



Security Council

Distr.
GENERAL

S/14786
9 December 1981

ORIGINAL: ENGLISH

NOTE BY THE SECRETARY-GENERAL

In a letter dated 8 December 1981 (S/14782), the Permanent Representative of Malta made a number of references to the report of the Special Representative of the Secretary-General, which the Secretary-General submitted to the President of the Security Council under cover of a letter dated 1 December 1981.

In view of the fact that the Permanent Representative of Malta has requested circulation of his letter as a Security Council document, the Secretary-General is making available, with the concurrence of the President of the Council, the report of his Special Representative in the same manner.

Annex

REPORT OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL
ON THE DISPUTE BETWEEN MALTA AND THE LIBYAN ARAB JAMAHIRIYA

1. The members of the Security Council will recall that the dispute between the Republic of Malta and the Socialist People's Libyan Arab Jamahiriya derives from the absence of delimitation of the continental shelf between the two countries. The question has been under discussion since 1972, and in May 1976 the parties signed a Special Agreement to submit the case to the International Court of Justice. Malta ratified the Special Agreement shortly thereafter. Libya did not do so, but has pointed out in this connexion that, after the Special Agreement was signed, the parties held further negotiations on matters concerning the Agreement and the dispute, including the drilling issue.

2. During my visit to Tripoli in November 1980, Libya undertook unconditionally to submit the Special Agreement to the Popular Congresses for ratification during the session which was then in progress "with a view to exchanging the instruments of ratification and formulating the joint notification to the Registrar of the International Court of Justice, as provided for in article IV of the Agreement, during the first two weeks of December 1980" (see S/14256, para. 5).

3. In view of the fact that questions have been subsequently raised regarding the nature of that undertaking, Libya has underlined on several occasions that the commitment it gave was to submit without conditions the Special Agreement to the Popular Congresses, which alone have the constitutional authority to ratify it. Libya has stated that that undertaking was in fact honoured. It informed me that, following consideration of the matter, which took longer than originally envisaged, the Popular Congresses decided on 4 January 1981 to ratify the Special Agreement. The actual text of the decision, which was recently transmitted to me, reads as follows:

"The Basic People's Congresses hereby decide to ratify the Special Agreement between the Socialist People's Libyan Arab Jamahiriya and the Republic of Malta for the submission of the dispute concerning the continental shelf to the International Court of Justice, provided that drilling in the disputed area shall not be permitted until after the International Court of Justice concludes its examination of the case."

4. Libya has stressed that this decision is in line with its consistent position on that issue. I was informed that its executive authorities accordingly prepared the instrument of ratification, which, in its approved translation, reads as follows:

"I, Abdulati Al-Obeidi, Secretary of the People's Committee of the People's Bureau for Foreign Liaison ...,

"In accordance with the resolutions and recommendations of the People's Congresses, ... whereby they approved the Agreement ...,

/...

"Do hereby proclaim the ratification by the Socialist People's Libyan Arab Jamahiriya of the above-mentioned Agreement."

5. Malta formally objected to Libya's instrument of ratification on the grounds that it contains an implicit condition to ratification and requested that the reference to the decision of the People's Congresses be deleted. It also proposed that the exchange of ratifications and the joint notification to the International Court of Justice be concluded simultaneously so that the necessary formalities could be completed without further delay. Malta has repeatedly said that the delay in the submission of the delimitation case to the Court has caused it serious economic and financial difficulties and made more imperative its need to explore offshore oil resources.

6. Libya has stated that the form of its instrument of ratification, including the reference to the source of authority for such action, is legally correct, consistent with both common international practice and the constitutional procedures of Libya, and is, in any event, a purely internal matter for Libya to decide. Libya did point out, in a note verbale addressed to the Government of Malta on 24 March 1981, that its instrument of ratification does not contain any additions or amendments to the Special Agreement. It has expressed the view in this connexion that what Malta regards as a condition regarding drilling is inherent to the nature of the dispute and consistent with the spirit and content of the Special Agreement whether or not it is stated as a condition. As regards the procedure for concluding the formalities, Libya took the position that the exchange of ratifications and joint notification to the Court are separate legal procedures to be taken step by step by different authorities in Libya. Libya has consistently rejected the charge that it was responsible for the delay in submitting the matter to the Court, and reiterated that it was prepared to meet with Malta at any time to exchange ratifications.

7. The positions of the parties - as summarized above - were expressed in the context of the efforts that the Secretary-General and I made, following the ratification of the Special Agreement by Libya, to assist them in the conclusion of the formalities required for the submission of the delimitation case to the International Court of Justice. At my suggestion two meetings were held by the parties for that purpose in Valletta, in March and in July of this year, both of which proved inconclusive. Malta then made a further appeal to the Security Council, at which time the Council, on the basis of informal consultations, requested that the Secretary-General's Special Representative should "once again get in touch with the two Governments in the manner he deems most appropriate, with a view to assisting them find a mutually acceptable solution at an early date."

8. The first steps taken in pursuance of that request were outlined in the Secretary-General's letter to the President of the Security Council of 30 October 1981. Since that date further intensive consultations were held with the parties, followed by a proposal that I should travel to Tripoli and Valletta from 21 to 25 November and that a third meeting be held by the parties in Valletta with the participation of the Special Representative of the Secretary-General. I was subsequently informed that it was not possible for the Libyan authorities to receive me on those dates but that I would be welcomed in early December. Libya

/...

has expressed its readiness to hold the proposed meeting in Valletta. The Government of Malta, while expressing the view that the proposed visit would not produce the desired results because it was convinced that Libya would not modify its position, agreed to my visit. It asserted that a meeting of the parties should be held only if Libya notified me of its intention to modify its instrument of ratification. Malta formally requested that I conclude my consultations with the parties before the end of November.

9. All the discussions so far held with the parties have proved beyond doubt that the crux of the problem that has prevented them from moving forward to conclude the formalities for the submission of the matter to the Court is the lack of agreement on the right of either party to drill in the disputed area pending a decision of the Court. My efforts in the latest phase were accordingly focused on the development of arrangements designed to enable the parties to overcome the obstacle which had arisen when Libya's instrument of ratification was communicated to Malta.

10. It may be noted, in that context, that on 2 July 1981, having reiterated that the instruments of ratification should not contain any condition, Malta had stated that the question whether either side could drill in the disputed areas while the case was pending before the Court was a separate legal issue on which the two parties were entitled to have - and even express - different views. The Secretary-General brought that statement to the attention of the Security Council, and expressed the view that, on that basis, it might be possible to find procedural ways and means to settle the issue.

11. Sustained attempts have been made to develop such procedural arrangements, including a suggestion which would have enabled the parties to place on record their respective legal positions on the question of drilling in conjunction with, but not as a part of, the exchange of ratifications. It is evident that both sides are reluctant to take any step which might have the effect of prejudicing their respective positions on the broader question of the delimitation of the continental shelf. The considerations invoked by the parties involve complex questions of legal doctrine which at this very moment are the subject of international efforts towards elucidation and codification. The basic positions of the parties have remained parallel and unchanged.

12. Throughout the consultations Libya stressed that the frequency and provocative character of the public communications addressed by Malta to the Security Council were not conducive to the atmosphere of goodwill required to facilitate the settlement of the outstanding issue. Malta, recalling the incident which took place on 20 August 1980, emphasized that it felt threatened with the use of force, a threat which in its view put in danger the peace and security not only of Malta but of the entire region.

13. While the clarifications which have been obtained confirm the divergent positions of the parties as to the question of drilling in the disputed area, they do not indicate any departure by either party from its intention formally to submit the dispute over the delimitation of the continental shelf to the International Court of Justice. It no longer appears possible, however, to overcome the specific problem that has arisen on the basis of mere procedural arrangements: Malta has

/...

made it abundantly clear that it cannot proceed to the exchange of ratifications as long as, in its view, Libya's instrument contains a reference to a condition regarding drilling, no matter how implicit or indirect that reference may be. Libya has stated with equal clarity that it cannot agree to amend its instrument of ratification.

14. In the circumstances, one possible course of action that the parties might wish to consider in order to settle the question of interim drilling in disputed areas would be to request the Court, in conjunction with the submission of the delimitation case, to indicate, as a matter of priority under the terms of Article 41 of its Statute, "any provisional measures which ought to be taken to preserve the respective rights of either party". This would avoid further delays in the efforts to settle the dispute. At the same time, by submitting the issue of interim drilling to the highest judicial organ of the United Nations, to which the parties have agreed to entrust the larger question of the delimitation of their continental shelf, they would ensure that their legal positions will be consistently safeguarded until the dispute is definitely resolved.

/...