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 SRFC (MCA CONVENTION)
OUTLINE

I INTRODUCTION

II JUSTIFICATION FOR REVISING THE MCA CONVENTION

III PROCESS FOR REVISING THE MCA CONVENTION

IV CONTENT OF THE REVISED MCA CONVENTION

V JUSTIFICATION FOR THE REQUEST TO THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA FOR AN ADVISORY OPINION
I  INTRODUCTION

The Sub-Regional Fisheries Commission (SRFC) is an intergovernmental organization for fisheries cooperation established by the Convention of 29 March 1985 and bringing together seven coastal States in West Africa: Cape Verde, the Gambia, Guinea, Guinea-Bissau, Mauritania, Senegal and Sierra Leone. The organization’s objective is to bring about the long-term harmonization of the Member States’ policies on the preservation, conservation and sustainable exploitation of their fisheries resources and to enhance cooperation for the benefit of the well-being of their respective populations.

The area covered by the SRFC Member States measures 1.6 million sq. km. and the coastal fronts extend over nearly 3,500 km. The States have an aggregate population of close to 37 million (70% of which lives near the coast), with annual per capita consumption of fisheries products not exceeding 20 kg. Fishing is a leading activity in these States and contributes significantly to their economic and social development (job creation, food production, exports). The total number of jobs in the industry is estimated to exceed 1 million (direct and indirect), with a fleet of 36,000 boats and more than 1,200 industrial vessels, of which 750 are foreign. The presence of transboundary fish stocks and fish stocks of common interest is of great benefit to these States, whose total annual production in the maritime fisheries sector is estimated to be 1.7 million tons. Catches are estimated to be worth 1.5 billion dollars per year, and the estimated value of exports is 412 million dollars.

With the advent of the crisis in the fishing industry in the 1990s, and in order to foster the negotiation of fisheries agreements with third States on a harmonized basis agreed among themselves, the Member States adopted a consensual sub-regional legal instrument on 14 July 1993 at Praia (Cape Verde) to regulate the conditions for access to their respective exclusive economic zones (EEZs): this was the Convention on the Determination of the Conditions for Access and Exploitation of Marine Resources off the Coasts of the Member States of the SRFC, commonly known as the Minimal Conditions for Access (MCA) Convention. The Convention however soon proved outmoded in terms of its content and impact.

II  JUSTIFICATION FOR REVISING THE MCA CONVENTION

Four main reasons led the SRFC to update the MCA Convention:

(i) Notwithstanding the MCA Convention’s entry into force in 1993, certain of its provisions had not been incorporated into national law in the Member States;

(ii) Over-exploitation of fisheries resources, in particular small pelagic and demersal species, by not only foreign but also domestic vessels (industrial and artisanal);

(iii) Illegal, unreported and unregulated (IUU) fishing of an ever more alarming magnitude in the sub-region. Allowable catches nearly equal IUU catches in some Member States, e.g., in Guinea, Guinea-Bissau.
and Sierra Leone. The lost income to national economies caused by IUU fishing in West Africa is on the order of 500 million dollars per year;

(iv) A fast-changing regional and international legal environment after 1993 created by relevant international legal instruments adopted and recommended by the United Nations and its specialized agencies, notably the Food and Agriculture Organization of the United Nations (FAO) and the International Labour Organization (ILO):

- United Nations Convention on the Law of the Sea (UN, 1982);
- Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (FAO, 1993);
- Code of Conduct for Responsible Fisheries (FAO, 1995);
- International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (FAO, 2001);
- Johannesburg Declaration on Sustainable Development (UNCTAD, 2002) and its Plan of Implementation;
- International Maritime Labour Convention (ILO, 2006);
- Work in Fishing Convention (ILO/No. 188);
- Guidelines for Port State Control Officers Carrying Out Inspections under the Maritime Labour Convention (ILO, 2006);
- Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (FAO, 2009).

Also of relevance are:

- European Union Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (EC, 2010);
- Nouakchott Declaration on Illegal, Unreported and Unregulated Fishing (SRFC, September 2001).
III PROCESS FOR REVISING THE MCA CONVENTION

After 10 years of discussion (from 2000 to 2009) at the sub-regional level among experts from the SRFC Member States, a sub-regional workshop was held in April 2009 in Dakar, followed by national workshops in each of the seven Member States, with a view to reaching agreement on the subjects to be included in the revised MCA Convention. Along the same lines, the Permanent Secretary of the SRFC wrote to the International Tribunal for the Law of the Sea in 2010 in respect of certain legal and procedural questions relating to the process for revising the MCA Convention.

After completion of these regional and national meetings, the Permanent Secretariat, in conjunction with its technical and financial partners, drew up the Draft Convention to revise the 1993 Convention on the Determination of the Conditions for Access and Exploitation of Marine Resources off the Coasts of the Member States of the SRFC. The Draft Revised MCA Convention was examined and approved in Dakar in July 2011 by the Twenty-Second Extraordinary Session of the expanded SRFC Coordinating Committee, i.e.: Directors of Fisheries; Directors of Fisheries Monitoring, Control and Surveillance (MCS); Directors of Scientific Research; and Legal Advisers to the Ministers in charge of fisheries in the Member States. Given the Convention’s strategic importance for the sub-region, the Committee recommended its adoption at the Thirteenth Extraordinary Session of the Conference of Ministers of the SRFC, which adopted the revised MCA Convention in Dakar on 8 June 2012.

IV CONTENT OF THE MCA CONVENTION AS REVISED IN 2012

The 2012 MCA Convention is made up of two parts:

1. **The main text**, which sets out the minimal agreed conditions for access to fishery resources by vessels under third-State flag and operating in maritime areas of the SRFC Member States and which specifies the provisions to be incorporated into national law for this purpose. It incorporates the main principles laid down by international law, including in particular the Code of Conduct for Responsible Fisheries, the Straddling Fish Stocks and Highly Migratory Fish Stocks Agreement, and the Port State Measures Agreement.

2. **Four Annexes**, forming an integral part of the Convention and made up of forms specifying the minimum information (for artisanal fishing and industrial fishing) which must be set out in: *applications for fishing licenses, *fishing licenses, *logbooks and *data collection forms.

The MCA Convention is an international treaty strengthening cooperation in fisheries matters among Member States for the purpose of harmonizing their positions in negotiations on fisheries agreements and within international bodies. It entered into force on the one-hundredth day following the date of signature by all SRFC Member

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1 These national workshops were held in: the Gambia (Banjul, 18-19 August 2009), Sierra Leone (Freetown, 2-3 September 2009), Guinea-Bissau (Bissau, 29-30 September 2009), Cape Verde (Mindelo, 5-6 November 2009), Mauritania (Nouakchott, 20-22 December 2009); Senegal (Dakar, 21-22 January 2010) and Guinea (Conakry, 6-7 April 2010).
States. It was signed on 8 June 2012 by the Ministers in charge of fisheries of the Member States. The Convention entered into force on 16 September 2012.

Article 33 of the revised MCA Convention establishes the possibility for the Permanent Secretary of the SRFC, acting pursuant to decision by the Conference of Ministers, to bring a given legal matter under maritime law or the law of the sea before the International Tribunal for the Law of the Sea for advisory opinion.

V JUSTIFICATION FOR THE REQUEST TO THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA (ITLOS) FOR AN ADVISORY OPINION

There now exist many new economic and scientific uses of the seas whose legal status is open to argument. New developments call for new legal responses which the Tribunal can give through its advisory opinions. The advisory function of the Tribunal can make a great contribution to sound governance of the seas and oceans.

More specifically, the 2001 International Plan of Action to Prevent, Deter and Eliminate IUU Fishing and the 2009 Port State Measures Agreement include important provisions aimed at reinforcing the powers of the coastal State in the fight against IUU fishing. These legal instruments, especially the 2009 Agreement, are binding on the SRFC Member States and are helpful to these countries, whose fragile economies suffer serious damage from IUU fishing.

These instruments bring major innovations to classic international law, notably in the area of the flag State’s obligations in respect of vessels engaged in IUU fishing not only in its own EEZ but also in those of other countries.

Accordingly, it is particularly useful for the SRFC Member States to know precisely what their rights and obligations are in this connection, especially the newly created rights and obligations. Given its powers and competencies, the Tribunal is well placed to provide the necessary elucidation of these points and other related ones involving fishing licenses and sustainable management of shared stocks and stocks of common interest.

The request for an advisory opinion submitted to the International Tribunal for the Law of the Sea by the SRFC is aimed at supporting the SRFC Member States to enable them, thanks to sensible and perceptive advice, to derive the greatest benefit from the effective implementation of the relevant international legal instruments and at ensuring that the challenges they are facing from IUU fishing are better met. It will help to strengthen the SRFC and enhance its visibility and credibility.

That is the general scheme and spirit of the Resolution adopted on 28 March 2013 by the Fourteenth Extraordinary Session of the Conference of Ministers of the SRFC, authorizing the Permanent Secretary of the SRFC to seise the International Tribunal for the Law of the Sea to obtain an advisory opinion, in the context of the Twenty-eighth Anniversary of the Sub-Regional Fisheries Commission, the 2013 theme of which is the fight against IUU fishing.