



International Tribunal for the Law of the Sea
Ms. Ximena Hinrichs Oyarce
Am Internationalen Seegerichtshof 1
22609 Hamburg
Germany

Legal Affairs Department

P.O. Box 20061
Rijnstraat 8
2500 EB The Hague
The Netherlands

Contact

International Law Division
T +31703486000
M +31625718624

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Subject Written comments of the Kingdom of the Netherlands on the written responses by COSIS and IUCN to the question asked by Judge Kittichaisaree (Case No. 31)

Dear Ms. Oyarce,

Further to your message (by e-mail) of 25 September 2023, the Kingdom of the Netherlands ('the Kingdom') would like to make use of the opportunity to submit comments on the responses of the Commission of Small Island States on Climate Change and International Law ('COSIS') and of the International Union for Conservation of Nature ('IUCN') to the question posed by Judge Kittichaisaree on 11 September 2023 with respect to Case No. 31. The question posed requested these participants to clarify whether the specific obligations mentioned in their respective statements can be considered obligations of conduct or obligations of result.

The Kingdom would like to begin by underlining its view, as presented in its written and oral statements, that articles 192 and 194 of the United Nations Convention on the Law of the Sea ('the Convention') are due diligence obligations and therefore obligations of conduct. The Kingdom would also like to highlight, in accordance with the advice rendered by the Seabed Disputes Chamber in *Responsibilities and Obligations of States with Respect to Activities in the Area*, that such due diligence obligations entail the deployment of adequate means, exercising best possible efforts, to do the utmost, to obtain the relevant result in accordance with articles 192 and 194 of the Convention. The Kingdom agrees with COSIS that articles 192 and 194 of the Convention cannot be reduced to a single obligation, but comprise procedural and substantive steps that States are required to take, depending on the factual context in which the provisions are applied, which may include the conduct of an environmental impact assessment, the application of the precautionary principle and the application of best environmental practices.

The Kingdom is of the view that the other provisions of Part XII on the prevention, reduction and control of pollution, in particular articles 207-212, and the provisions on cooperation, in particular article 197, to which it has made reference in its statements, are due diligence obligations and, therefore, obligations of conduct as well. They oblige States, individually or collectively, to exercise best possible efforts to achieve a certain result. What exactly is required in terms of efforts will depend on the result to be achieved and the factual context in which

the provisions are applied. In this respect, the level of risk, the foreseeability and severity of potential harm, the state of science, applicable international rules and standards, and the capabilities of States are relevant in determining the requisite conduct.

Finally, the Kingdom would like to make use of this opportunity to make two corrections to references in its written statement. First, in paragraph 5.1, the reference to 'articles 207-221' should read 'articles 207-212'; and, second, the reference to 'article 1, paragraph 4' should read 'article 1, paragraph 1(4)'.

Yours sincerely,



Dr. René J.M. Lefeber
Representative of the Kingdom of the Netherlands