



Note No: 108/2016-17

The Ministry of Foreign Affairs and Immigration of the Government of the Cook Islands presents its compliments to the Secretary-General of the United Nations, and has the honour to refer to the Note Verbale from the Secretariat of the Commission on the Limits of the Continental Shelf transmitting a letter dated 26 August 2016, from Mr. Awosika, Chairperson of the Commission on the Limits of the Continental Shelf, submitting the “Recommendations of the Commission on the Limits of the Continental Shelf in regard to the Submission made by the Cook Islands in respect of the Manihiki Plateau on 16 April 2009 ” (‘the Recommendations’).

The Ministry regrettably wishes to place on record that the Government of the Cook Islands is disappointed that the Commission, for the various reasons stated in the Recommendations, has reached the conclusion that it could not approve the location of the outer limits submitted by the Cook Islands in the region of the Manihiki Plateau.

The Ministry notes also that in its Concluding Recommendations, the Commission has stated that it is unable to recommend on the precise location of the outer limits of the continental shelf and has recommended that the Cook Islands make a new or revised submission taking into consideration the analyses and conclusions presented by the Commission in the Recommendations.

It should be emphasized that although the Government of the Cook Islands intends to make a revised submission that incorporates additional scientific material, it will not be doing so on the basis of the scientific and technical analysis, findings or conclusions presented in the Recommendations of the Commission. This is because the Cook Islands considers the Recommendations adopted by the Commission have been compromised by the practice of the Sub-Commission, which the Ministry recalls was entrusted with the responsibility of undertaking a fair and unbiased examination of the Submission, but instead pursued another agenda and ignored the serious concerns communicated by the Delegation of the Cook Islands with respect to important substantive and procedural matters throughout the process.

The Ministry recalls at this point that the Delegation of the Cook Islands made a presentation to the Commission on 26 August 2015 in accordance with paragraph 15.1 bis of Annex III to the Rules

of Procedure of the Commission on the Limits of the Continental Shelf, which outlined *inter alia* the concerns of the Cook Islands regarding the actions of the Sub-Commission during the examination of the Submission and the actions that the Cook Islands would take under the circumstances in order to prevent irreparable prejudice and to preserve its rights as a State Party to the Convention.

In addition to foregoing rejection of the Recommendations, the Ministry also wishes to highlight the serious concerns of the Government of the Cook Islands regarding the procedure applied to their adoption by the Commission and recalls that Article 6, paragraph 2 of Annex II to the Convention provides that the approval by the Commission of the recommendations of a Sub-Commission *shall be by a majority of two thirds of the Commission members present and voting* (emphasis added). This is reinforced by Rule 37 of the Rules of Procedure, which provides that where consensus cannot be achieved as provided for under Rule 35, and for matters of substance, decisions by the Commission to approve recommendations prepared by a Sub-Commission are to be taken by a two-thirds majority of the Members present and voting. The Cook Islands considers the approval of Recommendations on its Submission by the Commission to be most certainly a matter of substance.

In the present case, paragraph 21 of the Recommendations states that the Recommendations were approved by the Commission without a vote on 19 August 2016, but does not state that there was consensus. Indeed, the Recommendations would suggest that the opposite was in fact the case, as clearly indicated in paragraph 87 of the summary. Under the circumstances, a vote should have been required and the absence of any vote being recorded raises some troubling questions related to transparency and further undermines confidence in a process that has already in the view of the Cook Islands been tainted.

The result has been the endorsement of Recommendations by the Commission that are based upon a series of factual errors and misrepresentations, exacerbated by a flawed scientific analysis by the Sub-Commission. Regrettably, the actions of the Sub-Commission have proven to be prejudicial to the objective assessment of the Submission, as reflected in the Recommendations adopted by the Commission. The outcome does not reflect well on the Commission given the significance of its role under Article 76 and the trust placed in the institution by the Cook Islands as a Party to the Convention.

In conclusion, for the reasons set out above and for the avoidance of any doubt, the Ministry wishes to advise that the Government of the Cook Islands does not accept the Recommendations

of the Commission. The Cook Islands reserves the right to make a more substantive rejection of the technical elements of the Recommendations at an appropriate later stage. The Ministry requests also that this Note Verbale be placed on the website of the Division of Ocean Affairs and the Law of the Sea.

The Ministry of Foreign Affairs and Immigration of the Government of the Cook Islands avails itself of the opportunity to renew to the Secretary-General of the United Nations the assurances of its highest consideration.



30 November 2016

Rarotonga, Cook Islands

Secretary of the Commission on the Limits of the Continental Shelf

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