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Oceans and the law of the sea: oceans and the law of the sea

Letter dated 26 December 2019 from the Chargé d'affaires a.i. of the Permanent Mission of Libya to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith an explanatory note from the Permanent Mission of the State of Libya to the United Nations on the memorandum of understanding signed on 27 November 2019 between the Government of National Accord of the State of Libya and the Government of the Republic of Turkey regarding the delimitation of the maritime jurisdiction areas in the Mediterranean (see annex).

I would be most grateful if the present letter and its annex could be circulated as a document of the General Assembly, under agenda item 74 (a).

(Signed) **Elmahdi S. Elmajerbi**
Ambassador
Chargé d'affaires a.i.



Annex to the letter dated 26 December 2019 from the Chargé d'affaires a.i. of the Permanent Mission of Libya to the United Nations addressed to the Secretary-General

[Original: Arabic]

Explanatory note from the Permanent Mission of the State of Libya to the United Nations on the memorandum of understanding signed on 27 November 2019 between the Government of National Accord of Libya and the Government of the Republic of Turkey regarding the delimitation of maritime jurisdiction areas in the Mediterranean

This note aims to clarify the Memorandum of Understanding signed on 27 November 2019 between the Government of National Accord of Libya and the Government of the Republic of Turkey regarding the delimitation of maritime jurisdiction areas in the Mediterranean. It further aims to address the issues raised by regional and local parties after the signing and announcement of the memorandum and to eliminate any confusion or deliberate ambiguity on the part of certain States and parties regarding the conformity of the promulgation, signature and adoption of the memorandum with international law, the Libyan Political Agreement signed on 17 December 2015, the Constitutional Declaration issued in 2011, and national legislation in force.

It is among the fundamental accepted principles of both written and customary international law that a State may exercise its full sovereignty over its maritime territory and its sovereign right to define its continental shelf and exclusive economic zone in accordance with the provisions of international law. Furthermore, it is a right guaranteed by all international agreements concerned with the regulation of maritime affairs and maritime borders, of which the most recent is the 1982 United Nations Convention on the Law of the Sea. (We note that Libya is not a party to the latter).

The provisions of the international law of the sea, both customary and written, as well as the provisions of the 1982 United Nations Convention on the Law of the Sea, dictate that the delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice.

National legislation in force in Libya grants the Government the competence and authority to conclude and approve memorandums of understanding with other States, as well as to issue regulations and decisions that delimit its territorial sea. The Government of Libya has previously issued a number of decisions concerning the demarcation of its territorial sea, other maritime regions of Libya and protected fisheries zones. We mention the following examples:

- General People's Committee (Cabinet) Decision No. 37 of A.J. 1373 (2005) declaring a Libyan fisheries protection zone in the Mediterranean Sea;
- General People's Committee (Cabinet) Decision No. 104 of A.J. 1373 (2005) concerning straight baselines for measuring the territorial sea and maritime zones of Libya;
- General People's Committee (Cabinet) Decision No. 105 of A.J. 1373 (2005) concerning the delimitation of the Libyan fisheries protection zone in the Mediterranean Sea.

In addition, the Libyan Government has previously declared a Libyan fisheries protection zone in the Mediterranean Sea in accordance with General People's Committee (Cabinet) Decision No. 37 of A.J. 1373 (2005) declaring a Libyan

fisheries protection zone in the Mediterranean Sea. The declaration specifies that the area lying north of Libyan territorial waters, extending seaward for a distance of 62 nautical miles, measured from the territorial sea line, is a fisheries zone subject to Libyan sovereignty and jurisdiction. That declaration, containing all the decisions cited above, was sent to the Secretary-General in a letter dated 29 March 2005 from the Chargé d'affaires a.i. of the Permanent Mission of Libya to the United Nations that was circulated as a document of the General Assembly on 1 April 2005 under agenda item 76 (b) of the preliminary list ([A/60/68](#)).

The Libyan Government has also declared the exclusive economic zone of Libya pursuant to General People's Committee (Cabinet) Decision No. 260 (2009) concerning the declaration of the exclusive economic zone of Libya adjacent to and extending as far beyond its territorial waters as permitted under international law. That declaration states that, if necessary, the outer limits of that zone are to be established together with neighbouring States in accordance with instruments concluded on the basis of international law, and that Libya shall have jurisdiction in that zone under international law.

Given the preceding, on 27 November 2019, the Government of National Accord signed a memorandum of understanding with the Government of the Republic of Turkey regarding the delimitation of maritime jurisdiction areas in the Mediterranean. In so doing, it acted in accordance with national legislation in force that authorizes the executive authorities to conclude and adopt memorandums of understanding with other States. It also acted in accordance with international norms, the principles of public international law, the provisions of the international law of the sea and relevant international instruments. Its actions were consistent with the Libyan Political Agreement signed on 17 December 2015 which authorizes the Presidency Council of the Government of National Accord to sign memorandums of understanding as the supreme executive authority, the Constitutional Declaration issued in 2011, and national legislation that regulates the operation of the Government. It was exercising the sovereign right of States to define their territorial waters, exclusive economic zones and continental shelves in accordance with the provisions of the international law of the sea and international norms. The signature of the memorandum followed extensive in-depth negotiations, correspondence and exchanges of visits between representatives of the Libyan and Turkish authorities that started in 2007, were suspended in 2014 as a result of the exceptional circumstances in Libya, and then resumed in June 2018.

The memorandum consists of a preamble, in which the two parties confirm their commitment to the purposes and principles of the United Nations, and six articles. Article 1 defines the boundaries of the continental shelf and exclusive economic zone between the two States in accordance with applicable internationally recognized standards. The memorandum has two annexes. Annex 1 is a map drawn in accordance with applicable international standards that shows the maritime boundary between the two countries, which are States with opposite coasts sharing a common maritime boundary. Annex 2 gives base coordinates for delimiting the continental shelf and the exclusive economic zone between Libya and Turkey.

It will be recalled that starting in 2004, Libya held four rounds of negotiations with Greece involving experts from both countries. Those negotiations failed to produce any result because Greece insisted on defining its maritime jurisdiction vis-à-vis Libya on the basis of extremely small uninhabited islands of no legal significance. Greece insisted on drawing a median line based on those island outcroppings and refused to apply the principle of proportionality that is used internationally in such situations. Correspondence between the two sides continued until 2014. Unfortunately, Greece completely disregarded the rights of Libya, and rushed with its allies in the East Mediterranean Gas Forum to conclude agreements

and exploit regional tensions to impose a de facto monopoly on the production, liquefaction and transport of gas. That would have devastating impact on our national economy and the right of our future generations to the use of their natural resources. The Libyan Ministry of Foreign Affairs sent a note to the Greek Ministry of Foreign Affairs protesting its signature of concession and exploration contracts with international and local companies in areas where jurisdiction had not been agreed upon and defined between by two countries in accordance with the provisions of international law. The response of the Greek Ministry of Foreign Affairs was negative and completely dismissive of the claims and rights of Libya.

The Government of National Accord completely rejects any interference in its internal affairs. It affirms its full respect for the rights and sovereignty of its neighbouring countries, both opposite and adjacent. It also stresses that the memorandum of understanding does not affect the sovereign rights of any of the countries neighbouring Libya or bordering on the Mediterranean. It is acting on the basis of the principle of good faith and stands ready to engage in bilateral dialogue with any party that believes the memorandum violates any of its sovereign rights.

In that regard, the Government also affirms its commitment to Article 33 of the Charter of the United Nations and the principles of public international law. It recognizes the right of any State claiming that this memorandum violates its national borders to have recourse to the International Court of Justice. Libya has a good record of compliance with the rulings of that Court. For example, it agreed on one occasion with the Republic of Malta and on another with the Republic of Tunisia to have recourse to the International Court of Justice to delimit continental shelf boundaries. Since the Court's rulings are not binding, Libya signed agreements with Malta on 10 November 1986 and Tunisia on 8 August 1988 to demarcate the boundaries between the continental shelf zone of Libya and the zones of those two States in accordance with the Court's ruling.

Lastly, we hope that this explanatory note eliminates any ambiguity or confusion about the legality of the memorandum of understanding. We reiterate that the Government of National Accord stands ready to settle any dispute through diplomatic means with any party that has concerns about this matter. We continue to firmly believe that right and fairness are the foundation of justice and that the courts are the final arbiter in such matters.
