

REPUBLIC OF KOREA
PERMANENT MISSION TO THE UNITED NATIONS

MUN/022/13

23 January 2013

The Permanent Mission of the Republic of Korea to the United Nations presents its compliments to the Secretary-General of the United Nations and has the honour to refer to the Note Verbale dated 11 January 2013 from the Permanent Mission of Japan, SC/13/019, concerning the Government of the Republic of Korea's 26 December 2012 Partial Submission of 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 in the East China Sea to the Commission on the Limits of the Continental Shelf (hereinafter referred to as "the Commission").

The Permanent Mission of the Republic of Korea has the further honour to state that it does not consider the views articulated in Japan's Note Verbale to be well founded.

Nothing in the text of the United Nations Convention on the Law of the Sea (hereinafter referred to as "the Convention") supports the suggestion that the establishment of the outer limits of the continental shelf beyond 200 nautical miles in an area where the distance between States with opposite coasts is less than 400 nautical miles cannot be accomplished under the provisions of the Convention. The Convention establishes two distinct bases of entitlement in the continental shelf: (1) distance from the coast; and (2) the geomorphological criteria stated in paragraph 4 of Article 76. Neither basis is afforded priority over the other under the Convention. Japan, therefore, cannot use its entitlement based on the distance criterion to negate Korea's entitlement based on geomorphological considerations, or to block the Commission from issuing recommendations with regard to the existence and limits of the continental shelf in the East China Sea. Accordingly, the Partial Submission of the Government of the Republic of Korea to the Commission constitutes a legitimate undertaking in conformity with and in satisfaction of its obligations under the Convention, as well as the relevant provisions of the Rules of Procedures and the Scientific and Technical Guidelines of the Commission.

The Permanent Mission of the Republic of Korea notes also that the fact that the maritime boundary in the area between Korea and Japan has yet to be agreed upon is no impediment to the consideration of Korea's Partial Submission. Article 76, paragraph 10, of the Convention makes clear that the delineation of the outer limits of the continental shelf is without prejudice to the question of delimitation between neighbouring States. This same point is reiterated in the Commission's Rules of Procedure in Rule 46 and paragraph 5 of Annex I. It is with all these provisions in mind that the Korean Government assured the Commission in the Executive Summary of its Partial Submission

that the submission was "made without prejudice to the questions of delimitation of the continental shelf between States with opposite or adjacent coasts in the East China Sea." Indeed, the Government of the Republic of Korea observes that action by the Commission on its Partial Submission would likely facilitate the process of reaching agreement by clarifying the nature of the underlying seabed, and the extent and outer limits of the continental shelf in the area. This would be fully consistent with the objectives of Article 83, paragraph 1, of the Convention which stipulates that "the delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution."

In addition, the Permanent Mission of the Republic of Korea would like to point out that, as indicated in the Executive Summary of its Partial Submission, the Korean Government has made efforts in good faith to explain the aforementioned points to the Government of Japan. The Japanese Government has, however, refused even to engage in consultations on the matter with the Government of the Republic of Korea. The Korean Government is, therefore, surprised by Japan's reference to paragraph 5(a) of Annex I to the Commission's Rules of Procedure concerning maritime disputes, given that the Government of Japan has never indicated that it considers such a dispute to exist.

Against such a backdrop, the Permanent Mission of the Republic of Korea believes that the Commission should consider its Partial Submission at such time as it is next in line for consideration as queued in the order in which it was received.

The Permanent Mission of the Republic of Korea also would like to request the Secretariat that this Note Verbale be circulated to the Commission, all States Parties to the Convention and all Member States of the United Nations.

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

Secretary-General
of the United Nations
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