

## 2. Kenya and Somalia

*Memorandum of Understanding between the Government of the Republic of Kenya and the Transitional Federal Government of the Somali Republic to Grant to Each Other No-Objection in Respect of Submissions on the Outer Limits of the Continental Shelf beyond 200 Nautical Miles to the Commission on the Limits of the Continental Shelf*<sup>2</sup>

The Government of the Republic of Kenya and the Transitional Federal Government of the Somali Republic, in the spirit of co-operation and mutual understanding have agreed to conclude this Memorandum of Understanding:

The delimitation of the continental shelf between the Republic of Kenya and the Somali Republic (hereinafter collectively referred to as "the two coastal States") has not yet been settled. This unresolved delimitation issue between the two coastal States is to be considered as a "maritime dispute". The claims of the two coastal States cover an overlapping area of the continental shelf which constitutes the "area under dispute".

The two coastal States are conscious that the establishment of the outer limits of the continental shelf beyond 200 nautical miles is without prejudice to the question of delimitation of the continental shelf between states with opposite or adjacent coasts. While the two coastal States have differing interests regarding the delimitation of the continental shelf in the area under dispute, they have a strong common interest with respect to the establishment of the outer limits of the continental shelf beyond 200 nautical miles, without prejudice to the future delimitation of the continental shelf between them. On this basis the two coastal States are determined to work together to safeguard and promote their common interest with respect to the establishment of the outer limits of the continental shelf beyond 200 nautical miles.

Before 13 May 2009 the Transitional Federal Government of the Somali Republic intends to submit to the Secretary-General of the United Nations preliminary information indicative of the outer limits of the continental shelf beyond 200 nautical miles. This submission may include the area under dispute. It will solely aim at complying with the time period referred to in article (4) of Annex II to the United Nations Convention on the Law of the Sea (UNCLOS). It shall not prejudice the positions of the two coastal States with respect to the maritime dispute between them and shall be without prejudice to the future delimitation of maritime boundaries in the area under dispute, including the delimitation of the continental shelf beyond 200 nautical miles. On this understanding the Republic of Kenya has no objection to the inclusion of the areas under dispute in the submission by the Somali Republic of preliminary information indicative of the outer limits of the continental shelf beyond 200 nautical miles.

The two coastal States agree that at an appropriate time, in the case of the Republic of Kenya before 13 May 2009, each of them will make separate submissions to the Commission on the Limits of the Continental Shelf (herein referred to as "the Commission"), that may include the area under dispute, asking the Commission to make recommendations with respect to the outer limits of the continental shelf beyond 200 nautical miles without regard to the delimitation of maritime boundaries between them. The two coastal States hereby give their prior consent to the consideration by the Commission of these submissions in the area under dispute. The submissions made before the Commission and the recommendations approved by the Commission thereon shall not prejudice the positions of the two coastal States with respect to the maritime dispute between them and shall be without prejudice to the future delimitation of maritime boundaries in the area under dispute, including the delimitation of the continental shelf beyond 200 nautical miles.

The delimitation of maritime boundaries in the areas under dispute, including the delimitation of the continental shelf beyond 200 nautical miles, shall be agreed between the two coastal States on the basis of international law after the Commission has concluded its examination of the separate submissions made by each of the two coastal States and made its recommendations to two coastal States concerning the establishment of the outer limits of the continental shelf beyond 200 nautical miles. This Memorandum of Understanding shall enter into force upon its signature.

<sup>2</sup> Registered with the Secretariat of the United Nations on 11 June 2009. Registration number: I-46230. Entry into force: 07 April 2009.

IN WITNESS WHEREOF, the undersigned being duly authorized by their respective Governments, have signed this Memorandum of Understanding.

DONE in Nairobi this 7th day of April Two Thousand and Nine, in duplicate, in the English Language, both texts being equally authentic.

FOR THE GOVERNMENT OF THE  
REPUBLIC OF KENYA

Hon. Moses Wetang'ula, EGH, MP  
MINISTER FOR FOREIGN AFFAIRS

FOR THE TRANSITIONAL FEDERAL  
GOVERNMENT OF THE SOMALI REPUBLIC

Hon. Abdirahman Abdishakur Warsame  
MINISTER FOR NATIONAL PLANNING AND  
INTERNATIONAL COOPERATION