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Inter-State Conflicts and Conflict Resolution in the Gulf of Guinea

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1. Oil and Territorial Boundaries

Recently the Gulf of Guinea has come to assume a greater importance in security matters since it now represents a major source of oil for the industrialized countries. There are many ways that ownership of strategic raw materials like oil can create international security concerns. What come easily to mind are discriminative policies by a supplier or threats to traditional sources. A country, which can't substitute imported oil, may be in dire straits by a blockade and may be tempted to use violent means. Debates on the last war in Iraq in some circles followed such pattern or arguments but it may be pointed out, that since independence, West Africa has not witnessed an international aggression from overseas in securing access to strategic commodities.

There is a second group of inter-state security concerns which are more relevant to the Gulf of Guinea: conflicts arising from claims to and control of territorial boundaries and oil reserves therein. The coastal states of the Gulf of Guinea are prone to two sorts of territorial disputes that are linked to oil ownership. There may be unclear delineation of borders that wouldn't create much concern in normal times but can become a serious concern when oil is discovered in disputed territories. Additionally, oil fields exist in areas where the borderline itself may not be challenged, but where a deposit stretches across the border in uncertain quantities so that the drilling from one country may negatively impact the amount of oil available for exploitation by its neighbors.

While it is true that West Africa has never witnessed an inter state war over the control of resources, armed conflicts as a means of regulating competitive claims can never be ruled out per se, and the need to develop modes and patterns of conflict prevention and resolution within the Gulf of Guinea region can not be overstated.

This paper is divided into several parts. The second chapter will look into the hierarchy of the international system of law, beginning with a focus on the Charter of the United Nations – the *Grundnorm* of international law on matters of peace.

All other regimes on peace must take their cue from the UN Charter. Whatever variations in modes, processes, procedures or mechanisms may exist within member states, they must come within its bounds. Then the paper will deal with the Constitutive Act of the African Union (AU), the successor to OAU.

Thereafter the third chapter will examine two types of potential conflicts in the Gulf of Guinea region along with the treaties and provisions that could be applied for conflict resolution: The territorial dispute between Nigeria and Cameroon involving the International Court of Justice, and the Joint Development Zone between Nigeria and São Tomé and Príncipe, which uses a conflict resolution mechanism that can be seen as a way of safeguarding the interests of a small and weak country in dealings with a much stronger neighbor. Finally the fourth chapter will consider the case of the Gulf of Guinea Commission. Many details of this Commission are still obscure, but its treaty which is yet to come may establish a foundation for peaceful regional cooperation on marine based resources.

2. The Hierarchy of International Law: The UN & AU

2.1. The U.N. Charter

The U.N. Charter formally requires, and it is now considered a matter of customary international law, that member states shall refrain from the threat or use of force against the territorial integrity or political independence of any other state or in any other manner inconsistency with the purpose of the United Nations [Art 2(4)].¹ The philosophy underlying the purpose of the United Nations in matters of peace is that conflicts should be resolved by one of the peaceful modes – negotiation, conciliation, good offices, arbitration and, to wit, judicial settlement by the International Court of Justice (ICJ). Resort to force – war or armed conflict – in the last resort under the prevailing international order is restricted to the inherent right of self-defense – whether individual or collective or as directed by the Security Council under the enforcement measures. The right of self-defense is qualified and regulated in a number of ways.

- It is available only when an armed attack occurs against a member of the United Nations.

1 It is argued with respect to Article 2(4) of the United Nations Charter, which regulates the use of force by States that as a reflection of customary international law it is binding on nonmembers. See Nicaragua case (Merits). Nicaragua v United States (ICJ Reports 1986) p. 4. D.J. Harris, *Cases and Materials on International Law* (London: Sweet & Maxwell, 1998): pp. 262, 866-888.

- Measures taken in self-defense shall be immediately reported to the Security Council and shall in no way affect the responsibility of the Security Council under the Charter to take at any time whatever action it deems necessary in order to maintain or restore international peace and security. (Article 51).

Article 52 of the Charter provides for regional arrangements for dealing with matters of international peace and security reaffirming the primacy of peaceful means of resolving conflicts. It provides:

1. Nothing in the present Charter precludes the existence of regional arrangements of agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.
2. The Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.
3. The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the state concerned or by reference from the Security Council.
4. This Article in no way impairs the application of Articles 34 and 35.

Article 52 therefore provides not only the legal foundation for regional arrangements, such as AU or the Gulf of Guinea Commission, on matters of peace and security, but it also creates an organic-institutional linkage between the UN and such regional arrangements since the Security Council reserves the right to have the last say in such matters.

2.2. The African Union

Unlike the Charter of the Organization of African Unity (OAU), the Constitutive Act of the African Union (AU) does not make a general specific adherence to the United Nations Charter. Nevertheless, there is no doubt that the African States are committed to the principles of the UN.² Apart from the adoption of the UN principles of non interference in the internal affairs of member states, respect for territorial integrity, independence, and sovereign equality it consecrated the principle of respect for colonial boundaries (*uti possidetis*).

² Osita C. Eze "Institution Building and Consolidation of The African Union" in *The African Union and The Challenges of Cooperation and Integration* (Abuja: Spectrum Books, 2002).

The AU conception of peace goes beyond military security. It sees peace in its relationship to development. Thus, Members are conscious of the fact that the scourge of conflicts in Africa constitutes a major impediment to socio-economic development of the continent and of the need to promote peace, security, and stability as a pre-requisite for the implementation of their development.³

The key 'peace' principles as expressed in Article 4 are:

- “(a) sovereign equality and interdependence among Member States of the Union;
- (b) respect of borders existing on achievement of independence; [...]
- (d) establishment of a common defense policy for the African Continent,
- (e) peaceful resolution of conflicts among Member States of the Union through such appropriate means as may be decided upon by the Assembly;
- (f) prohibition of the use of force or threat to use force among Member States of the Union;
- (g) non-interference by any Member State in the internal affairs of another;
- (h) the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity;
- (i) peaceful co-existence of Member States and their right to live in peace and security;
- (j) the right of Member States to request intervention from the Union in order to restore peace and security.”

The sanctity of state sovereignty and territorial integrity has been modified because in certain circumstances the AU can intervene without the prior consent of the object-state. Thus, under Article 4(h), the AU has the right to intervene in a member state pursuant to a decision of its Assembly under grave circumstances, namely: war crimes, genocide or crimes against humanity. Decisions of its Assembly shall be made by consensus, or if that is not reached, by a two-thirds majority of member states. However procedural matters like the question of whether a matter is procedural shall be decided by a simple majority (Article 7). The quorum of the Assembly at any of its meeting shall be 2/3 of the total membership.

Unlike the OAU, this provision makes the AU a supranational organization with the power to take and enforce binding decisions against a violator state. If oil is the issue and the citizens of the plaintiff state are being eliminated, this provision can be called into play. Whether the AU can implement this provision is however another matter!

The Draft Protocol Relating to the Establishment of the Peace and Security Council of the African Union states in the preamble that the Heads of State are

3 The Constitutive Act of the Union (2001). Preamble.

“Determined to enhance our capacity to address the scourge of conflicts on the continent and to ensure that Africa, through the African Union plays a central role in bringing about peace, and security as well as for prevention of conflicts.” This is to be effected through the mechanism of the Peace and Security Committee, which is to be a collective and Early Warning arrangement to facilitate timely and efficient response to conflict and crises solutions in Africa. Article 16 states that: “The Regional Mechanism are part of the overall security architecture of the Union, which has the primary responsibility for promoting peace, security and stability in Africa.”

The coordinating and harmonizing functions of the AU are to be carried out through the following institutions: The Commission; The Panel of the Wise; The Continental Early Warning System; The African Strategy Force; The Special Fund. All of these institutions go to reinforce the activities of the AU in the area of peace and security.

3. Conflict Resolution in Oil-Related Border Disputes

For countries in the Gulf of Guinea, the relationship between neighboring states is particularly strained concerning offshore oil rights. These can become a source of territorial conflicts wherever oil fields cross national borders or where oil is found in zones whose borderlines have never been accepted or properly delineated.

This is true in particular for offshore oil in the Gulf of Guinea. The existence of oilfields is usually established through a two-phase process: seismic research that leads to indications, followed by test drilling that confirms availability. However, the deeper the oil field, the less the exploratory drilling, due to its punitive costs, and the less therefore that is known on the correct location and quantity of oil reserves. Usually, deep-sea oil fields are only properly mapped out during the exploitation phase.

When exploitation of an oil field starts, another problem arises. Tapping from one edge may lead to flowing of oil from other ‘ends of the field’ towards the point of tapping. This depends on the location of the field, the viscosity of oil and the mixture of oil with sands, which impacts on the speed of flow.

It is therefore normal for oil discoveries made in locations near borders to create suspicion that exploitation to some extent may be stealing from adjacent reserves. Clear border lines between countries and sharing information on seismological findings, additional drilling to confirm the stretch of an oil field or early agreements on how to proceed in cases of oil findings near borders are important steps for conflict-free exploitation of oil.

Despite this potential for conflicts, it must be recognized that at no time have any countries in the Gulf of Guinea ever waged an inter-state war over the control of oil. In the end, disputes have always been forwarded to established mechanism for resolution or were alternatively resolved through joint agreements. Consider two cases that had very different methods of dispute resolution.

3.1. The Nigeria-Cameroon Conflict over Bakassi Peninsula

The dispute between Cameroon and Nigeria over the Bakassi peninsula has assumed great prominence because of its richness in oil. It is important to note, however, that the case of Bakassi is only one element in the dispute that extends to the land boundary between Nigeria and Cameroon from the Lake Chad region to the Coast.

The purpose is not to go to the substance of the case but simply to highlight the fact that both Nigeria and Cameroon followed the path of negotiations through joint committees/commissions to resolve their disputes, as envisaged under both the UN Charter and the Charter of the OAU. When this failed there was resort to the International Court of Justice (ICJ) on the basis of an application filed by the Cameroon.

A sketch⁴ of events since the seventies will confirm this assessment.

- 14 August 1965: Nigeria accepted on sole condition of reciprocity, compulsory jurisdiction of ICJ by a unilateral declaration under Article 36(2) of ICJ Statute (*Yearbook of the International Court of Justice, 1993-1994, pp. 108-9*):
- 4 April 1971: Heads of state of Nigeria and Cameroon at Yaoundé initialed British Admiralty Chart 3433 demarcating a maritime boundary in the Cross/Calabar estuary up to the 3-mile limit of territorial jurisdiction as defined in the 1913 Agreement.
- 21 June 1971: Nigeria/Cameroon Joint Boundary Commission signed at Lagos a Declaration setting out geographical coordinates for 20 points on maritime boundary to a distance of 17.7 nautical miles seaward of the line linking Sandy Point and Tom Shot Point.
- 28 January 1972: Announcement that Federal Military Government had repudiated the above Declaration.
- 1 September 1974: Heads of State of Nigeria and Cameroon signed a Declaration at Kano establishing a corridor of ‘freedom from oil prospecting’ in Cross/Calabar estuary.

4 Geoffrey Marston, “Supplementary Report on Nigeria – Cameroon Boundary Dispute: Yola to the Sea Together with the Maritime Boundary,” (March 1995): pp. 28-30.

- 1 June 1975: Heads of State of Nigeria and Cameroon signed a Declaration at Maroua delimiting on British Admiralty Chart 3433 a maritime boundary in the Cross/Calabar estuary from the terminal point of the Yaoundé demarcation (Point B) seaward through Points A to a Point G on the same latitude as Point 20 in the Lagos Declaration though eastward of it.
- 12 June 1975: Heads of State exchanged letters agreeing to a correction of the coordinates of Point B on Maroua line.
- Date unknown: Maroua Declaration repudiated by Federal Government
- 3 March 1994: Cameroon accepted compulsory jurisdiction of ICJ by a unilateral declaration (*Yearbook of the International Court of Justice 1993-1994*, p. 87);
- 29 March 1994: Cameroon filed application dated 28th March 1994 to the ICJ re Bakassi and maritime boundary.
- 6 June 1994: Cameroon filed additional application to the ICJ re Lake Chad area.

On 10 October 2002 the ICJ ruled on the land and maritime boundary between both States. While the Court substantially awarded Bakassi to Cameroon, both parties gained some and lost some with respect to the land boundaries⁵. If Nigeria was displeased with the ICJ position on Bakassi, it is still seeking to resolve the consequences of the judgment by participating in a Joint Commission with Cameroon.

A joint commission created to implement the ruling was initiated by U.N. Secretary General Kofi Annan, and is meeting under the chair of a UN Special Representative. The joint commission is guided by the outcome of the Tripartite Summits between the Presidents of the two countries and the Secretary-General of the United Nations. The Cameroon-Nigeria Mixed Commission has adopted a “road map” including directions for the withdrawal of troops from disputed areas and the handover of administration to civil authorities. The main exercise is the demarcation of the some 1600 km of border between both countries, a process that may take several years to accomplish. The joint commission has delineated the new borderline on Lake Chad Zone with territory and settlements changing sides. The exercise now moves towards the Atlantic Ocean, and the Bakassi Peninsula.

Nigerian and Cameroonian troops have clashed repeatedly since their countries gained independence in 1960. Instead of continuing the aggression (and counter aggression) a peaceful settlement is now worked out to contain a potentially

5. Case concerning the Land and Maritime Boundary Between Cameroon and Nigeria, (2000), 10 October 2002, General List No. 94.

explosive military situation. Withdrawal of troops and peaceful transferring of authority may set new pages in the annals of African history where borderlines were seen as sacrosanct colonial heritage or were causes for inter-state wars.

3.2. The Joint Development Zone (Nigeria and São Tomé & Príncipe)

The Joint Development Zone between Nigeria and São Tomé & Príncipe is an agreement, which accepts uncertainties of ownership of oil fields, and frames the conditions allowing for joint exploitation of a disputed area. In February 2001, the parties approved to share oil discoveries in the disputed border zone 60/40, with Nigeria receiving the larger part. In addition to the provisions for joint exploitation of oil and other resources, the agreement sets up an JDZ-administration and provides a legal system with its own mechanism for conflict prevention and resolution.⁶

Thus it is formally stated that the treaty shall govern the regime, and that general international law shall govern in those areas not covered by this particular treaty. Even though no reference is made to either the Charter of the United Nations or the Constitutive Act of the African Union no one doubts their relevance, and in any event customary and general principles of international law will be applicable in appropriate circumstances.

Provisions that promote harmonious relations and are therefore preventive of conflicts include:

- Joint control by the States Parties, through appropriate organs, of the exploration and exploitation of resources [Article 3(1)];
- Regime is without prejudice to the rights the claims of either party to the whole or any and part of the zone – could be settled later [Article 4(1), (2)];
- The Council, composed of two Ministers each from each state is the highest organ and arrives at its decisions by consensus and it gives directives to the Authority on the discharge of functions under the Treaty [Articles 7(4) and 8(2) (a)];
- The Authority, a juridical person, and responsible for the management of activities, is governed by a Board of two Executive Directors each from each state and, like the Council, makes decisions by consensus [Article 9(6) and 10 (1), (5)];
- Applicable private law is to be determined by Council on a proposal by the Authority”. To the extent that the private law of the zone is not determined by or pursuit other parts of this Treaty the Private Law of one of the Parties.

⁶ *Treaty between The Federal Republic of Nigeria and Democratic Republic of São Tomé & Príncipe on the Joint Development of Petroleum and other Resources, in respect of areas of the Exclusive Economic Zone of the two States.*

The Treaty provides for two types of conflict resolution mechanisms. Where a dispute arises with respect to the implementation of the Treaty the parties shall first seek to resolve it through the Board. If the dispute cannot be resolved by the Board, it is left to the Council to “make every effort to resolve it in a spirit of compromise without prejudice to any underlying position of either State Party.” Where the dispute has not been resolved by the Council within 12 months, or such other period as the Heads of States may decide, the Council or either party may refer it to the Heads of States for decision (Article 48).

In order to facilitate access to the relevant provisions on settlement of disputes not resolved as stated above we hereby reproduce Article 49 which governs the procedure to be followed:

Article 49:

Settlement of unresolved Disputes between the States Parties

49.1 The provisions of Act 52 (on termination) shall apply:

- (a) If the Heads of State agree in writing that a dispute referred to them under paragraph 48 concerns a matter of policy or administration and the dispute has not been resolved by the Heads of State within 12 months of its referral to them, or such additional time as they agree; or
- (b) If arbitral proceedings under paragraph 2 below leave a substantial dispute between the parties unresolved by reason, either expressly or implicitly, of the fact that such dispute concerns a matter of policy or administration.

49.2. In any case not covered by sub-paragraph 1 (a), if the dispute has not been resolved by the Heads of State within six months of the reference under paragraph 4 of Article 48, and unless the States Parties have otherwise agreed, either State Party may give notice to the other State Party (the “referral”) to refer the dispute to an arbitral tribunal (“the Tribunal”) for resolution.

49.3. The Tribunal shall be constituted in the following manner:

- (a) Each State Party shall, within 60 days of the referral, appoint one arbitrator and the two arbitrators so appointed shall within 60 days of the appoint-



ment of the second arbitrator appoint a national of a third State as third arbitrator who shall act as President of the Tribunal;

- (b) If a State Party fails to appoint an arbitrator within 60 days of the referral, or the two arbitrators fail to appoint a third arbitrator within 60 days of the appointment of the second, either State Party may request the President of the International Court of Justice to fill the vacancy by appointing a national of a third State;
- (c) If the President of the International Court of Justice is a national of or habitually resident in the territory of a State Party or is otherwise unable to act, the appointment shall be made by the next most senior judge of the Court who is not a national of either State Party and who is available to act;
- (d) The Tribunal shall apply the UNCITRAL Rules, and on any point not covered by those Rules shall determine its own procedure, unless the States Parties have otherwise agreed;
- (e) The Tribunal pending its final award may on the request of a State Party issue an order or orders indicating the interim measures which must be taken to preserve the respective rights of either State Party or prevent the aggravation or extension of the dispute;
- (f) Unless the States Parties otherwise agree, the Tribunal shall sit at The Hague and the administering authority for the arbitration shall be the Secretariat of the Permanent Court of Arbitration.

49.3. Decision of the Tribunal shall be final and binding on the States Parties. The States Parties shall carry out in good faith all decisions of the Tribunal including any orders for interim measures. Any question as to the implementation of a decision may be referred to the Tribunal, or if the same tribunal is no longer in existence and cannot be reconstituted, to a new Tribunal constituted in accordance with paragraph 3.

There are thus elaborate procedures for peaceful resolution of conflicts between the State Parties.

Suspicion about the character of the JDZ can easily be ventilated. It may be arguable, whether the sharing formulae in favor of the bigger country is based on undue political pressure or on the fact that Nigeria is a long-settled oil economy with more knowledge and expertise in dealing with the international oil market and is therefore 'entitled' to an additional bonus for its management and training. It could be argued, however, that locating the JDZ-secretariat in Abuja is likely to open the doors for a pro-Nigerian bias.

In either case, São Tomé & Príncipe, for the time being, does not have the physical infrastructure or human resource base to manage the JDZ from its own territory and to deal effectively with the international oil companies. Nigeria finances the development of the zone (in form of a loan) and it offers scientific and technical training to Sãotomeans in Nigeria through the Petroleum Institute in Warri. Beyond this, negotiators of the agreement maintain that the 60/40 percent formula was guided by the application of the relevant provisions of the U.N. Convention of Law of the Sea (1982) as well as customary International law on the subject. In particular, they point to the much larger coastline of Nigeria and the fact that most of the oil (about 80 percent) is located in the much shallower Nigerian side of the EEZ.⁷

Nigerian reasons for setting up the JDZ may include national security interests, occasioned by the strategic location of São Tomé & Príncipe, the desire to avoid the Bakassi type of conflict, and the diplomatic and political support it may gain. But what is particularly important is the legal mechanism set up for any eventual cases of disagreement. This conflict resolution mechanism is based on the principles of equality, giving each side full veto powers and providing a framework for impartial arbitration. While informal pressure can never be ruled out (these are the natural costs of dealings between big and small countries and may tilt the oil business in favor of the Nigerian side): If São Tomé & Príncipe is prepared to use the conflict resolution mechanism to the fullest extent, it may find its interests well protected.

7 United Nations Convention on the Law of the Sea, United Nations Conference on the Law of the Sea, New York, 1983. See also "North Sea Continental Shelf Cases," ICJ Reports, 1969, p. 3; "Anglo-French Continental Shelf Case," (1978) 18 I.L.M., 397; "Gulf of Maine Case," I.C.J. Reports 1984, p. 246, "Guinea-Guinea Bissau Maritime Delimitation Case" (1985) 77 ILR, 636, "Tunisia/Libya Case and Libya Malta Case" cited in I.A Ayua "Delimitation of Maritime Boundaries in the Light of the New Law of the Sea" in *The New Law of the Sea and The Nigerian Maritime Sector: Issues and Prospects for the Next Millenium*, pp. 69-70, also Osita C. Eze "Historical Overview of the 1982 UN Convention On the Law of the Sea. Fifteen Years after signature" in I. A Ayua, T.A.T. Yagba, A.O. Odiase-Alegimenlen, Eds. (Lagos, Nigerian Institute of Advanced Legal Studies, 1998).

4. The Gulf of Guinea Commission

The Gulf of Guinea represents a geographical zone that cuts politically across other regions and none of the existing regional organizations can claim membership of all coastal states with oil resources. Some countries have joined ECOWAS, some CEMAC and others SADC, to name the more important. Conflicts between states cut across regions but do not fall under existing regional mechanism for conflict resolution.

Beyond the spatial pattern, existing conflict resolution mechanisms have a second shortcoming. They are of general character that cover all sorts of conflicts but prevent specialization and confidence building for certain types of conflicts. The Gulf of Guinea, beyond its geographical meaning, concerns the exploitation of marine based resources, including deep-water oil exploitation. When conflicts between states develop along a narrow if not single commodity line, a specialized mechanism for conflict prevention may be superior than general resolution provisions. With more exposure and a deeper understanding, it may be easier to propose best practices and assist in developing a common philosophy in solving recurrent problems.

It is precisely because of these problems that at the initiative of Nigeria the Gulf of Guinea Commission was established to ensure peaceful exploration and exploitation of the resources of the region. The Commission established under a treaty⁸ embraces coastal states bordering the Gulf of Guinea from Nigeria to Angola (including the island state of São Tomé & Príncipe)⁹.

Article IV of the Treaty establishing the Commission specifies as falling within its mandate, the promotion of peace and security in the Gulf of Guinea as well as economic, social and environmental well being of its members. The Commission has also the function to regulate and harmonize the exploitation of the resources of the Gulf. If carried out in accordance with the spirit of the Article there would be less likelihood of conflicts. Members are thus conscious of the need for preventing conflicts. Still, for preventive measures one can refer to some of the Aims and Objective provisions.

Article V on aims provides that the Commission shall be a forum for addressing problems affecting members in the following areas:

8 The Treaty on the Gulf of Guinea Commission. (See Appendix.)

9 The countries are Republic of Cameroon, Democratic Republic of Congo, Republic of Congo Brazzaville, Republic of Equatorial Guinea, Republic of Gabon, Federal Republic of Nigeria and Democratic Republic of São Tomé & Príncipe.

- (a) Environmental pollution of their common maritime zone;
- (b) Border issues vis-à-vis delimitation of maritime borders and other conflicts arising in the overlapping Exclusive Economic Zone (EEZ).

This paragraph would no doubt cover cases similar to the Nigeria/Cameroon case, in the future and may even influence the implementation of the ICJ decision in that case were Cameroon to become a party to the Gulf of Guinea Commission Treaty.¹⁰

- (c) Security matters such as issue of joint border patrol, Immigration and similar matters, and
- (d) Coordination of fishing activities in the Gulf.

Of the objectives, the following are more directly relevant:

- (a) To help achieve mutual confidence and trust among member states;
- (b) To provide a framework for monitoring and control of environmental degradation in the Gulf, as well as the harmonization of the exploitation of the natural resources in the overlapping areas of the EEZ – and,
- (c) To coordinate and articulate common positions on issues of particular interest to the enhancement of peace and stability in the sub-region (Article VI), Consultation is central to the relations between members in their quest to ensure better understanding, security and stability within the sub-region (Article VIII).

The parties shall endeavor to resolve any matter in dispute arising from the application and interpretation of the Treaty by negotiation, conciliation or other peaceful means.

It is quite clear that the Treaty, in line with the UN Charter and the Constitutive Act of the African Union, lays emphasis on prevention rather than resolution. But should conflict erupt, it is to be resolved by peaceful means.

The treaty has a lot of potential to develop into an institutional framework for regional cooperation in the Gulf of Guinea on marine resource including deep sea oil exploitation. However, the current fate of it remains somewhat obscure. From the scanty information available we can conclude:

- That the Treaty was signed by all the countries of the Gulf except Cameroon in 1999 even though Cameroon attended the Conference represented by Ministers of State for Foreign Affairs;
- Only Nigeria has ratified the Treaty as of 2002;
- There is evidence that the technical sub-committee of the Commission has held several meetings resulting in the preparation of an “action plan.” Neither the decisions of the sub-committee nor information on this action plan is available.

10 See *infra* for a discussion of the Nigeria/Cameroon Conflict.

One of the reasons why the Commission remains imbedded in a cloud of secrecy and the public having no access to information, may be that the political leaders themselves do not yet have full confidence in the commission. Confidence building is a slow process starting with small issues before substantive problems can be handled in a trustworthy environment. The Bakassi case and the cooperation within the JDZ are two important steps towards creating a confidence platform, from where the Gulf of Guinea Commission may fully take off.

5. Conclusion

Clearly the two cases studied show that there has been a general tendency to follow traditional methods of peaceful conflict management. This includes negotiation, arbitration, and resort to the International Court of Justice for management (e.g. the Joint Development Zone Agreement between Nigeria and São Tomé and Príncipe). This is a positive development given the potential of boundaries and oil resources to generate violent conflicts.

There may be a temptation to include oil companies in this process. If so, it would not be the first time that business enterprises, whether juridical persons or not, have been granted the capacity to enjoy the rights and bear the obligations of states, and have procedural capacity IBRD under international law (Convention on the Settlement of Investment Disputes). Given globalization and the dominance of the market this might appear to be an event whose time has come. Indeed the Joint Development Zone agreement recognizes the need to take into account the interest of persons. Additionally, it recognizes that third-party states might have interests and makes provisions for the resolution of disputes that might arise as a consequence. Given experiences in Sierra Leone and the Democratic Republic of the Congo, and the potential for third party interests to fuel or even generate conflicts, this is a welcome measure.

Finally, no one doubts that the oil companies can contribute to efforts to ensure peace. Companies like Shell have for some time now organized workshops for “stakeholders” in the oil sector aimed at finding a *modus vivendi* – particularly with the “oil communities” – in order to promote and ensure peace. Financial contribution to activities of NGOs is not problematic. And ways can be found in which governments and regional organizations such as the Gulf of Guinea Commission can collaborate as partners for peace, without offending certain sensibilities.