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Our ref. DAR/AR-40/2008
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Encl.
Re Exchange of Letters on Dutch Military Assistance
on board of ships flying the Comorian flag
Cc

Excellency,

Noting that the World Food Programme (WFP) is a key humanitarian actor in Somalia, to which it sends 80% of its assistance by sea;

Considering that the security of its vessels is of fundamental importance in this regard for the entire humanitarian community in Somalia;

Taking into consideration the statements of the President of the United Nations Security Council on 15 March 2006 in support of Resolution A.979 of the International Maritime Organization (IMO) dated 23 November 2005;

Conscious of the joint call made on 10 July 2007 by the IMO and the WFP for concerted international action to resolve the problem of piracy and armed robbery directed against ships in waters off the Somali coast;

Taking note of resolution 1772 (2007) of the United Nations Security Council, expressing its concern at the upsurge in piracy off the Somali coast, and the joint press release issued on 10 July 2007 by the International Maritime Organization and the World Food Programme;

Considering the persistent incidents of armed robbery committed in the territorial waters of Somalia, and responding to the request made by the Government of the Republic of Somalia and recent requests from the WFP, the Netherlands is willing to lend its support to the Somali government for the protection of WFP-contracted ships bound for Somalia;

I have the honour therefore, speaking on behalf of my Government, of making the following proposal to you:

- the present provisions have been defined to meet the needs of protection of World Food Programme-contracted ships in the territorial waters of Somalia and their application is limited to the period of the presence of Dutch Forces deployed in this connection on the territory of the Republic of Somalia.
- For the protection of the ships of the Comoros, being the Flag State of the ships chartered by the World Food Programme, the Government of the Comoros, as Flag State:
 - a) in conjunction with the owners of the ships flying its flag, shall facilitate the embarkation of Dutch Forces on ships chartered by the World Food Programme;
 - b) in conjunction with the owners of the ships flying its flag, shall facilitate cooperation between the Dutch Forces, including those on board such ships, and the ship's crew;
 - c) shall authorise the Dutch Forces to take all necessary steps, including the proportionate use of force. In this connection, the Dutch Forces shall assess the correct match between the means to be employed and the manner in which they are to be employed, at whatever level.
- The Government of the Comoros, as Flag State, authorises the possession of weapons and munitions for security by Dutch military personnel present on board ships chartered by the World Food Programme and flying its flag.
- The Government of the Comoros, as Flag State, grants to Dutch military personnel present on board its WFP-contracted ships for the purpose of their protection, personal inviolability and immunity from legal proceedings in its criminal, civil and administrative courts, in addition to immunity from execution.
- The Government of the Comoros, as Flag State, waives all rights of recourse against the Government of the Kingdom of the Netherlands in the event of prejudice caused to third parties and its nationals by Dutch Forces in the execution of their tasks. In the event of legal action instituted in connection with such prejudice, the Government of the Flag State shall stand in lieu of the Government of the Kingdom of the Netherlands in the proceeding. In all events, the Government of the Flag State shall pay any compensation due as redress for prejudice caused. If the latter is attributable to Dutch Forces alone in the course of the execution of their tasks, the Government of the Kingdom of the Netherlands shall refund the amount of the compensation to the Government of the Flag State. If both Governments are jointly responsible for the

prejudice suffered by third parties, the amount of the compensation shall be shared equally between them.

- The Comoros, as Flag State, agrees to the handing over to the Somali authorities by Dutch Forces of all equipment confiscated from individuals having committed acts of armed robbery on board its ships, unless the Dutch authorities wish to proceed otherwise.

- The Comoros, as Flag State, agrees to the handing over to the Somali authorities by Dutch Forces of all individuals having committed acts of armed robbery on board its ships, unless the Dutch authorities wish to proceed otherwise.

(1) In the event the Dutch Forces hand over individuals to the Comoros, the Netherlands make it a condition for such handing over of individuals to the Comoros, as Flag State, that the latter give assurances that in cases where capital punishment may be incurred, the death penalty will neither be sought nor applied to the individuals handed over.

(2) The authorities of the Comoros, as Flag State, undertake to ensure the transfer, guarding and safety of the individuals handed over by the Dutch authorities, abiding by applicable international law, and specifically international human rights law, assuring themselves that no individual handed over to them is subjected to torture or any other cruel, inhuman or degrading treatment.

- The death of any member of the personnel of Dutch Forces on board a ship of the Flag State shall be declared to the authorities of that State, which hereby agrees to hand over the body to the Dutch authorities without delay.

- Any dispute between the parties concerning the implementation or interpretation of the provisions hereof shall be settled exclusively by negotiation.

- The Government of the Comoros as Flag State, and the Government of the Kingdom of the Netherlands may terminate this agreement in writing, giving a short period of advance notice.

Expiry of the present agreement shall not discharge the Parties of obligations created during its implementation.

The provisions contained in this exchange of letters may be communicated to any third State that should so request from either of the parties.

I should be grateful if you would inform me whether the provisions set out above meet with the approval of your Government. If this is the case, the present letter, and your reply, shall constitute the agreement entered into by our two Governments concerning the protection tasks to be performed by Dutch Forces with regard to World Food

Programme-contracted ships on inbound or outbound journeys between the territorial waters of the last port of call and their entry into the port of destination in Somalia, and that agreement shall take effect on the date of your reply.

Please accept the assurances of my highest consideration.

Karel van Kesteren
Ambassador