



SIXTH REGULAR SESSION
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**INDEPENDENT STATE OF PAPUA NEW GUINEA STATEMENT OF
POSITION ON “AREAS UNDER NATIONAL JURISDICTION” IN THE
WCPFC**

**WCPFC6-2009/DP32
8 December 2009**

Submitted by Papua New Guinea

Mr Chairman, Our Pacific Leaders in establishing the MHLC process to manage the region’s tuna stocks, especially in the high seas clearly had no intention to undermine our sovereignty and sovereign rights. Nor was there any intention to undermine our in-zone management measures and regional compliance mechanisms, such as our FFA MTCs (the Harmonised Minimum Terms and Conditions of Access by Foreign Fishing Vessels into our Zones).

It is our understanding that the mandate of the Commission does not include areas under sovereignty – this has been the long-standing position of PNG evidenced in our statements to MHLC, PrepCon and now in the WCPFC, especially in relation to our archipelagic waters – and this is how we have always approached our work in this Commission and note other Parties shared this view during the process. It continues to be PNG’s firm belief that the Convention recognises this position.

Mr Chairman, the Convention is to be read in a manner consistent with the founding instruments, the Law of the Sea Convention and the UN Fish Stocks Agreement. This intention is clearly articulated in Article 4 that

“Nothing in this Convention shall prejudice the rights, jurisdiction and duties of States under the 1982 Convention and the Agreement. This Convention shall be interpreted and applied in the context of and in a manner consistent with the 1982 Convention and the Agreement”.

Evidently, the Law of the Sea Convention provides the first point of reference for the conservation and management of highly migratory species. The relevant articles are found in the Parts dealing with the EEZ and the high seas. In particular, Article 64 provides that the coastal State and States whose nationals fish for highly migratory species are required to “cooperate with a view to ensuring conservation and promoting optimum utilisation of such species throughout the region, both within and beyond the exclusive economic zone.” Where no appropriate international organisation exists, these States are to cooperate to establish one and participate in its work.

This provision is the foundation for the establishment of this Commission, and emphasises specifically a duty to cooperate on the conservation of highly migratory species in the EEZ and high seas. Clearly, Article 64 only refers to the EEZ but not to other areas under national jurisdiction – the archipelagic waters, territorial seas and internal waters.

Moreover, the Law of the Sea Convention does not impose any obligations in terms of management or cooperation in respect of fisheries resources in the areas under sovereignty.

In addition, Article 3(1) of the WCPF Convention sets out the Convention Area as follows:

Subject to article 4, the area of competence of the Commission (hereinafter referred to as “the Convention Area”) comprises all waters of the Pacific Ocean bounded to the south and to the east by the following line....

It is clearly intended that the area of competence of the Commission is to be read subject to Article 4 that nothing prejudices the rights, jurisdiction and duties of States under the Law of the Sea Convention and the Fish Stocks Agreement.

Further, Article 10 of the Convention provides at the outset that the functions of the Commission are “without prejudice to the sovereign rights of coastal States for the purpose of exploring and exploiting, conserving and managing highly migratory fish stock within the areas under national jurisdiction”.

Therefore, the functions of the Commission do not prejudice our sovereign rights in our EEZ. It is in the exercise of our sovereign rights that we come to the table to agree to certain decisions that may be applied to our EEZs and it is our position that no decision will apply to our EEZs and areas under sovereignty unless we specifically agree on a case by case basis. In addition, it is important to note that the functions of the Commission spelt out in Article 10 clearly do not refer to areas under sovereignty.

Given our long-standing position on this matter, we remind this Commission that nothing in the Convention, no Conservation and Management Measures nor Resolutions, decisions, or work of the Commission undermine our sovereignty or sovereign rights, and that any variation on this position is at our discretion from time to time. This is reflective of our desire to cooperate as members of this Commission and not our surrender of sovereignty or sovereign rights.

PNG’s position as set out in this statement is consistent with previous legal opinions and various statements of many Parties since the inception of the MHLC process.

In addition, Mr Chairman, PNG wishes to record its deep disappointment with the manner in which the record of proceedings of the WCPFC5 was handled. In particular, we still consider paragraph 174 in the WCPFC5 Summary Record is inconsistent with the advice from the Commission’s Legal Advisor.

Mr Chairman, in conclusion, this is PNG’s position on the matter and it is not open to debate. PNG insists that this statement be attached to the WCPFC6 Summary Record.