



PERMANENT MISSION OF THE REPUBLIC OF KENYA
TO THE UNITED NATIONS

No.

586/14

The Permanent Mission of the Republic of Kenya to the United Nations presents its compliments to the Secretary General of the United Nations and with reference to the submission by Republic of Kenya to the Commission on the Limits of the Continental Shelf, (hereinafter the Commission) in accordance with Article 76, paragraph 8, of the United Nations Convention on the Law of the Sea, on information on the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured and the communications from the Transitional Federal Government of the Somali Republic, thereafter known as the Somali Federal Republic, and has the honour to express the position of the Government of the Republic of Kenya with regards to these aforementioned communications.

Kenya confirms that prior to the filing of her Submission to the Commission on 6 April 2009, which submission was acknowledge and published by the United Nations vide Continental Shelf Notification, reference, CLCS.35.2009.LOS dated 11th May 2009, and the subsequent presentation to the Commission on 3rd September 2009, Kenya had, in the spirit of understanding and cooperation, negotiated arrangements of a practical nature with the Transitional Federal Government of the Republic of Somalia in accordance with Article 83, paragraph 3, of the Convention. These arrangements were contained in a Memorandum of Understanding (hereinafter MOU) signed on 7th April 2009, whereby both parties, undertook not to object to the examination of their respective submission. At the time, Kenya indicated to the Commission that pending further negotiations, a mechanism will be established to finalise the maritime boundary negotiations with Somalia.

Kenya confirms that thereafter, the Commission decided to revert to the consideration of the submission by way of a sub commission to be established at a future session. The consideration of the Submission was included the provisional agenda of the 24th session of the Commission held in New York from 10 August to 11 September 2009. In this regard reference is made to the Statement by the Chairman of the Commission on the Limits of the Continental Shelf contained in document CLCS/64 dated October 1 2009.

In a letter to the United Nations Secretary General referenced XRW/00506/08/09 dated August 19 2009, the Transitional Federal Government of the Somali Republic confirmed the rationale, intent and legitimacy of the MOU and further reiterated her consent in accordance with R 5 (c) of the Rules of Procedure of the Commission, to the examination of Kenya's submission by the Commission and further reiterated that the delimitation of the maritime boundaries in the areas under dispute including the delimitation of the Continental Shelf beyond 200 nautical miles shall be agreed between the two coastal states on the basis of International law after the Commission has concluded its examinations of the separate submissions made by each of the two coastal states.

To Kenya's surprise, the Somali Federal Republic vide letter MOFA/SFR/MO/258/2014 dated February 4, 2014 informed the Secretary-General of the United Nations that the MOU dated 7 April 2009 should be removed from the registry of the United Nations as the same was declared null and void. The attempt, by the Somali Federal Republic, to reverse this common understanding and agreement was undertaken unilaterally and without consultation or the consent of the co-signatory to the MOU. The Somali Federal Republic further aggravates this change of mind in a communication reference, MOFA/SFR/MO/1258/14 dated February 4, 2014 by purporting to have nullified the previous MOU and replacing the same with an objection to consideration of Kenya's submission owing to the existence of a maritime boundary dispute between the Somali Federal Republic and Kenya.

In light of this communication, the Commission did not consider Kenya's submission at the Session of the Commission held in July 2014 or at any other Session thereafter to date. Kenya's position in respect of objections to consideration of submissions by the Commission remain that these are unnecessary actions because the Convention (Article 76 paragraph 10) pronounces that the actions of the Commission are without prejudice to delimitation of the outer limits of the Continental shelf. Kenya has stated and reiterated this position in several open international fora including the meeting to the State Parties to the Convention.

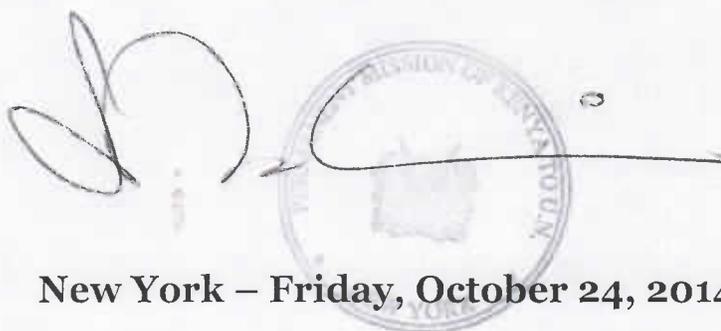
Kenya finds the action of skipping consideration of the submissions on the basis of objection stemming from unresolved delimitation between States is not founded on the Convention. The Commission should therefore consider the submission by Kenya as soon as is practical. Kenya remains committed and continues to pursue more legitimate avenues to have the delimitation of the maritime boundary amicably resolved, most preferably through a bilateral agreement with the Somali Federal Republic and in this regard wishes to inform that notwithstanding the aforementioned actions by Somalia, bilateral diplomatic negotiations, at the highest levels possible, are ongoing with a view to resolving this matter expeditiously and with a view to continuing peaceful cooperation, security and stability in the region.



From the foregoing, Kenya wishes to object to the actions by the Somali Federal Republic and affirms that these aforementioned actions are not only regrettable and unfortunate but are also not in the best interests of either State. Kenya is of the opinion that it would be in the best interests of both States as well as good international order that the Commission proceeds to consider Kenya's submission at the earliest opportunity; precisely to allow the two States to carry on with their delimitation of the continental shelf beyond 200 NM in the manner originally envisioned in the 7 April 2009 MOU and the 19 August 2009 communication.

The Permanent Mission of Kenya to the United Nations requests that this note verbale be circulated to the members of the Commission and member States of the United Nations and be posted on the websites of the Commission on the Limits of the Continental Shelf and the Division of Ocean Affairs and the Law of the Sea (DOALOS) of the Secretariat of the United Nations.

The Permanent Mission of the Republic of Kenya 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.

A handwritten signature in black ink is written over a circular official seal. The seal contains the text "PERMANENT MISSION OF KENYA TO U.N." around the perimeter and a map of Kenya in the center. The signature is a stylized, cursive script.

New York – Friday, October 24, 2014

**H.E. Mr. Ban Ki-moon,
Secretary General
United Nations
New York**

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