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MINISTRY OF FOREIGN AFFAIRS AND INTERNATIONAL TRADE

MFA.TCA 12/34 VOL.XI/(101)

Ref. No.....

The Ministry of Foreign Affairs and International Trade of the Republic of Kenya presents its compliments to the Secretary General of the United Nations and has the honour to refer to the note SRL-NOT-002-22.2009 by the Ministry of Foreign Affairs of the Democratic Socialist Republic of Sri Lanka dated 22 July 2009, to the Secretary General of the United Nations, regarding information contained in the Executive Summary of Kenya's submission on the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

Kenya wishes to reiterate and affirm her position in regard to the application of the Statement of Understanding as stated in her Note Verbale dated 30th April 2009 that referred to the Secretary General's circular CLCS.16.2008.LOS (Continental Shelf Notification) dated December 23, 2008. Further Kenya observes that ; consideration of practice and principles of international Law including, but not limited to, Vienna Convention on the Law of Treaties hold with esteem the equality and fairness in treatment of States. In this regard Kenya's position in application of the "Statement of Understanding Concerning a Specific Method to be Used in Establishing the Outer Edge of the Continental Margin" (Statement of Understanding) as provided for in Annex II of the United Nations Convention on the Law of the Sea is that of a general nature provided that the submitting State's continental margin exhibits special characteristics and that application of article 76 occasions an inequity. Quantification of both conditions is clearly spelt in paragraphs one and two of the Annex. Both of these conditions are geological and geomorphological in nature and are the basis upon which existence and extent of natural prolongation of a State's land territory into the ocean are founded. Accordingly application of the Statement of Understanding is not and cannot be limited to a geographical region. Reference to the States in the southern part of the Bay of Bengal in the 5th paragraph of the Statement of Understanding, does not preclude the application of the general principles where any other State is able to demonstrate existence of geological and geomophological characteristics similar to those exhibited by a continental margin of a State in the Southern part of the Bay of Bengal. The threshold of the similarity is clearly spelt out in paragraphs one and two of the annex.

Besides this general observation Kenya wishes to make reference to specific elements cited in Note Verbale by Sri Lanka in the following form;

Kenya notes that paragraph 3 of the Note Verbale states in part *"... Accordingly, Sri Lanka reiterates that the principal State referred to in paragraph 3 of the Statement of Understanding is Sri Lanka."* Kenya's position is that there is no reference either in the Statement of Understanding or in any other part of the Convention as a whole to *"... the principle State ..."* and that use of such terminology would not only negate the fundamental principle of equality of States under international law, but would also amount to discrimination of States even under similar circumstances.

The subject note verbal refers to a previous note verbale by Sri-Lanka regarding the Submission of the limits of continental shelf beyond 200M from the baselines from which the breadth of territorial sea is measured as submitted by the Union of Mynmar. In this regard, Kenya notes that her submission does not in any way prejudice the submission by Sri Lanka and that the Commissions' recommendations on Kenya's submission would be solely on this submission and therefore fails to understand on what basis such recommendations would prejudice Sri Lanka's interest on the area she claims. It is rather obvious that the expansive waters in excess of 4000 km between the two coastlines do not offer the slightest opportunity for the Commissions' recommendations on Kenya's submission to prejudice the delimitation of the continental shelf of the two respective States.

Kenya shares the view of the Commission contained in paragraph 8.1.12 of the Scientific and Technical Guidelines, that the Statement of Understanding is an exception to the provisions of article 76 (4)(a) (i) and (ii).

In conclusion, Kenya believes that the intention of States was not and could not have been to create a situation that would address inequity in one part of the world and exclude others under similar geological and geomophological situation, and that to imply so would derogate from the very principles that UNCLOS sought to protect.

The Ministry of Foreign Affairs of the Republic of Kenya avails itself of this opportunity to renew to the Secretary General of the United Nations the assurances of its highest consideration.

NAIROBI, 29th October, 2013

THE SECRETARY GENERAL OF THE UNITED NATIONS
NEW YORK