



**PERMANENT MISSION OF THE REPUBLIC OF KENYA
TO THE UNITED NATIONS**

No. 210/15

The Permanent Mission of the Republic of Kenya to the United Nations presents its compliments to the Secretary General of the United Nations and has the honor to refer to its Note No. 186/14 dated October 24, 2014 and Note No. 141/15 dated May 4, 2015, in which the Republic of Kenya (Kenya) recalled that the Federal Republic of Somalia (Somalia) had made its submission to the Commission on the Limits of the Continental Shelf (Commission) concerning the outer limits of the continental shelf on July 21, 2014, after Somalia had on February 4, 2014 objected to the consideration by the Commission of Kenya's own submission.

Somalia's objection was a material breach of the Memorandum of Understanding (MOU) between Kenya and Somalia dated April 7 2009, registered with the United Nations Secretariat on June 11, 2009, in accordance with Article 102 of the United Nations Charter. Under the terms of the MOU, the Parties are under an obligation not to object to each other's submission to the Commission, and then to conclude an agreement on the delimitation of the maritime boundary after the Commission has concluded the examination of each submission and made its recommendations concerning the establishment of the outer limits of the continental shelf beyond 200 nautical miles. Kenya was entitled to respond to Somalia's material breach of its obligation not to object to Kenya's submission by temporarily suspending the operation of the MOU in whole or in part. In the Note 141/15, Kenya indicated that it was suspending the operation of the MOU in part, by objecting to the consideration of Somalia's submission to the Commission.

The Statement by Kenya during the 24th Meeting of States parties to the United Nations Convention on the Law of The Sea (UNCLOS), held June 9-13, 2014, noted Kenya's concern in instances where the principle of good faith does not seem to guide the actions of a State Party;

This may arise in situations where a State may simply refuse to grant consent for no apparent reason. The situation is further compounded where States Parties grant each other consent for the Commission to consider a submission and the consent is withdrawn shortly before or during the course of consideration of the submission.


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At the 25th Meeting of States Parties, held June 8-12 2015, Kenya further noted that the provisions of Article 76 of UNCLOS and consideration of submissions by the Commission are without prejudice to questions of delimitation, and urged the Commission to proceed with its mandate notwithstanding such objections.

In light of this position, Kenya has given careful consideration to the possibility of enabling the Commission to proceed with its work expeditiously, without prejudice to the rights and interests of either Kenya or Somalia in relation to their maritime boundary dispute. Kenya considers that, as long as the Commission is aware of the area of overlapping claims, and that in respect of that area, it gives all due consideration to the submissions made by both States, the Commission may proceed to make recommendations concerning the outer limits of the continental shelf off the coasts of Somalia and Kenya, in accordance with the procedure agreed upon in the MOU. Accordingly, and on that basis, Kenya no longer objects to the consideration by the Commission of Somalia's submission.

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 both the Commission 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.



New York – Tuesday June 30, 2015

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