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Note No. 270/2017

The Permanent Mission of the Republic of South Africa to the United Nations presents its compliments to the Secretary-General of the United Nations, and has the honour to refer to the letter 2017_03_24_UN_EMAIL_ZAF_001, dated 17 March 2017, from the Chairperson of the Commission on the Limits of the Continental Shelf transmitting the “Recommendations of the Commission on the Limits of the Continental Shelf, in regard to the Submission made by the Republic of South Africa in respect of the area of the South African mainland on 5 May 2009” (“the Recommendations”).

The Government of the Republic of South Africa wishes to express its disappointment with and objection to the Recommendations and its concerns with the manner in which the Recommendations were arrived at by the Commission. It does so in light of the fact that at the 27th Meeting of the State Parties of the United Nations Convention on the Law of the Sea that took place in June 2017 several State Parties raised similar concerns.

As background it is noted that South Africa submitted its Submission on the outer limits of the continental shelf in relation to its Mainland to the Commission on 5 May 2009 (“the Mainland Submission”). A Sub-commission was assigned to consider the Mainland Submission and over the course of two years, numerous substantive meetings and rigorous exchanges with the Sub-commission took place to examine the Submission.

The interactions with the Sub-commission were collaborative and intensive, involving detailed exchanges to address questions and concerns posed by the Sub-commission to the Delegation of South Africa. The Sub-commission conducted its work with the utmost professionalism and expertise. The Mainland Submission was supported by a significant volume of scientific and technical data and was exhaustively examined by the Sub-commission. The result of these engagements was the draft recommendations by the Sub-commission that South Africa regarded as scientifically based and reflected the correct

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understanding of the delineation of the continental shelf. It was also in line with the past practice of the Commission in similar cases and therefore broadly acceptable.

It is thus with deep disappointment that South Africa received the Recommendations in respect of the Mainland Submission as approved by the Commission at its 43rd Session in March 2017. The Commission, in its Recommendations, has not provided the scientific rationale for its decision not to endorse some of the conclusions of the Sub-commission.

The Commission recommended that a Revised Submission containing additional data and information will be required without providing an indication of the nature of such additional data. South Africa now has to make a Revised Submission to the Commission for regions that have been, for all intents and purposes, examined and approved by a Sub-commission. The consequences of the Recommendations are twofold. Firstly, South Africa, as a developing country has to incur significant additional expenses and face challenges of having to prepare and submit the Revised Submission. Secondly, and of particular relevance to all States Parties as far as budgetary implications are concerned, is the fact that the workload of the Commission will not decrease as the Revised Submission will be resubmitted at the same point in the queue as it is now.

Of equal concern to South Africa, is how the decisions were taken in the Commission. South Africa had no opportunity to address the significant amendments made to the draft Recommendations by the Commission and only learned of them once Recommendations were issued. It is noted in the Statement from the Chair on the progress of work of the Commission to the 27th Meeting of the State Parties of the United Nations Convention on the Law of the Sea that took place in June 2017, that the Recommendations, with amendments, were approved without a vote. The approval of the Recommendations by the Commission, without either consensus, or a two-thirds majority vote, is in view of South Africa inconsistent with Article 6 of Annex II to the United Nations Convention on the Law of the Sea. It strikes South Africa as unusual, and counter to the working method of the Commission, to question and contradict the thorough analyses performed by its own Sub-commission – yet this is what has transpired.

The Government of the Republic of South Africa recognises the important role that the Commission plays in making recommendations that form the basis for the establishment of final and binding outer limits of the continental shelf by coastal States. It is thus essential that the Commission performs its role in a fair, transparent and science-based manner and

that is consistent with the Convention and established practices and rules of the Commission. Departure from these norms will undermine the legitimacy of the Commission, as well as the integrity of the Convention, and potentially impact on the clarity sought on the delineation of the areas of the extended continental shelf of coastal States.

The Government of the Republic of South Africa requests that this Note be published on the website of the Division of Ocean Affairs and the Law of the Sea concurrently with the Summary of Recommendations of the Commission.

The Permanent Mission of the Republic of South Africa to the United Nations avails itself of this opportunity to renew to the Secretary-General of the United Nations the assurances of its highest consideration.

New York

13 September 2017

Secretary-General of the United Nations

New York

Cc Division for Ocean Affairs and the Law of the Sea

United Nations Office of Legal Affairs

New York

