# Netherlands Antilles and Aruba

## Marine Fisheries in the Netherlands Antilles and Aruba in the Context of International Law

### Introduction

On 3 July 2002 the Netherlands Antilles fishing vessel *Eternal* was arrested in the maritime zones of the island of Kerguelen. This island lies in the Southern Ocean, in the Indian Ocean section, and forms part of the French Southern and Antarctic Territories. From the perspective of the Netherlands Antilles, Kerguelen is practically on the other side of the globe. The *Eternal* was charged with fishing without a licence for Patagonian toothfish,[1] a species that suffers much from IUU (illegal, unreported and unregulated) fishing.[2] On 6 August 2002 the *tribunal de grande instance* of Saint Paul, La Réunion ruled *inter alia* that the vessel would be confiscated, that fines would be imposed on the captain (Uruguayan nationality) and fishing master (Spanish nationality) but that no action would be undertaken against the vessel's operator or (beneficial) owner(s).[3] By then the Netherlands Antilles Directorate for Shipping and Maritime Affairs had already decided that the temporary registration and certificate of registry of the *Eternal*, at the time of arrest valid until 30 August 2002, would not be replaced by a permanent certificate.[4]

The *Eternal* has a troublesome history of involvement in IUU fishing. In 1999 it was arrested by French authorities for the same offence; that time flagged in

1 Press release (PR/12/02) of 8 July 2002, from the French Embassy in Canberra, Australia (text at www.ambafrance-au.org).

2 For more information see www.ccamlr.org, www.isofish.org.au and www.asoc.org. Several of the cases before the International Tribunal for the Law of the Sea (ITLOS) related in fact to illegal fishing for toothfish (see Case Nos. 5, 6, 8 and 11, the last of which was instituted at the time of writing (see www.itlos.org)). It is worth noting, however, that some stocks of toothfish are in better shape than others.

3 Information provided by Mr D. Silvestre, *Chargé de mission, Secrétariat Général de la mer, Premier Ministre*. At the time of writing, an appeal procedure was still pending.

4 Fax by the Directorate for Shipping and Maritime Affairs of 16 August 2002 to the author. Temporary certificates can be issued under Art. 20 of the 1993 Decree, note below. Arts. 9(g), 10 and 23(e) would allow the striking of registration or withdrawal of certificates under circumstances relevant to the situation of the *Eternal*.

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Panama under the name *Camouco*.[5] Panama then instituted a prompt-release procedure against France before the International Tribunal for the Law of the Sea (ITLOS).[6] In January 2002, the vessel was again sighted well within the CCAMLR Convention Area[7] by an Australian government vessel. Whereas it first alleged to be the *Kambott*, flying the Mauritanian flag, it later proved to be the *Arvisa 1*, flagged by Uruguay.[8] During the time that Uruguayan authorities were investigating the matter, the vessel reflagged to the Netherlands Antilles. Something that is also worth noting is the French-Spanish informal co-operation in addressing the problem of IUU fishing in the Southern Ocean. After indications that the level of involvement therein by Spanish natural and legal persons was considerable, France approached Spain for such co-operation. The arrest of the *Eternal* may turn out to be a test case for Spain in applying its recently adopted legislation that seeks to combat the involvement of Spanish natural and legal persons in IUU fishing worldwide.[9]

The incident with the *Eternal* warrants a closer look at the shipping registers in the Netherlands Antilles, in particular in view of repeated allegations that the Netherlands Antilles has become a flag of convenience (FOC) for fishing vessels.[10] This article takes a closer look at marine fisheries in the Netherlands Antilles and Aruba in the context of international law. This perspective makes it first of all necessary to clarify the status of the Netherlands Antilles and Aruba under international law. According to the 1954 Statute for the Kingdom of the Netherlands,[11] the Kingdom consists of three "countries": the Netherlands Antilles, Aruba and the Netherlands (in Europe).[12] Where this article refers to "the Netherlands", only the country in Europe is meant. The country

5 Prior to registering with the Netherlands Antilles, the vessel was registered under the name *Arvisa 1* with Uruguay (cf. PR/12/02, note above).

6 See Case No. 5 (www.itlos.org).

7 Convention on the Conservation of Antarctic Marine Living Resources, Canberra, 20 May 1980. In force 7 April 1982, www.ccamlr.org. See Art. I for the Convention Area.

8 Information based on the 2002 *Report* of CCAMLR's Standing Committee on Observation and Inspection (SCOI), at para. 5.2.

9 This concerns Royal Decree 1134/2002, of 31 October 2002. Information kindly provided by Mr F. Curcio, *Consejero* RELEX.

10 See "Pirate Fishing Plundering the Oceans", Greenpeace International (February 2001), available at archive.greenpeace.org/~oceans, where the Netherlands Antilles is listed as No. 10 among the top 10 FOCs. These data are based on 1999 and provided by Lloyd's Maritime Information Service. Data from 2001 show that some newly (2000, 2001) built vessels were then still registered. This suggests that the popularity of the Netherlands Antilles flag has not diminished since 1999. See also FAO Fisheries Circular No. 980 (2002), Table 35, p. 60; info at www.itf.org.uk; and Weidner *et al.*, note below, pp. 1065–1066. See also European Parliament Docs. PE 309.162/REV of 11 April 2001, p. 3 and 2000/2303(INI) of 20 November 2001, p. 9. At the Conference on IUU Fishing held in Santiago de Compostela, Spain, 25–26 November 2002, the FOC status of the Netherlands Antilles was referred to both implicitly and explicitly. See, for instance, the reference to "territories" in the Conclusions of the Conference (EU Council Doc. 14590/1/02 REV 1 of 27 November 2002).

11 *Statuut voor het Koninkrijk der Nederlanden* of 28 October 1954; (1954) *Staatsblad* 503.

12 See *inter alia* Art. 6(1) of the 1954 Statute, note above.

Netherlands Antilles consists of five islands (and their dependencies): Bonaire, Curaçao, Saba, Sint Eustatius and the Netherlands part of Sint Maarten.

Article 3(1) of the 1954 Statute contains an exhaustive list of so-called "matters of the Kingdom", for which the Kingdom has competence instead of the individual countries. Matters not listed must be presumed to be within the competence of each of the three countries. Subparagraphs (a) and (b) of Article 3(1) list as matters of the Kingdom: "the maintenance of the independence and the defence of the Kingdom" and "the foreign affairs".[13] These and other provisions[14] of the 1954 Statute imply that only the Kingdom of the Netherlands has international legal personality and is capable of concluding treaties with other states or become a member of an intergovernmental organisation. This does not mean, however, that when the Kingdom becomes a party to a treaty or a member of an intergovernmental organisation, it always does so on behalf of all three countries. Where treaties do not by their nature apply to the entire territory of a subject of international law[15] and do not explicitly deal with their territorial scope, a well-established international practice exists by which a state indicates by signature, ratification or accession whether the treaty applies to its metropolitan territory and/or (one of) its overseas territories.[16] The 1954 Statute is largely consistent with this international practice.

Very relevant for present purposes is the fact that the Kingdom of the Netherlands is among the 15 states that are currently Members of the European Community (EC). By becoming a Member, the Netherlands has agreed with the Common Fisheries Policy (CFP) and has thereby transferred a significant measure of competence in fisheries to the level of the EC. However, the Kingdom of the Netherlands has ensured that the Netherlands Antilles and Aruba are listed among the "overseas countries and territories" (OCTs) pursuant to Article 299(1) and Annex II to the EC Treaty,[17] to which the special arrangements for association set out in Part Four of the EC Treaty apply. This also means that the CFP is not applicable to the Netherlands Antilles or Aruba.[18]

Moreover, whereas the Netherlands is a party to the LOS Convention,[19] the

[13] Translation by the author.
[14] In particular Arts. 24–28.
[15] E.g. the Charter of the United Nations.
[16] Cf. A. Aust, *Modern Treaty Law and Practice* (Cambridge, University Press, 2000), pp. 165–166 and 168. Note that at the time of writing the United Kingdom had ratified the 1995 Fish Stocks Agreement (note below) exclusively on behalf of some of its overseas territories (see info at www.un.org/Depts/los).
[17] Treaty establishing the European Economic Community, Rome, 25 March 1957. In force 1 January 1958, consolidated version available at europe.eu.int/eur-lex. The EC Treaty has, *inter alia*, been amended by the 1986 Single European Act, the 1992 Maastricht Treaty and the 1997 Amsterdam Treaty.
[18] But see note below.
[19] United Nations Convention on the Law of the Sea, Montego Bay, 10 December 1982. In force 16 November 1994, (1982) 21 *International Legal Materials* 1245.

Netherlands Antilles and Aruba are not.[20] This implies that even if the Kingdom of the Netherlands, on behalf of the Netherlands Antilles, would have *wished* to institute a prompt-release procedure against France in relation to the *Eternal*, this would not have been possible due to the fact that the Netherlands Antilles is not a party to the LOS Convention and its vessels not entitled to benefit from the prompt-release procedure. Furthermore, whereas the 1995 Fish Stocks Agreement[21] has been approved by the Kingdom of the Netherlands in its entirety,[22] this still allows the Netherlands Antilles and Aruba not to deposit their own instruments of ratification.[23] The Netherlands will deposit its instrument of ratification jointly with the other EC Member States.[24]

This article first gives some basic information on the maritime zones of the Kingdom of the Netherlands. Then it discusses the main species of commercial interest that are caught in the maritime zones of the Netherlands Antilles and Aruba, the relevant regulatory competence in the Netherlands Antilles and Aruba and the participation in RFMOs (regional fisheries management organisations), on the one hand for the (Kingdom of the) Netherlands in general and on the other specifically by the Kingdom on behalf of the Netherlands Antilles and Aruba. It then ends with some conclusions.

## Netherlands Maritime Zones

Three years after the adoption of the LOS Convention, the Netherlands decided to extend the width of its territorial sea from 3 to 12 nautical miles (nm) from the baselines.[25] The territorial sea of the Netherlands Antilles (and Aruba) was also extended to 12 nautical miles in the same year.[26] Several years before that, in

[20] The Netherlands deposited its instrument of ratification, in relation to the Kingdom in Europe exclusively, on 28 June 1996 ((1996) *Staatsblad* 357; www.un.org/Depts/los).

[21] Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, New York, 4 December 1995. In force 11 December 2001, (1995) *Law of the Sea Bulletin* 29, 25; www.un.org/Depts/los.

[22] Act of 18 October 2001 ((2001) *Staatsblad* 535).

[23] See Explanatory Note to the Act of 18 October 2001 ((2001) *Staatsblad* 535), at p. 21 (Parliamentary Papers Second Chamber 2000 2001, 27892 (R 1693), No. 3). As to the reasons for the Netherlands Antilles, see below **XXX**.

[24] Cf. Council Decision of 8 June 1998 (OJ 1998 No. L189/14). See also note above with respect to the United Kingdom.

[25] Arts. 1 and 2 of the Act on the Limits of the Netherlands Territorial Sea, of 9 January 1985 (*Wet grenzen Nederlandse territoriale zee*; (1985) *Staatsblad* 129). For more information on the Netherlands maritime zones and baselines see H.M. Dotinga and A.H.A. Soons, "The Netherlands and the Law of the Sea" in T. Treves and L. Pineschi (eds.), *The Law of the Sea. The European Union and its Member States* (The Hague/Boston/London, Martinus Nijhoff Publishers, 1997), pp. 365–426.

[26] Art. 1 of the Kingdom Act Extension of the Territorial Sea of the Kingdom in the Netherlands Antilles, of 9 January 1985 (*Rijkswet uitbreiding van de territoriale zee van het Koninkrijk in de Nederlandse Antillen*; (1985) *Staatsblad* 130). The entry into force of this Kingdom Act was effected by the Executive Decree pursuant to Art. 1, Kingdom Act Extension of the Territorial Sea of the Kingdom in the Netherlands Antilles, of 23 October 1985 (*Uitvoeringsbesluit ex*

1977, the Netherlands had already established a 200-nautical mile fishery zone (FZ) in which it claimed exclusive jurisdiction in matters of fisheries.[27] FZs off the Netherlands Antilles and Aruba were only established in 1993.[28] In contrast with the Netherlands FZ, these FZs commence seaward of the outer limit of the territorial sea.

It took until 2000 before the Netherlands established an EEZ.[29] Its original purpose was to allow the exercise of jurisdiction with regard to vessel-source pollution and dumping, but several building plans (e.g. an airport at sea) also played a key role in the end. The sovereign rights and jurisdiction which the Netherlands claims in its EEZ are identical to those listed in Article 56(1) of the LOS Convention. As the establishment of an EEZ has not been accompanied by revocation of the FZ, the two maritime zones exist alongside each other. The national legal framework for fisheries will continue to use only the FZ, if only because the current definitions imply that the spatial area of the FZ encompasses both the territorial sea and the EEZ. From the perspective of international law, however, the Netherlands should be treated as claiming an EEZ because this corresponds to a wider range of sovereign rights and jurisdiction in comparison with an FZ claim.[30] Until now, no EEZs have been established for the Netherlands Antilles and Aruba.[31]

Pursuant to the LOS Convention, states are also entitled to a legal continental shelf without having to formally claim this.[32] In view of the geographical

*cont.*

*artikel 1 Rijkswet uitbreiding van de territoriale zee van het Koninkrijk in de Nederlandse Antillen*; (1985) *Staatsblad* 559). The straight baselines in Arts. 3 and 4 of this Decree come within the scope of Arts. 7, 9 or 10 of the LOS Convention. Aruba was in 1985 not yet a separate country within the Kingdom but formed part of the Netherlands Antilles.

[27] Authorisation Act Establishment Fishery Zone, of 8 June 1977 (*Machtigingswet instelling visserijzone*; (1977) *Staatsblad* 345). The FZ was effectively established on 25 December 1977 (Executive Decree pursuant to Art. 1, Authorisation Act Establishment Fishery Zone, of 23 November 1977 (*Uitvoeringsbesluit ex artikel 1 Machtigingswet instelling visserijzone*; (1977) *Staatsblad* 665)).

[28] Art. 1(1) of the Decree Fishery Zone Netherlands Antilles and Aruba, of 6 July 1993 (*Visserijzonebesluit Nederlandse Antillen en Aruba*; (1993) *Staatsblad* 409). This Decree entered into force on 1 September 1993 and was based on Art. 1 of the 1977 Act (note above).

[29] Art. 1(1) of the Kingdom Act Establishment Exclusive Economic Zone, of 27 May 1999 (*Rijkswet instelling exclusieve economische zone*; (1999) *Staatsblad* 281). The entry into force of this Act, and thereby the effective establishment of the Netherlands EEZ, took place on 28 April 2000 (Decree Limits Netherlands Exclusive Economic Zone, of 13 March 2000 (*Besluit grenzen Nederlandse exclusieve economische zone*; (2000) *Staatsblad* 167)).

[30] Cf. the depiction of the Netherlands in the "Table Containing the Summary of National Claims to Maritime Zones" at www.un.org/Depts/los. The Netherlands is not unique in this respect. For example, Australia has an EEZ but also an Australian Fishery Zone, which it uses in the context of fisheries.

[31] Art. 4 of the 1999 Kingdom Act (note above) allows each of the Kingdom's countries to determine the time of the entry into force of the Kingdom Act.

[32] Cf. Art. 77(3) of the LOS Convention. Note that the sovereign rights of a coastal state in its EEZ comprise the sovereign rights of a coastal state with respect to its continental shelf (cf. Arts. 56(1)(a) and 56(3) of the LOS Convention).

situation, in particular the proximity of other states, none of the countries in the Kingdom of the Netherlands is able to claim an outer legal continental shelf (beyond 200 nautical miles). Enactments establishing a national legal regime for the continental shelf exist in the Netherlands, Aruba and the Netherlands Antilles (Saba).[33] The fact that the enactments of the Netherlands Antilles and Aruba presumably do not relate to sedentary species[34] does not affect their sovereign rights over them. The FZs of the Netherlands Antilles and Aruba would act as an alternative basis for jurisdiction over sedentary species.

The Netherlands has not claimed archipelagic status in relation to the Netherlands Antilles and Aruba. This is consistent with Article 46(b) of the LOS Convention which does not allow for continental archipelagos.[35] A contiguous zone pursuant to Article 33 of the LOS Convention has not been claimed either, although this would in any event have been of little use in the context of fisheries.

Finally, with respect to the Netherlands Antilles and Aruba, there are still several maritime delimitations to be agreed.

## Species

The maritime zones of the Netherlands Antilles and Aruba lie to a small extent within the Atlantic Ocean but mostly within the Caribbean Sea, which has been identified as a Large Marine Ecosystem (LME) due to its semi-enclosed character.[36] The maritime zones of the Windward Group (Saba, the Netherlands part of Sint Maarten and Sint Eustatius) of the Netherlands Antilles are very small due to the proximity of other states. The maritime zones of Aruba and the Leeward Group (Curaçao and Bonaire) of the Netherlands Antilles are much larger. The high level of jurisdictional fragmentation of the Caribbean LME means that many fish stocks are transboundary. Whereas this only reinforces the need for international co-operation, this has so far unfortunately not been very successful.[37] Recent years have seen a significant decline in practically all catches throughout the Caribbean.[38]

Fishing operations in the maritime zones of the Netherlands Antilles and Aruba primarily have an artisanal character.[39] In 1999 Aruba decided not to

[33] See *inter alia* the (Netherlands) Mining Act of 31 October 2002 (*Mijnbouwwet*; (2002) *Staatsblad* 542), which still had to enter into force at the time of writing and replaces several older pieces of legislation.

[34] Sedentary species are included among the natural resources of the continental shelf over which coastal states have sovereign rights.

[35] See the Netherlands declaration upon ratification of the LOS Convention, under IV (text at www.un.org/Depts/los).

[36] See the info at www.edc.uri.edu/lme.

[37] The regulatory impact of the efforts within WECAFC are very limited. See notes and below and accompanying texts.

[38] See info at www.na.nmfs.gov/lme/text/lme12.htm.

[39] Cf. D.M. Weidner, G.E. Laya, W.B. Folsom and J.A. Serrano, "Part B. Caribbean. Section 4. Montserrat to Puerto Rico" in *World Swordfish Fisheries. An Analysis of Swordfish Fisheries, Market Trends and Trade Patterns* (NMFS, NOAA Tech. Memo. NMFS-F/SPO-53, 2001), vol. IV, p. 1053.

stimulate a commercial fishery to conserve the limited fish stocks and protect the artisanal fishery.[40] The Netherlands Antilles has nevertheless shown an interest in developing a longline fishery for large pelagics.[41] As neither the Netherlands Antilles nor Aruba have adequate fishery statistics, this has severely limited fisheries management.[42] Species caught include a large variety of small pelagics but also oceanic pelagics, including various tuna species, billfish species, swordfish rainbow runner and dorado. Catch of demersal species such as snappers and groupers is more common in Aruba. Queen conch and spiny lobster are prized catches as well.

## Regulatory Competence

In the Introduction it was already pointed out that the division of competence between the Kingdom of the Netherlands on the one hand and the three "countries" of the Kingdom on the other hand, is determined by the 1954 Statute.[43] One of the "matters of the Kingdom" listed in Article 3(1) of the 1954 Statute that is relevant for present purposes is subparagraph (e), which reads: "the regulation of the nationality of ships and the establishment of requirements with regard to the safety and the navigation of sea-going ships, that fly the flag of the Kingdom, except for sailing ships".[44] This provision is clearly not free from interpretational ambiguities, but it is safe to conclude that no reference is made here or elsewhere in the 1954 Statute to the management and conservation of (marine) fisheries or the establishment of shipping registers. Practice confirms that these matters are within the exclusive competence of the individual countries.

The Netherlands Antilles and Aruba both regulate fishing in their maritime zones, where a certain measure of preferential treatment is accorded to small-scale or artisanal fishing.[45] As regards Aruba, the competence to regulate fishing lies with the Minister of Economic Affairs from Aruba. With respect to the Netherlands Antilles, the individual islands may choose to regulate fishing in their own territorial sea. The Minister for General Affairs of the Netherlands Antilles has competence to regulate fishing in the FZ of the Netherlands Antilles.

Fishing vessels can be registered in all three countries of the Kingdom. Various

[40] See "Guidelines for the Fishery" (*Beleidslijnen voor de visserij*, Directie LVV&M, afdeling Visserij, 29 October 1999).

[41] Cf. Weidner *et al.*, note above, p. 1084 and the Fisheries Policy Plan of the Island Area Curaçao (*Visserijbeleidsplan Eilandgebied Curaçao*, July 2001, available in Dutch at www.mina.vomil.an), p. 4.

[42] *Ibid.*, p. 1070.

[43] Note above.

[44] Translation by the author.

[45] Art. 2(1) of the 1992 Fisheries Regulation of Aruba (*Visserijverordening*, 25 November 1992; (1992) *Afkondigingsblad van Aruba* 116, 2) and Art. 2(1) of the 1991 Fisheries Regulation of the Netherlands Antilles (*Visserijlandsverordening*, 11 July 1991; (1991) *Publicatieblad van de Nederlandse Antillen* 74). Some of the legislation is available at www.mina.vomil.an (mostly in Dutch).

relevant enactments have been passed for the Netherlands Antilles[46] and for Aruba.[47] Registering a fishing vessel in the Netherlands Antilles is attractive for a number of reasons, including low tax rates, low registration fees and flexible manning requirements.[48] Moreover, as an OCT under Annex II to the EC Treaty, fish exported to the EC is exempt from customs duties.[49] Whether the registration of foreign vessels in the Netherlands Antilles represents a net benefit to the Netherlands Antilles government is a contested issue.[50] Sea-going ships and coastal ships above 20 gross cubic metres are entered into the Netherlands Antilles Register of Shipping or, for vessels that are not "owned" by private individuals or legal entities bearing the nationality of the Netherlands or of one of the EC Member States, into the Netherlands Antilles Bareboat Register.[51] The responsibility for these registers lies with the Directorate for Shipping and Maritime Affairs of the Ministry of Traffic and Transport. At the time of writing, the Netherlands Antilles did not have specific legislation to regulate fishing beyond their maritime zones.[52] Consequently, ships that do not apply for licences to fish in the maritime zones of the Netherlands Antilles do not have to deal with the Ministry of Economic Affairs. In those cases, the registration procedure does not require these ships to meet any conditions relating to fishing.[53] A legislative basis to impose such conditions is nevertheless available and may be used in the aftermath of the *Eternal* incident.[54]

The incident with the *Eternal* made the Netherlands Ministry of Foreign Affairs decide to contact the relevant authorities in the Netherlands Antilles to enquire about the measures that would be taken in relation to the *Eternal* and perhaps also to prevent similar incidents in the future. These enquiries were made in light of the fact that only the Kingdom of the Netherlands is a subject of international law and not its territorial units. The Kingdom can therefore incur state responsibility if the actions of its territorial units violate applicable

[46] *Inter alia* the 1993 Netherlands Antilles Certificate of Registry Decree (*Nederlands-Antilliaans Zeebrievenbesluit*, 5 April 1993; (1993) *Publicatieblad* 79), the Second Book of the Code of Commerce of the Netherlands Antilles; the 1938 Registry of Shipping Decree (*Scheepsregisterbesluit*; (1938) *Publicatieblad* 73), as amended; and the 1994 Bareboat Registry Decree (*Landsbesluit Romphevrachtingsregister*, 21 January 1994; (1994) *Publicatieblad* 24).

[47] The 1933 Curaçao Certificates of Registry Decree (*Curaçaosch Zeebrievenbesluit*, 17 March 1933; (1933) *Publicatieblad* 41) is still applicable to Aruba.

[48] Cf. A.M.P. Eshuis, "Registration of Ships and of Bareboat Charters" in D.E. Cijntje *et al.* (eds.), *Netherlands Antilles Business Law* (The Hague/London/Boston, Kluwer Law International, 1999), pp. 495–518, at pp. 495–496. See also the info on the Netherlands Antilles at www.flagsofconvenience.com.

[49] Cf. Art. 184(1) of the EC Treaty.

[50] See Weidner *et al.*, note above, p. 1066.

[51] Cf. Eshuis, note above, pp. 497 and 510. Arts. 376, 378 and 405 of the Code of Commerce are relevant to the (public) Register of Shipping.

[52] See note below.

[53] *Ibid.*

[54] See Arts. 8(4) and 8(5) of the 1993 Decree, note above.

international law.[55] In the event that ships flying the flag of the Kingdom of the Netherlands, wherever registered in the Kingdom, act inconsistently with international law or the enactments of other states, the Kingdom may be approached and may even incur state responsibility for a failure to exercise effective jurisdiction and control over vessels flying its flag.[56]

It is worth repeating at this point that many treaties, including the LOS Convention and the 1995 Fish Stocks Agreement are not applicable to the Netherlands Antilles. However, basic duties like effective control and jurisdiction over a state's vessels and co-operation on transboundary stocks of marine living resources are part of the body of customary international law that is in any case applicable to the Kingdom. Both the Kingdom of the Netherlands and the Netherlands Antilles therefore have to take appropriate action to rule out the repetition of incidents like that with the *Eternal*. Guidance is offered by a variety of instruments that seek to enhance flag state jurisdiction over fishing vessels, including non-legally binding instruments such as the FAO Code of Conduct and the 2001 International Plan of Action (IPOA) to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated (IUU) Fishing.[57] Paragraph 36 of the IPOA on IUU Fishing, which urges flag states not to flag vessels with a history of non-compliance, would be particularly relevant to the case of the *Eternal*. The IPOA on IUU Fishing contains a wide range of provisions that are just as relevant.[58] Various meetings that were held in the fall of 2002, *inter alia* involving officials from the Netherlands Ministry of Foreign Affairs and the Netherlands Ministry of Agriculture, Nature Conservation and Fisheries, indicate that the first steps in the right direction have already been taken.

The customary duty for states to co-operate in relation to transboundary stocks arises in particular in relation to vessels registered in the Netherlands Antilles that target the highly migratory fish species for which ICCAT (International Commission for the Conservation of Atlantic Tunas) is competent. Some of these species, such as swordfish, also occur in the maritime zones of the Netherlands Antilles. The next section examines this issue somewhat further.

## Participation in RFMOs

### *(Kingdom of) the Netherlands*

Due to the external competence of the EC in fisheries, it is in general not possible

[55] See Art. 4(1) of the draft articles on the Responsibility of States for Internationally Wrongful Acts (adopted by the International Law Commission in 2001; for text and commentaries see www.un.org/law/ilc).

[56] See Art. 94 of the LOS Convention.

[57] Adopted by consensus by FAO's COFI on 2 March 2001 and endorsed by the FAO Council on 23 June 2001 (text available at www.fao.org/fi).

[58] See e.g. paras. 35, 38, 40–41 (which relate to linking the procedure of registering a vessel with the procedure for authorisation to fish) and 44–50 (which relate to the authorisation to fish).

for the Netherlands to participate as a separate member in an RFMO. Since the inception of the CFP, the EC has therefore gradually replaced its Member States in many RFMOs. The circumstance that the Netherlands maritime zones fall within the regulatory area of an RFMO does not affect that general rule. This concerns the NASCO Convention,[59] the NEAFC Convention,[60] and the ICCAT Convention[61]. As tuna or tuna-like species do not occur in the Netherlands maritime zones and Netherlands fishing vessels do not target these species elsewhere or plan to do so in the near future,[62] the Netherlands has never been a party to the ICCAT Convention.

Apart from these three conventions, the EC has also replaced its Member States in various other conventions, none of which the Netherlands was ever a party to.[63] Following the entry into force of the SEAFO Convention,[64] the EC will represent its Member States there. In case pelagic fishing by Netherlands fishing vessels in the maritime zones of Angola continues,[65] EC delegations to SEAFO meetings may have representatives of the Netherlands.

Despite the external competence of the EC, there are various situations in which EC Member States continue their membership of RFMOs. For instance where other states parties to RFMOs are not favourably disposed towards EC membership.[66] Another situation concerns fisheries advisory bodies established under Article VI of the FAO Constitution,[67] such as CECAF[68] and WECAFC[69].

[59] Convention for the Conservation of Salmon in the North Atlantic Ocean, Reykjavik, 2 March 1982. In force 1 October 1983, www.nasco.int. See Art. 1(1).

[60] Convention on Future Multilateral Co-operation in the North-East Atlantic Fisheries, London, 18 November 1980. In force 17 March 1982, OJ 1981 No. L227/22; www.neafc.org. See Art. 1.

[61] International Convention for the Conservation of Atlantic Tunas, Rio de Janeiro, 14 May 1966. In force 21 March 1969, www.iccat.es. See Art. I.

[62] The Netherlands firm Jaczon (info at www.jaczon.nl) has a financial interest in some fishing vessels registered in EC Member States that target tuna in the Indian Ocean. Jaczon is currently examining possibilities of a broader involvement in tuna fishing, in particular in the Indian Ocean. The possibilities of doing so under the Netherlands flag are very limited due to EC law (information provided by P. Koets, Jaczon, 19 November 2002).

[63] The IBSFC (International Baltic Sea Fishery Commission), IOTC (Indian Ocean Tuna Commission) and NAFO (North-west Atlantic Fisheries Organisation).

[64] Convention on the Conservation and Management of the Fishery Resources in the South East Atlantic Ocean, Windhoek, 20 April 2001. Not in force, see www.mfmr.gov.na/seafo/seafo.htm.

[65] Agreement between the European Economic Community and the Government of the People's Republic of Angola on fishing off Angola, 30 April 1987 (OJ 1987 No. L341/2). See also COM(2002)369 final, of 9 July 2002.

[66] E.g. in relation to the IATTC (Inter-American Tropical Tuna Commission). See info at www.iattc.org. The EC Council has adopted a decision allowing Spain to accede to the IATTC Convention pending EC Membership (Council Decision 1999/405/EC of 10 June 1999; OJ 1999 No. L155/37). While Spain has since then applied for membership, at the time of writing not all of the current IATTC members had yet given their approval, as required by Art. V(3) of the IATTC Convention (information provided by B. Hallman, IATTC, 4 November 2002).

[67] Text available at www.fao.org/Legal.

[68] Fishery Committee for the Eastern Central Atlantic. Instituted by FAO Council Resolution 1/48 (June 1967).

[69] Western Central Atlantic Fishery Commission. Established by FAO Council Resolution 4/61 (November 1973).

The Kingdom of the Netherlands is party to both bodies alongside the EC, although with respect to CECAF only on behalf of the Netherlands and with respect to WECAFC only on behalf of the Netherlands Antilles.[70]

At the moment of writing, both CECAF and WECAFC were still in the process of reforming towards bodies with management functions.[71] Until this has been achieved, the EC is not really concerned by the participation of EC Member States as independent contracting parties. In recent years this participation has been quite minimal and has hardly infringed upon the exclusive competence of the EC in fisheries. Once CECAF and WECAFC are reformed, however, the EC may reconsider the issue of participation. The situation in the GFCM[72] nevertheless illustrates that the EC does not always insist on replacing its Member States. The input of delegations from EC Member States at GFCM meetings tends to be focused on administrative and scientific issues and does not threaten exclusive EC competence.[73]

The Netherlands presumably became a party to CECAF in view of its fishing activities off North-west Africa and was keen to contribute towards improving the scientific basis of the pelagic fisheries in which it participated. However, CECAF did not appear to be a suitable forum for that.

On issues where the EC and its Member States share competence, the Netherlands is permitted to participate in RFMOs. An example is the IWC Convention.[74] The inception of the CFP has not interfered with Netherlands membership as conservation and management of marine mammals is not perceived as an exclusive competence of the EC.[75] The Netherlands' current IWC membership stems from 14 June 1977.[76] The Kingdom of the Netherlands also became a party on behalf of the Netherlands Antilles,[77] and on behalf of

[70] Cf. FAO Doc. WECAFC/IX/99/5$^{E}$, para. 2 of which does not refer to Aruba.

[71] This is part of a broader review of FAO regional fishery bodies, as decided by the FAO Committee of Fisheries (COFI) at its Twenty-Second Session in 1997 (see *FAO Fishery Report* No. 562, para. 31).

[72] General Fisheries Commission for the Mediterranean. See Art. II of the Agreement for the Establishment of the General Fisheries Commission for the Mediterranean (text at www.fao.org/Legal/default.htm), which provides for voting procedures that take account of the situation in which either the EC or its Member States or both have competence.

[73] Information kindly provided by J. Spencer, EC Commission, October 2002.

[74] International Convention for the Regulation of Whaling, Washington DC, 2 December 1946. In force 10 November 1948, 161 UNTS 72; ourworld.compuserve.com/homepages/iwcoffice.

[75] R.R. Churchill, *EEC Fisheries Law* (Dordrecht/Boston/Lancaster, Martinus Nijhoff Publishers, 1987), at p. 189 observes that a 1979 EEC Commission proposal for the EEC to become a party to the IWC Convention and replace EEC Member States did not secure sufficient support. A 1992 EEC Commission proposal based on shared competence has up until now not been decided on.

[76] (1977) *Tractatenblad* 102. The Netherlands first joined on 10 November 1948, left the IWC on 31 December 1956 in protest of the IWC's inability to agree on catch allocations, rejoined on 4 May 1962 and withdrew again on 30 June 1970 in view of the fact that it was no longer directly involved in commercial whaling. Its 1977 membership was motivated by reasons of conservation.

[77] On 16 February 1982 ((1982) *Tractatenblad* 30).

Aruba.[78] Somewhat similar to the IWC Convention is the case of the CCAMLR Convention.[79] Here the EC is a member of the CCAMLR Commission, the convention's main regulatory body, alongside several EC Member States. The Netherlands is not a member of the Commission, but has nevertheless become a party to the CCAMLR Convention.[80] It did so on behalf of the entire Kingdom, including therefore the Netherlands Antilles and Aruba.[81] As an "acceding party", the Kingdom of the Netherlands has always been invited to attend Commission meetings as observer.[82]

*On behalf of the Netherlands Antilles and Aruba*

For the Netherlands the WECAFC is different from CECAF because the regulatory area of WECAFC overlaps with the maritime zones of the Netherlands Antilles and Aruba.[83] Consequently, even if the EC were to insist on replacing its Member States in a reformed WECAFC,[84] the presence of these territories would still allow the Netherlands to remain a party on behalf of the Netherlands Antilles and/or Aruba. This exception to the exclusive external competence of the EC in fisheries is frequently invoked, for instance by the United Kingdom to the ICCAT Convention on behalf of Bermuda.

ICCAT is another RFMO whose regulatory area overlaps with that of the Netherlands Antilles and Aruba. The participation of Bermuda in ICCAT illustrates that the Kingdom of the Netherlands could also become a party to the ICCAT Convention on behalf of the Netherlands Antilles and/or Aruba. The incident with the *Eternal* ensured that the relationship between the Netherlands Antilles and ICCAT came under closer scrutiny. For some years now, ICCAT has been aware of the fact that Netherlands Antilles fishing vessels are engaged in unregulated fishing for ICCAT species. "Unregulated fishing" is referred to in paragraph 3.3.1 of the IPOA on IUU Fishing as fishing activities:

> "in the area of application of a relevant regional fisheries management organization that are conducted by vessels without nationality, or by those flying the flag of a State not party to that organization, or by a fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organization".[85]

The Netherlands Antilles has occasionally participated as an observer in ICCAT

[78] On 1 January 1986 ((1986) *Tractatenblad* 71).
[79] See note above.
[80] The Kingdom acceded on 25 March 1990 ((1990) *Tractatenblad* 73).
[81] *Ibid.*
[82] See Part VI of the Rules of Procedure of the Commission (text at www.ccamlr.org).
[83] Note that Spain and France also participate in WECAFC, even though they have no territories within its regulatory area.
[84] Note that at the 10th Session of WECAFC (2001), the EC and its Member States already issued a declaration on competence (*FAO Fisheries Report* No. 660 (SLAC/R660(Tri)), at para.12).
[85] See also paras. 3.3.2 and 3.4.

meetings[86] and has provided ICCAT with information on relevant fishing activities, upon ICCAT's request.[87] The Netherlands Antilles are concerned that formal participation threatens their legitimate interests as a new entrant in fishing for ICCAT species. As ICCAT traditionally allocated quotas (if necessary) based on historical catch records, new entrants were likely to receive a zero allocation, even for ICCAT species that occur in their maritime zones. Other new entrants from the Caribbean, and also states like Iceland, Namibia, Norway, the Faroe Islands and many others, shared these concerns. The fact that Article 8(3) of the 1995 Fish Stocks Agreement obliges states parties to participate with RFMOs therefore explains at least in part why the Netherlands Antilles hesitates in adhering thereto as well. As the review of ICCAT's allocation process, instigated to accommodate the concerns of new entrants, is now finalised,[88] this removes much of the new entrants' reasons for not joining ICCAT or co-operating with it. The actual implementation of the newly agreed ICCAT allocation criteria and the extent to which they offer fair and equitable allocations to new entrants is nevertheless decisive.

As the *Eternal* incident must have increased pressure on the Netherlands to co-operate more closely with ICCAT, the Kingdom of the Netherlands applied, on behalf of the Netherlands Antilles, for the status of "co-operating non-contracting party" with ICCAT prior to the 2002 Annual ICCAT Meeting, which took place in Bilbao, Spain, from 28 October to 4 November 2002.[89] In doing so, the Netherlands apparently decided not to follow the example of the United Kingdom and France, which became contracting parties on behalf of Bermuda, and Saint Pierre and Miquelon respectively. As the application was made too late,[90] ICCAT could not rule on the issue at the 2002 Meeting. However, co-operating status may not always be required to obtain an allocation or to be exempt from measures against unregulated fishing. ICCAT's inaction with respect to the Netherlands Antilles in recent years illustrates that. Which

[86] E.g. the Second Meeting of the ICCAT Working Group on Allocation Criteria, Madrid, April 2000 (ICCAT Doc. COM/00/19, para. 1.1) and the 12th Special ICCAT Meeting (2000) (ICCAT *Report* 2000–2001, p. 2; text at www.iccat.es).

[87] See ICCAT Resolutions 98-18 and 01-17 and ICCAT *Report* 2000–2001, pp. 33 and 247 (texts at www.iccat.es). In 2000 and 2001 (2001 PWG *Report*, para. 7.b.7) and probably also 2002, it was not yet deemed necessary to send the Netherlands a letter of warning. See also Weidner *et al.*, note above, pp. 1065–1066.

[88] The ICCAT Criteria for the Allocation of Fishing Possibilities were adopted in November 2001 (text available at www.iccat.es, under "Management"), but considerable problems remain in implementing them in practice.

[89] Letter of 25 October 2002 by P.P. van Wulfften Palthe, Netherlands Ministry of Foreign Affairs, to the Executive Secretary of ICCAT. See also the Statement by E. Cova, Vice Prime Minister of the Netherlands Antilles, of 4 November 2002 made at the 2002 Annual ICCAT Meeting. See ICCAT Resolutions 94-6 and 01-17: "A Co-operating Non-Contracting Party, Entity or Fishing Entity is in principle entitled to an allocation" (see para. 1 of the ICCAT Allocation Criteria, note above).

[90] Para. 2 of ICCAT Resolution 01-17 stipulates that this shall be done 90 days in advance.

allocation would be available to the Netherlands Antilles, if any, would first of all depend on the type of species. In relation to species that are already fully allocated, for example swordfish, the considerable foreign interest in the distant water fleet of the Netherlands Antilles means that the offered allocation will probably be very small. This is due to the fact that the states co-operating within ICCAT, including the EC for that matter, do not want to take any action that effectively supports large-scale reflagging to states with no history in fishing for ICCAT species.

Worth noting also is that since September 2001, the CARICOM (Caribbean Community) Regional Fisheries Mechanism (CRFM) has been initiated.[91] Whether the work of the Caribbean Fisheries Forum, the "main technical and decision making" body of the CRFM, will also encompass such key management activities as the establishment of measures to avoid over-exploitation (e.g. TACs or other fishing effort limitations), is not yet clear. Aruba and Netherlands Antilles, the latter of which currently has the status of observer to CARICOM,[92] would be allowed to become an associate member of the CRFM.[93] In this context, mention should also be made of an initiative by CARICOM countries on the expansion of their domestic fisheries for large pelagic species.[94] The participants at the first workshop in June 2002 recognised the need for a stronger involvement in ICCAT with respect to those pelagics that are already fully managed by ICCAT. For species that are not within ICCAT's competence (e.g. dolphinfish) or species with respect to which ICCAT has not yet fully exercised its competence (e.g. large coastal pelagics such as wahoo, blackfin tuna and mackerel), the participants seemed to have a preference for developing a regional arrangement within the context of the CRFM, but in close co-operation or consultation with ICCAT.[95] The further phases in this initiative are expected to take place in the first half of 2003.[96]

An interesting question is whether the Netherlands could also become a party on behalf of the Netherlands Antilles and/or Aruba to RFMOs whose regulatory areas do not overlap or border with the maritime zones of the Netherlands Antilles and Aruba. This question is less academic than it at first appears. Denmark is a party to the NAFO Convention[97] on behalf of both Greenland and the Faroe Islands, even though the latter's maritime zones lie beyond the NAFO

[91] Text at www.caricom-fisheries.com.
[92] Info at www.caricom.org.
[93] See the CRFM text at "Membership".
[94] See "Preparation for Expansion of Domestic Fisheries for Large Pelagic Species by CARICOM Countries" (FAO TCP Project RLA/0070), *Report of the First Workshop*.
[95] See the *Report*, note above, at pp. 4, 14–15.
[96] Information provided by Mr A. Gumy, FAO, on 18 November 2002.
[97] Convention on Future Multilateral Co-operation in the North-west Atlantic Fisheries, Ottawa, 24 October 1978. In force 1 January 1979, www.nafo.ca.

Convention Area.[98] The circumstance that the Netherlands Antilles and Aruba have not, like the Faroe Islands, been historically engaged in fishing in the NAFO Convention Area would certainly have consequences for (the extent of) entitlements to fishing opportunities, but may not be a valid argument to bar participation as such. However, the status of the Faroe Islands within Denmark is different from the status of the Netherlands Antilles and Aruba in the Netherlands, which is *inter alia* illustrated by the difference in their status under the EC Treaty.[99] That is not to say that this distinction is decisive.

In the regulatory area of the IATTC (Inter-American Tropical Tuna Commission), several Netherlands Antilles purse seiners were operating some years ago. Currently, however, the *Faro Villano* may be the only Netherlands Antilles flagged fishing vessel present in the IATTC regulatory area. Whether its fishing activity amounts to unregulated fishing depends on the type of fishing. This still has to be determined as the vessels had only recently arrived at the time of writing. If it operates as a so-called "baitboat", this would not be the case, but it *would* when it is purse seining or "tendering" (assisting other vessels in fishing on fish aggregating devices).[100]

In the regulatory area of the IOTC (Indian Ocean Tuna Commission), Netherlands Antilles fishing activity was quite substantial a number of years ago. Currently, however, it seems to have a couple of purse seiners and a number of "supply" vessels that are involved in fishing for tropical tuna. The status of the Indian Ocean tropical tuna stocks is not yet deemed to require stringent fishing effort control, for instance by means of a TAC, national quotas or fleet capacity.[101] Consequently, the fishing activity by Netherlands Antilles does not automatically amount to unregulated fishing as defined in the IPOA on IUU Fishing, even though the Netherlands Antilles has not formalised its co-operation with the IOTC.[102] In 2001 the Netherlands Antilles complied with IOTC reporting obligations, which meant that their fishing activity did not qualify as unregulated fishing.[103]

As the *Eternal* was arrested in the maritime zones of Kerguelen, which lies entirely within the CCAMLR Convention Area, and was also sighted fishing

[98] As Denmark (on behalf of the Faroe Islands) was identified as a non-contracting party to the CCAMLR Convention with an interest in fishing or trade in Patagonian toothfish, it was invited to attend the 18th Meeting of CCAMLR in 1999 (see Doc. CCAMLR-XVIII, paras. 1.5, 2.10 and 16.2). Denmark did not attend the subsequent (19th) meeting, presumably because it was no longer engaged in relevant fishing or trade and/or no longer had an interest in becoming involved in the CCAMLR Convention.

[99] Art. 299(6)(a) of the EC Treaty stipulates that the EC Treaty does not apply to the Faroe Islands.

[100] Information provided by Mr B. Hallman, IATTC, on 23 October 2002.

[101] See IOTC Resolutions 99/01 and 01/04 by which fishing effort limitations are envisaged.

[102] See IOTC Resolutions 98/05, 00/01, 01/03 and 01/04 which relate (in part) to non-contracting parties.

[103] Information obtained from Mr A. Anganuzzi, IOTC, on 24 October 2002 and Mr D. Ardill, IOTC, on 20 November 2002.

elsewhere in the CCAMLR Convention Area some months prior thereto, the matter was discussed during the annual meeting of the CCAMLR Standing Committee on Observation and Inspection (SCOI) in 2002.[104] Eventually the CCAMLR Executive Secretary was instructed to contact the Kingdom of the Netherlands to draw its attention to its obligations as a contracting party to the CCAMLR Convention.[105] As the Netherlands applied for contracting party status for the entire Kingdom, including therefore the Netherlands Antilles and Aruba,[106] the obligations accepted within CCAMLR also apply to vessels flying the flag of the Netherlands Antilles. Whether all these obligations in fact apply to the specific case of the arrest of the *Eternal* in the maritime zones of Kerguelen is not so evident, however.[107] This does not affect the basic conclusion that the registration of the *Eternal* and the lack of effective control and jurisdiction exercised over it may not be consistent with international commitments and legally binding obligations undertaken by or applicable to the Kingdom of the Netherlands.

## Conclusions

The arrest of the Netherlands Antilles fishing vessel *Eternal* in the maritime zones of Kerguelen in the Southern Ocean will probably have consequences that extend far beyond that of a simple case of illegal fishing. It is even likely that those consequences remain not just confined to the Netherlands Antilles or Aruba, but also have an impact for other overseas countries and territories (OCTs) of EC Member States.

On the one hand the arrest of the *Eternal* relates to a flag state's responsibilities and ability to exercise effective jurisdiction and control over fishing vessels flying its flag. On the other hand it also illustrates the dilemmas inherent in a state's legitimate interest in a fair and equitable share of the world's marine living resources, both in the EEZ and on the high seas, the customary duty to co-operate with other states in relation to transboundary and discrete high seas stocks, and the question whether from an economic perspective it makes more sense to develop your own fishing industry or let foreigners with much more expertise do it for you. It is also evident that unregulated fishing poses a threat to the sustainability of many of the world's marine fisheries and the work of many RFMOs (regional fisheries management organisations). The adoption of the 2001 IPOA on IUU Fishing underscores this concern.

As an OCT under the EC Treaty, the relevant context for the Netherlands

[104] See paras 5.2–5.5 of the 2002 *Report* of SCOI.
[105] Doc. CCAMLR-XXI, para. 8.18. Australia also made diplomatic demarches to the Netherlands and the Netherlands Antilles (cf. para. 5.4 of the 2002 *Report* of SCOI).
[106] See note above and accompanying text.
[107] For instance, Resolution 13/XIX would not be applicable as prior to registering with the Netherlands Antilles, the vessel was registered as *Arvisa 1* with Uruguay (a member of the Commission).

Antilles is also determined by the past and present global involvement in unregulated fishing by operators and beneficial owners of vessels that have the nationality of an EC Member State. In view of the current commitment by the EC to eradicate IUU fishing,[108] it seems inevitable for the credibility of this commitment that a situation such as presently exists in the Netherlands Antilles and that may well exist in other OCTs, has a very high priority. The fact that EC law and the EC's Common Fisheries Policy are not automatically applicable to OCTs cannot be used as an excuse in the face of overarching international (customary) obligations that apply to EC Member States.[109]

With regard to the specific situation of fishing activity relevant to ICCAT by vessels registered in the Netherlands Antilles, the Kingdom of the Netherlands must formalise its co-operation with ICCAT as soon as possible. The states and entities now co-operating in ICCAT should in their turn reserve a fair and equitable allocation of the fishing opportunities for the Netherlands Antilles. The situation with regard to Netherlands Antilles fishing activity in the regulatory areas of RFMOs that do not overlap with or border the maritime zones of the Netherlands Antilles is more complex. Even if international law or EC law would allow the Kingdom of the Netherlands to become a party on behalf of the Netherlands Antilles or Aruba to RFMOs like IATTC and IOTC, there are a number of reasons for not doing this; or at least not for the moment.

A very prominent one is that the Kingdom of the Netherlands will first have to ensure that fishing vessels registered in the Netherlands Antilles or Aruba are subject to the necessary jurisdiction and control. In view of the very serious shortcomings that presently exist in this respect, immediate action is called for, certainly if the Netherlands Antilles wants to continue to fish for ICCAT species. This action relates to a wide range of aspects but should at any rate include some temporary (emergency) measures based on the residual regulatory discretion of the competent authorities, which will eventually be replaced by a suitable legislative framework. These measures and framework should draw on the IPOA on IUU Fishing and a wide range of other relevant international instruments adopted in the 1990s. One of the key objectives should be to end the involvement of vessels flying the flag of the Kingdom of the Netherlands in unregulated fishing as meant in the IPOA on IUU Fishing. Another necessary step that the Netherlands Antilles and/or Aruba must take for its commitment to be credible is to ensure that legally binding international instruments such as the LOS Convention and the 1995 Fish Stocks Agreement will become applicable to them.

Secondly, the allocations of fishing opportunities that may be offered (if

[108] See COM(2002)180 final, of 28 May 2002, "Communication from the Commission, Community action plan for the eradication of illegal, unreported and unregulated fishing" (available at europe.eu.int/eur-lex).

[109] In view of Declaration No. 25 to the 1992 EU Treaty (Maastricht), the EC may also interfere where the position or behaviour of an OCT jeopardises vital EC positions or interests, for instance those on combating IUU fishing.

relevant) may be quite small for essentially the same reasons as mentioned in relation to ICCAT. The ensuing profit may therefore not outweigh the costs of exercising effective flag state control and those related to cooperating with relevant RFMOs. The present deplorable status of marine capture fisheries worldwide and the uncertain prospects for recovery should be taken into account as well. These considerations will compel the Kingdom of the Netherlands and/or the Netherlands Antilles or Aruba to rethink their vessels' involvement in marine capture fisheries. One option could be to (temporarily) prohibit all fishing activity by vessels registered in the Netherlands Antilles and Aruba that is not relatively close to their maritime zones, for instance beyond the Caribbean Sea and the Atlantic Ocean.

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