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Agenda item 9

C/ES.29/9/2  
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## PROTECTION OF VITAL SHIPPING LANES

### Depositary functions for the Record of the Jeddah Amendment to the Djibouti Code of Conduct 2017

#### Note by the Secretary-General

#### SUMMARY

*Executive summary:* This document explains the role of a treaty depositary in light of a request for the Secretary-General to perform the depositary functions relating to the Record of the Jeddah Amendment to the Djibouti Code of Conduct, 2017

*Strategic direction:* 3.3, 6.1, 6.2, 6.3, 8

*High-level action:* 3.3.1, 6.1.1, 6.1.2, 6.2.1, 6.2.3, 6.2.4, 8.0.2

*Output:* 6.2.2.1

*Action to be taken:* Paragraph 12

*Related documents:* C/ES.29/9/1; resolution A.1002(25); C 102/D and C 118/D

#### Introduction

1 The Council may recall that, pursuant to resolution A.1002(25) on *Piracy and armed robbery against ships in waters off the coast of Somalia*, a sub-regional meeting on maritime security, piracy and armed robbery against ships for Western Indian Ocean, Gulf of Aden and Red Sea States was held in Djibouti from 26 to 29 January 2009 (the Djibouti Meeting). The Djibouti Meeting adopted the Code of Conduct concerning the repression of piracy and armed robbery against ships in the Western Indian Ocean and the Gulf of Aden (the Djibouti Code of Conduct).

2 The Council may also recall that, at its 102nd session, it authorized the Secretary-General of the Organization to perform the functions of Depositary of the Record of the Djibouti Meeting (C 102/D, paragraph 14.3(iii)).

3 The Djibouti Code of Conduct was subsequently revised by its signatories at a meeting which was held in Jeddah, from 10 to 12 January 2017 (the Jeddah Meeting). The revised Djibouti Code of Conduct (the Jeddah Amendment to the Djibouti Code of Conduct 2017) was signed on 12 January 2017 by the representatives of the Comoros, Djibouti, Ethiopia, Jordan, Madagascar, Maldives, Mozambique, Saudi Arabia, Seychelles, the United Arab Emirates, the United Republic of Tanzania and Yemen. Kenya subsequently signed the Jeddah Amendment in June 2017.

4 Pursuant to article 21 of the Jeddah Amendment, the Amendment became effective on 12 January 2017 for Participants that had signed it. That article, as adopted by the signatory States of the Djibouti Code of Conduct also states that the Jeddah Amendment will become effective for subsequent Participants upon their respective date of deposit of a signature instrument with the Secretary-General.

5 The Council may recall that, at its 118th session, it noted the outcome of the Jeddah Meeting and, in particular, the adoption of the Jeddah Amendment and the resolutions adopted thereby; and also expressed appreciation to the Government of the Kingdom of Saudi Arabia for hosting and funding the Jeddah Meeting, and to the States and international organizations that supported and assisted the Meeting (C 118/D, paragraph 14.3). The Council may also recall the invitation to authorize the Secretary-General to perform the functions of Depository of the record of the Jeddah Meeting (C 118/14, paragraphs 15 to 17 and 18.2). That invitation is repeated in document C/ES.29/9/1, paragraph 16.1 (Kenya).

#### **Depository for the Record of the Jeddah Meeting**

6 Paragraphs 10 and 11 of the Record of the Jeddah Meeting provide that the Record, which is established in a single original text in the Arabic, English and French languages, should be deposited with the Secretary-General of the Organization. Further, that the Secretary-General shall send copies of the Record with its attachments, and certified copies of the authentic text of the Jeddah Amendment to the Djibouti Code of Conduct 2017, to the Governments of the States invited to be represented at the Jeddah Meeting.

7 The Jeddah Amendment includes the provisions of the Djibouti Code of Conduct, and takes into account and promotes the implementation of those aspects of United Nations Security Council resolutions, United Nations General Assembly resolutions, conventions, IMO resolutions and guidance, and regional agreements that apply in the maritime domain beyond those addressing piracy and armed robbery against ships, including illegal, unreported and unregulated (IUU) fishing, and other transnational organized crime in the maritime domain (see C 118/14, annex). It is the legal opinion of the Secretary-General that, considering Articles 1 and 2 of the IMO Convention concerning the purposes and functions of the Organization, the Jeddah Amendment does not confer any additional competence to the Organization with respect to any illicit maritime activities regulated by non-IMO instruments or under the competence of other United Nations agencies.

#### **Functions of the depository**

8 The designation of the depository of a treaty may be made by negotiating States, either in the treaty itself, or in some other manner. The depository may be one or more States, an international organization or the chief administrative officer of the organization.

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9 Subject to the provisions of the relevant treaty, or as may be agreed by the Contracting States, the principal functions of the depositary are listed in article 77 of the Vienna Convention on the Law of Treaties, 1969 (VCLT). With respect to the Jeddah Amendment, these functions would include:

- .1 keeping custody of the original text of the Record of the Jeddah Meeting (paragraph 10 of the Record);
- .2 preparing certified copies of the authentic text of the Jeddah Amendment and transmitting it, together with copies of the Record of the Jeddah Meeting, to the Governments of the States invited to be represented at the Jeddah Meeting (paragraph 11 of the Record);
- .3 receiving signatures of the Jeddah Amendment, and keeping custody of signature instruments received from subsequent Participants (article 21 of the Jeddah Amendment);
- .4 examining whether any signature of the Jeddah Amendment is in due and proper form and, in case of doubt, bringing the matter to the attention of the State in question; and
- .5 receiving and keeping custody of contact information for the designated focal points and piracy information exchange centres of Participants (article 11(2) of the Jeddah Amendment).

10 The functions of the depositary are international in character and the depositary is under an obligation to act impartially (article 76(2) of the VCLT).

11 Furthermore, in the event of any difference appearing between a State and the depositary as to the performance of the latter's functions, the depositary shall bring the question to the attention of the signatory States and the Contracting States or, where appropriate, of the competent organ of the international organization concerned (article 77(2) of the VCLT).

#### **Action requested of the Council**

12 The Council is invited to:

- .1 take note of the information provided in relation to the depositary functions for the Jeddah Amendment to the Djibouti Code of Conduct 2017; and
- .2 decide as appropriate to authorize the Secretary-General to perform the functions of the Depositary to the Jeddah Amendment, with the understanding that such authorization confers no additional competence to the Organization with respect to the illicit activities identified in the instrument.