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BORDER ISSUES IN AFRICA AND THE ROLE OF AUBP (2010)

BORDER ISSUES IN AFRICA AND THE ROLE OF AUBP

I. SYNTHESIS OF THE REPORT

1. The programme for the delimitation and demarcation of the borders of Member States of the African Union (AU) is a key factor for improvement and modernization of the border regimes in the continent of Africa.

2. Good management of the borders is underpinned by three imperatives:

- a) The first which is geo-political, concerns the maintenance of peace, stability and security anchored on conflict prevention. Imprecise delimitation and inconclusive demarcation can be sources of friction which can be prevented by adoption of a border delimitation and demarcation policy. Far from being an element of balkanization of the continent, such a policy will help strengthen the sovereignty of States within their own borders - a prerequisite for peaceful co-existence in the continental context;
- b) The second is geo-economic: a more visible frontier could be open without damage to trade flows and indeed could facilitate such flows. Establishment of more effective border regimes (clear markings and joint control management) is conducive to commercial exchanges;
- c) The third imperative is encouragement of local initiative driven cross-border cooperation undertaken by societies that are geographically contiguous and share common interests. For such societies, the geographical border is not an impediment but rather constitutes a resource.

3. The programme for the delimitation and demarcation of African borders is thus multi-dimensional. It establishes a nexus between peace and security, socio-economic development and the consensual objective of regional and continental integration. It is a federating programme capable of fostering the prevailing dynamics in the continent. A defined border comprises clear-cut demarcation landmarks and constitutes one of the prerequisites of regional integration and cooperation processes as indicated in the book **“From Barriers to Bridges”** prepared by the AU Border Programme (AUBP) Section – a compilation of all the key texts on border issues since the Cairo Resolution of 1964. The accompanying **Handbook** presents the technical aspects of border delimitation and demarcation. The draft **Convention** on cross-border cooperation is the legal tool for local level integration.

II. STATE OF BORDERS IN THE AFRICAN CONTINENT: SOME DATA

4. The African continent has about 80,000 km long political land borders. It is estimated that only one-quarter of these borders have been duly demarcated. In actual fact, knowledge

of the real situation remains hazy. Fifteen States have responded to the technical questionnaire prepared and circulated by AUBP.

5. According to estimates, of the 450 potential maritime borders in the world, 50 are to be found around the continent of Africa. Thirteen of such borders were fixed before 1998 and 9 were determined as far back as 10 years, thus bringing the total to 22: 5 in the Mediterranean Sea, 12 in the Atlantic Ocean and 5 in the Indian Ocean. While no major disputes were recorded, there is the urgent need to resolve the status of the borders that have remained inconclusive. It is noteworthy that the formulae of cooperation have been found to promote joint exploitation of oil and gas resources in adjoining areas (São Tomé & Príncipe and Nigeria, for example).

III. BORDER DISPUTES AND RESOLUTION MODALITIES

6. The Cairo Resolution of 21 July 1964 enshrines the commitment of States to “respect the borders existing on achievement of national independence”. This principle of “*uti possidetis juris*”, and the inviolability of the borders inherited from colonialism, has very largely been respected since 1963-4. It is to be noted that this principle was affirmed by the International Court of Justice (ICJ) which settles disputes in accordance with the “*uti possidetis juris*” principle. Only one new State was constituted on the basis of previous colonial border markings. The States of the African continent made it a point to abide by this principle of stability and thus staved off any tendency towards fragmentation.

7. The review of shared international political borders however generated a proliferation of border disputes as a result of the gaps in the archives bequeathed by the colonizers, particularly with respect to intra-colonial segments, the imprecise nature of certain texts and of the demarcation on the ground. It is noteworthy that, since 1964, about 42 cases of latent tensions and open conflicts have occurred over border issues *stricto sensu*, to the exclusion of internal problems.

8. States Parties adopted several methodologies in cases of dispute:

- a) The first consisted of bringing cases before the ICJ which settles them through decision, edits and advisory opinion. Seven such disputes have been treated by ICJ since 1963. A fresh seizure of the ICJ was effected by Niger and Burkina Faso in 2009 in regard to segments of their common border, the markings of which apparently lacked clarity in the known colonial texts.

The major advantage of recourse to the ICJ is that the objective decisions of this body are binding on the parties which are therefore obliged to implement such decisions on the ground. The ICJ takes decision on the basis of colonial records. Seizure of the ICJ can be fraught with the disadvantage of taking several years to resolve and could be hugely expensive. Its implementation should therefore take

into account the impact on the local populations concerned (which was the case in matter of Bakassi Peninsula). Seizure may equally offer the opportunity to undertake updated mapping and geodesy which is a tool of development. Some experts have called for greater involvement of the African Court of Justice in such matters.

(Recourse to the Permanent Court of Arbitration is more rare, and involves internal situations, the most recent being the dispute over Abyei region).

- b) The second methodology is the use of the bilateral diplomacy option which enables two contiguous States to negotiate directly and arrive at a compromise agreement (reaffirmation of the *status quo* or very minor adjustments).
- c) Lastly, there is the economic option which consists of agreeing on mechanisms for joint management of the resources located along adjoining border areas. This option may be implemented concurrently with option (b) and offers the advantage of making it easy to save time with regard to exploitation of the resources.

9. In some cases, United Nations intervention was required especially to provide impetus for operationalization of the decisions adopted by the parties and to support the work of a joint commission.

10. Irrespective of the path chosen, political agreement between two States parties is an indispensable prerequisite.

11. As regards the border delimitation and demarcation programme, an objective appraisal shows that the results so far achieved have been mixed. It is probable that the current socio-economic dynamics in the African continent and the increasing integration into global affairs would demonstrate to those that have made the least progress that it is in their interest to equally get engaged in a delimitation and demarcation policy (as observed elsewhere in the world, especially in Asia).

IV. FROM DELIMITATION TO DEMARCATION: GIVE REALITY TO A VIRTUAL LINE AND CONSIGN IT TO A MAP

12. As regards the process of moving from delimitation to demarcation, two specific cases may be observed:

- a) the initiative is taken by a bi-national border commission sequel to a political decision: the case of the Lake Chad Commission (1988) and the Benin/Nigeria Border Committee (2002-4 after a long gestation period). Several categories of players are involved, and it is often needful to come up with a technical agreement the geodetic coverage;

- b) another approach which is much more rare is that which involves initiative by one sole country in case of dispute, with the external operator playing the role of third party.
13. Demarcation may be carried out based on three categories of technical approach:
- a) the first is cartographic. In this regard, in the case of Niger and Benin, border of which was marked by the fluctuation of a river course, the method of superimposition of old maps on recent satellite pictures highlighted clear differences, and the Border Commission in 2006 resolved the issue on the basis of ICJ decision;
 - b) the next approach is physical, consisting of pillar markings with stone and concrete monuments. The cost thereof may be high (concrete, water, work teams), but the results have greater clarity, ensured in particular by the inter-visibility of the pillars. When this is possible on the ground, the combined approach limits the markings to the segments without clear morphological landmarks; and for the rest of the boundary lines, the approach relies on hydro-topographical features.
14. It is no doubt needful to devise less expensive demarcation techniques (using more modern tools for initial geodetic assessment in areas more far afield, and through reduced overall time of the process and simplification of the logistics). Involvement of the local population is a vital factor of success. What now remains is to complete the questionnaire and update the cartographic and geodetic coverage. However, AUBP is forging ahead.

V. WHY DELIMIT AND DEMARCAT? IMPROVEMENT OF BORDER REGIMES IS UNDERPINNED BY A DUAL IMPERATIVE

15. In the present global circumstances, good border management is driven by two considerations:
- a) The first imperative is geo-political and concerns the maintenance of peace, stability and security anchored on conflict prevention. It is necessary to eliminate the causes of frictions and tensions arising from imprecise delimitation. Prevention of such frictions and tensions will pave the way to organize peaceful coexistence in the continental context.
 - b) The second is geo-economic: a more visible frontier can be open without damage to trade flows and can indeed facilitate such flows. The past two decades have been characterized by increased number of resolved border disputes – bilateral delimitation and demarcation agreements at global level (Central Asia, Arabian Peninsula and East Asia as well as in the European continent involving the new

States). This general momentum may be seen as one of the technical conditions for countries to access the emergent economy in the global economic climate.

16. Regarding this second consideration, it should be noted that the African continent is imbued with a robust energy for transformation. Its population tripled between 1960 and 2005; it will double by 2050 and will continue to urbanize. The result will be intensified flows between the cities and the countryside at a pace more rapid than the establishment of infrastructure and the upscaling of major facilities. Trade is however seeing rapid growth in line with increased economic growth estimated at an average of 5 per cent (except in 2008-9). All this has spatial significance: intensified flows in the transport corridors (Maputo corridor, Great Lakes region – Uganda – Kenya; Ethiopia – Djibouti, North-South and East-West flows in West Africa). In West Africa, it is estimated that 50 cities with over 50,000 inhabitants are located at less than 150 km of a political border.

17. Having said that, the African continent remains largely extroverted. It trades more easily with the rest of the world than with itself. Despite the activities of the various regional economic groupings, domestic trade accounts for only 9 per cent of the Africa's overall trade (as against 18 per cent in Latin America, 40 per cent in South East Asia and 74 per cent in the European Union). Explanation for these still modest figures includes:

- the gaps in road and rail transport;
- the high cost of transport (136 per cent higher when compared to other regions of the world); and
- bureaucratic red tapism as described in various OECD, UNCTAD and World Bank reports.

18. One of the indicators of the aforesaid obstacles to trade is what is commonly described as “waiting time at the border” calculated on the basis of the number of customs documents multiplied by the number of the signatures required and the time of crossing the border posts (excluding the actual time of transportation). This waiting time is in Africa 35 days for exports and 41 days for imports (as against 10 days on the average in developed countries).

19. A national and regional policy for improved “border regimes” will pave the way to reduce the waiting time at the border and fluidify trade. The “one border post” type regime, the like of which has been in existence between Zambia and Zimbabwe since the end of 2009, or the customs facilities available in ports such as Accra (mentioned herein only for the purposes of example) are interesting.

20. Furthermore, it is the view of UNCTAD that improved road network is propitious to trade: a continent-wide investment of US \$23 million would generate US \$240 million worth of commercial flows, representing a leverage effect of 1 to 10 in 15 years. The same is true for electricity network inter-connections and railways modernization projects.

21. Modernization of inter-State and border regimes infrastructure could, lastly, act as spring boards for the formation and consolidation of integrated regional spaces, for which “border countries” would serve as catalyser and portal. Finally, contrary to certain preconceived notions, it is established that intra-African migrations contribute to poverty reduction.

VI. CROSS-BORDER COOPERATION CONSTITUTES A SHARED WORKING METHOD

22. It is further needful to examine the advantages of improved border regimes at the level of regions and border communities. Cross-border cooperation has two dimensions:

- a) It paves the way to get societies brought close by language or geographical milieu, but belonging to different States and distinct administrative structures, to work together;
- b) It also has the advantage of being a relevant level for mobilizing financial support at the level of RECs (with priority for the financing of pilot operations).

24. “Cross-border cooperation” (CBC) is already widespread as a practice in the continent. It is observed that cross-border activities thrive immensely along established borders. The same is true for the relations established between immediate neighbours around water courses and lakes/rivers (the Senegal, Niger, Congo, Oubangui, Okavango and Nile rivers). In contrast, border segments that are subject to tensions hamper normal relations at local level. Local and regional security is critical, not only in inter-State relations but also at local level.

VII. THE CBC IS A TOOL FOR PROMOTION OF REGIONAL INTEGRATION

25. This tool offers the following three advantages:

- a) at the level of institutions, States can enhance local initiatives and work towards integration especially through administrative management of the movement of persons and goods, as well as through infrastructure projects;
- b) with regard to competences, the RECs can enter into cooperation with European and international donors and establish a budget line exclusively reserved for CBC;
- c) in regard to action areas:
 - in the political realm, CBC is a spring board for integration;
 - at institutional level, CBC allows for the exercise of subsidiarity, involves training and capacity building development and ensures the flourishing of project providers;

- In the geo-economic domain, CBC is concerned with peripheral spaces, often marginalized and critical;
- at socio-cultural level, CBC is anchored on social and linguistic relationships which act as a vehicle of local integration.

VIII. CROSS-BORDER COOPERATION OFFERS A DUAL GUARANTEE

- a) The first is that of regional integration as an objective: “regional integration remains an absolute priority for African countries”. This includes the formation of “border countries” - coherent territories driven by formal and informal trade around a border managed as a resource, and by local initiative led cooperation;
- b) The other guarantee is that of the role of a State which exercises sovereign functions (police, customs and security) but delegates duties to and reposes confidence in regional and local development players in a way that encourages providers of local initiative led cross-border cooperation projects. The signing followed by the implementation of the protocols on free movement of goods and persons could contribute to this role.

26. Implementation of the Convention on Cross-Border Cooperation and the production of the Handbook on cross-border cooperation are vital gains. As indicated by the former Chairperson Alpha Oumar Konaré, “national peripheries are at the heart of integration”.

IX. CONCLUSIONS: TIME FOR ACTION

27. The time has come to devise a plan of action for the period 2010-2012 based on a list of localized projects (land, river, lake and maritime), the components of which would be as follows:

1. contribute to the demarcation of already agreed borders with training workshops, field missions, search for financing and actual implementation. Such workshops would help build capacities to handle the border issues under resolution;
2. encourage and disseminate best practices on specific cross-border cooperation; and
3. develop shared management of maritime and terrestrial border resources.