



**EMBASSY OF THE PLURINATIONAL STATE OF BOLIVIA**  
The Hague – The Netherlands

**INTERNATIONAL COURT OF JUSTICE**

**STATEMENT OF**

**THE PLURINATIONAL STATE OF BOLIVIA**

**CONCERNING**

**THE REQUEST OF AN ADVISORY OPINION No. 135929 DATED 3 MAY 2010  
FROM THE INTERNATIONAL COURT OF JUSTICE,**

**ON THE JUDGMENT No. 2867 OF**

**THE ADMINISTRATIVE TRIBUNAL OF THE  
INTERNATIONAL LABOUR ORGANIZATION**

**UPON A COMPLAINT FILED AGAINST**

**THE INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT**



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**WRITTEN STATEMENT OF THE PLURINATIONAL STATE OF BOLIVIA  
CONCERNING THE REQUEST OF AN ADVISORY OPINION No. 135929 DATED 3  
MAY 2010 FROM THE INTERNATIONAL COURT OF JUSTICE, ON THE  
JUDGMENT No. 2867 OF THE ADMINISTRATIVE TRIBUNAL OF THE  
INTERNATIONAL LABOUR ORGANIZATION UPON A COMPLAINT FILED  
AGAINST THE INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT**

In reference to article 66, paragraph 4 of the Statute of the International Court of Justice, the Government of the Plurinational State of Bolivia, has the honor to forward the following criteria, with reference to the Request for Advisory Opinion No. 135929, 3 of May 2010, on the judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a complaint filed against the International Fund for Agricultural Development.

The above mentioned judgment No. 2867, established in general terms that the Global Mechanism (GM) dependent on the United Nations Convention to Combat Desertification (UNCCD) and the International Fund for Agricultural Development (IFAD), even as separate legal entities, would share administrative competences, aspect which presents a conflict on the roles that both entities perform. According to the Memorandum of Understanding dated 16 November 2010 held between IFAD and the GM, both entities would have administrative units that would work together, including the budget of the GM, in part allocated to serve administrative services to IFAD. In other words there would be a close collaboration between the two international organizations. The Memorandum of



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Understanding did not clearly defined which would be the labor and administrative parameters of each international agency. It could be also deduced from the Memorandum of Understanding that the Global Mechanism acknowledges the administrative dependence and custody of the IFAD.

In this context, it is mentioned that on July 8, 2008, Ms. A.T.S.G., former staff member of the GM, filed a lawsuit against the IFAD at the Administrative Tribunal of the International Labour Organization (ILOAT). ILOAT judgment No. 2867, issued on 3 February 2010, ruled in favour of Mrs. A.T.S.G. and ordered IFAD to pay an indemnity to IFAD of \$US 450,000 (four hundred fifty thousand dollars 00/100). Likewise, that judgment indicates that the ILOAT, decided that [...] "the members of the staff of the mechanism are members of the staff of the Fund and that the decision not to renew the contract of Ms. A.T.S.G. was made without due authorization from the Fund." It should be clearly established that the GM in relation with IFAD, would form part of a modality of partnership called a "host agency", i.e. a form of association, by which an organism by need of infrastructure, funding or institutional support houses another. However, administrative competencies weren't clearly identified in both International organizations; the hosted Agency (GM) as well as the hosts (IFAD); including separate rules for both international agencies. In addition, it should have been known exactly if the GM was subject to the jurisdiction of the ILOAT, or if that tribunal is fitting up both international agencies as if they were one. This could constitute an element to be considered.



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If there were differentiated competences between both agencies, even if there still exist the modality of "host", it could be even established the exercise of improper functions, if the members of the Board from both international organizations exercised interchangeably functions in one or another organization. Nevertheless, it must be reiterated that with regard to the competences of both agencies, they were not be adequately defined. That is why it can be established that there would be a subsumption of competences, since the functions of the staff of both institutions are not clearly identified with regard to dependency between the two international organizations, situation that shows the lack or inaccuracy in the division of administrative competences between both international organizations, not having separate regulations. However, the Memorandum of Understanding, which sets the status of "host," would not determine the union of these entities; on the contrary, it would be only to support the functions of the Global Mechanism by the IFAD.

In this regard, it could be deduced that the ILOAT, could have noted difficulties in identifying the legal character of the demanded international body. From the endpoints referrals it could be established that the reason for the compromise of the parties was generated by the lack of precision in the determination of powers and competences, which should have been designated towards their specific objectives. The objectives should have been enshrined in a document in order to regulate their responsibilities, particularly its jurisdiction and scope of application, and not only about the "host" to



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provide technical or administrative cooperation as determined by the Memorandum of Agreement, mentioned above ut supra.

In short, it should be clearly determined each organism function in order to avoid any confusion about the applicability and jurisdiction of the international procedure. The figure of "host" by IFAD to the GM has brought as consequence, that the ILOAT had judged a demand that would not have existed, since the particular person did not depend on, nor was hired by IFAD, and had a labor relation with the GM international agency that depended on IFAD, and in turn on the UNCCD.

Furthermore, the Plurinational State of Bolivia expresses its concern in respect that beyond any administrative difference arising in an international jurisdictional conflict, labor and social rights of individuals should clearly be protected, providing them assurances and proper legal security and having, identified clearly the employer.

With regard to critical failures that could have committed the ILOAT in its judgment, they should be reviewed in order to establish which is international organization subject to be sued and if it applies the law-sue between the complaint filed by the particular person against the international organization.



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On the framework of the "host", either for reasons of budgetary, administrative, or technical convenience, the same should have been carefully defined and regulated, without losing sight of the utility and the benefits proposed. The international organization that uses this framework should have their own differentiated statutes, budget and staff, in order to avoid legal disputes.

Having taken into account those backgrounds, the Government of the Plurinacional State of Bolivia, expresses its wish that the International Court of Justice with the respective advisory opinion will contribute to clarify the competences of each international agency, so that under the principles of international equity and solidarity, support and collaboration between these organization should be encouraged in the interests of the Members States

Also, regardless the fact that ILOAT could have missed the outlined situations in the procedure applied to decision No. 2867, which motivate the Advisory opinion and this written statement, it should be clearly determined, the right of individuals to identify the international organization that hires them and to have relevant legal certainty.

The Hague, October 2010.