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MINISTRY OF FOREIGN AFFAIRS

Ref Fo. MFA. INT.8.15A/XXXI

The Ministry of Foreign Affairs of the Republic of Kenya presents its compliments to the Secretary General of the United Nations and has the honour to refer to the latter's circular CLCS.16.2008.LOS (Continental Shelf Notification) dated December 23, 2008 regarding the submission made by the Union of Myanmar on 16th December, 2008, pursuant to Article 76, paragraph 8, of the United Nations Convention on the Law of the Sea (1982), containing information on the limits of the Continental Shelf it claims beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

Kenya notes that the submission to the Commission by the Union of Myanmar relies inter-alia on the Statement of Understanding concerning a specific method to be used in establishing the outer edge of the Continental Margin, incorporated in Annex II of the Final Act of the Third United Nations Conference on the Law of the Sea.

Kenya wishes to recall that during the negotiations of the United Nations Convention on the Law of the Sea, the Conference of Parties considered that application of Article 76 to coastal States with special margins would result in an inequitable situation for them and elaborated alternative scientific criteria, contained in the Statement of Understanding, to be used by such States for the purpose of establishing the outer limits of their continental shelf. The Conference further requested the Commission on the Limits of the Continental Shelf to use this Statement when considering submissions from the coastal States within the southern part of the Bay of Bengal.

It is the understanding of Kenya that the basis for any coastal State of invoking this formula in any particular case is the ability of the State to demonstrate the existence of the special conditions and the inequity that the application of Article 76 paragraph 4(a) (i) and (ii), would occasion.

Without making any judgment on a State's interpretation and application of the Statement of Understanding, Kenya considers that the formula contained in the Statement can be applied to a coastal State upon a valid demonstration by that

State of the special conditions and the inequity that would otherwise arise for it rather than its geographic location.

The fulfillment of these conditions should in Kenya's view be adequate to qualify a coastal State to apply the Statement.

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 – 30TH APRIL, 2009

Secretary General of the United Nations NEW YORK

