

Jamhuuriyada Soomaaliya
Ergada Joogtada ah ee Qaramada Midoobay

Permanent Mission of the Somali
Republic to the United Nations

New York, 2 September, 2014.

SOM/MSS/253/14

To: H.E.Mr. BAN Ki-moon
Secretary-General of the United Nations
New York.

RECEIVED

cc: Mr. Miguel de Serpa Soares,
Under-Secretary-General for Legal Affairs
United Nations
New York.

SEP - 3 2014

DIVISION FOR OCEAN AFFAIRS
AND THE LAW OF THE SEA

Excellency,

The Permanent Mission of the Federal Republic of Somalia to the United Nations presents its compliments to the Secretary-General of the United Nations and refers to document CLCS/84 of the Commission on the Limitation of Continental Shelf (the "Commission") which reflects the adopted agenda for the work of the Commission during the Thirty-fifth session in New York, from 21 July-5 September 2014 (the "Agenda"). Under item 17 of the Agenda, the Republic of Kenya (the "Government of Kenya") is scheduled to make a presentation to the Commission. In connection therewith, the Somali Government wishes to recall to your Excellency's attention the communication made by the Ministry of Foreign Affairs and International Cooperation of the Federal Republic of Somalia, REF No: MOFA/SFR/MO/258/2014, dated 4 February 2014, as submitted under cover of a letter REF No: SOM/MSS/21/41, dated February 4, 2014, in which the Somali Government stated, among other things, that there is a maritime dispute between Somalia and Kenya and that pursuant to paragraph 5(a) of Annex I of the Rules it has not given its consent (and does not hereby give its consent) to the consideration by the Commission of the submissions made (or to be made) or presented (or to be presented) by the Government of Kenya.

Furthermore, Excellency, the Somali Government wishes to draw your attention to the fact that the Commission took note of the Somali Government's objection (as reflected in the communication dated 4 February 2014), and made a determination that it "was not in a position to proceed with the establishment of a subcommission [to consider Kenya's Submission] at that time"¹ as reflected in the Statement by the Chair reporting on the progress of work at the 34th session of the CLCS (CLCS/83). The Somali Government concurs with the Commission's determination made in accordance with its Rules and

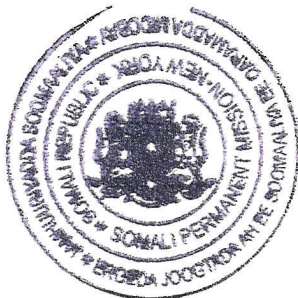
¹ Commission on the Limits of the Continental Shelf, Thirty-Fourth session, "Progress of work in the Commission on the Limits of the Continental Shelf: Statement by the Chair," UN Doc. No. CLCS/83 (31 March 2014), para. 18.

Procedures. Therefore, in connection with the proposed presentation by the Government of Kenya scheduled on 3 September 2014, the Somali Government wishes to reiterate its objection to the submission made by the Government of Kenya to the Commission and draws your Excellency's attention to UNCLOS, including its Article 76 and Annex II, as well as the Rules, including specifically paragraph 5(a) of Annex I of the Rules. In connection therewith, the Somali Government observes first that the actions of the Commission may not prejudice matters relating to the delimitation of boundaries between States with adjacent or opposite coasts, and further that the Commission may not in the circumstances of this matter "consider and qualify" Kenya's submission without the prior consent of the Somali Government as a party to the maritime dispute between Somalia and Kenya. As stated above, the Somali Government has not given its consent (and does not hereby give its consent) to the consideration by the Commission of the submissions made (or to be made) or presented (or to be presented) by the Government of Kenya.

The maritime dispute between Somalia and Kenya is presently before the International Court of Justice, following Somalia's Application to the Court filed on 28 August 2014.

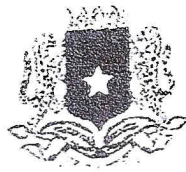
The Permanent Mission of the Federal Republic of Somalia to the United Nations requests the Secretary-General of the United Nations to distribute this letter to any other relevant United Nations office in order to take the necessary action.

Please accept, Excellency, the assurances of my highest consideration.



Sincerely,

H.E. Dr. Elmi Ahmed Dualeh
Ambassador
Permanent Representative



Jamhuuriyada Soomaaliya
Ergada Joogtada ah ee Qaramada Midoobay

Permanent Mission of the Somali
Republic to the United Nations

February 4, 2014

SOM/MSS/21/14

To: H.E. Mr. Ban Ki-moon
Secretary General
United Nations
New York.

Subject: Memorandum

Excellency,

I am pleased to forward herewith a note verbale from H.E. Dr. Abdirahman Duale Beileh, Minister of Foreign Affairs and International Cooperation of the Federal Republic of Somalia, REF: MOFA/SFR/258/2014 dated February 4, 2014, attaching a letter Ref: MOFA/SFR/259/2014, informing that the Government of the Federal Republic of Somalia objects to the registration of a purported Memorandum of understanding (the "Purported MoU"), dated 7 April 2009, between the Transitional Government of the Somali Republic and the Government of the Republic of Kenya, with the Secretariat of the United Nations made by the Government of the Republic of Kenya on 11 June 2009 (Registration No. 46230).

Please accept, Excellency, the assurances of my highest consideration

Sincerely,

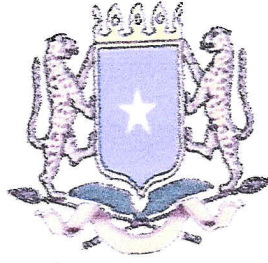


Elmi Ahmed Duale
Dr. Elmi Ahmed Duale
Ambassador
Permanent Representative

Cc: Mr. Miguel de Serpa Soares, Under-Secretary-General for Legal Affairs.

Ms. Gabriele Goettsche-Wanli, Director, Division for Ocean Affairs and Law of the Sea,
Office of Legal Affairs.

JAMHUURIYADDA FEDERAALKA SOOMAALIYA
WASAARADDA ARRIMAHA DIBADDA
IYO ISKAASHIGA CAALAMIGA



جمهورية الصومال الفيدرالية
وزارة الشؤون الخارجية
والتعاون الدولي

SOMALI FEDERAL REPUBLIC
Ministry of Foreign Affairs and International Cooperation

REF: MOFA/SFR/MO/258/2014

Date: 04/02/2014

His Excellency
Mr. BAN Ki-moon
Secretary-General of the United Nations
New York

Excellency,

The Ministry of Foreign Affairs and International Cooperation of the Federal Republic of Somalia to the United Nations presents its compliments to the Secretary-General of the United Nations and has the honour to inform your Excellency that the Government of the Federal Republic of Somalia (the "Somali Government") objects to the registration of a purported Memorandum of Understanding (the "Purported MoU"), dated 7 April 2009, between the Transitional Government of the Somali Republic and the Government of the Republic of Kenya, with the Secretariat of the United Nations made by the Government of the Republic of Kenya on 11 June 2009 (Registration No. 46230).

I refer your Excellency to the communications made by the Transitional Federal Government of the Somali Republic, dated 10 October 2009 (OPM/IC/00/016/11/09), as submitted under cover of a letter dated 2 March 2010 (SOM/MSS/09/10), informing your office that on 1 August 2009, the Parliament of the Transitional Federal Republic of Somalia voted to reject the Purported MoU, and that the referenced document was, therefore, rendered "non-actionable". In addition, your Excellency, attached herewith is a note verbale from the Minister of Foreign Affairs and International Cooperation of the Federal Republic of Somalia to your office dated 4 February 2014 stating, *inter alia*, the basis on which the Purported MoU was deemed void and of no effect. The Somali Government, therefore, requests all appropriate actions to be taken immediately to remove the Purported MoU from the registry of the Secretariat of the United Nations.

Address: Afgoye Road-KM 5 -Mogadishu
E-mail: ministry@mofa.gov.so/Ps@mofa.gov.so

Tel: +252-1-854040/854041
Website: <http://www.mofa.gov.so>

The Ministry of Foreign Affairs and International Cooperation of the Federal Republic of Somalia to the United Nations requests the Secretary-General of the United Nations to distribute this letter to any other relevant United Nations office in order to take the necessary action.

Please accept, Mr. Secretary-General, the assurances of my highest consideration.

Sincerely,



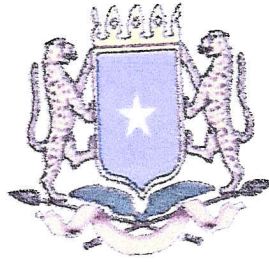
H.E. Dr. Abdirahman Beileh
Minister of Foreign Affairs
and International Cooperation



His Excellency
Mr. BAN Ki-moon
Secretary-General of the United Nations
New York

cc: Mr. Miguel de Serpa Soares, Under-Secretary-General for Legal Affairs

JAMHUURIYADDA FEDERAALKA SOOMAALIYA
WASAARADDA ARRIMAHA DIBADDA
IYO ISKAASHIGA CAALAMIGA



جمهورية الصومال الفيدرالية
وزارة الشؤون الخارجية
والتعاون الدولي

SOMALI FEDERAL REPUBLIC
Ministry of Foreign Affairs and International Cooperation

REF: MOFA/SFR/MO/259/2014

Date: 04/02/2014

His Excellency
Mr. BAN Ki-moon
Secretary-General of the United Nations
New York

Excellency,

The Ministry of Foreign Affairs and International Cooperation of the Federal Republic of Somalia (the "Somali Republic") presents its compliments to the Secretary-General of the United Nations in his capacity as the depositary for the United Nations Convention on the Law of the Sea ("UNCLOS"), and draws his attention to the following observations of the Transitional Federal Government of the Somali Republic in connection with your Excellency's communication of 11 May 2009, Ref. CLCS.35.2009.LOS (Continental Shelf Notification) in regards to the submission presented by the Republic of Kenya to the Commission on the Limits of the Continental Shelf (the "Commission"), together with subsequent communications submitted on behalf of the Somali Republic, being a letter dated 10 October 2009 (OPM/IC/00./016/11/09) (the "2009 Letter"), as submitted under cover of a letter dated 2 March 2010 (SOM/MSS/09/10), in relation to a memorandum of understanding purportedly entered into by the Somali Republic dated 7 April 2009 (the "MoU").

1. There exists a dispute between the Somali Republic and the Republic of Kenya for purposes of rule 5(a) of Annex I of the Rules of Procedure of the Commission on the Limits of the Continental Shelf.

Address: Afgoye Road-KM 5 -Mogadishu
E-mail: ministry@mofa.gov.so/Ps@mofa.gov.so

Tel: +252-1-854040/854041
Website: <http://www.mofa.gov.so>

2. As stated in paragraph 7.1 of the Executive Summary to Kenya's submission: "Kenya has overlapping maritime claims with the adjacent States of Somalia to the north and with the United Republic of Tanzania to the south." The map that appears at page 9 of Kenya's Executive Summary depicts Kenya's claim to a maritime boundary with Somalia extending seaward along a parallel of latitude from the purported land boundary terminus through the territorial sea, the exclusive economic zone and the continental shelf beyond 200 M of Somalia. Somalia has expressly rejected Kenya's claim. This unresolved delimitation issue is to be considered a 'maritime dispute' for the purposes of rule 5(a) of Annex I to the Rules of Procedure of the Commission. The Kenyan and Somali claims cover an overlapping area which for the same purposes constitutes the areas under dispute.
3. The areas under dispute cover approximately 15,000 square M within 200 M of the Somali Republic, and a significant portion of Kenya's claim in the outer continental shelf beyond 200 M.
4. Based on the exaggerated nature of Kenya's claim, its lack of legal foundation, and its severe prejudice to Somalia both within and beyond 200 M, Somalia formally objects to consideration of Kenya's submission by the Commission on the Limits of the Continental Shelf. In view of the Commission's consistent practice, in conformity with its regulations, of refraining from considering or making recommendations in regard to submissions when a dispute exists and one of the parties to the dispute submits an objection, Somalia expects that, faced with its objection, the Commission will decline to consider or make recommendations with regard to Kenya's submission.
5. In his statement on the progress of the work of the Commission, the Chairman of the Commission reported that, at the twenty-fourth session of the Commission held in New York between 10 August and 11 September 2009 (CLCS/64), Kenya had informed the Commission that:

" [P]ending negotiations with the Transitional Federal Government of the Republic of Somalia, provisional arrangements of a practical nature had been entered into, in accordance with article 83, paragraph 3, of the Convention. These arrangements are contained in a memorandum of understanding signed on 7 April 2009, whereby the parties undertake not to object to the examination of their respective submissions."
6. The Somali Republic rejects these assertions, and declares that no provisional arrangements of a practical nature under Article 83, paragraph

3 of UNCLOS have been entered into by Somalia and Kenya, and that no memorandum of understanding is in force between them. The alleged memorandum of understanding, ratification of which was rejected by the Transitional Federal Parliament of Somalia on 1 August 2009, and which is not therefore in force, was not an arrangement under Article 83, paragraph 3. In any event, it lacks legal force and does not impose obligations on either party; specifically, it does not obligate either Somalia or Kenya to refrain from objecting to the Commission's consideration of the other's submission. The 2009 Letter submitted by the Prime Minister of Somalia stated that: "the above mentioned MOU between Somalia and Kenya was considered by the Transitional Federal Parliament of Somalia and the members voted to reject the ratification of that MOU.... We would, therefore, request the relevant offices of the U.N. to take note of the situation and treat the MOU as non-actionable."

7. With respect to the unratified MOU, the Somali Republic further observes that:
- (a) In accordance with customary international law (as now reflected in Article 7 of the Vienna Convention on the Law of Treaties), a person is considered as representing a State for the purpose of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound by a treaty if (i) he produces appropriate full powers or (ii) it appears from the practice of the States concerned or from other circumstances that their intention was to consider that person as representing the State for such purposes and to dispense with full powers.
 - (b) The Minister for National Planning and International Cooperation, whose signature appears on the MOU, did not produce appropriate documents demonstrating his powers to represent the Somali Republic for the purpose of agreeing to the text of the MOU on behalf of the Somali Republic.
 - (c) Nor is it or has it been the practice of the Somali Republic to allow the Minister for Planning and International Cooperation to enter into binding bilateral arrangements which concern maritime delimitation and the presentation of submissions to the Commission and its consideration of them.
 - (d) At the time of signature, the Minister for National Planning and International Cooperation informed the representatives of the Government of Kenya that, in accordance with the provisions of the Transitional Federal Charter of the Somali Government of February

2004, the MOU would require ratification by the Transitional Federal Parliament of the Somali Republic.

- (e) The Transitional Federal Parliament of the Somali Republic voted on 1 August 2009 against ratification of the MOU. Thus, the MOU is void and of no effect. The Secretary-General was notified in the 2009 Letter by the Prime Minister of the Somali Republic of the outcome of the Transitional Federal Parliament's vote, and was accordingly requested to "treat" the MOU as "non-actionable."
8. The Somali Republic observes that, given the existence of a dispute between the Somali Republic and Kenya concerning entitlement to parts of the continental shelf in the Indian Ocean claimed by Kenya and in light of the vote of the Transitional Federal Parliament not to ratify the MOU, first, there are no and never have been any provisional arrangements of a practical nature between Kenya and the Somali Republic, whether within the meaning of Article 83 paragraph 3 of UNCLOS or at all; and further that the Somali Republic has not given its consent (and does not hereby give its consent) to the consideration by the Commission of the submissions presented by Kenya.
9. Recalling UNCLOS, including its Article 76 and Annex II, as well as the Rules, including specifically paragraph 5(a) of Annex I of the Rules, the Somali Republic observes first that the actions of the Commission may not prejudice matters relating to the delimitation of boundaries between States with adjacent or opposite coasts; and further that the Commission may not in the circumstances of this matter "consider and qualify" Kenya's submission without the prior consent of the Somali Republic as a party to that dispute.
10. The Somali Republic protests the continuing activities of oil companies under licence to Kenya in maritime zones claimed by the Somali Republic, and in dispute between the two States, which are in contravention of Article 74(3), Article 83(3) and Article 300 of UNCLOS. The Somali Republic condemns these activities and urges all parties involved in such activities to immediately cease and desist from them.
11. The Somali Republic reserves its right to submit further comments in relation to the submissions presented by Kenya, including, but without limitation, comments upon Kenya's assertions regarding the application of the Statement of Understanding set out at Annex II of the Final Act of UNLCOS III, and in relation to the scientific, technical and other claims made therein.

The Ministry of Foreign Affairs and International Cooperation of the Somali Republic has the honour to request that the present letter be brought to the immediate attention of the Commission and that it be distributed and published in the Law of the Sea Bulletin and any other relevant United Nations publications.

The Ministry of Foreign Affairs and International Cooperation of the Somali Republic avails itself of this opportunity to renew to the Secretary-General of the United Nations the assurances of its highest consideration.

Sincerely,



H.E. Dr. Abdirahman Beileh
Minister of Foreign Affairs
and International Cooperation



His Excellency
Mr. BAN Ki-moon
Secretary-General of the United Nations
New York

cc: Mr. Miguel de Serpa Soares, Under-Secretary-General for Legal Affairs
Ms. Gabriele Goettsche-Wanli, Director, Division for Ocean Affairs and Law of the Sea, Office of Legal Affairs