

Case Studies in 21st Century Diplomacy

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In addition to the above experts we would like to extend our gratitude to GAPP Executive Education for customizing a series of integrative training modules based on the best practices for training young diplomatic officers of the Diplomatic Institute and coordinating the publishing of this book.

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Forward Notes

The School of Global Affairs and Public Policy (GAPP) at the American University in Cairo is committed to disseminating research results and providing a platform for top-notch executive training in Egypt and the region more broadly. The GAPP School with its rich expertise in issues of diplomacy, migration, international human rights and law, gender and media did not hesitate to offer its knowledge to build the skills of young emerging Foreign Service officers. Effective Diplomacy in the 21st Century in cooperation with the Diplomatic Institute of the Ministry of Foreign Affairs in Egypt and the Ford Foundation provides young diplomats with professional guidance on issues of relevance to diplomacy.

Having served as foreign minister of Egypt from July 2013 to June 2014, as well as numerous other positions throughout my diplomatic career, I am always eager to mentor and guide emerging Foreign Service officers, particularly during their early stages. This program, built on the expertise of GAPP faculty and other local experts and piloted through training initiatives by GAPP Executive Education, is considered a building block for knowledge sharing to help build the capacities of emerging Foreign Service leaders in Egypt and the region.

*Ambassador Nabil Fahmy
Dean, School of Global Affairs and Public Policy*

The Ford Foundation Middle East and North Africa (MENA) Office has had the pleasure of supporting the Diplomatic Training Institute at the Egyptian Ministry of Foreign Affairs since the 1980s. Our cooperation aimed to provide generations of young diplomats with exposure to key US and UN institutions in Washington D.C. and New York. More recently, our grants to the Diplomatic Training Institute added two further components: trips to some of the Nile Basin countries in order to enhance young Egyptian diplomats' exposure to Egypt's strategic African neighbors, and innovation in training methods, using interactive, experiential adult learning through simulations, case studies and exercises.

The Ford Foundation MENA office was glad to support cooperation between the Diplomatic Training Institute at the Ministry of Foreign Affairs and the School of Global Affairs and Public Policy (GAPP) at the American University in Cairo who developed interactive modules for the Diplomatic Training Institute. The Ford Foundation MENA office has regularly supported GAPP's endeavors to work with Egyptian public institutions, offering practical analytical skills and professional expertise.

We are delighted to see cooperation between GAPP and the Diplomatic Training Institute result in this fine product. The world needs diplomats capable of addressing its complex problems with dynamism and compassion. This product is hopefully a step in that direction.

*Noha El-Mikany, Ph.D.
Regional Representative
Ford Foundation*

Effective Diplomacy in the 21st Century aims to build the capacities of young Foreign Service officers who are the emerging leaders of tomorrow. With its mission to reinforce and reinvigorate leadership capacities within government agencies and public institutions, GAPP Executive Education was eager to partner in managing the program and translating research into practice. Building on the expertise of the School of Global Affairs and Public Policy in the areas of human security, international trade, migration and global governance, and youth and gender, and piloting a training program with the Diplomatic Institute, we were able to develop this material consisting of a series of four integrative training modules based on best practices. These interrelated topics are linked to public diplomacy and consist of case studies, simulations and training exercises. They will be used as guidance for capacity building of future generations. We aim to continue to build on this initiative as partners in its development.

Dina Wafa
Director, Executive Education
School of Global Affairs and Public Policy

This new collaborative initiative between the School of Global Affairs and Public Policy (GAPP) at the American University in Cairo, the Diplomatic Institute at the Ministry of Foreign Affairs in Egypt and the Ford Foundation was a very stimulating and motivating exercise for young diplomats as well as GAPP faculty. The GAPP School was honored to provide its high level expertise in the fields of international trade, youth and gender, human security, migration and global governance to the Diplomatic Institute. Young diplomats were receptive to the emergent concepts of diplomacy, the art of negotiation, and the new methods of simulation addressed in a series of seminars by competent faculty. It was an innovative experience for the institute to have a full-fledged program taught by academics. With an emphasis on the theoretical aspects of diplomacy, instructors enriched the discourse with practical experience and hands-on knowledge.

GAPP was pleased to collaborate with the Diplomatic Institute and the Ford Foundation on this pilot project.

As the Principal Investigator, I would like to thank everyone who contributed to the success of this project.

Magda Shahin
Director, American Studies Center
School of Global Affairs and Public Policy

Case #1
**Negotiating Human Security:
Challenges and Choices at the Mission Level**

By: Allison Beth Hodgkins

*Mona Ahmed Saleh contributed to the research
and writing of this case*

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Note: This case is based on actual events; however names have been changed to protect the interests and rights of the individuals and governments involved. The author is grateful to the diplomats involved in this incident for their contribution to the development of the case.

Introduction

Long after working hours, the duty phone rang at the Azanian embassy in Galor, the port city capital of the African coastal country of Kasura. The call, taken by the embassy's guards, was from an Azanian citizen named Ahmed, who reported that he and five other Azanian nationals were locked in the hold of an oil tanker adrift off the Kasurian coast. Not only were they stranded without food or fuel and were running short on water, but they believed the tanker's owner was planning to have them killed. Why? Although they had worked long hours for over six months they had not been paid. As a result of demanding their back wages, they had been locked in the hold and quite literally left to die. Could the embassy help, Ahmed pleaded, before it's too late?

The guards quickly took down as much information as they could and gave Ahmed the mobile number of the Consular Duty Officer, a 28-year-old Azanian diplomat named "Sara" on her first overseas post with the Foreign Ministry.

Ahmed's call roused Sara from a deep sleep; however, she was able to obtain many additional details about the crisis including the name of the tanker, its owners and their possible location.

Ahmed told Sara that he and his companions had seen an advertisement in an Azanian newspaper offering positions for able-bodied men to serve as crewman on tankers managed by a world renowned maritime agency. They applied and were surprised that they were all offered immediate positions within two weeks. They had to pay for their own tickets to Orela, but were promised such high wages by the tanker's owner that it didn't matter. That was six months ago but they had never been paid

any of their promised wages. They were given multiple excuses by the owners: the money was in the wrong account, it was awaiting transfer or delayed, finally they were told that because of recent losses they would not be paid until next year. When the crew finally demanded to be paid or sent home at the owners' expense, they were thrown into the hold and abandoned. According to Ahmed, they were told that their deaths would be blamed on piracy. No one would question the owners, they were told. They would just disappear.

When Sara learned the name of the ship and the owners she immediately knew the Azanians were in serious danger and the threat to their lives was credible. The tanker, named the "Johar," was an Orelan flagged oil tanker owned by two brothers with dual Kasurian and Orelan nationality. Like Azan, Orela is a member of the Arab League, and is a coastal nation like Kasura. The tankers owners, "Said" and "Salem," were also well known in Galor as powerful but corrupt shipping merchants. They had been linked with criminal activity in the past, but had always eluded prosecution. Given the pervasive corruption in Kasura, including within the port authority, police, and judiciary, she had every reason to believe the brothers could carry out their threat and ensure no questions would be asked about the crew's disappearance.

Sara quickly thought through her options. She had an obligation to do everything she could to help these citizens, but how? Azan had solid diplomatic relations with both Orela and Kasura and many shared economic interests. These ties could help, but could also be threatened if resolving the situation caused embarrassment. Fortunately, Sara was on good personal terms with the director of the Galor Port Authority and believed she could convince him to intervene.

First thing in the morning, Sara called the Director of the Port Authority on his cellphone making sure to use the appropriate honorific and expected greetings. Sara was fluent in Kasuran dialect and had taken time to learn the customs as well. She arrived at his offices a short time later

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with a small gift and a carefully planned plea for help in rescuing the stranded crewmen. First, she praised his professionalism and thanked him for his efforts in keeping the port running safely and efficiently. She also reminded him of the good relations between Kasura and Azan, and how trade and port security was an important part of that. Criminal activity is a threat to those good relations, she said, and the reputation of this port. The port director agreed.

Then she relayed the story of the stranded crewmen, describing how their request for promised wages for work they had faithfully performed per the terms of hire had been met with a threat of murder. They needed his help. It wouldn't take much, just sending a ship from the port authority to tow the Johar into port, to right this wrong and reaffirm Kasura's commitment to the protection of vulnerable populations and advance human security. "I know that you could avoid trouble by saying that the ship is outside your territorial sea and that you have no obligation; but I know that Kasura has a commitment to the protection of vulnerable people who are only seeking to develop their potential and live in dignity."

The Port Authority director listened carefully, and after a moment's thought picked up the phone and ordered an emergency boat to pull the tanker into port. "I can get them into port on the grounds that it is our waters. I can impound the ship temporarily on a report of a suspicion a crime has been committed, but you have to get them out of Galor and Kasura. Once I impound the ship, the owners need to bring a court order releasing it. I can't prevent the owners from getting someone to sign off on the papers needed to release the ship on the grounds of insufficient evidence or something like that," he said, rubbing his fingers together in a signal for paying a bribe, "you probably have 24 hours, but I would get them out of town ASAP!" Sara thanked him profusely, drawing on all her knowledge of local language and customs. Two hours later, Ahmed and his five companions were inside the Azanian Embassy and the Johar was impounded.

While the men were jubilant, Sara also knew there were more challenges to come. A quick call to her ambassador confirmed her fears regarding Salem and Said: they were allegedly involved in multiple crimes but had never faced punishment. They were also feared among local businessmen and law enforcement. It was conceivable they could still carry out their threat to kill the six men even on the way to the airport. Moreover, they could also retaliate against Sara, the port director and any other staff at the embassy or in Galor who interfered with their objectives.

The easiest thing for Sara to do at this point was to get the men to the airport and back to Azan; which had funds allocated for the repatriation of Azanian citizens in cases of distress abroad. The Port Director could quickly release the ship with an apology for the inconvenience and the incident would be forgotten. However, neither Sara nor her ambassador were willing to sit back and congratulate themselves. With many Azanian citizens working abroad, corrupt merchants who could exploit corrupt officials with impunity, and persistently lax law enforcement, the missions were dealing with several issues across the region. They wanted to do more than ensure the survival of these men, they wanted to support their right to earn a livelihood as well. They also both felt an obligation to press the matter with Orelan officials and the Kasuran government, if only for the sake of the port director who had also put himself at risk by sending out a rescue boat and impounding the tanker.

Together, she and her ambassador devised a plan they hoped would send a message to the tanker owners and empower their local counterparts to stand up for human security. First, the ambassador called his counterpart at the Orelan Embassy. After sharing pleasantries and reminiscing about the first time they worked together when they were both junior officers, the Azanian ambassador asked his diplomatic compatriot for help with a mutually troublesome situation that shouldn't be allowed to harm the strong relations between their two states, or Orela's reputation as a state that stood against piracy, or other criminal acts that threatened

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the stability of vital shipping lines. While explaining the situation, the ambassador was careful to point out how exposing what these men had done to the six-crewmen would be to Orela's interests, particularly their threat of blaming their deaths on piracy. Moreover, if Azan supported the crewmen in taking legal actions against the tanker owners in Kasuran courts it could be embarrassing, costly and time consuming for them both. "Could something be done on your end to work this out?" the Azanian ambassador asked. After thanking the Azanian ambassador for his call and concern, the Orelan ambassador called one of the brothers and made a strong recommendation that he pay a call to the Azanian embassy and rectify the situation at once.

With the knowledge that one of the brothers, Said, was on his way, Sara and her ambassador agreed that they would stick to the standard protocol. Said would meet with Sara first and once she had clarified their expectations, he would meet with the ambassador to confirm the deal. The embassy guards protested that this was risky. The tanker owners were dangerous men. Even if they could not bring weapons into the embassy compound they could harm Sara. At the very least, Sara should not be left alone with Said in the same room. Sara thanked them for their concern but said she knew what she needed to do and was confident she could handle "this rotten pirate" on her own.

When Said arrived at the Embassy, he was relaxed and confident. He almost laughed when Sara came into the room and sat down across from him without any entourage. When she went over their actions, described them as crimes and laid out the expectation of the Azanian government that their citizens should be paid for their wages earned, he yawned, put his feet up on the table and played with his phone. She waited for a response and then coolly demanded that he should pay up or else. At this Said started to laugh. "Why should I?" the barrel-chested pirate asked. He stood up and leaned over the table in a menacing stance, "I can still get them. And I can get you too!" he sneered. Sara slowly counted to

ten before reaching into her purse and pulling out her foreign ministry issued sidearm, putting it on the table beside her. Said burst out laughing again; “What are you going to do? Try and kill me? Even if you could that won’t save you or your friends!” Again, Sara counted to ten before calmly explaining to Said what she intended to do.

No, she was not planning to shoot him. She had no doubt he could overpower her. But she also knew he didn’t want to make himself look weak by killing or hurting a woman. Plus, doing so inside the embassy would be going too far, even for them. So, while he was in the embassy meeting with her ambassador, she would go down to the port and fire bullets into the ship until it sank. She would also go and set fire to his warehouse. “I have diplomatic immunity, you know. So, I am just as much above Kasuran law as you right now. They will probably throw me out, but it will take a while and until then, I will make you suffer and show everyone in Galor just how weak and pathetic you really are.” She then slapped her hand on the table in a pre-arranged signal to the embassy guard to open the door. “The ambassador is ready to see you sir,” said the guard. Said looked confused, but Sara just continued sitting there, staring at him without blinking. He slowly got up and walked to the door. As he was about to exit, she cocked her revolver. When he looked over his shoulder, she waved and smiled.

Said met with the ambassador for 30 minutes; during which time he committed to paying the men three months lost wages immediately and the remainder in two installments. In the end, the money was paid in two weeks and the six men were flown home with all their back pay. Their families posted messages in the paper thanking the Azanian mission in Kasura and all involved in what was a commendable and courageous victory for human security.

The Scope and Limits of Human Security

The role of diplomacy and diplomats in national security is generally understood as building and maintaining the bi-lateral and multi-lateral

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relationships to respond to the threat of military action. However, in this case there was no threat to the national security of Azan. The threats were to personal survival and human dignity. The precarious situation of these six crewmen and the extraordinary efforts required to secure their safety and basic right to be paid for services rendered is a unique story only in that it had an unusually happy ending. It is also broadly illustrative of the kinds of challenges that diplomats are increasingly facing at the mission level and the ambiguity around the obligations posed by the imperative of “human security.”

The term “human security” is generally acknowledged to have made its first, official appearance in the 1994 United Nations Development Programme (UNDP) annual Human Development Report, which began with the bold assertion that “the world will never be at peace unless people have security in their daily lives”(UNDP, 1994, 1). The report made the basic argument that the personal safety and wellbeing of individual human beings is the real lynch-pin of global security (Hampson, 2013, 282). When people perceive threats to their immediate security, they are not only less productive but less tolerant, more inclined to accept oppressive or discriminatory practices or to become engaged in violence themselves, the report asserted (UNDP, 1994, 24). Moreover, many of the threats that make individuals insecure ultimately have the potential to make states less secure and present potential threats to the stability of the international system such as protracted ethnic conflict, unchecked population growth, forced migration, terrorism, resource scarcity, desertification and climate change.

Proponents of “human security” argue that the gap between the sources of insecurity in the lives of most individuals and the protections available to them require a complete recalibration of the international security framework. The focus on traditional threats to national security, like war, nuclear weapons or even terrorism, misses the fact that the real dangers facing the world’s population are a lack of adequate protections

within state boundaries, or from the absence of global efforts to address threats that pay no heed to sovereignty yet pose an increasing threat to human survival and well-being like climate change, infectious disease, or transnational crime.

The 1994 report went on to outline seven principle threats to human security requiring action at the global, national, local and non-governmental levels: economic security, food security, health security, environmental security, personal security, community security and political security. Refocusing on these issues and recognizing them as threats, the report asserted, will ultimately contribute to greater global security by supporting each individual's right to be free from fear and free from want. In 2003 the United Nations Commission on Human Security released a report that reaffirmed the urgency of these issues, as well as adding additional priorities such as empowerment through universal education, the development of a global system of patent rights, and efforts to stop the proliferation of small arms. (Commission on Human Security Report, Online Summary, 2003). Paragraph 143 of the 2005 World Summit Outcome stressed "the right of people to live in freedom and dignity, free from poverty and despair.... and [to] fully develop their human potential" (A/RES/60/1).

However, while all these reports have unquestionably changed the discourse on security at the policy and scholarly level and brought new attention to transnational threats like infectious disease, poverty and piracy, there are few concrete policy measures or normative changes. The few victories that are noted are in areas that are closest to traditional national security threats such as the international efforts to eradicate landmines and the completion of the Arms Trade Treaty, which is slowly but persistently moving towards ratification.

The deleterious impact of these "emerging" or "non-traditional" threats (Paris, 2001) is immediately apparent in the case of the six stranded crewmen, where criminal violence presented an immediate threat to their sur-

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vival. The tanker's owners may present themselves as legitimate agents within the shipping industry, but their routine exploitation of the weaknesses in law enforcement, engagement in corrupt practices like bribery and intimidation borders on piracy. Moreover, their utter disregard for the lives and welfare of their crew is resonant with the attitudes of human traffickers, a global scourge that preys on the vulnerable.

International organizations admit they have no real means of estimating the number of migrants who lose their lives at the hands of smugglers, traffickers or negligent employers. A 2011 report on the smuggling of migrants by sea quoted the United Nations High Commissioner for Human Rights as saying 'there is no doubt that ruthless people smugglers bear much of the blame for the thousands of deaths that occur each year in the Mediterranean, the Gulf of Aden, the Caribbean, the Indian Ocean and elsewhere' (statement by Navi Pillay, UN High Commissioner for Human Rights 9/5/2009) A 2011 report by the United Nations Office for Drugs and Crime states that while it is impossible to verify the number of migrants who die at sea, the number is believed to be increasing. Transiting the Gulf of Aden alone is believed to have a 5% mortality rate (UNODC, 2011, 33).

The rescue of these six men is a happy exception emblematic of grim choices leading them into such a precarious and vulnerable position. However, the confluence of complex forces empowering the criminals and disempowering the men underscores the relationship between weak states and human security. Criminal activity thrives in situations where state institutions are weak or contested. Like many African countries with a legacy of colonialism and internal armed conflict, Kasura struggles to project its sovereignty over the full extent of its territory. The Failed States Index attaches a "warning" label to states similar to Kasura; identifying high population growth, uneven economic development, poverty, insufficient public services and weak state infrastructure as contributing to an environment in which corruption flourishes and criminality prevails over the rule of law (ffp.statesindex.org).

The actions of the port director, as well as his warning to Sara, captures the daily struggle in states with weak institutions of governance and the on-going tension between upholding the rule of law and protecting legitimate commerce, and the corrosive influence of corruption and organized crime. By impounding the Johar, the port director was placing himself at risk for retaliation and providing others with an opportunity to exploit his efforts to execute his responsibility to uphold the law for their own gain. What would prevent another official from accepting a bribe to look the other way as the Johar was removed from the port, or to the crew of the rescue ship to report they failed to find the Johar out of fear of retaliation?

However, the central and most contested aspect of human security, “freedom from want,” is unquestionably at the core of the crewmen’s vulnerability in this case. Azan’s fragile economic situation is a common story in the developing world; where high rates of unemployment, a stagnant economy, and a heavy debt burden translate into few employment opportunities for a burgeoning youth population. As a result, large numbers of its citizens are forced to seek work abroad and routinely find themselves in situations where they have few protections or rights. Migrants are also extremely vulnerable to exploitation by human traffickers who extort huge fees from vulnerable job seekers on flimsy promises of opportunities abroad. The case of the crewman does not constitute trafficking, and it is unclear if the owners intended to defraud the men from the beginning or simply ran out of funds due to unanticipated losses. In either case, the lack of protections make the crewmen prime targets for exploitation.

Critics of the state-centered security model point out that the entire premise of national security is based on the assumption that the state must be protected because the state is protecting its citizens. When the state is unable to do so, human insecurity prevails. However, it is precisely this aspect of the human security model that makes it so controversial and stymies international efforts to establish clear definitions or promote

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actionable policies. The established core of human security, “freedom from fear and freedom from want,” is something everyone is quick to endorse, but can easily be marshaled to support policy objectives that states in the developing world find threatening. The association of human security with democratization, globalization and “liberal” or “western” norms of behavior has also engendered a backlash from some countries in the global south that see these forces as perpetuating income inequalities, degrading their own cultural heritage and threatening their existing religious and social norms. The 2009 Arab Human Development Report, which focused on Human Security in the Arab world, specifically identified foreign military occupation and armed intervention as undermining human security, in an implicit but no less blistering rebuttal of the argument that the 2003 invasion of Iraq would ultimately contribute to the human security of Iraqi citizens by liberating them from an oppressive regime. This subtle tension is reflected in many of the clarifications of human security made by the General Assembly and various commissions charged with defining the meaning of the term and the obligations therein. In 2012, the General Assembly clarified that human security does not entail additional legal obligations on states and ultimately flows from national ownership and local initiatives. It also went on to clarify that human security is distinct from the responsibility to protect, which is perceived as empowering external military intervention in states accused of grievous human rights abuses (A/RES/66/290 2012).

Thus, while the expansiveness of the term allows for innovation and linkages that add urgency to established international priorities like the Millennium Development Goals (MDGs), many critiques charge that its lack of definition makes it next to impossible to set priorities, marshal resources and devise actionable policy initiatives aimed at issues with broad-based support. Moreover, the few concrete achievements associated with human security have been largely confined to those areas most closely associated with national security, such as the recent treaty on the regulation of small arms and the significant strides in banning and eradicating landmines. The impact of human security on those issue areas

that fall into the category of “non-military threats” has largely fallen by the wayside. In the meantime, the absence of human security is routinely apparent in the predicament these men were facing.

This case also demonstrates how diplomats are often on the front lines of human security, and the challenges they face in upholding their obligation to provide assistance to citizens in distress in the absence of binding norms and with limited resources. The case also illustrates how skilled negotiation remains the most important device in the diplomatic tool kit. The next section will show how Sara and her ambassador leveraged several key sources of negotiating power to secure an outcome that not only saved the men, but restored their lost wages as well.

Harnessing Negotiating Power to Advance Human Security

The owners of the tanker had several advantages that gave them power over not only the six crewmen, but Sara and her ambassador as well. First, they had local networks and financial resources that enabled them to pay bribes and skirt the law. Most importantly, they were perceived as being capable of inflicting violent retribution on those who opposed them. Together, these resources gave Salem and Said a sense that they could dictate their terms and act in Kasura with impunity.

However, Sara and her ambassador also had important resources that enabled them to counter the owners’ threats and push them to pay the men their due wages. These sources of negotiating power, which are vital for diplomats, are as follows: the power of legitimacy, the power of a good relationship, and the power of a firm commitment (Fisher and Ury, 1981, 2011). By skillfully tapping into these resources, Sara and her ambassador turned the tables on the Orelan tanker owners and won a rare, but commendable victory for human security.

The Power of A Good Relationship

When Sara had to find a way to rescue the men, her first thought was not “what should I do?” but “who do I know?” Fortunately, both she and her

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ambassador had invested in getting to know key figures in the Kasuran government, including at the local level. Therefore, she not only knew who the port director was, but how to get in touch with him and that he would most likely take her call and be willing to meet with her first thing in the morning. This connection, which was enhanced by her knowledge of the local language and customs, not only got her in the door, but also helped her persuade him to take action.

In addition, the relationship between the two ambassadors, as fellow diplomatic compatriots charged with protecting their nation's interests and advancing relations with other states, was leveraged to put pressure on Said and Salem. Not only were diplomatic relations between the two countries solid, they also had shared interests in protecting the stability of trade and the security of shipping lanes. The Azanian ambassador knew that Orelia wouldn't want the dubious behavior of two less than reputable businessmen to undermine the strength of that relationship.

The Power of Legitimacy

In addition to strong relationships, both Sara and her ambassador leveraged what scholars of negotiation call "the power of legitimacy" or "objective standards" in influencing action or settling a dispute (Fisher and Ury). Most people want to believe they are taking actions or supporting policies that are fair, just and in accordance with established standards. Bringing those standards into the dialogue can be used to frame possible solutions, rule out unacceptable demands or, as in this case, influence actors to take difficult decisions.

When Sara met with the Kasuran Port's director, she made a deliberate appeal to the language associated with the human security debate. By invoking this language, Sara was framing her request for action within international norms that, even if not binding, have legitimacy as a recognized goal and valid basis for action. Studies of negotiating behavior have long shown that people want to feel they are doing the right thing

and are likely to respond favorably to proposals that are framed as being consistent with legal norms and international statutes. Even though there are no binding norms behind human security, invoking those standards had the desired impact on the port director, despite exposing himself to retaliation. In addition, the Orelan ambassador was receptive to a request from a fellow colleague to uphold the law. Reciprocity is a powerful motivating force that, while intangible, can be leveraged to a negotiator's advantage.

The Power of Commitment

The final source of negotiating power leveraged in this case is often overlooked but is extremely important in cases where a negotiator knows their counterpart has more physical or traditional sources of power. As a young woman and a new diplomat in a junior position, Sara was physically, socially and institutionally weaker than the Orelan tanker's owner. With no legal authority, how could she extract concessions from him and insist he and his brother pay back wages? If she confronted him directly or tried to challenge him where he was strong, she would certainly lose. Instead, Sara avoided confrontation; sidestepping his attack and countering with a firm commitment to exercise the narrow sources of power she had: diplomatic immunity and a willingness to risk everything, including her position, to cause him embarrassment and harm. This level of commitment was unexpected and unnerving to the Orelan tanker owner. He entered the negotiations assuming that his threats of retaliation would enable him to walk away without further repercussions; an outcome that would not only mean no payment of back wages but would reinforce his reputation for being above the law. Sara's determination lent credibility to her threat, as did the window of opportunity created by the meeting with the ambassador. By cocking her pistol, she delivered a final signal of her readiness to go down to the docks and sink his ship. Even though Sara was shaking inside, her determination caused Said to re-evaluate his position. During his meeting with Said, the ambassador increased the credibility of this threat by affirming he had authorized Sara to commit this act of sabotage on the grounds that as a junior officer she could

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easily be sent home and reassigned. Thus, Sara's weakness became an additional source of power in that her expendability increased the credibility of her threat. Because of her commitment, the cost of paying the back wages was now balanced against the threat of credible financial losses and very real reputational damage. Who would fear two pirates that couldn't prevent their tanker from being shot up by a young woman with diplomatic immunity?

Just as advancing human security requires considering and countering threats that extend beyond advancing armies, shifting alliances or external intervention, success in negotiations requires recognizing different sources of power and how they can be leveraged to yield favorable outcomes. In this case, strong relationships, the legitimacy of principles like freedom from fear and freedom from want and a credible commitment to act gave Sara and her ambassador unexpected advantages over the tanker owners. Finally, their knowledge of the local context, language and culture also played an important role in the successful resolution of this case. Sara and her ambassador knew how embarrassing it would be for the brothers to have their ship attacked by a young woman and the impact the loss of face would have on their position in the local community. Their recognition of these sources of power is also a testament to their skills as negotiators; which in and of itself is a source of negotiating power.

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Human Security in International Law

By Hussein Hassouma, PhD

The concept of human security does not have an exact analog in international law. Instead, human security ideals are reflected in human rights treaty regimes, the progressive development of environmental law and evolving international standards. In fact, human security has been offered both as a way to drive international law development and as a means to replace existing "limited" or "rigid" international law standards.

For the most vulnerable populations—refugees, migrants, children, etc.—specific treaty regimes build and maintain fundamental and universal standards to protect their security. Human rights treaties, labor rights treaties, treaties on the protection of the environment and refugee rights treaties create a nuanced tapestry of legal obligations that signatories are required to follow. These standards, though mandatory, often have limited enforceability. While a state may incur these legal obligations freely, they may not submit to a dispute resolution body that has the power to hold the state accountable when they violate these obligations. As such, many of these treaties create legal standards that can be useful in coercive diplomacy—as they define the basic treatment required—but which are much harder to enforce against a State’s entrenched recalcitrance.

Additionally, many of these treaty regimes are not automatically universal and obligatory for states to follow. Instead, states are free to sign, ratify (adopt) and implement treaty standards at their leisure. If a treaty impinges too much on a state’s sovereignty, it may never garner enough support to even “enter into force” or become international law. State sovereignty, as evidenced through the state’s choice of treaties to ratify or reject, gives states the right to accept obligations and conventions or to reject them and remain unburdened by treaty rules.

While the theory of human security may unify otherwise “compartmentalized” areas of law like development, security, human rights and humanitarian law, its effect is felt primarily on the policy level and has not been truly reflected in widely applicable conventions. If anything, human security provides a lens through which the law is developed, with negotiators thinking more broadly about the effects on human rights and security while still creating treaties that are limited to one subject or another.

But these issues often bleed across their well-defined areas. International arbitration and international trade dispute resolution mechanisms have explored issues of human rights and environmental protection in

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their decisions, despite being focused on issues more closely related to trade, development and foreign investment protection. Legal policy at the World Bank includes developing environmental and labor safeguards that apply to the approval and monitoring of loans and projects. In short, while human security as a concept has not been codified, its holistic, cross-discipline approach is becoming the rule.

But these limited exceptions may remain just that. While some tribunals and organizations have adopted this approach, there are still many steps before these rules become legal norms. There are few approved sources of international law: treaties, customary international law, *jus cogens* and general principles of law.

The United Nations (UN) provides an example of an international organization governed by an international treaty. With the exception of UN Security Council decisions taken under Chapter VII, which create mandatory obligations for states parties, the UN bodies do not “create” law. Instead, the UN serves an important role in crystallizing and developing international law and practice, which States then adopt through conventions. General Assembly (GA) resolutions, Secretary-General reports, Commission findings, all of these develop and define principles of law, but none create law. While the UN might issue guidelines on practice in a certain area, these guidelines are either derived from law and existing practice or are prospective and suggestive in nature. Some scholars have argued that GA resolutions on issues like human rights, when unanimously adopted, represent international custom because they represent the will of 193 member states. However, in order for these GA resolutions to become binding international law, states must treat them as binding international law. This reflects the two established components of customary international law: (1) established, similar and repetitive actions of states; and (2) *opinio juris* or a manifested belief that the action is obligatory. In other words, it is not enough that States act repeatedly in a specific way; they must do so out of a sense of obligation. This creates a standard that is particularly difficult to apply in practice. Using this

standard, General Assembly resolutions have the potential to become binding law. That potential is realized only through consistent, pervasive practice and the existence of a sense of obligation.

The UN Charter does give the GA some power to create binding law in the area of accession of new states to the GA, approval of the budget of the UN and a few other areas defined by the charter. But these are internal powers to the organization and more administrative in nature. The GA is responsible for driving reforms to international law, and they fulfill this role by encouraging and discussing the work of the International Law Commission. The GA may also request reports on issues regarding international peace and security that discuss new approaches, legal and otherwise. The GA's mandate, reflected in these reports, includes the essential elements of human security among many other topics. This type of patronage allows the GA to have a hand in a more academic discussion on the law and its role in international affairs. New conventions created by the UN are almost always a product of GA action not Security Council (SC) action, and peacetime broadening of rights are more closely tied to the GA. Though the SC may be primarily responsible for driving the UN and enforcing broader ideals of peace and security through "decisions" and actions on situations of immediate concern and peril, the GA's circumspect approach actually has a more profound effect on the growth and development of the organization.

In short, while human security—much like GA resolutions—is not an enforceable international norm, its broad approach to the issues that affect individuals is more likely to lead to a comprehensive response. That response, if it attracts enough support as a treaty or as practice guidelines, may lead to the creation of international norms.

In relation to the practice of the United Nations Security Council, it clearly demonstrates the increased importance of human security as a determining factor in policy decisions. Several resolutions adopted by the council in recent years in the field of armed conflict, the protection of

civilians, peace keeping, humanitarian law etc.... refer to the concept of human security. That concept has also found its way into various influential UN policy documents, such as the 2000 United Nations Millennium Declaration, the 2004 Report of the United Nations Secretary-General's High Level Panel and the 2010 United Nations Secretary-General's Report on Human Security. Moreover, the United Nations International Law Commission has dealt with various aspects of human security in codifying and progressively developing international law in relation to topics such as "Protection of Persons in Disasters", "Expulsion of Aliens" and "Protection of the Atmosphere". (www.un.org/law/ilc)

Questions on the scope of diplomatic immunity in international law

In the present case, the Azanian diplomat Sara claims diplomatic immunity to add credibility to her threat to harm his interests if he does not repay the workers wages. While effective as a tool of negotiating power, her actions are questionable from the perspective of international law. In fact, diplomatic immunity does extend to the criminal and non-commercial conduct of diplomats, with exceptions to immunity granted for conduct outside of the scope of diplomatic employ and with commercial ends. While this immunity has been broadly applied and recognized in customary international law and treaty law, and it does create obligations for States that are enforceable at the international level, there could be unintended consequences for Sara. First, if she were declared "persona non grata" by the receiving state she would have to leave immediately, a move that might disrupt the life of her dependents, if she has any. Her sending state, even if it approves of her actions, might choose to waive her immunity and allow her to be prosecuted for her threats under diplomatic pressure. Additionally, while she may not be liable for suit in the receiving state, she may still be subject to a lawsuit or criminal charges in her home country, depending on the laws. She may also be subject to termination. Other states, upon hearing of her exploits, might exercise their right to refuse to allow her to enter and serve in missions on their soil. This might severely limit her career prospects and available postings.

As was the case with Indian diplomat Devyani Khobragade, Sara may be arrested, charged, strip-searched and jailed pending hearing. For Khobragade, who was charged in New York for enslaving her domestic servant, the diplomatic firestorm that followed these actions created pressure for her eventual release. However, the prosecuting attorney, Preet Bharara, noted that the crime was investigated and charges were demanded by the U.S. Department of State. This indicates that the willingness of receiving states to allow diplomatic immunity to excuse extreme violations of law—like threats of violence at gunpoint—may be waning. Though the charges are unlikely to lead to Khobragade’s trial, she has been barred from entering the United States for the foreseeable future. Even though Sara may escape liability, her state might be held internationally responsible for her actions. Sara was acting as an agent of her state and exercising the power of her office when she made her threats. This conduct is imputable to her home state and could serve the basis for an international claim by either the receiving state or the pirate’s state of nationality. While this is an unlikely course, the public condemnation or litigation of her actions could generate unwanted publicity for her government and lead to outrage around the world. Her actions might incite demonstrations, reprisals, violence, or otherwise undermine broader foreign policy goals of her state.

Ogata, S. and Cels, J.(2003) Human Security—Protecting and Empowering the People. *Global Governance*, 9(3), 276.

Discussion Questions

Diplomatic Relations and Human Security

- 1) What was the impact of Sara and her ambassador's efforts to protect human security and Azan's national security? Were there any potential risks that they avoided?
- 2) Did the resolution of this case strengthen, undermine, or have no real effect on bilateral relations between the states involved?
 - a. Between Azan and Kasura?
 - b. Between Azan and Orela?
 - c. Between Kasura and Orela?
- 3) Are there other ways that diplomats can act to advance human security at the mission level?
- 4) What kind of cooperation with the host country would be required to meet these objectives?
- 5) Are there risks involved in making human security a priority at the mission level?
- 6) What are the legal implications of Sara's claim to diplomatic immunity?
 - a. Was her use of threats justified or potentially reckless?
 - b. What could have been the consequences of her threats for her ambassador?
 - c. Her career?
 - d. Relations between the two states?

Negotiations Process

- 1) Why was it important that Said meet with Sara before meeting the ambassador?

- 2) What should Sara have done if the brothers refused to pay the back wages despite her commitment to act?
 - a. What would be the consequences of her carrying out the threat to damage the tanker?
 - b. What would be the consequences of not carrying out the threat?

- 3) What steps can every diplomat take to strengthen his or her negotiating power?

References

- Commission on Human Security. (2003). *Human security now*. New York. Retrieved from: <http://www.unocha.org/humansecurity/chs/finalreport/English/FinalReport.pdf>
- Fisher, R; Ury, W. & Patton, B. (2011). *Getting to yes: Negotiating agreement without giving in* (3rd ed.). Penguin.
- Fund For Peace Failed States Index website (<http://ffp.statesindex.org/>).
- Hampson, Fen Osler, in Williams, P. D. (Ed.). (2012). *Security Studies: an introduction*. Routledge.
- United Nations Development Programme. (1994). *Human development report 1994*. New York. Oxford University Press. Retrieved from: http://hdr.undp.org/sites/default/files/reports/255/hdr_1994_en_complete_nostats.pdf
- United Nations Development Programme. Regional Bureau for Arab States. (2009). *Arab human development report 2009. Challenges to human security in Arab states*. New York. United Nations Publications. Retrieved from: <http://www.arab-hdr.org/publications/other/ahdr/ahdr2009e.pdf>
- United Nations General Assembly. Sixtieth Session. (2005) *World Summit Outcome. A/RES/60/1*. Retrieved from: <http://www.un.org/womenwatch/ods/A-RES-60-1-E.pdf>
- United Nations General Assembly. Sixty-sixth Session (2012). Follow-up to paragraph 143 on human security of the 2005 *World Summit Outcome. A/RES/66/*

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290. Retrieved from: <https://docs.unocha.org/sites/dms/HSU/Publications%20and%20Products/GA%20Resolutions%20and%20Debate%20Summaries/GA%20Resolutions.pdf>

United Nations High Commissioner for Human Rights Navi Pillay (2009).

Migrants at sea are not toxic cargo. Retrieved from: <http://www.abs-cbsnews.com/views-and-analysis/09/04/09/migrants-sea-are-not-toxic-cargo-navi-pillay>

United Nations Office on Drugs and Crime. (2011). *World drug report 2011*. New York. United Nations Publication (Sales No. E.11.XI.10). Retrieved from: http://www.unodc.org/documents/data-and-analysis/WDR2011/World_Drug_Report_2011_ebook.pdf

Further Reading

List of recommended resources for independent exploration of the issues raised in the case.

Hampson, F. O., & Daudelin, J. (2002). *Madness in the Multitude: Human security and world disorder*. Don Mills, Ont.: Oxford University Press.

Hampson, F. O. & Reid, H. (2003). Coalition diversity and normative legitimacy in human security negotiations. *International Negotiation*, 8(1), 7-42.

Kaldor, M. (2013). *Human Security*. John Wiley & Sons.

MacFarlane, S. N., & Khong, Y. F. (2006). *Human security and the UN: A critical history*. Indiana University Press.

McRae, R. G., & Hubert, D. (Eds.). (2001). *Human Security and the New Diplomacy: Protecting people, promoting peace*. McGill-Queen's Press-MQUP.

Owen, T. (2004). Human Security-conflict, critique and consensus: colloquium remarks and a proposal for a threshold-based definition. *Security Dialogue*, 35(3), 373-387.

Paris, R. (2001). Human security: Paradigm shift or hot air?. *International Security*, 26(2), 87-102.

Negotiations Training Simulation #1

The Baham-Mira Crisis

By: Allison Beth Hodgkins

Mona Ahmed Saleh contributed to the research and writing of this simulation.

*Supplementary materials on communications by Kim Fox
and discussion of international law issued by Hussein Hassouna*

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The Baham and Mira Crisis is a two-player negotiations simulation designed to model a mission level response to a crisis in diplomatic relations between Mira and Baham, two fictional, MENA region countries that underwent revolutions during the “Arab Spring.” Diplomatic ties between the two countries have vacillated over the years, but were improving in the period prior to the crisis captured in the simulation. The two principal sources of tension in the past two years have been border security and the safety and security of Bahamian citizens working in Mira. Both issues have human security implications and are central to the evolution of the current crisis. In order to reach a successful resolution of the crisis, simulation participants will need to balance traditional and national security related interests with human security considerations.

The roles in the simulation are junior Foreign Service officers representing Mira and Baham. The crisis takes place in Mira but on the grounds of the Bahamian embassy. The crisis has largely been resolved at the time the two junior officers will meet; however, if the two states cannot agree on the language of a joint statement, the crisis may escalate again.

Participants will have 30 minutes to review their confidential role instructions and prepare a negotiating strategy. During the preparation stage, participants may consult others with the same instructions. There will be 60 minutes for each pair to conclude an agreement on the content and format of a joint statement to be issued by their respective Foreign Ministries.

The simulation includes the following components:

1. General background information on relations between Mira and Baham.
2. Summary of the current crisis.
3. Text of original travel warning posted on the Facebook

4. Confidential role instructions for:
 - a. Second Communications Officer; Mira Foreign Ministry
 - b. Deputy Protocol and Communications Officer; Bahamian Mission in Mira
5. Draft of a joint statement with alternative texts to be resolved.
6. Facilitator Guidelines and sample debriefing questions.
7. Analysis of international legal aspects of the case.
8. Communications exercise on social media in crisis situations.

All participants should receive the copies of the first three documents as well as the draft statement to review before the session. The facilitator should divide the group into two and hand out confidential instructions during the briefing session.

General Overview of Diplomatic Relations: Mira and Baham

Mira and Baham are both Arabic-speaking countries in the MENA region, which gained their independence from colonial rule in the aftermath of World War II. They share land and sea borders and both have oil and gas reserves, although Mira's oil reserves are more expansive and their production capabilities are considerably more advanced. Baham is stronger militarily but Mira has a more developed economy. Mira is slightly larger in total landmass, but its population is a fraction of Baham's. Baham is a net exporter of labor to Mira. Although both countries benefit from the flow of migrant labor, their treatment and regulation of entry and exit requirements has been an ongoing source of tension between the countries.

Relations between the two states were strong in the 1960s and early 1970s. However, differences over regional conflicts have fueled friction between the two states since the late 1970s. Mira has twice expelled all Bahamian citizens in order to protest actions taken by Baham. In

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the last ten years, relations have improved and they have concluded a series of trade related agreements. However, the states continued to face disagreements on regional issues as well as on issues related to border cooperation. Both countries struggle with border enforcement, a situation that has worsened since their respective revolutions. Both countries are concerned about the implications of cross border drug trade and human trafficking. However, Baham has specific concerns about the transit of weapons into Baham in the south and Mira believes that Baham is failing to do enough to prevent illegal fishing and the entry of illegal migrants in the north.

Over the years there have also been multiple diplomatic rows between the two countries stemming from the treatment and status of the Bahamian workers in Mira. For example, Baham has accused Mira of unfair treatment of Bahamian workers charged with criminal offenses or involved in legal disputes, claiming they are not receiving fair trials and are given unreasonably harsh sentences. Mira has executed tens of Bahamian citizens for criminal offenses in the past.

During an outbreak of a flu epidemic in the region, Mira refused entry to Bahamian workers and demanded workers who had entered the country in the previous six-months obtain a certificate of vaccination from the Miran Ministry of Health that cost the equivalent of two-months wages. There were also rumors in Baham that the vaccines in Mira were contaminated with HIV and the Bahamian Ministry of Health made a formal request to test the vaccine. Mira rebuffed the request on the grounds that their testing procedures were superior. As the flu subsided, the vaccination requirement was quietly allowed to lapse. Nevertheless, Mira remains a popular destination for Bahamian's seeking employment opportunities unavailable in Baham, and Mira continues to seek Bahamians to fill skilled and semi-skilled positions.

On the eve of Mira's revolution, there were an estimated 350,000 Bahamians working there. However, Mira's revolution was fraught

with significant violence and several thousand Bahamian guest workers were stranded during the fighting. Baham enlisted the support of the International Organization for Migration (IOM) in securing their rescue and repatriated nearly 200,000 workers over a four-week period. Although the level of fighting in Mira has declined, serious pockets of instability remain. Many areas are beyond the reach of the newly elected government and there are concerns that vast swaths of the country are lawless. This has exacerbated border control problems, and both states are concerned that transnational criminal and terror networks are exploiting the instability to smuggle drugs, weapons and fighters through their states. Baham has stepped up border patrols on the southern end of their shared border, yet Mira is more concerned with infiltration in the north.

Baham is also struggling with the consequences of its revolution. Its own economy remains weak and has struggled to stave off further decline. As a result, Bahamian workers have resumed seeking work in Mira and some are also exploiting the weak border controls to avoid paying hefty fees for visas, entry permits and required medical tests and vaccinations. Several fraudulent employment agencies have cropped up in Baham, promising lucrative jobs in Mira for minimal fees. In most cases, these workers are brought to Mira on lesser expensive tourist visas, which expire and force the workers underground to avoid deportation or the expense of rectifying their situation with the Miran authorities. Mira blames this situation on lax enforcement in Baham. However, Baham's position is that Miran employers are equally to blame for exploiting these workers, holding their passports and threatening them with deportation if they complain. Many work in unsafe conditions, for long hours and with minimal pay. The Bahamian Embassy in Mira responds to multiple complaints of abusive employers every week.

As a result, much of the diplomatic activity between the two countries is now focused on resolving disputes related to Bahamian workers. Mira brought pressure on Baham to crack down on fraudulent agencies in

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Baham that were serving as fronts for human traffickers. They refused to release 1,300 detained Bahamians until steps were taken to close three particularly notorious agencies and serve charges against their owners. Baham complied and shut the specific agencies, but accused Mira of unfairly targeting workers from Baham and overlooking comparable violations from other labor exporting countries in Africa. Mira countered that Baham was not doing enough to encourage their citizens to comply with Miran law and was actively abetting their illegal entry through uneven border controls.

To avoid the disruptions and stave off another round of deportations, the two states brokered an agreement that gave all Bahamian workers six months to rectify their status in Mira. The Bahamian Embassy posted flyers outlining the local laws and directed its citizens to comply with the requirements for updating their visas. Mira agreed to wave overstay fines in most cases. After that six-month period, workers without proper documentation would be deported. If they turned themselves in, their fines would be waived and they could reapply for work in Mira after three months respite in Baham. If they were caught, however, they would have to pay all outstanding fines in order to be eligible to reapply for a work visa in the future. In a joint statement, both Foreign Ministers praised this agreement as an example of their new partnership and mutual support for the rule of law.

In addition to issues with visas and residency requirements, there have been several high profile incidents in which Bahamian citizens have died in attacks by anti-government insurgents. In most cases they were simply bystanders, but there has been concern that groups opposed to the government in Baham may have targeted the workers. Baham is also struggling with insurgent groups resisting the policies of the transitional government, but has more effective control over its internal security situation than its neighbor. There is concern that anti-Baham militants see attacks on Bahamian citizens in Mira as a convenient way to place pressure on that government. In one particularly severe incident, a bus

with 75 Bahamian construction workers was hit with an RPG; only twelve survived the attack, three with permanent injuries. Survivors complained that it took over five hours for the Miran authorities to provide emergency medical assistance and Baham registered a private complaint with the government over the laxity of law enforcement.

Mira expressed regret for the incident, but argued Baham was not being sensitive to its internal security constraints and pointed to recent attacks inside Baham. If Baham cannot prevent every incident within its own borders, why should it hold Mira to a different standard? Moreover, the group that claimed responsibility called it a warning for all those “traitorous and deceitful regimes that repress the faithful at the behest of their Western overlords;” which was seen as a reference to Baham’s cooperation with Western governments. Prior to the revolutions, this cooperation was a significant source of tension between the two countries.

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In response to domestic pressures, the Bahamian foreign ministry has placed a travel warning on its official website and Facebook page cautioning against working in Mira. Mira countered by refusing to renew work permits for Bahamian workers in the country on the grounds that Baham did not support their residence in Mira for safety reasons. That

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crisis was resolved through a series of joint statements in which both countries affirmed their respect for human rights, human security and the rule of law in both their respective nations.

Summary of the Current Crisis

After two relatively calm months, tensions between Mira and Baham erupted again this week after a series of incidents involving Bahamian workers provoked an exchange of hostile rhetoric between the two countries. Baham reinstated a strict travel warning on its Facebook page, which cautioned Bahamian's to defer travelling to Mira in light of the "deteriorating security situation" there and for citizens in Mira to "avoid any and all unnecessary movements until the security situation improves." In response, the Miran government posted reminders on-line and in local papers that all Bahamian citizens who failed to regularize their status with the Ministry of the Interior were subject to fines and immediate deportation. During a prior planned address the Baham Foreign Minister included a statement "calling on all member states to refrain from discriminatory targeting of specific nationalities in their domestic policies". Mira closed its borders to the entry of Bahamian workers in response.

The events that precipitated the current crisis are as follows. At the beginning of the month, a Miran factory owner turned over 25 Bahamian workers without proper papers to the Ministry of Interior. The workers had been brought to Mira 18 months ago by an agency that was closed in the recent crackdown in Baham. While they were being detained, the workers told visiting consular officers that they had attempted to take advantage of the recent amnesty but their employer refused to return their passports. In addition, he had been withholding wages. When the workers complained and threatened to strike, the employer turned them in. The workers ended up being detained for two-weeks, while their case was debated between the two governments. During that period, the families of the detained workers issued public complaints that the

Bahamian Foreign Ministry was not doing enough to protect their relatives and that they were suffering in detention.

In the end, the fines were waived but the workers were to be deported and would be allowed to reapply for a work visa after three months. The deportation was scheduled for the beginning of the week, however, because of a recent escalation in fighting along the border between the two countries, the workers and their families again appealed to the Bahamian foreign ministry to repatriate them by air or delay their return. In a press conference related to other issues, the prime minister responded to a question about the workers saying that Mira had assured the route to Baham was totally safe. Privately the Miran government protested the statement, as no such assurances had been requested or made.

Tragically, during the overnight drive to the border a radical extremist group with ties to anti-Bahamian militants seized the bus. The militants summarily executed eight of the 25 workers; survivors claimed it was because the men were Christians. Although Miran security services responded to the incident, another 11 Bahamians died during the rescue attempt. Three Miran soldiers were also killed. Both governments immediately condemned the attack and expressed their shared commitment to fighting extremism. However, the attack received extensive coverage in the Bahamian media and provoked a significant domestic backlash. Outraged families in Baham demanded a response from their government, which issued a harshly worded statement decrying the attack and faulting Mira for failing to uphold its responsibilities.

In particular, leaders of Baham's Christian minority made specific complaints regarding the apparent targeting of Christians in the attack. One member of the community stated that the Miran government was complicit in the murder because they are under the influence of radical Islamist elements that don't share Baham's respect for religious minorities. Baham has its own internal sectarian challenges and has on

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occasion faced pressure from human rights groups to do more to ensure the rights of its Christian minorities. Although the Miran government issued an official statement of condolence over the incident, it refused to take responsibility for the deaths and made no mention of the alleged targeting of Christians. It also expressed its dismay at the harsh statements made by various officials in the Bahamian government. In particular, they rejected the statement made by the foreign minister to the Arab League and demanded a formal retraction before normal relations could be resumed.

Despite the seriousness of this crisis, the foreign ministries in both states have been working tirelessly to defuse tensions and regularize the border situation. The crisis has brought significant domestic pressure on both governments. Neither side has an interest in blocking Bahamian's from working in Mira, but there is a need to ensure that continued labor flows do not exacerbate domestic tensions. In addition western diplomats have warned Mira that they are receiving complaints from Christian advocacy groups about the incident. Mira's position is that this was as a regrettable but isolated incident committed by outside forces.

As the foreign ministries worked through the night, a framework agreement was reached between the two governments to allow a resumption of normal border operations. This was completed pending agreement on the wording of either a joint or cooperative set of statements on the importance of mutual cooperation on matters related to upholding the rule of law, the safety of "vulnerable populations," and opposition to extremism. Drafts of a joint statement have been circulated between the two governments and a few points of disagreement are left to be reconciled. If an agreement cannot be reached, both ministries will issue separate communiqués that will, hopefully, express mutual intent to reconcile outstanding differences.

Draft of Joint Statement:

بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ

The governments of Baham and Mira reaffirm their commitment to strong cooperation between their great nations and to support each other in the fulfillment of the aspirations of their peoples and the realization of the goals of their respective revolutions.

Both nations condemn the heinous attack [on Bahamian citizens] by coward, criminal groups that defame Islam and whose actions violate the most fundamental of all human rights, the right to life. Any organization that uses violence [against innocent civilians] {against innocents and the state} is not worthy of the aims it espouses and should know its actions will only bring it condemnation and failure.

Both nations reaffirm their shared commitment to cooperation on security matters and reinvigorate their efforts to ensure protection of {all citizens} [all individuals within their borders] from threats to their survival. {Both nations affirm that each government has a responsibility to ensure the survival, dignity and livelihood of their citizens wherever they may be in the world and to encourage them to conduct themselves in accordance with local laws}

~~{Both nations reiterate their commitment to {border} security and the safety and security of all persons within their borders {regardless of religion} [nation of origin].}~~ [reinstate]

Both nations are committed to the 2004 agreement on customs and tariffs which, among many important areas of cooperation, calls for enhanced cooperation and easing impediments to trade [and commerce].

[Both governments see the free movement of goods and persons as an integral part of strengthening mutual cooperation and supporting the continued economic prosperity of both nations]

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{Both governments have a shared interest in continued economic cooperation and recognize that respect for the rule of law plays a fundamental role in economic development and prosperity}

In light of a shared commitment to the rule of law, both nations will make every effort to ensure their citizens comply with local laws in all countries, to register with the appropriate authorities where requested [and to follow the instructions of their diplomatic missions abroad] {Both nations will make every effort to ensure full compliance with local regulations for residency} [Both countries will take every effort to assure that law enforcement does not discriminate against any specific nationality].

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Original Travel Warning for Mira as posted on the Facebook page of the Foreign Ministry of Baham:

The Foreign Ministry of Baham reiterates its warning to all citizens currently traveling inside Mira or planning to travel to Mira of the grave security situation there. The Foreign Ministry advises all citizens to defer any travel to Mira at this time. Citizens currently in Mira should be mindful of their safety and avoid all but essential travel. They should notify the nearest mission of their whereabouts and take steps to ensure they have valid travel documents should they need to exit the country in the event of a further deterioration of the safety situation there.

Confidential Instructions for the Deputy Protocol and Communications Officer

You are a junior diplomat in your second year of service with the Foreign Ministry. This is your first overseas post. Although you have only been in Mira for the last four months, you are already too familiar with the issues in this crisis. The deaths of these workers have shaken everyone in the mission and personally, both you and your supervisor believe that a stronger line should be taken. You understand that the relationship with Mira is important, but the stories you hear from these workers about the discrimination they face are awful. However, as a diplomat, you have an obligation to uphold the stated policies of your government and put your personal feelings aside. Senior diplomats have already completed all the main points of a deal to resolve this crisis. Mira will open its borders and Baham will revise its travel warning as follows:

Baham reminds its citizens of continued security challenges in parts of Mira, including remote areas and advises them to take all necessary precautions when traveling in, around, or to and from the country. Baham also reminds its citizens abroad to ensure they have valid travel documents and appropriate residency permissions while traveling or residing in Mira. Any questions regarding the appropriate paperwork or verification of documentation should be directed to the nearest police station in Mira or the nearest diplomatic mission.

However, if an agreement on a joint statement isn't reached, the original warning will be reinstated on the Facebook page and the official ministry website. You have the draft of the text that your superiors have agreed to so far. You know your foreign minister would like stronger language from Mira on the necessity of protecting all those within their borders and to ensure their policies do not discriminate against "specific nationalities," which you know means Baham. However, he recognizes the current sensitivities in Mira and realizes that general language on protecting human rights or human security may be all that they can agree

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to at this time. The decision to extend the previous amnesty agreement for another 12 months was seen as an important signal of reconciliation. Although this will be a private understanding between the two states, you and your supervisors have been assured that you can give strong “hints” that Miran officials will be sympathetic to requests for individual exemptions. Neither side wants to risk additional deportations in this environment: it’s not safe and Mira can’t guarantee there will not be further attacks. Baham has solid intelligence on these groups and will increase its cooperation with its Miran counterparts in order to extend its efforts to protect its citizens from terror.

Like everyone in the mission, you and your supervisor have been working for nearly 48 hours without sleep, constantly getting updates from the capital and working to refine the language. Your supervisor believes that almost all the outstanding points can be easily resolved. She thinks that the Mirans are going to be flexible on most of the outstanding points and believes you can handle the next round while she gets a few hours of sleep. She has asked you to resolve as many of the eight points below as possible and to generate a set of new options for those that remain for her to wrap up before 10:00am. She has faith in you, but reminded you to stick to the instructions. If you feel you need to concede too much for an agreement to be reached, leave it for her to complete but try to narrow options or generate some specific ideas. Both foreign ministers have agreed that the statement must be issued by noon tomorrow.

You would like to try and conclude an agreement on all the points below and hope you can persuade your Miran counterpart to see things from the perspective of Baham. You are not authorized to make any deletions to the text, except for removing point 4# and reinstating point 5#. You may add language that does not alter the meaning of the text or place any additional obligations on Baham. You can add language that affirms general rights or conventions to which Baham is a party as long as there is nothing clearly binding and no new obligations are added.

Your supervisor has suggested a few statements and some language on human security that might smooth over the differences.

1. Both states reaffirm their commitment to promote the rights of all peoples to live in freedom and dignity and to be free from poverty and despair in accordance with the general principles enshrined in the UN Charter and with respect for state sovereignty.

2. Both states reaffirm the primary role of each government in undertaking policies that ensure their citizens are able to live free from harm and develop their full human potential in accordance with their national principles and respect for the sovereign independence of all member states.

3. Both states affirm the aspirations of all people to live in freedom from fear and with freedom from want and commit themselves to support the national level efforts of all member states in those noble aims and to work in partnership when such cooperation is mutually accepted and agreed upon.

These phrases reflect the 25 October 2012 resolution that follows up on paragraph 143 on human security of the 2005 World Summit outcome and recent deliberations in the GA. They may be helpful in generating new ideas, but you need to stick to the instructions given by your supervisor; and you need to make sure your own emotions about this case do not interfere with your judgment or responsibilities.

Draft of Joint Statement:

بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ

The governments of Baham and Mira reaffirm their commitment to strong cooperation between their great nations and to support each other in the fulfillment of the aspirations of their peoples and the realization of the goals of their respective revolutions.

Both nations condemn the heinous attack **1.[on Bahamian citizens]** by cowardly, criminal groups that defame Islam and whose actions violate the most fundamental of all human rights, the right to life. Any organization that uses violence **2.[against innocent civilians]** {against innocents and the state} is not worthy of the aims they espouse and should know their actions will only bring them condemnation and failure.

1. Let this go. It would be nice to affirm that this attack targeted Baham, but the FM said drop it. Just try and get something for taking it out. See next point.

2. In exchange for dropping the reference in point 1 get Mira to accept including the word civilians in this sentence. See what their ideas are and press for civilians. Do NOT accept any changes without that word!

Both nations reaffirm their shared commitment to cooperation on security matters and to reinvigorate their efforts to ensure protection of **3.{all citizens} [all individuals within their borders]** from threats to their survival. **4.[{Both nations affirm that each government has a responsibility for ensuring the survival, dignity and livelihood of their citizens wherever they may be in the world}]** {and to encourage them to conduct themselves in accordance with local laws}.

3.I am sure they will let this go. My advice is wait for them to raise it as a possible concession

Do not agree to keep it. If it's not discussed it will remain unresolved and I will deal with it. If they bring this up, try and get some additional language about protecting civilians or innocent life from the dangers of armed conflict or violence.

4. I was very surprised that I was able to slide this sentence in (and so was the FM!) however, now that it is in we have been able to make the deletion in point 5 contingent on agreement here. We left off with the understanding that our amendment for 4 would be accepted on the condition that we can agree on the final clause. I conveyed to my Miran counterpart that Baham respects sovereignty and non-interference in domestic affairs, which assumes respect for laws - so we could add that. I think their addition is excessive under the current circumstances. If they insist, add after word "or whatever their national heritage or religious convictions."

5. When you get to point 4 suggest working on reinstating this. They will object, but see if you can use that to generate language they would agree to include under point 4 that addresses protection of religious minorities in some fashion. We need to be able to show that this was addressed in order to calm opposition at home.

~~5. {Both nations reiterate their commitment to {border} security and the safety and security of all persons within their borders {regardless of religion} {nation of origin};} [reinstate]~~

Both nations are committed to the 2004 agreement on customs and tariffs, which among many important areas of cooperation, calls for enhanced cooperation and easing impediments to trade ~~6.~~[and commerce].

6. We interpret commerce as including the movement of persons to pursue commercial undertakings. It's a stretch but if left in we can use it to argue for less stringent border checks in the future. They may not even mention this so just try and confirm they have no objections.

7. [both governments see the free movement of goods and persons as an integral part of strengthening mutual cooperation and supporting the continued economic prosperity of both nations]

{both governments have a shared interest in continued economic cooperation and recognize that respect for the rule of law plays a fundamental role in economic development and prosperity}

7. Focus on the cooperation and prosperity language. Add that development is a key pillar of human security and human security is the key to global security and see what they say. We are fine with respect for the rule of law here if they drop it above in point 4 as its more neutral here.

In light of a shared commitment to the rule of law, both nations will make every effort to ensure their citizens comply with local laws in all countries, to register with the appropriate authorities where requested **8. [and to follow the instructions of their diplomatic missions abroad]** {Both nations will make every effort to ensure full compliance with local regulations for residency} [Both countries will take every effort to assure that law enforcement does not discriminate against any specific nationality].

8. Our preference is to remove this entire sentence and add a conclusion that makes general reference to promoting human security, upholding national sovereignty and striving to cooperate on safety and security. There is enough specific language in this document to clarify what the main points are.

Confidential Instructions for Second Communication Secretary Foreign Ministry of the Republic of Mira

You are a junior diplomat and have only completed your training six months ago. However, given the transition you have gotten a lot of experience in recent months. This is not the first time you have worked on a crisis involving Baham, but this will be the first time that you are entrusted to represent Mira on your own. Your supervisor became very dizzy during the evening and his director insisted that he go home. Fortunately, you have been involved in the process every step of the way and are fully briefed on the situation and expectations for concluding talks with Baham on the text of a draft statement.

Senior diplomats have already completed all the main points of a deal to resolve this crisis. Mira will open its borders and Baham will revise its travel warning as follows:

Baham reminds its citizens of continued security challenges in parts of Mira, including remote areas, and advises them to take all necessary precautions when traveling in, around or to and from the country. Baham also reminds its citizens abroad to ensure they have valid travel documents and appropriate residency permissions while traveling or residing in Mira. Any questions regarding the appropriate paperwork or verification of documentation should be directed to the nearest police station in Mira or the nearest diplomatic mission.

Although the foreign minister would like stronger language regarding the obligation to comply with local laws, he recognizes the current sensitivities in Baham and is happy with this wording. In addition, he has affirmed that the amnesty granted in the previous agreement will be extended for another 12 months. This will be a private understanding between the two states, but Baham will encourage its citizens to regularize and indicate they should not fear deportation. Neither side wants to risk additional deportations in this environment. Mira knows that it cannot secure the roads from its main cities to the border with Baham as the distance is too

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long and too remote. Baham has agreed to share as much information as possible related to those areas, pending resolution of this crisis.

In addition, a draft of a joint statement has been reached with the exception of disagreement on a few minor points of language and scope. Both of the principles have indicated a high degree of flexibility on the outstanding points. Your responsibility is to work out an agreement on the eight points below. Both Foreign Ministers have agreed that the statement must be issued by noon tomorrow. You have until fajar to work out an agreement with your counterpart from Baham. If you can get your counterparts' agreement, you are certain you will be commended. However, you must be sure not to yield to pressure on the key points. Do not commit to any option not endorsed by your supervisor in the revised text below or within generally accepted positions on the matter. You are not authorized to make any deletions to the text. You may add language that does not alter the meaning of the text or places any additional obligations on Mira. Language that includes general affirmations consistent with international norms, charters or conventions to which Mira is a party are acceptable. However, additions should be minimized.

Everyone in the ministry is exhausted by this issue, so you want to try and bring it to a conclusion and not leave anything to your superiors to deal with in the morning. However, you also do not want to agree to anything that might get you into trouble. You are relieved that your supervisor has left you with very clear instructions on the text. He has offered a few statements regarding human security that might help facilitate mutual agreement, but you should not offer those unless absolutely necessary.

Options for an additional concluding paragraph:

1. Both states reaffirm that every government has a primary role and responsibility for ensuring the survival, livelihood and dignity of their citizens and to work in collaboration and cooperative partnership with their neighbors toward upholding those objectives for all.
2. Both states reaffirm the right of people to live in freedom and dignity, free from poverty and despair in accordance with the purposes and principles in the UN Charter.
3. Both states affirm the aspirations of all people to live in freedom from fear and with freedom from want and commit themselves to all cooperative, mutually agreed upon efforts to support those noble ends.

These phrases reflect the 25 October 2012 resolution that follows up on paragraph 143 on human security of the 2005 World Summit outcome. That resolution affirms there are no additional obligations on member states, but reinforcing the principles may smooth over deleting some of the specific requests Baham has made below.

In other cases, you must conform to the options provided in the comments. Again, it is preferable to reach an agreement with your counterpart. However, it is better to not agree to something that might get you or your supervisor in trouble. If you can't work out a complete agreement, then try to resolve the minor points and produce new options for the major sticking points.

Personally, you think your government should be more conciliatory as the attack was horrific and you know that there are a lot of threats being made against Christians. However, you know that once this is settled your FM has offered to send his deputy to pay a private condolence call on the families of the victims on his next visit to Baham.

*Note: on the document your supervisor's comments are in the comment section. Mira's preferred language is in **this font**.*

Draft of Joint Statement:

بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ

The governments of Baham and Mira reaffirm their commitment to strong cooperation between their great nations and to support each other in the fulfillment of the aspirations of their peoples and the realization of the goals of their respective revolutions.

Both nations condemn the heinous attack **1.**[on Bahamian citizens] by cowardly, criminal groups that defame Islam and whose actions violate the most fundamental of all human rights, the right to life. Any organization that uses violence **2.**[against innocent civilians] **{against innocents and the state}** is not worthy of the aims they espouse and should know their actions will only bring them condemnation and failure.

1. Under no circumstances may this be included in the final draft. DO NOT FORGET TO HAVE THIS DELETED. Remember, Mirans were also killed in this attack. This shouldn't be an issue, it seems they are aware this needs to go and maybe put it in as a bargaining chip - so be careful.

2. The FM strongly prefers to have the word state in the final draft, these groups undermine Mira's sovereignty and harm the goals of the revolution. However, if necessary the following compromises are possible (in order of preference): Against those who have no guilt other than faithfully upholding their duties; On innocent lives, civilian and soldier alike; On innocents.

Both nations reaffirm their shared commitment to cooperation on security matters and to reinvigorate their efforts to ensure protection of **3. {all citizens}** [all individuals within their borders] from threats to their survival. **4.**[*Both nations affirm that each government has a responsibility for ensuring the survival, dignity and livelihood of its citizens wherever they maybe*

in the world] **[and to encourage them to conduct themselves in accordance with local laws]**

3. The FM has conceded that this will be dropped and believes that Baham will accept the following compromise: "Protection of human survival" - Baham may want to add other language, just be careful there is nothing that suggests an obligation for Mira or entails special protection for Bahamians.

4. This sentence NEVER should have gotten in the draft. Now Baham doesn't want it removed without reinstating the struck statement below. The first part is fine with the FM, but the clarification is essential. Baham has to realize that Mira cannot offer special protections to Bahamian citizens if they continue to try and circumvent our laws! You can play with this a little bit, but the sense of an obligation to obey local laws or uphold the rule of law must be reflected.

5. {Both nations reiterate their commitment to {border} security and the safety and security of all persons within their borders **{regardless of religion}** [nation of origin].}

Both nations are committed to the 2004 agreement on customs and tariffs, which among many important areas of cooperation, calls for enhanced cooperation and easing impediments to trade 6. [and commerce].

6. No one knows why they put this in - see if you can get clarification on what they think this means. As long as it's just a general reference to supporting trade then its fine.

7. [both governments see the free movement of goods and persons as an integral part of strengthening mutual cooperation and supporting the continued economic prosperity of both nations]

{both governments have a shared interest in continued economic cooperation and recognize that respect for the rule of law plays a fundamental role in economic development and prosperity}

7. Try and forge a sentence that combines these two but emphasizes the rule of law, and removes the word "persons". We are happy with the following alternatives: 1) Both governments have a shared interest in mutual cooperation in areas that support economic development and the mutual prosperity of both nations, in accordance with each nation's laws and respect for sovereignty. 2) Economic development and the rule of law are essential to the prosperity of nations and peoples. 3) Cooperation that contributes to mutual prosperity is in the interest of both governments as is upholding the rule of law.

In light of a shared commitment to the rule of law, both nations will make every effort to ensure their citizens comply with local laws in all countries, to register with the appropriate authorities where requested §, [and to follow the instructions of their diplomatic missions abroad] **{Both nations will make every effort to ensure full compliance with local regulations for residency}** [Both countries will take every effort to assure that law enforcement does not discriminate against any specific nationality].

§. This may require further deliberation between the superiors. The word discrimination is not acceptable. We need them to agree to language that acknowledges they must do more on getting their citizens to comply with our laws. See if you can come up with new options.

Facilitator Guidelines

During this simulation participants will experience acting as agents and learn to balance their individual interests and their superior's interests with the broader national interest. In addition, they will experience time pressure and crisis negotiation. The role instructions are designed to create a dilemma between trying to close a deal for the sake of demonstrating the agent's ability to get the job done, and generating non-approved options for consideration by their respective principals. Facilitators should encourage participants to think through the multiple levels of interest in this simulation.

Sample Debriefing Questions:

- 1) What were your goals for the negotiation?
- 2) Were those goals different from your principal's?
- 3) What were your counterpart's goals?
- 4) How did you determine those goals?
- 5) What strategies did you use to generate new options or bridging language?
- 6) Did the General Assembly guidelines on human security provide objective criteria for resolving differences in the text?

Additional options:

With more experienced groups or groups with additional time for preparation and review the facilitator can distribute the International Law Supplement to participants with the general instructions and confidential role instructions. Participants should be encouraged to look at the international law issues as possible objective criteria by which different statements could be evaluated or to settle discrepancies between competing statements and their interpretations. Additional debriefing questions can address the extent to which the draft communiqué was consistent with understandings of the issues from an international law perspective and whether international law helped resolve differences on language and substance of the statement, facilitated the creation of mutually acceptable language, helped generate new options, or whether it complicated the discussion. The facilitator can also conclude the session with the supplementary communications exercise on social media in crisis situations or assign those exercises for homework.

**An analysis of the International Law Dimensions
of the Baham–Mira Crisis**

by Hussein Hassouna, PhD

This case raises important legal issues relating to the admission by a state of aliens, including migrant workers, and their expulsion from that state. International law regulates the discretion of states to admit and expel aliens, and the limitations imposed upon such discretion.

In principal, a state may choose not to admit aliens or may impose conditions on their admission, since it is a matter of domestic jurisdiction. Internal economic policies and aspects of foreign policy may result in restrictions on the economic activity of aliens. National policy may require prohibition or regulation of the purchase of immovables, ships, aircraft, and the like, and the practice of certain professions by aliens. Provisions for the admissions of aliens in treaties of friendship, commerce, and navigation are qualified by references to «public order, morals, health or safety.»

Expulsion of aliens is also within the discretion of the state, although there exists some limitations on this discretion. In particular, the power of expulsion must be exercised in good faith and not for an ulterior motive. While the expelling state has a margin of appreciation in applying the concept of «public order», this concept is to be measured against human rights standards. The latter are applicable also to the manner of expulsion. In certain conditions expulsion may constitute genocide or may infringe the principle of non-discrimination, on racial or religious grounds, which is part of the customary international law. Expulsion that causes specific loss to the national state receiving groups without adequate notice would raise a claim of indemnity. Finally, the expulsion of persons who by long residence have acquired *prima facie* the effective nationality of the host state is not a matter of discretion, since the issue of nationality places the right to expel in question.

The topic of expulsion of aliens has been included in the programme work of the United Nations International Law Commission since 2004.

On the basis of nine reports prepared by the special rapporteur on the subject, the commission submitted at its last session in August 2014, a set of thirty one draft articles to the United Nations General Assembly for adoption, with a view to consider the elaboration of a convention based on those drafts articles (Report to the International Law commission on its sixty-sixth session in 2014: General Assembly Official Records, sixty-ninth session, supplement no. 10, A/10/69). The draft articles define the terms «expulsion» and «alien», set forth general rules relating to the right of expulsion, the requirement for conformity with law, and the grounds for expulsion, the protection of the rights of aliens subject to expulsion, the procedural rules and the legal consequences of expulsion.

In addition to the work of the United Nations International Law Commission, in December 1990 the United Nations General Assembly adopted an International Convention on the protection of the rights of Migrant Workers, that came into force in April 2003. The Convention defines migrant workers, their rights and those of family members, and requires state parties to provide reports on measures taken to give effect to the provisions of the Convention.

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Communication Supplement by Kim Fox
BEST PRACTICES FOR USING TWITTER FOR
CRISIS COMMUNICATION

When using social media to address crisis communication issues, caution should be taken to ensure that damage is minimized.

TIPS: WHAT TO DO WHEN USING SOCIAL MEDIA IN CRISIS
COMMUNICATION SITUATIONS

- Make sure that you have a social media action plan. See below.
- Do not get in a Twitter fight or altercation.
- Don't be afraid to admit an error.
- It's important to engage with the social media audience, however, refrain from finger pointing.

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- The names of the authors of tweets should be included in the Twitter bio.
- If more than one person is posting on Twitter, each person should end the tweet with their initials. For example, ^kjf.
- If someone from your organization posts an erroneous tweet on Twitter, do not delete the tweet. Instead, you should reply to the incorrect tweet with the accurate information. That way the accurate information is circulated along with the inaccurate information.
- Write concisely and include links to more information on the organization's website.
- Tweet key quotes from online news releases and include a direct link to the full news release.
- If you have an image or a map that would better explain a situation, post it on Twitter. For example, if you have an image of the negotiators during their negotiations.
- Monitor the Twitter conversations about your organization, and others related to the crisis, by using hashtags as well as Twitter's advanced search.

EXERCISE 1 : CREATING A SOCIAL MEDIA ACTION PLAN

Create a social media action plan based on the questions listed below.

- Who is in charge of the social media accounts?
- What are the passwords?
- In the event of an emergency, are you using any third party applications to generate alerts?
 - The emergency could be something that is going on that you need to be made aware of.
 - The emergency could be something that you need to announce.
- Do you have a list of media contacts? And who has access to that list?
- Consider sharing this information as a shared Google Doc or on another secure platform that select administrators will have the ability to access.

EXERCISE 2

Based on these best practices, draft a few mock tweets that could be used in the situation between Mira and Baham.

1. If you are Mira, what tweet(s) would you publish to diffuse the situation?
2. If you are Baham, what tweet(s) would you publish to diffuse the situation?

ONLINE RESOURCES

How to use Twitter's advanced search:

<https://support.twitter.com/articles/-71577using-advanced-search>

Twitter: A Crisis Communication Tool

<http://aboutpublicrelations.net/ucclark1.htm>

Using Twitter in a Crisis:

<https://media.twitter.com/best-practice/using-twitter-in-a-crisis>



Negotiations Training Simulation #2
Full Consideration:
**A request for additional EU funding
to improve the infrastructure and
productivity of Egypt's dairy
and aquaculture industries**

By: Allison Beth Hodgkins and Ambassador Magda Shahin
Elena Deola contributed to the research and writing of this simulation

Introduction and Contents

“Full Consideration” is a two-player simulation of a hypothetical request for an increase EU aid to Egypt in which differing interpretations of the obligations developed countries have to support the strengthening of developing countries under the WTO framework that was established during the Uruguay round. This simulation is designed to be used in conjunction with the companion case, “When closing a deal isn’t enough: Lessons from the Uruguay round.” The simulation is designed to reinforce several key negotiating principles such as determining mutual interests, consideration of each party’s BATNA (Best Alternative to a Negotiated Agreement) and the use of objective criteria for evaluating possible settlements. The simulation requires a minimum of two hours of preparation time and three hours for briefing, negotiations and debriefing. This document includes the following sections:

- 1) General Instructions
- 2) Overview of EU financial cooperation and the European Neighborhood Partnership Program (ENP)
- 3) Description of EU funded aid project implemented by the French Agency for Development
- 4) ENP Progress Report for Egypt
- 5) Participant Confidential Instructions for:
 - i) EuropeAid Representative
 - ii) Representative from Egyptian Mission in Brussels
- 6) Facilitation Guidelines.

Nota Bene: This simulation references actual EU programs and actual EU press releases and reports. However, the meeting and the requests are constructed to simulate the dynamics around the Ministerial Decision. Figures in the general background and supporting documents were accessed from Europa.eu, the principal website for the European Union.

Partnership (ENP). Within that framework, Egypt must demonstrate progress in key priority areas before any additional requests for funding can be considered.

Each participant will receive the following materials: Background information on EU/Egyptian financial cooperation; description of an EU funded project with the French Development Agency; ENP progress report for Egypt and one set of confidential negotiating instructions. Participants should review the materials in order to formulate a strategy for achieving the objectives set out in the confidential instructions. Participants are encouraged to make note of the parameters set in the instructions for acceptable settlements, alternates and key interests. They are also encouraged to consider the interests of their counterparts while formulating a negotiating strategy. A facilitator will be available during the simulation for questions and guidance.

General Overview:

EU Financial Cooperation with Egypt through the European Neighbourhood Policy and Partnership Initiative

Egypt and the EU have a history of robust economic cooperation. Egypt signed its first cooperation agreement with the European Community in 1976 and was one of the first 12 members of the Euro-Mediterranean Partnership launched in 1995. Egypt and the EU signed an Association Agreement in 2004, which was operationalized through a European Neighborhood Partnership Instrument “Action Plan” in 2007 and renewed until 2013. Since 2007, Egypt has received an average of €150 million in EU funding each year. There were €449 million in financing allocated under the 2010-2013 partnership envelope.

The Action Plan identified key fields of mutual interest, which included supporting reforms towards democracy and human rights, and in the judiciary, education and health sectors, as well as improving economic competitiveness, expanding trade liberalization and promoting environmental protections (Egypt/EU Joint Action Plan, 2007 eeas.europa.eu; accessed April 12, 2014). Early EU reports on Egypt’s progress were

General Instructions

In the simulation, a contract agent with Development and Cooperation – EuropeAid and a representative from the Egyptian mission in Brussels meet to discuss a request by the Egyptian government to add an additional €13 million in grants for technical assistance to a project aimed at strengthening the competitiveness and efficiency of Egyptian dairy and aquaculture industries. The meeting is to help determine whether the additional funds are warranted. The existing project is a €52.3 million EU-funded program that is designed to provide small and medium enterprises (SMEs) in these two sectors greater access to credit for the purchase of equipment or infrastructure upgrades. This project combines €30 million in sovereign loans, some backed by the Egyptian government and €22 million in grants provided by the EU. The program also includes €4.8 million for “technical assistance.”

Egypt believes the amount for technical assistance is insufficient given the needs of these industries. In addition, Egypt is seeking EU support in improving the regulatory infrastructure and procedures at the governmental level. Egypt believes it needs support to bring its regulatory system up to the rigorous standards required for export to the EU. Egypt believes that the EU has an obligation to support the competitiveness of the agriculture industry in developing countries based on the terms of the “Ministerial Decision on Measures Concerning the Possible Negative Effects of the Reform Program on LDCs and NFIDCs” included in the WTO Agreement on Agriculture (AoA).

Egypt’s position is that under the WTO framework, the EU is required to give full consideration to provide additional funds to improve the infrastructure and productivity of these vital industries in order to meet Egypt’s domestic requirements and increase exports. The position of the EU is that the ministerial decision does not create a specific obligation on the part of developed countries to grant financial assistance to NFIDCs on a bilateral basis. Nevertheless, the EU believes that it is invested in supporting the productivity of the Egyptian agriculture sector, but within the framework established by the European Neighborhood

generally positive and indicated that Egypt had shown commitment to realizing the Action Plan's objectives. However, limited to negligible progress has been noted in the annual reports since 2011 (ENP Country progress reports - Egypt, 2011, 2012, Europa.eu; accessed April 12, 2014). The latest report, issued March 2014, stated that no progress had been made in 2013 and invited Egypt to consider a series of steps related to political, social and economic reforms.

With trade doubling since 2004, the EU is now Egypt's main trading partner. Egyptian exports to the EU are valued at roughly €7 billion and account for 42% of all Egyptian exports. Imports from the EU account for 37% of Egyptian imports and are valued at approximately €15 billion each year. Principal Egyptian exports to the EU are energy, textiles, agricultural products and chemicals. Imports are mainly machinery, chemicals, transport equipment and agricultural products. Agricultural products are only 9% of Egypt's exports to the EU, although the percentage has been increasing steadily since 2010. 80% of Egypt's agricultural exports benefit from duty free and quota free access to the EU market. The main products are grapes, potatoes, oranges, beans, onions and strawberries (eas.europa.eu/trade accessed April 12, 2014).

Egypt remains a net-food importing country and imports roughly 50% of its wheat, corn and other staples, including dairy products. Rising food costs have strained the Egyptian economy and have been a driver of domestic instability. Egyptians spend roughly 40% of their income on food, versus 17% in Brazil and 20% in China (FAO Index, op-cited Slate, January 2011). When food prices surged in 2008, Egyptians went to the streets in protest. Although prices have stabilized, the economic crisis in Egypt has exacerbated the situation. According to a report released by Central Agency for Public Mobilization and Statistics (CAPMAS) and the World Food Program (WFP), 17% of Egyptians faced food insecurity in 2013 in contrast to 14% in 2009 (CAPMAS, www.WFP.org, May 2013; accessed April 16, 2014).

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Strengthening the Egyptian agricultural sector is regarded by both Egypt and the EU as one method of tackling the rising problem of food insecurity. The Egyptian agricultural sector employs approximately 30% of the workforce and contributes around 15% of the national GDP. Crops like cotton, rice and potatoes dominate the majority of the sector. Dairy products and marine aquaculture are growing industries with the potential to increase employment and sustainability of the domestic market. However, the productivity of these industries is hampered by deficiencies in technology, equipment and, for aquaculture, water treatment and supply.

The European Union provides significant amounts of aid and financial assistance to Egypt, through various EU interments and bilateral agreements between EU members and the Egyptian government. One such recent project is an umbrella agreement with the French Development Agency to provide loans and technical assistance to the Dairy and Marine Aquaculture sectors. This project was negotiated between the three parties over several years and activated in 2013. The terms of this umbrella agreement are included in the supplementary documents. Although the terms of the project are fixed, it is not uncommon for the stakeholders to re-negotiate the allocations or implementation procedures during the life span of the project or to use a successful project as the basis to negotiate an extension, additional or supplementary funding for similar purposes. It is also common for donors to condition financial assistance on progress towards other priority areas.

EU-Egypt –BACKGROUND

THE POLICY

The European Neighbourhood Policy governs the relations between the EU and Egypt.

2004: EU-Egypt Association Agreement entered into force.

2007: EU-Egypt Action Plan was approved.

2008: Launch of the Union for the Mediterranean.

FACTS AND FIGURES

2009: *Neighbourhood Investment Facility (NIF) - two projects in Egypt were being implemented in 2009 in the environment and energy sectors. The European Investment Bank signed lending operations for €130 million, of which €120 million are linked to NIF projects.*

2007-2010: *The ENPI envelope for Egypt is €558 million.*

2011-2013: *The new National Indicative Programme (NIP) 2011-13 for Egypt was adopted in March 2010 and has a budget of €449.3 million. The programme is geared towards supporting the achievement of key policy objectives as outlined in the EU-Egypt ENP Action Plan and pursues three priorities: (1) political reform and good governance, (2) competitiveness and productivity of the economy, and (3) socio-economic sustainability of the development process.*

2011: *Egypt declined the offer made by the EU to start a dialogue on Mobility, Migration and Security, leading towards the conclusion of a Mobility Partnership.*

2012: *President Morsi visited Brussels on 13 September and the High Representative and Vice President of the Commission Catherine Ashton chaired the EU-Egypt Task Force on 13-14 November in Cairo.*

For further information

Press release: *Neighbourhood at the crossroads – taking stock of a year of challenges* 27 March, 2014 (IP/315/14)

For the Joint Communication check the EEAS website at:

http://eeas.europa.eu/enp/index_en.htm

Website of Commissioner for Enlargement and European Neighbourhood Policy, Štefan Füle: http://ec.europa.eu/commission_2010-2014/fule/index_en.htm

Website of High Representative and Vice President of the European Commission, Catherine Ashton: http://ec.europa.eu/commission_2010-2014/ashton/index_en.htm

European Commission: European Neighbourhood Policy

http://ec.europa.eu/world/enp/index_en.htm

<http://www.enpi-info.eu>

http://ec.europa.eu/world/enp/documents_en.htm

http://eeas.europa.eu/egypt/index_en.htm

For information on Egyptian Aquaculture see this report by WorldFish:

http://www.worldfishcenter.org/resource_centre/WF_3168.pdf

Supplementary Document #1:
Umbrella Agreement Announcement



Cairo November 25, 2013

Signature of the Umbrella Agreement between the Government of the Arab Republic of Egypt, the French Development Agency and the European Union to improve access to finance for agricultural SMEs and strengthen Dairy and Marine Aquaculture sectors.

The French Development Agency (AFD) and the European Union (EU) signed an Umbrella Agreement for an amount of €52.3 million (an AFD €30 million sovereign loan, EU €22 million grant and a contribution of the Arab Republic of Egypt estimated to €292,000) with the Government of the Arab Republic of Egypt on November 25th 2013, to improve access to finance for agricultural SMEs and strengthen agricultural sectors.

This Umbrella Agreement was signed by the Deputy Prime Minister and Minister of International Cooperation, Dr. ZiadBahaa El-Din, the French Ambassador to Egypt, Mr.Nicolas Gale, the EU Ambassador to Egypt, Mr. James Moran and the Director of the AFD Middle East and North Africa (MENA) Department in Paris, Mrs. Marie-Pierre Nicollet.

The “Support to Agricultural SMEs”(SASME) project will support the efforts of Egyptian Authorities to create job opportunities and foster income generation in rural areas and develop the agricultural sector. Specific objectives of that project include:

- i) Improve access to finance for farmers and agricultural SMEs;

- i) Improve access to finance for farmers and agricultural SMEs;
- ii) Provide technical and financial assistance to farmers and agricultural SMEs to develop their marketing capacities and improve their access to financial instruments;
- iii) Strengthen two value-chains: Dairy and Marine Aquaculture.

To reach these objectives, the project will support two components:

Component 1: Improve access to finance for the agricultural sector

- Investment funding of €32.5 million to contribute to the existing ADP (Agricultural Development Program).
- Establishment of a credit guarantee scheme of €9 million.
- Provide €3.7 million for technical assistance to key stakeholders in the lending and guarantee granting process.

Component 2: Develop and strengthen two value-chains

- Provide €4.8 million for technical assistance to support the Dairy and Marine Aquaculture value-chains.

On the occasion of the signing of the Umbrella Agreement, Mr. James Moran, the Ambassador of the European Union Delegation to Egypt made the following statement:

This agreement is a key step in the implementation of this project which will create significant opportunities for financing of agricultural enterprises in Egypt, and in particular the dairy and aquaculture sectors. EU assistance to Egypt focuses on job creation and income generation in both rural and urban areas, and SASME is a key part of our programme.

Mr. Nicolas Galey, the French Ambassador to Egypt, also expressed his satisfaction with the signing of this Umbrella Agreement through the following statement:

With on-going programs in the fields of research and irrigation, France grants a high importance to its cooperation with the Ministry of Agriculture and Land Reclamation. Through the signing of this agreement, AFD confirms and strengthens its commitment to supporting job creation and revenue improvement especially in rural areas. This project should provide economic and social benefits to the Egyptian people and we are honored to finance it.”

**Supplementary Document #2:
ENP Progress Report**

MEMO/14/223

EUROPEAN COMMISSION
MEMO

Brussels, 27 March 2014

ENP Country Progress Report 2013 – Egypt

The 2014 annual “Neighbourhood Package” consists of a joint communication (“Neighbourhood at the Crossroads”) and a set of country specific and regional reports. The report on Egypt underlines key developments and reform efforts in 2013 and makes recommendations for the future. 2013 has been politically a very challenging year during which no particular progress can be reported in relation to the Action Plan currently in place. A deeply divisive political crisis culminated by the end of June in massive demonstrations against the government throughout the country. Following an ultimatum set by the armed forces; Mohamed Morsi was ousted from the Presidential office on 3 July 2013. The EU undertook extensive outreach activities. HR/VP Catherine Ashton visited Egypt several times, engaging closely with all political parties in order to contribute to overcoming the political mistrust and polarization that have characterized the political scene, and seeking an inclusive solution. Following the revision of the constitution undertaken by the Egyptian interim authorities, a referendum was held on January 14-15 2014, and led to an overwhelming approval of the draft constitution. However, voter turnout was relatively low and there was little room left for the opposition in the electoral campaign.

Due to the political developments, Egypt did not address key recommendations contained in last years ENP progress report, with the exception of having signed the regional Convention on Pan-Euro-Mediterranean preferential rules of origin. Thus, past recommendations remain largely pertinent. Consequently, on the basis of this year’s report and to sustain implementation of the ENP Action Plan still in place, Egypt is invited to:

- Ensure that the new constitution is implemented with full respect for human rights and fundamental freedoms. National legislation should be compliant with the constitution and with international standards;
- Create conditions conducive to an active and independent civil society and adopt legislation on non-governmental organizations (NGOs) and amend the law regulating assembly in line with international standards;
- Ensure the protection of women's rights and gender equality;
- Ensure that regulations on the right of asylum are in line with the constitution and international standards on migration and refugee rights; effectively cooperate with UNHCR/IOM, including by giving them full access to detention facilities;
- Address firmly the serious situation in the Sinai by closing down torture camps and by dismantling the criminal networks operating on the trafficking/smuggling routes within and towards the Sinai;
- Organize genuine democratic presidential and parliamentary elections, in line with international standards;
- Completely halt the use of military courts to judge civilians;
- Ensure that investigations on the many cases of violence, including sexual abuse, are carried out and that the perpetrators are promptly brought to justice;
- Ensure macroeconomic stability and strengthen public finance management in line with international standards and put in place necessary economic reforms;
- Ensure and implement social safety net systems to protect the most vulnerable from the impact of reductions in commodities subsidies;
- Ratify the regional Convention on Pan-Euro-Mediterranean preferential rules of origin. Reforms initiated, carried out, or delayed during 2013 in the different areas of cooperation.

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Points of contention between the EU and Egypt are described in the annual country report. Some of the issues reported deserve special attention.

The **military** held considerable sway over key political decisions in Egypt. The new constitution envisages a high level of autonomy for the military, as it would grant a final say over the position of minister of defense to the Supreme Council of Armed Forces (SCAF).

Freedom of assembly and press freedom deteriorated. TV channels were closed and many journalists harassed, including foreigners. The relationship between the Egyptian authorities and **civil society** deteriorated markedly during 2013, affecting especially human rights NGOs. The NGO trial, several arrests and disproportionate sentencing of human right activists, and the new law on demonstrations were among the cases indicating a willingness to reduce the voices of independent civil society organizations.

Concerning **asylum** issues, according to the UN High Commissioner on Refugees (UNHCR) 129,031 Syrian nationals were registered in Egypt as of 7 December 2013. It is estimated that there are over 300,000 Syrians in the country. **Human trafficking** in Sinai remained a matter of concern. Migrants and refugees, primarily from Eritrea and Sudan, were being held for ransom and traffickers and other criminals subjected some to torture.

In the area of **trade**, only limited progress in the Agreement on Conformity Assessment and Acceptance (ACAA) of industrial products could be registered. In June 2012 the EU and Egypt launched a dialogue on the Deep and Comprehensive Free Trade Area but Egypt showed only little interest in the matter.

Interpretation of Treaty Obligations in International Law

By Hussein Hassouna, PhD

This case raises a set of legal issues relating to the interpretation of states' obligations under a treaty. Thus the request by Egypt for increase EU aid is based on the belief that the EU has an obligation to support the agriculture sector according to the terms of the ministerial decision included in the WTO Agreement on Agriculture. However, the position of the EU is that such a decision does not create a specific obligation on their part to grant Egypt financial assistance. This differing interpretation should therefore be assessed in light of the rules of interpretation established by international law.

According to those rules, there are three basic approaches to treaty interpretation. The first centers on the actual text of the agreement and emphasizes the analysis of the words used. The second looks to the intention of the parties adopting the agreement as the solution to ambiguous provisions and can be termed the subjective approach in contradistinction to the objective approach of the previous school. The third approach adopts a wider perspective than the other two and emphasizes the object and purpose of the treaty as the most important backdrop against which the meaning of any particular treaty provision should be measured. However, any true interpretation of a treaty in international law will have to take into account all aspects of the agreement, from the words employed to the intention of the parties and the aims of the particular document. It is not possible to completely exclude any one of these components.

Articles 31 to 33 of the Vienna Convention comprise in some measure aspects of all three doctrines. Article 31 lays down the fundamental rules of interpretation and can be taken as reflecting customary international law. Article 31 (1) declares that a treaty shall be interpreted "in good faith in accordance with ordinary meaning to be given to the terms of the

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treaty in their context and in the light of its object and purpose.” The international Court of Justice noted in the “Competence of the General Assembly for the Admission of a State to the United Nations” case (ICJ Reports, 1950, pp. 4, 8) that “the first duty of a tribunal which is called upon to interpret and apply the provisions of a treaty is to endeavor to give effect to them in their natural and ordinary meaning in the context in which they occur.” In addition, any subsequent agreement or practice relating to the treaty must be considered together with the context. Subsequent practice may indeed have a dual role: It may act as an instrument of interpretation and it may also mark an alteration in the legal relations between the parties established by the treaty in question.

To conclude, I believe that the interpretation of an agreement, as in the present case, should always take into account the spirit of that agreement and its policy considerations. This will eventually allow the reaching of a satisfactory solution to all parties concerned.

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Role Instructions for Representative of EuropeAid

NOTA BENE: this role and the allocation of funds have been constructed for training purposes and do not represent an actual person or position within the European Commission or the actual design of the project budget.

You are a French contract agent working on a three-year contract at the headquarters of the European Commission in Brussels. Your responsibility is the development and implementation monitoring of EuropeAid agreements under the Neighbourhood and Partnership Instrument. One of the agreements you are currently monitoring is the “Umbrella Agreement between the Government of the Arab Republic of Egypt, AFD and the European Union to Improve Access to Finance for Agricultural SME’s and Strengthen Dairy and Marine Aquaculture Sectors.” This project includes €22 million in grants through the Partnership Instrument plus €30 million in loans from France and a €292,000 contribution from the Egyptian government. The total budget is €52.3 million. The principal goal of the project is to expand financing opportunities and credit access for Egyptian SMEs in these two industries.

The project was scheduled to start in the second quarter of 2012. However, implementation was delayed due to “political developments.” It moved ahead in late 2013 when an umbrella agreement was signed with the French Development Agency (AFD) and the Ministry of International Cooperation. The bulk of the project is financing for loans to small and medium businesses that will be financed by France and the EU, with a small portion guaranteed by the Egyptian government as well. The EU will underwrite €14.9 million of the overall financing for the project. In addition to financing for loans, the budget includes €4.8 million for “technical assistance” to dairy and marine aquaculture industries. The premise is that the industries will take out loans to purchase equipment and then apply for technical assistance needed to train their employees on the use and maintenance of the new equipment. In addition, the budget includes approximately €7.1 million of unallocated funds that

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can be used to cover unexpected administrative costs, cost overruns or to augment successful components of the program.

The project is designed to address priority areas 2 and 3 under the ENP Action Plan: Economic reform and support for sustainable economic development. Small and medium enterprises are identified in the action plan as drivers of economic growth and employment. Small businesses are also seen as important entry points for women into the economy, particularly in rural areas where agriculture remains a mainstay of the economy. Women remain under-represented in the Egyptian economy and the EU is keen to finance programs that increase opportunities for women to start or expand businesses. It was hoped that this program would focus on training and increase financing options for women in rural areas who might be encouraged to start small businesses. Dairy and Marine aquaculture industries were identified as sectors that would benefit from expanded opportunities for financing and training.

The project is currently in the initial stages; however, you have received a request from your Egyptian counterparts to revisit the allocation of funds and the question of equipment and sanitation standards. Egypt has strong production capabilities for farmed, freshwater tilapia; a popular whitefish used in a lot of frozen and processed fish products. Over-supply in the local and regional markets has rendered these businesses unprofitable despite their robust production capabilities. However, due to weak sanitary controls, this product is barred for export to EU markets. Financing for processing, packing and freezing of tilapia, as well as financing and training for requisite sanitary controls would provide swift gains for the economy, would save existing jobs and hopefully create more. In short, the overall productivity of these industries is hampered by lack of advanced equipment, such as devices used for processing, packaging and storage. The Egyptians pointed out that such equipment was vital for their products to be compliant with EU import standards and the sanitary and phytosanitary measures laid out by the WTO.

The Egyptian government would like an additional 10€ million added to the project for technical assistance such as training for improved sanitary controls and regulatory overhaul. They would like another 3€ million direct EuropeAid grant for any equipment or facility upgrades needed to ensure that the government regulatory system for the control and monitoring of fish disease is in compliance with WTO rules for sanitary and phytosanitary measures. They are basing their request on the grounds that the EU has an obligation under the WTO framework to consider any requests made by a net food importing developing country for assistance to strengthen the productivity of their existing agricultural sectors, which includes dairy and aquaculture. They are specifically referencing the shall clause in Article 16 of the Agreement on Agriculture (AoA), stating that developed countries are supposed to give full consideration to requests for technical assistance.

Quite frankly, the Commission was taken aback by this request, especially considering that it came only days after the release of the ENP country progress report for 2013. As a matter of principle, EU funding is based on a formula of “do-more, get more.” Egypt has been showing insufficient progress in too many areas to warrant increased funds. In addition, donating equipment to the government is not within the parameters of this agreement. They will need to show concrete progress if they expect funds to be continued at the current levels. EuropeAid should not be providing additional money without evidence of commitment. Your supervisor believes the reference to the WTO is a ploy. There is no binding obligation in the ministerial decision beyond giving full consideration. By holding this meeting, the EU is considering this request and meeting any presumed obligation under the AoA.

Nevertheless, the amounts requested here are relatively modest and Egypt is an important EU partner. Simply rejecting this request is unlikely to result in greater progress towards the ENP goals and could reduce EU leverage with the government. The challenge is striking the right balance between reinforcing the expectation of progress and demonstrating sensitivity to the particular challenges Egypt is facing at this critical moment.

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You have been authorized to work with your Egyptian counterpart on a strategy for re-allocating small portions of the funding to target sanitary measures or testing procedures provided they are able to demonstrate need and overall impact. In the current political climate, any additional funds would need to make economic sense or be shown as supporting compliance with other key priority areas such as the environment or women's empowerment.

You have looked into their request and found that some parts are reasonable but others don't make sense. The specific focus on tilapia is quite curious. Your quick research indicated that tilapia is about 83% of Egypt's aquaculture, so you can understand why this is an important industry to strengthen. However, the local market is saturated and demand is falling off. The demand for tilapia is weak in the EU as well. Why invest in enhancing the export capacity of a product that might not be marketable? Enhancing market competitiveness and efficiency is a priority in the action plan, not underwriting non-competitive industries.

However, one report produced by WorldFish included a recommendation about working to establish "Nile Tilapia" as a brand. With all the concerns about the safety of imports from China, where the EU gets most of its tilapia, there could be an opportunity if marketed strategically. This could be an interesting avenue to incorporate into the project under the business training components. However, you need to hear their ideas. It is not your role to suggest projects to finance, but you can respond favorably to their proposals.

Egypt is an important partner so you will not immediately reject the request. However, if you are going to make a recommendation to re-allocate funds or increase funds you will need to be convinced of the following:

1. The funds are within the current framework of the grant; they should be for training, technical assistance and support for small and medium businesses in either the dairy or aquaculture value chains.
2. These changes will support Egypt's ability to enact some of the steps outlined in the latest country report.
3. Expansion will meet Action Plan priority areas (i.e., gender, market reform, environmental protections).

Clearly, you cannot agree to just add €13 million to the project. However, there is the €7 million in unallocated funds that could be "allocated" for training programs for enhanced marketing or implementing sanitary controls. Any later overruns could be covered in a negotiated extension if the project appears successful. Funding for the purchase of equipment by the SME's would have to come through loans and credit guarantees in the project. However, you have been given authorization for an additional €3 million to cover the cost of maintenance on equipment purchased by SME's through the program if the Egyptians can provide a reasonable justification.

However, you are not to consider adding grants to support governmental regulatory systems through this program. You don't disagree that a €3 million technical assistance grant would support the competitiveness of Egyptian agricultural exports, but you are unclear on why the EU has an obligation to provide the funds. The commission is sensitive to the impact of global food prices on food importing countries, however, the ministerial decision refers to supporting food sufficiently in NFIDCs not increasing exports.

**Role Instructions for Representative of
Egyptian Mission in Brussels**

NOTE BENE: This role is simulated for training purposes and does not represent an actual person or position within the European Commission, although the umbrella agreement referenced is an actual EuropeAid/AFD project. The author has constructed the allocation of funds described in these instructions for the purpose of the simulation.

You are an Egyptian diplomat stationed in Brussels. One of your main responsibilities is interfacing with your EU counterparts pursuant to the European-Mediterranean Partnership and advocating for Egypt's economic and political interests within the framework of these partnership agreements. One of the programs currently within the envelope of that partnership is the "Umbrella Agreement between the Government of the Arab Republic of Egypt, AFD and the European Union to Improve Access to Finance for Agricultural SME's and Strengthen Dairy and Marine Aquaculture Sectors." The project was designed in 2011 to address Action Plan priority area 3 – support for sustainable development, and priority area 2 –economic reform, by targeting financing for small and medium enterprises in the agricultural sector. Small and medium enterprises are identified in the action plan as drivers of economic growth and employment. The EU is a big proponent of small and medium enterprises as indicators of economic reform. The project was scheduled to start after the elections in 2012, but with the turmoil it was delayed until November 2013.

This project includes an EU contribution of €22 million in grants, as well as €30 million in sovereign loans through a bilateral agreement which the French government negotiated in 2013. Because this is a "partnership,"the Egyptian Government has allocated €300,000 to this project in the form of government guarantees to loans issued to small business in the agricultural sector. The French Development Agency (AFD) is involved in the implementation of most of the project given its €30 million contribution. The EU's contribution is divided between underwriting €14.9 million of the financing component and the entirety of

component 2, which currently has €4.8 million allocated for technical assistance. That leaves approximately €7.1 million in unallocated funds that you suspect will be used for EU “overhead” and not be invested in the development of Egyptian industries.

Overall, this program seems too modest in relation to current needs. Small and medium businesses are important and most of them need credit to start or grow, but credit doesn’t guarantee jobs. In addition, Egypt has more pressing concerns in terms of its balance of trade. Egypt needs to increase its exports. The emphasis on the agricultural sector reflects Egypt’s interest in gaining a greater share of EU market access for its products. Training in business skills like planning and financial management is valuable but these sectors need more tangible support. EU’s import standards are based on the sanitary and phytosanitary measures laid out by the WTO. Egyptian farmers and fisheries have been unable to bring many of their products up to those standards, largely because of the extensive testing requirements and the equipment needed to carry-out those tests.

What these industries really need is modern processing, packaging and testing equipment in addition to the training needed to run them at EU standards. It is important to point out that these standards are derived from the Agreement on Agriculture signed as part of the “final act” of the Uruguay round in 1994. If Egypt is going to be able to export, it is required to meet EU standards. Still, you believe that they have an obligation to help Egypt do so under the very same agreement.

There is a ministerial decision referenced in Article 16 of the Agreement on Agriculture, that obliges developed countries to give full consideration to requests for technical assistance from Net Food Importing Developing Countries (NFIDC) seeking to strengthen their agricultural sectors in order to offset the costs of higher imports with local capacity. A request for funds to support Egyptian industries in meeting WTO standards is well within the letter and spirit of that ministerial decision.

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You believe that the high costs of EU imports to Egypt should be “offset” by support to Egyptian agricultural industries. The more competitive these industries, the less dependent Egypt is on food imports. This is an obligation that transcends the ENP but can certainly be part of it.

You know that the EU’s position is that supporting efficiency and competitiveness means SME’s should seek loans to buy needed equipment. Grants are only provided to for training once businesses have purchased equipment with loans secured through the program. That’s fine in principle, however the €4.8 million allocated for “technical assistance” is insufficient to provide the training and doesn’t address overall upgrades to the regulatory infrastructure needed to support those industries. What is needed is an additional €10 million allocated to technical assistance not just for new equipment but for additional training on how to improve sanitary controls and recommendations for upgrades or procedural changes in the packaging, storing and shipping of these products in line with EU standards.

There are €7 million that are not allocated, and you would like an additional €3 million shifted from the Agricultural Development Program and designated as “financial assistance needed to improve the infrastructure and productivity of the agriculture sector.” The EU has an obligation to give this request full consideration. In addition, you would like to request another €3 million direct EuropeAid grant for the establishment of an EU compliant regulatory system that will facilitate the export of Egyptian aquaculture products to the EU. The WTO was supposed to reduce barriers and the partnership should contribute to that. After all, the EU has access to Egyptian markets at a very high price.

Egypt has strong production capabilities for farmed, freshwater tilapia; a popular whitefish used in a lot of frozen and processed fish products. However, due to weak sanitary controls, it is barred for export to EU markets. Oversupply in the local and regional markets has rendered these businesses unprofitable despite their robust production capabilities. Fi-

nancing for processing, packing and freezing of tilapia, as well as financing and training for requisite sanitary controls would provide swift gains for the economy, would save existing jobs and hopefully create more. Tilapia farms are primarily in the Nile delta but there are some smaller fisheries near Port Said and Suez. Jobs are a real issue in these regions and a project that revitalizes these industries would demonstrate the government's commitment to the people.

Freshwater farming of tilapia and carp make up about 83% of Egypt's aquaculture. The farmers who run these farms are skilled and have invested a great deal in enhanced equipment and modern technology. However, the local market is saturated. Exporting to the EU will be vital if this industry is to survive. To export, these farms need freezing equipment and training. However, they also need better sanitary controls and marketing options. A report done by WorldFish recommended looking into ways to establish "Nile Tilapia" as a niche brand. Training and marketing support towards this branding effort could certainly fall under "technical assistance," if more funds were allocated.

You know that the EU is keen on expanding women's involvement in the economy and you know that many of these smaller operations are family-run and employ women. In addition, some of these farms are located in highly impoverished rural areas where the drop in demand means a decline in jobs. Support to make this industry more profitable would support the goals of the EU action plan and be consistent with the agreements reached at the Uruguay round. It is unlikely that they will accept the entire request, but if you could secure at least €7 million in additional funds now the remaining €3 could be conditioned on benchmark. The most important thing is getting the €3 million grant for the establishment of a regulatory system for the control and monitoring of fish disease. Without getting this in place, it will be years before tilapia will be up to EU export standards. These industries are already productive and if the EU is serious about trade liberalization it should help Egypt overcome this barrier.

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In addition, expanding this project would counter-act the harsh ENP country progress report for 2013. Your government appreciates that the report acknowledged the political challenges the country has been facing, but feels that it failed to recognize what the new government has done in a short time to restore stability. Some of the recommendations also fail to take Egypt's security situation into account. Egypt remains committed to the action plan and hopes that the EU will give greater deference to its current challenges and expand, rather than contract, its level of support.

In sum, you believe that the EU has an obligation to provide an additional €13 million in funds to support the efficiency and self-sufficiency of these sectors. How can Egypt be self-sufficient, let alone competitive, without an improved regulatory system? Not only would this increase exports, but local products would be more attractive and overall dependency on imports would be reduced. Isn't that the principle of partnership and free-trade? You would also like to point out that ministerial decision doesn't specify the type of support given, only that food-exporting countries have an obligation to help NFIDCs be more self-sufficient. Expanding employment in the aquaculture sector means expanded incomes for the purchase of food. Egyptian dairy products are marginally more expensive than EU ones. Increased household income means local products become an option when in the past they couldn't afford them. And, many of these empowered buyers are likely to be women. You hope that these arguments will succeed in helping the EuropeAid representative understand the EU's obligations.

Facilitator Instructions:

This simulation requires approximately two hours of outside preparation and a minimum of three hours in session; 30 minutes to introduce the simulation, 45 minutes to review the instructions and prepare a negotiating strategy, 60 minutes for negotiations and 45 minutes for reporting and debriefing. This simulation is best conducted after the participants have read and discussed the companion case “When closing a deal is not enough: Lessons from the Uruguay round.” Participants should have a copy of the ministerial decision for reference, in addition to the following materials:

1. General background information on the EU/Egypt cooperation
2. One set of confidential role instructions for either:
 - a. Contract agent, Development and Cooperation-EuropeAid
 - b. Representative of the Egyptian mission in Brussels
3. Supporting documents:
 - a. November 25, 2013 press release on AFD umbrella agreement
 - b. March 27, 2014 Press release on ENP Country Progress report for Egypt.

All participants should be given a copy of the general background information, instructions and supporting documents to review before the session. Depending on language ability, the background materials, instructions and supporting documents should take approximately one hour to 90 minutes to read and review. During the session, participants should be divided into two groups. One group should receive instructions for the EU contract agent and the other, instructions for the Egyptian Mission in Brussels. Take care to ensure that each participant only receives one set of confidential instructions.

Participants should be given 45 minutes to review the instructions and formulate a negotiating strategy. The facilitator can require they prepare independently or in groups. During the preparation, the facilitator should

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independently or in groups. During the preparation, the facilitator should circulate between the groups in order to answer questions and provide tips on key aspects of the case. The facilitator is also advised to divide the group into negotiating pairs or set procedures for selecting a partner. In the event of an odd numbered group of participants, select one group of three with two representatives for Egypt.

Once instructions are reviewed, give the group 60 minutes to negotiate a deal. Instruct them to keep individual notes and to create a written record of any agreement reached during the session. In cases where no agreement is reached, participants should be asked to note major points of agreement or disagreement. Facilitator should circulate to answer questions and keep the participants aware of time. After 45 minutes, all groups should be advised to write out areas of agreement and disagreement if they are not “close to a deal.” Once the simulation is concluded, groups should each be given 3-5 minutes to present their results and compare experiences. In addition to general debriefing questions, the facilitator should ask how groups referenced the ministerial decision and the impact it had on the outcome.

The role instructions have been structured to create a “Zone of Possible Agreement” somewhere between €7 million and €10 million of additional funding granted in exchange for measures of progress towards key EU priority areas. Both sets of instructions also indicate that neither party has a desirable “BATNA” or Best Alternative to a Negotiated Agreement. In other words, it is in the best interest of both parties to create a workable solution during the meeting.

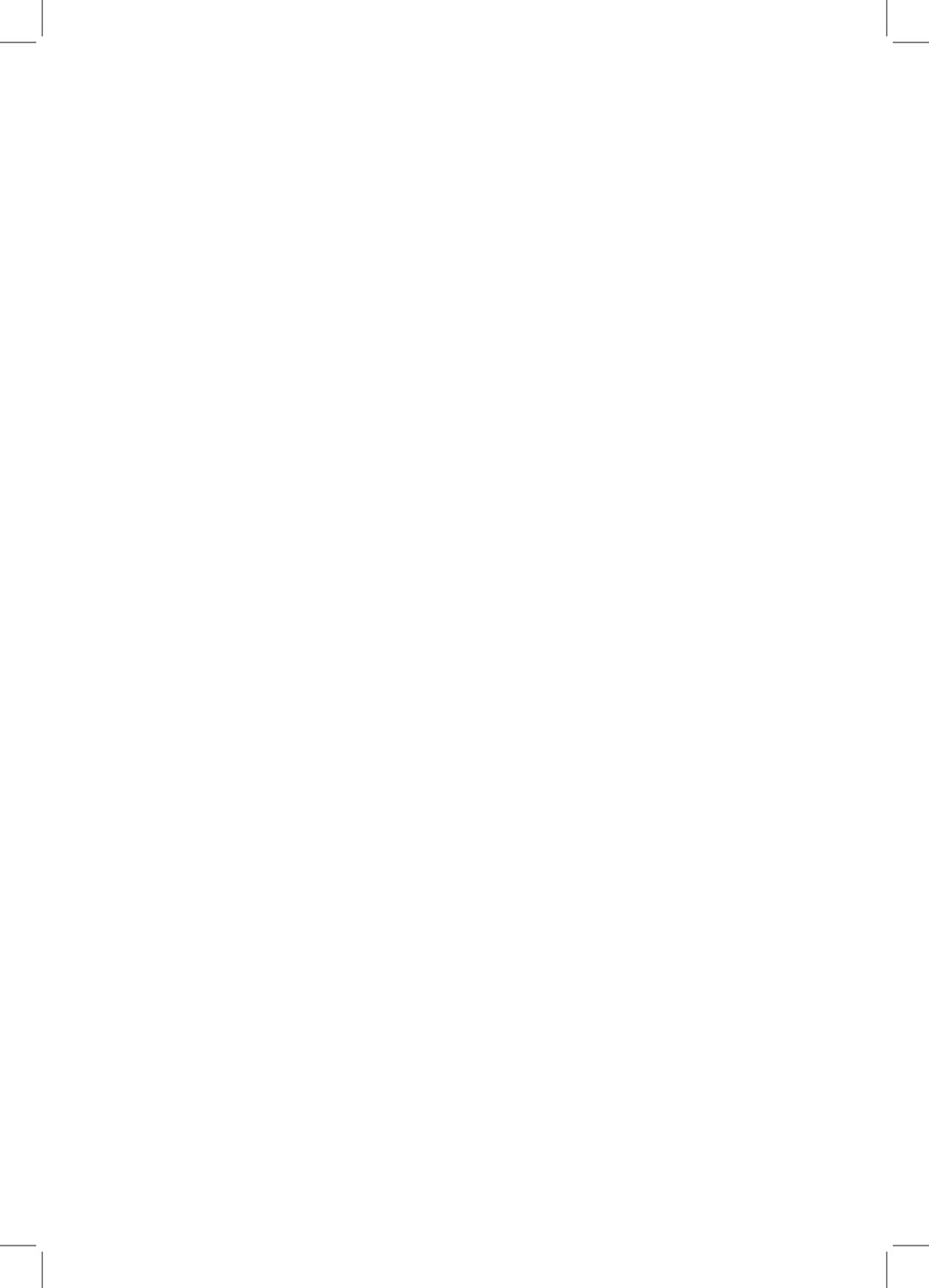
Achieving this end will require a solution to the question of governmental regulatory controls. The EU is resistant to providing direct funds to the government and would like to focus on bolstering SME’s, however the Egyptian government believes that a €3 million grant for improved regulatory controls is essential to support the overall competitiveness of these sectors. As the companion case indicates, the ministerial decision in the Agreement on Agriculture has never been operationalized and

therefore has no direct bearing on how the project is funded. However, it does provide a form of “objective criteria” for justifying an increase in funds that, in principle, both parties are willing to accept. For example, the participants could agree to allocate an additional €3 million to the dairy sector to show the EU’s commitment to Egyptian self-sufficiency in that sector based on the spirit of the ministerial decision.

Although there are multiple ways to create an acceptable agreement within the parameters set by the instructions, the facilitator should remind participants to stay within the guidelines. For example, the participants cannot amend the parameters set out by the WTO, such as deciding to exempt Egyptian products from EU standards. Other unacceptable agreements would be ones where the EU agrees to buy equipment or to fund a new government regulatory system through the program. Alternatively, Egypt could not accept a proposal that makes no accommodations for the question of improved regulation or no increase in financial assistance. Conversely, the facilitator should remind parties that both have an interest in an agreement in this case and that “no deal” would be harmful for both parties.

Sample debriefing questions:

- 1) What were the most difficult aspects of this discussion?
- 2) What was your “BATNA”? Did you consider the consequences of not reaching an agreement here?
- 3) What questions did you ask your counterpart? What do you believe their major interests were?
- 4) What were the alternatives to reaching an agreement in this case?
- 5) Did either party refer to the ministerial decision as “objective criteria” for determining obligations and expectations?
- 6) Were there options for mutual gain? How did you determine them?



Case #2

**When closing a deal is not enough:
Lessons from the Uruguay Round**

By: Ambassador Magda Shahin and Allison Hodgkins

Mona Ahmed Saleh contributed to the research and writing of this case

The WTO and the “Cost” of Reform

When world food prices increased dramatically in 2007, there were food riots in parts of the world and much blame was laid at the feet of the WTO for not taking the needs of these countries into account. The volume of food aid has also decreased in the years since the creation of the WTO as a result of diminished surpluses and higher prices, which reduce the quantity of foodstuffs in contributions measured by value. However, the irony behind these charges is that these specific negative effects were not overlooked during the Uruguay Round. In fact, they were recognized and brought to the attention of the secretariat by a coalition of the Least Developed Countries (LDCs) and the Net-Food Importing Developing Countries (NFIDCs), including Egypt. Although the negotiations were successful in securing consensus on the inclusion of a Ministerial Decision on Measures Concerning the Possible Negative Effects of the Reform Program on LDCs and NFIDCs, the expected protections were difficult to actuate once the deal was done.

Eliminating the price distortions created by subsidies in the developed world was one of the driving forces behind the creation of the World Trade Organization (WTO) in the 1980s. Subsidies and crop surpluses in the developed world suppressed food prices and made it virtually impossible for farmers in the developing world to compete on the global market. However, these distortions also benefited LDCs and countries in the developing world that import the majority of their foodstuffs or receive food aid. There are approximately 75 countries in the world today that are considered Net Food Importing Developing Countries (NFIDCs). Any changes in the price or supply of basic foodstuffs like cereals and grains could have a devastating effect on these countries and force them commit a higher proportion of their already limited resources to importing food. This created tension between net food importing and net food exporting countries during the Uruguay Round of the WTO and sparked the formation of unlikely coalitions that influenced the outcome of the negotiations.

During the negotiations for the WTO, a coalition of developing countries attempted to insert language into the treaty that would protect these countries from any potential shocks created by the liberalization of trade in agriculture. Their efforts to ensure passage of the Agreement on Agriculture (AoA) in a way that protected the interests of LDCs and NFIDCs led to the promulgation of a Ministerial Decision on Measures Concerning the Possible Negative Effects of the Reform Program on LDCs and NFIDCs, (see document supplement at the end of this case).

This decision, made binding on the developed member countries through a “shall clause” in Article 16 of the AoA, called for three forms of assistance: food aid, technical assistance and a financial facility to offset the difficulties of financing normal levels of food imports. Specific actions and expected donor commitments were included for each type of aid as well. For example, donors were asked to establish set levels of food aid that were “sufficient to meet the legitimate needs of developing countries during the reform programs.” The decision also referenced international financial institutions, specifically the International Monetary Fund (IMF) and the World Bank (WB), as a possible source of funds to address financing difficulties either through the existing facilities or the establishment of a new facility for financing. Finally, the decision also called for technical and financial assistance to strengthen the agricultural sectors in the LDCs and NFIDCs in order to encourage self-sufficiency in the future.

From the perspective of the delegates who drafted the decision and pushed for its inclusion in the terms of the WTO, it was seen as a great success. The benefits of market access and trade liberalization were secured as well as a commitment from the developed country members to “take such action as provided for within the framework of the [Ministerial] Decision.” (Article 16, AoA, 1994; WTO.org, accessed April 15, 2014.) Unfortunately, although the liberalization of trade in agriculture has been ongoing since the culmination of the Uruguay Round, the terms of the ministerial decision are yet to be activated. The discon-

nect between the successful culmination of a compromise agreement on ways of mitigating potential harm to LDCs and NFIDCs and the limited scope of its implementation is a common problem in negotiations. As this case will show, many of the negotiating practices that facilitate the culmination of an agreement; like deadlines, ambiguous language and interest-based coalitions, complicate follow-up and implementation, and can also lead to re-negotiation.

GATT and the Origins of the “Uruguay Round”

The Uruguay Round was the 8th round of multilateral trade negotiations (MTN) conducted within the framework of the General Agreement on Tariffs and Trade (GATT). Beginning in 1947 with twenty-three (23) signatories, the GATT was designed to restructure international economic relations after the Second World War in a way that would gradually eliminate impediments to free trade and open new markets for global commerce. Pursuant to entry into the GATT, member countries were obliged to forego some of their own trade policies in favor of the rules and regulations established by GATT. They were also committed to participate in regular negotiations on tariff reductions. These regular multilateral trade negotiations later became known as Rounds of GATT.

Traditionally, GATT was regarded as a “rich nations club”, where developing countries benefited from trade with their more developed counterparts without the necessity of accepting the more comprehensive treaty obligations for trade liberalization, which GATT imposed. However, this arrangement also meant that developing countries had limited capacity to put issues on the GATT agenda or counter concessions and exemptions the developed countries made between themselves on the basis of their shared interests. After World War II, government’s support to revitalize and stabilize food production was seen as a vital interest for all countries in the GATT. As a result, waivers were granted to the United States for its protectionist policies with regard to agriculture that became a “grandfather clause” in the agreement. European countries also agreed to certain protective policies for their agricultural sectors in the 1960s.

Maintaining these favorable policies had considerable domestic implications and was therefore largely excluded from the seven rounds of multilateral trade negotiations conducted under the auspices of GATT.

However, these subsidies also encouraged crop surpluses, whose exports were further facilitated by programs such as the United States Export Enhancement Program, which was designed to facilitate US exports in targeted markets (Womach 2005). In combination, surpluses and export subsidies pushed global food prices down at the same time the world economy was entering into a recession. The crisis caused by reduced revenues and an increased burden in maintaining the subsidies necessary to ensure cost competitiveness led to demands for reform in the agricultural markets (Tanner, 1996). A meeting of 19 agricultural exporting countries in Cairns, Australia pushed for the inclusion of agricultural subsidies on the agenda of the upcoming GATT Ministerial Conference. Resistance from countries like the US was tempered by the hope of greater access to emerging markets (Stancanelli 2009).

This unique confluence of pressures led to the launching of what became known as the Uruguay Round, which opened at Punta del Este, Uruguay in 1986. After years of struggling with market distortions and barriers to market access like quotas, the developing countries wanted to become an integral part of creating and setting the rules of global trade. The two sectors that were most effected by the policies of the developed countries were trade in textiles and agriculture, and they became the main focus of the Uruguay round.

Unlike earlier rounds of negotiations under the GATT, which were primarily focused on the control and reduction of tariff barriers, the Uruguay Round sought to extend its coverage to new non-tariff areas. It covered a much broader range of transactions including agriculture and textiles; in addition, new areas became governed by the GATT principles such as trade in services, intellectual property, and investment. One of the reasons that developed countries like the US were open to discussion

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on sensitive areas like agriculture was the interest in protecting its rapidly expanding technology and pharmaceutical sectors through intellectual property rights laws. In addition, the United States also wanted to open the market for trade in services. In the end, there were four broadly recognized objectives for the talks: the reduction and regulation of subsidies on agriculture, lifting restrictions on foreign investment, including services, such as banking and insurance, under trade regulations and drafting a code for handling copyright infractions and the protection of intellectual property.

Talks opened with an expansive agenda that included everything from cruise ships to toothbrushes and included 123 participating governments (WTO, accessed April 10, 2014). Initially scheduled to end in early 1990, disagreement between the US and the EU over the reduction of subsidies deadlocked the talks. However, when these two parties reached a separate agreement signed in London in 1992, the talks were extended until 1994¹. On April 15 1994, in Marrakesh, Morocco the final issues were resolved, agreements signed, and the World Trade Organization (WTO) came into being. Although there were over 60 different agreements that came out of the Uruguay Round, the principal understandings were (1) the creation of the WTO, (2) multilateral agreements on trade in goods, including the agreement on agriculture, (3) agreement on trade in services (GATS), (4) an agreement on intellectual property rights (TRIPS); and (5) mechanisms for review of trade policies and a mechanism for the settlement of disputes. (WTO, accessed April 10, 2014.)

The Uruguay Round was regarded as the most far-reaching of all multilateral trade negotiations and agreements. According to the World Trade Organization website (WTO, accessed April 10, 2014), it was the largest trade negotiation ever as it took seven and a half years for the final agreement to be reached. The creation of the WTO brought as much as 75 per cent of world trade under the discipline of GATT. In addition, it

¹ The “Blair House Accord” was a bilateral understanding between the EU and the US on the reduction of subsidies that was signed in November, 1992.

formed a body for monitoring compliance and a new, expanded forum for future multilateral negotiations. The WTO also outlined the development of a stronger dispute resolution mechanism for the settlement of trade-related disputes. It is worth mentioning that the final act of the Uruguay Round is considered as the WTO's trade rules, and the WTO is often described as "rules-based" – a system based on rules – which are agreements that governments negotiated in the first place (Mutti et al, 2000).

However, the results of the round were not without criticism. As mentioned, there were significant concerns that the protections for developing countries were insufficient. Another criticism was that the new intellectual property regime might require more payments to the developed world by developing countries. This was particularly so in a context where the automatic patenting of some products became subject to strict limits by the Uruguay Round. The Doha Round launched in 2001 aimed at addressing many of these issues and perceived deficiencies.

Multi-Lateral Negotiations: Challenges and Opportunities

WTO negotiations are considered among the most complex in the world given the sheer number of countries and issues involved. However, in many ways the Uruguay Round is indicative of how most global issues are being handled today. With the end of the Cold War, the tendency for developing countries to address the majority of their concerns through bi-lateral relations with individual, large powers has become a thing of the past. Simply put, growing interdependence has increased the range of issues that can only be addressed by involving multiple stakeholders.

Addressing issues like climate change, piracy and weapons proliferation are increasingly taking place in broad, international forums like the WTO. Moreover, not only is the number of states involved increasing, there is also a proliferation of non-governmental actors joining these forums and wielding considerable influence. During the WTO, actors like the United Nations Conference on Trade and Development played

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a significant role in supporting developing countries in the talks. However, non-governmental organizations like Oxfam were also involved, as were large, multinational corporations like Cargil and ADM (White, 2008). Thus, diplomats must learn to balance multiple actors, multiple roles and multiple issues in order to advance their country's interests in negotiations.

Another additional measure of complexity that is unique to multilateral negotiations is the role of coalitions. The "Cairns Group" is a coalition of agricultural exporting countries, which included developing countries like Argentina, Bolivia, South Africa and Indonesia as well as developed countries like Australia and Canada, who came together out of a shared interest in loosening the grip of the United States and the EU on the global trade in agriculture. Net food importing countries formed another coalition, which again, included developed countries like Japan and least developed countries like Bangladesh. What distinguishes negotiating coalitions in the multi-lateral context from traditional coalitions in international relations is that they are a function of interests and not common political ideologies or bonds of solidarity. That means they can be fluid, fractious and composed of actors who would never conduct business in a different context.

There are four types of coalitions in multilateral negotiations: blocs, coalitions, alignment groups, and issue groups. These types are defined by the range of issues covered by the coalition and the degree of coordination between the parties. Blocs, like the Soviet Block, represent coalitions with the highest number of issues covered by joint decisions and greatest degree of coordination between the members. When dealing with a bloc, conformity is assumed on almost every aspect of the negotiations. Conversely, alignment groups share interests over a broad range of issues but have limited coordination. Alignment groupings can be counted on to vote in general patterns but not to formulate specific positions. Traditional coalitions represent a grouping with a high degree of coordination on a specific issue; again the Cairns Group being a clear example in their

highly organized effort to address trade in agriculture as a singular focus. Finally, there are deal-making coalitions, which are generally short-term alliances between disparate groups of actors who unite on a single issue with minimal coordination. These informal coalitions are the hardest to form and maintain, but can often be decisive in reaching a deal.

As challenging as coalitions can be to form and maintain, they are vital to success in multilateral negotiations for two important reasons. First, coalitions manage complexity by focusing the agenda and reducing the number of participants without reducing inclusiveness. Thus, during the Uruguay round, it wasn't Australia, Argentina, Brazil, Indonesia and Canada each individually seeking to address a range of trade related issues but the Cairns Group speaking on the issue of market access. Most importantly, coalitions increase the power and voice of weaker parties and enable them to put issues on the agenda, forge solutions to collective grievances and block detrimental agreements in a way they could not as individual actors. Only by forming coalitions, were the developing countries able to protect their interests as the agreement on agriculture took form.

Assessment of the Agreement on Agriculture

Because reforming global trade in agriculture was one of the principal objectives of the Uruguay Round, the conclusion of the Agreement on Agriculture and the liberalization of trade in that sector was seen as a major victory for the coalition of agricultural exporting countries known as the Cairns Group; named after the location of their first meeting in 1989. The agreement included many of the issues sought by the Cairns Group, including the reduction of subsidies and improved market access through the reduction of tariff barriers. However, there are still many aspects that are seen as perpetuating the advantages traditionally enjoyed by the developed, food exporting countries like the United States and the European Union (Stancelli, 2009).

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Market access is one area where the Cairns Group believed they had achieved a victory. During the Uruguay Round, the parties agreed to the transformation of all non-tariff barriers into tariffs and then gradually reducing them. By converting non-tariff restrictions, such as quotas, there would be transparency and predictability in market access. However, because it was agreed that in the first stages tariffs would ensure the same level of protection enjoyed at 1986 levels, the developed countries began placing tariffs as high as 300-350% on critical imports such as dairy or poultry (ESCAP 1996). The failure to impose a ceiling on tariffs during the talks led to what became known as “dirty tariffication.”

In addition, the requirement that tariffs be reduced by 36% was an agreement that developed countries could comply with only by reducing tariffs on goods that were not essential to their economy and raising them on others. Processed products, for example, have a higher tariff rate than unprocessed, agricultural products.

Even the tough limits on export subsidies had loopholes advantaging the developed countries. For example, the baseline for export subsidy reduction was set at 1986-1988 levels, when subsidies were at their highest for developed countries; whereas countries that had never used such subsidies were barred from implementing them at all (position paper, 6, 2014). These weaknesses and oversights in the AoA are often cited as reasons that developing countries have not been able to increase their share of the market in processed agricultural products or compete in the markets of developed countries as effectively as hoped (Anderson, 2000; position paper 5, 2014.)

Inexperience, time pressure and the sheer complexity of the WTO negotiations were major factors in the loopholes and other structural weaknesses in the agreements produced in the Uruguay Round. First, even though many of the delegations had highly skilled, experienced diplomats, they were negotiating within a framework that had long been the

exclusive purview of the developed countries. The US and the EU were very adept at leveraging the negotiating framework because they were, quite literally, the ones who “wrote the rules of the game” (Shahin, interview March 6, 2014). Whereas, delegates from developing countries had to struggle to forecast the implications of what they were agreeing to and how it may or may not be operationalized (Shahin, interview March 16, 2014). Particularly during the Marrakesh meeting, time was a major factor as the delegates struggled to reach consensus on multiple agreements in a limited amount of time. Moreover, because the delegations from developing countries were smaller, they had to stretch their delegates across multiple issues and actors. In many cases, diplomats would work through the night on a particular issue and then have to shift to another set of meetings in the morning and face a well-rested counterpart without any sleep (Shahin, interview March 6, 2014).

Finally, the complexity of the talks was staggering. Not only were there 123 countries taking part in the talks, there were different international organizations, non-governmental organizations and even lobbyists representing different economic interests and endeavoring to advance them through the terms of the emerging agreements. Again, with small delegations shifting from issue to issue, coalition partner to partner, the potential for something to slip through or for a clause to be accepted without fully understanding the implications was huge. Nevertheless, when it became apparent that the talks were leading to an agreement on the eventual elimination of subsidies on agriculture, the Egyptian delegation was quick to realize the dangerous implications for its national interests and to assemble a coalition to secure measures for protection.

The Ministerial Decision on Measures Concerning the Possible Negative Effects of the Reform Program on LDCs and NFIDCs: An Unlikely Coalition and a Qualified Success

For the Cairns Group, reducing subsidies was the primary objective of entry into the Uruguay Round. However, these same subsidies that created a competitiveness barrier for food-exporting countries were also

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a boon to net food importing countries; regardless of developmental status. Lower prices meant lower expenditures on imports, something particularly important for countries like Egypt, which have their own internal subsidies on basic foodstuffs. In addition, the crop surpluses associated with subsidized production ensured high levels of food aid available for the least developed countries, particularly in Africa (position paper, 3, 2014).

Many food importing, developing countries have depended on these cheap subsidized crops to meet the needs of their growing populations, particularly in the form of food-aid concessions. The reduction in subsidies was seen as having a twofold impact: upward pressure on global prices and a reduction of the price concessions many of these countries had enjoyed for decades (UNCTAD, Background Note, 2000).

As a NFIDC with a rapidly growing population and its own agricultural industry, Egypt had a clear stake in the final parameters of the agreement. If a reduction in subsidies reduced the availability of subsidized cereals for import by 3.5 tons per year, Egypt's share of the 26 million tons normally imported by NFIDCs each year would be reduced. However, Egypt's farmers have also been harmed by US subsidies on cotton, which devastated cotton production in the Nile Delta (Lotterman, 1996). Moreover, many of the countries pushing for these reforms, the United States in particular, were Egyptian allies. Therefore, Egypt had to seek a middle path that would avoid derailing the reform altogether but still protect its interests. To accomplish this task Egypt would need to assemble a coalition capable of exerting pressure on the US and the Cairns Group. With the support of the United Nations Conference on Trade and Development (UNCTAD), Egypt began reaching out to other food importing countries like Pakistan, Jamaica, Nigeria, and even Japan to bring their concerns before the secretariat and pursue protective measures.

Their line of argument was to accept the reforms would take place, but to urge those more developed countries and those who would benefit from the reforms to outline a series of measures to mitigate the expected negative results. Instead of seeking to limit reforms, they pursued redress through measures to ensure the continued availability of food aid for the LDCs and financial support to the developing countries that could offset the projected price increases when the subsidies were removed. Moreover, the coalition requested additional technical assistance in improving the productivity of their own agricultural sectors, which had been negatively impacted by the years of escalating subsidies (Lotterman, 1996).

As they began raising the issue with various delegations, they were surprised to find support for their initiative from several European countries, including France, Spain and Greece, who remained strenuously opposed to the reduction of subsidies. Because these delegations were bound by the unified EU policy outlined in the 1992 “Blair House Agreement,” they could not actively be involved in the coalition’s efforts. However, they could provide tips on language, issues to watch for and different strategies for bringing pressure on the major actors. This “clandestine” support was valuable but also risky as disclosing the involvement of these countries would destroy their credibility. They also had to ensure that their coalition would hold together and not be undermined by breakaway coalitions with a narrower agenda. For example, many small African countries with historic ties to the disgruntled EU countries were in the coalition. Because the Uruguay Round operated on the principle that nothing was agreed until everything was agreed, there was potential this group could announce their complete opposition to the reform and scuttle the entire agreement; including reforms that were important to Egypt (Shahin interview March 6, 2014).

Through painstaking negotiations the coalition advanced a series of proposals through the secretariat that eventually became the text of the ministerial decision (See supplementary document.) In brief, the decision

recognized the potential for the implementation of the reform program to have adverse effects on the economies of the LDCs and the NFIDCs, in particular reduced supplies of food aid and difficulties financing normal levels of food imports, and agreed to establish mechanisms to mitigate these harms should they occur. Among the measures included in the decision were agreements to review levels of food aid and initiate negotiations on establishing levels appropriate to meet the needs of LDCs, guidelines for increasing the proportion of food aid available through the Food Aid Convention of 1986 and for donor countries to give full consideration to requests from these countries for financing and technical assistance to their agricultural sectors. In addition, the decision indicated that these countries may be eligible to draw on the resources of the IMF and the WB in the event of short term difficulties in financing the cost of food imports. The decision was referenced in the text of the Agreement on Agriculture in Article 16, which reads as follows:

Part X: Article 16

Least-Developed and Net Food-Importing Developing Countries

- 1. Developed country Members shall take such action as is provided for within the framework of the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries.*
- 2. The Committee on Agriculture shall monitor, as appropriate, the follow-up to this Decision. (Official text of the Agreement on Agriculture, www.wto.org; accessed April 11, 2014)*

In the end, the group was very pleased with what they had achieved and believed they had ensured their countries would have support in dealing with the negative impacts of the liberalization programs. However, in the months and years after the conclusion of the Uruguay Round, it became readily apparent that the actions were far less concrete than anticipated and the protection measures impossible to operationalize. In fact, the main aspects of the decision have yet to be activated. A report issued in

2000 by UNCTAD made the assessment that the implementation of the decision was unsatisfactory for three main reasons: (1) lack of an operational mechanism for carrying out suggested actions; (2) no attempts by within the WTO framework to estimate the impact of the reforms on the LDCs and the NFIDCs; and (3) minimal substantive discussions of specific country level impacts within the WTO's monitoring of the implementation of the reform, despite the implementation of measures like the elimination of price discounts on food-aid (UNCTAD.org, background note, 2000; accessed April 11, 2014.) Ultimately, the agreement was nearly impossible to operationalize and never became more than a hypothetical exercise (Shahin, interview March 6, 2014.)

The Trajectory Problem in Negotiations: Roots of an Imperfect Agreement

Negotiations mean more than getting a deal. At the end of the day, reaching an agreement is about setting the parameters of future actions; in this case actions taken by the WTO members to protect the interests of LDCs and NFIDCs as the reform program was implemented. However, as this case points out, the assumption of an automatic trajectory from agreeing to future change and actually bringing about that desired change is fundamentally flawed. Successful outcomes mean not only paying attention to what happens during the negotiations, but what could happen after an agreement is reached (Breslin and Rubin, 1991). Future uncertainty, imperfect agreements, lack of needed resources and changing circumstances are common factors in the post-settlement challenge that can derail even the most hard-won and carefully negotiated agreements (Salacuse, 1991.)

The disappointing results of the decision are related to many different factors, however chief among them are weaknesses in the actual wording of the document. First and foremost, the Decision referred to possible negative effects, which meant the commitment to act was contingent on harms being demonstrated to have taken place. In addition, those pos-

sible negative effects - chiefly reduction in food supplies and increased prices - were linked to the reform program. This implied a twofold burden of proof on the countries seeking assistance through the terms of the decision; first they had to prove actual harm and then they had to prove that harm was a direct result of the reform program. Similar tentative language appears in the terms referring to access to financing from the IMF and the WB; such as phrases: “may be eligible” to draw on resources of these institutions and that “such facilities as may be established” within the context of existing adjustment programs (Ministerial Decision, pt. 5 see documentary supplement).

Although these terms created the impression of future actions, there was nothing in the agreement that created a binding obligation to carry them out. For example, why would a decision made in the WTO create a binding obligation on the IMF? The IMF indicated that any short-term balance of payments difficulties should be addressed within existing adjustment programs and rejected the idea of establishing a separate adjustment program related to the programs emerging from the Uruguay Round (position paper 2014, 6). The decision did compel donor countries to give “full consideration” to requests for technical and financial assistance from LDCs and NFIDCs, but did not stipulate such assistance would have to be forthcoming. In practice, this meant that each member country perceiving a negative effect could request additional assistance from each relevant donor member country but that delivery of such assistance would be subject to bilateral negotiations in each case. In the end, the only tangible result of the decision was the renegotiation of the 1986 Food Aid Convention (FAC), which came into force in July, 1999. While the aggregate food aid commitments contained in the new FAC were lower in terms of volume, values were fixed and a broader range of products were covered.

Follow Up and Renegotiation

This case underscores the importance of thinking about the implementation process during the context of brokering a deal and endeavors to

include safeguards to prevent the potential for weak language, differences in interpretation or changing circumstances from undermining the deal. First and foremost, it is important to recognize that many of the techniques that facilitate closing an agreement can undermine implementation. Deadlines and time limits, for example, create pressure on the parties to accept various concessions; often without sleep or time to consider the implications. However, once accepted, these become binding components of the deal that the signatories can repent at leisure as the saying goes.

Leaving certain aspects open-ended or to be negotiated at a future time, such as the prospect of an IMF/WB financing facility or aid packages, can allow the parties to leap over disagreements that would prevent an otherwise beneficial deal. However, those issues will eventually need to be dealt with if the agreement is to be fully actuated. Finally, the classic diplomatic tool of “constructive ambiguity” has facilitated the signature of countless historical agreements. However, differing interpretations, such as the expectation of binding commitments to provide assistance to LDCs and NFIDCs can lead to significant implementation challenges and sour the entire agreement.

It is worth noting that many of the criticisms lobbed against the WTO, which has many important benefits for developing countries, emanate from the belief that its terms have led to increased food insecurity (FAO, background note, 2011, accessed April 10, 2014). While more precise commitments may have slowed the conclusion of the final act, the end result could have meant a more positive, global perception of the WTO.

Fortunately, the terms of the WTO included measures to address these very challenges. One of the biggest achievements of the Uruguay round was expanded provisions for dispute settlement and mechanisms for continual follow-up and re-negotiation. Many of the outstanding concerns held by the LDCs and NFIDCs have been drawn up in position

papers by the countries and interested organizations, such as FAO and UNCTAD, and included in the agenda of the on-going negotiations on the implementation of the Agreement on Agriculture.

Finally, it is important to point out that the decision remains as a source of leverage for individual countries seeking to expand financial assistance from developed countries to offset the rising costs of food and improve the productivity of their domestic agricultural sector. The fact that LDCs and NFIDCs, as well as international agencies like UNCTAD and the FAO and NGOs like Oxfam, continue to raise the “unsatisfactory” implementation of this decision in WTO forums ensures the negative impacts remain a part of the negotiations on the regulation of global trade.

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Uruguay Round in International Law

By Hussein Hassouna, PhD

This case reveals the complexity of multilateral negotiations in an interdependent world. Success in any negotiation depends on a degree of mutual goodwill, flexibility and good faith. In that regard, the International Court of Justice (ICJ) has observed that negotiations require a genuine attempt by the parties to engage in discussions with a view to resolving a controversial issue (*Georgia v Russian Federation* case, ICJ Reports 2011). The case also indicates how the drafting of the terms of an agreement can lead to differing interpretations and future controversy. According to international law, interpretation of states’ obligations under a treaty must take into account the wording employed, the intention of the parties and the object and purpose of the treaty (Article 31 of the Vienna Convention on the Law of Treaties).

The WTO is governed by the Ministerial Conference. The Ministerial Conference (MC) is the meeting of all of the members mandated once

every two years. Typically, the idea is that the Ministerial Conference will bring together the decision-makers — the top brass — to allow for agreements that have been negotiated during the past two years to be approved and implemented.

In between meetings of the Ministerial Conference, the General Council fulfills the roles and responsibilities of the MC. In practice, the difference is academic. The same states are involved in both bodies, the powers are essentially the same, and the voting procedures are the same as well. But the MC is intended to be where agreements are actually reached, so its importance cannot be understated, even if the preparative work is the most important part. To this end, ministerial decisions, which represent an unreviewable, unassailable political decision by the WTO's members, are the most effective way to interpret and apply the rules set out in the WTO.

In the WTO's Agreement on Agriculture, an interesting situation arose. There was a danger that the Agreement's rules could prohibit certain types of subsidized food aid because of its effect on the world market. As discussed in the case study, the agreement's Article X created a mandatory recourse to additional provisions in the Ministerial Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries. The language in the Agreement on Agriculture is mandatory, creating legal obligations for WTO members. The language in the decision also creates obligations. However, the obligations that are created are very weak. The operative legal requirements are "to review the level of food aid" "to initiate negotiations in the appropriate forum" "to adopt [non-mandatory] guidelines to ensure" and "to give full consideration...to requests for the provision of technical and financial assistance." Many of these obligations are requirements of conduct, not of result, meaning that if a state fully considers the options or initiates negotiations but that conduct does not lead to a change in food aid, their obligation is still satisfied. As such, operationalizing and enforcing the ministerial decision is difficult.

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Because ministerial decisions cannot be reviewed in any internal WTO dispute mechanism or any external mechanism, it is impossible to change the current decision without lengthy renegotiation. Should a case be brought under the Agreement on Agriculture by one state against another, a dispute settlement panel would evaluate the decision using the interpretative mechanisms in the Vienna Convention of the Law of Treaties. This would likely lead to a restrictive interpretation of the decision, focused on the plain meaning of the terms, and would have little effect on the current situation.

Questions for Discussion:

1. What were some of the unique challenges for developing countries like Egypt in the Uruguay Round?
2. Besides working with coalitions, what other strategies could the Egyptian delegation have employed to better protect their interests in the agricultural agreement?
3. What alternatives to accepting the ministerial decision did Egypt have during the final act? What would have been possible consequences of blocking the agricultural agreement?
4. What is the best strategy for working with non-state actors, like non-governmental organizations, in multilateral negotiations?

Negotiations Questions:

1. What are possible terms or measures that the coalition of NFIDCs and LDCs could have taken to ensure more effective implementation of the safeguards promises in the ministerial decision?

2. How did time pressure impact the closure of a deal in this case? What would have been the consequences of holding off for a better agreement?
3. How can smaller delegations cope with the pressures of multilateral negotiations?
4. What now? What strategies could NFIDCs and LDCs use to mitigate the impact of trade liberalization through renewed negotiations with developing countries? Could the ministerial decision still be useful? If so, how?

Communications Exercises:

1. Draft a press release from the Ministry of Foreign Affairs in an LDC or NFIDCs on the culmination of the Agreement on Agriculture ministerial decision that both introduces the ministerial decision and highlights its protective promise. Structure the press release in a way that addresses both domestic constituencies and partners in the developing world.
2. Draft an address to the WTO that calls for renewed efforts to operationalize the ministerial decision. Outline a plan of action that would address concerns of developing countries and donors.
3. Plan a press conference after the signing of the AoA that includes talking points for representatives from an LDC, an NFIDCs and a member of the Cairns Group. Anticipate questions on the impact of food shortages and price increases, and formulate responses from the perspective of each stakeholder.

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Additional Information:

The World Trade Organization: www.wto.org

The United Nations Conference on Trade and Development:
www.unctad.org

The Food and Agricultural Organization of the United Nations:
www.fao.org

Oxfam; Africa and the Doha Round:
<http://www.oxfam.org/en/policy/bp80-Africa-and-the-Doha-Round>

**DECISION ON MEASURES CONCERNING THE
POSSIBLE NEGATIVE EFFECTS OF THE REFORM
PROGRAMME ON LEAST-DEVELOPED AND NET
FOOD-IMPORTING DEVELOPING COUNTRIES**

1. Ministers recognize that the progressive implementation of the results of the Uruguay Round as a whole will generate increasing opportunities for trade expansion and economic growth to the benefit of all participants.

2. Ministers recognize that during the reform programme leading to greater liberalization of trade in agriculture least-developed and net food-importing developing countries may experience negative effects in terms of the availability of adequate supplies of basic foodstuffs from external sources on reasonable terms and conditions, including short-term difficulties in financing normal levels of commercial imports of basic foodstuffs.

3. Ministers accordingly agree to establish appropriate mechanisms to ensure that the implementation of the results of the Uruguay Round on trade in agriculture does not adversely affect the availability of food aid at a level which is sufficient to continue to provide assistance in meeting the food needs of developing countries, especially least-developed and net food-importing developing countries. To this end Ministers agree:

(i) To review the level of food aid established periodically by the Committee on Food Aid under the Food Aid Convention 1986 and to initiate negotiations in the appropriate forum to establish a level of food aid commitment sufficient to meet the legitimate needs of developing countries during the reform programme;

(ii) To adopt guidelines to ensure that an increasing proportion of basic foodstuffs is provided to least-developed and net food-importing developing countries in fully grant form

and/or on appropriate concessional terms in line with Article IV of the Food Aid Convention 1986;

(iii) To give full consideration in the context of their aid programmes to requests for the provision of technical and financial assistance to least-developed and net food-importing developing countries to improve their agricultural productivity and infrastructure.

4. Ministers further agree to ensure that any agreement relating to agricultural export credits makes appropriate provision for differential treatment in favor of least-developed and net food-importing developing countries.

5. Ministers recognize that as a result of the Uruguay Round certain developing countries may experience short-term difficulties in financing normal levels of commercial imports and that these countries may be eligible to draw on the resources of international financial institutions under existing facilities, or such facilities as may be established, in the context of adjustment programmes, in order to address such financing difficulties. In this regard, Ministers take note of paragraph 37 of the report of the Director-General to the CONTRACTING PARTIES to GATT 1947 on his consultations with the managing director of the International Monetary Fund and the president of the World Bank (MTN.GNG/NG14/W/35).

6. The provisions of this decision will be subject to regular review by the Ministerial Conference, and the Committee on Agriculture shall monitor the follow-up to this decision as appropriate.

References

- Breslin, J. W., & Rubin, J. Z. (Eds.). (1993). *Negotiation theory and practice*. Program on Negotiation.
- Finger, J. M., & Nogués, J. J. (2002). The unbalanced Uruguay Round outcome: the new areas in future WTO negotiations. *The World Economy*, 25(3), 321-340.
- Khor, Martin *TWNS Statement on Agriculture at UN ECOSOC*, TWN July 2003, accessed April 10, 2014.
- Lotterman, E. (1996). *Farm bills and farmers: the effects of subsidies over time*. Banking and Policy Issues.
- Meléndez-Ortiz, R., Bellmann, C., & Hepburn, J. (Eds.). (2009). *Agricultural subsidies in the WTO green box: ensuring coherence with sustainable development goals*. Cambridge University Press.
- Mutti, J., Sampson, R., & Yeung, B. (2000). The effects of the Uruguay round: empirical evidence from US industry. *Contemporary Economic Policy*, 18(1), 59-69.
- Sandiford, W. (1994). *GATT and the Uruguay Round*. Eastern Caribbean Central Bank (ECCB). http://www.eccb-centralbank.org/Rsch_Papers/Rpmar94.pdf.
- Salacuse, J. W., & Salacuse, J. W. (1991). *Making global deals: Negotiating in the international marketplace* (p. 1). Boston: Houghton Mifflin.
- Spector, B. I., & Zartman, I. W. (Eds.). (2003). *Getting it done: postagreement negotiation and international regimes*. US Institute of Peace Press.
- Stancanelli, N. (2009). *The Doha Round: Problems and Prospects*. Opportunities and Obligations: New Perspectives on Global and US Trade Policy, 47.
- Tanner, C. (1996). AGRICULTURAL TRADE LIBERALISATION AND THE URUGUAY ROUND. *Australian Journal of Agricultural and Resource Economics*, 40(1), 1-35.
- United Nations Conference on Trade and Development (23 June 2000) *Background Note: Impact of the Reform Process in Agriculture on LDCs and Net-Food Importing Developing Countries and Ways to Address their Concern in Multilateral Trade Negotiations*, unctad.org; Accessed April 11, 2014.
- White, C. E. (2008). *The Nature of What's to Come: Changing Agribusiness Strategies in the Era of the Uruguay Round*. ProQuest.
- Womach, Jasper (2005). *Report for Congress: Agriculture: A Glossary of Terms, Programs, and Laws*, 2005 Edition.



Negotiations Training Simulation #3
**Reconciling Reservations through Consensus:
An Exercise in Consensus Building
and Coalition Management**

By: Allison Beth Hodgkins
*Mona Ahmed Saleh contributed to the research and writing
of this simulation*

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This is a team-based simulation aimed at formulating a collective position through consensus building. The objective of this simulation is to practice forming consensus on sensitive issues between participants with conflicting positions. A successful resolution of the simulation will require the participants to redefine positions in accordance with underlying interests and formulate compromise language that will be acceptable to national and international constituents.

The premise of the simulation is a hypothetical meeting of delegates from Arab League member states to discuss their respective reservations on two articles within the 1979 Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). The meeting has been convened in response to a hypothetical announcement that the UN Committee on Eliminating Discrimination Against Women plans to request that states that have joined the convention provide evidence of their intention to remove any remaining reservations to the treaty or provide a justification for retaining those reservations, which explicitly outlines how their national laws do not contradict the spirit of the convention. The announcement has specifically identified Article 2, which stipulates gender equality before the law, and Article 9, which calls for full gender equality in nationality rights, as requiring action.

For the simulation, participants will be divided into five teams, each representing a state in the Arab League that has reservations on one or both of these articles. The objective is to meet and discuss ways of formulating a unified action plan for amending these reservations in a manner that reconciles national priorities, religious freedom and state obligations under the CEDAW. The objective is to produce a draft resolution for circulation and possible adoption during the next meeting of ministers. The group has agreed to a series of ground rules for the meeting and appointed a chair to keep time and call any procedural or substantive votes.

Participants will have 45 minutes to review their confidential instructions as a team, 30 minutes for in-group caucusing, and 120 minutes to broker

a consensus position on the CEDAW reservations, followed by a 45 minute debrief. The simulation includes the following:

1. General Guidelines
2. Description of reservations on CEDAW for Arab League States
3. Confidential role instructions for representatives from:
 - a. Egypt
 - b. Jordan
 - c. Libya
 - d. Algeria
 - e. Lebanon
4. Optional role instructions for a conference chair (Saudi Arabia)
5. Facilitators Guidelines and debriefing sheet (shared at the end)
6. Treaty Reservations in International Law, by Hussein Hassouna, PhD

Agreed Guidelines for Participants

Thank you in advance for accepting to take part in this important meeting. Your participation will be an invaluable part of our efforts to demonstrate unified support for the rule of law, protection of religious freedom and the rights of all citizens. This meeting is an important opportunity to forge a regional consensus on an appropriate response to international calls for all CEDAW member states to remove remaining reservations on the 1979 convention. Although all member states have equal voice and standing, a unified position will enhance our ability to ensure that our collective concerns are addressed and to ensure that no one state or grouping of states are singled out for censure. Our hope is that we can come to agreement on the text of a draft resolution on these reservations that can be circulated for adoption by the next, scheduled meeting of ministers. We thank you in advance for your willingness to engage in this important effort.

Through advance coordination, participants have agreed to the following agenda:

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- To review and discuss the rationale for existing reservations on Article 2 and Article 9 respectively.
- To identify areas of consensus on retaining, removing or amending the reservations on these articles.
- To determine whether member states should pursue coordinated action or make a coordinated statement on these reservations.
- To formulate a consensus set of recommendations on the basis of the results of the above.

Participants have agreed that a chairperson will keep time, entertain motions and hold a final vote at the end of the session. Although this is an unofficial meeting, with no mechanism for imposing any binding outcomes, participants have agreed to the objective of formulating a draft resolution for circulation and possible adoption at the next general meeting of ministers:

- A draft resolution calling for member states to commit to removing or amending existing reservations that are contradictory with the principles of the convention.
- A draft resolution calling all member states to endorse a unified justification of the existing reservations on the basis of:
 - Demonstrating how existing legal codes offer women sufficient levels of protection;
 - Necessity of maintaining existing protections for family and children.
- A draft resolution calling on all member states to ensure adequate protections for women and families in accordance with the principles of the convention and to consider steps to amend or remove remaining reservations prior to the UN Committee meeting.
- A draft resolution calling on all member states to ensure greater protection for women and families in accordance with national priorities.

On the basis of advance coordination, we have agreed to the following ground rules and outcomes.

1. Strict confidentiality of all discussions. None of the ideas or draft resolutions considered in this meeting will be shared without explicit consent of all members.
2. A draft resolution will be adopted and circulated for consideration among member states only in the event of consensus.
3. Members have the right to reject recommendations, withhold consent or withdraw participation.
4. Consensus is defined as agreement of all participants (unanimity) or majority agreement and agreement by the minority to withhold consent.
5. In the event that participants withhold consent, they may include an additional statement with the consent of the majority (minority opinion).
6. Withdrawal from participation does not preclude the remaining members from issuing a consensus set of recommendations; neither does it preclude that delegate from participating in future deliberations on these issues in different forums.
7. A minimum of three participants is required for any consensus recommendation.
8. Consensus will be determined through a vote of “Yea” or “Nay”.
9. The chair will call the vote and record responses.

To facilitate preparation for discussions, please review the attached summary of the relevant articles and a listing of attendant reservations held by member states. While we respect the right of each member state to determine its national priorities, our hope is that a unified position will increase our ability to guard our shared interests in protecting the rights of women, children and families without prejudice to national level priorities and to our shared values.

Thank you in advance for your honored participation.

AGREED PROCEDURES AND PARAMETERS

- Session is unofficial and confidential
- Only chair will take official notes in full or small group session
- Chair will circulate drafts
- All draft text will be returned to chair at end of session.
- Only approved resolution will be released from the meeting
- Options for drafting include:
 - Binding call for action.
 - General statement of intent/affirmation of commitments.
 - Delegates recognize the chair's authority to open the session, call for motions, order, recess, roll call vote and cloture.
 - Chair will recognize delegates for contribution during formal debate.
 - Delegates will respect 60-second limit for questions and comments during formal debate. Chair reserves right to request delegates to curtail comments for time purposes.
 - Chair will call final vote; delegates APPROVE, REJECT, or ABSTAIN.
 - Majority of four required for approval. Majority of less than four does not constitute consensus.
 - Only text with majority transferred to the Women's Affairs Committee for presentation at the next meeting of ministers.
 - Abstentions or rejections can be amended to the text with permission of the delegates.
 - In the event no resolution is adopted, no official record of the meeting will be registered with the Women's Committee.

Relevant Articles in CEDAW (1979)

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.

Article 9

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.
2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

Summary of Reservations on Article 2 as registered by Arab League Member States

Algeria

The Government of the People's Democratic Republic of Algeria declares that it is prepared to apply the provisions of this article on condition that they do not conflict with the provisions of the Algerian Family Code.

Bahrain

The Kingdom of Bahrain makes reservations with respect to the following provisions of the Convention: Article 2, in order to ensure its implementation within the bounds of the provisions of the Islamic Shariah:

Iraq

Approval of and accession to this Convention shall not mean that the Republic of Iraq is bound by the provisions of article 2, paragraphs (f) and (g), of article 9, paragraphs 1 and 2, nor of article 16 of the Convention. The reservation to this last-mentioned article shall be without prejudice to the provisions of the Islamic Shariah according women rights equivalent to the rights of their spouses so as to ensure a just balance between them.

Libyan Arab Jamahiriya

Article 2 of the Convention shall be implemented with due regard for the peremptory norms of the Islamic Shariah relating to determination of the inheritance portions of the estate of a deceased person, whether female or male.

Morocco

With regard to Article 2: *The Government of the Kingdom of Morocco expresses its readiness to apply the provisions of this article provided that:*

- *They are without prejudice to the constitutional requirement that regulate the rules of succession to the throne of the Kingdom of Morocco;*
- *They do not conflict with the provisions of the Islamic Shariah. It should be noted that certain of the provisions contained in the Moroccan Code of Personal Status according women rights that differ from the rights conferred on men may not be infringed upon or abrogated because they derive primarily from the Islamic Shariah, which strives, among its other objectives, to strike a balance between the spouses in order to preserve the coherence of family life.*

Oman

All provisions of the Convention not in accordance with the provisions of the Islamic Sharia and legislation in force in the Sultanate of Oman:

United Arab Emirates

The United Arab Emirates makes reservations to articles 2 (f), 9, 15 (2), 16 and 29 (1) of the Convention, as follows:

Article 2 (f) - The United Arab Emirates, being of the opinion that this paragraph violates the rules of inheritance established in accordance with the precepts of the Shariah, makes a reservation thereto and does not consider itself bound by the provisions thereof.

Note: Saudi Arabia has not attached a specific reservation to Article 2 but it has added a general statement indicating that it is not committed to any article in the CEDAW that contradicts with Shariah.

“1. In case of contradiction between any term of the Convention and the norms of Islamic law, the Kingdom is not under obligation to observe the contradictory terms of the Convention.

2. The Kingdom does not consider itself bound by paragraph 2 of Article 9 of the Convention and paragraph 1 of Article 29 of the Convention.”

Summary of States with Gender based limits on the transmission of nationality (Article 9)

(From: UNCHR, (March, 2014). *Background Note on Gender Equality, Nationality Laws and Statelessness*. Retrieved on 25 May 2014, from: <http://www.refworld.org/pdfid/532075964.pdf>)

According to the latest survey of UNHCR in 2014, the nationality legislations in 27 countries around the world still do not grant mothers equal rights as fathers to confer their nationality on their children. The majority of these states – twelve (12) – are in Middle East and North Africa; eight (8) are in Sub-Saharan Africa, four (4) are in Asia, and three (3) in the Americas. In recent years, a number of states have undertaken reforms that introduce provisions for gender equality in their nationality

laws; among them are Egypt in 2004, Algeria in 2005, Iraq with a partial reform in 2006, Morocco in 2007, Tunisia (remaining gaps addressed in 2010), and Yemen in 2010. However, there are still 12 countries in the MENA region, which do not allow mothers to confer nationality to their children.

Algeria

The Algerian Nationality code allows a child to take the nationality of the mother only when: The father is either unknown or stateless; the child is born in Algeria to an Algerian mother and a foreign father who was born in Algeria; a child born in Algeria to an Algerian mother and a foreign father who was not born on Algerian territory may, under article 26 of the Algerian Nationality Code, acquire the nationality of the mother providing the Ministry of Justice does not object.

Egypt

In 2004, the nationality law was amended to include the right of citizenship to those born to either an Egyptian father or mother, in adoption of the principle of gender equality. The amendment codifies the status of children of an Egyptian mother and a non-Egyptian father, with no regard to the nationality of the non-Egyptian father, to be similar to children of an Egyptian father and a non-Egyptian mother.

Morocco

The Law of Moroccan Nationality permits a child to bear the nationality of its mother only in the cases where s/he is born to an unknown father, regardless of place of birth, or to a stateless father, when born in Morocco, and it does so in order to guarantee to each child her/his right to a nationality. Further, a child born in Morocco of a Moroccan mother and a foreign father may acquire the nationality of the mother by declaring, within two years of reaching the age of majority, the desire to acquire that nationality, provided that, on making such declaration, her/his customary and regular residence is in Morocco.

Tunisia

Birth within the territory of Tunisia does not necessarily confer citizenship. There are two major exceptions: A child born to stateless or unknown parents and a child born in Tunisia from a Tunisian mother and foreign father. In addition, nationality can be conferred by descent to a child whose father is a citizen of Tunisia, regardless of the child's country of birth. The child of a Tunisian mother and a foreign father may obtain Tunisian citizenship upon the request of the father. In addition, Tunisian nationality may be conferred on a child whose mother is a citizen of Tunisia and whose father is unknown or stateless, regardless of the child's country of birth.

Qatar:

Qatar does not allow mothers to confer nationality to their children, without exception, even if this would result in statelessness.

Kuwait

The law allows only fathers to confer their nationality on their children in all circumstances. If a Kuwaiti mother has a child with a father who is unknown or whose paternity has not been established, the individual concerned may apply for Kuwaiti citizenship. In such cases, nationality is granted by decree based on the discretionary recommendation of the minister of interior. However, this is an extraordinary measure that occurs rarely in practice.

Lebanon

Lebanon allows only Lebanese fathers to confer their nationality to their children in all circumstances. Women can only confer their citizenship if the child is born out of marriage and recognized while a minor by the Lebanese mother.

Jordan, Libya, Saudi Arabia, and the United Arab Emirates

The nationality laws of these countries do not allow women nationals married to foreign nationals to pass their nationality to their children. However, they do permit women nationals to confer their nationality

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to their children in certain circumstances such as where fathers are unknown, stateless, of unknown nationality or do not establish filiation.

Iraq

Although the Iraqi Constitution of 2005 establishes gender equality by providing that nationality is acquired by descent from either men or women, Iraq's 2006 Nationality Law limits the ability of Iraqi women to confer nationality to children born outside the country. For such births, the child of an Iraqi mother may apply for Iraqi nationality within one year of reaching majority, providing that the child's father is unknown or stateless and the child is residing in Iraq at the time of the application.

Syria

Mothers can only confer nationality if the child was born in Syria and the father does not establish filiation in relation to the child. Syria has a safeguard in place to prevent statelessness among children born in the territory but it is not clear that this is implemented in practice.

Bahrain

Law allows mothers to confer their nationality to their children born either in their home country or abroad if the fathers are unknown or stateless.

Oman

Mothers confer nationality to their children born either in their home country or abroad if the fathers are unknown or are former Omani nationals.

Confidential Role Instructions for Egyptian Delegation

You and several of your colleagues have been asked to represent Egypt in a meeting being convened by the Women's Committee of the League of Arab States. This meeting was called after the UN Committee on Eliminating Discrimination Against Women, which monitors member states' progress towards compliance with the convention, announced it would be renewing its call for all CEDAW member states to remove existing reservations or demonstrate national level action to ensure comparable protections against gender discrimination. In particular, it has stated that reservations on Article 2 and Article 9 are counter to the very object and purpose of the convention and states must consider revisions without delay.

While almost all Arab League members have acceded to the CEDAW, most have reservations against several articles in the convention. In particular, many states have reservations against Article 2, which requires constitutional and legislative equality between the genders, and Article 9, which stipulates gender equality in the transmission of nationality.

Several ministers in the Arab League have expressed concern that the committee's announcement will lead to resolutions condemning Arab and Islamic majority states for failing to do enough to protect women from discrimination. In turn, such statements will provoke calls to defend Islam and Islamic values from Western imperialism and cause unnecessary tensions at a time when states have other pressing concerns. In addition, there is a preoccupation that such action will become an issue in bilateral and multilateral aid programs on which many Arab League states depend.

The objective of the meeting is to draft a statement or action plan that outlines a unified position on how League states are ensuring their national laws are compatible with international conventions AND religious norms, in particular Shariah principles. A clear, unified statement that incorporates the concerns and interests of a broad number of member

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states could be adopted in the next meeting of ministers and be transmitted to the Committee in advance of the meeting.

Such a statement, particularly if it includes a plan of action that states agree to follow, will make League members appear proactive on women's rights as opposed to responding on the defensive. Moreover, if the statement is drafted in a way that takes different states' national priorities into account and respects local sensitivities, it should also pre-empt the predictable backlash from the street.

The other states that have agreed to participate are Algeria, Jordan, Libya and Lebanon. Another member state will be appointed to chair. These states have differing perspectives on the CEDAW and different approaches to the articles in question. However, they have all agreed to the importance of being proactive and demonstrating a commitment to the CEDAW in so far as is compatible with national priorities.

Egypt, as you know, has made considerable progress on CEDAW and in 2008 dropped its reservations on Article 9. Egyptian women are now eligible to pass their nationality onto their children. This was a significant step taken to demonstrate its commitment to offering women, children and families full protection under the law in so far as such protections are compatible with national priorities and customary norms.

In addition, Egypt has repeatedly confirmed its commitment to uphold its obligations under the convention and make changes through legislation in so far as these changes do not run counter to Shari'a. The Egyptian people are a religious people who value their religious traditions and expect to see their faith respected and reflected in national law. Many of the reforms requested by the committee would contradict existing family law and could arguably make women's status worse. However, Egypt agrees that there is a need to be more forceful in making this case to the international community and that a unified statement from the League of Arab States would support such efforts.

Egypt would be in favor of a binding resolution that called on all states in the League who are members to the CEDAW to undertake those reforms needed to ensure harmony between the protections and rights afforded to women under Shari'a and those in international conventions. It would also encourage member states to consider amending their reservations on Article 2 to read in a manner consistent with Egypt's, which is explicit that action is required within the stated limitations.

In terms of Article 9, Egypt now allows Egyptian women to pass their nationality to their children, but should encourage other states to adopt laws similar to those of Algeria and Tunisia, which take a child's right to a nationality into consideration. Under Islamic principles, children who are orphans or refugees should be cared for and offered shelter; under international conventions that address rights to citizenship and rights of children all children have right to a nationality. It is customary that such citizenship should pass from the father, but if that is not an option than there is no contradiction with that protection coming from the mother.

Egypt should make an effort to convince the other states that dropping or amending reservations on Article 9 will strengthen the argument that discrete reservations on Article 2 are compatible with the spirit of the CEDAW and other human rights norms because Shari'a in many cases offers superior protections to the vulnerable. Egypt would support a binding resolution with this language, especially if it grounds such changes as a humanitarian measure compatible with human rights norms and Shari'a.

However, Egypt should block any effort to focus on dropping reservations on Article 2 and not force action on Article 9. Article 2 is more important and Egypt feels a more viable position in international forum. Women's rights are important, but must be balanced with cultural rights, religious rights and children's rights. If a binding resolution is rejected, Egypt should then push for a general statement affirming that states have an obligation to offer women protections in so far as they are compatible with Shari'a and take care to ensure all children have a right to a nationality.

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Below is a chart that has the different positions of the states that will be attending the meeting. You and your team should use the chart to identify potential allies and formulate possible wording of a resolution that at least a majority of states would accept. Remember, your preference is for a binding resolution that calls on states to take action to demonstrate their national laws are consistent with both the CEDAW and Shari'a and to clarify that their nationality laws protect the rights of children to a nationality. Do your best to align with like-minded member states and push for this! Good luck!

	Article 2	Article 9	Anticipated Priorities/Areas of Compromise
Libya	<p>Entered reservations to Article 2: Article 2 of the Convention shall be implemented with <u>due regard for the preemptory norms of the Islamic <i>Shariah</i></u> relating to determination of the inheritance portions of the estate of a deceased person, whether female or male.</p> <p>The implementation of paragraph 16 (c) and (d) of the convention shall be without prejudice to any of the rights guaranteed to women by the Islamic <i>Shariah</i>.</p> <p>Upon accession, Libya stated that accession is subject to the general reservation that such accession cannot conflict with the laws on personal status derived from the Islamic <i>Sharia</i>. In other words, whenever there is a conflict between wom-</p>	<p>Did not enter reservations to Article 9.</p> <p>Libya is the only country in North Africa that has ratified the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, which affirms equal rights for men and women with regard to the nationality of their children.</p> <p>A new law issued in 2010 extends Libyan nationality to children born to Libyan mothers and foreign fathers, but in certain circumstances such as where fathers are unknown, stateless, of unknown nationality or do not establish filiation</p>	

	Article 2	Article 9	Anticipated Priorities/Areas of Compromise
	<p>en's rights in CEDAW in the area of personal status, Libya gives priority to <i>Sharia</i> laws.</p> <p><u>The reservation is undefined, so this gives area for maneuver since there are different sources and interpretations of <i>Sharia</i>.</u></p>		
Jordan	<p>Did not enter reservations on Article 2. Jordan does not cite <i>Sharia</i> in any of the reservations.</p>	<p>Jordan has the highest per capita percentage of refugees in the world. According to the country's citizenship Law No. 6 of 1954 on Nationality, as well its 1987 amendment, nationality is afforded to children of Jordanian men wherever they are born, or to children who are born within the country to a Jordanian mother and a stateless father. Mothers cannot, therefore, confer nationality upon their children.</p> <p>There are three main justifications given for Jordan's nationality law. First: It is argued that patrilineal nationality is mandated by <i>Sharia</i> law, the Islamic legal code.</p> <p>Second: The law is necessary for the wellbeing of the country, as granting nationality to foreign husbands of Jordanian women would deplete national resources.</p>	

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	Article 2	Article 9	Anticipated Priorities/Areas of Compromise
		Third: The law protects the family; according to this theory, families become divided when there is more than one national allegiance.	
Lebanon	Did not enter reservations on Article 2.	The law allows only Lebanese fathers to confer their nationality to their children in all circumstances. Women can only confer their citizenship if the child is born out of marriage and recognized while a minor by the Lebanese mother.	
Algeria	Entered the following reservation: The Government of the People's Democratic Republic of Algeria declares that it is prepared to apply the provisions of this article on condition that they do not conflict with the provisions of the <u>Algerian Family Code</u> .	The Algerian Nationality code allows a child to take the nationality of the mother only when: - The father is either unknown or stateless; - The child is born in Algeria to an Algerian mother and a foreign father who was born in Algeria; - Moreover, a child born in Algeria to an Algerian mother and a foreign father who was not born on Algerian territory may, under article 26 of the Algerian Nationality Code, acquire the nationality of the mother providing the Ministry of Justice does not object.	

Confidential Role Instructions for Jordanian Delegation

You and several of your colleagues have been asked to represent the Hashemite Kingdom of Jordan in a meeting being convened by the Women's Committee of the League of Arab States. This meeting was called after the UN Committee on Eliminating Discrimination Against Women, which monitors member states' progress towards compliance with the convention, announced it would be renewing its call for all CEDAW member states to remove existing reservations or demonstrate national level action to ensure comparable protections against gender discrimination. In particular, it has stated that reservations on Article 2 and Article 9 are counter to the very object and purpose of the convention and states must consider revisions without delay.

While almost all League members have acceded to the CEDAW, most have reservations against several articles in the convention. In particular, many states have reservations against Article 2, which requires constitutional and legislative equality between the genders, and Article 9, which stipulates gender equality in the transmission of nationality.

Several ministers in the League have expressed concern that the Committee's announcement will lead to resolutions condemning Arab and Islamic majority states for failing to do enough to protect women from discrimination. In turn, such statements will provoke calls to defend Islam and Islamic values from Western imperialism and cause unnecessary tensions at a time when states have other pressing concerns. In addition, there is a preoccupation that such action will become an issue in bilateral and multilateral aid programs on which many League states depend.

The objective of the meeting is to draft a statement or action plan that outlines a unified position on how League states are ensuring their national laws are compatible with international conventions AND religious norms, in particular Shari'a principles. A clear, unified statement that incorporates the concerns and interests of a broad number of member

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states could be adopted in the next meeting of ministers and be transmitted to the committee in advance of the meeting.

Such a statement, particularly if it includes a plan of action that states agree to follow, will make League members appear proactive on women's rights as opposed to responding on the defensive. Moreover, if the statement is drafted in a way that takes different states' national priorities into account and respects local sensitivities, it should also pre-empt the predictable backlash from the street.

The other states that have agreed to participate are Egypt, Lebanon, Libya and Algeria. Another member state will be appointed to chair. Jordan acceded to CEDAW in 1992, but only ratified the convention in 2007 with three reservations related to housing, women's mobility and nationality laws. In 2009, Jordan lifted its reservations in relation to the mobility clauses. Although this move was applauded by many organizations that promote the advancement of gender equality, the Islamic Action Front condemned the move as threatening the "Jordanian family with total collapse" (Jordan Times 11/11/12).

The debate on CEDAW in Jordan is balanced between Islamist groups, who condemn the convention as a form of "cultural globalization" and a UN control mechanism (Faouri, op-cite Jordan Times 11/11/12), and advocates of gender equality who press the government to lift all the Kingdom's reservations and enact additional laws to institutionalize gender equality. In 2012 Prime Minister Ensour announced a review of Jordan's additional reservations and commented that Jordan remained fully committed to implementing all its obligations under the convention, but added that its reservations on one article should not be a distraction (Jordan Times, 16/11/2012).

The main area where Jordan retains reservations is Article 9, which relates to nationality. Under current Jordanian law, it is almost impossible

for women to confer their nationality on their children. The country's citizenship Law No. 6 of 1954 on Nationality, as well its 1987 amendment, confers Jordanian nationality only to children of Jordanian men wherever they are born, or to children who are born within the country to a Jordanian mother and a stateless father. However, Palestinians are not considered stateless and this regulation is also seen as protecting the Palestinian nationality and right of return.

The Palestinian question is only one aspect of Jordan's reservations on changing the nationality law to conform to Article 9 of CEDAW. Jordan has the highest per capita percentage of refugees in the world¹ and many argue that allowing women to confer their nationality on their husbands and children would also deplete national resources. Between 2003 and 2009 UNHCR reports suggested that anywhere from 200,000 to 1 million Iraqi refugees came through the Kingdom. Since the outset of the civil war in Syria, UNHCR has registered nearly 600,000 Syrians as refugees residing in Jordan (Syrian Refugees Regional Response, www.data.unhcr.org).

Nevertheless, there is also significant civil society attention on granting Jordanian women equality in citizenship rights. In the last few years a popular campaign, "My mother is Jordanian and her nationality is my right!" has demanded changes in the national law in accordance with CEDAW. According to a 2010 report issued by the Arab Women Organization of Jordan, there are some 65,000 families living in Jordan without nationality rights because only the mother has Jordanian citizenship (www2.ohchr.org). Lacking nationality, these families must pay high fees for residency permits in order to work, attend school and obtain other basic civil services. Many are unable to afford those fees and live outside

¹ See Géraldine Chatelard, *Jordan: A Refugee Haven*, MIGRATION INFORMATION SOURCE (Aug, 2009)

<http://www.migrationinformation.org/feature/display.cfm?ID=794>;

Fact Sheet: Iraqi Refugees in Jordan and Syria, HUMAN RIGHTS FIRST (Aug. 1, 2007) www.humanrightsfirst.org/wp-content/uploads/pdf/irp-jordan-syria.pdf.

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the legal framework. Activists argue this creates a humanitarian crisis within the country and unfairly discriminates against Jordanian women and their children. The Royal family has indicated they want a solution to the plight of Jordanian women with foreign spouses who live in Jordan. A coalition of advocates for this issue have recently scored a victory in the Jordanian parliament and obtained legislation granting the children of Jordanian women married to non-Jordanians civil rights such as automatic residency, schooling rights and social benefits.

At this sensitive time, Jordan does not want to risk pressing the matter of Article 9 any further as Islamist and national conservatives who view this Article as protecting Jordan from a new wave of Palestinian refugees gaining citizenship will certainly use this issue to stir up trouble. Stability is a priority right now. However, Jordan also wants to avoid any negative press in international forums. Jordan is heavily dependent on international support because of the Syrian refugee crisis. The last thing it needs is for changes on this law to become a condition of additional international assistance. Therefore, Jordan wants to support a statement that demonstrates its commitment to advancing women's rights without forcing changes that are contentious at home.

Jordan does not have reservations on Article 2 and members of the royal family have repeatedly stated this is because there is no basic incompatibility between women's rights and Islamic principles. Justice and equality are central tenets of the faith and laws that support those principles should be identified as such. However, Jordan would like to see Article 9 reframed as a humanitarian concern as opposed to a rights issue. Children should not be deprived of refuge or civil rights under international human rights norms and under Islam. Jordan should seek a resolution that affirms this. However, children should not be deprived of their nationality either, meaning that care must be taken to ensure that such laws do not result in a child losing their father's nationality if they take the mother's. Jordan should consider proposing the following text:

Calls on all member states to undertake action ensuring that the right of all children to their nationality is protected under national laws.

Jordan should also propose text affirming that protections for women and children are not only consistent with Sharia' but expected in a just society and that all efforts should be taken to ensure national legal codes incorporate those principles in regards to women, children and families.

This wording is pragmatic and conciliatory, but affirms the commitment the UN Committee will be looking for. Although Jordan would prefer a binding resolution, it can point to a more general statement in its bilateral negotiations with donor states as examples of its efforts to serve as a moderating influence in the region. What Jordan should not do is agree to endorse a resolution that focuses on lifting the restrictions on Article 9, thus it is important that it work early to advance a compromise. Moreover, Jordan should avoid references to the Palestinian issue in the resolution, as this will also cause uncomfortable attention on the Kingdom.

The chart attached to this briefing details the positions of other participating states on these two reservations. You and your team should use the chart to establish possible areas of compromise and to identify allies for moderation. Lebanon will certainly support keeping Article 9 off the agenda.

Good Luck!

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	Article 2	Article 9	Anticipated Priorities/Areas of Compromise
Libya	<p>Article 2 of the Convention shall be implemented with <u>due regard for the peremptory norms of the Islamic <i>Shariah</i></u> relating to determination of the <u>in-heri-tance portions</u> of the estate of a deceased person, whether female or male. The implementation of paragraph 16 (c) and (d) of the Convention shall be without prejudice to any of the rights guaranteed to women by the Islamic <i>Shariah</i>.</p> <p>Upon accession, Libya stated that accession is subject to the general reservation that such accession cannot conflict with the laws on personal status derived from the Islamic <i>Shariah</i>. In other words, whenever there is a conflict between women's rights in CEDAW in the area of personal status, Libya gives priority to <i>Shariah</i> laws. The reservation is undefined, so this gives area for maneuver since there are different sources and interpretations of <i>Shariah</i>.</p>	<p>Libya did not enter reservations to Article 9.</p> <p>Libya is the only country in North Africa that has ratified the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, which affirms equal rights for men and women with regard to the nationality of their children.</p> <p>A new law issued in 2010 that extends Libyan nationality to children born to Libyan mothers and foreign fathers, but in certain circumstances such as where fathers are unknown, stateless, of unknown nationality or do not establish filiation</p>	
Lebanon	<p>Did not enter reservation on Article 2.</p>	<p>The law allows only Lebanese fathers to confer their nationality to their children in all circumstances. Women can only confer their citizenship if the child is born out of marriage and recognized while a minor by the Lebanese mother.</p>	

	Article 2	Article 9	Anticipated Priorities/ Areas of Compromise
Egypt	<p>Egypt made general reservation on article 2: The Arab Republic of Egypt is willing to comply with the content of this article, provided that such compliance does not run counter to the Islamic Shariah.</p> <p>The reservation does not detail the reasons why Islamic law could be incompatible with Article 2.</p> <p>So the group could be reached to specify the areas or laws that could be incompatible with <i>Shariah</i>.</p>	<p>Egypt initially entered a reservation to Article 9. However, they withdrew the reservation after the 2004 law. In 2004, the nationality law was amended to include the right of citizenship to those born to either an Egyptian father or mother, in adoption of the principle of gender equality. The amendment codifies the status of children of an Egyptian mother and a non-Egyptian father, with no regard to the nationality of the non-Egyptian father, to be similar to children of an Egyptian father and a non-Egyptian mother.</p>	
Algeria	<p>Reservations: Article 2: The Government of the People's Democratic Republic of Algeria declares that it is prepared to apply the provisions of this article on condition that they do not conflict with the provisions of the <u>Algerian Family Code</u>.</p>	<p>The Algerian Nationality code allows a child to take the nationality of the mother only when:</p> <ul style="list-style-type: none"> - The father is either unknown or stateless; - The child is born in Algeria to an Algerian mother and a foreign father who was born in Algeria; - Moreover, a child born in Algeria to an Algerian mother and a foreign father who was not born on Algerian territory may, under article 26 of the Algerian Nationality Code, acquire the nationality of the mother providing the Ministry of Justice does not object. 	

Confidential Role Instructions for Libyan Delegation

You and several of your colleagues have been asked to represent Libya in a meeting being convened by the Women's Committee of the League of Arab States. This meeting was called after the UN Committee on Eliminating Discrimination Against Women announced it would be renewing its call for all member states to remove existing reservations or demonstrate national level action to ensure comparable protections against gender discrimination. In particular, it has stated that reservations on Article 2 and Article 9 are counter to the very object and purpose of the convention and states must consider revisions without delay.

While almost all League members have acceded to the CEDAW, most have reservations against several articles in the convention. In particular, many states have reservations against Article 2, which requires constitutional and legislative equality between the genders, and Article 9, which stipulates gender equality in the transmission of nationality.

Several ministers in the League have expressed concern that the committee's announcement will lead to resolutions condemning Arab and Islamic majority states for failing to do enough to protect women from discrimination. In turn, such statements will provoke calls to defend Islam and Islamic values from Western imperialism and cause unnecessary tensions at a time when states have other pressing concerns. In addition, there is a preoccupation that such action will become an issue in bilateral and multilateral aid programs on which many League states depend.

The objective of the meeting is to draft a statement or an action plan that outlines a unified position on how League states are ensuring their national laws are compatible with international conventions AND religious norms, in particular Shari'a principles. A clear, unified statement that incorporates the concerns and interests of a broad number of member states could be adopted in the next meeting of ministers and be transmitted to the committee in advance of the meeting.

Such a statement, particularly if it includes a plan of action that states agree to follow, will make League members appear proactive on wom-

en's rights as opposed to responding on the defensive. Moreover, if the statement is drafted in a way that takes different states' national priorities into account and respects local sensitivities, it should also pre-empt the predictable backlash from the street. The other states that have agreed to participate are Egypt, Jordan, Algeria and Lebanon. Another member state will be appointed to chair. These states have differing perspectives on the CEDAW and different approaches to the articles in question. However, they have all agreed to the importance of being proactive and demonstrating a commitment to the CEDAW in so far as compatible with national priorities.

Libya has been consistent in regards to its commitment to uphold the convention so far as those obligations are compatible with Shari'a. When Libya joined the treaty in 1989, it made it clear that its personal status laws are drawn from Sharia' law since these laws already provide women with a broad range of protections. In Libya's various reports to the committee it has confirmed that, "As a Muslim society, the Libyan Arab Jamahariya has the Holy Quran as its social code. As such, it is the Islamic faith which defines relationships and establishes rights, duties and methods of interaction between individuals, both male and female in every sphere of life" (Libya State party report, UN Doc. CEDAW/C/LBY/2 1999 p.2). As Shari'a offers sufficient, if not superior protections, there is no need for further changes. Moreover, imposing such changes would infringe upon the human right of religious expression. Libya is open to differing interpretations of how women's protections can be construed in Islamic jurisprudence, but some areas like inheritance are settled. Ultimately, Libya will offer women full rights and protection in accordance with the CEDAW, but where the convention conflicts with Sharia, Libya will give priority to Sharia principles, as they are superior.

Therefore, your efforts in the meeting should focus on drafting a resolution calling on all states to ensure national laws extend the maximum protections to women, children and families in accordance with the principles of Shari'a or international standards where they do not conflict with the protections offered by the latter. This is a call for a greater action on women's rights through existing family laws and clarifies how Libya's

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reservations are, in fact, not incompatible with the convention. If it is not possible to get the other participants to agree to a binding call for action, then push for a non-binding affirmation of these same principles. Libya should not agree to any statement that calls on states to drop reservations on Article 2 – under any circumstances! You believe Egypt agrees with your perspective.

However, Libya should encourage states to reconsider their reservations on Article 9. Not only does Libya not have reservations on Article 9, but it is also the only country in North Africa that has ratified the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa. This Charter affirms equal rights for men and women with regard to the nationality of their children. Libya issued a new law in 2010 that allows Libyan mothers to extend their nationality to their children in situations where the father is stateless, of unknown nationality or does not claim the child or object to the child having Libyan nationality. This law ensures that every child has a right to a nationality in a manner consistent with international norms and Islamic principles. Other states with reservations should consider enacting such humanitarian exemptions. Of course, Libya should be sensitive to concerns that these exemptions not be construed as creating an excuse for children to be deprived of their nationality, such as Palestinian children whose right of return is sacrosanct.

Aides have prepared a chart that lists the reservations and positions of other participants. You and your team should review this in order to identify potential allies with whom to work on drafting compatible positions. We suggest you open the meeting with a draft resolution that contains the following text:

The League of Arab States calls on all members who have joined CEDAW to ensure all their national laws extend the maximum protections to women, children and families in accordance with Shari'a and international standards but giving priority to Shari'a in cases where there is conflict as Shari'a is superior. In addition, states should revisit their reservations on Article 9 and ensure citizenship laws protect the right of all children to their nationality in a manner compatible with Shari'a.

	Article 2	Article 9	Anticipated Priorities/Areas of Compromise
Egypt	<p>Made a general reservation on article 2: The Arab Republic of Egypt is willing to comply with the content of this article, provided that such compliance does not run counter to the Islamic <i>Shariah</i>.</p> <p>The reservation does not precise the reasons why Islamic law could be incompatible with Article 2.</p> <p>So the group could be reached to specify the areas or laws that could be incompatible with <i>Shariah</i>.</p>	<p>Initially entered a reservation to Article 9. However, they withdrew the reservation after a 2004 law.</p> <p>In 2004, the nationality law was amended to include the right of citizenship to those born to either an Egyptian father or mother, in adoption of the principle of gender equality. The amendment codifies the status of children of an Egyptian mother and a non-Egyptian father, with no regard to the nationality of the non-Egyptian father, to be similar to children of an Egyptian father and a non-Egyptian mother.</p>	
Jordan	<p>Did not enter reservations on Article 2. Jordan does not cite <i>Shariah</i> in any of the reservations.</p>	<p>Jordan has the highest per capita percentage of refugees in the world.</p> <p>According to the country's citizenship Law No. 6 of 1954 on Nationality, as well its 1987 amendment, nationality is afforded to children of Jordanian men wherever they are born, or to children who are born within the country to a Jordanian mother and a stateless father. Mothers cannot, therefore, confer nationality upon their children.</p> <p>There are three main justifications given for Jordan's nationality law. First: it is argued that patrilineal</p>	

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	Article 2	Article 9	Anticipated Priorities/Areas of Compromise
		nationality is mandated by Sharia law, the Islamic legal code. Second: the law is necessary for the wellbeing of the country, as granting nationality to foreign husbands of Jordanian women would deplete national resources. Third: the law protects the family; according to this theory, families become divided when there is more than one national allegiance.	
Lebanon	Did not enter reservations on Article 2.	The law allows only Lebanese fathers to confer their nationality to their children in all circumstances. Women can only confer their citizenship if the child is born out of marriage and recognized while a minor by the Lebanese mother.	
Algeria	Entered the following reservation: The Government of the Peoples Democratic Republic of Algeria declares that it is prepared to apply the provisions of this article on condition that they do not conflict with the provisions of the <u>Algerian Family Code</u> .	The Algerian Nationality code allows a child to take the nationality of the mother only when: - The father is either unknown or stateless; - The child is born in Algeria to an Algerian mother and a foreign father who was born in Algeria; - moreover, a child born in Algeria to an Algerian mother and a foreign father who was not born on Algerian territory may, under article 26 of the Algerian Nationality Code, acquire the nationality of the mother providing the Ministry of Justice does not object.	

Confidential Role Instructions for Algerian Delegation

You and several of your colleagues have been asked to represent Algeria in a meeting being convened by the Women's Committee of the League of Arab States. This meeting was called after the UN Committee on Eliminating Discrimination Against Women announced it would be renewing its call for all member states to remove existing reservations or demonstrate national level action to ensure comparable protections against gender discrimination. In particular, it has stated that reservations on Article 2 and Article 9 are counter to the very object and purpose of the convention and states must consider revisions without delay.

While almost all League members have acceded to the CEDAW, most have reservations against several articles in the convention. In particular, many states have reservations against Article 2, which requires constitutional and legislative equality between the genders, and Article 9, which stipulates gender equality in the transmission of nationality. Several ministers in the League have expressed concern that the committee's announcement will lead to resolutions condemning Arab and Islamic majority states for failing to do enough to protect women from discrimination. In turn, such statements will provoke calls to defend Islam and Islamic values from Western imperialism and cause unnecessary tensions at a time when states have other pressing concerns. In addition, there is preoccupation that such action will become an issue in bilateral and multilateral aid programs on which many League states depend.

The objective of the meeting is to draft a statement or action plan that outlines a unified position on how League states are ensuring their national laws are compatible with international conventions AND religious norms, in particular Shari'a principles. A clear, unified statement that incorporates the concerns and interests of a broad number of member states could be adopted in the next meeting of ministers and be transmitted to the committee in advance of the meeting.

Such a statement, particularly if it includes a plan of action that states agree to follow, will make League members appear proactive on wom-

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en's rights as opposed to responding on the defensive. Moreover, if the statement is drafted in a way that takes different states' national priorities into account and respects local sensitivities, it should also pre-empt the predictable backlash from the street.

The other states that have agreed to participate are Egypt, Jordan, Libya and Lebanon. Another member state will be appointed to chair. These states have differing perspectives on the CEDAW and different approaches to the articles in question. However, they have all agreed to the importance of being proactive and demonstrating a commitment to the CEDAW in so far as compatible with national priorities.

Generally speaking, Algeria is in a better position than the other states invited to the meeting. It had limited reservations on CEDAW in the beginning and dropped some of those reservations in 2009. As a matter of principle, Algeria believes that practical, incremental efforts at reform are preferable to sweeping declarations and new laws that only serve to empower a vocal minority to raise charges of "western influence" and do little to change attitudes. People's mentalities need time to change. For example, why invest efforts in outlawing polygamy when its practice is in decline? Algeria ignored calls to outlaw this practice but did raise the age of marriage to 19 and implemented measures to ensure mutual consent as a condition of marriage. This logic applies to the reservations on Article 2.

Although Algeria maintains the reservation that it will not adopt laws that conflict with the Algerian Family Code, the UN committee has actually pointed to this very code as a model of balance between international norms and local customs. This should be emphasized as an objective of all member states. The Algerian Family Code also emphasizes the protection of children, especially in terms of citizenship. Again, the objective was pragmatic protection. Nationality transmission is not about gender equality, it is about ensuring every child has a right to a nationality. This is understood as a moral imperative. Thus, the Algerian Nationality code has a broad range of situations in which a mother can pass her nationality, such as when:

- *The father is either unknown or stateless;*
- *The child is born in Algeria to an Algerian mother and a foreign father who was born in Algeria;*
- *Moreover, a child born in Algeria to an Algerian mother and a foreign father who was not born on Algerian territory may, under article 26 of the Algerian Nationality Code, acquire the nationality of the mother providing the Ministry of Justice does not object.*

It is true that the code does not automatically grant citizenship to the child of an Algerian mother, but it is sufficiently broad to allow Algeria to drop the reservation without being accused of damaging the family or prejudicing the rights of the father. Algeria should offer its pragmatic approach as a model and push for a binding resolution that calls on all League states to ensure their family codes offer maximum protections to women and children in a manner that is consistent with international standards and local customs. The resolution should also call on states to adopt laws that ensure that the right of every child to a nationality is protected. This would allow for states to focus on adopting legislation that creates exemptions for women to pass on their nationality when the child would be stateless or disadvantaged. The team should be vigorous in convincing other participants of the wisdom of Algeria's approach.

If this is not possible, then encourage a non-binding affirmation of the same principles. Algeria is already in a good position vis-à-vis the UN committee but it would certainly not hurt to demonstrate our capacity to act as a model of pragmatic progress. If no agreement is reached here, Algeria will not lose anything but it also will not gain an opportunity to reinforce its reputation as a mediator.

Aides have prepared a chart that lists the reservations of other participating states. You and your team should review the chart and try and identify areas of compatibility with Algeria's approach or cases where Algeria's approach might address other states' interests. There is room for flexibility if you can convince others to see it. GOOD LUCK!

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	Article 2	Article 9	Anticipated Priorities/ Areas of Compromise
Libya	<p>Article 2 of the Convention shall be implemented with <u>due regard for the peremptory norms of the Islamic <i>Shariah</i></u> relating to determination of the inheritance portions of the estate of a deceased person, whether female or male. The implementation of paragraph 16 (c) and (d) of the Convention shall be without prejudice to any of the rights guaranteed to women by the Islamic <i>Shariah</i>.</p> <p>Upon accession, Libya stated that accession is subject to the general reservation that such accession cannot conflict with the laws on personal status derived from the Islamic <i>Shariah</i>. In other words, whenever there is a conflict between women's rights in CEDAW in the area of personal status, Libya gives priority to <i>Shariah</i> laws. <u>The reservation is undefined, so this gives area for maneuver since there are different sources and interpretations of <i>Shariah</i>.</u></p>	<p>Libya did not enter reservations to Article 9.</p> <p>Libya is the only country in North Africa that has ratified the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, which affirms equal rights for men and women with regard to the nationality of their children.</p> <p>A new law issued in 2010 that extends Libyan nationality to children born to Libyan mothers and foreign fathers, but in certain circumstances such as where fathers are unknown, stateless, of unknown nationality or do not establish filiation</p>	
Lebanon	<p>Did not enter reservation on Article 2.</p>	<p>The law allows only Lebanese fathers to confer their nationality to their children in all circumstances. Women can only confer their citizenship if the child is born out of marriage and recognized while a minor by the Lebanese mother.</p>	

	Article 2	Article 9	Anticipated Priorities/Areas of Compromise
Egypt	<p>Made a general reservation on article 2: The Arab Republic of Egypt is willing to comply with the content of this article, provided that such compliance does not run counter to the Islamic <i>Shariah</i>. The reservation does not precise thereasons why Islamic law could be incompatible with Article 2. So the group could be reached to specify the areas or laws that could be incompatible with <i>Shariah</i>.</p>	<p>Initially entered a reservation to Article 9. However, they withdrew the reservation after a 2004 law. In 2004, the nationality law was amended to include the right of citizenship to those born to either an Egyptian father or mother, in adoption of the principle of gender equality. The amendment codifies the status of children of an Egyptian mother and a non-Egyptian father, with no regard to the nationality of the non-Egyptian father, to be similar to children of an Egyptian father and a non-Egyptian mother.</p>	
Jordan	<p>Did not enter reservations on Article 2. Jordan does not cite <i>Shariah</i> in any of the reservations.</p>	<p>Jordan has the highest per capita percentage of refugees in the world. According to the country's citizenship Law No. 6 of 1954 on Nationality, as well its 1987 amendment, nationality is afforded to children of Jordanian men wherever they are born, or to children who are born within the country to a Jordanian mother and a stateless father. Mothers cannot, therefore, confer nationality upon their children. There are three main justifications given for Jordan's nationality law. First: it is argued that patrilineal nationality is mandated by Sharia law, the Islamic legal code. Second: the law is necessary for the wellbeing of the country, as granting nationality to foreign husbands of Jordanian women would deplete national resources. Third: the law protects the family; according to this theory, families become divided when there is more than one national allegiance.</p>	

Confidential Role Instructions for Lebanese Delegation

You and several of your colleagues have been asked to represent Lebanon in a meeting being convened by the Women's Committee of the League of Arab States. This meeting was called after the UN Committee on Eliminating Discrimination Against Women announced it would be renewing its call for all member states to remove existing reservations or demonstrate national level action to ensure comparable protections against gender discrimination. In particular, it has stated that reservations on Article 2 and Article 9 are counter to the very object and purpose of the Convention and states must consider revisions without delay.

While almost all League members have acceded to the CEDAW, most have reservations against several articles in the Convention. In particular, many states have reservations against Article 2, which requires constitutional and legislative equality between the genders, and Article 9, which stipulates gender equality in the transmission of nationality.

The objective of the meeting is to draft a statement or an action plan that outlines a unified position on how League states are ensuring their national laws are compatible with international conventions AND religious norms, in particular Shari'a principles. A clear, unified statement that incorporates the concerns and interests of a broad number of member states could be adopted in the next meeting of ministers and be transmitted to the committee in advance of the meeting.

Such a statement, particularly if it includes a plan of action that states agree to follow, will make League members appear proactive on women's rights as opposed to responding on the defensive. Moreover, if the statement is drafted in a way that takes different states' national priorities into account and respects local sensitivities, it should also pre-empt the predictable backlash from the street. The other states that have agreed to participate are Egypt, Jordan, Libya and Algeria. Another member state will be appointed to chair.

Lebanon, as you know, has few reservations on the CEDAW and believes its laws offer full equality on the basis of gender. Lebanon admits that inequality persists, but that is a matter of bringing practice up to the standard of law and not a matter of further legislation. However, Lebanon sees no reason to consider amending or dropping its existing reservations on Article 9 as they relate to the extremely sensitive issue of nationality rights.

Lebanon is participating in this meeting for the sole purpose of preventing a resolution that even suggests consideration of changing its position on Article 9. Lebanon's national stability is its number one priority at this point and time. Lebanon cannot risk prioritizing compliance with international conventions over maintaining the status quo. Some of the reforms that the committee is requesting will jeopardize that balance and must be strenuously avoided. Your job is to prevent this from even coming up for debate.

Most of the states who are taking part in this meeting have reservations on Article 2 that relate to ensuring compatibility of national laws with Shari'a. Lebanon does not have any reservations on Article 2, so there is no reason to say anything about it. However, the suspicion is that Lebanon has been invited in order to pressure it into dropping its reservations on Article 9 and to consider pledging to take steps to allow women limited rights to confer Lebanese citizenship on their children regardless of the nationality of the father.

Lebanon is not interested in signing onto or endorsing such a statement. Obviously, endorsing such a resolution would disrupt the government's careful balance on matters related to religious identity and open the sensitive issue of the status of Palestinian refugees. This would be a nightmare, especially with the additional burden of refugees from Syria—many of whom may also be refugees from Palestine. This is a serious issue and under no circumstances will Lebanon agree to consider such measures at the behest of the League of Arab States!

Nationality laws are a very sensitive issue in Lebanon, as you know. This is not a question of women's rights; it is a matter of national security. Na-

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tional laws allow a Lebanese mother to pass on her citizenship to her minor child only if the child is born out of wedlock and she acknowledges that child as a minor. It has also made it easier for children with a Lebanese mother to get residency permits and other civil services when the father is a national of another country and they wish to reside in Lebanon. However, Lebanon does not consider its responsibility to extend Lebanese citizenship or civil rights to children of a Lebanese mother and a stateless father. Again, this goes straight to the question of Palestine and there is absolutely no upside to engaging in even a discussion on the issue.

Generally speaking, Lebanon is not overly concerned about the implications of these reservations being on the UN committee's agenda. Of all the states in the Arab League, Lebanon is perceived as having a more liberal atmosphere. Lebanon's stability is a bigger priority than nationality rights at this point, and the world knows it! The best outcome of this meeting for Lebanon is a general statement endorsing the right of each state to set its own priorities and a pledge to do more to advance protection for women at the national level. Lebanon is not opposed to a resolution that calls on states to drop or amend reservations on Article 2, but should not be seen as endorsing it. However, Lebanon must block any draft resolution that calls on states to address reservations or change laws related to Article 9.

Under no circumstances should Lebanon withdraw from the meeting before confirming that there will be no such binding language on Article 9. If the statement includes references to Article 2 but is silent on Article 9, Lebanon can allow it to go forward without explicit consent.

Aides have prepared a matrix of the other participants' positions on these reservations. Use this matrix, along with other reference materials on the CEDAW and the reservations of Arab League members to plan a strategy with your team members. Look for potential allies on Article 9, like Jordan, and try to convince them to take a firm stand on the importance of this reservation for national stability. Good luck, and remember *—don't sign if it touches Article 9!*

	Article 2	Article 9	Anticipated Priorities/Areas of Compromise
Libya	<p>Article 2 of the Convention shall be implemented with <u>due regard for the peremptory norms of the Islamic <i>Shariah</i></u> relating to determination of the inheritance portions of the estate of a deceased person, whether female or male. The implementation of paragraph 16 (c) and (d) of the Convention shall be without prejudice to any of the rights guaranteed to women by the Islamic <i>Shariah</i>. Upon accession, Libya stated that accession is subject to the general reservation that such accession cannot conflict with the laws on personal status derived from the Islamic <i>Shariah</i>. In other words, whenever there is a conflict between women's rights in CEDAW in the area of personal status, Libya gives priority to <i>Shariah</i> laws.</p> <p><u>The reservation is undefined, so this gives area for maneuver since there are different sources and interpretations of <i>Shariah</i>.</u></p>	<p>Libya did not enter reservations to Article 9.</p> <p>Libya is the only country in North Africa that has ratified the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, which affirms equal rights for men and women with regard to the nationality of their children.</p> <p>A new law issued in 2010 that extends Libyan nationality to children born to Libyan mothers and foreign fathers, but in certain circumstances such as where fathers are unknown, stateless, of unknown nationality or do not establish filiation</p>	
Egypt	<p>Made a general reservation on article 2: The Arab Republic of Egypt is willing to comply with the content of this article, provided that such compliance does not run counter to the Islamic <i>Shariah</i>. The reservation does not precise the reasons why Islamic law could be incompatible with Article 2.</p>	<p>Initially entered a reservation to Article 9. However, they withdrew the reservation after a 2004 law.</p> <p>In 2004, the nationality law was amended to include the right of citizenship to those born to either an Egyptian father or mother, in adoption of the principle of gender</p>	

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	Article 2	Article 9	Anticipated Priorities/ Areas of Compromise
	So the group could be reached to specify the areas or laws that could be incompatible with <i>Shariah</i> .	equality. The amendment codifies the status of children of an Egyptian mother and a non-Egyptian father, with no regard to the nationality of the non-Egyptian father, to be similar to children of an Egyptian father and a non-Egyptian mother.	
Jordan	Did not enter reservations on Article 2. Jordan does not cite <i>Shariah</i> in any of the reservations.	<p>Jordan has the highest per capita percentage of refugees in the world. According to the country's citizenship Law No. 6 of 1954 on Nationality, as well its 1987 amendment, nationality is afforded to children of Jordanian men wherever they are born, or to children who are born within the country to a Jordanian mother and a stateless father. Mothers cannot, therefore, confer nationality upon their children.</p> <p>There are three main justifications given for Jordan's nationality law. First: it is argued that patrilineal nationality is mandated by Sharia law, the Islamic legal code. nationality is mandated by Sharia law, the Islamic legal code. Second: the law is necessary for the wellbeing of the country, as granting nationality to foreign husbands of Jordanian women would deplete national resources. Third: the law protects the family; according to this theory, families become divided when there is more than one national allegiance.</p>	

Instructions for Saudi Arabia (Chair Version)

These instructions are designed to allow a participant or facilitator model the role of the chair in multi-lateral decision making. In this case, the chair will use their influence and the procedural rules established by the simulation to support brokering a consensus resolution that it does not, in actuality, support. This will be done by using the chair's position to propose and manage procedural rules, avoiding direct engagement on substance until the final roll call vote when objections will be revealed. Having the chair play this role will demonstrate their power in multi-lateral bodies and underscore the importance of participants considering the chair's substantive interests in any debate where they exercise procedural control over the agenda, voting and, in some cases, hold authority to cast a deciding vote or exercise a veto.

In this simulation, Saudi Arabia holds the role of chair and will open the session, present an agenda, keep time and notes, call for motions, orders and votes, and close the meeting. In addition, Saudi Arabia will offer support with circulating drafts and attempting to close gaps between other participants in order to reach a consensus document. If such text is achieved, Saudi Arabia will call for and cast the final vote. A majority is required to advance any draft for discussion at the next meeting of ministers.

However, Saudi Arabia also has a clear position on the substance of the discussion. Although it is a member of the CEDAW, it holds the following general reservations on the convention:

"1. In case of contradiction between any term of the Convention and the norms of Islamic law, the Kingdom is not under obligation to observe the contradictory terms of the Convention.

2. The Kingdom does not consider itself bound by paragraph 2 of article 9 of the Convention and paragraph 1 of article 29 of the Convention."

It has consistently reaffirmed these objections, despite the objections of many member states that such broad reservations violate the object and

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purpose of the treaty (Blanchfield, CRS, May 2013). For the purposes of this simulation, Saudi Arabia is considered to be opposed to any changes and seeks only to reaffirm the importance of not instituting legislation contrary to Shari'a in the Kingdom. However, it is not opposed to a general resolution surfacing from the committee, as it will have an opportunity to restate its reservations in the meeting of ministers. Therefore, the objective of the chair is to facilitate a consensus draft resolution that is signed by four of the five participants, with the fifth agreeing to withhold consent. In the final vote, Saudi Arabia will abstain if it is a general declaration of intent and vote against if it is a binding resolution.

The participant playing the role of chair must make every effort to avoid engagement in the debate, while simultaneously encouraging consensus. If questions are asked, the chair should defer answering, return a different question, or defer to avoid influencing the discussion. In addition, the chair should encourage small group discussion and focus on managing procedure wherever possible. In most cases, participants will focus on persuading active members and not notice the chair's reticence.

The chair should use the following prompts and points of order:

1. Welcome delegates and thank them for attendance.
2. Ask for adoption of the agenda, ask a second affirmation and adopt.
3. Open discussion on the first item; call on delegates by saying: "The chair recognizes the honorable delegate from _____."
4. Remind delegates of procedural rules: "The chair reminds the delegates to keep comments to 2 minutes," "The chair asks the honorable delegate from X to remember to speak in turn," or "The chair calls for order."
5. Encourage the participants to break into small working groups by article "The chair proposes we move to small groups for drafting, is there a second?" "Chair declares the meeting in recess for drafting." Recommend that half the delegates work

on Article 2 in one room and half work on Article 9 in another room. The chair should circulate and offer to take notes.

6. Call a break between sessions: “The chair declares the meeting in recess.”

7. Open the second session and request drafts: “The chair invites delegates to present options for resolutions.”

8. Ask for solutions 30 minutes before final roll call: “The chair requests delegates offer their most constructive solutions.”

9. If necessary, offer another 15-minute breakout session for drafting.

10. At 10 minutes before the end of session, close debate and call roll: “Chair motions to close debate, second?” If no second, repeat until second concurs or time runs out.

11. Open motion for vote: “Chair will begin roll call with delegate from [whomever is on the Chair’s left]; please state whether your delegation APPROVES, REJECTS or ABSTAINS.” Remind that a majority is required then proceed from left to right so that chair casts final vote

12. “Thank you and the Chair [ABSTAINS if it’s a general declaration] [REJECTS if resolution is binding] on the basis of its established position on this convention. The chair announces the resolution as [APPROVED if 4+ accept] [REJECTED if less than 4 approve]

13. Close meeting: “This vote concludes this session, the chair thanks the delegates for their contributions and calls our meeting to a close. Thank you, meeting adjourned.”

Chair should get up and shake hands with other delegates at this point, while facilitator calls participants to debrief.

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AGREED PROCEDURES AND PARAMETERS

- Session is unofficial and confidential
- Only chair will take official notes in full or small group session
- Chair will circulate drafts
- All draft text will be returned to chair at end of session.
- Only approved resolution will be released from the meeting
- Options for drafting include:
 - Binding call for action.
 - General statement of intent/affirmation of commitments.
 - Delegates recognize the chair's authority to open the session, call for motions, order, recess, roll call vote and cloture.
 - Chair will recognize delegates for contribution during formal debate.
 - Delegates will respect 60-second limit for questions and comments during formal debate. Chair reserves right to request delegates to curtail comments for time purposes.
 - Chair will call final vote; delegates APPROVE, REJECT, or ABSTAIN.
 - Majority of four required for approval. Majority of less than four does not constitute consensus.
 - Only text with majority transferred to the Women's Affairs Committee for presentation at the next meeting of ministers.
 - a. Abstentions or rejections can be amended to the text with permission of the delegates.
- In the event no resolution is adopted, no official record of the meeting will be registered with the Women's Committee.

	Article 2	Article 9	Anticipated Priorities/Areas of Compromise
Egypt	Made a general reservation on article 2: The Arab Republic of Egypt is willing to comply with the content of this article, provided that such compliance does not run counter to the Islamic <i>Shariah</i> . The reservation does not precise thereasons why Islamic law could be incompatible with Article 2. So the group could be reached to specify the areas or laws that could be incompatible with <i>Shariah</i> .	Initially entered a reservation to Article 9. However, they withdrew the reservation after a 2004 law. In 2004, the nationality law was amended to include the right of citizenship to those born to either an Egyptian father or mother, in adoption of the principle of gender equality. The amendment codifies the status of children of an Egyptian mother and a non-Egyptian father, with no regard to the nationality of the non-Egyptian father, to be similar to children of an Egyptian father and a non-Egyptian mother.	
Jordan	Did not enter reservations on Article 2. Jordan does not cite <i>Shariah</i> in any of the reservations.	Jordan has the highest per capita percentage of refugees in the world. According to the country's citizenship Law No. 6 of 1954 on Nationality, as well its 1987 amendment, nationality is afforded to children of Jordanian men wherever they are born, or to children who are born within the country to a Jordanian mother and a stateless father. Mothers cannot, therefore, confer nationality upon their children. There are three main justifications given for Jordan's nationality law. First: it is argued that patrilineal nationality is mandated by Sharia law, the Islamic legal code. Second: the law is necessary for the wellbeing of the country, as granting nationality to foreign husbands of Jordanian women would deplete national resources. Third: the law protects the family; according to this theory, families become divided when there is more than one national allegiance.	

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	Article 2	Article 9	Anticipated Priorities/Areas of Compromise
Libya	<p>Article 2 of the Convention shall be implemented with <u>due regard for the peremptory norms of the Islamic <i>Shariah</i></u> relating to determination of the inheritance portions of the estate of a deceased person, whether female or male. The implementation of paragraph 16 (c) and (d) of the Convention shall be without prejudice to any of the rights guaranteed to women by the Islamic <i>Shariah</i>.</p> <p>Upon accession, Libya stated that accession is subject to the general reservation that such accession cannot conflict with the laws on personal status derived from the Islamic <i>Shariah</i>. In other words, whenever there is a conflict between women's rights in CEDAW in the area of personal status, Libya gives priority to <i>Shariah</i> laws. <u>The reservation is undefined, so this gives area for maneuver since there are different sources and interpretations of <i>Shariah</i>.</u></p>	<p>Libya did not enter reservations to Article 9.</p> <p>Libya is the only country in North Africa that has ratified the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, which affirms equal rights for men and women with regard to the nationality of their children.</p> <p>A new law issued in 2010 that extends Libyan nationality to children born to Libyan mothers and foreign fathers, but in certain circumstances such as where fathers are unknown, stateless, of unknown nationality or do not establish filiation</p>	
Lebanon	<p>Did not enter reservation on Article 2.</p>	<p>The law allows only Lebanese fathers to confer their nationality to their children in all circumstances. Women can only confer their citizenship if the child is born out of marriage and recognized while a minor by the Lebanese mother.</p>	

	Article 2	Article 9	Anticipated Priorities/Areas of Compromise
Algeria	Entered the following reservation: The Government of the Peoples Democratic Republic of Algeria declares that it is prepared to apply the provisions of this article on condition that they do not conflict with the provisions of the <u>Algerian Family Code</u> .	The Algerian Nationality code allows a child to take the nationality of the mother only when: - The father is either unknown or stateless; - The child is born in Algeria to an Algerian mother and a foreign father who was born in Algeria; - Moreover, a child born in Algeria to an Algerian mother and a foreign father who was not born on Algerian territory may, under article 26 of the Algerian Nationality Code, acquire the nationality of the mother providing the Ministry of Justice does not object.	

Solution Matrix

Type of Resolution	Article 2	Who Cannot Agree	Ensure Citizenship	Who Cannot Agree
Binding declaration - calls on all League members to:	Ensure all national laws extend the maximum protections to women, children and families in accordance with <i>Shariah</i> and international standards	Lebanon Libya Egypt	Laws protect the right of all children to their nationality and that no child should be deprived of citizenship in the country of their birth; without prejudice to the nationality of the father should those rights be established by law.	Lebanon, Jordan

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Type of Resolution	Article 2	Who Cannot Agree	Ensure Citizenship	Who Cannot Agree
Binding declaration - calls on all League members to:	Ensure all national laws extend the maximum protections to women, children and families in accordance with <i>Shari'ah</i> and international standards	Lebanon Libya Egypt	Laws protect the right of all children to their nationality and that no child should be deprived of citizenship in the country of their birth; without prejudice to the nationality of the father should those rights be established by law.	Lebanon, Jordan
Binding declaration - calls on all League members to:	Ensure all national laws extend the maximum protections to women, children and families in accordance with the principles of <i>Shari'a</i> or international standards where they do not conflict with the protections offered by the later.	Lebanon, Algeria	Ensure citizenship laws protect the right of all children to a nationality; without prejudice to the nationality of the father should those rights be established by law.	Lebanon, Jordan
Non-binding declaration - encourages all League members to consider:	That protections for women and children are not only consistent with <i>Shari'a</i> but expected in a just society and that all efforts should be taken to ensure national legal codes incorporate those principles in regards to women, children and families.	Lebanon, Libya	That all children have a right to their nationality and to take every effort to ensure that right is protected under law.	
Non-binding declaration - encourages all League members to consider:	That all member states have an obligation to ensure their national laws provide protections for women and children to the extent that those laws do not contradict religious norms or national priorities.	Jordan	That every child has a right to a nationality and to take every action to ensure no child is deprived of that right.	Lebanon, Jordan

This simulation has been designed to model the complexity associated with multilateral negotiations. A minimum of five participants are needed to run the simulation, however it is recommended for groups of ten or more, with teams of three for each delegation preferred. In addition, this simulation includes a chair's role, which can be played by a participant or a facilitator depending on the number of participants and skill level. The chair's role can also be tailored to meet the skill level of the participants. If the participants are relatively new to the process of negotiations or multilateral negotiations, it is recommended for the chair to play a neutral, non-voting role and to be played by a facilitator or assistant. However, if the participants are experienced practitioners, the chair's role can be adapted to play a spoiler function. In this case, the chair is assumed to have been a participant who was selected by the other participants to moderate the session in addition to taking part in the vote and deliberations. If the participants fail to consult the chair on their position, an agreement could be derailed in the final role call.

The role instructions have also been designed to introduce participants to the concept of coalitions and coalition building. There are three possible coalitions based on the positions and interests in the confidential instructions and the outcome of the simulation depends on which coalitions form during the process. In addition, the simulation emulates the concept of "sufficient" consensus in multilateral settings, where an agreement is reached without the consent of a small number of parties. In this simulation, there are two clear "spoilers", Lebanon and Jordan, who cannot agree to any amendments on one of the two articles in the simulation. Therefore, the only means of brokering an agreement is for the majority to accept that one of both of those parties will not agree. To approximate multilateral conference diplomacy, the schedule will have formal sessions as well as breakout sessions where participants can caucus informally and coalesce with other teams. To facilitate these discussions, teams should be encouraged to divide their delegations by articles and to seek out other teams for consultation and consensus. During

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the planning session, teams should also be encouraged to formulate brief opening statement. If desired, facilitators can conduct the formal sessions according to parliamentary debate rules or simply set basic ground rules with the participants during the general briefing. At a minimum, participants should raise hands and wait to be acknowledged by the chair or facilitator during the formal sessions and each intervention kept to a 1-2 minute time limit. One facilitator should also be prepared to track the final roll call vote along with the chair.

Requirements:

Minimum of 2 facilitators; 3 preferred.

Minimum of 5 participants; 10+ preferred.

Minimum of 4 hours; either in a single session or spread over two sessions.

Meeting room with large conference table or classroom with moveable tables and sufficient chairs to seat all participants in teams.

Breakout rooms for informal meetings or team meetings.

Chair's gavel and tally sheet (any large paper weight, heavy duty water bottle or coffee mug can be substituted for an actual gavel)

Suggested Schedule:

15 minutes: divide into teams. Hand out role instructions and go over interactions.

45 minutes: review role instructions and team strategy formulation.

30 minutes: informal caucusing.

30 minutes: formal opening and presentation of opening statements.

30 minutes: moderated debate.

20 minutes: break with informal caucusing.

30 minutes: moderated debate.

10 minutes: role call vote.

45 minutes: debrief.

Sample Debriefing Questions

- 1) What strategies were used to identify potential coalition partners?
- 2) Did coalition partners agree on all issues or only on specific points?

- 3) How were differences managed within coalitions? Between coalitions?
- 4) What were the key moments in the group process (e.g. fact-finding, inventing and packaging of options, calling a break or caucusing, intervention by one or more players to mediate disputes) that made agreement possible?
- 5) Were there options that could have satisfied the interests of more participants? Why weren't these options explored?
- 6) Was it possible to form a proposal that would include all the parties?
- 7) If an agreement was reached in the session, what are the prospects of it being endorsed by additional parties not represented in this session? Is it likely to be durable?
- 8) How did the chair contribute to the process of deal making? Did participants consider the chair's interests?

Treaty Reservations in International Law

By Hussein Hassouna

Treaty reservations are “unilateral statements made by a state, when signing, ratifying, acceding to, accepting or approving a treaty, whereby it purports to exclude or vary the legal effect of some provisions of the treaty in its application to that state” (Vienna Convention on the Law of Treaties (VCLT), Art. 2(d)). The power to make these statements is very broad. Under international law, reservations are only illegal if they are prohibited by the treaty, if the treaty allows only specific types of reservations and the reservation does not comply, or if the reservation is incompatible with the object and purpose of the treaty (VCLT, Art. 19). The general rule established in the past was that the reservations could only be made with the consent of all the other states involved in the process. This was to preserve as much unity of approach as possible to ensure the success of an international agreement. However, this restrictive approach to reservations was not accepted by the International Court of Justice (ICJ) in the “Reservations to the Genocide Convention” case (ICJ Reports, 1951, page 5). The Court held that a State can become a party to the convention, in spite of an objection by another party, if the reservation is compatible with the object and purpose of the convention. Compatibility, in the court’s opinion, could be decided by states individually.

Reservations allow states to sign onto treaty regimes and to receive the benefits of the regime while carving out parts of the treaty that might make it difficult or unpalatable to ratify or to follow. This allows states to participate significantly in large-scale international agreements instead of abstaining completely. The example given in the case study is instructive. Though Egypt did not wish to abstain from joining a fundamental rights treaty like CEDAW, it wanted to preserve the place of Shari’a law in Egypt’s legal system. The reservation allowed Egypt to join the majority of the convention while ensuring that its international legal obligations under Articles 2 and 16 did not contravene its domestic law. If they had, the treaty might have been unratifiable domestically, leaving Egypt as a

pariah internationally on women's rights. Additionally, as a non-signatory state, Egypt would have been unable to either lead diplomatically on women's issues or enforce the treaty against other states. As a result, the reservations were a necessary step to allow Egypt to join the broader convention. In that context, Reservations to CEDAW by countries such as Egypt, Bangladesh or Kuwait, have shown that the international community may be more lenient when it comes to reservations made on religious grounds. This would be in line with the international legal community's doctrine towards accepting freedom of religion as a fundamental right.

But the power to draft and implement reservations is limited, as noted above. Treaties can prohibit reservations, either explicitly or implicitly. When the treaty explicitly prohibits reservations, then any reservation would be null as a matter of law. When a reservation vitiates the object and purpose of a treaty, then it is also illegal as a matter of law. When a reservation does not follow the form or content guidelines set out in a treaty, if any exist, then it is null as a matter of law.

However, just because a reservation is legal does not mean that the treaty can enter into force between the parties. When a reservation to a treaty is made, another party can openly and expressly object to the reservation. A state that objects to a reservation can prevent the treaty from entering into force between it and the reserving state. This means that the treaty is not enforceable between those two states, and neither can claim protections or benefits of the treaty due to them. Just as the power to make a reservation is very broad, the power to object to a reservation is also very broad and serves as an important check on reservations.

A reservation modifies the legal relationship between the reserving state and the treaty's other state parties. A reserving state can use a reservation to avoid or redefine certain legal obligations under the treaty. The danger is that reservations may draw objections from other treaty partners and

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end up costing the reserving state a full co-equal place in the international regime.

Reservations also prevent the development of norms at the international level. Customary international law requires clear and continuous practice of most, if not all, states for the creation of a norm. Reservations undermine the development of this practice and make it much harder to discern the true extent of developing customary norms. Reservations, particularly those not expressly allowed or contemplated by the treaty, also undermine and devalue the negotiation process. By undercutting or “reinterpreting” norms on fundamental issues like women’s rights, reserving states tacitly approve the same approach from other states. This can lead to an ambiguous and unenforceable tangle of individual legal rules, unique to each state, and add to the difficulty of determining compliance with the international regime. Reservations to one fundamental rights treaty may encourage reservations to other fundamental rights treaties, opening the floodgates to rule-swallowing exceptions. As treaty drafters become more concerned about reservations undermining the basic rules, they may in turn expressly forbid reservations; this in turn makes treaties unpalatable for some states and limits the growth and expansion of critical rules of law. It may be noted that in 2011 the United Nations International Law Commission adopted a legal document it submitted to the United Nations General Assembly, entitled “Guide to Practice on Reservations to Treaties” (United Nations, General Assembly: A/66/10). This comprehensive document is of important practical legal value as it covers all aspects relating to reservations to treaties in international law.

Case #3

**Contentious Issues and Deft Diplomacy:
Managing the Egyptian Delegation to the
57th Commission on the Status of Women
(CSW) 4-15 March, 2013**

By: Rana Korayem
*With introduction and edits by
Mona Ahmed Saleh and Allison Hodgkins*

The proceedings of the 57th session of the CSW serves as a case study on how skilled leadership and careful coalition management cannot only avert a potential crisis, but deliver success. In March 2013, a coalition formed of Egyptian civil society organizations dedicated to gender equality and issues related to women's rights and national level entities were able to overcome past differences and formulate a strong, unified message necessary to push the agenda in the desired direction. However, while the efforts of the various women's organization was the driving force behind these efforts, their success was unquestionably facilitated by the skilled leadership of Ambassador Mervat al Tallawy, who carefully balanced competing forces and obligations to delicately orchestrate a resolution that advanced policy at the national level and preserved Egypt's position at the international level. In many ways the actions taken by the various women's NGOs and civil society organizations set a precedent for collective action, which in the past had been challenged by a disconnect between civil society organizations (NGOs) and national level organizations. However, in 2013, these groups were able to overcome past differences and unite in the face of perceived challenges to progress towards gender equality in Egypt.

This case study proceeds as follows, a short introduction to the challenge of negotiating intangible issues related to beliefs and values, a general overview of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), including Egypt's reservations, and a detailed discussion of the successful management of Egypt's participation in the annual CSW meeting in 2013. The case will conclude with a brief discussion of gender in negotiations, questions for discussion and resources for further study.

Beliefs, Values and International Negotiations

One of the more difficult issues in global governance is negotiating "universal" standards for issues that relate to human beliefs and value structures. Even though world leaders regularly affirm their commitment to

protecting human rights and to providing safeguards for vulnerable populations, such as religious minorities, children and women, defining exactly what those rights are is challenging. Efforts to formulate international conventions that guarantee a set of rights or protections for one set of issues is often perceived as infringing on another set of equally cherished beliefs and values. Historical power-imbalances and increasing concerns over the impact of globalization on local cultures and traditions make these issues harder still. Moreover, negotiating these issues at international conventions also means balancing the global debate with the national level discourse. In short, questions around social and cultural rights are nothing short of a diplomatic minefield.

Nowhere are these tensions more apparent than the international negotiations around questions related to gender. While no one would argue that women and children have basic rights that require protection; especially in vulnerable situations like armed conflict, what it means to actually define and enforce these rights globally is a different story altogether. When engaging on such contentious issues in an international forum, there is also a need to be cognizant of how efforts to reach accommodations at the international level will be interpreted at the local level. Because these negotiations normally take place in the full glare of the international community, there is always the danger of sparking controversy if words meant to signal diplomatic understanding are seized by local actors to advance a certain agenda. Moreover, there is also the danger that provocative statements from disparate factions at home can throw off efforts to secure a solution abroad. Balancing such divergent interests requires deft diplomacy. It also requires careful attention to the competing interests of various stakeholders and underscores the imperative of deliberate dialogue.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

The 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) marked a milestone in the global struggle

for universal standards to eliminate discrimination against women (Zwinger, 2005). As the first legally binding international instrument for the protection of women's rights, CEDAW obligates member states to take swift and definitive domestic action to combat discrimination against women and incorporate the convention's standards into their national legal codes. CEDAW, as the convention is popularly known, first came into force in 1981 and has been ratified by 188 countries, with Palestine being the most recent signatory to accede on April 2, 2014. Despite widespread membership, there are still seven UN Member States who have not joined CEDAW, in addition to the Holy See out of opposition to many of the convention's core provisions. Fifty-five of the states, who signed and ratified CEDAW, did so with reservations on specific articles. Egypt was one of those countries that joined with reservations.

According to the consensus definition outlined in the text of the convention, discrimination against women is identified as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." States that joined the convention committed themselves to undertaking measures to end discrimination against women in all forms including:

- Incorporating the principle of gender equality in the national legal system, abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women.
- Establishing tribunals and other public institutions to ensure the effective protection of women against discrimination.
- To ensure elimination of all acts of discrimination against women by persons, organizations or enterprises.

This broad agenda was an ambitious call for national level action by the international community. CEDAW has also increased attention on

gender issues worldwide and has empowered national and international NGOs and civil society organizations to use the convention as a means of shaping the local discourse and influencing national policy on gender norms. However, even though the convention has been an effective means of connecting local understandings of gender norms with international standards, the debate on gender policy continues, often sustained by governmental and non-governmental actors from different cultural contexts with competing ideas over the best means of improving women's lives (Basu 1995, op-cite Zwingel, 2005). Another point of contention is whether protecting women's rights trumps protecting religious and cultural rights and how to respond to concerns that implementing CEDAW's obligations to enforce gender equality impinges long-standing religious traditions or cultural norms (Freedman, 2006; op-cite Zwingel, 2005).

Egypt's Reservations to the Convention

When Egypt acceded to the convention in 1980, it made reservations on four articles that were confirmed upon its ratification in 1981. Two of these reservations invoked Shari'a as a justification and argued that implementing those articles would contradict Islamic principles.

Reservation on Article 2

The first article to which Egypt attached a reservation was Article 2; an article primarily concerned with policy measures that states should undertake to ensure the protection of women against discrimination and the promotion of women's rights.

Article 2 itself is broad and general, one of the provisions under Article 2 is: *To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.*

It is not clear in this term whether or not religious practices are also included within the reference to "customs and practices". No further

explanation is offered in the Committee's General Comments about the scope of this term. In this case, there is a conflict of rights between the right to practice one's own religious beliefs or cultural practices and the protection of women against discrimination. Accordingly, the operative question becomes which right should take precedence; religious and cultural rights or women's right to be protected against all forms of discrimination (Khalil, 2007)?

Concerns over how to reconcile these competing rights, prompted Egypt, as well as several other states to register a reservation on this Article upon accession to the convention. Egypt's reservation included the following:

The Arab Republic of Egypt is willing to comply with the content of this article, provided that such compliance does not run counter to the Islamic Sharia.

This reservation exempts Egypt from abiding by any obligation to undertake a legislative reform that contradicts Shari'a. However, the reservation does not explain why the provisions of Shari'a might be incompatible with adhering to Article 2 of the Convention. The ambiguities in the reservation compound the ambiguities in the text and continue to be a point of contention in the on-going debate over the scope of Egypt's obligations vis-à-vis institutionalizing legal rights and protections for women.

Reservation on Article 16

Egypt also included reservations on Article 16, an article concerned with the equality of men and women in all matters relating to marriage and family relations during marriage and upon its dissolution. Egypt made the following reservation on Article 16, which again focused on concerns that the obligations in the convention could contradict Shari'a law. In addition, the reservation asserted that Shari'a also includes sufficient protections on matters related to marriage and family. The main points of the reservation are as follows:

Reservation to the text of article 16 concerning the equality of men and women in all matters relating to marriage and family relations during the marriage and upon its dissolution, without prejudice to the Islamic Sharia's provisions whereby women are accorded rights equivalent to those of their spouses so as to ensure a just balance between them. This is out of respect for the sacrosanct nature of the firm religious beliefs which govern marital relations in Egypt and which may not be called in question and in view of the fact that one of the most important bases of these relations is an equivalency of rights and duties so as to ensure complementarity which guarantees true equality between the spouses. The provisions of the Sharia lay down that the husband shall pay bridal money to the wife and maintain her fully and shall also make a payment to her upon divorce, whereas the wife retains full rights over her property and is not obliged to spend anything on her keep. The Sharia therefore restricts the wife's rights to divorce by making it contingent on a judge's ruling, whereas no such restriction is laid down in the case of the husband.

The main argument presented in the Egyptian reservation was that Shari'a defines both the rights and the obligations of men and women with regard to issues related to marriage and divorce. This reservation is more detailed than Article 2. It illustrates the points of disagreement between Shari'a and the article in more precise terms as well as offering a detailed description of what rights and protections Islamic law includes.

Additional Reservations

Egypt also attached two additional reservations to the convention. First, Egypt expressed reservations on Article 9, paragraph 2, which stipulates that women must share the same rights as men with respect to transferring nationality to their children. Egypt's reservation was aimed at preventing a child's acquisition of two nationalities where his parents are of different nationalities or prejudicing the nationality of the father. Egypt, however, lifted its reservation to this article in 2008 by issuing a legislation that enables mothers married to non-nationals to pass on their citizenship to their children. Finally, the Egyptian delegation also maintains the reservation contained in article 29, paragraph 2, which concerns submission to binding arbitration.

The sum of Egypt's reservations emerge from the tension between sovereign rights to define national laws in a manner consistent with prevailing norms and national priorities and a desire to both support and contribute to defining international standards of human rights and gender rights. Reservations provide a mechanism by which states can reconcile those competing desires and accede to an important treaty without accepting the components that infringe on sovereign priorities. However, there is equal concern that excessive reservations dilute the effectiveness of a convention and in some cases may allow states to reap the benefits associated with being a party to a specific convention while continuing practices that arguably contravene its core principles. For example, one of the principle arguments raised against ratifying CEDAW by the United States is that a significant number of member states use reservations to perpetuate practices that discriminate against women or deprive them of basic rights (Blanchfield, 2011). Thus, there are significant ongoing efforts to convince states that are members to CEDAW to remove or amend their reservations in a manner more consistent with the spirit of the convention. Sometimes, this pressure is enacted through action in the General Assembly or other UN bodies like UN Women or UNICEF. Other times these reservations are raised as issues of concern in bilateral negotiations between states or international organizations and linked to development aid (See Case #2 on EUROMED Partnership Report, 2014)

These issues also emerge in other United Nations forums, such as the United Nations Commission on the Status of Women (CSW), which often incorporates the terms of these various reservations in their annual "Agreed Conclusions"(AC); policy recommendations that serve as a call for action on women's status worldwide. As with CEDAW, a combination of international, national and civil society actors utilize these forums to press for local action.

*Background on the United Nations Commission on the Status of Women (CSW)
and National Level Actors in Egypt*

Established by the United Nations Economic and Social Council (ECOSOC) in 1946, the CSW serves as a global policy making body

for issues related to gender equality and the empowerment of women. Member states meet annually in New York to share best practices, identify persistent challenges and formulate a set of agreed conclusions (AC) on specific priority issues for that year. These conclusions, which are presented as concrete policy recommendations, serve as a call to action for governments, intergovernmental bodies, civil society actors, and other stakeholders. They also represent a set of benchmarks by which progress can be measured.

The Egyptian Delegation to the 2013 CSW

In the run up to the 57th meeting, there was intense debate in Egypt around the appropriate parameters for women's rights in the national legal code. Conservative voices, in particular from Salafist parties and the Muslim Brotherhood, called for the abolition of laws that sanction violence and certain forms of discrimination against women and girls. More alarming for advocates of women's rights, these groups offered no indication of seeing a need for strong protections for women in the national legal code. These groups even failed to offer statements condemning acts of violence against women and girls.

There were also rumors that the National Council for Women (NCW); a council established by presidential decree in 2000 with the mandate to study and develop policies to advance women's empowerment in economic, social and political sectors in Egypt, was to be abolished and replaced by "a family council", stocked with members of the Moslem Brotherhood who had recently swept to power in the post January 25, 2011 parliamentary and presidential elections. The Muslim Brotherhood's Freedom and Justice Party had persistently castigated the NCW as an institution used by the Mubarak regime to "weaken and destroy Egyptian families." They argued that NCW had adopted a western agenda at odds with the goals of the revolution. There is no question that the NCW was associated with the old regime, having been led by former first Lady Suzanne Mubarak since its inception. However shortly after

the revolution, the Supreme Council of the Armed Forces (SCAF) reshuffled the NCW and Ambassador Mervat Tallawy took over as leader. The Freedom and Justice Party opposed the reshuffle, arguing the whole structure of the institution needed to be revisited in order to protect Egyptian families. The NCW and the different networks of civil society organizations dedicated to advancing women's rights were gravely concerned that these various statements signaled an impending restriction of women's participation in social, economic and political life and the protections afforded them in Egyptian law.

In response to all these challenges, the NCW and civil society organizations joined forces and coordinated their efforts prior to the upcoming CSW through joint preparatory meetings and intensified communication. This step, initiated by the NCW, was welcomed by civil society organizations. It narrowed the gap between the NCW and these organizations and strengthened the negotiating hand of Ambassador Tallawy, who had been chosen to head the delegation to the CSW. From the NGO side, two groups were headed to the CSW, the first was that of the Network of Women's Rights Organizations (NWRO) funded by GIZ (Deutsche Gesellschaft für Internationale Zusammenarbeit), comprised of ten Egyptian NGOs; and the second was a regional group, among which were Egyptian participants, funded by KARAMA. Together, this new coalition was ready to present a unified front at the CSW. However, the night prior to their departure, the Egyptian president announced that Dr. Pakinam Al Sharkawy, Special Assistant to the President for Political Affairs, and a Professor of Political Science at the Cairo University, would be delivering Egypt's statement at the opening session of the CSW. According to Ambassador Tallawy, President Morsi called for a meeting with her and explained the importance of having his advisor deliver the statement to reflect the true will of the presidency to support women's rights. However, Ambassador Tallawy, would remain head of the Egyptian delegation, and lead the negotiations over the draft agreed conclusions (AC) for that year.

At the CSW²

As the various members of the delegation arrived at the airport, they were surprised to find Dr. Al Sharkawy there ready to present Egypt's position at CSW. They looked to Ambassador Tallawy for clarification, but she greeted the participants without any further comments. Feelings of uncertainty and ambiguity about how their efforts would be organized overwhelmed the delegation, but they kept silent, to observe and follow the "wait and see" strategy. Soon after their arrival to New York, it was confirmed that Dr. Al Sharkawy would only deliver Egypt's statement at the opening session, but concerns remained over Ambassador Tallawy's authority to drive the negotiations after the move by the President.

On the first day, Dr. Al Sharkawy delivered a statement that the rest of the delegation believed contradicted the reality of the status of Egyptian women on the ground. The statement argued that Egyptian women had "effectively" contributed to the "democratization process". Yet, the majority of the groups represented in the delegation firmly believed their voices had been marginalized from the early stages of the post-revolution transitional process. Dr. Al Sharkawy was presenting an extremely limited definition of effective participation in the political process, seemingly arguing that casting votes in the different elections qualified as having an effective impact, even if they were not adequately represented in decision-making bodies, serving on committees, or well represented on party lists.

Dr. Al Sharkawy also praised the Egyptian constitution of 2012 and described it as a constitution that "underlines the rights of women and stresses that they are full-fledged citizens." However, it was the opinion of the majority of the organizations represented in the delegation that the new constitution did not include explicit rights for women nor any articles that prohibit discrimination against gender. It explicitly references women in one article (Article 10), and recognizes them only within the context of the family, guaranteeing state support for divorced women, widowers, or female heads of households. Moreover, the constitution

did not contain specific articles or language referencing Egypt's commitment to international agreements or conventions, under which ratified conventions and declarations that pertain to women's rights would also fall.

Immediately after the statement was read, the civil society groups called for an urgent meeting with Ambassador Tallawy to address questions raised by Dr. Al Sharkawy's presence at the CSW and the contents of the speech. Did this speech and Dr. Al-Sharkawy's presence dictate the delegation's position in the negotiations that would be held over the coming two weeks? Ambassador Tallawy spoke to them in a transparent manner, explained what happened during the meeting with the President, the motive behind Dr. Al Sharkawy's presence, and clarified her position with regards to the content of the speech. She affirmed that she shared the delegation's concerns that the constitution ignored the rights of women and described it as a step backwards for women's rights; comparing it to the rights listed in the constitution of 1971. She added that women after the revolution have been subjected to several forms of marginalization, all of which she stated in the panel on the Prevention of Violence against Women and Girls, in which she clearly attacked the system. It is worth noting that Ambassador Tallawy's position was historic for Egypt with regards to the CSW; being the state representative yet attacking its practices and calling for international support on women's rights issues.

One other factor that resulted in discomfort from the side of Egyptian women NGOs was the fact that Egypt was said to have been spearheading a conservative force to block the negotiations and stop the adoption of the proposed AC. The group was called the "like-minded group", comprised of seventeen countries, represented by officials who work in the permanent missions of these countries, namely: Saudi Arabia, Iran, Qatar, Bahrain, Kuwait, United Arab Emirates, Iraq, Syria, Libya, Yemen, Pakistan, Bangladesh, Algeria, Malaysia, Indonesia, Russia, and Egypt. According to the first update issued and circulated by the NWRO on the

proceedings of the CSW, the like-minded group was “the main gossip in the UN corridors and side events.”

In response to Ambassador Tallawy’s briefing, the members of the Egyptian NGOs expressed their discontentment with the decision of President Morsi, to have chosen Dr. Al Sharkawy to deliver Egypt’s speech, besides its content, and the fact that Egypt is taking a leading role in the like-minded group, they were particularly concerned because several of these countries do not have a strong record with regards to advancing women’s rights. On the contrary, they had reserved positions on these issues, all of which were mentioned in their circulated update.

Ambassador Tallawy reassured them of Egypt’s true position in all the negotiations, which she had also stated in each of the meetings:

1. Egypt wants agreed conclusions by the end of the session, unlike the previous year
2. No retreat from the principles listed in the Beijing declaration and the ICPD
3. The document should be as short as possible

Members of the NGO networks reiterated their full support for Ambassador Tallawy after the meeting, and declared their intention to accelerate their efforts in countering conservative attempts to block the negotiations, or challenge the mission of the official delegation. They also informed her about the next steps they will follow: issue press releases and share updates through several media outlets to demonstrate their support and reveal the truth about those who are hindering the negotiations process.

The groups went back to work and continued to lobby throughout the first week of negotiations. Some organized side events, others networked with people from other delegations to learn more about their position

with regards to the AC, in addition to having printed flyers for distribution to state why the proposed AC were important for advancing the rights of women of the world. KARAMA organized a successful event, and invited Ambassador Tallaway as a speaker. They invited reputable and widely viewed media TV channels, to which they introduced Ambassador Tallaway as their leader.

Parallel to these efforts, Ambassador Tallaway convened several meetings with different groups and delegations to strengthen support for the delegation's objectives. She called for a meeting with the members of the African Union (AU) in order to know the position of the African group with regards to the latest draft of the AC. She stressed on the importance of having a document (AC) by the end of the CSW, explaining how important it is to the world's women and to African women in particular. She called on the African group to agree on a position that supports the document, reminding them that they can be a driving force, and that they are a power, for other regions to agree on the document. She recognized that there will always be differences, but there must be agreement on the basic issues. "We want the session to be a success this year" she said.

Ambassador Tallaway then called for another meeting with the like-minded group, which she headed at Egypt's permanent mission to the United Nations. She opened the meeting by stating clarifications with regards to Egypt's position, reaffirming the same three points that she stated at every other meeting. She firmly expressed and stressed that this was Egypt's "clear cut" position. She briefed the group about how it is being perceived by other delegations, noting that the impression that the group is blocking negotiations must be changed. She explained that it is unacceptable for Islamic countries to be perceived as those blocking an agreement that calls for the elimination and prevention of violence against women and girls. "Islam is a beautiful religion that gave all the rights to women; the group should come in a more positive picture rather than being perceived as radicals," she said. Ambassador Tallaway added

that this cannot be Egypt's position, on the contrary Egypt hosted the ICPD, and even Iran was helping Egypt in the negotiations at that time. Ambassador Tallawy's statement was well received by the group.

They agreed to the principle of unblocking the negotiations but made reservations on three issues with regards to the AC. They were:

1. Sex education
2. Abortion
3. Reproductive rights

Her next step was to meet some of the heads of delegations who had been members of the like-minded group prior to pulling out. Meetings with other delegations continued, including western delegations, like Germany, the United States, the France, and Denmark, among other representatives of official delegations. She briefed the western groups about Egypt's position, highlighting the areas where she saw no possibility for compromise from more conservative groups.

Challenges

Tensions were in the air during the first week of negotiations. The negotiations were moving at a slow pace and it was not clear what the final results would be. Instead of being streamlined with new clarifications, the document was getting longer, as the additions and suggestions from member states were incorporated into the text. Days were passing and no real picture could be drawn about the future of the AC. The second week was not really different than the first. Time was passing by so quickly, to the extent that the official delegations had to spend nights in the negotiation room, often not leaving the room until 2 am. Amid all these happenings, two (2) main incidents, one following the other, challenged the Egyptian delegation.

The first were false reports propagated by the media through a prominent women's rights activist about the participation of the Egyptian delegation, namely Ambassador Tallawy and Dr. Fatemah Khafagy, whom

she said had withdrawn from the CSW. This generated a great deal of debate on several media talk shows and newspapers that became fixated on the proceedings of the CSW. This was both positive and presented a challenge because more awareness about the conference and the importance of its theme was raised among the general public, while higher expectations meant disappointment if the session should end without AC. The more difficult challenge was the fact that the Muslim Brotherhood in Egypt issued a statement against the AC two days before the end of the session. The statement was published on their official website to strongly oppose the proposed AC to be adopted by member states of the United Nations by the closing of the session. In their statement, the brotherhood called upon all leaders of Muslim countries, ministers of foreign affairs, and permanent representatives at the UN to condemn the proposed draft conclusions. They also encouraged the UN to aspire to a more “pure and clean” family relationship, as defined in Islam. They further called upon Al Azhar to assume its role as the leader and the reference on all Islamic matters, to condemn the proposed conclusions and clarify the position of Islam on its content.

The Muslim Brotherhood also called upon all NGOs, including Islamic NGOs, to take a decisive stand and a clear-cut position against this proposal. In addition, it called on women’s organizations to adhere to the principles of their religion, morals of their communities, and the foundations of social life warning them from being deceived by false calls for modernity based on misleading and destructive ways of thinking.

The statement outlined specific points, based on which they have identified the strong need for action to stop the document. From their perspective, the CSW document would:

1. Grant sexual freedom to girls, including the freedom to choose her sexual orientation and sexual partners.
2. Raise the age of marriage.
3. Require contraception be provided for adolescent girls and

they be given training on its proper use.

4. Legalize abortion under the guise of sexual and reproductive rights.
5. Grant rights to women who commit adultery and confer recognition and equal rights to children born out of wedlock.
6. Grant rights and protections to homosexuals, as well as protection of women engaged in prostitution.
7. Grant a wife the right to take legal measures against her husband in the cases of marital rape, and the punishment would be similar to that given to a stranger who rapes or harasses any woman.
8. Redefine inheritance rights in a manner that undermines proscriptions under Shari'a.
9. Replace the male role as guardian of the family with an equal partnership between men and women in regards to spending, childcare, and household chores.
10. Call for equal rights in family law, in matters that specifically relate to: pluralism (which the document aims at cancelling), dowry, men's authority in family spending, and allowing a Muslim woman to marry a non-Muslim, among others.
11. Withdraw the husband's authority in cases of divorce, referring it instead to the judiciary, and calling for equal sharing of property after divorce.
12. Abolish the requirement that a woman have permission from their husband or father to travel, leave the house or obtain contraceptives.

The statement was consistent with similar statements issued by the head of the International Union for Muslim Scholars, Sheikh Youssef Al Karadawy, who is based in Qatar and known as a strong supporter of the MB and conformed to the general perspective of the MB on the issues incorporated in the AC. However, other Muslim scholars hold different views, some of which are consistent in spirit, if not in actual text, of the protections outlined in the AC. Moreover, Islam clearly condemns all forms of violence against women.

In response, Ambassador Tallawy issued a counter statement on behalf of the NCW, which rejected the content and veracity of the statement. It further noted that the MB's statement was issued before the document had been finalized and that there were on-going negotiations between the delegations. How is it possible to know the definitive meaning of a text that is still being negotiated? She also stressed that all international documents are subject to the sovereignty of states, its laws and customs. Moreover, the claim that the proposed document contradicts Shari'a Law and its principles, demolishes Islamic manners, and destroys the family institution is completely false. Ambassador Tallawy asserted that the claim was misleading and constitutes a misuse of religion and an attempt to destroy the image of the United Nations in order to prevent rights for women. Moreover, many of the points in the MB statement lacked any element of truth. The proposed document did not mention anything about inheritance, divorce, guardianship, or granting homosexuals rights. The negotiations are currently ongoing between official delegations and representatives of permanent missions to the United Nations. It is therefore inconceivable and illogical to believe that 54 Islamic countries will not have the motivation to protect their religion and culture, and that only one non-governmental organization will, by claiming false allegations against the delegations and the United Nations, that are guided by a Universal Declaration, adopted by member states in 1945. Ambassador Tallawy also argued that it was not in the interest of Egypt to make such statements and put itself in confrontation with other countries and the United Nations. Such statements are contrary to Egypt's reputation as a mediator and consensus builder, known for its ability to formulate solutions to global problems.

The NCW's final statement summarized the five main points in the proposed AC as it stood in the negotiations. First, the proposal gave general reference to international treaties, conventions and documents issued by the United Nations, which are approved by all member states regarding human rights, the empowerment of women and the definition of violence against women. Second, the proposal recognized the need for supportive

national policies and legislation, and implementation to combat violence against women. Third, was a call to accelerate law enforcement and the execution of national plans to reduce the incidences of violence against women. In addition, the proposal called for a redoubling of efforts to prevent violence against women and girls, by identifying the root causes and challenges to the implementation of laws, policies and programs that contribute to the fulfillment of these objectives in cooperation with civil society. Fourth, the proposal supported improved delivery of services to victims of violence. Finally, the proposal included a recommendation for conducting research on the causes of violence against women and girls and building a comprehensive database. Ambassador Tallaway also made live phone interviews on several of the most popular TV shows in order to clarify misconceptions about the true content of the document and to counter false allegations of what the proposed ACs entailed.

Towards a Successful Conclusion: Adopting the AC

However, responding to challenges at the national level was not the only thing taking place during the negotiations. Delegations often made reference to “agreed language”, meaning universally agreed upon and adopted language, as in other important recommendations, namely ICPD and the Beijing Declaration. The problem was that there was no consensus around what “agreed language” indeed was. One argument was that although ICPD and the Beijing Declaration are recognized international documents, some countries had reservations on parts of the content on these documents, and therefore, “agreed language” would not really apply in this case.

The art of negotiation was also another factor, especially that some countries were still tactfully exerting real effort to block the process of consensus building around the AC, namely Syria, Qatar, and Russia. Other phrases like, “various forms of the family”, generated a very strong debate, mainly because more conservative countries know only one form of the family meaning within the institution of marriage.

Delegations that really wanted the AC to pass started creating pressure in the room, reminding other delegations that there is a need to put the controversial issues aside and move forward with what could be agreed upon. They reminded participants of the need to leave the negotiating room with AC, otherwise, as one delegation articulated, “we will have failed half of the world’s population, women of this world.” Some people also took initiative to speak to the chair of the session and the secretariat to limit the time for interventions and to move at a faster pace to reach progress. More pressure was exerted, western countries gave up on items that were never going to be accepted by some countries, and the overall was a success to reach agreed consensus around the AC. It was a historic moment when the conclusions were adopted. Joy filled the room, some people cried happily to see the fruits of their tireless work and sleepless nights materialize into agreed action to eliminate and prevent violence against women and girls.

Analysis, Conclusions and Lessons Learned

The above case shows how coordinated action and careful leadership can bring about positive results. Effective coalition building, especially in the weeks before the delegation left for the CSW, was essential to the unified stance that enabled the delegation to side step the challenges presented by the actions of the MB. The civil society organizations (NGOs) conducted an effective advocacy campaign in support of Ambassador Tallawy and the NCW; such as the organization of side events, issuance of statements and the human chain they organized on the occasion of the international women’s day to say no to violence against women in front of the Egyptian embassy. They also networked intensively with delegations, gaining additional information and disseminating their vision of Egypt’s position.

The deft leadership of Ambassador Tallawy was also a key component of the successful outcome. Her discipline and adroit dialogue enabled her to carefully navigate the multiple challenges she confronted on the

way to the CSW and during the two weeks of negotiations. Furthermore, she was successful in getting the support of the group that would normally oppose her. The quick and immediate responses to the media about her withdrawal, as well as the rapid response to the claims of the Muslim Brotherhood strengthened her position and generated more public support. Having identified the correct, and the sufficiently influential force to ally with, namely the African group, was a successful strategy given they are larger in number than the Arab group, whom she did not initially have the support of. Speaking to the opposition at the CSW, namely, the like-minded group was also a very smart move, which resulted in the near dismantling of the group, with only a few countries sticking together. She managed to overcome another very important challenge, which was the wrong perception about the position of Egypt, given that Egypt was part of the like-minded group prior to her arrival. This raised questions from other delegations about her position and she changed how Egypt was perceived. She did this by stating the same three (3) points to everyone she spoke to, formally or informally, and that was how it worked. Both the governmental and nongovernmental women's organizations felt threatened with the existence of a political will that does not translate its commitment to women's rights into substantial policies and legislations on the ground. It could also be noted that the actors that were more vocal and influential on policy makers were the informal actors or networks, in this case: the brotherhood, private media channels, and conservative public figures, conservative NGOs, apolitical methods were used to influence policy and decision making with regards to the issue at hand.

Another critical lesson to be drawn from this case study is the importance of preparation, especially when it comes to working with coalitions in a complex, multi-dimensional negotiating process. The fact that the civil society organizations and the NCW had invested considerable time before the interference of the President's office and the Muslim Brotherhood enabled them to maintain cohesion and execute effective,

collective action. Advance planning enabled them to respond rapidly and effectively to the crisis. This coordination also contributed to their main source of strength during the process: a clear objective and a unified message, repeated continuously throughout the process. Finally, this case demonstrates the value of maintaining dialogue with all the stakeholders and carefully picking one's battles. Had Ambassador Tallawy challenged President Morsi over the imposition of Dr. Al-Sharkawy at the outset of the CSW, she may very well have been removed from the delegation entirely. Who knows what could have been the end result?

Her Place at the Table

This case study also presents an opportunity to discuss the role of gender in the negotiating process. Although the perception of women as inherently more peaceful and conciliatory than men is a worn out stereotype, many studies suggest that women are very effective at using negotiations to advance or protect their interests. First, as the case demonstrates, dialogue is a central component of women's approach to problem solving. Women seek to engage their counterpart in a process of exploring possible solutions as opposed to staking out positions (Surrey, 1987 op-site Breslin and Rubin, 1991, 267). This enables them to identify possible areas of agreement and incorporate them into workable solutions. Raffia, Lax, Sebenious and other negotiation experts argue that this form of give and take, and joint exploration is the essence of joint gain negotiations and integrated problem solving models (Raffia 1982, Lax and Sebenious, 1986; op-cite Breslin and Rubin, 1991, 266). However, women also face particular challenges finding their place at the negotiating table. When women are assertive, studies show that their stance is interpreted negatively where the same behavior in a male would be rewarded (Pridel, Bowels and Macgin, 2013; Harvard PON Accessed May 23, 2014). This also explains why women tend to couch their statements in the form of questions, which can be an effective way of avoiding an unnecessary confrontation but can also cause important suggestions or contributions to be overlooked. One of the suspected causes behind salary differences

between men and women is the fact that women are 60% less likely to negotiate a job offer than their male counter-parts (Kolb, 2004). Simply put, women are a vital force at the negotiating table, provided they train themselves to state their positions and to never be afraid to ask for what they believe they deserve.

Treaty Reservations in International Law

By Hussein Hassouna, PhD

Treaty reservations are “unilateral statements made by a state, when signing, ratifying, acceding to, accepting or approving a treaty, whereby it purports to exclude or vary the legal effect of some provisions of the treaty in its application to that state” (Vienna Convention on the Law of Treaties (VCLT), Art. 2(d)). The power to make these statements is very broad. Under international law, reservations are only illegal if they are prohibited by the treaty, if the treaty allows only specific types of reservations and the reservation does not comply, or if the reservation is incompatible with the object and purpose of the treaty (VCLT, Art. 19). The general rule established in the past was that the reservations could only be made with the consent of all the other states involved in the process. This was to preserve as much unity of approach as possible to ensure the success of an international agreement. However, this restrictive approach to reservations was not accepted by the International Court of Justice in the “Reservations to the Genocide Convention” case (I.C.J. Reports, 1951, page 5). The Court held that a State can become party to the Convention, in spite of an objection by another party, if the reservation is compatible with the object and purpose of the convention. Compatibility, in the Court’s opinion, could be decided by states individually.

Reservations allow states to sign onto treaty regimes and to receive the benefits of the regime while carving out parts of the treaty that might make it difficult or unpalatable to ratify or to follow. This allows states to participate significantly in large-scale international agreements instead of abstaining completely. The example given in the case study is instructive.

Though Egypt did not wish to abstain from joining a fundamental rights treaty like CEDAW, it wanted to preserve the place of Shari'a law in Egypt's legal system. The reservation allowed Egypt to join the majority of the convention while ensuring that its international legal obligations under Articles 2 and 16 did not contravene its domestic law. If they had, the treaty might have been unratifiable domestically, leaving Egypt as an international pariah on women's rights. Additionally, as a non-signatory state, Egypt would have been unable to either lead diplomatically on women's issues or enforce the treaty against other states. As a result, the reservations were a necessary step to allow Egypt to join the broader convention. In that context, reservations to CEDAW by countries such as Egypt, Bangladesh or Kuwait, have shown that the international community may be more lenient when it comes to reservations made on religious grounds. This would be in line with the international legal community's doctrine towards accepting freedom of religion as a fundamental right.

But the power to draft and implement reservations is limited, as noted above. Treaties can prohibit reservations either explicitly or implicitly. When the treaty explicitly prohibits reservations, then any reservation would be null as a matter of law. When a reservation vitiates the object and purpose of a treaty, then it is also illegal as a matter of law. When a reservation does not follow the form or content guidelines set out in a treaty, if any exist, then it is null as a matter of law.

However, just because a reservation is legal does not mean that the treaty can enter into force between the parties. When a reservation to a treaty is made, another party can openly and expressly object to the reservation. A state that objects to a reservation can prevent the treaty from entering into force between it and the reserving state. This means that the treaty is not enforceable between those two states, and neither can claim protections or benefits of the treaty due to them. Just as the power to make a reservation is very broad, the power to object to a reservation is also very broad and serves as an important check on reservations.

A reservation modifies the legal relationship between the reserving state and the treaty's other state parties. A reserving state can use a reservation to avoid or redefine certain legal obligations under the treaty. The danger is that reservations may draw objections from other treaty partners and end up costing the reserving state a full, co-equal place in the international regime.

Reservations also prevent the development of norms at the international level. Customary international law requires clear and continuous practice of most, if not all, states for the creation of a norm. Reservations undermine the development of this practice and make it much harder to discern the true extent of developing customary norms. Reservations, particularly those not expressly allowed or contemplated by the treaty, also undermine and devalue the negotiation process. By undercutting or "reinterpreting" norms on fundamental issues like women's rights, reserving states tacitly approve the same approach from other states. This can lead to an ambiguous and unenforceable tangle of individual legal rules, unique to each state, and add to the difficulty of determining compliance with the international regime. Reservations to one fundamental rights treaty may encourage reservations to other fundamental rights treaties, opening the floodgates to rule-swallowing exceptions. As treaty drafters become more concerned about reservations undermining the basic rules, they may in turn expressly forbid reservations; this in turn makes treaties unpalatable for some states and limits the growth and expansion of critical rules of law. It may be noted that the United Nations International Law Commission adopted in 2011 a legal document it submitted to the United Nations General Assembly, entitled "Guide to Practice on Reservations to Treaties" (United Nations, General Assembly: A/66/10). This comprehensive document is of important practical legal value as it covers all aspects relating to Reservations to Treaties in international law.

Questions for Discussion

1. Why do you think Ambassador Tallawy chose not to confront President Morsi when he informed her of his decision to send his personal representative to represent Egypt at the CSW?

2. The perception of shared threats was a key factor in the unprecedented unity between the NCW and the civil society organizations working on gender. What other methods of coalition building could have been used to establish better coordination before the crisis?

3. How important was media coverage to the successful conclusion of the CSW? Was Ambassador Tallawy's ability to "speak to the people" through interviews with newspapers and TV necessary to countering the messages coming from the Muslim Brotherhood? What alternatives could she have used if these media outlets were unavailable? What could she and the other members of the delegation have done if media outlets were hostile to their message?

4. Why don't women "ask"? And why don't men listen? Are these suggested gender differences in negotiating styles evident in your experience and how should men and women respond to them at the table?

References and Resources

- Blanchfield, L. (2011). *UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW): Issues in the US Ratification Debate*. Congressional Research Service.
- Breslin, J. W., & Rubin, J. Z. (Eds.). (1993). *Negotiation theory and practice*. Program on Negotiation.
- Khalil, M. (2007). *Islamic law and women's rights: Questioning the validity of the reservations invoking Islamic law to the convention on the elimination of all forms of discrimination against women (CEDAW)*. Retrieved May 15, 2014 from: <https://dar.aucegypt.edu/handle/10526/3377>
- Kolb, D. M., Williams, J., & Carol Frohlinger, J. D. (2004). *Her Place at the Table: A Woman's Guide to Negotiating Five Key Challenges to Leadership Success*. John Wiley & Sons.
- Zwingel, S. (2005). From intergovernmental negotiations to (sub) national change: A transnational perspective on the impact of CEDAW. *International Feminist Journal of Politics*, 7(3), 400-424.

CEDAW: <http://www.un.org/womenwatch/daw/cedaw/>

UN Council on the Status of Women:

<http://www.un.org/womenwatch/daw/csw/57sess.htm>

UNWOMEN: United Nations Entity for Gender Empowerment and the Equality of Women <http://www.unwomen.org/>

The Harvard Program on Negotiations "Women and Negotiations Blog"

<http://www.pon.harvard.edu/category/daily/women-and-negotiation-daily/>

Note on permissions and authorship:

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Egypt's Reservations on CEDAW

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women

Article 9

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband

during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.
2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

- (a) The same right to enter into marriage;
- (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
- (c) The same rights and responsibilities during marriage and at its dissolution;
- (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
- (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
- (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
- (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
- (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

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2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

Article 29

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

HONING PRESENTATION SKILLS

By Kim Fox

Presentation skills are important as you share knowledge and information with others. You can hone your presentation skills based on your ability to understand the Deft Diplomacy case study and present the case to others.

Guidelines for using presentation software:

- If using a template, use a minimalist template.
- Use minimal text on slides.
- Use a visually appealing font.
- Use images/charts/infographics to help illustrate you point(s).

Guidelines for presenting:

- Briefly introduce yourself.
- Briefly provide an overview of your topic.
- Present the main points in an orderly fashion.
- Speak at a moderate pace and pronounce words clearly.
- Refrain from using lingo. If you have to use lingo, briefly provide definitions.
- Define acronyms.
- Engage your audience; don't just talk at them.
- Practice/rehearse so that you appear confident.
- Write conversationally so that you speak conversationally.
- Recap the main points.
- Thank the audience.
- Take questions from the audience.

Exercise: Create a presentation based on the Deft Diplomacy case study. The presentation should focus on the highlights of the case study. Your presentation should be based on the following guidelines:

- 5-7 minutes and use no more than 10 slides

Online Resources:

Presentation Skills: <http://www.skillsyouneed.com/presentation-skills.html>

Presentation Tips: Improve Your Presentation Skills <http://www.pitchemy.com/2014/06/26/presentation-tips-improve-your-presentation-skills/> How to Make A Good Presentation of a Case Study <http://classroom.synonym.com/make-good-presentation-case-study-4510.html>



**Case Study
&
Negotiations Training Simulation #4**

**Every Diplomat's Nightmare:
Evaluating Alternatives in
Crisis Negotiations
&
Contractor Abduction**

By: Allison Beth Hodgkins

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On April 14, 2014 Jordan's envoy to Libya; HE Fawaz al-Aitan, was kidnapped in Tripoli on his way to work. Masked gunmen surrounded his car, shot his driver and whisked him away to an undisclosed location. Shortly after his abduction, information was passed to the Jordanian foreign ministry that the kidnappers were demanding the release of a Libyan national detained in Jordan in exchange for Al-Itan's safe return. The detainee in question, Mohamed Dersi, was allegedly involved in a plot to set off explosives in Amman's Queen Alia airport and had been sentenced to life in prison in 2007. In other words, the price of the Ambassador's life was the release of a convicted terrorist.

In the days that followed the hostage taking, there was a flurry of diplomatic activity between the two states; including strong demands on the part of Jordan's Foreign Minister for increased efforts on the part of the Libyan government to take vigorous action and ensure the ambassador's safe release. The Jordanian government also cancelled its flights to Tripoli and the prime minister warned that Jordan would "take all necessary measures to protect his life and release him!" At home, however, public anger was mounting over the abduction amid charges that there had been insufficient protective measures taken to prevent this potential tragedy. Given that several other diplomats, businessmen, journalists and NGO workers had been kidnapped recently the belief was that the mission should have been better prepared and the envoy provided a higher level of protection. While some voices were cautioning against conceding to terror, there was increasing pressure from members of Aitan's Beni Hassan tribe for something to be done.

After three weeks of back-channel talks and intense negotiations, reports surfaced that Libya and Jordan were working out the final details of a mutual extradition treaty. A few days later, it was confirmed that Mohamed Dersi had been deported to Libya at the request of the Libyan government where he would serve the remainder of his sentence in a Libyan prison. Just days after that report, the Jordanian Ministry of For-

eign Affairs confirmed that Ambassador Al-Aitan had been released, was in good health and would shortly be landing in Jordan.

During a press conference announcing the Ambassador's safe return, Jordan's foreign minister denied that the government had negotiated with terrorists in order to secure Al-Aitan's release. Rather, there had been state-to-state negotiations over how the Libyan government would manage the rescue and return of the Jordanian Ambassador and the terms under which Jordan would agree to an extradition request by the Libyan government regarding Mohamed Dersi. Regardless of the appearance of an exchange, said the foreign minister, what mattered in this case was the safe return of a Jordanian patriot. The Beni Hassan tribe set up celebratory tents and served mansaf, a traditional Jordanian dish to mark special occasions, in honor of Al-Aitan's return.

Did Jordan negotiate with terrorists? Did they effectively accept the kidnapper's terms for their ambassador's release? If so, why the elaborate exercise in brokering an extradition treaty and giving credit for the release to the Libyan government? The answer to these questions is found in the complex web of competing interests in this case of crisis negotiations. Jordan had every interest in securing the safe release of its ambassador, both for humanitarian reasons, the integrity of its diplomatic corps and domestic political opinion. However, it also had no interest in setting a precedent for payment of ransom or legitimizing al-Aitan's kidnappers through direct negotiations. Conversely, the Libyan government had every interest in preventing the death of another foreign diplomat and demonstrating some semblance of law and order in an increasingly fluid, internal security situation. The kidnappers also wanted a victory but had little to gain by killing the ambassador.

In the end, the convoluted contours of the agreement to extradite Dersi and release al-Aitan to the Libyan government was a precise reflection of these competing interests and a remarkable example of a crisis be-

ing resolved through integrative problem solving. Looking again at the specifics of the deal, the principle interests of each of the parties in this case was preserved; Jordan saw the safe return of its ambassador without directly negotiating with terrorists; the kidnapper's demands for Dersi's release were met even though he ostensibly was to be re-incarcerated in a Libyan jail, and the Libyan government was able to demonstrate a modicum of domestic control. Without question, each of these parties would have preferred a different outcome. However, within the options available and the resources at hand none of these actors could be certain that their vital interests could be secured through unilateral action. Thus, they collectively worked out a solution that gave all the parties measures of satisfaction needed to avoid catastrophe.

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Diplomatic Relations in International Law

By Hussein Hassouna

Under the Vienna Convention on Diplomatic Relations, Libya had clear obligations to protect the person and property of the Jordanian ambassador: "The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity" (VCDR, *Article 29*). Similar inviolability is extended to the mission's premises as well as the personal residence and property of the ambassador (VCDR, *Articles 22 & 30*). Even in the case of armed conflict—including armed conflict between the state sending the diplomat and the state receiving the diplomat—the obligations to protect diplomatic personnel and their families and to preserve the mission's inviolability continue (VCDR, *Articles 44 & 45*).

Many states, including Jordan and Libya (*Libya acceded to the treaty in 2000 and Jordan in 1984*). It should be noted that 177 states are parties to this Convention, including all of the Permanent members of the UN Security Council, Iran, Israel, India and Brazil), have also signed the UN Convention on the Prevention

and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents which requires states to prevent (*UN Internationally Protected Persons Convention, Article 4*) and prosecute (*UN Internationally Protected Persons Convention, Articles 2 (2) & 3*) crimes against diplomats. The UN Convention also has a “prosecute or extradite” clause (*UN Internationally Protected Persons Convention, Article 7*), requiring that states extradite culprits of crimes against protected persons if they are unwilling or unable to prosecute. The UN Convention also automatically creates an extradition clause for any crime falling under the treaty, regardless of whether an extradition treaty exists between the two states or whether any extant treaty includes crimes against diplomats as extraditable offenses (*UN Internationally Protected Persons Convention, Article 8*). Additionally, the treaty requires that future extradition treaties include these crimes as extraditable. These protections were fully in force during the events described in the case study. For its part the United Nations International Law Commission adopted at its last session in 2014 a comprehensive report on the topic: “The obligation to extradite or prosecute” and submitted it to the United Nations General Assembly (*U.N. General Assembly Official Records, sixty-ninth session, supplement No. 10: A/69/10*).

When a state fails to honor their obligations under these Conventions, there are some dispute resolution options. The Vienna Convention (VCDR), through its Optional Protocol 1 (*Optional Protocol One to the Vienna Convention on Diplomatic Relations, 500 U.N.T.S. 241 (1961). The Optional protocol has only 70 parties in total*), allows violations of the VCDR to be resolved by the involved states at the International Court of Justice (ICJ), through conciliation procedures, or in an arbitral tribunal (*Id. at Articles 1-3*). The UN Convention allows for dispute resolution at the ICJ for violations of the Convention, though many states have made ICJ jurisdiction contingent on explicit consent on a case-by-case basis (*UN Internationally Protected Persons Convention, Article 13 & reservations*). When there is no dispute resolution option, assuming that the states have not agreed to the compulsory jurisdiction of the ICJ for all international

disputes, those states that fail to honor their treaty obligations are still liable for their internationally wrongful acts. However, without a dispute resolution body it is almost impossible to enforce reparations for these violations.

While states have an obligation to prevent and punish crimes against diplomats, there is no clear guidance on what states must do to resolve hostage disputes like the one described in this case study. Some states refuse to negotiate with hostage-takers, seeing negotiation with terror groups as encouraging more attacks. Other states see a refusal to negotiate for the release of hostages as violating the VCDR's requirement to "take all appropriate steps" to protect diplomats. Given the impact that negotiation could have on national security, tribunals are unlikely to require one path or another. However, even if a state takes all of the right steps in securing release, they may still be liable for failing to adequately protect the diplomat in the first place. International law has not clearly defined the rules of engagement in these cases—rightfully so, to help prevent future attacks—and it is unlikely that this will change; in turn, exact legal obligations in hostage negotiation and post-situation liability are also hard to define.

Even if a state fails to adequately protect a diplomat or to handle a hostage situation appropriately, the diplomat's state cannot intervene without the host state's permission. International law does not allow for military intervention in other states, despite arguments about "protection of nationals" and a "responsibility to protect", though the law in this area continues to develop. Jordan's options, as a result, were limited to working with Libya and engaging in negotiations. Unilateral commando strikes in foreign territory, while they have been used in other situations by the United States, are not widely accepted as conforming to rules of international law.

Extradition via treaty in this situation was not necessary, but it did make the transfer much easier. Extradition treaties create a set procedure for

extraditing wanted criminals and oblige states to follow the procedure and extradite persons when requested. Typically, extradition treaties set out specific extraditable crimes; usually the list of offenses includes the most serious crimes. In general, offenses of a political nature are excluded, but this would not cover terrorist activities. While extradition requests trigger the procedure set out in the treaty or in national law, most states have a political check — the Home Secretary/Interior Minister — who must approve or decline to extradite at the very end of the process. If a state does not have a treaty with a requesting state, it makes the process much more difficult. Particularly for most legal systems, which incorporate treaties directly into domestic law, having a treaty can obviate a need to revise national laws that might stand in the way of extradition. States are allowed to extradite without a treaty in place as a matter of international law, but extradition treaties make the process much smoother, build the rule of law, and create more certainty and predictability in the system.

Applying this to the case study before us, Jordan and Libya were not required to execute a treaty as a matter of international law prior to the extradition. However, the treaty likely made it much easier and prevented internal domestic laws from standing in the way of the state's international obligations. The treaty, negotiated at the executive level, was able to follow the form of other, similar treaties. Politically, this might be more palatable than attempting a prisoner transfer at the purely domestic level.

International obligations often fall above domestic laws in the legal hierarchy. As a result, treaties can help cut through otherwise obstructive policies and laws at the domestic level that might otherwise govern a situation. An extradition treaty here allowed for greater flexibility, for development of an express legal rule that could be narrowly applied to this situation, and for preservation of diplomatic options without a sacrifice of the rule of law.

Preparation and Crisis Management

Most courses in negotiations stress the importance of preparation and pre-negotiation is ensuring an effective outcome. Wise negotiators take the time to understand their counterpart, consider options for mutual gain and strengthen their BATNA before they even think about approaching the table. Nowhere is the principle of careful, deliberate preparation more critical than in crisis situations. The hallmark of a crisis situation is a quickly escalating situation in which time is of the essence and the window for action sharply constrained. The urgency in most crisis scenarios often generates an urge to act; quickly and decisively. Unfortunately, giving in to that urge can lead to disastrous results. As the examples in this case will show, even when life is at stake, commencing talks without considering your interests and theirs, your options and theirs, and what alternatives all parties possess is unlikely to render the desired results. Even in an emergency, failing to plan is planning to fail. The only difference in crisis situations is that negotiators must rely heavily on prior planning and quick thinking about key elements in the process, and the parameters of a plausible deal.

BATNA: Best Alternative to a Negotiated Agreement

Before thinking about possible concessions, trades and options for a deal, the first step in crisis negotiations is to determine whether there are any viable alternatives to a negotiated settlement. Can you appeal to law enforcement? An international organization? Can your objectives be secured by force? Are there other groups with whom you can join forces to compel the other party to drop their demands? What are the consequences of doing nothing? Of escalating to confrontation? Of running away?

Asking these questions is vital in a crisis situation because the urgency and intensity can “anchor” you in a narrow range of choices; concede or confront, capitulate or conquer. How can you evaluate the merits of an offer from your adversary if you don’t see any other choice? Conversely,

should you reject an offer without really considering the consequences of saying no? The only way out of the trap of false binaries is to quickly and carefully identify your BATNA; which is not your bottom line but what you can realistically do if you decide not to take the deal on the table. If your alternative is strong, you can afford to press for more time, additional concessions or simply walk away. However, if it is weak, a bad deal is not only your best decision but also your justification for taking it.

To quickly identify your BATNA follow these five steps:

- 1) List all your alternatives to joint action: all of them! What can you do unilaterally in this case? Who else can you call on and what help could they provide.
- 2) Evaluate these alternatives in terms of potential costs and potential gains. How much money would be lost? Spent? Causalities? Reputation costs?
- 3) Rank these alternatives from least painful to worst outcome ever. Look for some that may even appear good and rank those first! (You might be surprised!)
- 4) Establish your BATNA, if there was no possibility for a deal THIS is the course of action to take.
- 5) Determine your reservation value/bottom line. Consider what kind of a deal would result in an outcome slightly better than your BATNA. Any offer or proposal better than this is one that you should take. If negotiations fail to match your BATNA, walk away.

As the case of the Jordanian ambassador indicated, without a strong BATNA, parties have an interest in forging some sort of a workable deal; even one that appears to have some costly side effects. However, in cases where the parties have a stronger BATNA, the best option for advancing ones interests may be through unilateral action. The measure is interest and options; variables that are only known through deliberate preparation.

In the simulation that follows, participants will tackle the case of a contractor abducted by unknown militants in Iraq shortly after the US invasion. Participants are advised to carefully consider their interests as well as their alternatives before proceeding to negotiations.

General Instructions

“Contractor Abduction” is a two-person simulation of crisis negotiations that involves a hostage situation, terrorism and contradictions between humanitarian concerns, legal constraints and reputation costs. The simulation takes place in Baghdad in the aftermath of the US invasion of Iraq and deals with institutional responses to a hostage situation. The simulation has two principle roles; a representative of “Solutions International (SI)” a US-based international consulting firm working on a major reconstruction contract in Iraq, and a representative of the US Agency for International Development (USAID); the agency that has awarded the contract to “SI” and is responsible for ensuring compliance with US laws and regulations. The simulation involves a meeting between these two parties to coordinate a response to the kidnapping of an SI contractor by Islamist militants. The parties will discuss the options, evaluate the best response and the parameters for any possible cooperation or coordination in securing the hostage’s release.

To approximate crisis situations, participants will have only 30 minutes to review instructions and prepare for the meeting with their counterparts. The meeting is scheduled for 45 minutes and must be cut off after one hour. There will be an additional 45 minute debrief at the end.

The following items are included in this simulation:

1. General Instructions/Scenario
2. Confidential Instructions for:
 - a. Solutions International
 - b. USAID
3. Facilitator’s Guidelines
4. Participant debriefing file

Scenario:
Baghdad 2004

Solutions International (SI) is a US based international consulting firm that has been awarded a multi-million contract to provide technical assistance to the Iraqi ministry of finance. The project was awarded to SI on the basis of a competitive bidding project and is managed from the company's US headquarters. It has an in country implementation team of 55 US and "third country" personnel who are responsible for everything from operations, procurement, technical assistance and training. It also employs roughly 100 local staff. The project has been operating in Baghdad for approximately six-months, with offices in a rented apartment near the "green zone". Expatriate staff reside in a nearby hotel and are driven to the project office in a secure convoy with an armed escort provided by a private security company.

Last Thursday, an SI convoy was attacked by an Islamist militant group called "Jash al-Shaheed" en-route to make a weekly payroll transfer. Two members of the security detail were killed and the third is in critical condition. The one SI employee in the convoy, the project's payroll officer, was taken hostage. The employee, Mr. Garo Hagopian, is an Armenian from Jerusalem who does not hold US citizenship. According to SI records, he came to Iraq on a Jordanian travel document but is not a Jordanian citizen. 24 hours after the kidnapping occurred, the militant group released a video of Mr. Hagopian with a close up of an ID card that has Hebrew writing. The group is claiming they have captured an Israeli spy.

The company's crisis management team has identified 3 avenues for securing his release, each with risk and complications vis-à-vis USAID regulations, US restrictions on dealings with organizations on the terrorist list and policy of the current administration. A representative from SI must meet with the USAID mission head in order to brief him on their plans and possibly secure their consent or support for one of their options.

Instructions for Crisis Team Head Solutions International

You have been mobilized to respond to the kidnapping of Mr. Garo Hagopian, deputy comptroller for SI's Technical Assistance Program (TAP) with USAID and the Iraqi minister of finance. Mr. Hagopian was kidnapped during a payroll transfer. Two members of the private security detail were killed and a third is in critical condition. Shortly after the kidnapping, a video was released by a militant group called "Jash al-Shaheed" which had Mr. Hagopian blindfolded and kneeling with a sword behind his neck. The video also had a close up of his Israeli issued driver's license.

Although the group is claiming to be bent on executing him for being an Israeli spy, your team has determined that the real motive behind his kidnapping is cash. (Mr. Hagopian had close to \$500,000 on his person when the kidnapping happened. He had also been complaining that he felt the security detail was too light and security lax.) This is encouraging as it means the group is unlikely to kill Mr. Hagopian unless there is a rescue attempt. However, if there isn't at least an offer on the table within the timeframe it is possible that he could be sold to another group. This has happened with two other recent kidnappings. In one case, two Chinese nationals working on the airport reconstruction were sold to a middleman who garnered a tidy profit for their release. However, a Canadian businessman was sold to a more militant faction and ended up an Internet cautionary tale.

The president of SI has made it clear that getting the employee back alive is priority number one. Humanitarian concerns notwithstanding, the death of a team member would have a devastating effect on the company in terms of reputation and morale. Mr. Hagopian had worked for the firm in the finance office stateside before shipping over to Iraq. He was well liked and had a reputation for honesty and trustworthiness. The TAP team is especially on edge as they have worked with him on a daily basis. Losing Garo "will shatter us", the team leader said. Your team has identified three channels for securing Mr. Hagopian's release. Each option has risks and creates liabilities for SI's relationship with USAID.

The first involves working through the Palestinian embassy in Jordan and the personal intervention of PLO Chairman Yasser Arafat. A stateside employee, who also has family in East Jerusalem, was able to get a message to Arafat through his chief of staff and he has pledged his support. Your contact in the Palestinian embassy has said that Arafat can secure his release and will issue an immediate statement refuting charges the captive is a spy. Of course, he will make his intervention public and is expecting US government acknowledgement of his efforts.

Option two involves the Vatican. Mr. Hagopian's family are members of the Armenian Catholic Church and they appealed to the pontiff through the Armenian Catholic Patriarch in Lebanon. The Vatican has accepted to act as an intermediary and has been able to make contact with the kidnapers. They are prepared to also take part in any transfers necessary for his release and return. The risk is that the Vatican is relying on its own series of sub-contractors. While the pontifical mission in Amman is acting as the spokesperson, the real dealing seems to be taking place in Beirut. Another member of your team has confirmed that the patriarchate in Lebanon is depending on a contact in Hezbollah, who has agreed to negotiate the ransom, transfer the payment, retrieve the hostage and deliver him to a Vatican emissary once contact has been made.

The final option is the most direct but also the most problematic. While working the Arafat channel in Amman, another member of your team was approached by a man claiming to be a member of Hamas and a childhood friend of Mr. Hagopian's. The man apparently grew up in the Old City of Jerusalem and used to play soccer with Mr. Hagopian. He joined Hamas during the first intifada and was expelled from Jerusalem a decade ago. Quite simply, he heard the news and contacted the family to offer his help. His family directed him to the Palestinian Embassy and SI. Hamas, the man says, has already made contact with the faction holding Mr. Hagopian and delivered a message that he is not a spy. The man claims that the group also communicated their willingness to release their hostage for payment of between \$50,000-\$80,000. The catch is that

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the funds would need to be transferred directly to Hamas operatives in Jordan. However, they are willing to turn Mr. Hagopian over to Vatican representatives at a Catholic Hospital in Baghdad.

Mr. Hagopian's family has corroborated that this man was a neighborhood friend, and seem quite confident he is credible. Mr. Hagopian's mother says that she knows that some of the family still lives in the Old City and are simple folk. She doesn't know about their "politics", but she generally doesn't get into such things with people. She has no reason to think that this man wouldn't be sincere in wanting to help save her son. They are apparently trying to raise money on their own.

The President of SI has authorized up to \$100,000 for "facilitating payments" towards his release. The company has agreed to back any of the three options, but doesn't want to do anything that would damage its relationship with USAID or the US government. Therefore, you have been instructed to meet with the USAID mission head, brief them on your options and preferably get their specific consent or implied consent.

If they are unwilling to make any formal authorization, SI can act unilaterally. However, SI depends on US government contracts and therefore cannot take any action that USAID specifically forbids or rejects. In particular, any deal must get around the "Foreign Corrupt Practices Act," which outlaws bribes, and limitations set by the Foreign Assistance Act, Patriot Act and regulations that prohibit dealings with terrorist organizations. SI will not exercise an option that USAID specifically rejects or says is illegal.

Obviously, a cash payment to Hamas is not something USAID will sign off on. There is the option of not disclosing the ideological identification of the operative. There has been no indication that Hamas wants to make this public and a team member believes they would not want credit for helping free an Armenian, Israeli spy working to support the crusaders in Baghdad. Yet the implications of making a cash payment of that size to a known terrorist organization are not to be taken lightly, even if it

is the most direct route to saving a life. Leaving aside the possibility that even the suggestion that SI may have considered this could permanently end their ability to compete for USAID contracts, there is no guarantee the funds won't be used for purposes other than Mr. Hagopian's release.

The Vatican option could be framed in an acceptable manner. The ransom could be written off as a donation and the Pope isn't currently on any terrorist watch list. However, this is the least clear path to the hostages' release. Moreover, there is the small glitch that Hezbollah seems to be the link in the chain. Of course, the Vatican isn't telling you this....

As crazy as it sounds, accepting the chairman's offer is the most above board and within the framework of the law. It doesn't involve any ransom and since the signing of the 1993 peace agreement, dealing with the Palestinian Authority is copasetic with US regulations. However, Arafat is currently *persona non-grata* with the White House and it's unlikely a hand written thank you note from President G.W. Bush will be forthcoming. Legal yes, but also a certified PR nightmare!

You will be briefing the USAID mission head on your solution to the crisis in 20 minutes. You need to decide the following:

- 1) Which channel or channels to disclose to the mission head
- 2) Which channel to recommend and how to present it
- 3) Whether to formally ask for their approval
- 4) How to respond if they:
 - a. Reject your recommendation
 - b. Ask for specifics on anyone channel
 - c. Appear to have information on your options

Again, your objective is to come away from the meeting with one of the following outcomes: USAID to authorize (consent), accept without any official authorization (implied consent) or not specifically rule out your preferred solution. If you agree to an option that requires USAID or US government cooperation you must also agree to the terms of their involvement. Of course, a man's life also hangs in the balance...

Confidential Instructions for USAID Mission Head

You are about to meet with the crisis team head for Solutions International (SI) in regards to the kidnapping of their contractor, Mr. Garo Hagopian. Mr. Hagopian is the deputy comptroller for SI's Technical Assistance Program (TAP) for the Iraqi minister of finance. Mr. Hagopian was kidnapped during a payroll transfer. Two members of the private security detail were killed and a third is in critical condition. Shortly after the kidnapping, a video was released by a militant group called "Jash al-Shaheed" which had Mr. Hagopian blindfolded and kneeling with a sword behind his neck. The video also had a close up of his Israeli issued driver's license.

SI is a private US company that USAID has contracted for multiple technical assistance projects globally. Several of their board members are known as big Republican donors. They have a reputation as a solid contracting firm with a good record on compliance, budgeting, reporting and deliverables. However, it seems that they haven't invested enough in security as this kidnapping took place after a payroll pick up. Your records from the finance office show that Mr. Hagopian was kidnapped after signing for a cash disbursement of \$489,510. Although the group that is holding him claims they will execute him as an Israeli spy, intel briefings say this is a ransom deal (unless he is "sold" to a more extreme group, which happened to that poor Canadian business man).

As this hostage is not a US citizen, member of the US armed services, or a US government employee, the kidnapping is considered a private matter. Although you are happy that SI has reached out to you and requested a briefing meeting, there is little you or USAID can do in this case. Ultimately, it's up to SI to determine how they want to proceed and to assume the costs. Under no circumstances can you authorize any use of USAID funds in the release of this hostage. Moreover, you cannot condone any activities that would be in violation of the Foreign Corrupt Practices Act, the Patriot Act or prohibitions on dealings with groups or persons associated with groups on the list of known terrorist organizations.

Of course, you want to give what support and advice you can within the constraints of your position. It is not your role to tell SI how to resolve this case, only to be clear on what cannot take place in light of the terms of its contract. Of course, you aren't naïve. You know that other hostages have been released through ransom payments. It is rumored that some hostages were freed with the intervention of Iran or groups with links to Iran. You understand the urgency and the humanitarian stakes. You wouldn't judge, but you certainly cannot be in a position of even implying consent to such tactics.

You hope your meeting with SI will not put you in such a position. You anticipate that SI's team will present various options for handling the situation. Your objective is to be clear this is a private matter, on SI's obligations to uphold US law and to avoid being party to any solution that is illegal or potentially embarrassing for USAID or the US government as a whole.

In preparation for your meeting, you decide to make a list of 10 possible scenarios that would not be acceptable to USAID and hope they don't come up in the discussion.

Facilitator's Guidelines

This simulation is based on the 2004 kidnapping of Nabil Razouk, a Coptic Christian from East Jerusalem who was working for Research Triangle International (RTI) on a US funded local governance project. Razouk, who was neither an American nor Israeli citizen, was caught trying to destroy his Israeli issued health insurance card and threatened with execution. Unlike in the simulation, Razouk's release was handled with minimal engagement with USAID. Instead, the crisis management team conducted intensive back channel negotiations, including with the PLO and, via a contact in the Anglican Church in Lebanon, with Hezbollah. A deal was eventually made to secure Razouk's release that involved payment of ransom from a special emergency fund in the company budget that was completely separated from any external funding.

However, the objective of this case is to illustrate the importance of the BATNA in relation to possible collaborative outcomes. The case is structured so that the best option for all parties, as well as the hostage, is unilateral action by one side. There is no offer of cooperation or coordination that USAID can make that will secure the release of the hostage. In fact, if SI and USAID cooperate, it is likely that the hostage will be killed. In addition, participants must also evaluate risks associated with revealing and concealing information. The scenario also simulates crisis negotiations, with time pressures and high stakes. The parties have limited options and limited time to determine the best course of action.

During the debriefing session the facilitator should probe the participants to see whether they took time to consider their BATNA and how their options reconciled with their counterparts' interest. It is likely that the parties will invest significant energy in trying to get an agreement and become frustrated with the possibility that the hostage will be killed. The facilitator should point out the escalating tensions and encourage the participants to think critically about how the emotional aspects impacted their ability to think through the options for securing the best outcome.

Debriefing questions:

- What are the critical interests for each party?
- Which solution best meets those interests?
- Is a deal really the best outcome?
- What was the most difficult aspect of this meeting?
- What emotions did you experience during the conversation? Did you observe any emotions in your counterpart? How did you respond?
- During preparation, did you discuss the BATNA?
- At any point in the negotiation, did you consider walking away from the table? When and why?
- Was full disclosure advisable in this case?
- What are the implications of withholding information for the relationship?
- Were there any additional proposals for resolving the conflict between USAID's interests and SI's?

Participant Debriefing

This simulation is based on the 2004 kidnapping of Nabil Razouk, a Coptic Christian from East Jerusalem who was working for Research Triangle International (RTI) on a US funded local governance project. Razouk, who was neither an American nor Israeli citizen, was caught trying to destroy his Israeli issued health insurance card and threatened with execution. Unlike in the simulation, Razouk's release was handled with minimal engagement with USAID. Instead, the crisis management team conducted intensive back channel negotiations, including with the PLO and, via a contact in the Anglican Church in Lebanon, with Hezbollah. A deal was eventually made to secure Razouk's release that involved payment of ransom from a special emergency fund in the company budget that was completely separated from any external funding. Although the initial demand set by the kidnappers was \$1,000,000, the final payment was allegedly a cash payment of \$10,000.

The following is an excerpt from a news report on the case:

An Israeli Arab taken hostage in Iraq two weeks ago and accused of spying for Israel was released by his captors Thursday, his U.S.-based employer said. Research

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Triangle International Vice President Sally Johnson said their employee, Nabil George Yaakob Razouk, was “safe and sound.” Relatives of Razouk said Thursday that the North Carolina-based independent, nonprofit group had informed them of his release. Razouk’s mother, Samira, told Haaretz on Thursday that she hopes her son will stop working in Iraq, and thanked Yasser Arafat, whom the family had asked for help after finding out Nabil had been abducted. “He has already gone through enough,” Samira Razouk said about her son Thursday. “He doesn’t have to take more chances.” She thanked “everyone who contacted us and helped us during this period, especially the Palestinian Authority chairman, Yasser Arafat.” Razouk’s sister Lena has said she appealed to Arafat to make clear to Iraqi officials that her brother is neither an Israeli agent nor an American one and that she wanted the PA “to protect him like a proud Palestinian.” Razouk’s father has said his son is not a member of any Palestinian organization. Fadi Razouk, a cousin, told Channel Two that Nabil told him in a telephone conversation that he would probably arrive in Israel on Sunday and that he was feeling good. The television station reported that Razouk has been transferred from Najaf to Baghdad. Razouk, a 30-year-old man from a prominent Coptic Christian family in East Jerusalem who was doing local governance work in Iraq, was taken hostage on April 8. Johnson did not have details about the release or how Razouk was treated, but said he appeared to be in good condition. Razouk was serving as operations manager in Najaf, Iraq, under a contract that RTI has with the United States Agency for International Development. “All of us at RTI are grateful for his safe release,” said President and CEO Victoria Franchetti Haynes. “We are relieved and overjoyed for Nabil, his family and friends,” she added in a statement.

Like in the simulation, the crisis management team in RTI’s North Carolina headquarters had been given instructions to do whatever was necessary to ensure the safe release of their employee. In the end, this meant that public credit for the release was given to Yasser Arafat and Razouk’s family in order to distance the organization from the consequences of making a ransom payment. Not only did RTI want to save their employee, they also wanted to minimize the possibility of losing their government contracts and for other employees to become targets. For a first person account of the case, see Lamar Craven’s five part piece on “War on the Rocks” <http://warontherocks.com/2014/04/the-spark-of-rebellion-a-reservoir-exhausted/>

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