganda and the United Republic of Tanzania have come to the island because of its proximity to fishing grounds rich with Nile perch. In 2009, some Kenyan fishermen argued that given that none of the Nile perch was spawned in Ugandan territory (the nearest Ugandan landmass and nearest Ugandan freshwater source is 85 km away), the fish "belonged to Kenyans". In the same year, Ugandan fishermen called upon their local government for help, with the Ugandans being first to respond by sending maritime police. Upon their arrival, the Ugandans raised their country's flag and slowly began to administer the resident fishermen who had made their home on the tiny island. A Kenyan district commissioner travelled with a convoy of a dozen policemen, and once again raised the Kenyan flag that had been torn down by the Ugandan forces.

Types of transboundary resources: Fish resources are the main issue under dispute. Population growth, climate change and food insecurity also accelerate tensions among the fishermen (Okumu, 2010), (Shaka, 2013). Uganda blames Kenya over the decline of the fish population owing to its expansion of fish-exporting industries. Kenya exports and consumes more fish than Uganda. According to Peter Wafula Wekesa, the dispute over Migingo is not only a border conflict; it also involves contentious issues about fishing resources and the preservation of such resources. The extensive fishing by Kenyans, using "technically superior nets and trawling gear that depletes a wide variety of marine species … from the cities of Kisumu, Kampala and Mwanza" (Wekesa, 2010) is the cause of the declining fish.

Parties to the disputes and claims: Both Kenya and Uganda dispute the locations of Migingo Island, with each claiming that it is on its side of the border. The fishermen on the ground and the local authorities in the area are the parties to the dispute. Generally, Kenyan fishermen have been arrested for violating the marine and riparian boundaries of the United Republic of Tanzania and Uganda. In Migingo, when they are found guilty, the authorities force them to pay a fine or confiscate their fishing paraphernalia. The Kenyan fishermen, however, mainly challenge the assertion that Migingo is not Kenyan and therefore they are not liable to pay any taxes to Uganda.[72]

72 Vincent Owuor Ooko, Bilateral Diplomacy and Mugingo Island Transboundary Conflict Management, Research Project Report (2011).

Kenya considers Migingo Island as its territory, and Uganda's action, therefore, provoked anger in the Government and among the Kenyan public. Kenya first responded by condemning Uganda as an aggressor. In 2008, however, Uganda levied taxes on the Kenyan inhabitants of Migingo (Shaka, 2013) and forced 400 Kenyans off the island for refusing to pay taxes.[73]

Efforts and mechanisms to resolve the dispute: A pact by Kenya and Uganda, both members of IGAD and the East African Community regional economic communities, agreed that the two nations would determine the island's status through a border survey within two months, based on a 1926 accord, when both were under British colonial rule. Amid concerns then that the posturing would affect relations between the two countries, a joint physical demarcation of the borders of Lake Victoria was launched on 2 June 2009. The chiefs of security of the two countries organized a joint visit. A system of joint management of the island was established to avert any security crisis. Both the Ugandan and Kenyan police have agreed and established a joint special unit and joint post that will secure the northern corridor from the Nairobi-Kisumu-Busia border to end traffic jams and facilitate trade. A budget of Sh240 million ($2.3 million) was allocated for the demarcation exercise that was supposed to be conducted in 2009.

4.8 Maritime dispute on the Indian Ocean, Kenya/ Somalia

Background

The Kenya-Somalia dispute has arisen over a 100,000 km^2 narrow triangle off the coast of the Horn of Africa, in the Indian Ocean. Kenya and Somalia, adjacent States on the coast of East Africa, share both land and maritime borders, but the maritime border has become the main source of dispute between the two.

Somalia signed the United Nations Convention on the Law of the Sea on 10 December 1982 and ratified it six years later, on 24 July 1989. The country then issued Law No. 5 in 1989[74] as the Somali Maritime Law. Somalia argues that its maritime law established the breadth of Somalia's territorial sea at 12 nautical miles, with a continental shelf that extends throughout the natural projection of Somalia's land territory to the outer edge of the continental margin. Shortly thereafter, on 9 February 1989, Somalia enacted Law No. 11, which incorporated the Convention into its internal law. Acting in conformity with article 7 (7) of the Somali Maritime Law of 1988, which provides that Somalia "shall… draw up detailed charts and lists of geographical coordinates whenever appropriate, showing the outer limits of the exclusive economic zone",[75] the President of Somalia issued a proclamation on 30 June 2014, claiming a 200-mile exclusive economic zone measured by a mixture of normal and straight baselines. On the same day, Somalia deposited with the United Nations

73 M. Berger 2014. From Collaboration to Conflict: A Study of Environmental Scarcity in Lake Victoria. (Lund University, Department of Political Science, 2014) Available at https://lup.lub.lu.se/student-papers/record/4229004/file/4229006/pdf. Viewed 10 November 2016.

74 See Somali Democratic Republic, Law No. 5, Somali Maritime Law (26 Jan. 1989).

75 Federal Republic of Somalia (2015) Memorial of Somalia on The Case Concerning Maritime Delimitation in the Indian Ocean Somalia V. Kenya Available at http://www.icj-cij.org/files/case-related/161/19080.pdf, accessed 12 January 2017.

Secretariat, Office of Legal Affairs, Division for Ocean Affairs a list of coordinates for 2,468 points that precisely defined the outer limit of its EEZ. With respect to the delimitation of Somalia's maritime boundaries with its neighbours, article 4 (6) of the Somali Maritime Law of 1988 provides that in the absence of an agreement, "the Somali Democratic Republic shall consider that the border between the Somali Democratic Republic and the Republic of Djibouti and the Republic of Kenya is a straight line toward the sea from the land".[76]

Ten years before it signed the United Nations Convention on the Law of the Sea, Kenya enacted its 1972 Territorial Waters Act (United Nations, 1972) in which it claimed a 12-mile territorial maritime border. In 1989, Kenya passed its Maritime Zones Act, which brought the domestic legislation of Kenya into conformity with the Convention. The 1989 Act established a 12-mile territorial sea, in addition to a 200-mile exclusive economic zone. Kenya now measures the breadth of its territorial sea and EEZ from straight baselines covering the full length of its coast. These baselines were first declared in the 1972 Territorial Waters Act and were subsequently amended in 2005. In February 1989, Kenya deposited the required geographical coordinates with the United Nations, defining its baselines. These coordinates were subsequently amended, and the United Nations was notified of the amendments in 2006. With respect to its maritime boundary with Somalia, Kenya initially took the view that the territorial waters of the two States should be divided by means of an equidistance line of demarcation. In its 1972 Territorial Waters Act, as revised, Kenya claimed as its boundary with Somalia in the territorial sea, "a median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial waters" (United Nations, 1972) is measured.

On 28 February 1979, Kenya issued a Presidential Proclamation declaring a 200-mile EEZ measured from the appropriate baseline.[77] With respect to the maritime boundary with Somalia, the 1979 Proclamation provided that "the exclusive economic zone of Kenya shall … (b) in respect of its northern territorial waters boundary with the Somali Republic be on eastern latitude South of Diua Damasciaca Island, being latitude 1°38' South".[78] These coordinates drew a parallel line between the maritime boundaries of the two countries.

Kenya also signed the United Nations Convention on the Law of the Sea on 10 December 1982, and subsequently ratified it on 2 March 1989. Ten years after the issuance of the 1979 Presidential Proclamation, Kenya's 1989 Maritime Zones Act[79] reverted to the approach first adopted in the 1972 Territorial Waters Act. It provided that Kenya's "territorial waters shall extend to every point of which is equidistant from the nearest points on the baselines from which the breadth of territorial waters of each of respective States is measured".[80] The proclamation provided that the "northern boundary of the exclusive economic zone with Somalia shall be delimited

76 Ibid. 1988.
77 Republic of Kenya, Proclamation by the President of the Republic of Kenya of 28 February 1979. Available at http://extwprlegs1.fao.org/docs/pdf/ken4655.pdf accessed 15 April 2017.
78 Ibid.
79 See Kenya, Maritime Zones Act (25 August 1989). Available form http://extwprlegs1.fao.org/docs/pdf/ken3534.pdf accessed 15 April 2017.
80 Ibid.

by notice in the *Gazette* by the Minister pursuant to an agreement between Kenya and Somalia on the basis of international law".[81]

Seventeen years later, Kenya switched course again and returned to its parallel boundary claim. In a Presidential Proclamation dated 9 June 2005, which made no reference to the 1989 Maritime Zones Act, Kenya specified that its maritime boundary with Somalia followed a parallel of latitude emanating from the land boundary terminus (LBT) and running due east to the limit of the EEZ. Specifically, the 2005 proclamation stated that the northern limits of the EEZ of Kenya would be "on eastern latitude South of Diua Damasciaca Island being latitude 139'34' degrees South".[82]

In the early 2000s, the dispute between Kenya and Somalia escalated, following Kenya's granting of exploration concessions to companies. Somalia argued that its national laws were very clear in delimiting its maritime boundary, which included the contested maritime area.[83] Somalia also noted that Kenya had acknowledged the boundary. Somalia further asserted that Kenya had never granted oil exploration concessions in the contested area until the early 2000s.[84] Kenya argued that it had exercised effective control of the area for many years and had also legally proclaimed since 1979 that its maritime boundary with Somalia followed a parallel line.[85] Kenya added that it had reiterated this claim again in a 2005 Presidential Decree. Kenya argues that in both instances Somalia did not object.[86]

Types of transboundary resources: All resources within a country's maritime borders contribute to that country's wealth. These resources include oil and gas reserves, fish and marine life and maritime transport and port services. Somalia recognizes the significant loss it incurs owing to widespread illegal deep-water fishing. In 2005 alone, Somalia incurred economic losses amounting to $300 million owing to illegal fishing.[87] Some analysts estimate that Somalia has reserves of around 110 billion barrels of oil, both on shore and offshore.[88] To provide perspective, if those estimated reserves are accurate, Somalia could have the seventh-largest oil reserves in the world.[89] Somalia is also believed to have some 440 trillion cubic feet of offshore gas, which would make it the fourth-largest gas reservoir globally.[90] A significant percentage of these unexploited resources are believed to lie within the contested maritime area.

81 See Republic of Kenya (1989, Maritime Zone Act, Part 2, Article 1 Available at http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/KEN_1989_Maritime.pdf accessed 2 March 2018.

82 Republic of Kenya (2005) Proclamation by the President of the Republic of Kenya, 2005. Available at http://faolex.fao.org/docs/pdf/ken158811.pdf. Downloaded 14 April 2017.

83 See Case concerning Maritime Delimitation in the Indian Ocean, International Court of Justice, Somalia's Memorial, July 2014, vol. I.

84 Ibid.

85 See Case Concerning Maritime Delimitation in the Indian Ocean, International Court of Justice, Kenya's Memorial, October 2015, vol. I.

86 Ibid.

87 See Zainab Calcuttawala, Tensions Spike as Kenya and Somalia Battle for Oil Rich Offshore Blocks, OILPRICE.com (21 September 2016). Available at http://www.oilproce.com/Energy/Energy-General/Tensions-Spike-As-Kenya-And-Somalia-Battle-For-Oil-Rich-Offshore-Block.html. Viewed 1 November 2016.

88 See Prithvi Punjabi, Maritime Delimitation of the Indian Ocean (Somalia v. Kenya), The Dhirubhai Ambani International School, Model United Nations (November 2015).

89 Ibid.

90 Ibid.

Kenya has already begun conducting exploration of the disputed area for hydrocarbon resources and has conceded six blocks for oil-exploring companies to operate. Kenya, in partnership with Somalia and an Italian mining corporation, has agreed to explore for oil and gas in the contested area.[91] American companies, such as Anadarko Petroleum and SOHI Ga**s**, are also involved in natural resource exploration in these two countries.[92]

Parties to the disputes and claims: The parties to the dispute are Kenya and Somalia. The disputes focus on two issues: the core issue relates to the maritime border of the two countries; and the second relates to discrepancies in the interpretation of the legal texts at domestic, bilateral and international levels.

On 7 April 2009, in order to facilitate the consideration by the Commission on the Limits of the Continental Shelf of their submission with regard to their outer continental shelves, in line with the United Nations Convention on the Law of the Sea (1982), article 76, Kenya and Somalia reached an agreement to resolve their dispute peacefully and signed a memorandum of understanding. The ultimate aim of the memorandum of understanding is "to grant to each other no-objection 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".[93] Furthermore, the memorandum of understanding was signed when Somalia was governed under a transitional government based in Nairobi. It states that the "unresolved delimitation issue between the two coastal States is to be considered as a 'maritime dispute".[94] It permits both States to make separate submissions to the Commission that may include the area under dispute, asking the Commission to make recommendations with respect to the outer limits of the continental shelf. It further notes that the "delimitation of maritime boundaries in the areas under dispute, including the delimitation of the continental shelf beyond 200 nautical miles, shall be agreed between the two coastal States. Such agreement should be on the basis of international law after the Commission has concluded its examination of the separate submissions made by each of the two coastal States and made its recommendations to these States concerning the establishment of the outer limits of the continental shelf beyond 200 nautical miles".[95]

They also agreed to present their cases to the International Court of Justice if the mediation through the United Nations Convention on the Law of the Sea fails.[96] With

91 See Christina Okello, "Kenya-Somalia maritime dispute: Whose sea is it anyway?" (9 September 2016). Available at http://en.rfi.fr/africa/20160919-Kenya-Somalia-dispute-Whose-sea-it-anyway. Viewed 4 November 2016.
92 See John Mbaria, "Kenya and Somalia in Bitter Dispute over Indian Ocean Border" (25 October 2015). Available at http://www.wardheernews.com/wp-login-php.
93 Kenya and Somalia, Governments (2009). Memorandum of Understanding between Somalia and Kenya to grant to each other no-objection in respect of submissions on the outer limits of the continental shelf beyond 200 nautical miles to the Commission on the Limits of the Continental Shelf, April 2009 Available at http://www.innercitypress.com/los2somalia.pdf. Accessed 3 November 2016.
94 Kenya and Somalia, Governments (2009). Memorandum of Understanding between Somalia and Kenya to grant to each other no-objection in respect of submissions on the outer limits of the continental shelf beyond 200 nautical miles to the Commission on the Limits of the Continental Shelf, April 2009 Available at http://www.innercitypress.com/los2somalia.pdf. Accessed 3 November 2016.
95 Kenya and Somalia, Governments (2009). Memorandum of Understanding between Somalia and Kenya to grant to each other no-objection in respect of submissions on the outer limits of the continental shelf beyond 200 nautical miles to the Commission on the Limits of the Continental Shelf, April 2009 Available at http://www.innercitypress.com/los2somalia.pdf. Accessed 3 November 2016.
96 See Friederike Muller-Jung, "Kenya or Somalia: Who owns the sea and what lies beneath?". Available at

the intention of resolving issues on their maritime boundaries, the two countries held negotiations in Nairobi between February and August 2014.[97] The two rounds of negotiations, however, ended without significant progress towards resolving the dispute. In the proceedings, the two parties pursued two different arguments to substantiate their respective claims. While Somalia argued on the basis of international instruments, Kenya alluded to the 2009 Memorandum of Understanding signed between the two countries.

However, by 1 August 2009, the Transitional Federal Parliament of Somalia had rejected the memorandum of understanding signed between the two countries (Kwiatkowska, 2013). Accordingly, on 28 August 2014, Somalia brought its case to the International Court of Justice. Somalia justified its decision to take the case to the Court, asserting Kenya's failure to demonstrate a sincere commitment to a negotiated settlement of the dispute.[98] In response, Kenya opposed Somalia's claim and the jurisdiction of the Court in 2015. That position was a follow-up to the 9 January 2014 action by Kenya, reiterating its boundary claim in a note verbale to the Secretary-General of the United Nations. In the note verbale, Kenya reverted to the contents of its 2005 presidential proclamation and concluded with the assertion that, in terms of the agreement with the United Nations Convention on the Law of the Sea, it had exercised and would continue to exercise sovereignty and jurisdiction over the said area.[99] The Court is currently reviewing the case, and on 19 September 2016, it held its first hearing on the dispute.

Kenya's interpretation of the memorandum of understanding: First, Kenya contended that under the memorandum of understanding entered into between Kenya and Somalia, which was a binding treaty, the parties had agreed on a method of settlement of their maritime boundary dispute other than having recourse to the Court, namely, by agreement to be concluded by Somalia and Kenya after the Commission on the Limits of the Continental Shelf has made its recommendations to them concerning the establishment of the outer limits of the continental shelf beyond 200 nautical miles. Thus, Somalia could not file the action before the International Court of Justice any time before the recommendations of the Commission. Secondly, Kenya contended that United Nations Convention of the Law of the Sea, Part XV, makes provision for methods of settlement of disputes concerning the interpretation or application of the Convention, to which both Kenya and Somalia are State parties; and since neither of the parties had made a declaration regarding the choice of one or more means of dispute settlement pursuant to the Convention, article 287, paragraph 1, the parties were deemed, under paragraph 3 of that article, to have accepted arbitration in accordance with Annex VII to the Convention for the settlement of disputes concerning the interpretation or application of the Convention. Hence, it argued that the Annex VII means of settlement of disputes fell within the ambit of

www.dw.com/en/kenya-or-somalia-who-owns-the-sea-and-what-lies-beneath/a-19557277. Viewed 11 November 2016.

97 See Case Concerning Maritime Delimitation in the Indian Ocean, International Court of Justice, Kenya's Memorial, October 2015, vol. I.

98 See "Kenya – Somalia: Maritime Border Dispute", African Research Bulletin: Economic, Financial and Technical Series, pp. 21414C-21415A. Available at onlinelibrary.wiley.com/doi/10.1111/arbe.2016.53.issue-9/issuetoc.

99 See Republic of Kenya (2014) Note Verbale dated 9 January 2014 from the Permanent Mission of the Kenya to the United Nations addressed to the Secretary-General. Available at http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/communications/ken_note_09012014.pdf downloaded 9 December 2016.

the reservation of its declaration, which excludes "recourse to some other method or methods of settlement. On the admissibility of Somalia's application to the Court, Kenya argued that the application was inadmissible before the Court, first, because again the parties had agreed to negotiate the delimitation and to do that after the Commission recommendation. Secondly, that by the withdrawal of its consent, Somalia was in breach of its obligations under the memorandum of understanding, and consequently Somalia had not come before the Court to seek relief "with clean hands" and thus its Application should not be admissible.[100]

Somalia's interpretation of the memorandum of understanding: On the other hand, Somalia argued that the memorandum of understanding did not establish a method for resolving the delimitation dispute between the parties and consequently, the reservation of Kenya in its declaration did not apply in the present case. It also disagreed with the assertion of Kenya that the United Nations Convention on the Law of the Sea, Part XV, fell within the scope of the reservation of Kenya. As far as Somalia was concerned, the agreement of the parties to the jurisdiction of the International Court of Justice as expressed through declarations under article 36, paragraph 2, of the Court Statute had to take priority, under the Convention, article 282, over the procedures provided for in section 2 of Part XV of the Convention. Furthermore, Somalia was of the view that the memorandum of understanding did not have any effect on the current dispute between the two countries given that Somalia's parliament had subsequently voted not to ratify it. Secondly, Somalia argued that the memorandum of understanding by itself does not waive its right to institute a separate action regarding its maritime boundary. The most important effect of the memorandum of understanding for Somalia is that it acknowledged the existence of a "maritime dispute" between the two countries. In its submission to the Court, Somalia wrote: "The memorandum of understanding, whatever its status, did not purport to resolve the parties' maritime boundary dispute. To the contrary, in it, the parties expressly recognized and maintained their conflicting positions on the location of the boundary. Its purpose was to ensure that neither party objected to the CLCS's [Commission on the Limits of the Continental Shelf] consideration of the other's submissions".[101]

On 2 February 2017, the International Court of Justice rejected the preliminary objections of Kenya and ruled as follows:

- After interpreting the memorandum of understanding, which the Court found to be a valid treaty under international law, it found that the object and purpose of the memorandum was merely to constitute a no-objection agreement that would enable the Commission on the Limits of the Continental Shelf to make recommendations on the outer limits of the continental shelves of the parties to the agreement, even though there was in existence a dispute between the parties on delimitation of the continental shelf. It therefore held that the memorandum of understanding did not preclude the parties from taking steps (undertaking negotiations

100 See Case Concerning Maritime Delimitation in the Indian Ocean, International Court of Justice, Kenya's Memorial, October 2015, vol I.

101 See Case concerning Maritime Delimitation in the Indian Ocean, International Court of Justice, Somalia's Memorial, July 2014, vol. I.

or reaching certain agreements) to delimit their maritime zones, including the continental shelves, prior to the recommendation of the Commission. It also held that the memorandum of understanding did not constitute an agreement between the parties to have recourse to some other method or methods of settlement other than the Court and thus did not fall within the scope of the reservation of Kenya in its declaration recognizing the jurisdiction of the Court (International Court of Justice, 2017).

- Exploring United Nations Convention on the Law of the Sea, Part XV, article 282, which states: "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", the Court was of the view that the phrase "or otherwise" in this article actually included an agreement to the jurisdiction of the Court resulting from the optional clause declarations filed by the parties. It held that the procedure before the Court shall, as a result of article 282, apply "in lieu" of the procedures provided in section 2 of Part XV, which was relied upon by Kenya in its preliminary objection. Consequently, the Court held that the current dispute did not, by virtue of Part XV of the Convention, fall outside the ambit of Kenya's declaration (International Court of Justice, 2017).

- Further, the Court held that the alleged breach of the memorandum of understanding by Somalia's withdrawal of its consent did not per se affect the admissibility of Somalia's application before the Court (International Court of Justice, 2017).

4.9 Dispute between Gabon and Equatorial Guinea concerning the island of Mbanié

Economic, historical and geopolitical sources of the conflict: The island of Mbanié, which is at the centre of a very disturbing territorial conflict between Gabon and Equatorial Guinea, covers only about 30 hectares. But it is an island in the middle of the Gulf of Guinea, in the Bay of Corisco, barely some 30 km from the coast, in a maritime area that is continuously and insistently proclaimed to contain very abundant resources, particularly oil and gas, and which is necessarily highly coveted.[102] The Gulf of Guinea accounts for almost 50 per cent of oil and gas production in Africa, or 10 per cent of the world total. Statisticians estimate the reserves in this area at 24 billion barrels of oil.[103] Because of these riches, and despite the increasingly sluggish economic situation, the two claimants of the island of Mbanié are often dubbed proper "African

102 See Dossier : Pétrole « Les frontières de la discorde », Hebdomadaire Jeune Afrique, 29 Mars 2010; Abdelhak Bassou, Le Golfe de Guinée, zone de contrastes : richesses et vulnérabilités, OCP Policy Center (September 2016); Essono Essono Ménélik, Différends frontaliers maritimes et exploitation pétrolière dans le Golfe de Guinée, Mémoire (2010-2011).

103 See Philippe Copinschi and Pierre Noël, « L'Afrique dans la géopolitique du mondiale du pétrole », *Afrique contemporaine* (2005), vol. 4, No. 216.

oil emirates". Gabon is in fifth position among oil producers in sub-Saharan Africa. Its oil and gas sector accounts for 43 per cent of GDP, 50 per cent of budget revenue and 80 per cent of export income. Meanwhile, its close neighbour Equatorial Guinea has become the third largest oil producer in sub-Saharan Africa, after Nigeria and Angola, since the discovery of very large offshore deposits in its waters, near the island of Bioko, with reserves of no less than 1.1 billion barrels; these huge resources now supply up to 89 per cent of budget revenue. Because of these riches, the face of the country has been steadily transformed, particularly in terms of infrastructure and urbanization, making it a real focus of development and attraction in Central Africa, even though its economy (like those of its neighbours) remains fragile because of this extreme dependence on oil resources.

Historically, claims to the island of Mbanié are long-standing and relate to a string of small islands over which the two countries dispute sovereignty. Notable among them, in addition to Mbanié, are Cocotier and Congas, all located a few dozen kilometres from the Gabonese coast. These tensions already existed in colonial times, and a Franco-Spanish diplomatic conference was organized in Paris in 1900 to pinpoint the possessions of the two Powers on African soil. The adoption of the Paris Convention for the Protection of Industrial Property of 20 March 1883, as revised at Brussels on 14 December 1900, which concluded that this conference sheds–much helpful light on the fate of the island of Mbanié. Hence a degree of uncertainty, which, leading to disagreement and even tensions, has continued to prevail. Diplomatic archives record an incident between the two European colonial powers, France (for Gabon) and Spain (for Equatorial Guinea). In February 1955, convinced that Mbanié, Congas and Cocotiers fell under French sovereignty, owing to their geographical position close to Gabon, the Libreville Lighthouse and Beacon Service sought to begin work to construct a first lighhouse on the island of Cocotiers. On 15 March 1955, the Director of Public Works in the French colony of Gabon was informed that a Spanish force had landed on the island and demanded the immediate evacuation of the French engineers and technicians who had been sent there, failing which it would immediately open fire. The Spanish regarded the islands of Mbanié, Conga and Cocotiers as "dependencies of Corisco", a Spanish island located not far from the island of Fernando Po (later renamed the island of Bioko), a centre of prosperity for the Spanish presence in the Gulf of Guinea. But the French colonial administration eventually regarded this military incident as past history and lacking any special legal effect, given that Spain never afterwards opposed the French presence on these islands, and indeed has never agreed to reimburse the costs incurred by the French Lighthouse and Beacon Service in installing equipment on the islands.[104]

Resumption of the conflict between the two now independent States: In 1972, differences between Gabon and Equatorial Guinea as to the ownership of the island of Mbanié arose again. The trigger seems to have been decree No. 319 of 2 August 1967, signed by Albert Bernard Bongo, then President of Gabon, granting the Gulf Oil Shell Gabon Consortium an authorization to explore for oil and gas in an area whose northern limit was defined as "the border between Gabon and Equatorial Guinea".

104 Concerning this incident between the two colonial Powers, see Guy Rossantanga-Rignault and Patrice MOUNDOUNGA MOUITY: « La sauvegarde de la souveraineté maritime nationale : l'Ile de Mbanié » in « *Les régions littorales du Gabon – Elements de réflexion pour une planification stratégique du territoire* », Coédition LETG-Nantes Géolittomer, UMR 6554 CNRS (France) & Éditions Raponda-Walker (Gabon), Janvier 2017, pp.23-37.

The authorities of Equatorial Guinea regarded the decree as implying de facto and de jure that the island of Mbanié, which was located to the south of the border, had been illegally placed under Gabonese sovereignty. Although the President of Gabon modified the decree by means of a new decree, No. 689 of 14 May 1970, the authorities of Equatorial Guinea reacted immediately to protect what they regarded as their legitimate interests in Mbanié. Those authorities, in turn, issued a decree granting authorizations in the area surrounding the islands of Elobey and Corisco and the islands of Mbanié, Congas and Cocotiers, which they considered to form an "integral part of the national territory of Equatorial Guinea".[105]

In order to defuse the tensions and seek an amicable solution, the two countries began negotiations in June 1970, first in Bata, Equatorial Guinea (in 1971), then in Libreville, Gabon (in April and May 1972). However, those meetings did not produce the anticipated results and, specifically, did not prevent a new escalation of violence, notably that of 20 February 1972, which was marked by shots fired against Gabonese yachts, leading to real radicalization of positions. In August 1972, the Council of Ministers of the Gabon decided to extend the limits of its territorial waters to 100 nautical miles. That step prompted sharp reactions on the part of the authorities in Equatorial Guinea, who considered that by that extension Gabon was seeking a single goal: to include in its territorial waters the Equatorial Guinea islands of the 1900 Convention off its coast (Corisco, Elobey Grande, Elobey Chico), to which Mbanié, Conga and Cocotiers were now added. On 23 August 1972, Gabon landed a detachment of gendarmes on the island of Mbanié and evicted the Equatorial Guinea personnel who were camping there. Following those incidents and repeated escalation, Equatorial Guinea brought the issue before the United Nations Security Council, emphasizing (the Gabonese authorities of course rejected these claims) that the Government of Gabon, having extended its territorial waters to 170 miles, on 23 August, invaded all the islands of Equatorial Guinea - Elobey Grande, Elobey Chico, Corisco, as well as the neighbouring small islands in its province of Rio Muni. The 4 guards who were guarding the island and 24 Guineans from Corisco were arrested, ill-treated, tortured, tied up and shackled like animals. During this week, the Government placed warships in the Rio Muni estuary and around the islands. Our ships, which were providing services between Kogo and Corisco, have all been sunk. For lack of communication between the islands, we do not know the fate of their inhabitants following this flagrant aggression. The Government of Equatorial Guinea calls for the immediate intervention of the Security Council to ensure that the Gabonese Government withdraws its forces from the territorial waters of Equatorial Guinea. Gabon stated that the alleged presence of naval forces and the violent militarization of the dispute stemmed from nothing more than a policy on the part of the neighbouring State deliberately aimed at manipulation and causing alarm, in the presence of what was merely a "small gendarmerie post" intended to ensure the security of these islands, which are considered to be Gabonese.[106]

105 Mabire J.C, 1989. Elobey Grande, un différend frontalier franco-espagnol, revue *Mélanges de la Casa de Velázquez*, tome 25, pp. 517-526.

106 See speech by the head of State published by the Gabonese Press Agency on 10 September 1972. Speech also quoted by Prof. Guy Rossantanga-Rignault: and Patrice Moundounga Mouity « La sauvegarde de la souveraineté maritime nationale : l'Ile de Mbanié », in « Les régions littorales du Gabon – Elements de réflexion pour une planification stratégique du territoire », Coédition LETG-Nantes Géolittomer, UMR 6554 CNRS (France) & Éditions Raponda-Walker (Gabon), Janvier 2017, p.26.

The search for solutions to settle the conflict: The Conference of Heads of State and Government of Central and Eastern Africa, meeting in Dar es Salaam from 7 to 9 September 1972, took up this dispute and entrusted the heads of State of the People's Republic of the Congo (Marien Ngouabi) and Zaire (Mobutu Sese Seko) with the task of mediation: to assist in settling the dispute between Gabon and Equatorial Guinea through peaceful means and in a spirit of good-neighbourliness, solidarity and African fraternity.[107] The mission would lead to the holding of a mediation meeting between the two heads of State concerned in Kinshasa, Zaire, on 17 September 1972.

The meeting advocated, among other measures, renunciation of any resort to force, an immediate halt to any form of reciprocal attacks in the written and spoken media and the setting up of a commission composed of representatives of the People's Republic of the Congo, Gabon, the Republic of Equatorial Guinea and the Republic of Zaire to examine all aspects of the problem, conduct all necessary consultations and recommend ways and means of reaching a definitive solution of the dispute.

A second mediation effort was urgently launched and resulted in the second mediation summit in Brazzaville (11–13 November 1972), where painstaking discussions gave rise to a final communiqué in which the two heads of State agreed to the neutralization of the disputed area in the Bay of Corisco, delimitation of maritime borders between the Gabon and the Republic of Equatorial Guinea by the Organization of African Unity Ad Hoc Maritime Borders Commission, in accordance with the spirit of the Charter of the Organization of African Unity, and respect for the provisions and the spirit of the Brazzaville Conference of 11–13 November 1972.

This second conference laid the ground for a warming of relations between the two countries, culminating in reciprocal visits by the two heads of State and the signature on 12 September 1974, during an official visit by the Gabonese President to Equatorial Guinea, of the Bata (Equatorial Guinea) Convention laying down the land and maritime borders between Gabon and Equatorial Guinea.

The overthrow of President Macias Nguema of Equatorial Guinea in 1979 and his replacement by the current President, Théodoro Obiang Nguema Mbazongo, gave rise to a long tranquil period and even a new push for cooperation, exemplified by an oil cooperation agreement signed in 1979 and renegotiation in 1982, which, sadly, was subsequently terminated by Equatorial Guinea.

The new authorities in Equatorial Guinea demanded the definitive establishment of the maritime border with Gabon in order to avoid renewal of past tensions, and gave priority to mediation by the United Nations.[108] The Ad Hoc Border Commission,

107 La Semaine de Brazzaville : "Le Gabon et la Guinée Équatoriale réconciliés grâce à la médiation des Présidents Mobutu et Ngouabi", édition du dimanche 19 novembre 1972.

108 See Jean Ping, « Gabon : historique des pourparlers entre le Gabon et la Guinée Equatoriale sur l'île Mbanié », AllAfrica, Gabonews (Libreville) (2006). Available at http://fr.allafrica.com/stories/200609290879.html; J.C. Mabire J.C., « Elobey Grande, un différend frontalier franco-espagnol », *Mélanges de la Casa de Velázquez,* vol. 25, pp. 517-526 (1989) ; D. Ortolland and J-P. Pirat, 2007. *Atlas géopolitique des espaces maritimes : Frontières, énergie, transports, piraterie, pêche et environnement,* p. 277 (Paris, Editions Technip 2007); D.J. Dzurek, 1999. Mbanie in Gulf of Guinea Boundary disputes, Boundary and Security Bulletin, Durham University, Durham (UK), Spring, pp. 98-104.; Alianza Nacional de Restauracion Democratica (ANRD), 1974. Las nuevas fronteras de la Guinea Ecuatorial de Macías Nguema, Boletín interno del ANRD, 2. Ginebra, pp. 11. ; Ando N., Oda S., et al. *Iles Mbanié, Cocotiers, etc, in Liber*

which met in Bata in 1985 and in Libreville in January 1993, concluded its work each time with the same disagreement, given that both two countries asserted and reasserted their sovereignty over the islands of Mbanié, Conga and Cocotier.

In the months following the Libreville meeting, numerous incidents occurred in the disputed maritime area. The most significant included the boarding of two Gabonese fishing vessels, *Amerger 1* and *Amerger 9*, and the sentencing of their crews by a military court in Equatorial Guinea to a particularly heavy fine (CFA 300 million). Another major incident involved a 3D seismic operation by the oil company Vanco Energy Company, at the request of the authorities in Equatorial Guinea, on the Gabonese oil authorization Igoumou Marin. Equatorial Guinea also refused to forward the results of the seismic operation in accordance with the rules of geophysical data acquisition. Another no less serious incident was the arrest by the Equatorial Guinea army of Canadian experts exploring for diamonds in the Gabonese province of Woleu-Ntem.

It was in that very tense and uncertain atmosphere that the first mediation effort headed by the United Nations Secretary-General (Kofi Annan) opened in August 2003, in the hands of a Canadian, Yves Fortier. That effort, aimed at finding a negotiated "win-win" solution (both on the line of the border and on the establishment of a joint development zone), came to an end in October 2006 without achieving any results and without any encouraging prospects.

At the end of his last term as Secretary-General, Kofi Annan was replaced by Ban Ki-moon, who in April 2008 in New York suggested a new mediation effort between the parties, this time to be led by a Swiss national, Nicolas Michel, who had been the Under-Secretary-General for Legal Affairs of the United Nations Secretariat. That new effort was to be composed of two phases: the first, lasting from 6 to 12 months and a second follow-up to offer an opportunity to seek an amicable solution, once again.

The second phase, in the event the first phase failed, was to involve the negotiation of a special agreement in preparation for submission of the case to the International Court of Justice, as neither of the parties had adhered to the compulsory jurisdiction of the Court.

That United Nations mediation, which took place over 10 sessions (June 2008, July 2008, March 2009, May 2009, November 2009, January 2010, March 2010, May 2010, July 2010, March 2011), was too long and bogged down, despite the renewed commitment expressed by the parties during the trilateral United Nations-Gabon-Equatorial Guinea summit (New York, 24 and 25 February 2011) to conclude as quickly as possible the agreement under which the issue would be brought before the judge in The Hague.

Finally, in a communiqué jointly signed under the auspices of the United Nations, the new President of Gabon, Ali Bongo Ondimba, and the President of Equatorial Guinea, Théodoro Obiang Nguema, announced that they had found a "compromise regarding

Amicorum Judge Shigeru Oda, Kluwer Law International, La Haye, 2002.

the submission of the border dispute between the two countries to the International Court of Justice".

The agreement was signed on 15 November 2016 in Marrakech[109], on the margins of the twenty-second session of the Conference of the Parties to the United Nations Framework Convention on Climate Change, which was held in Morocco. "In signing the compromise, the two parties have made a formal commitment to submit this dispute to the International Court of Justice, in accordance with the framework document on mediation signed in 2009".

4.10 Eritrea and Ethiopia border conflict

Background[110]

Shortly after the incorporation of Eritrea into Ethiopia, an armed Eritrean resistance developed. In 1974, the Ethiopian armed forces deposed Emperor Haile Selassie, and a junta, or Derg, led by Mengistu Haile Mariam, took control of Ethiopia. The Derg continued to prosecute the war against the Eritrean People's Liberation Front. By the late 1980s, the Front controlled most of Eritrea except for Asmara and Massawa. In February 1990, it captured Massawa (Jacquin-Berdal, Dominique and Martin Plaut, 2004) (De Guttry, Post and Venturini, 2009), (Bairu, 2015), (Negash and Tronvoll, 2000).

In 1991, Mengistu fled Ethiopia and the Ethiopian People's Revolutionary Democratic Front established an interim government, while Eritrean People's Liberation Front took control of Asmara. At a conference on peace and democracy held in Addis Ababa in 1991, the right of the people of Eritrea to determine their own political future by an internationally supervised referendum was recognized. In April 1993, the referendum was held in Eritrea, supervised by international observers. Eritreans abroad were also enabled to vote. Over 99 per cent of the voters favoured independence. The Special Representative of the Secretary-General announced that the referendum process had been free and fair. On 27 April 1993, Eritrea became independent and was admitted as a member of the United Nations.

On 29 April 1993, Ethiopia recognized Eritrea's sovereignty and independence and on 30 July 1993, the two Governments concluded an agreement of friendship and cooperation. In May 1998, hostilities broke out between Eritrea and Ethiopia. After a number of attempts to re-establish peace between the two parties, the December agreement was signed on 12 December 2000, providing for the permanent termination of military hostilities between them. A major component of the agreement was article

109 Voir Médias24, L'information économique marocaine en continu, 15 Novembre 2016, pp.1-2 ; Vincent Duhem: « *Mbanié : le Gabon et la Guinée équatoriale s'en remettent à la Cour internationale de justice* », Jeune Afrique, 16 Novembre 2016, http://www.jeuneafrique.com/374665/politique; Michel DJOMENI : *Le Gabon et la Guinée Equatoriale conviennent de soumettre à la CIJ leur différend relatif à la souveraineté sur l'île de Mbanié et les îlots voisins* », http://www.sentinelle-droit-international.fr, edition du dimanche 20 novembre /2016 ; *Gabon-Guinée-Equatoriale : Le conflit de l'Ile de Mbanié objet d'un accord sous l'égide de l'ONU* », https://afriqueeducation.com/politique/, publié le Mercredi 16 novembre 2016.

110 The background materials and the case have relied heavily on Government submissions to the International Arbitral Awards, Decision regarding delimitation of the border between Eritrea and Ethiopia, 13 April 2002. Available at http://legal.un.org/riaa/cases/vol_XXV/83-195.pdf.

4, the terms of which have been set out above, providing for the establishment of the present Boundary Commission.

Attempts to settle the conflict and dispute: The Permanent Court of Arbitration serves as registry for the Boundary Commission established pursuant to the Agreement of 12 December 2000 between the Government of the State of Eritrea and the Government of the Federal Democratic Republic of Ethiopia. The Commission has a mandate "to delimit and demarcate the colonial treaty border based on pertinent colonial treaties (1900, 1902 and 1908) and applicable international law" (International Court of Justice, 2002).[111]

Although the boundary dispute between Eritrea and Ethiopia is referred to as a dispute over Bademe (in the Western Sector), the disputed boundaries extend from their borders with the Sudan to Djibouti, known as the Western, Central and Eastern Sectors. This case study provides only a brief description of the disputed Western Sector, mainly the Mareb-Belesa-Muna line for illustration. The information is depicted line by line, as narrated by the two countries in the International Court of Justice Reports of International Arbitral Awards (2002:108).[112]

- "Eritrea contends that the Treaty map provides sufficient guidance to enable the Commission to identify each of the disputed components of the Mareb-Belesa-Muna line. Thus, Eritrea points to the fact that the branch of the Belesa that the Treaty map shows as being connected by a land link to the Muna corresponds with the western branch of that river as it appears on the 1894 map that formed the basis of the Treaty map, that that line turns to run southwards and then leaves the Belesa by a small unnamed stream to run almost due eastwards over the watershed to join the Muna, as it rises on the eastern side of the watershed (Point 20). It then continues again in a roughly easterly direction until it meets the Endeli at Massolae (Point 27)" (International Court of Justice, 2002).

- "The first contention in the Ethiopian approach is that the formula Mareb-Belesa-Muna is to be taken as intended to reflect the de facto administrative division between the districts of Acchele Guzai in the north, under Italian control, and Agame in the south, under Abyssinian control. Thus, for Ethiopia, the task of the Commission is not so much to interpret and apply in a geographical sense the Treaty's Mareb-Belesa-Muna formula as it is to determine the actual division at the time between Acchele Guzai and Agame. The second element in the Ethiopian approach involves a comparison between the map annexed to the 1900 Treaty and a modern map based on satellite imaging. Ethiopia contends that the former does not accurately represent the relevant geography. In particular, the depiction of the rivers on the 1900 map is not consistent with the rivers as they appear on the modern map. The third element involves the assertion that the names "Belesa" and "Muna" do not describe relevant rivers in the region. Ethiopia

111 See International Court of Justice http://www.haguejusticeportal.net/index.php?id=6162.

112 See International Court of Justice, International Arbitral Awards, Decision regarding delimitation of the border between Eritrea and Ethiopia, vol. XXV, 13 April 2002, pp. 83-195. Avaialble from http://legal.un.org/riaa/cases/vol_XXV/83-195.pdf.

> names the western branch of the "Belesa" the "Rubai Daro" and the eastern "the Mestai Mes", the latter being joined by the "Sur". The name "Berbero Gado" is given to the river that the 1900 map calls the "Muna". Indeed, Ethiopia maintains that there was no "Muna" identifiable in 1900 at the location at which the 1900 Treaty map places it or, indeed, at all. Ethiopia further contends that the Berbero Gado really forms part of a larger river system, the Endeli, whose source lies somewhat further to the north; that that river formed the boundary between Acchele Guzai and Agame; and, therefore, that it was really along the line of that river that the boundary marked "Muna" on the 1900 Treaty map was meant to run" (International Court of Justice, 2002:108-109).

The Decision on Delimitation of the Border between Eritrea and Ethiopia: The decision was delivered by the Commission on 13 April 2002. Having completed the task of delimitation, the Commission moved on to implementing the actual demarcation of that boundary on the ground. From November 2002 to late 2003, the Commission met several times with delegates of the parties, and the observers from the United Nations and the African Union, in order to discuss matters related to the ongoing demarcation process. However, no progress was made owing to the irreconcilable demands of Ethiopia and Eritrea. In March 2006, the demarcation activities that had been halted in 2003, owing to circumstances beyond the control of the Commission resumed. The last meeting was held in September 2007, but no agreement has yet been reached towards the emplacement of pillars on the ground. In January 2008, the United Nations Secretary-General declared that he was worried about the growing militarization, on both sides of the border, which could lead to a war.[113] The conflict still awaiting final resolution.

4.11 Burkina Faso and Niger frontier dispute from Tong-Tong to Boto114

Background

The dispute follows from the 1987 Agreement that the Arrêté of 31 August 1927, adopted by the Governor-General ad interim of French West Africa with a view to "fixing the boundaries of the colonies of Upper Volta and Niger", as clarified by its Erratum of 5 October 1927, is the instrument to be applied for the delimitation of the boundary. It further observed that the 1987 Agreement provides for the possibility of "the Arrêté and Erratum not suffic[ing]" and establishes that, in that event, "the course shall be that shown on the 1:200,000-scale map of the Institut géographique national de France, 1960 edition (Patel, 2014).

On 20 July 2010, Burkina Faso and the Niger jointly submitted a frontier dispute between them to the International Court of Justice, pursuant to a Special Agreement signed in Niamey on 24 February 2009, and which entered into force on 20 November 2009. In article 2 of the Special Agreement, the Court was requested to

113 See International Court of Justice: Eritrea and Ethiopia Boundary Commission 2008. Available from http://www.haguejusticeportal.net/index.php?id=6162.

114 In narrating the Burkina Faso and the Niger case, we relied heavily on the documents submitted by the two countries and the 2013 Judgment of the International Court of Justice. http://www.icj-cij.org/files/case-related/149/149-20130416-JUD-01-00-EN.pdf.

determine the course of the boundary between the two countries in the sector from the astronomic marker of Tong-Tong to the beginning of the Botou bend and to place on record the parties' agreement ("*leur entente*") on the results of the work of the Joint Technical Commission on Demarcation of the Boundary.[115]

Attempts to settle the dispute: The International Court of Justice (2002) observed that article 6 of the Special Agreement, entitled "Applicable Law", highlighted, among the rules of international law applicable to the dispute, "the principle of the intangibility of boundaries inherited from colonization and the Agreement of 28 March 1908". It noted that the first two articles of that Agreement specify the acts and documents of the French colonial administration that must be used to determine the delimitation line that existed when the two countries gained independence. The Court was of the opinion that a straight line connecting the Tong-Tong and Tao astronomic markers should be regarded as constituting the frontier between Burkina Faso and the Niger in the sector in question, given that the colonial administration officials interpreted the Arrêté in that manner. [116]

The International Court of Justice (1999) further noted that it is not possible to determine from the Arrêté how to connect the Tao astronomic marker to "the River Sirba at Bossébangou". Recourse must therefore be had to the line appearing on the 1960 map of the Institut géographique national de France (IGN). Moreover, the Court declared that it could not uphold the Niger's requests that the said line be shifted slightly at the level of the localities of Petelkolé and Oussaltane, on the ground that these were purportedly administered by the Niger during the colonial period. According to the Court, once it had been concluded that the Arrêté was insufficient, and insofar as it was insufficient, the *effectivités* could no longer play a role in the case.

The International Court of Justice further considered that, according to the description in the Arrêté, the frontier line, after reaching the median line of the River Sirba while heading towards Bossébangou, at the point called SB on the sketch-map attached to the judgment, follows that line upstream until its intersection with the IGN line, at the point called point A on the sketch-map attached to the judgment. From that point, given that the Arrêté does not suffice to determine precisely the course of the frontier line, that line follows the IGN line, turning up towards the north-west until the point called point B on the sketch-map attached to the judgment, where the IGN line markedly changes direction, turning due south in a straight line. As this turning point B is situated some 200 m to the east of the meridian which passes through the intersection of the Say parallel with the River Sirba, the IGN line does not cut the River Sirba at the Say parallel. However, the Court noted, the Arrêté expressly requires that the boundary line cut the River Sirba at that parallel. The frontier line must therefore depart from the IGN line as from point B and, instead of turning there,

115 In its Judgment of 16 April 2013, the Court indicated that, when it is seized on the basis of a Special Agreement, any request made by a party in its final submissions can fall within the jurisdiction of the Court only if it remains within the limits defined by the provisions of that Special Agreement. However, in the case in question, neither of the parties had ever claimed that a dispute continued to exist between them concerning the delimitation of the frontier in the two sectors in question on the date when the proceedings were instituted — nor that such a dispute had subsequently arisen. Accordingly, the Court considered that Burkina Faso's request exceeded the limits of its judicial function.

116 See summary of the International Court of Justice Judgment (2013). Available at http://www.icj-cij.org/en/case/149.

continue due west in a straight line until the point, called point C on the sketch-map attached to the Judgment, where it reaches the meridian which passes through the intersection of the Say parallel with the right bank of the River Sirba. According to the description in the Erratum, the frontier line then runs southwards along that meridian until the said intersection, at the point called point I on the sketch-map attached to the judgment.

International Court of Justice decision on the border dispute: The Court finally observed that, according to the Arrêté, "[f]rom that point the frontier, following an east-south-east direction, continues in a straight line up to a point located 1,200 m to the west of the village of Tchenguiliba". It considered that the Arrêté is precise in this section of the frontier, in that it establishes that the frontier line is a straight-line segment between the intersection of the Say parallel with the Sirba and the point located 1,200 m to the west of the village of Tchenguiliba, which marks the start of the southern section of the already demarcated portion of the frontier. The Court decided that, having regard to the circumstances of the case, it would nominate at a later date, by means of an Order, the experts requested by the parties in article 7, paragraph 4, of the Special Agreement, to assist them in the demarcation of their frontier in the area in dispute. By an Order of 12 July 2013, the Court nominated the said three experts. The case was thus completed and was removed from the Court's List.

An exemplary case of border dispute settlement (Patel, 2014), Kasikili/Sedudu Island). Burkina Faso and the Niger have agreed to exchange 18 towns in order to settle a long-running border dispute and end years of litigation. Burkina Faso gained 14 towns and the Niger received four by 2015, when the boundary drawing is complete.

The ruling ordered the exchange of territory between the two countries, with 786 km^2 (303 sq. miles) handed to Burkina Faso and 277 km^2 (107 sq miles) to the Niger. The countries have implemented the decision and agreed that once the disputed territory is exchanged, authorities in each country will perform a census in the affected areas so that the local populations can decide their nationality: Burkina Faso or the Niger (Patel, 2014), Kasikili/Sedudu Island).

4.12 Botswana and Namibia dispute over Kasikili/ Sedudu Island

Background

Kasikili/Sedudu Island: On 29 May 1996, the Governments of Botswana and of Namibia notified jointly to the Registrar of the Court a Special Agreement that had been signed between them on 15 February 1996 and had entered into force on 15 May 1996, for the submission to the Court of the dispute existing between them concerning the boundary around Kasikili/Sedudu Island and the legal status of that island. The Special Agreement referred to a treaty between the United Kingdom of Great Britain and Northern Ireland and Germany concerning the respective spheres of influence of the two countries, signed on 1 July 1890, and to the appointment on 24 May 1992 of a joint team of technical experts to determine the boundary between Namibia and Botswana around Kasikili/Sedudu Island on the basis of that treaty and of the applicable principles of international law. Unable to reach a conclusion on the

question submitted to it, the joint team of technical experts recommended recourse to a peaceful settlement of the dispute on the basis of the applicable rules and principles of international law. At a summit held in Harare on 15 February 1995, the Presidents of the two States agreed to submit the dispute to the Court. Taking account of the relevant provisions of the Special Agreement, the Court, by an Order dated 24 June 1996, fixed time limits for the filing, by each of the parties, of a Memorial and a Counter-Memorial. Those pleadings were duly filed within the time limits fixed.

The dispute: The plaintiff, the nation of Botswana, argued that the island should be considered its territory unless it could be proven that the main channel passes through the south region of the island, and therefore falls within the sovereignty of Namibia. Botswana held that the north and west channels of the Chobe River constitute the "main channel", and in accordance with the provisions of the Anglo-German Agreement of 1890, establishes the boundary between the two nations. Accordingly, Kasikili/Sedudu Island falls exclusively within the sovereignty of Botswana (International Court of Justice, 1996).

The defendant, Namibia, claimed that the main channel of the Chobe River indeed passes through the south of the island and that "Namibia and its predecessors had occupied, used, and exercised sovereign jurisdiction over Kasikili Island [with the knowledge and acquiescence of Botswana] since at least 1890" (International Court of Justice, 1996). Accordingly, Kasikili/Sedudu Island is a territory governed by the sovereignty of Namibia (International Court of Justice, 1996).

Attempts to manage the dispute: The Court, in view of the agreement between the parties, also authorized the filing of a Reply by each party. The Replies were duly filed within the time limits prescribed. In its Judgment of 13 December 1999, the Court began by stating that the island in question, which in Namibia is known as "Kasikili", and in Botswana as "Sedudu", is approximately 3.5 km^2 in area, that it is located in the Chobe River, which divides around it to the north and south and that it is subject to flooding of several months' duration, beginning around March. It briefly outlined the historical context of the dispute, then examined the text of the 1890 Treaty, which, in respect of the region concerned, located the dividing line between the spheres of influence of Great Britain and Germany in the "main channel" of the River Chobe. In the opinion of the Court, the real dispute between the parties concerned the location of that main channel, Botswana contending that it was the channel running north of Kasikili/Sedudu Island and Namibia the channel running south of the island. Given that the Treaty did not define the notion of "main channel", the Court itself proceeded to determine it was the main channel in the Chobe River. In order to do so, it took into consideration, inter alia, the depth and the width of the channel, the flow (i.e. the volume of water carried), the bed profile configuration and the navigability of the channel.

The Court decision: After considering the figures submitted by the parties, as well as surveys carried out on the ground at different periods, the Court concluded that "the northern channel of the River Chobe around Kasikili/Sedudu Island must be regarded as its main channel". Having invoked the object and purpose of the 1890 Treaty and its *travaux préparatoires*, the Court examined at length the subsequent practice of the parties to the Treaty. The Court found that that practice did not result in any

agreement between them regarding the interpretation of the Treaty or the application of its provisions. The Court further stated that it could not draw conclusions from the cartographic material "in view of the absence of any map officially reflecting the intentions of the parties to the 1890 Treaty" and in the light of "the uncertainty and inconsistency" of the maps submitted by the Parties to the dispute. It finally considered Namibia's alternative argument that it and its predecessors had prescriptive titles to Kasikili/Sedudu Island by virtue of the exercise of sovereign jurisdiction over it since the beginning of the century, with the full knowledge and acceptance of the authorities of Botswana and its predecessors. The Court found that, while the Masubia of the Caprivi Strip (territory belonging to Namibia) did indeed use the island for many years, they did so intermittently, according to the seasons and for exclusively agricultural purposes, without it being established that they occupied the island *à titre de souverain*, i.e. that they were exercising functions of State authority there on behalf of the Caprivi authorities. The Court therefore rejected that argument.

After concluding that the boundary between Botswana and Namibia around Kasikili/Sedudu Island followed the line of deepest soundings in the northern channel of the Chobe and that the island formed part of the territory of Botswana, the Court recalled that, under the terms of an agreement concluded in May 1992 (the "Kasane Communiqué"), the parties had undertaken to one another that there should be unimpeded navigation for craft of their nationals and flags in the channels around the island.

The settlement of Botswana and Namibia dispute over the status of Kasikili/Sedudu Island is an example showing how the cooperation over access to transboundary water resources can be settled peacefully leading to amicable relationships between the two countries. It also illustrates the importance of leadership and their capacity to abide by the course decision without invoking nationalistic sentiments, which more than often have been the stumbling block in resolving such disputes.

5. Human and economic cost of transboundary disputes

It is difficult to estimate the human and economic cost of conflict, particularly in a situation where there are meagre, if any, reliable data on transboundary disputes in Africa. At least four factors contribute to this: first, armed forces often exaggerate their enemies' war casualties and economic cost, while lowering their own as part of war propaganda and morale-raising tactics. Secondly, armed forces operations and casualties are shrouded in secrecy and suspicion of the intended use or abuse of information. Thirdly, armed forces fear that information about casualties may discourage new recruits from joining the army or may undermine national pride. Fourthly, to the best of our knowledge, most African countries do not have their own databases on the human and economic costs of conflict, and African researchers and policymakers depend on data provided by the United States and European databases. In addition to these, a forth factor is the issue of disentagling the direct from the indirect human and economic costs of the conflict inflating orunder estimating the cost.

In this section, we limit our analysis to three case studies of the human and economic costs of three unresolved or ongoing border disputes: first, the Eritrea-Ethiopia dispute over Badme, Ethiopia; secondly, the South Sudan-Sudan war over the Abyei region; and thirdly, the Côte d'Ivoire-Ghana dispute over the Jubilee maritime territory on the Atlantic Ocean. Each of the three cases provides a different and interesting insight. The Eritrean-Ethiopia war offers some of the most comprehensive assessments of the cost of recent border disputes in Africa: (i) the economic (mainly financial) claims provided by Eritrea and Ethiopia to the Eritrea-Ethiopia Claims Commission) in 2005; (ii) the human costs reported by either the Government of Eritrea or the Government of Ethiopia, the United Nations agencies and various conflict databases; and (iii) estimates of the economic effect of war on five main macro-economic sectors of the economy (GDP growth, GNI per capita, inflation and consumer prices, exports of goods and services and agriculture).

The case of South Sudan and the Sudan is important because it demonstrates the devastating cost of a border dispute over transboundary oil resources and how it vividly contributed to the collapse of the economy of South Sudan and the considerable slowdown of economic growth in the Sudan.

While the cases of the Eritrea-Ethiopia and South Sudan-Sudan wars are yet to be conclusively resolved, the Côte d'Ivoire-Ghana dispute over the Jubilee fields illustrates that disputes over transboundary resources are costly, even if the two countries have not gone to war. The Côte d'Ivoire-Ghana case also demonstrates the possibility of peaceful resolution of such disputes without actually going to war. These three cases are presented in the following sections.

5.1 Synopsis of the economic and human cost of the Eritrean-Ethiopian border conflict

The root causes of the Eritrea-Ethiopia War over Badme have been described earlier; therefore, they will not be rehashed here. Casualty figures of any war are contested, and this fact is no different in the case of the Eritrea-Ethiopia war. Most reports put the total number on both sides at around 98,192 (Uppsala database 2017).[117]

In June 2000, the Government of Eritrea estimated that nearly 550,000 Eritreans were internally displaced because of the war, in addition to an estimated 300,000 people who were internally displaced by drought. In mid-May 2000, the Office of the United Nations High Commissioner for Refugees (UNHCR) had registered 52,671 Eritrean asylum seekers who had arrived in the Sudan's eastern State of Kassala. The Government of Ethiopian estimates that by December 1998, 315,000 Ethiopians had been internally displaced, with the two regions bordering Eritrea (Tigray and Afar) having the greatest number of internally displaced people. In June 2000, UNHCR estimated that the number of internally displaced Ethiopians was 360,000, and that women and children constituted about 90 per cent of internally displaced people.

Elements of economic costs at the macro-economic economic level: The 1998-2000 war between Eritrea and Ethiopia occurred at a time when the two countries had emerged from almost three decades of a protracted war of liberation from the Derg regimes. Their economies were almost integrated, enjoying preferential trade arrangements and the transit of goods and services between the two countries. As indicated in table 5.1, the economy of Eritrea grew by 21.22 per cent in 1994 (i.e. one year after independence) and 9.26 per cent in 1996. Likewise, the economy of Ethiopia grew by 3.19 per cent in 1994 and 12.43 per cent in 1996.

War must have played a significant role in the economic slowdown of Eritrea, which registered a growth rate of -3.14 per cent in 2000. Although the sluggish growth of the Eritrean economy between 2000 and 2010 cannot be attributed to the war alone, likewise, the recovery of the Ethiopia economy and the double-digit performance it enjoyed four years after the war were significant.

The Eritrea GNI per capita before and after the 1998-2000 war is indicated in table 5.2. The GNI picked up during the first year of the war, stagnated from the end of the war in 2000 to 2002 and began to grow again from 2004 to 2010. Two years before the war, the GNI of Ethiopia was $150 or 75 per cent that of Eritrea. It shrunk to

Table 5.1: Gross domestic product (GDP) growth (annual %) in Eritrea and Ethiopia, 1994-2010

Country	1994	1996	1998	2000	2002	2004	2006	2008	2010
Eritrea	21.22	9.26	1.77	-3.14	3.01	1.45	-0.97	-9.78	2.19
Ethiopia	3.19	12.43	-3.46	6.07	1.51	13.57	10.83	10.79	12.55

Source: World Bank, World DataBank, downloaded 18 September 2016. Available from http://databank.worldbank.org/data/views/reports/tableview.aspx#.

117 Uppsala Conflict Data Programme based at the Department of Conflict and Peace Research, Uppsala University, Sweden.Available at http://ucdp.uu.se/.

Table 5.2: Gross national income (GNI) per capita, Atlas method (current US$)

Country	1996	1998	2000	2002	2004	2006	2008	2010	2012	2014
Eritrea	200	220	200	200	230	280	280	380	480 (2011)	--
Ethiopia	150	130	120	120	130	180	280	380	410	550

Source: World Bank, DataBank, downloaded 18 September 2016. Available from http://data.worldbank.org/country/eritrea?view=chart and http://data.worldbank.org/country/ethiopia?view=chart.

Table 5.3: Eritrea and Ethiopia exports of goods and services (% of GDP), 1996–2010

Country	1996	1998	2000	2002	2004	2006	2008	2010
Eritrea	29.23	14.83	9.67	11.78	5.78	6.90	4.43	4.79
Ethiopia	9.18	13.27	11.94	12.52	14.75	13.78	11.40	13.60

Source: World Bank, DataBank, downloaded 18 September 2016. Available from http://databank.worldbank.org/data/views/reports/tableview.aspx#.

$120 in 2000 and 2002 and then increased steadily to $380 in 2010 (i.e. more than 250 % of the pre-war GNI, which helped it catch up with Eritrea).

Information on the effect of the war on inflation and consumer prices in Eritrea was not available; therefore, this report has not speculated or dwelled on it. Ethiopia inflation increased from -8.48 per cent in 1996 to less than 1 per cent at the end of the war, but climbed to 12.31 per cent and 44.39 per cent in 2006 and 2008, respectively, and came down to 8.14 per cent in 2010.

In table 5.3, the war's direct and indirect effect on Eritrea and Ethiopia's exports of goods and services contribution to GDP is shown. In Eritrea, the export of goods and services declined steadily, from 29.23 per cent at the beginning of the war in 1998, to 4.79 per cent of GDP in 2010. As the figures show, Ethiopia's exports of goods and services were not as drastically affected by the war as those of Eritrea, because the war occurred in the peripheral regions of Tigray and Afar, whose contribution to GDP was rather small relative to the then peaceful and major contributors to exports (Oromia and Amhara). Furthermore, Ethiopia was able to find alternative export ports (Djibouti, Somalia and the Sudan) and was therefore able to recover in a relatively short period.

In table 5.4 it is indicated that food production in both Eritrea and Ethiopia was subdued before the war but deteriorated during the war years (2000, 20002 and 2004), then recovered between 2006 and 2012, according to UNHCR 2000 and the United Nations Children's Fund, 2000. Fighting frustrated farmers' efforts to cultivate food crops, resulting in food production dropping by nearly 40 per cent, causing malnourishment in 44 per cent of the population in Ethiopia and 58 per cent of the population in Eritrea.

As shown in table 5.5, in Eritrea, military expenditure is accorded high priority in the hope that more sophisticated weaponry will compensate for a population deficit. Military expenditure, which was already high in Eritrea prior to the war (13.4% and 22.0% of GDP), skyrocketed to 35.3 per cent and 32.7 per cent of GDP during the

Table 5.4: Eritrea and Ethiopia food production index (2004-2006 = 100), 1994-2012

Country	1994	1996	1998	2000	2002	2004	2006	2008	2010	2012
Eritrea	83.8	74.5	108.5	79.2	74.4	86.6	106.9	92.6	106.7	111.4
Ethiopia	51.5	66.7	62.5	69.6	84.8	92.8	104.4	115.3	136.8	147.0

Source: World Bank, DataBank, downloaded 18 September 2016. Available from http://databank.worldbank.org/data/reports.aspx?source=world-development-indicators#.

Table: 5.5 : Ethiopia and Eritrea military expenditure (% of GDP), 1994-2012

Country	1994	1996	1998	2000	2002	2004	2006	2008	2010	2012
Eritrea	13.4	22.0	35.3	32.7	20.7	..	..	..	..	..
Ethiopia	2.0	1.5	6.1	7.6	3.7	3.1	2.3	1.5	1.1	0.9

Source: World Bank, DataBank. Downloaded 18 September 18 2016. Available from http://databank.worldbank.org/data/reports.aspx?source=world-development-indicators#.

war effort (in 1998 and 2000, respectively). On the other hand, Ethiopia's military expenditure remained between 3.7 per cent and 0.9 per cent of GDP, except during the war, when it rose to 6.1 per cent in 1998 and 7.6 per cent in 2000.

Eritrea-Ethiopia Economic Cost as Boundary Commission awards: The Eritrea-Ethiopia Claims Commission report (2009), established by the Eritrea-Ethiopia Boundary Commission, delivered its boundary awards in April 2002. The awards were based on claims made by the Government of Eritrea and the Government of Ethiopia. On Monday, 17 August 2009, the Commission delivered its final awards regarding violations of international law during the 1998-2000 border war. The Commission awarded 15 partial and final damage awards on liability rendered between 1 July 2003 and 19 December 2005 and both sides accepted the awards. Ethiopia's final award totalled $174,036,520, while Eritrea received $161,455,000, plus an additional $2,065,865 for individual Eritrean claimants.[118]

Accordingly, the Eritrea-Ethiopia Claims Commission; notes that its awards of monetary compensation for damages were less – probably much less – than the parties believed were due. The Commission thus stands in the tradition of many other past claims commissions that have awarded only a fraction of the total amounts claimed. Its awards probably do not reflect the totality of damages that either party suffered in violation of international law. Instead, they reflect the damages that could be established with sufficient certainty through the available evidence, in the context of complex international legal proceedings carried out by the parties with modest resources and under time constraints.

The Eritrea-Ethiopia Claims Commission notes that evidence of the extent of physical damage to buildings and infrastructure is more readily gathered and presented than is evidence of the extent of injuries, including physical, economic and moral injuries, to large numbers of individuals. That fact may well have led to the lesser extent of evidence that often was offered in support of claims based on injuries to individuals. Moreover, as the claims addressed in this award are almost entirely claims by the

118 See https://pcacases.com/web/view/71.

State party for compensation for legal violations it has suffered, rather than claims on behalf of its nationals, the Commission has been compelled to make judgments not as to appropriate compensation for individual victims, but instead as to the relative seriousness of those violations of law and the effects they had on the Claimant State Party. The detailed Eritrea-Ethiopia Claims Commission Awards (by category) to Eritrea and Ethiopia are shown in annex III.

5.2 Economic and human cost of the South Sudan-Sudan border dispute

The root causes of the South Sudan and Sudan transboundary dispute over the Abeyei region are described and explained earlier in the report. This section focuses on the cost of the short border war between South Sudan and the Sudan over the Heglig oil fields. South Sudan disagreed with the ruling of the Abyei Arbitration Commission, which ruled that Heglig is located within the contested Abyei territory.[119]

The Heglig oil field became important for the Sudan after the independence of South Sudan in 2011, because prior to independence, oil revenue provided the Government of the Sudan with 63 per cent and South Sudan with 98 per cent of government revenue. Another fact worth noting is that an estimated 75 per cent of the oil field is located in South Sudan, so that the Sudan stood to lose between $7.77 and $10.4 billion without securing a favourable agreement on oil transit fees through the oil pipeline, which passes through the Port-Sudan terminal for exports.

As the negotiations between South Sudan and the Sudan on transit fees stalled, South Sudan decided to shut down all oil production in retaliation for what it alleged was Sudan's illegal confiscation of more than 6 million barrels of southern oil, valued at over $800 million to offset unpaid fees. The Government of the Sudan denied these claims, but tensions escalated, and South Sudan armed forces attacked the oil-producing region of Heglig. In April 2012, the Sudan People's Liberation Army/Movement seized control of Heglig. Whether Sudan armed forces retook Heglig or South Sudan armed forces withdrew voluntarily, the two sides continued to attack each other's border areas.

The economic cost of the oil shutdown and the damage to Heglig's oil fields, which accounts for almost half of the Sudan's oil production, suffered significantly from the damage to oil facilities. Therefore, the Sudan ended losing 70,000 barrels of oil per day. The International Monetary Fund estimated that the Sudan lost an equivalent of 2.7 per cent of its economic growth and recorded a GDP deficit of 4 per cent.

The shutdown of oil production by South Sudan had profound negative impacts on its economy and the standard of living of its population, losing 89 per cent of government revenue. The Government of South Sudan was forced to curb government expenditure by 51 per cent, with far-reaching negative consequences on

119 In 2009, the Permanent Court of Arbitration ruled that Heglig was not a part of Abyei, but belonged to the North, despite the South's claim that it belonged to the South culturally.

Table 5.6: Exports of goods and services (% of GDP), 2011-2015

Country	2011	2012	2013	2014	2015
South Sudan	66.07612	10.12162	16.19534	20.15123	9.776992
Sudan	17.56763	10.01875	7.204708	6.132845	6.907109

Source: Compiled from the World Bank DataBank (2016}. Accessed 29 September 29 2016. Available from http://databank.worldbank.org/data/reports.aspx?source=world-development-indicators#.

Table 5.7: South Sudan and Sudan GDP growth (annual %), 2011-2015

Country	2011	2012	2013	2014	2015
South Sudan	-4.64032	-46.0821	13.12973	3.373648	-6.34978
Sudan	-1.96773	-2.2147	3.3	3.1	3.439616

Source: Compiled from the World Bank, DataBank 2016. Accessed 29 September 2016. Available from http://databank.worldbank.org/data/reports.aspx?source=world-development-indicators#.

health, education and other public services.[120] The World Bank reported that the oil shutdown left South Sudan low on foreign exchange reserves, weakened the South Sudanese pound, increased the cost of imports and put further strain on an already crippled economy.[121]

More systematically, the following data reflect some of the macroeconomic consequences of the 2012 border war between the Sudan and South Sudan. The consequences of the shutdown of oil production and the damage to the Heglig oil field has negatively impacted exports of goods and services from the two countries, as shown in table 5.6. The table shows that the export of goods and services, mainly oil as the main export commodity of South Sudan, decreased from about 66.07 per cent in 2011 to 10.2 per cent and 16.1 per cent of GDP in 2012 and 2013, respectively. The 2013 civil war between the Government of South Sudan and the opposition (Sudan People's Liberation in Opposition) reduced oil exports to 20.1 per cent and 9.7 per cent of GDP in 2014 and 2015, respectively.

The devastating impact of the 2012 border war and the subsequent civil war in South Sudan on GDP growth during 2011 and 2015 is shown in table 5.7. In 2012, the year when the war started, the South Sudan economy had a negative growth rate of -46.08 per cent. GDP growth rate was restored to 13.1 per cent in 2013, only to be depressed by the 2013 civil war, whose consequences began to be felt in 2014 and 2015, when the economy grew by only 3.4 per cent and registered a negative growth rate (-6.3 per cent), in 2015. During the same period, the Sudan economy shrunk by -2.2 per cent in 2012, but picked up to 3.3 per cent, 3.1 per cent and 3.4 per cent in 2013, 2014 and 2015, respectively.

The economic downturn in South Sudan and the Sudan has had a devastating impact on the income of the population and, consequently, its livelihood. South Sudan and the Sudan GNI per capita, purchasing power parity (ppp) (constant 2011 international US$) 2011-2015, are shown in table 5.8. GNI per capita income for South Sudan has

120 See World Bank 2013. South Sudan Overview. Available from http://www.worldbank.org/en/country/southsudan/overview. Accessed 15 December 2015.
121 Ibid. 2013.

Table 5.8: South Sudan and the Sudan GNI per capita, purchasing power parity (constant 2011 international US$) 2011-2015

Country	2011	2012	2013 [	2014	2015
South Sudan	2 227.26	2 057.957	2 144.84	2 046.057	1 882.499
Sudan	3 335.512	3 675.157	3 701.346	3 756.357	3 846.371

Source: Compiled from the World Bank, DataBank 2016. Accessed 29 September 2016. Available from http://databank.worldbank.org/data/reports.aspx?source=world-development-indicators#.

Table 5.9: Internally displaced persons, the Sudan and South Sudan, 2011 – 2015

Country	2011	2012	2013	2014	2015
South Sudan	560 161	345 670	331 097	645 392	1 790 247
Sudan	2 422 520	1 873 300	1 873 300	2 192 830	3 218 234

Source: Compiled from UNHCR, Population Statistics. Accessed 10 October 2016. Available from http://popstats.unhcr.org/en/time_series.

Table 5.10: Refugees originating from South Sudan and the Sudan, 2011 – 2015

Country	2011	2012	2013	2014	2015
South Sudan, originating from the Sudan	76 845	208 130	225 272	725 000	241 002
Sudan, originating from South Sudan	--	--	--	115 451	194 404

Source: Compiled from UNHCR, Population Statistics. Accessed 10 October 2016. Available from http://popstats.unhcr.org/en/time_series.

never been restored to the pre-border war or civil war level. In 2015, it decreased from $2,227.25 to $1,882.499 (-$334.77 or about 15.4%). However, the Sudan has had a slight GNI per capita improvement, increasing from $3,335.5 during the pre-war period to about $3,846.3 in 2015.

Human cost of the border war between South Sudan and the Sudan: The consequences of the border war between South Sudan and the Sudan on the population of the two countries are horrific. In table 5.9, it is indicated that there were over 560,000 internally displaced persons (IDPs) in South Sudan in 2011. With the intensification of the war in South Kordofan and the Blue Nile States, the number of IDPs in South Sudan increased to 1,790,247 in 2015. While the number of IDPs in the Sudan was 2,422,520 in 2011, it increased to over 3.2 million people in 2015.

In table 5.10, it is indicated that there were 76,845 refugees originating from South Sudan in 2011. That number increased dramatically, to reach 725,000 in 2014 as a result of the 2012 war between South Sudan and the Sudan and later because of the increasing number of South Sudanese who began to seek refuge in the Sudan.

As of September 2016, UNHCR reported that the number of people who had been forced to flee from South Sudan to countries in the region had reached more than 1 million. In Uganda, the influx of South Sudanese refugees continues, with some

47,998 newly arrived individuals, while in Ethiopia, about 11,420 South Sudanese refugees have entered the country, and in the Democratic Republic of Congo, UNHCR has received 10,000 new South Sudanese arrivals.

5.3 Projected economic cost of Côte d'Ivoire-Ghana Maritime Border Dispute

In reporting the projected economic cost of the dispute between Ghana and Côte d'Ivoire, we depended on verified information that Ghana supplied to the Special Chamber. It contained estimates of the cost Ghana would incur should the Special Chamber accept the provisional measures requested by Côte d'Ivoire to suspend operations in the Tweneboa-Enyenra-Ntomme and Jubilee oil fields (Ghana, 2015).

In its submission, Ghana claimed that: "The provisional measures sought by Côte d'Ivoire would deliver a crippling blow to Ghana's petroleum industry, cause major dislocations throughout Ghana's economy, and set back its economic development for many years". (Ghana, 2015).

Ghana presented the statement of Paul Mcdade on behalf of Tullow Oil pic (Ghana, 2015), which determined that the cost of exploration and appraisal work in the Tweneboa-Enyenra-Ntomme oil field from January 2006 to November 2012 was "approximately $1 billion". The planned development of the field for production required "the investment of approximately a further $4 billion (not including very substantial leasing costs for the long-term contracted FPSO [floating production storage and offloading] by Tullow Oil and its co-venturers before first oil, scheduled in mid-2016". A large part of the $4 billion has already been committed through a series of lump sum contracts with world-class major contractors around the globe, with around $2 billion having already been expended.

One of the many long-term contractual commitments, for example, is for the semi-submersible drilling unit, which, according to the Tullow Oil Statement "drills and completes the wells, at a cost of over $1.25 million a day (for the rig and associated service contracts (Ghana, 2015). An order to stop all activity in the Tweneboa-Enyenra-Ntomme field would have consequences beyond the billions of dollars already spent and committed to the project. (Ghana, 2015). In addition to being financially ruinous, the ramifications of such an order would be complex, widespread and potentially irreversible. Tullow Oil estimated the "additional cost that would result from a suspension of operations in the disputed area to be in the order of $1–2 billion, before account is taken of the significant financing implications such a decision could have on Tullow, its co-venturers and the contractor companies involved in the project (Ghana, 2015).

The announcement alone in the Economic Impact Statement that Côte d'Ivoire was seeking provisional measures caused the Tullow Oil share price to drop by over 6 per cent ($308 million) in a single day.[122]

122 See Reuters, "Tullow falls on worries legal dispute could delay Ghana project", 2 March 2015. Available at http://af.reuters.com/article/investingNews/idAFKBN0LY1K720150302. Accessed 19 March 2015.

The harm to Ghana's economy by suspending operations in the Jubilee oil field would be enormous. Ghana's economic development would be stunted. Its plans to build infrastructure, generate employment and reduce poverty, which depend on increased revenue from oil production, would be harmed. In 2014, oil accounted for 9.3 per cent of overall GDP, and 13.5 per cent of domestic revenue. Ghana has used that revenue for key fiscal and development purposes, including agriculture modernization and infrastructure projects (such as the construction of roads and bridges, hospitals and educational facilities (Ghana, 2015).

Priorities set in the 2015 budget include the development of thermal energy resources, the completion of water supply systems and the training of teachers. All depend on oil-generated revenues for their execution. Ghana also depends on these revenues for repayment of debt. Some of the projected inflows have already been earmarked for the repayment of the $500 million balance on the 2017 eurobond, the entire 2023 and 2024 eurobonds (of $1 billion each) and subsequent eurobond issuances. (Ghana, 2015).

The petroleum industry is also an important source of employment in Ghana, both directly and indirectly. If granted, the request of Côte d'Ivoire for provisional measures will have a harsh impact on employment and training opportunities. Thousands of Ghanaians, including owners of small businesses, owe their livelihood to the activities of Tullow Oil and other concession holders in the area that would be affected by the requested provisional measures (Ghana, 2015).

Compliance with the company's local content commitments, and generating a new fabrication capacity that enables more technical work to be done in Ghana will be lost. Were the provisional measures to be granted, these opportunities would stop, reducing both employment and capacity-building.

Put in context, the TEN [Tweneboa-Enyenra-Ntomme] project's projected contribution to Ghana's economy in 2017 is $2.2 billion or the equivalent to 116 per cent of Ghana's 2015 budget for educational programs and 254 per cent of its annual spending on health services (Ghana, 2015). Enduring such a near-term loss in Ghana's economy, with limited time to plan or prepare to cover the loss, would have grave consequences for the country's development, and severely limit its ability to provide for its citizens' well-being.

6. Success stories and lessons learned

6.1 Success stories

The case studies show that not all border disputes end up in violent conflicts or in a perpetual limbo, some are amicably resolved while others linger on for decades. With regard to the case studies are presented in the report, the settlement of the cases of the Botswana and Namibia dispute over Kasikili/Sedudu Island was amicably resolved between the two States. First, they drew up an agreement to settle the dispute. Secondly, when differences emerged about the interpretation of the 1996 Agreement, they agreed of their own accord to refer the dispute to the International Court of Justice. On 13 December 1999, the Court delivered its official judgment. The Court held, with 11 votes to 4, that "the boundary between Namibia and Botswana around Kasikili/Sedudu Island followed the line of deepest soundings in the northern channel of the Chobe" and that the island "forms part of the territory of the Republic of Botswana" (International Court of Justice, 1999). The Court also ruled that while Namibia had historically occupied the island, the State functions in which it participated during seasonal occupation did not constitute ownership. The two countries accepted the Court decision, implemented it and agreed to cooperate in the mutual use of the Island.

An equally successful and exemplary case is the settlement of the dispute between Burkina Faso and the Niger Frontier Dispute from Tong-Tong to Botou. On 20 July 2010, Burkina Faso and the Niger agreed and jointly submitted a frontier dispute between them to the International Court of Justice. Burkina Faso and the Niger requested the International Court of Justice in pursuant the Special Agreement signed in Niamey on 24 February 2009 and which entered into force on 20 November 2009 to determine the course of the boundary between the two countries. Specifically, they referred tothe sector from the astronomic marker of Tong-Tong to the beginning of the Botou bend and to place on record the parties' agreement ["*leur entente*"] on the results of the work of the Joint Technical Commission on Demarcation of the Boundary.

The two countries accepted the court ruling, which led to the peaceful exchange of territory along 620 miles of the disputed border. The countries have agreed to swap 18 towns, resulting in Burkina Faso gaining 14 towns and the Niger gaining 4. In effect, the 2013 International Court of Justice ruling stipulated that territories totalling 786 km^2 be granted to Burkina Faso and 277 km^2 be granted to the Niger. The town swap accomplished that result and thus ended the lengthy legal dispute between the two countries, which dated back to the colonial period. A unique aspect of the settlement of the dispute is that it offered citizens in the swapped territories to, individually, choose their preferred nationality. That is practical and rational practice, which puts the interests of citizens first, recognizing that the cooperation between the border communities will eventually take place regardless of nationality.

The lessons learned are divided into two categories: general lessons learned and case study-specific lessons learned. The two are complementary. They are as follows.

6.2 General lessons learned

First, border disputes originated in the colonial past. These disputes are intractable and traverse the natural resources in question to engulf other factors such as local communities, transboundary ethnic groups, transnational corporations and firms. Relatively high African population growth has created increasing demand for natural resources, which has been exacerbated by increased global demand. Essentially, the current trend of demand is multi-layered (within and between countries, regional economic communities and globally).

Second, as the case studies have illustrated, transboundary disputes can be dormant for decades, but once high-premium resources are discovered, there is the likelihood that they will become conflict triggers, capable of altering peaceful interstate relations from peaceful to conflict-ridden. Therefore, the old wisdom that "prevention is better than cure" applies and the need for scrupulous efforts to demarcate African borders should be a matter at the top of African development, peace and security agendas.

Third, bilateral agreements that avoid the involvement of African continental and regional economic communities' institutions or rely only on the good offices of international courts and instruments responsible for transboundary dispute management have proven to be non-sustainable in the long run. As case studies will demonstrate, mixed committees and the involvement of continental institutions and regional economic communities have much better chances of success. On the other hand, if these disputes inevitably have to go to court, it has been suggested that the parties be given the opportunity to utilize African-based regional courts to resolve these disputes. For instance, Egede had suggested in the case of maritime disputes the possibility of creating a chambers within the proposed merged court of the African Court of Justice and the African Court of Human Rights, which would deal with law of the sea matters, including maritime disputes between African States, if the parties so choose.[123]

Fourth, it is crucial for African States having maritime boundary disputes to explore the possibility of joint development arrangements, in line with the United Nations Convention on the Law of the Sea, articles 74 (3) and 83 (3), which allows them to enter into such joint arrangements to exploit pending the resolution of the dispute. There are examples of such joint development arrangements all over the world,[124] including Africa, which have been successful. An example in Africa is the Nigeria-Sao Tome Joint Development Zone.[125]

Fifth, transboundary resource disputes that have been resolved successfully have exhibited the presence of leadership committed to peaceful coexistence with

123 See Edwin Egede, "Institutional Gaps in the 2050 Africa's Integrated Maritime Strategy", *Journal of Ocean Law and Governance in Africa* (2016), pp.1-27, particularly pp.10-15.
124 See M.J. Valencia and M. Miyoshi, "Southeast Asian Seas: Joint Development of Hydrocarbons in Overlapping Claim Areas", *Ocean Development and International Law*, vol. 16 (1986), pp. 211-254; and David Ong, "Joint Development of International Common Offshore Oil and Gas Deposits: 'Mere' State Practice or Customary International Law?', *American Journal of International Law*, vol.93, No.4 (October 1999), pp. 771-804.
125 See http://www.nstpjda.com/.

neighbours within the framework of cooperation for the betterment of the livelihoods of the respective countries and people involved.

Sixth, stalled efforts to manage transboundary disputes have proven to be costly, even without resorting to violent conflict. This has been clearly demonstrated by the case of the maritime dispute between Ghana and Côte d'Ivoire.

Seventh, the current shifts in pastoral development policies towards integrated regional programmes show that recognition has been given to the importance of pastoral transboundary movement for livestock production and livelihoods. The creation of pastoral networks involving a number of countries in the Horn of Africa and the Sahel has reduced tension, established transboundary conflict management mechanisms and enhanced transboundary trade.

6.3 Case study-specific lessons learned

The case studies identified four main transboundary resources that were causing disputes: oil, gas, water and grazing rights. Recent years have witnessed a noticeable increase in disputes between States over minerals, gas, oil, gold, diamonds, uranium and platinum. Other transboundary resources in contention over traditional resources (grazing, farmlands and fishing rights) at the national and community level have become the focus of daily survival struggles between communities, degenerating in some instances into violent conflicts. The case studies provide lessons of experiences that deserve serious attention by policymakers and community leaders in cross-border areas engulfed in disputes over transnational natural resources. The lessons are drawn on the basis of the eight case studies presented in this study. They are as follows.

First, the Côte d'Ivoire and Ghana maritime border dispute over the Tweneboa-Enyenra-Ntomme and Jubilee oil fields illustrates that it is possible to project the economic cost of delayed exploitation of transboundary resources. Economic cost projections are verifiable and often measured in the loss of billions of dollars in revenue, which could otherwise have accrued to the Government. As described in Ghana Statement to the International Tribunal for the Law of the Sea (2015): "The provisional measures sought by Côte d'Ivoire would deliver a crippling blow to Ghana's petroleum industry, cause major dislocations throughout Ghana's economy and set back its economic development for many years". The economic cost would have been larger for both countries, if they had pursued non-peaceful measures to resolve the dispute. The two countries have accepted the judgement of and decided to cooperate as described in concluding the case study. In common with other similar case studies, it often takes years, if not decades, to resolve border disputes, which become ever more intractable, complex and difficult to resolve as the years pass.

Second, the lessons to be learned in the case of the Cameroon-Nigeria dispute over the Bakassi Peninsula demonstrate that military occupation can be undone by the application of international law (by the International Court of Justice, in this case) governing border disputes between States. In 2006, the Nigerian armed forces evacuated the Cameroonian border regions it occupied, claiming these regions had been on its side of the Peninsula in 1994. The case also shows the importance of

leadership both at the national (Olusegun Obasanjo, President of Nigeria) and the international (Kofi Anan, Secretary-General of the United Nations) levels. Another important lesson was the immediate establishment of the Cameroon-Nigeria Mixed Committee, which was tasked with monitoring the implementation of the agreement and the demarcation of the border between the two countries. A timetable for handing over the island to Cameroon was drawn up in 2008, establishing a code of conduct for the treatment of the local population and serving as a face-saving measure to allow Nigerian troops to be present in 18 per cent of the Peninsula. Although not without hiccups, the transition was completed in 2013, with further measures being taken for confidence-building between the two countries.

Third, the Angola/Democratic Republic of Congo dispute over the maritime borders and oil reserves offers few positive lessons. The most tangible negative lesson not to be learned is the lack of trust between the two countries, which has been exacerbated by issues beyond the border (alleged support by the Congo for Kabila and the suspicion of support by the Democratic Republic of the Congo for the rebellion against Angola by the Cabinda enclave). Like the dispute between Egypt and the Sudan over Hala'ib (delineated below), transboundary disputes entangled with broader geopolitical considerations are difficult to resolve without commitment and stout leadership.

A positive lesson to be learned in the Angola-Democratic Republic of the Congo maritime dispute is about their experimentation with two memorandums of understanding (2003 and 2007), which resulted in establishing a joint technical committee and a common interest zone as a special exploration area in the lower Congo Basin, pending delimitation of their maritime boundaries. Unfortunately, owing to the seemingly non-compromising stand of both countries, this noble objective never materialized. Also, in common with Kenya and Somalia's maritime dispute, the Angola-Democratic Republic of the Congo case ended up with the International Court of Justice, when they submitted that the two memorandums of understanding and the common interest zone were not workable.

Fourth, the dispute between Egypt and the Sudan over Hala'ib is entangled with their colonial past and the potential of exploiting mineral deposits such as gold, oil, gas and other mineral resources. The dispute over Hala'ib is often raised regarding non-related geopolitical challenges, such as the 1959 Nile Waters Agreement and the role of the Muslim Brotherhood in the relationship between the two countries.

A pivotal lesson to be learned from Hala'ib's case is that reluctance to refer border disputes to the established international courts not only delays possible solutions, but also complicates matters further and contributes to situations that can lead to violent conflicts. Although Egypt and the Sudan have not gone to war over Hala'ib, the consequences of a protracted dispute over a contested border can potentially result in interstate conflict, which may involve the use of force or a threat of force, depending on the state of relations when heightened nationalist rhetoric flares up. Such disputes affect not only the security of the two States; they can also contribute to regional insecurity.

Given the changing relations between Egypt and Ethiopia over the Grand Ethiopian Renaissance Dam and the Nile's waters, as well as the dispute between South Sudan and the Sudan over Abyei and other border posts, resolving the disputes between Egypt and other neighbouring countries could help to resolve other disputes in the region and consolidate peace. Aware of the positive multiplier impacts a resolution of the Hala'ib disputes could bring to the region, the African Union, the United Nations and other actors need to take proactive steps to provide effective platforms for deliberation and finding solutions.

Fifth, the Abyei Boundary Dispute: Sudan/South Sudan: In situations where compromises between the two States have proven difficult, agreeing to arbitration through the resolutions of border commissions (such as the Abyei Border Commission) and their enforcement is near impossible. In the case of Abyei, there are at least two levels of conflict: long-standing inter-community conflicts over traditional resources; and interstate war over modern resources such as oil, minerals and gum Arabica. The latter complicates the former, because of the dominance of the central Governments of South Sudan and the Sudan over the periphery (the border communities), entwined with interventions by non-State actors, including armed groups and transnational oil companies.

Community-level conflicts were managed peacefully until the Sudan introduced the "modern government system" in 1972. Now, with the secession of South Sudan, the discovery of oil, the rising price of gum Arabica, climatic stress on the pastoralist Misseriya, the rise of identity-based politics, the rise of Islamic fundamentalism and the role of transnational companies in search of oil and other resources, the dynamics have changed. While the interests of the Governments of South Sudan and the Sudan, and the Dinka and the Misseriya communities are important, the primary anchor for the resolution of the Abyei issues needs to be embedded in the rights of the populations in the Abyei areas, both the Misseriya and Dinka pastoralists. International and traditional rights of the respective populations need to be given legal standing, affirmed through treaties and local and regional institutions that should resolutely follow up on the implementation of the resolution mechanisms.

Sixth, the Great Ethiopian Renaissance Dam Dispute: Egypt/Ethiopia. Long-standing disputes over the transboundary water resources of the Nile, emanating from the colonial experience are amenable to political resolution without resorting to violent conflicts between States. The Grand Ethiopian Renaissance Dam offers a case where cooperation between riparian countries can lead to a win-win solution to a potentially protracted dispute over the Nile. A lesson to learn here is that the dam and any other hydroelectric projects on the River Nile should be treated as integrative factors and could effectively enhance opportunities for geopolitical interdependence. The Nile River Basin Commission may not only prevent conflicts; it could also multiply integrative opportunities, such as the establishment of regional energy pools for energy sharing among all the riparian countries.

Responsive to changes on the political, socioeconomic and environmental landscapes of the Nile Basin States, the Cooperation Framework Agreement and the Nile Basin Initiative are exemplary initiatives that need to be supported within a broader regional framework specifically designed to avoid and reduce conflict triggers

over transboundary water resources. Such a framework should aim at enhancing cooperation.

Global conventions on water resources by themselves do not compensate for the need to develop an Africa-specific declaration based on the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (1992). Concomitantly, an African convention on water resources should be dapted to the specificity of the African context. The African Peer Review Mechanism may have to take transboundary resource governance into consideration, particularly its linkage to climate change, and water and energy security issues to assess how member States progress in national and regional water governance.

Seventh, Migingo Island dispute: Kenya/Uganda: Border disputes over transboundary resources occur, regardless of the strength of bilateral relations between States and their bilateral integration into functional political, social and economic aspects of governance or within their respective regional economic communities. Many commentators were taken by surprise to witness the sudden upsurge of inflammatory rhetoric between Kenya and Uganda over the Lake Victoria islands.

However, the intractability of the challenges surrounding the islands has not prevented the two countries from seeking the support of the African Union Border Programme. The aim of the Programme is to go beyond the Lake Victoria border to reaffirm the location of Migingo in the borders between Uganda and Kenya.

Eighth, the maritime dispute between Kenya and Somalia is not new, and dates back to colonial rule. In common with most African border disputes, the dispute remained dormant until the recent surge in the discovery of inland and maritime oil, gas and minerals, which pitched one country against the other. Only time will show whether a policy-oriented and institutionally supported proactive commitment can be sought at the regional level to identify such disputes on natural resources and determine the available remedies before seeking international justice or a hybrid model (Cameroon and Nigeria Mixed Commission).

As in the case of the dispute between Kenya and Uganda over the Lake Victoria islands, membership of IGAD did not prevent the two countries from taking the case to the International Court of Justice. The Court concluded that Memorandum of Understanding between Somalia and Kenya did not constitute an agreement "to have recourse to some other method or methods of settlement" (International Court of Justice, 2017)[126] within the meaning of Kenya's reservation regarding article 36, paragraph 2, of the Court's Statute, and consequently this case did not, by virtue of the memorandum of understanding, fall outside the scope of Kenya's consent to the Court's jurisdiction.

126 In lieu of International Court of Justice Conclusion (2014: 2) on whether the reservation contained in Kenya's declaration under Article 36, paragraph 2, and applicable by virtue of the MoU (para. 106), the Court concludes that the MoU does not constitute an agreement "to have recourse to some other method or methods of settlement" within the meaning of Kenya's reservation to its Article 36, paragraph 2, declaration, and consequently this case does not, by virtue of the MoU, fall outside the scope of Kenya's consent to the Court's jurisdiction.

An important lesson to be learned from the Somali-Kenya maritime dispute is that half-hearted solutions outside the realm of international law or the involvement of African continental (African Union) and regional institutions, regional economic communities and, in this case, IGAD, may only provide a respite but not a durable solution. Equally important is the fact that a memorandum of understanding between the two countries initially stabilized the dispute, but it has not provided an everlasting solution.

Ninth, the peaceful settlement of the dispute between Botswana and Namibia over Kasikili/Sedudu Island and the Burkina Faso and Niger Frontier Dispute from Tong-Tong to Botou should be ameliorated. In each case, the States signed agreements to settle long-simmering border disputes and when differences of interpretation of the agreements arose they sought legal advice and each submitted its claim to the International Court of Justice. In both cases, the countries involved accepted, and implemented the court ruling in an amicable manner.

Annexes

Annex I: Organization of African Unity/African Union Treaties, Conventions, Protocols and Charters directly or indirectly relating to natural resources sustainable use, management and protection

No	Treaty	Date of adoption	Date of entry into force
1.	Organization of African Unity Charter, Addis Ababa, 25 May 1963		
2.	African Convention on the Conservation of Nature and Natural Resources	15 September 1968	16 June 1969
3.	Constitution of the Association of African Trade Promotion Organizations	18 January 1974	28 March 2012
4.	Inter-African Convention Establishing an African Technical Co-operation Programme	1 August 1975	
5.	African Charter on Human and Peoples' Rights	1 June 1981	21 October 1986
6.	Convention of the African Energy Commission	11 July 2001	13 December 2006
7.	Protocol Relating to the Establishment of the Peace and Security Council of the African Union	9 July 2002	26 December 2003
8.	Protocol of the Court of Justice of the African Union	1 July 2003	11 February 2009
9.	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa	1 July 2003	25 November 2005
10..	Protocol on Amendments to the Constitutive Act of the African Union	11 July 2003	25 April 2012
11	The African Union Non-Aggression and Common Defence Pact	1 January 2005	18 December 2009
12..	Statute of the African Union Commission on International Law	4 February 2009	4 February 2009
13.	African Charter on Statistics	4 February 2009	8 February 2015
14.	Statute of the African Union Commission on International Law (AUCIL)	4 February 2009	4 February 2009
15.	Protocol on the African Investment Bank	30 June 2009	
16.	African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)	23 October 2009	6 December 2012
17.	Revised Constitution of the African Civil Aviation Commission	16 December 2009	11 May 2010
18.	Revised African Maritime Transport Charter	26 July 2010	
19.	African Union Convention on Cross-Border Cooperation (Niamey Convention)	27 June 2014	
20.	Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights	27 June 2014	
21.	African Charter on the Values and Principles of Decentralization, Local Governance and Local Development	27 June 2014	

No	Treaty	Date of adoption	Date of entry into force
22.	Statute of the African Science Research and Innovation Council (ASRIC)	30 January 2016	
23.	Statute of the African Minerals Development Centre	30 January 2016	
24.	Statute of the African Observatory in Science Technology and Innovation (AOSTI)	30 January 2016	
25.	Statute on the Establishment of Legal Aid Fund for the African Union Human Rights Organs	30 January 2016	
26.	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa	31 January 2016	
27.	African Charter on Democracy, Elections and Governance	30 January 2007	15 February 2012
28.	Revised African Convention on the Conservation of Nature and Natural Resources	7 March 2017	

Source: African Union, https://www.au.int/web/en/treaties, downloaded 5 July 2017.

Annex II: African Union Border Programme: uniting and integrating Africa through peaceful, open and prosperous borders127

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 on the continent. Most of the borders are poorly defined. The location of strategic natural resources in cross-border areas poses additional challenges.

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 that is imposed upon them by borders. Indeed, 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.

Political and legal instruments guiding the African Union Border Programme

Member States adopted a number of political and legal instruments to guide their efforts in the management of border issues; they include:

- 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 Organization of African Unity+, held in Cairo in July 1964

- Article 4 (b) of the African Union Constitutive Act

- 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 Organization of African Unity, held in Addis Ababa in July 1986

- Memorandum of Understanding on Security, Stability, Development and Cooperation in Africa (CSSDCA), adopted by the Organization of African Unity 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 African boundaries by 2012 where such an exercise has not yet taken place]

- Decision of the 8th Ordinary Session of Heads of State and Government of the African Union, held in Addis Ababa in January 2007, encouraging the Commission to pursue its efforts towards the structural prevention of

127 See African Union Border Programme (2004) Available at http://www.peaceau.org/en/page/27-au-border-programme-aubp. Accessed 1 July 2017.

conflicts, especially through the implementation of the African Union Border Programme. As a follow-up to this decision, the Commission convened, in Addis Ababa, on 7 June 2007, the first Conference of African Ministers in Charge of Border Issues. The Conference adopted a declaration on the Border Programme and its implementation modalities, which was endorsed by the Executive Council in Accra. On 25 March 2010, the Commission convened the second Conference of African Union Ministers in Charge of Border Issues, held in Addis Ababa. The Ministers adopted the declaration on the Border Programme and its implementation modalities, which was endorsed by the Executive Council in Kampala on 23 July 2010.

Justification for the establishment of the African Union Border Programme

- To address the problems posed by the lack of delimitation and demarcation, which 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

- To address cross-border criminal activities through pragmatic border management

- To consolidate the gains made in the regional integration process, as demonstrated by the existence of the regional economic communities and numerous large-scale cooperation initiatives

- To facilitate the development of cross-border integration dynamics, which are sustained by local stakeholders

African Union Border Programme vision

A united and integrated Africa with peaceful, open and prosperous borders

African Union Border Programme mission

The prevention and resolution of border-related disputes and the promotion of regional and continental integration, which constitutes a tool in the structural prevention of conflicts in Africa

The strategic objectives of the African Union Border Programme

- Facilitating and supporting the delimitation and demarcation of African boundaries where such exercise has not yet taken place

- Reinforcing the integration process, within the framework of the regional economic communities and other large-scale cooperation initiatives

- Developing, within the framework of the regional economic communities and other regional integration initiatives, local cross-border cooperation

- Building the capacities of Member States in border management, as well as in border studies and research

- Advising the Commission and other organs of the African Union on border-related matters.

African Union Border Programme implementation modalities

The African Union Border Programme is being implemented at the national, regional and continental levels on the basis of the principles of subsidiarity and respect of the sovereignty of States.

- The delimitation, demarcation and management of boundaries depend primarily on the sovereign decision of the States. The African Union Border Programme works closely with States to undertake and pursue bilateral negotiations on all issues relating to the delimitation, the demarcation and the management of their borders, while aiming to protect and promote the interests and rights of border populations. The Border Programme assists the States in mobilizing the necessary resources and expertise needed to delimit, demarcate and manage their boundaries.

- Local stakeholders are the primary drivers and key players of cross-border cooperation. The African Union Border Programme works closely with regional economic communities to facilitate local initiatives that promote cross-border cooperation. The Border Programme, in partnership with the regional economic communities, plans to establish regional funds to finance cross-border cooperation projects, and has prepared a convention on cross-border cooperation, which is under consideration by the relevant African Union organs. The Border Programme is also taking 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 the role of these institutions to play a coordination role and facilitate the exchange of information and good practices between the regional economic communities.

Annex III: Eritrean Ethiopian Claims Commissions Awards to Eritrea and Ethiopia

Compensation Awarded to Eritrea

1. $13,500,000 for losses of residential and business property on the Central and Western Fronts in Serha, Senafe, Teseney, Alighidir, Guluj, Tabaldia, Gergef, Omhajer, Barentu and Tokombia, and Molki Sub-Zoba

2. $35,965,000 for damage to, and destruction of, buildings on the Central and Western Fronts in Serha, Senafe, Teseney, Alighidir, Guluj, Tabaldia, Gergef, Omhajer, Barentu and Tokombia, and Molki Sub-Zoba

3. $1,500,000 in respect of injuries to civilians owing to loss of access to health care on account of damage to, or destruction of, Eritrean hospitals and other medical facilities and loss of medical supplies

4. $100,000 for damage to cultural property, specifically $50,000 for damage to the Stela of Matara and $50,000 for damage to the Tserona Patriots Cemetery

5. $4,000,000 for mistreatment of prisoners of war

6. $2,000,000 for failing to prevent the rape of known and unknown victims in the towns of Senafe, Barentu and Teseney

7. $1,550,000 for the forcible expulsion of the population of Awgaro

8. $50,000 in respect of the unknown, but apparently small, number of dual Eritrean-Ethiopian nationals who were arbitrarily deprived of their Ethiopian nationality while present in third countries

9. $15,000,000 in respect of the wrongful expulsion of an unknown, but considerable, number of dual nationals by local Ethiopian authorities

10. $11,000,000 for receiving, caring for and resettling rural Ethiopian nationals wrongfully expelled from Ethiopia

11. $2,000,000 for failure to provide humane and safe treatment for persons being expelled from Ethiopia

12. $46,000,000 for expellees' losses of property because of Ethiopia's wrongful actions

13. $24,525,000 for Ethiopia's failure to return or provide compensation after the war for vehicles it requisitioned from non-resident Eritreans

14. $1,500,000 for other property losses of non-resident Eritreans

15. $2,600,000 for imprisoning Eritrean civilians on security charges or detaining them for unknown reasons under harsh and unacceptable conditions

16. $155,000 for the violation of Eritrea's diplomatic premises and property

17. As determined at the liability phase, the Commission considers its finding that Ethiopia unlawfully deprived dual Eritrean-Ethiopian nationals of their Ethiopian nationality to be appropriate reparation for the violation

18. As determined at the liability phase, the Commission considers its finding that Ethiopia unlawfully interfered with Eritrea's departing diplomats to be appropriate reparation for the violation

19. All of Eritrea's other claims on its own behalf are dismissed

20. For claims filed by Eritrea on behalf of named individuals, the Commission awards the following amounts:
    a) $319,615 for Hiwot Nemariam and Belay Redda, for failure to provide humane and safe treatment in transport from Ethiopia, lack of access to bank accounts, and unlawful deprivation of property;

    b) $1,500,000 for Sertzu Gebre Meskel, for the unlawful deprivation of property;

    c) $21,250 for Mebrahtu Gebremedhin, for lack of access to bank accounts and unlawful deprivation of property;

    d) $225,000 for Mebrat Gebreamlak, for lack of access to bank accounts and unlawful deprivation of property;

    e) The claim of Fekadu Andremeskal is dismissed.

21. In addition to the award of satisfaction to Eritrea for all of the liability findings of the Commission, the total monetary compensation awarded to Eritrea in respect of its own claims is $161,455,000. The amount awarded in respect of claims presented on behalf of individual claimants is $2,065,865.

At the conclusion of its lengthy proceedings and the issuance of this Final Award, and the parallel Final Award in Ethiopia's claims against Eritrea, the Commission reiterated its confidence that the parties will ensure that the compensation awarded will be paid promptly, and that funds received in respect of their claims will be used to provide relief to their civilian populations injured in the war.

Compensation Awarded to Ethiopia

A. The Commission awarded Ethiopia the following compensation for Eritrea's violations of jus in bello:

1. $11,000,000 for the death, physical injury, disappearance, forced labour and conscription of Ethiopian civilians

2. $2,000,000 for failing to prevent the rape of known and unknown victims in Irob, Dalul and Elidar Weredas

3. $13,900,000 for the looting, destruction of, and damage to houses

4. $20,195,000 for damage, destruction and looting in Zalambessa

5. $2,500,000 for death, injury and property damage in Mekele

6. $315,000 for the looting of, and damage to, government buildings and infrastructure

7. $4,500,000 for the looting, destruction of, and damage to religious institutions

8. $3,216,000 for the seizure and looting of the Saba Dimensional Stones PLC

9. $7,500,000 for mistreatment of Ethiopian prisoners of war

10. $2,000,000 for failure to protect Ethiopian civilians in Eritrea from threats and violence

11. $1,500,000 for failure to ensure Ethiopian civilians in Eritrea access to employment

12. $50,000 for failure to ensure that Ethiopian civilians in Eritrea were able to receive medical care to the same extent as Eritrean nationals

13. $2,000,000 for wrongful detention and abusive treatment of Ethiopian civilians in Eritrean custody

14. $1,500,000 for harsh treatment of Ethiopian civilians at the Hawshaite detention camp

15. $10,000,000 for detaining significant numbers of Ethiopian civilians under harsh conditions during and after May 2000

16. $500,000 for deaths and injuries suffered by detainees at Wi'a Camp

17. $2,000,000 for failure to protect the property of Ethiopian detainees expelled from Eritrea

18. $1,000,000 for failure to protect the property of other departing Ethiopians

19. $1,100,000 for failing to ensure the safe and humane repatriation of departing Ethiopians in transports that were not conducted or supervised by the International Committee of the Red Cross.

Compensation to Ethiopia for Eritrea's violations of the jus ad bellum

1. $45,000,000 for human suffering and lost income associated with internal displacement of persons
2. $8,500,000 for Ethiopian civilian deaths and injuries
3. $6,000,000 for damage to civilian property, primarily from shelling
4. $3,500,000 for damage to public buildings and infrastructure
5. $2,500,000 for looting, destruction and damage to religious institutions
6. $5,605,000 for destruction in Zalambessa
7. $1,500,000 for deaths and injuries caused by landmines
8. $250,000 for the destruction of Disaster Prevention and Preparedness Bureau facilities in Adigrat
9. $162,500 for damage to other government facilities on the Central Front
10. $75,000 for other government losses on the Central Front
11. $125,000 for looting of property from the Relief Society of Tigray
12. $150,000 for damage in Adi Goshu
13. $625,000 for shelling damage in Sheraro
14. $65,000 for damage caused by the attack on the Mekele Airport
15. $4,000,000 for profits lost by Ethiopian Airlines
16. $1,703,020 for failing to provide Ethiopian Airlines access to its bank accounts at the Bank of Eritrea
17. $7,500,000 for reconstruction and assistance to internally displaced persons.

B. As determined at the liability phase, the Commission considers its finding that Eritrea violated the Vienna Convention on Diplomatic Relations by arresting and detaining the Ethiopian Chargé d'affaires a.i. and by violating official Ethiopian

diplomatic correspondence and interfering with the functioning of the Ethiopian diplomatic mission to be appropriate reparation.

C. All of Ethiopia's other claims are dismissed.

D. In addition to the award of satisfaction to Ethiopia for all of the liability findings of the Commission, the total monetary compensation awarded to Ethiopia in respect of its claims is $174,036,520. At the conclusion of these lengthy proceedings and the issuance of this Final Award, and the parallel Final Award in Eritrea's claims against Ethiopia, the Commission reiterates its confidence that the parties will ensure that the compensation awarded will be paid promptly, and that funds received in respect of their claims will be used to provide relief to their civilian populations injured in the war.

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Africa is endowed with considerable strategic renewable and non-renewable natural resources, of which only a fraction has been exploited for the benefit of the African people. The role of natural resources as major contributors to economic growth and poverty reduction cannot be overstated. However, natural resources can be a curse or a blessing, depending on the quality of governance, institutions and governments' capacity and willingness to manage them for development and the public good.

While intra-State conflicts over natural resources have dominated much of the policy and academic debate on the root causes of conflicts, little attention has been given to current and potential interstate conflicts over transboundary resources. It is worthwhile noting that competition over, and the scramble for, natural resources between the industrialized and industrializing countries has created an incentive for the control of these resources by national and international players. As Africa has embarked on the path of structural economic transformation and industrialization, its demand for raw materials and natural resources will also increase, with the potential for the re-emergence of old boundary disputes or the emergence of new disputes over transboundary resources.

This report elucidates the current policy and academic debates on the role of transboundary resources in African economic growth, and introduces the current practices of transboundary resources management. The focus of the report is on mapping Africa's protocols and strategies on transboundary resources management, with special reference to minerals, oil and gas, on the basis of eight case studies. The scope of the report is limited to transboundary natural resources management, focused on the management of disputes over transboundary natural resources, with specific reference to gas, oil, minerals and fresh water.

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