Commencement: 12 July 1993

CHAPTER 225

NIUE TREATY ON COOPERATION IN FISHERIES SURVEILLANCE AND LAW ENFORCEMENT IN THE SOUTH PACIFIC REGION (RATIFICATION)

Act 10 of 1993

ARRANGEMENT OF SECTIONS

1. Ratification

SCHEDULE

NIUE TREATY ON COOPERATION IN FISHERIES SURVEILLANCE AND LAW ENFORCEMENT IN THE SOUTH PACIFIC REGION (RATIFICATION)

An Act to provide for the ratification of the Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region signed on the 9th day of July, 1992.

1. Ratification

(1) The Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region signed in Niue on the 9th day of July, 1992 which is set out in the Schedule hereto is hereby ratified.

(2) The Treaty referred to in subsection (1) shall be binding on the Republic of Vanuatu in accordance with the terms thereof.

SCHEDULE

NIUE TREATY ON COOPERATION IN FISHERIES SURVEILLANCE AND LAW ENFORCEMENT IN THE SOUTH PACIFIC REGION

The Parties to this Treaty:

GIVEN that in accordance with international law as expressed in the United Nations Convention on the Law of the Sea, coastal States have sovereign rights for the purposes of exploring and exploiting, conserving and managing the fisheries resources of their exclusive economic zones and fisheries zones;

TAKING INTO ACCOUNT Article 73 of the United Nations Convention on the Law of the Sea;

NOTING that the Parties to the South Pacific Forum Fisheries Agency Convention, 1979 have agreed under Article 5 of that Convention that the Forum Fisheries Committee shall promote intra-regional coordination and cooperation in fisheries surveillance and law enforcement;

CONSIDERING the vast areas of ocean covered by the exclusive economic zones and fisheries zones of coastal States in the South Pacific region and the vital economic significance of such zones to the economic development of South Pacific coastal States;

WISHING THEREFORE to enhance their ability to enforce effectively their fisheries laws, and deter breaches of such laws;

HAVE AGREED AS FOLLOWS:

ARTICLE I – DEFINITIONS

In this Treaty:

(a) 'fishing' means

(i) searching for, catching, taking or harvesting fish;

(ii) attempting to search for, catch, take or harvest fish;

(iii) engaging in any other activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fish;

(iv) placing, searching for or recovering fish aggregating devices or associated electronic equipment such as radio beacons;

(v) any operations at sea directly in support of, or in preparation for any activity described in this paragraph;

(vi) use of any craft, air or sea borne, for any activity described in this paragraph except for emergencies involving the health and safety of the crew or the safety of a vessel;

(vi) the processing, carrying or transhipping of fish that have been taken.

(b) 'fishing vessel' means any boat, ship or other craft which is used for, equipped to be used for, or of a type normally used for fishing;

(c) 'foreign fishing agreement' means an agreement or arrangement authorizing or permitting foreign fishing vessels to fish in the exclusive economic zone or fisheries zone of any Party;

(d) 'foreign fishing vessel' in relation to a Party means a fishing vessel which is not part of the domestic fleet of that Party;

(e) 'South Pacific Forum Fisheries Agency' means the Agency of that name established by the South Pacific Forum Fisheries Agency Convention, 1979; and

(f) "Subsidiary Agreement' means an agreement or an arrangement entered into by any two or more Parties in accordance with this Treaty.

ARTICLE II – RELATIONSHIP WITH OTHER TREATIES

1. Rights and obligations under this Treaty shall apply as between the Parties in addition to any right or obligation concerning a similar matter applicable to a Party under any other Treaty.

2. A Subsidiary Agreement may expand upon rights and obligations under this Treaty in their application between the Parties to the Subsidiary Agreement.

ARTICLE III – GENERAL COOPERATION

1. The Parties shall cooperate in the enforcement of their fisheries laws and regulations in accordance with this Treaty and may agree on forms of assistance for that purpose.

2. The Parties shall cooperate to develop regionally-agreed procedures for the conduct of fisheries surveillance and law enforcement. Where appropriate, fisheries surveillance and law enforcement will be conducted in accordance with such regionally agreed procedures.

ARTICLE IV – COOPERATION IN THE IMPLEMENTATION OF HARMONIZED MINIMUM TERMS AND CONDITIONS OF FISHERIES ACCESS

1. The Parties shall cooperate in the implementation of harmonized minimum terms and conditions of fisheries access as may be agreed upon from time to time.

2. The Parties shall ensure that no foreign fishing vessel shall be licensed for fishing unless the vessel has good standing on the Regional Register of Foreign Fishing Vessels maintained by the South Pacific Forum Fisheries Agency.

3. The Parties shall ensure that foreign fishing vessels licensed to fish under foreign fishing agreements are, as a minimum, required to provide reports in accordance with the standard forms of reporting as set out in the harmonized minimum terms and conditions of fisheries access from time to time.

4. The Parties shall ensure that fishing vessels licensed to fish under foreign fishing agreements are required to be readily identifiable from the sea and the air by way of distinctive markings.

5. The Parties shall, as far as possible, ensure that foreign fishing agreements with flag States require the flag State to take responsibility for the compliance by its flag vessels with the terms of any such agreement and applicable laws.

6. The Parties shall, as far as possible, ensure that foreign fishing arrangements with foreign parties, including Fishing Associations, require the foreign party to take responsibility for the compliance by its vessels with the terms of any such arrangement and applicable laws.

ARTICLE V – EXCHANGE OF INFORMATION

1. Each Party shall, to the extent permitted by its national laws and regulations, provide to the South Pacific Forum Fisheries Agency, or to any other Party directly, information relevant to the purposes of this Treaty, including but not limited to information about:

(a) the location and movements of foreign fishing vessels;

(b) foreign fishing vessel licensing; and

(c) fisheries surveillance and law enforcement activities.

2. The Parties shall develop standard forms and procedures for reporting information provided under paragraph 1 of this Article and effective methods for communicating such information.

ARTICLE VI – COOPERATION IN FISHERIES SURVEILLANCE AND LAW ENFORCEMENT

1. A Party may, by way of provisions in a Subsidiary Agreement or otherwise, permit another Party to extend its fisheries surveillance and law enforcement activities to the territorial sea and archipelagic waters of that Party. In such circumstances, the conditions and method of stopping, inspecting, detaining, directing to port and seizing vessels shall be governed by the national laws and regulations applicable in the State in whose territorial sea or archipelagic waters the fisheries surveillance or law enforcement activity was carried out.

2. Vessels seized by another Party pursuant to an agreement under paragraph 1 of this Article in the territorial sea or archipelagic waters of a Party shall, together with the persons on board, be handed over as soon as possible to the authorities of that Party.

3. Any two or more Parties may enter into a Subsidiary Agreement under which they would cooperate in the provision of personnel and the use of vessels, aircraft or other items of equipment for fisheries surveillance and law enforcement purposes. Vessels and aircraft shall be identified as set out in Annex 1.

4. Any Party wishing to authorize its officers to perform fisheries surveillance and law enforcement functions on its behalf while on board a vessel or aircraft of another Party shall by instrument in writing designate the officers accordingly and such officers shall be identified as set out in Annex 2.

5. Any Party wishing to authorize the officers of another Party to perform fisheries surveillance and law enforcement functions on its behalf while on board a vessel of that other Party shall by instrument in writing designate such officers accordingly. Officers carrying out enforcement functions shall be identified by a card in the form set out in Annex 2 with such variations as may be agreed to in a Subsidiary Agreement or otherwise.

ARTICLE VII – COOPERATION IN PROSECUTIONS

1. The Parties may, by way of provisions in a Subsidiary Agreement or otherwise, agree on procedures for the extradition to a Party of persons charged with offences against the fisheries laws of that Party.

2. A Party may request another Party which is holding a person or any equipment (including a vessel) in custody for an offence against the laws of the holding Party to assist the requesting Party to enforce its fisheries laws in respect of that person or equipment. The holding Party shall provide such assistance upon completion of its legal processes and to the extent permitted by its national laws and regulations. Such assistance shall be provided on conditions as to cost recovery or other matters as the Parties agree in each case.

3. The Parties may agree on procedures whereby persons permitted to appear as advocates or expert witnesses in the courts of one Party are, for the purposes of judicial proceedings involving offences against fisheries laws, entitled to perform the same or substantially similar functions in the court of another Party.

4. Where there are waters over which more than one Party claims to have jurisdiction for the purposes of the application of fisheries laws, the Parties concerned shall for the purposes of the application of this Agreement seek to adopt the provisional lines used for the distribution of revenue received under the Treaty on Fisheries between the Governments of certain Pacific Island States and the Government of the United States of America done at Port Moresby on 2 April 1987.

ARTICLE VIII – COOPERATION IN ENFORCEMENT OF PENALTIES

Should two or more Parties wish to provide that a penalty imposed by one party under its fisheries laws be enforced by another Party, they may, by way of provisions in a Subsidiary Agreement or otherwise, agree on procedures for that purpose consistent with their national laws.

PART IX – CONSULTATIONS

The Director of the South Pacific Forum Fisheries Agency, at the request of any three or more Parties, shall convene a meeting to discuss any matter arising out of the application of this Treaty. The meeting shall be held at such time and place as the Parties may agree, but shall be held not more than 90 days after the request is notified to the Director.

ARTICLE X – NOTIFICATION

1. Each Party shall notify the Director of the South Pacific Forum Fisheries Agency of the current postal, cable, telex and facsimile addresses which it wishes to be used for the receipt of notices given pursuant to this Treaty, and of any changes to a notified address. The Director of the South Pacific Forum Fisheries Agency shall inform all Parties of the notified addresses.

2. Any notice given under this Treaty shall be in writing and may be served by hand, post, cable, telex or facsimile to the notified address.

ARTICLE XI – DEPOSITARY

The depositary for this Treaty shall be the Government of Niue.

ARTICLE XII – AMENDMENTS

1. Any Party may propose to the depositary an amendment to this Treaty, which shall be considered by the Parties at a meeting arranged in accordance with Article IX.
2. The text of any amendments shall be adopted by unanimous decision of the Parties to the Treaty.
3. Any amendment to this Treaty which is adopted by the Parties shall enter into force upon the receipt by the depositary of the instruments of ratification, acceptance or approval by all of the Parties, or on such later date as may be specified in the amendment.
4. The depositary shall notify all of the Parties of the entry into force of an amendment.

ARTICLE XIII – FINAL CLAUSES

1. This Treaty shall be open for signature by:
   (a) any member of the South Pacific Forum Fisheries Agency;
   (b) any Territory of a Member of the South Pacific Forum Fisheries Agency which has been authorized to sign the Treaty and to assume rights and obligations under it by the Government of the State which is internationally responsible for it.
2. This Treaty is subject to ratification by members of the South Pacific Forum Fisheries Agency and the Territories referred to in paragraph 1 of this Article. The instruments of ratification shall be deposited with the depositary.
3. This Treaty shall enter into force on the date of deposit of the fourth instrument of ratification.
4. This Treaty shall remain open for accession by the members of the South Pacific Forum Fisheries Agency and the Territories referred to in paragraph 1 of this Article. The instruments of accession shall be deposited with the depositary.
5. If all of the Parties agree, a State which is not a Party to the South Pacific Forum Fisheries Agency Convention may accede to this Treaty.
6. For any member of the South Pacific Forum Fisheries Agency or a State or Territory which ratifies or accedes to the Treaty after the date of deposit of the fourth instrument of ratification, the Treaty shall enter into force on the date of deposit of its instrument of ratification or accession.

ARTICLE XIV - CERTIFICATION AND REGISTRATION

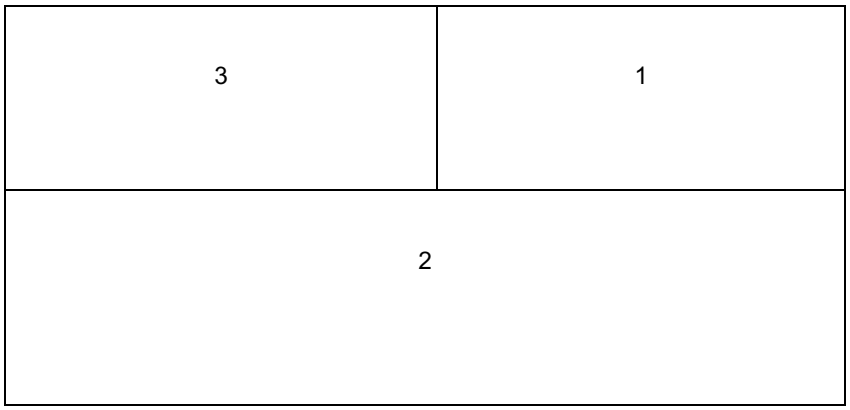
1. The original of the Treaty shall be deposited with the depositary, which shall transmit certified copies to all States and Territories eligible to become party to this Treaty.
2. The depositary shall register this Treaty in accordance with Article 102 of the Charter of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed this Treaty.

OPENED FOR SIGNATURE at Honiara, Solomon Islands on the ninth day of July, One thousand nine hundred and ninety two.

ANNEX 1
FISHERIES SURVEILLANCE AND LAW ENFORCEMENT FLAG AND MARKINGS

Regional Fisheries Surveillance and Law Enforcement Flag:



1. light blue
2. dark blue
3. red and yellow

The Regional Fisheries Surveillance and Law Enforcement Flag is authorized for use by vessels during fisheries surveillance patrols. It should be flown at the same times as the national or ensign flag with the national or ensign flag superior.

Aircraft Markings:
Aircraft shall be clearly marked and identifiable in a manner agreed between the Parties to subsidiary agreements.

ANNEX 2
IDENTIFICATION CARD

CREST

TREATY ON COOPERATION IN FISHERIES SURVEILLANCE AND LAW ENFORCEMENT IN THE SOUTH PACIFIC REGION.

THE HOLDER OF THIS CARD IS AUTHORISED TO ENFORCE THE FISHERIES LAWS OF THE COUNTRIES LISTED BELOW WHILE ON BOARD THIS CRAFT.

NAME OF HOLDER: _____

SIGNATURE: _____

ISSUED BY: [name of issuing officer]
_____

SIGNATURE: _____

DATE: _____

THIS AUTHORISATION IS VALID UNTIL:
_____

Photograph