

Written Statement of the Kingdom of the Netherlands

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

**REQUEST FOR AN ADVISORY OPINION SUBMITTED BY THE SUB-REGIONAL
FISHERIES COMMISSION (SRFC)
(CASE NO. 21)**

WRITTEN STATEMENT OF THE KINGDOM OF THE NETHERLANDS

29 NOVEMBER 2013

1 Introduction

1.1 During its fourteenth session (27-28 March 2013), the Conference of Ministers of the Sub-Regional Fisheries Commission ('SRFC') adopted a resolution by which it decided, in accordance with article 33 of the 2012 Convention on the Determination of the Minimal Conditions for Access and Exploitation of Marine Resources within the Maritime Areas under Jurisdiction of the Member States of the Sub-Regional Fisheries Commission ('CMAC'), to authorize the Permanent Secretary of the SRFC to submit to the International Tribunal for the Law of the Sea ('Tribunal') a request for an advisory opinion ('Request') on the following matters:

1. What are the obligations of the flag State in cases where illegal, unreported and unregulated (IUU) fishing activities are conducted within the Exclusive Economic Zone of third party States?
2. To what extent shall the flag State be held liable for IUU fishing activities conducted by vessels sailing under its flag?
3. Where a fishing license is issued to a vessel within the framework of an international agreement with the flag State or with an international agency, shall the State or international agency be held liable for the violation of the fisheries legislation of the coastal State by the vessel in question?
4. What are the rights and obligations of the coastal State in ensuring the sustainable management of shared stocks and stocks of common interest, especially the small pelagic species and tuna?"

1.2 In its Order of 24 May 2013, the Tribunal invited, in accordance with article 133, paragraph 3, of the Rules of the Tribunal ('Rules'), the States Parties to the United Nations Convention on the Law of the Sea ('Convention'), to present written statements on the questions submitted to the Tribunal for an advisory opinion.

1.3 As the Kingdom of the Netherlands is a State Party to the Convention, it wishes to avail itself of the opportunity afforded by the Tribunal to make a written statement on a preliminary issue pertaining to the Request.

2 The requested advisory opinion is to be limited to the scope of CMAC

2.1 The questions submitted to the Tribunal concern a number of matters in connection with illegal, unreported and unregulated ('IUU') fishing.

2.2 Article 138 of the Rules states that "the Tribunal may give an advisory opinion on a legal question if an international agreement related to the purposes of the Convention specifically provides for the submission of a request for such an opinion." The Kingdom of the Netherlands submits that the Tribunal, before giving its opinion, will have to satisfy itself that it is competent to exercise advisory jurisdiction with regard to the Request.

2.3 Insofar as the Tribunal considers that it has advisory jurisdiction and that it may exercise this jurisdiction with respect to the present Request, Article 21 of the Statute of the Tribunal ('Statute') determines that the jurisdiction of the Tribunal comprises "all matters specifically provided for in any other agreement which confers jurisdiction on the

Tribunal.” Thus, the scope of a request for an advisory opinion is limited to matters *specifically provided for* in the agreement under which that request is made. As the Request is made under CMAC, the legal questions raised therein can only arise within the scope of the activities of SRFC under CMAC.

2.4 This is furthermore underscored by Article 131, paragraph 1, of the Rules which applies *mutatis mutandis* by virtue of Article 138, paragraph 3, of the Rules:

“A request for an advisory opinion on a legal question *arising within the scope of the activities* of the Assembly or the Council of the Authority shall contain a precise statement of the question.” (Emphasis added).

2.5 Moreover, this limitation on the scope of the requested advisory opinion is in line with the ‘principle of speciality’, according to which

“international organizations are subjects of international law which do not, unlike States, possess a general competence. International organizations are governed by the “principle of speciality”, that is to say, they are invested by the States which create them with powers, the limits of which are a function of the common interests whose promotion those States entrust to them.” (*Legality of the Use by a State of Nuclear Weapons in Armed Conflict, Advisory Opinion, I.C.J. Reports 1996*, para. 25; See also *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations, Advisory Opinion, I.C.J. Reports 1989*, p. 177).

2.6 It follows that the SRFC, as a regional international organization, is only competent to submit a request on matters that arise within the scope of its activities.

2.7 Consequently, in addressing the questions submitted to it, the Tribunal should limit the scope of the requested advisory opinion to the activities of the SRFC and the members of that Organization in accordance with CMAC.

2.8 The questions in the Request concern the rights and obligations of flag States and coastal States in situations of IUU fishing in exclusive economic zones. In particular, they refer to rights and obligations of flag States without specifying whether these include flag States not party to CMAC. Therefore, the Request could be construed to involve the rights and obligations of States not party to CMAC. The Kingdom of the Netherlands would note that, on the basis of the foregoing, an advisory opinion in reply to a request made under CMAC should only concern the interpretation and application of CMAC. Hence, it can only contain advice to States parties to CMAC in regard to their rights and obligations *inter se*.

2.9 Therefore, if the Tribunal considers it necessary to interpret or apply the United Nations Convention on the Law of the Sea or other rules of the international law of the sea in order to reply to the Request, it should only do so in conjunction with the interpretation and application of CMAC.

3 Submissions

The Kingdom of the Netherlands submits that, insofar as the Tribunal considers that it has advisory jurisdiction and that it may exercise this jurisdiction with respect to the present Request, it should limit the scope of the requested advisory opinion to the activities of the SRFC and the members of that Organization in accordance with CMAC.

A handwritten signature in black ink, appearing to read 'L. Lijnzaad', with a large, sweeping flourish underneath.

Liesbeth Lijnzaad
Representative of the Kingdom of the Netherlands

The Hague, 29 November 2013