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Interim Report of the Intergovernmental Group
to Monitor the Supply and Shipping of Oil and
Petroleum Products to South Africa to the
General Assembly

I. INTRODUCTION

1. The Intergovernmental Group to Monitor the Supply and Shipping of Oil and Petroleum Products to South Africa submitted on 26 October 1989 its third Report to the General Assembly. In Chapter V of that Report, the Intergovernmental Group described the purpose and procedures of the exercise of monitoring calls of ships with petroleum-bearing capabilities at South African ports and its intention to report to the forty-fourth session of the General Assembly within six months on the status of its inquiry into the matter. The General Assembly in para. 2 of resolution 44/27 H of 22 November 1989, took note of the Intergovernmental Group's intention to submit this present interim report.

2. As was noted in para. 43 of its report to the forty-fourth session of the General Assembly, the Intergovernmental Group attached utmost importance to responses of Governments to letters requesting information on such port calls. Such a request had been sent out on 28 July 1989. The Group had the intention of making it possible for Governments to research the cases involved and to report back to it before any evaluation of the cases took place. The ^{complex} technical nature of the issues involved, and the fact that information had to be sought ultimately from operational ^{sectors} branches of national Governments ^{in the countries concerned} (e.g. harbour authorities, ^{industry} maritime ministries, etc.) and relayed back to the Intergovernmental Group through Permanent Missions to the United Nations at Headquarters in New York would have made it difficult

for Governments to reply in time for the Intergovernmental Group's report to the forty-fourth session of the General Assembly.

3. The Intergovernmental Group adopted the present report on xx May 1990.

II. DESCRIPTIVE RESUME OF PORT CALL CASES REPORTED IN 1989

4. The task of monitoring the supply and shipping of oil and petroleum products to South Africa is a difficult one, if only because South Africa lies at the cross-roads of maritime oil trade and its major harbours are at a convenient mid-way point between important termini in oil and chemical shipping. Indeed, South African harbours are 2-3 days sea journey from the nearest harbours of equivalent size and with equivalent facilities for bunkering, restocking, repairs, etc. Under these circumstances it has been customary for many ships representing different registries and ownership to call at South African ports for operational purposes, i.e. without loading or discharging any cargoes. In addition, ships with petroleum-bearing capabilities may call at South African ports for the purpose of discharging non-petroleum cargoes as well. The Intergovernmental Group, before proceeding to consider the possibility of violations of the oil embargo against South Africa in these port calls, wished to provide concerned Governments with the opportunity to submit information that would allow these cases to be excluded from further consideration.

5. The procedures for selecting the 476 cases originally considered were described in paras. 40 and 41 of the report of the Intergovernmental Group to the forty-fourth session of the General Assembly.

6. In the overwhelming majority of the cases, information was requested from at least two Governments, namely the flag State and the porting State. In cases of more complex voyages (e.g. "chain voyages") one or more additional Governments were believed to be in a position to submit relevant information. In its evaluation of responses, the Intergovernmental Group laid stress on flexibility and the importance of taking a global view of all available information. While it would prefer supporting documentation, explanations submitted by Governments were found to be in a number of cases sufficient to remove these cases from further consideration without requesting relevant documentation. The Intergovernmental Group in all cases sought indications that cases had been researched individually and it did not consider as sufficient broad generic responses which did not address themselves to the particulars of the cases queried. Altogether 62 cases were removed from further consideration.

7. The remaining 414 as yet unclarified cases are broken down by type of ship and flag State as shown in table 1. The results show clearly that the bulk of the port calls involved ships belonging to what the Intergovernmental Group has referred to as oil-shipping States. One such State alone had been requested to provide information on no less than 112 of the still unclarified cases.

8. Table 2 shows the same 414 cases by type of ship and type of country of the last known porting before the port call in South Africa. It emerges from that table that port calls of ships proceeding from oil-exporting countries did not account for a major portion of the tonnage which potentially could be used for shipping oil or petroleum products to South Africa. In addition, it will be noted that no less than 66.4 per cent of tanker

voyages, and 35.3 per cent of all combination carrier voyages proceeded to South African ports from oil-consuming countries with no particularly strong ties to any sector of the international oil industry.

9. Fifty-eight of the 414 unclarified voyages were accounted for by product tankers belonging to a single transnational conglomerate. These voyages represented a total of just over 2 million deadweight tons petroleum product capacity or just under 32 per cent of the total petroleum product tonnage encompassed in the survey. Furthermore 33 of those 58 voyages originated in a country where a subsidiary of the same conglomerate operates on-shore oil transloading facilities. An additional 16 voyages originated in another country where the conglomerate's management is domiciled. The tonnage involved in these 49 voyages represents about 85 per cent of the 2 million tons deadweight capacity cited. The two countries from which these 49 voyages commenced both ban the export of oil and petroleum products to South Africa.

10. The Intergovernmental Group is aware of the possibility that port calls in South Africa are being made on long transcontinental voyages for operational reasons at what is a convenient mid-point in the journey. However, it has observed that such port calls only occur on voyages going in one direction. None of the voyages undertaken by tankers belonging to this conglomerate could be removed from further consideration on the basis of information submitted by Governments.

11. The petroleum product tankers cited in the above paragraph highlights a trend noted in the voyage statistics for much of the remaining port calls. The tankers involved are recently built, technically advanced and expensive ships which, unlike crude oil carrying tankers in the 100-250,000 deadweight ton range, are by

no means in surplus on world tanker markets. Their removal from petroleum product trading to South Africa would create a supply gap which could not easily be replaced by the authorities of Pretoria.

12. The statistics from the survey further show that in the years 1986-1988 some 16 million tons of incoming deadweight oil carriage capacity was made available to South Africa through the porting of combination carriers whose main purpose in calling at South African ports was to load cargoes of mineral ore. In calendar year 1988 these portings accounted for close to 12 million tons deadweight capacity. If rationally and exhaustively utilized for inbound oil carriage, such voyages could practically cover all crude oil import needs. The Intergovernmental Group does not believe that this potential maximum is being utilized. However the very magnitudes involved make it imperative to address the question of how this traffic can be monitored in order to eliminate this loophole.

13. Of the approximately 22 million tons of petroleum-bearing capacity encompassed by the survey of 414 as yet unclarified voyages, over 9 million tons of capacity, or about 42 per cent of the total, proceeded to South Africa from ports in countries where the export of oil and petroleum products to South Africa has reportedly been banned. The Intergovernmental Group does not wish to suggest that the statutes of these countries are being violated on a systematic basis. However on the basis of responses, and/or the lack of responses, it is unable to discern what enforcement mechanisms are in place that would allow the responsible authorities in these jurisdictions to determine if violations of these export bans ever occur.

14. The above notwithstanding, the Intergovernmental Group also notes that many voyages commence in countries where the export of

petroleum products and petro-chemicals has not been banned. In the case of one country which has published accurate statistics on the export of petroleum products to South Africa the survey of voyages originating in that country confirms the general magnitudes involved. The failure to include petroleum product in export bans thus remains a major loophole in the oil embargo against South Africa.

15. The large number of cases where port calls cannot be excluded from consideration as possible violations of the oil embargo against South Africa by the Governments immediately concerned (about 200-250 per year), as well as the size of their potential contribution to supplying oil and petroleum products to South Africa in defiance of the oil embargo, lead the Intergovernmental Group to conclude that such portings constitute a potential means of circumvention of the oil embargo. This constitutes a loophole that cannot be adequately monitored with the means currently available to the Intergovernmental Group, and therefore such port calls by ships with petroleum-bearing capacity should be discouraged.

III. CORRESPONDENCE WITH GOVERNMENTS

16. The Acting Chairman of the Intergovernmental Group addressed letters requesting information on one or more of the 474 original cases to 57 permanent missions or observer missions to the United Nations on 28 July 1989. Reminders were sent to 49 permanent missions to the United Nations on 20 November 1989 and additional reminders to 46 permanent missions to the United Nations on 5 February 1990.

17. Eighteen Governments ultimately responded with information which helped to clarify some aspect of at least one case. Conversely, 39 Governments did not respond, or responded without

providing information specific to the cases about which it had been requested to provide clarifications.

18. On 23 February 1990 the Permanent Mission of Norway sent a letter to the Acting Chairman of the Intergovernmental Group giving a brief résumé of Norwegian legislation in support of the oil embargo against South Africa. In regard to the cases submitted by the Intergovernmental Group in its letter of 28 July 1989, the Norwegian Government had investigated the cases and found that in no case had crude oil been delivered to South Africa. Because the collection of information regarding the porting of Norwegian ships occurs solely for the purpose of determining if Norwegian law has been violated, and because relevant Norwegian legislation only covers crude oil, there is no legal obligation for shipowners to submit detailed documentation concerning such voyages to the Norwegian Government.

19. On 27 February 1990 the Acting Permanent Representative of Brazil to the United Nations in a letter to the Acting Chairman of the Intergovernmental Group informed the latter that a search of the archives of the Brazilian Secretariat for Water Transports (STA) confirmed that no Brazilian ship had shipped oil or petroleum products to South Africa. The Secretariat for Water Transports has no control over third-flagged ships unless they are under charter to Brazilian companies.

20. On 8 August 1989 the Permanent Mission of Ethiopia to the United Nations replied to the Acting Chairman of the Intergovernmental Group that the request for information had been forwarded to the Ethiopian Government and that substantive explanations would be furnished upon the completion of the necessary enquiries. On 8 August 1989 the Permanent Representative of Vanuatu to the United Nations replied to the Acting Chairman of the Intergovernmental Group that the letter of

28 July 1989 had been transmitted to the Government of Vanuatu which would assist the Intergovernmental Group in looking into the matter.

21. In 8 cases Governments confirmed that crude oil or petroleum product had been loaded on the ship at the commencement of the voyage. Information clarifying the cargo in these cases was received from five different Governments. The Acting Chairman of the Intergovernmental Group wrote on 12 April 1990 to the permanent missions of the four Member States in whose ports these petroleum cargoes had been loaded with a request for discharge documentation attesting to the ultimate disposition of the cargo. In two further cases the Government concerned confirmed that the ships had been loaded with crude oil or petroleum products but submitted discharge certificates showing that the cargoes had been off-loaded outside of South Africa.

22. Responses from Governments led to the removal of 62 cases from further consideration, either because the ship was in ballast on its voyage to South Africa (44 cases), or was carrying a non-petroleum cargo (7 cases), or called at a South African port for purely operational purposes (4 cases), or because the ships in question were not certified to carry oil or petroleum products by their registration States (7 cases). Information which contributed to the clarification of these cases was received from 11 different Governments. 414 cases thus remained for further investigation.

23. In addition, in cases there were responses from Governments where such ships had ported before proceeding to South Africa and which clarified that no oil or petroleum products had been on board those same ships at that point in their voyage. These portings were thus removed from any further consideration of the voyages in question. Information which contributed to the

clarification of these portings were received from ten different Governments.

24. The Acting Chairman of the Intergovernmental Group is currently in communication with the permanent or observer missions of five further Governments seeking clarification of information submitted by those Governments regarding specific cases about which they had been queried.

25. Because of its strong emphasis on close co-operation with Governments and the necessity of maintaining absolute confidentiality in regard to its correspondence with the latter, the Intergovernmental Group adheres to the policy of not disclosing the source or contents of communications from Governments which provided grounds for excluding cases from further consideration.

26. During the Intergovernmental Group's evaluation of responses the view emerged that it was the registration State, generally termed the flag State, upon whom the primary onus of clarifying the purpose and circumstances of voyages should be placed. In this context it was pointed out that ships are bound by the laws of the registration State at all times. The Intergovernmental Group is of the opinion that all States, without regard to their relationship to the individual cases, have an important contribution to make and would thus not like to bind itself to rigorous procedural maxims. However, it is able to make the observation that, where registration States co-operate, concise and pertinent information made it possible to remove cases from further consideration. Unfortunately, only a few smaller oil-shipping State co-operated fully with the Intergovernmental Group in this exercise.

IV. CONCLUSIONS AND RECOMMENDATIONS

27. The Intergovernmental Group feels that further consideration should be given to all cases where no response was obtained from any of the concerned Governments. In particular, the failure of all but a few smaller oil-shipping States to respond with information pertinent to the individual cases has eliminated the most reliable source of information on the voyages queried. In 414 of the original 474 cases the Intergovernmental Group has no option but maintain the cases under further review.

28. The Intergovernmental Group sincerely hopes that co-operation will still be forthcoming from those Governments which have not responded to its requests for information.

29. The exercise of investigating port calls has revealed the practical and legal impediments to an effective oil embargo against South Africa which obtain where States have not included petroleum products in their legislation but have contented themselves with bans on crude oil. Additionally, the absence of mechanisms or procedures for reporting and monitoring portings and ships movements prevent not only the effective enforcement of national Governments' bans on the export of oil and petroleum products to South Africa, but make it more difficult for States to co-operate in an efficient and meaningful manner with the Intergovernmental Group where the latter seeks to enforce the oil embargo against South Africa.

30. In order to strengthen the implementation of the oil embargo against South Africa the Intergovernmental Group recommends the following action:

- (i) Governments should enact legislation or comparable measures to prohibit the supply and shipping of oil and

petroleum products to South Africa;

(ii) Governments should co-operate fully with the Intergovernmental Group in its investigation of cases where ships with petroleum-bearing capacity call at South African ports. In particular, Governments should remove legal impediments to full co-operation with the Intergovernmental Group in its monitoring of the shipping of oil and petroleum products to South Africa;

(iii) Governments should discourage ships capable of carrying oil or petroleum products in their national registries, or owned or managed by companies or individuals within their jurisdictions, from calling at South African ports;

(iv) Intergovernmental and non-governmental Organizations should extend their utmost co-operation to the Intergovernmental Group, as well as to national Governments, in the co-ordinated enforcement of the oil embargo against South Africa.
