INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

2014

Public sitting
held on Tuesday, 2 September 2014, at 3 p.m.,
at the International Tribunal for the Law of the Sea, Hamburg,
President Shunji Yanai presiding

REQUEST FOR AN ADVISORY OPINION SUBMITTED BY
THE SUB-REGIONAL FISHERIES COMMISSION (SRFC)

(Request for Advisory Opinion submitted to the Tribunal)

Verbatim Record
Present: Shunji Yanai
Vice-President: Albert J. Hoffmann
Judges:
- Vicente Marotta Rangel
- L. Dolliver M. Nelson
- P. Chandrasekhar Rao
- Joseph Akl
- Rüdiger Wolfrum
- Tafsir Malick Ndiaye
- José Luis Jesus
- Jean-Pierre Cot
- Anthony Amos Lucky
- Stanislaw Pawlak
- Helmut Türk
- James L. Kateka
- Zhiguo Gao
- Boualem Bouguetaia
- Vladimir Golitsyn
- Jin-Hyun Paik
- Elsa Kelly
- David Attard
- Markivyan Kulyk

Registrar: Philippe Gautier
List of delegations:

Sub-Regional Fisheries Commission (SRFC)

H.E. Mr Lousény Camara, Chairman-in-Office of the Conference of Ministers of the SRFC
Mr Hassimio Tall, Director of Fisheries, Republic of Guinea, Chairman-in-Office of the Coordinating Committee of the SRFC
Mr Sebastiao Pereira, Director-General for Industrial Fisheries, Republic of Guinea-Bissau
Mr Doudou Gueye, Legal Adviser, Ministry of Fisheries and Maritime Affairs, Republic of Senegal
Mr Cheikh Sarr, Director of Fisheries Protection and Surveillance, Republic of Senegal
Ms Marième Diagne Talla, Acting Permanent Secretary of the SRFC

Ms Diéna Bèye Traoré, Head of the Department for Harmonization of Policies and Legislation of the SRFC
Mr Hamady Diop, Head of the Department of Research and Information Systems of the SRFC
Mr Babacar Ba, Head of the Department for Fisheries Monitoring, Control, Surveillance and Planning of the SRFC
Ms Mame Fatou Toure, Head of the Communication and Public Relations Service of the SRFC
Mr Demba Yeum Kane, Regional Coordinator of the RFMO
Mr Abdou Khadir Diakhate, Programme Assistant, Department for Harmonization of Policies and Legislation of the SRFC
Mr Baidi Diene, Deputy Secretary-General of the Guinea-Bissau/Senegal Management and Cooperation Agency (AGC)
Mr Sloans Chimatrio, African Union/NEPAD
Mr Racine Kane, Head of Mission, Office of the International Union for the Conservation of Nature (IUCN), Dakar, Senegal
Mr Ahmed Senhoury, Director of the Mobilization and Coordination Unit, Regional Partnership for the Preservation of the Coastal and Marine Zone in Western Africa

Mr Papa Kebe, Expert, Specialist in pelagic resources
Mr Aboubacar Fall, Lawyer, Bar of Dakar, Senegal
Mr Ibrahima Ly, Legal Counsel, Professor at the Université Cheikh Anta Diop de Dakar, Dakar, Senegal
Mr Adilson D. Djabula, Legal Counsel

Germany

Mr Martin Ney, Legal Adviser, Director-General for Legal Affairs, Federal Foreign Office
Mr Christian Schulz, Deputy Head of Division Law of the Sea, Space Law, Antarctica, Federal Foreign Office
Argentina

Mr Holger F. Martinsen, Deputy Legal Adviser, Office of the Legal Adviser, Ministry of Foreign Affairs and Worship
Mr Manuel Fernández Salorio, Consul General of the Argentine Republic in Hamburg, Federal Republic of Germany
Ms Cecilia María Verónica Quadri, Consul General Adjunct of the Argentine Republic in Hamburg, Federal Republic of Germany

Australia

Mr William McFadyen Campbell QC, General Counsel (International Law), Office of International Law, Attorney-Generals’ Department
Ms Stephanie Ierino, Principal Legal Officer, Office of International Law, Attorney-Generals' Department
Ms Amanda Annamalay, Second Secretary, Embassy of Australia, Berlin, Federal Republic of Germany

Chile

Mr Eduardo Schott S., Consul-General of Chile, Hamburg, Federal Republic of Germany
Ms Katherine Bernal S., Lawyer, Sub-Secretariat for Fisheries

Spain

Mr José Martín y Pérez de Nanclares, Director of the International Law Department, Ministry of Foreign Affairs and Cooperation
Mr Eduardo Ramón Merino de Mena, Legal Advisor at the International Law Department, Ministry of Foreign Affairs and Cooperation

Micronesia (Federated States of)

Mr Clement Yow Mulalap, Esq., Legal Adviser, Permanent Mission of the Federated States of Micronesia to the United Nations, New York, United States of America

New Zealand

Ms Penelope Ridings, International Legal Adviser, Ministry of Foreign Affairs and Trade
Ms Elana Geddis, Barrister, High Court of New Zealand
United Kingdom of Great Britain and Northern Ireland

Ms Nicola Smith, Assistant Legal Adviser, Foreign and Commonwealth Office
Sir Michael Wood, member of the International Law Commission, member of the English Bar

Thailand

Mr Kriangsak Kittichaisaree, Executive Director, Thailand Trade and Economic Office (Taipei), member of the International Law Commission

European Union

Mr Esa Paasivirta, Member of the Legal Service, European Commission
Mr André Bouquet, Legal Advisor, Legal Service, European Commission
Mr Daniele Nardi, Member of the Legal Service, European Commission
Ms Valérie Lainé, Head of Unit - Fisheries Control Policy, Directorate-General for Maritime Affairs and Fisheries, European Commission
Mr Friedrich Wieland, Head of Unit - Legal Matters, Directorate-General for Maritime Affairs and Fisheries, European Commission
Ms Cristina Olivos, Lawyer - Legal Matters, Directorate-General for Maritime Affairs and Fisheries, European Commission

Caribbean Regional Fisheries Mechanism (CRFM)

Mr Pieter Bekker, Professor of International Law, Graduate School of Natural Resources Law, Policy and Management, University of Dundee, United Kingdom; member of the New York Bar

International Union for the Conservation of Nature (IUCN)

Ms Cymie Payne, J.D., Assistant Professor, School of Law – Camden, Bloustein School of Public Policy, Rutgers University, New Brunswick, USA
Ms Nilufer Oral, Faculty of Law, Istanbul Bilgi University, Istanbul, Turkey
Ms Anastasia Telesetsky, Associate Professor, College of Law, Natural Resources and Environmental Law Program, University of Idaho, United States of America
THE PRESIDENT (Interpretation from French): At its fourteenth extraordinary session, held on 27 and 28 March 2013, the Conference of Ministers of the Sub-Regional Fisheries Commission adopted a resolution by which it decided to authorize the Permanent Secretary of the Sub-Regional Fisheries Commission to seize the Tribunal in order to obtain its advisory opinion.

That resolution was adopted in accordance with article 33 of the Convention of 8 June 2012 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 Sub-Regional Commission.

The text of that resolution was transmitted by a letter from the Permanent Secretary of the Sub-Regional Fisheries Commission, dated 27 March 2013, which was received by the Registry on 28 March 2013. In accordance with article 131 of the Rules of the Tribunal, by letter of 9 April 2013 the Permanent Secretary of the Sub-Regional Fisheries Commission transmitted additional documents. Those additional documents have been posted on the Tribunal's website.

The request for an advisory opinion was submitted on the basis of article 21 of the Statute of the Tribunal and article 138 of the Rules of the Tribunal.

The case, which has been entered in the list of cases as Case No. 21, is named Request for an advisory opinion submitted by the Sub-Regional Fisheries Commission.

I now call on the Registrar to summarize the procedure and to read out the questions on which the Tribunal is called to give an advisory opinion on the basis of the resolution of the Sub-Regional Fisheries Commission. Mr Registrar.

THE REGISTRAR (Interpretation from French): Thank you, Mr President. The questions read as follows:

1. What are the obligations of the flag State in cases where illegal, unreported and unregulated (IUU) fishing activities are conducted within the Exclusive Economic Zone of third party States?

2. To what extent shall the flag State be held liable for IUU fishing activities conducted by vessels sailing under its flag?

3. Where a fishing license is issued to a vessel within the framework of an international agreement with the flag State or with an international agency, shall the State or international agency be held liable for the violation of the fisheries legislation of the coastal State by the vessel in question?

4. What are the rights and obligations of the coastal State in ensuring the sustainable management of shared stocks and stocks of common interest, especially the small pelagic species and tuna?

Mr President, I would point out that the French wording of question 3, which I have just read out, corresponds to the text submitted by the Sub-Regional Commission in...
its written statements. The wording was confirmed by the Sub-Regional Commission in its letter of 12 March 2014.

(Continued in English) By an Order dated 24 May 2013, the Tribunal decided that the Sub-Regional Fisheries Commission and the intergovernmental organizations listed in the annex to that Order were likely to be able to furnish information on the questions submitted to the Tribunal for an advisory opinion. By the same Order, States Parties to the Convention, the Sub-Regional Commission and the said organizations were invited to present written statements on the questions submitted to the Tribunal for an advisory opinion. The time-limit for the submission of written statements, initially fixed on 29 November 2013, was extended to 19 December 2013 by an Order of the President dated 3 December 2013.

Within that time-limit, written statements were filed by 22 States Parties to the Convention. These are, in the order of receipt: Saudi Arabia, Germany, New Zealand, China, Somalia, Ireland, the Federated States of Micronesia, Australia, Japan, Portugal, Chile, Argentina, the United Kingdom, Thailand, the Netherlands, European Union, Cuba, France, Spain, Montenegro, Switzerland and Sri Lanka.

Within the same time-limit, written statements were also submitted by the following seven organizations, in the order of receipt: the Forum Fisheries Agency, the International Union for Conservation of Nature and Natural Resources (IUCN), the Caribbean Regional Fisheries Mechanism, the United Nations, the Sub-Regional Fisheries Commission, the Food and Agriculture Organization of the United Nations and the Central America Fisheries and Aquaculture Organization.

One statement was submitted by a State party to the 1995 Straddling Fish Stocks Agreement: the United States of America.

In addition, one statement was submitted by a non-governmental international organization (the World Wide Fund for Nature), which was informed by a letter of 4 December 2013 that its statement would not be considered part of the documentation in the case.

By an Order dated 20 December 2013, the President fixed 14 March 2014 as the time-limit within which States parties to the Convention and intergovernmental organizations having presented written statements could submit written statements on the statements made. During this second round of statements, written statements were filed, in the order of receipt, by the following five States Parties to the Convention: the United Kingdom, New Zealand, European Union, the Netherlands, and Thailand. In addition, one statement was submitted by the Sub-Regional Fisheries Commission. A further statement was received from the World Wide Fund for Nature, which was not included in the case file.

All the statements have been posted on the website of the Tribunal.

THE PRESIDENT: As indicated, the Tribunal is meeting today to hear oral statements relating to the request for an advisory opinion. In this regard, the Tribunal has been informed that representatives of the following States and organizations wish to take the floor during the current oral proceedings: the Sub-Regional Fisheries
Commission, Germany, Argentina, Australia, Chile, Spain, the Federated States of Micronesia, New Zealand, the United Kingdom, Thailand, the European Union, the Caribbean Regional Fisheries Mechanism and the International Union for the Conservation of Nature.

The specific arrangements for the hearing have been made known by the Registry to the participating delegations. The schedule of the hearing has also been made public by a press release.

(Interpretation from French) This afternoon the Tribunal will hear the Sub-Regional Fisheries Commission, and the other delegations I have already mentioned will address the Tribunal on Wednesday, Thursday and Friday.

I now give the floor to the representative of the Sub-Regional Fisheries Commission. Your Excellency, Mr Camara, you have the floor.

MR CAMARA (Interpretation from French): Mr President, distinguished Members of the International Tribunal for the Law of the Sea, as Chairman-in-Office of the Conference of Ministers of the Sub-Regional Fisheries Commission and on behalf of the delegation accompanying me, consisting of representatives of the seven member States of the SRFC (namely Cabo Verde, the Gambia, Guinea, Guinea-Bissau, Mauritania, Senegal and Sierra Leone, which are all parties to the United Nations Convention on the Law of the Sea), of the Permanent Secretariat of the SRFC, of regional intergovernmental organizations, regional NGOs and experts from the sub-region, I thank you for the honour that you have granted us of participating in the hearing on the request for an advisory opinion submitted by the Sub-Regional Fisheries Commission.

I wish to express the hope of the Sub-Regional Fisheries Commission that the Tribunal will clarify international law so that everyone involved in the eradication of the scourge that is illegal, unreported and unregulated fishing (better known by its abbreviation IUU) can fully exercise the rights to which they are entitled and fully assume the obligations incumbent upon them.

According to findings from surveillance operations conducted in our sub-region, the maritime areas of the Member States of the SRFC, in particular Sierra Leone, the Gambia, Guinea and Guinea-Bissau, are the favoured location for IUU fishing activities. Losses attributed to fishing without a licence are estimated annually at USD 140 million for Guinea and Sierra Leone. The amount of the loss is huge, as it is equivalent to a quarter of the average value of fisheries production officially declared in those two countries.

For a country like Senegal, assumed to be relatively advanced in terms of surveillance, losses based solely on IUU fishing vessels actually boarded in 2011 are estimated at 350,000 tonnes, which represents a value of USD 292 million,1 not to mention all the other attendant negative effects.

1 Source: HBC-URI Technical Report 2013, USAID/COMFISH.
The situation is equally a cause for concern in Mauritania, which has a relatively strong surveillance system. It still reports high annual boarding levels despite the strictness of the legislation in that country. In 2011 more than 400 fishing offences were recorded for industrial and artisanal fishing.

The disastrous consequences of IUU fishing for the socio-economic fabric in all the States of the sub-region are seen inter alia in factory closures, with reduced productivity due to a lack of products to be processed, and unemployment in related activities such as processing, fish marketing, handling, shipping and trade in general.

The most visible effects of IUU fishing are lower revenues for fishermen, declining landings in ports, extended fishing trips with consequent additional operating expenses, changes in catch composition, with some species disappearing, and a decrease in average size of fish caught. The stocks most affected by this over-exploitation are the pelagics targeted by certain foreign fleets.

Within the area of the SRFC, fish provide almost 62 per cent of available animal proteins. *Per capita* fish consumption is 21 kg whereas the global average is 18 kg, which represents double the African average of 9 kg.

According to FAO estimates, it is likely that the global consumption of fish, which currently stands at around 91.3 million\(^2\) tonnes per year, will increase considerably by 2030, even though the resource is declining drastically in all parts of the globe and especially in countries with low capacity to protect their resources.

This decline in the resource, combined with a continuous increase in demand for fish on the global market, encourages an intensification of IUU fishing, particularly in the area of the Sub-Regional Fisheries Commission, which is reputed to be one of the richest in fish worldwide.

Note should also be taken of the degradation of marine habitats as a result of IUU fishing vessels using destructive techniques such as bottom-trawling, blast fishing and the mass dumping at sea of fish that are deemed to be unprofitable but which could have been consumed by people in the sub-region.

Moreover, scientific opinions provided to managers to underpin decisions concerning fisheries management are subject to major uncertainty resulting from stock evaluations based on mathematical models that are dependent on the reliability of statistical, biological and socio-economic data on fisheries. These data are often skewed by the activities of certain illegally operating vessels, which are not taken into account.

Finally, other problems linked to IUU fishing in the sub-region have been observed, such as attempts at clandestine emigration amongst young fishermen and, sometimes, their involvement in various forms of illegal trafficking (drugs, arms etc.).

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Considering the recurring difficulties encountered by the Member States of the SRFC in their fight against IUU fishing, we, the Ministers of the Member States of the SRFC have authorized – I repeat, have authorized – the Permanent Secretary of the Commission to seize the International Tribunal for the Law of the Sea in order to obtain its advisory opinion.

Mr President, distinguished Members of the International Tribunal for the Law of the Sea, thank you very much for your kind attention.

Mr President, would you kindly now give the floor to the Agent of the Sub-Regional Fisheries Commission, Ms Diénaba Béye Traoré, to expand on the arguments of the Sub-Regional Fisheries Commission?

THE PRESIDENT (Interpretation from French): Thank you very much, Mr Camara. Before I give the floor to the next speaker I wish to inform you that some of the Judges would like to ask questions to the Sub-Regional Commission. I shall now give the floor to Judge Cot.

JUDGE COT (Interpretation from French): Thank you, Mr President. Mr Camara, the Sub-Regional Fisheries Commission relies on the MCA Convention of 8 June 2012 in submitting to the Tribunal a request for advisory opinion. It has put four questions. Could the Sub-Regional Fisheries Commission cite for us the article or articles of the MCA Convention corresponding to each of the four questions? Thank you.

THE PRESIDENT (Interpretation from French): Thank you, Judge Cot. (Continued in English) I will now give the floor to Judge Pawlak.

JUDGE PAWLAK: Thank you, Mr President. Mr President, distinguished Judges, distinguished representatives of the Sub-Regional Fisheries Commission, I am of the view that in order to understand better the request for an advisory opinion it would be advisable to have the following information: Is the term “flag State” used in the first question intended to encompass all flag States or only those whose fishing vessels are operating in the exclusive economic zones within the framework of the MCA Convention? Thank you, Mr President.

THE PRESIDENT: Thank you, Judge Pawlak. I now invite Judge Gao to take the floor.

JUDGE GAO: Thank you, Mr President. Your Excellency, my question is relatively straightforward. Would it be possible for the Sub-Regional Fisheries Commission to provide the Tribunal with additional information and materials upon which the four questions are formulated and put forward for an advisory opinion? This further relevant documentation may include the following categories:

- international agreements concluded with the flag States and other relevant international agencies;
- national reports on IUU fishing activities and damages and losses suffered from these activities;
- and last but not least, existing regulatory and enforcement measures against IUU fishing.
Thank you, Minister.

THE PRESIDENT: Thank you, Judge Gao. (Interpretation from French) Of course, you will be sent the written text of these questions. If you so wish, you may answer the questions during the hearing or send a written answer within one week, that is to say by noon on Tuesday, 9 September. The text of your answer will be sent to the States and organizations participating in the hearing and will be posted on the Tribunal’s website. Ms Bèye Traoré, you have the floor.

MS BÈYE TRAORÉ (Interpretation from French): Thank you, Mr President.

Mr President, distinguished Members of the International Tribunal for the Law of the Sea, it is for me a singular honour to appear today before your esteemed institution on behalf of the Sub-Regional Fisheries Commission.

It has to be said that – despite efforts to strengthen legal frameworks at the national, sub-regional, continental and international levels to combat IUU fishing; and despite the fact that all SRFC Member States have ratified the United Nations Convention on the Law of the Sea, it being the governing framework on which the legal action of the SRFC is based as it seeks an advisory opinion from your Tribunal; and despite the fact that the Member States of the SRFC do not oppose either the binding international instruments to combat IUU fishing¹ or the non-binding instruments, if we refer to the preamble to the SRFC Convention on Minimal Conditions for Access; and despite the adoption of decisions by regional fisheries organizations to strengthen the good governance of fisheries by means of major reforms to national fisheries policies, improvement of the legislative and regulatory fisheries framework, development of an information system on fisheries and strengthening of fisheries research; and despite the institutional and operational support of technical and financial partners in the monitoring, oversight and surveillance of fisheries zones, particularly by developing human and material capacity and regularly organizing joint surveillance operations – the Member States of the SRFC are still facing ever more serious IUU fisheries problems without being able to rely on effective and fruitful cooperation by the flag States of offending vessels.

That is the situation the SRFC has observed, which justifies its request for an advisory opinion from your Tribunal based on the 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 – generally known as the Convention on Minimal Conditions for Access or MCA Convention. We also base our request on the United Nations Convention on the Law of the Sea and the governing legal documents of this Tribunal.

We are now going to look at issues of jurisdiction, admissibility and applicable law.

Regarding the jurisdiction of the Tribunal, the basis and scope of the Tribunal’s jurisdiction in respect of our request for an advisory opinion are to be found not only

¹ Sierra Leone signed the Agreement on Port State Measures to Prevent, Deter and Eliminate IUU Fishing on 23 November 2009.
in the Statute and Rules of this Tribunal but also in UNCLOS and the MCA Convention of the SRFC.

Whilst it is true that UNCLOS and the Statute of ITLOS do not expressly state the jurisdiction of the Tribunal for the instant case, the provisions of the Statute and the Rules of the Tribunal, of UNCLOS and of the MCA Convention, taken together, incontrovertibly found this jurisdiction.

I refer here inter alia to the following provisions: article 21 of the Statute; article 16 of the Statute; article 138 of the Rules; article 33 of the MCA Convention; and articles 287 and 288, paragraph 4, of UNCLOS.

Let us look first at the jurisdiction of the Tribunal pursuant to article 21 of the Statute. The advisory function of the Tribunal is based on article 21 of the Statute, which reads in French as follows:

Le Tribunal est compétent pour tous les différends et toutes les demandes qui lui sont soumis conformément à la Convention et toutes les fois que cela est expressément prévu dans tout autre accord conférant compétence au Tribunal.

It should be noted that in the French version of article 21 a clear distinction is made between the word “différend”, which refers to a contentious situation, and the word “demande”, which refers to a non-contentious situation. The word “et”, a coordinating conjunction between the words “différends” and “demandes”, shows here the Tribunal’s jurisdiction in the two distinct situations.

It must be noted that there is a difference of meaning between the French and English versions of article 21. In English, it reads as follows: “The jurisdiction of the Tribunal comprises all disputes and all applications submitted to it in accordance with this Convention and all matters specifically provided for in any other agreement which confers jurisdiction on the Tribunal.”

Does the English term “applications” refer to an “application” within the meaning of the provisions of UNCLOS, that is to say “demandes”, “requêtes”, or is this an attribution of the Tribunal’s jurisdiction to situations other than those where there is a dispute?

The expression “toutes les demandes”, mentioned in French in article 21, opens the jurisdiction of ITLOS to procedures other than those pertaining to the contentious function, which itself is reflected by the words “tous les différends”. The advisory jurisdiction of the Tribunal is thus expressed.

A plain reading of article 21 of the Statute in both the English and French versions shows clearly the Tribunal’s jurisdiction to give an advisory opinion.

Regarding the jurisdiction of the Tribunal pursuant to article 16 of its Statute, article 16 provides as follows: “The Tribunal shall frame rules for carrying out its functions. In particular it shall lay down rules of procedure.”
This article refers explicitly to the Rules of the Tribunal to define the procedure for exercising its functions as defined under UNCLOS and the Statute of the Tribunal. Article 16 is the basis for the adoption of article 138 of the Rules of the Tribunal mentioned in section H – Advisory Proceedings.

Let us move on now to the jurisdiction of the Tribunal under article 138 of its Rules. According to article 138 of the Rules of the Tribunal,

- The Tribunal may give an advisory opinion on a legal question if an international agreement related to the purposes of the Convention specifically provides for the submission to the Tribunal of a request for such an opinion (para. 1). A request for an advisory opinion shall be transmitted to the Tribunal by whatever body is authorized by or in accordance with the agreement to make the request to the Tribunal (para. 2).

Under article 138 of the Rules, three conditions are therefore left to the sole determination of the Tribunal in order for it to give an advisory opinion:

- first, the existence of an international agreement related to the purpose of UNCLOS;
- second, a given legal question within the meaning of article 138; and
- third, the authorization to seize the Tribunal given by the governing body of the institution making the request.

Let us consider first the existence of an international agreement related to the purposes of UNCLOS.

In the instant case, the jurisdiction of this Tribunal is founded on the MCA Convention.

Let us recall that the MCA Convention is a regional legal instrument for the regulation of fishing activities which, for that purpose, refers to the relevant international legal instruments such as:

- international provisions relating to maritime safety and the protection of the marine environment established by the International Maritime Organization;
- the principles and standards set out in the Code of Conduct for Responsible Fisheries of the FAO;
- the International Plan of Action to prevent, deter and eliminate IUU fishing adopted in 2001 by the FAO.

Further instruments in this regard are article 3, paragraph 1, of the MCA Convention, which rehearses article 62, paragraph 2, of UNCLOS, and article 3, paragraph 3, of the MCA Convention, which faithfully reflects paragraph 7.5 of the Code of Conduct for Responsible Fisheries.

Similarly, Title IV on Port State Measures and measures to fight IUU fishing reproduces the key points of the FAO Agreement of 2009 on Port State Measures and the International Plan of Action to prevent, deter and eliminate IUU fishing.
Thus, it can be inferred from the foregoing that the MCA Convention is incontroversibly an international agreement related to the purposes of the Convention as provided for in articles 61-64 and 116-119 with respect to the conservation and management of biological resources of the EEZ and the high seas.

The basis for the referral to the Tribunal by the SRFC can be found in article 33 of the MCA Convention, which reads as follows: “The Conference of Ministers of the SRFC may authorize the Permanent Secretary of the SRFC to bring a given legal matter before the International Tribunal for the Law of the Sea for advisory opinion.”

As article 33 indicates, the Tribunal must ensure that the following conditions are met:

(a) an authorization by the governing body of the applicant institution, by means of a resolution of the Conference of Ministers of the SRFC, to bring a matter before ITLOS, which has been done; and

(b) a request relating to a given legal matter, which is the case here.

The second condition in article 138 is that there must be a given legal matter.

Article 138, paragraph 3, of the Rules refers to the application mutatis mutandis, inter alia, of article 131, paragraph 1, of the Rules: “A request for an advisory opinion on a legal question […] shall contain a precise statement of the question. […]”.

The International Court of Justice gives some guidance on the concept of a legal question in its advisory opinion on Western Sahara.

That Court considers that “[t]he questions […] have been framed in terms of law and raise problems of international law […] and […] are by their very nature susceptible of a reply based on law; […]”.2

This case law has been confirmed by the Seabed Disputes Chamber of this Tribunal in the advisory opinion handed down in Case No. 17. In paragraph 39 of that opinion, the Chamber recalls that the International Court of Justice underscored that “[q]uestions framed in terms of law and rais[ing] problems of international law are […] by their very nature susceptible of a reply based on law.”3

In summary, the four questions posed by the SRFC concern the rights and obligations of the flag State in cases of IUU fishing, the responsibility of States or international organizations signing fisheries agreements and the rights and obligations of coastal States in sustainably managing shared fish stocks.

These questions are precise, they are framed in terms of law, and they raise problems of international law and thus are perfectly susceptible of a reply based on law.

The answers to these questions posed by the SRFC will provide it with the necessary legal elements to assure the proper conduct of its activities, specifically the effective implementation of the MCA Convention.

Let us move now on to the third condition flowing from article 138, namely the authorization to seise the Tribunal given by the governing body of the institution making the request.

The Conference of Ministers of the SRFC, which is its governing body, authorized the Permanent Secretary by a resolution adopted during the 14th extraordinary session (held on 27 and 28 March 2013 in Dakar, Senegal) to request an advisory opinion of this Tribunal. That resolution was transmitted by letter dated 27 March 2013, as set out in Order 2013/2 of the Tribunal. This procedure is in line with article 33 of the MCA Convention.

There can be no doubt, then, that the decision to request an advisory opinion is indeed the result of a resolution of the supreme governing body of the SRFC, namely the Conference of Ministers.

As a last point on the jurisdiction of the Tribunal, let us look now at jurisdiction pursuant to articles 287 and 288, paragraph 4, of UNCLOS.

Article 287 of the Convention provides a number of choices of procedure concerning the interpretation or application of the Convention. Amongst them is included the International Tribunal for the Law of the Sea pursuant to Annex VI(a) to the Convention.

Although article 287 refers to a situation of dispute settlement, article 288, paragraph 4, gives the Tribunal the possibility to decide, itself, as to its jurisdiction in the case of a request for an advisory opinion (competens competens). Indeed, article 288, paragraph 4, of the Convention reads as follows: “In the event of a dispute as to whether a court or tribunal has jurisdiction, the matter shall be settled by decision of that court or tribunal.”

Consequently, the Tribunal is entitled to examine the extent of its jurisdiction in case of dispute but must respect the provisions of the Convention and its own Statute and Rules, inter alia articles 21 and 27 of the Statute and articles 130, 131 and 138 of the Rules.

Moreover, according to doctrine on the Tribunal’s jurisdiction to give an advisory opinion, it should be noted that the issue of such jurisdiction has been raised on a number of occasions during meetings of States Parties and during debates held in the United Nations General Assembly. It would appear that no firm objection was raised and a number of States were in favour of the application of article 138.5

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4 For example, the comments by the International Court of Justice on the principle of compétence de la compétence in Nottebohm, Preliminary Objection, Judgment, I.C.J. Reports 1953, p. 111, at pp. 119-120.

5 Michael B. Gerrard and Gregory E. Wannier (eds), Threatened Island Nations: Legal Implications of Rising Seas and a Changing Climate (Cambridge University Press, 2013), pp. 524-525. See also
Furthermore, Presidents of the Tribunal have always confirmed in their statements the advisory jurisdiction of the full Tribunal. This jurisdiction complements the judicial function attributed to the Tribunal by the Convention and its governing legal documents.

Moving on now to the admissibility of the SRFC request, by agreeing to examine and give an opinion on the four questions posed by the SRFC, the Tribunal will enable the Member States of the SRFC better to appreciate and apply the relevant international and regional legal instruments to combat IUU fishing. This will contribute to strengthening the framework of good governance of the seas and oceans, notably in providing its opinion on the obligations which, under international law, fall to the flag State in the event of IUU fishing.

With respect to the legal regime of fishing in the EEZ and on the high seas, the opinions of the Tribunal will carry considerable legal and practical weight. These opinions could also be used when necessary by other States Parties to the Convention and regional organizations facing the problem of IUU fishing.

It should be remembered that an advisory opinion remains advisory and refers mainly to the agreement under which it was given, in this case the Convention on Minimal Conditions for Access – the MCA Convention – and beyond that, UNCLOS and instruments adopted pursuant to it.

Finally, the questions posed by the SRFC are precise and thus should lead the Tribunal to find them admissible.

Moving to applicable law, the SRFC referenced in chapter II of its written statement (version 2) a number of binding legal instruments that the Commission believes are relevant in support of its request. Some of these legal instruments are directly linked to the MCA Convention, for example the United Nations Convention, the United Nations Fish Stocks Agreement, the FAO fisheries legal instruments, whereas others...

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6 See the statements by the various Presidents on the Tribunal’s website.


8 See Chapter II, Section 1 of the SRFC’s Written Statement version 2 (Legal instruments to fight IUU fishing applicable in the SRFC area).

9 See Resolution 56/12 of 28 November 2001, where the UN General Assembly underlined "the important role and authority of the Tribunal concerning the interpretation or application of the Convention". As the former President of the Tribunal Judge José Luis Jesus said, "interpretation of certain provisions of the Convention by means of an advisory opinion may be the most appropriate means of clarifying a legal matter arising within the scope of, or related to, the Convention".

10 See article 59 of the Statute of the International Court of Justice (ICJ).

11 See, for example, Fitzmaurice, The Law and Practice of the International Court of Justice (Grotius, Cambridge, 1986), Vol. 1 at pp. 16-117.
focus more on the goals of the MCA Convention. Unquestionably, all these instruments are relevant where implementation of the United Nations Convention is concerned.

There are also a number of non-binding instruments which have been voluntarily approved by States. These instruments are also relevant in the light of the advisory opinion sought from your Tribunal. This is the meaning to be given to the reference made by the Seabed Disputes Chamber to the rules of the International Seabed Authority when it speaks of “texts of a binding nature” negotiated by States and adopted under a procedure similar to that used by multilateral conferences.

This confirms the position of the ICJ when that court declared in its advisory opinion on Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo that rules governing the interpretation of treaties enshrined in the Vienna Convention “may provide guidance” as to the interpretation of United Nations Security Council resolutions.\(^\text{12}\)

Moreover, it should be emphasized that information on the national, regional and international legal frameworks found in the written statements of the SRFC are there for information purposes, to enlighten the Tribunal as to the legal regime underpinning fisheries activities in the SRFC zone. Reference to these legal instruments will enable the Tribunal better to appreciate the difficulties encountered by the SRFC and its Member States in their interpretation and their application.

The SRFC very respectfully urges the International Tribunal for the Law of the Sea to find that it has jurisdiction to entertain this request for an advisory opinion, to declare that the request from the SRFC is admissible, and to find that the texts referred to constitute applicable law in the instant case.

As regards the additional arguments in support of the questions asked, as was stated in its letter of transmittal of 12 March 2014 accompanying the written statement, the SRFC informed the Tribunal that the contents of that statement were “without prejudice to other arguments and information which may be presented and relied upon during the oral phase of the proceedings”.

Thus, in its oral statement the SRFC is providing clarification and additional information to reinforce its arguments relating to the questions asked.

Firstly, the definition of a third-party State. A third-party State is any State which is not a member of the Sub-Regional Fisheries Commission, as is indicated in article 2, paragraph 9, of the MCA Convention.

Second, in its submissions, the SRFC is requesting an advisory opinion on the application and interpretation of the MCA Convention and, beyond that, of the United Nations Convention on the Law of the Sea, but not on other bilateral and multilateral instruments signed or ratified by one or more of its member States, which are

mentioned in the SRFC’s written statements purely to familiarize the Tribunal with the SRFC.

In the SRFC's written statements the reference to the legal status of new economic and scientific uses of the seas is justified by the emergence of new factors, such as the scale of IUU fishing, which call for new legal responses.

It is also necessary to point out that the Sub-Regional Fisheries Commission’s questions regarding the changes in the definition of IUU fishing can be explained by the fact that the fisheries sector is highly dynamic and that the fishing techniques used increasingly call for advanced and evolutionary technologies such as the fish aggregating device, transshipment at sea, driftnet fishing etc.

Furthermore, certain major retail brands care little about the origin and legality of the products that they purchase, process and sell. This does not in any way mean that the SRFC is questioning the definition of IUU fishing set out in the International Plan of Action to prevent IUU fishing, which, incidentally, is reproduced verbatim in article 2, paragraph 4, of the MCA Convention.

Furthermore, it should be stated that the examples of offences cited in the SRFC’s written statements represent a sample of cases which have been presented to you to illustrate the scale of IUU fishing in the sub-region.

In the light of articles 58, paragraph 2, 62, paragraph 4, and 94 of UNCLOS, it should be pointed out that the term “flag State”, which appears in questions 1, 2, and 3 of the request for an advisory opinion from the SRFC, should be interpreted to mean the “State of nationality” of natural and legal persons such as the owners, charterers and crew of a fishing vessel.

The obligations of the State of nationality of natural and legal persons in the case of IUU fishing will also have to be clarified, as the UN General Assembly stated in its resolution endorsing the outcome document of the United Nations Conference on Sustainable Development entitled “The Future We Want.” In paragraph 170 of that resolution, it is stated:

We recommit to eliminate illegal, unreported and unregulated fishing [...] by [...] implementing, in accordance with international law, effective and coordinated measures by coastal States, flag States, port States, chartering nations and the States of nationality of the beneficial owners and others who support or engage in illegal, unreported and unregulated fishing by identifying vessels engaged in such fishing and by depriving offenders of the benefits accruing from it.

Furthermore, in article 94, paragraph 2(b), of UNCLOS we read that every State shall “assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship”.

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Lastly, IUU fishing activities are internationally wrongful acts committed by the State which incur the international responsibility of the flag State of the vessel. The definition of "internationally wrongful acts", as set out in the annex to United Nations General Assembly Resolution A/Res/56/83, which reproduces the wording used by the International Law Commission in the provisions relating to responsibility of States, is satisfied when conduct consisting of an action or omission is attributable to the State under international law, in other words the conduct of any State organ of any organ of that State, whatever functions that organ holds (article 4), and constitutes a breach of an international obligation of the State, that is to say, when an act of that State is not in conformity with what is required of it by that obligation, regardless of its origin or character (article 12).

We shall now present the Commission's arguments question by question.

Question 1 reads as follows: "What are the obligations of the flag State in cases where illegal, unreported and unregulated fishing activities are conducted within the Exclusive Economic Zone of third party States?"

For purposes of clarification, the reference here is to the obligations of the flag State when IUU fishing activities are conducted in waters under the jurisdiction of third-party States. A clarification is required with respect to the translation of the word "obligations" into English, since it can have two different but complementary meanings: "obligations" can mean responsibility or liability. In question 1 it should be translated by the word "liability".

The coastal State is required under international law to inform the flag State of any IUU fishing activities conducted in the waters under its national jurisdiction and of any penalties imposed in that connection.

The flag State is required under international law to ensure that, in waters under the jurisdiction of third-party States, vessels flying its flag comply with measures pertaining to the conservation and management of fishery resources. The flag State is therefore responsible for the effective monitoring of fishing activities conducted by a vessel flying its flag, regardless of the location of such activities. This responsibility stems from the right of the coastal State to sail its vessels throughout the world, including on the high seas. It therefore entails the obligation to take due account of the rights and obligations of the coastal State by respecting its laws and regulations adopted in accordance with the Convention.

This general obligation incumbent on the flag State is an obligation of conduct coupled with an obligation of due diligence, which derives from article 194 of the Convention and from general principles of law relating to the prevention of transboundary damage. This obligation also derives from:

- customary international law;

- the 1958 Convention on the High Seas;
- the Convention, in particular article 58, paragraphs 2 and 3, on the rights and
duties of other states in the exclusive economic zone, and article 94 on the duties
of the flag State.

It also derives from:

- the 1995 Agreement on straddling fish stocks and highly migratory fish stocks;
and
- the 1993 FAO Compliance Agreement.

The obligation to take administrative and regulatory measures and to enforce them is
an obligation of conduct incumbent on the flag State. It thus requires the flag State to
enact laws and to adopt regulations and other administrative measures and
procedures that are designed to ensure, within its own legal system, effective
compliance with its obligations by persons subject to its jurisdiction, in accordance
with article 153, paragraph 4, of the Convention.

The obligation of conduct is thus linked to the obligation of due diligence incumbent
on the flag State with respect to private owners and crews of fishing vessels flying its
flag, regardless of the maritime area in which they are conducting their activities.

This obligation of due diligence requires not only the adoption of appropriate
standards and measures but also the exercise of a certain degree of vigilance in
enforcing them and in providing for the administrative monitoring of public and
private operators, for example by ensuring surveillance of the activities conducted by
these operators with a view to preserving the rights of the other party.\textsuperscript{15}

In other words, the flag State must endeavour, by appropriate means, to prevent its
vessels from engaging in IUU fishing. The flag State is therefore expected to
exercise a higher degree of due diligence, particularly where the coastal State has
insufficient technical or operational means at its disposal to enforce its laws and
regulations, which is the case in the Member States of the Sub-Regional Fisheries
Commission.

The flag State is thus required to ensure effective control of its vessels and crews
and to impose penalties when offences take place, irrespective of any penalties
imposed by the coastal State.

Collaboration is necessary, as far as possible, with the coastal State to facilitate
enforcement of the penalty imposed for an offence, in particular

- by proceeding expeditiously with an in-depth investigation to determine the
  veracity of the allegations made by the coastal State;
- by sharing relevant information, including evidentiary material, with the coastal
  State regarding the activities of the vessel;
- by instituting legal proceedings, where appropriate, against the vessel;

- by imposing appropriate sanctions on the vessel and its operators if the offence is proved;
- and by providing the coastal State with regular information regarding the measures taken and progress made.

It is appropriate at this stage to examine the shortcomings in international law with respect to question 1.

In light of the foregoing, it is perfectly reasonable to request the Tribunal to clarify the responsibilities of the flag State in order to facilitate their effective implementation. The competent authorities in the Member States of the Sub-Regional Fisheries Commission draw the Tribunal’s attention to the fact that when a vessel is boarded because it is engaging in IUU fishing, the flag State authorities are regularly informed but fail to take any action, let alone any positive action.

Member States of the SRFC have encountered difficulties in ensuring the enforcement of international law, in particular after boarding fishing vessels of foreign nationality. For example, in the case of IUU fishing in one of the SRFC Member States, the flag State, once informed, cooperates only if the offence is the result of fishing activity undertaken within the framework of a fisheries agreement between the Member State and the flag State of the boarded vessel. It is only in that case that the flag State cooperates in enforcing the penalty on a vessel that has committed an IUU fishing offence and has absconded.

However, in most cases where the vessel has succeeded in evading the SRFC Member State patrol boats, the flag State, on being alerted, has failed to cooperate. In such cases, should the flag State not undertake to prosecute and sanction vessels flying its flag that commit offences in waters under the jurisdiction of the SRFC Member State? Could the joint responsibility of the flag State and the vessel’s owner and captain not be engaged?

In addition, a further difficulty encountered by Member States of the SRFC stems from the fact that international law fails to specify the timeframe for the flag State’s response and the form it should take when it is notified of an IUU fishing offence.

International law does not specify either the rights of the SRFC Member State in the event of non-cooperation by the flag State when one of its fishing vessels is seized on account of IUU fishing in a port of that member State.

In addition, international law remains unclear regarding the nature and the penalties applicable to the flag State if a flag of convenience has been granted to a vessel in violation of articles 91, paragraph 1, and 92, paragraph 1, of the Convention.

A vessel’s nationality is based on two fundamental principles, namely the principle of the monopoly of the flag State and the principle of a genuine link between the State and the vessel.16

The first principle states that the vessel can sail under the flag of one State only (article 92, para. 1, of the Convention). If it sails under several flags, using them according to convenience, it is considered under international law to be a vessel without nationality and it may not claim any of the nationalities in question with respect to a third-party State (article 92, para. 2, of the Convention). During a voyage or while in a port of call, a vessel can change its nationality only in the case of a real transfer of ownership or change of registry (article 92, para. 2, of the Convention). A new nationality may not be granted until the previous nationality has been annulled.\(^{17}\)

The difficulties faced by shipowners during the international crisis in the maritime transport sector led to the enactment of several national laws authorizing bareboat chartered vessels, even those registered in other countries, to operate under the national flag provided that the declaration of ownership and the inherent right to raise the respective flags was suspended. In such cases there is dual registration: the genuine registration of the flag State and the registration of the charterer’s State.\(^{18}\)

The second principle, that of the genuine link, calls for the existence of a relationship between the State and the vessel (article 91, para. 1). The criteria that determine whether a genuine link exists vary from one legal system to another, and responsibility for defining them lies with individual States (article 91, para. 1, of the Convention).

Whatever option is chosen, the criterion adopted must require the flag State:

- To exercise control over the vessel and the persons and property on board in administrative, technical and social matters (articles 94 and 97 of the Convention);
- To exercise its criminal jurisdiction in the event of a navigation accident (article 97 of the Convention);
- To require vessels to render assistance to persons and vessels in danger at sea (article 98 of the Convention);
- To prohibit and punish the transport of slaves (article 99 of the Convention);
- To prohibit and punish illicit traffic in narcotic drugs and psychotropic substances (article 108 of the Convention);
- To prohibit and punish unauthorized radio or television broadcasting from the high seas (article 109 of the Convention);
- To regulate the conditions governing fishing on the high seas by vessels flying its flag, to ensure that they are respected and to punish vessels that violate them (articles 87, para. 1(e), 116, 119 and 120 of the Convention);
- To require vessels flying its flag to comply with international norms aimed at preventing, reducing and controlling pollution of the maritime environment from vessels, to ensure that they are complied with and to punish vessels that violate them (article 217 of the Convention).

The genuine link requirement implies primarily that the flag State should be assigned the role of an agent of the international community and should be required to adopt


and maintain on its behalf a minimum standard of rights and duties that enable it to
d控制其船舶的活动在开放给所有国家的海事区域中，不损害第三方的利益，以及一般国际

社区。19

This responsibility is based on the idea that the principle of freedom of the high seas
can be more effectively guaranteed if the flag State controls the freedom and the

activities conducted by its vessels in that maritime area.20 It follows that the purpose

of the genuine link requirement is to ensure effective control and jurisdiction.21

The Tribunal therefore needs to base its opinion on the combined provisions of

articles 56, paragraph 1(a), 58, paragraph 3, 62, 73, paragraph 1, 91, paragraph 1, and 92, paragraph 1, of the Convention in order to conclude, in response to

question 1 of the Sub-Regional Fisheries Commission, that the vessel's flag State

must be held fully responsible for improper activities conducted by a vessel flying its

flag. The fact is that the Convention does not explicitly state whether the flag State

incurs any responsibility, nor does it specify the nature of its responsibility if such a
case arises or the applicable penalties. Incidentally, the Tribunal could therefore

clarify the meaning that should be attributed to the provisions of article 94 of the

aforementioned Convention, pursuant to which the flag State has a positive duty to

prevent and punish IUU fishing activities.

Now let us turn to question 2 of the SRFC, which reads as follows: To what extent shall
the flag State be held liable for IUU fishing activities conducted by vessels flying its
flag?

This relates, in particular, to the obligations of the flag State in cases of IUU fishing
conducted in the high seas by a vessel flying its flag. In more specific terms,
reference should be made to the responsibility of the flag State in cases where there
has been a breach of its international obligation to exercise effective jurisdiction and
control over a vessel flying its flag.

In addition to the responsibility invoked under question 1, international law requires
the flag State to ensure that vessels flying its flag and fishing in the high seas abide
by measures aimed at the conservation and management of fish stocks and do not
engage in any activities that could undermine their effectiveness.

It should be borne in mind that the provisions of article 116 of the Convention, while
recognizing that States Parties to the Convention have the right to engage in fishing
on the high seas, requires them to take the rights, duties and interests of coastal
States into account. Similarly, articles 117 and 118 remind States of their duty of
cooperation with respect to fishing on the high seas.

All these texts should serve as a basis for the Tribunal to conclude that in cases of
IUU fishing on the high seas the flag State should recognize its full liability if it is
proved to have breached its obligation to take reasonable measures to prevent IUU
fishing by its national vessels.

19 See, to similar effect, von Böhm-Amolly, “Registro de Navios”…, op. cit., p. 175.
The 1995 United Nations Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks and the 1993 Compliance Agreement confirm the responsibility of the flag State for any IUU fishing offence committed by a vessel flying its flag on the high seas.

In addition, according to the provisions of the 2009 Agreement on Port State Measures, which are backed up by the 2014 Voluntary Guidelines for Flag State Performance, the flag State must:

(a) ensure that the vessel authorized to fly its flag does not engage in illegal, unreported and unregulated fishing and/or does not support such activity;
(b) monitor the fishing activities of all vessels flying its flag, regardless of the location of such activities;
(c) confirm, where necessary, the information contained in the notification of arrival of a vessel;
(d) cooperate with port States and adopt all necessary punitive measures against any of its ships that are arrested on grounds of IUU fishing activities, even if the port State’s legislation has already prescribed penalties for this kind of offence.

In such a case, could a Member State of the Sub-Regional Fisheries Commission, acting in the context of its monitoring, control and surveillance activities, for instance when implementing provisions that fall under the jurisdiction of the port State, board vessels that have engaged in IUU fishing activities in the high seas and that are currently located in one of its ports?

That brings me to shortcomings in international law with respect to question 2. The Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks imposes a number of obligations on the flag State in cases involving fishing on the high seas. Under article 18 of the Agreement, States should authorize vessels flying their flags to engage in fishing on the high seas only where they can effectively exercise their responsibilities in that regard.

Article 3, paragraph 3, of the Compliance Agreement confirms the provisions of article 18 of the Agreement on straddling stocks as follows:

No party shall authorize any fishing vessel entitled to fly its flag to be used for fishing on the high seas unless the Party is satisfied that it is able, taking into account the links that exist between it and the fishing vessel concerned, to exercise effectively its responsibilities under this Agreement in respect of that fishing vessel.

In addition, the Code of Conduct for Responsible Fisheries stipulates that flag States must ensure that:

no fishing vessels entitled to fly their flag fish on the high seas or in the waters under the jurisdiction of other States unless such vessels have been issued with a Certificate of Registry and have been authorized to fish by the

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22 Voluntary Guidelines for Flag State Performance were adopted by the 31st session of the FAO Committee on Fisheries, Rome, 9-13 June 2014.
competent authorities. Such vessels should carry on board the Certificate of Registry and their authorization to fish. (Article 8.2 of the Code of Conduct for Responsible Fisheries on flag State duties)

This Tribunal is requested to deliver an opinion regarding the types of sanctions that Member States of the Sub-Regional Fisheries Commission can impose if the flag State refuses to cooperate, takes no steps to control vessels flying its flag or is reluctant to cooperate in penalizing an IUU offence on the high seas.

Given the inadequate means of surveillance available to the Member States of the Commission and the recurrence of cases in which flag States refuse to cooperate, the Tribunal will take the opportunity of this request for an advisory opinion to specify, where appropriate, the conditions, scale and modalities of the sanctions that should be imposed in such cases.

In its Draft Articles on Responsibility of States for Internationally Wrongful Acts, the International Law Commission fully endorses the position that the flag State is responsible for the consequences of such acts, i.e. in this case IUU fishing by a vessel flying its flag. Thus, the flag State is under an obligation to cease the act and to guarantee its non-repetition (article 30), to make reparations (articles 31, 34 and 39) and, where appropriate, to take countermeasures (articles 49 and 54).23

The opinions delivered on questions 1 and 2 are of paramount importance not only for regional fisheries organizations but also for the countries of registration that are deemed to be sources of flags of convenience.

Let us now turn to question 3.

THE PRESIDENT (Interpretation from French): I beg your pardon, Madam. I am sorry to interrupt you but it is now almost 4.30 p.m. and the Tribunal will now withdraw for a break of 30 minutes. The sitting will resume at 5 p.m., when we will continue to listen to your statement.

Thank you.

(The sitting was suspended at 4.29 p.m. and resumed at 5 p.m.)

THE PRESIDENT (Interpretation from French): The sitting now continues and I give the floor immediately to Ms Bèye Traoré to continue the oral statement of the Sub-Regional Fisheries Commission. Go ahead, please.

MS BÈYE TRAORÉ (Interpretation from French): Thank you, Mr President.

We shall now consider the arguments of the Sub-Regional Fisheries Commission regarding question 3, which reads as follows: “Where a fishing license is issued to a vessel within the framework of an international agreement with the flag State or with

23 See UN General Assembly Resolution A/RES/56/83 (Responsibility of States for internationally wrongful acts).
an international agency, shall the State or international agency be held liable for the
violation of the fisheries legislation of the coastal State by the vessel in question?"

It should be explained that the wording of question 3 is as it appears in the two
written statements (in French and English) that were sent to the Tribunal on
16 December 2013 and 12 March 2014, respectively. This wording is authoritative,
as noted by the Commission in its letter of 12 March 2014, accompanying version 2
of the written statement. Consequently, the wording of question 3 as it appears in the
French version of the SRFC resolution is an error which we respectfully request the
Tribunal to overlook.

The question of the responsibility and the definition of the flag State, in the case of
an offender sailing under the flag of a member State of an international organization
that has signed a fisheries agreement with a coastal State, is raised. A review of
fisheries agreements with Member States of the Commission shows a variety of
responsibilities in cases where a vessel is arrested for IUU fishing in waters under
the national jurisdiction of an SRFC Member State. Three cases have been
identified:

In the first case, the fisheries agreement refers to the international organization
signing the agreement as the single point of contact when acts of IUU fishing are
committed in waters under the national jurisdiction of an SRFC Member State. It is
stated that the SRFC Member State shall notify the international organization of all
boardings and penalties imposed in implementation of the agreement.

In this first case, under international law, is there not some confusion as to the
respective responsibilities of the international organization signatory to the
agreement and those of the flag State?

In the second case, the fisheries agreement refers to both the responsibility of the
flag State and the responsibility of the international organization that signed the
agreement for any boarding of a vessel or penalties imposed in implementation of
the agreement.

In this second case, is it possible to hold the international organization, on the one
hand, and the flag State of the offending vessel, on the other, jointly and severally
liable?

In the third case, the fisheries agreement refers to the responsibility of the
international organization that signed the agreement for any boarding of a vessel or
penalties imposed in implementation of the agreement. In addition, it provides for the
possible participation of a representative of the concerned flag State in the
exchanges between the SRFC Member State and the international organization that
signed the agreement.

In this third case, could the flag State, which is simply participating in the exchanges
between the international organization that signed the fisheries agreement and the
SRFC Member State in whose waters an IUU fishing activity occurred, be held liable
under international law?
This brings me to the shortcomings of international law in relation to question 3.

International law provides that only a State can be considered a flag State. In that case, as stated in the arguments put forward by the SRFC regarding questions 1 and 2, the flag State has an obligation of “due diligence” under the law of treaties and customary law and must, in good faith, take all necessary measures to ensure that a vessel sailing under its flag complies with the regulations governing the conservation and management of the fisheries resources of the coastal State; it must also ensure that the measures taken are not contrary to the interests of the coastal State. This is in line with the jurisprudence of the International Court of Justice in the Corfu Channel case, as well as with the adage sic utere tuo in alienum non laedas (“Use your own property in such a way that you do not injure other people’s”).

Can an international organization made up of sovereign States therefore be subject to the same legal regime as the flag State in respect of IUU fishing by a vessel sailing under the flag of one of its member States and fishing under its cover?

Where the flag State is not bound to the coastal State by a fisheries agreement, can it be held responsible in the event of IUU fishing simply because it is a member of the international organization that signed the agreement?

If so, which of them should be considered as the flag State under international law: the international organization that signed the fisheries agreement, the State of registration or the State of nationality of the offending vessel? Is it possible to hold them jointly responsible for a fisheries offence committed in waters under the coastal State’s jurisdiction? International law on this matter requires updating. The Sub-Regional Fisheries Commission eagerly awaits the detailed opinion of the Tribunal on these questions.

According to the Tribunal’s Judgment in Case No. 2, M/V “SAIGA” (No. 2), confirmed by its Judgment in Case No. 19, M/V “VIRGINIA G”, issued on 14 April 2014, an international organization cannot confer nationality on a vessel. The flag State has the exclusive right to grant its nationality to vessels. Indeed, the Judgment in the M/V “SAIGA” Case states that: “Article 91 leaves to each State exclusive jurisdiction over the granting of its nationality to ships. In this respect, article 91 codifies a well-established rule of general international law.”

The Tribunal’s jurisprudence in this case supports the Sub-Regional Fisheries Commission in its view that the flag State must be a State, not an organization that consists of several States and is therefore not competent to - grant its nationality to a vessel; and - assume sole liability for an act of IUU fishing by a vessel sailing under the flag of one of its member States and operating within the framework of a fisheries agreement.

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24 See Corfu Channel, Merits, Judgment, I.C.J. Reports 1949, p.4, at p. 22.
Furthermore, other terms used by regional fisheries management organizations to refer to a flag State, with reference to the Convention, particularly article 91 (“Nationality of ships”), article 94 (“Duties of the flag State”), article 61 (“Conservation of the living resources”) and part 5 (“Exclusive economic zone”).

All of these articles combine in pursuit of the objectives of article 193 and other provisions of the Convention.

I shall now turn to question 4, which reads: “What are the rights and obligations of the coastal State in ensuring the sustainable management of shared stocks and stocks of common interest, especially the small pelagic species and tuna?”

The pelagic species are fish which live near the surface and are characteristically migratory. Their habitat generally covers the tropical and subtropical zones straddling the maritime areas of several States. IUU fishing activities in the area of the Sub-Regional Fisheries Commission often target these pelagic species.

In the central eastern Atlantic, a number of migratory pelagic species move between the exclusive economic zones of several States (“transboundary stocks” or “stocks of common interest”) and/or between the exclusive economic zones and the waters beyond (“straddling stocks”). Thus, these are stocks which are shared between two neighbouring coastal States, two non-neighbouring coastal States located on either side of a gulf or an ocean, or a coastal State and the flag State of the vessel fishing the stock.

The term “shared stocks” requires clarification in light of the provisions of the Convention and the request for an advisory opinion submitted by the Sub-Regional Fisheries Commission.

In that connection, two types of pelagic fisheries are generally identified in the SRFC area: small coastal pelagic fisheries and high-seas fisheries.

Mr President, I now invite you to call to the bar Mr Papa Kebe, an expert in pelagic resources and Co-Agent, who will describe the biology, ecology and status of the pelagic species in the SRFC area.

THE PRESIDENT (Interpretation from French): Thank you, Ms Bèye Traoré. I now invite the next speaker, Mr Kebe, to take the floor.

MR KEBE (Interpretation from French): Thank you. President, ladies and gentlemen of the Tribunal for the Law of the Sea, it is a great honour for me to be able to address you some of the scientific aspects of the pelagic species that live in...

26 See the Compendium of management recommendations and resolutions adopted by ICCAT for the conservation of Atlantic tunas and tuna-like species: http://www.iccat.int/en/recsregs.asp. For example, the Recommendation by ICCAT Regarding Belize, Cambodia, Honduras, and St. Vincent and the Grenadines pursuant to the 1998 Resolution Concerning the Unreported and Unregulated Catches of Tuna by Large-Scale Longline Vessels in the Convention Area. See also the Recommendation by ICCAT Concerning the Importation of Bigeye Tuna and Bigeye Tuna Products from St. Vincent and the Grenadines, which entered into force on 21 September 2002.
SRFC waters. In the course of this presentation I shall be displaying graphs and charts on the screen. Some of you may be familiar with them since most of them are official FAO, International Commission for the Conservation of Atlantic Tunas (ICCAT) or SRFC documents.

The pelagic species are fish that live between the ocean surface and the ocean bottom but at a distance from the coastline and from the demersal area. Pelagic fish, also known as blue fish, include several hundred species with common characteristics, including a dark blue back and a silver belly that make it harder for predators to see them.

The eastern Atlantic, which includes the SRFC zone, has some of the most abundant fish resources in the world owing to the oceanographic phenomenon of upwelling. This phenomenon results from very strong ocean winds which push the surface layer of the oceans along, creating a gap into which the nutrient-rich cold waters on which the pelagic species feed rise.

I will consider first the small and then the large pelagic species.

The coastal pelagic resources known as “small pelagic species” include all the small fish that make up 77 per cent of all landings for the subregion. These resources essentially comprise six subspecies: round sardinella, flat sardinella, bonga, horse mackerel, Pacific horse mackerel and mackerel.

The straddling and migratory nature of these species is such that they are spread among a number of countries in north-western Africa and have a very broad range.

Round and flat sardinella, which are particularly important for the States of the subregion, range from south of Senegal to south of Morocco. Bonga, another widely fished species in the subregion, is found in the southern-most areas between Senegal and Sierra Leone. These small pelagic species spend virtually all of their adult life at or near the surface.

In 2012, the Food and Agriculture Organization (FAO) Fishery Committee for the Eastern Central Atlantic (CECAF) estimated the catch statistics for 2011 at approximately 2.6 million tonnes for the area comprising Senegal, the Gambia, Mauritania and Morocco.

In 2011, the average catch was approximately 115,000 tonnes for bonga, 535,000 tonnes for round sardinella, 132,000 tonnes for flat sardinella, 318,000 tonnes for mackerel and 367,000 tonnes for horse mackerel.

The peak reproductive season for round sardinella begins in May in the area south of Dakar and continues through June all along the coast of Senegal and north as far as Cap Timiris, ending off the coast of Mauritania between July and August.

Flat sardinella spawn throughout the year, but there is always at least one peak, generally at the beginning of the warm season in July and August off Senegal. The spawning period for bonga lasts all year off the coasts of Senegal and the Gambia.
The season runs from May to December in Sierra Leone and from February to October in Guinea-Bissau.

The reproductive period for horse mackerel is long, peaking from November to December and continuing until January or February at 15 degrees north.

After this brief summary of the reproductive areas and catch statistics for the small pelagic species that are most important to the Commission, let us now turn to their habitats and migratory patterns.

Early in the year, most of the round sardinella stock is concentrated between Senegal and the Gambia. The species may be found south of the Gambia, but this theory is unproven and further scientific studies are required. Beginning in April, round sardinella move towards the waters off Mauritania and in September and October, the stock moves northward towards Morocco. In late October, it returns southward to its spawning grounds along the coast of Senegal.

Flat sardinella are less migratory in nature and sometimes establish local populations that remain in the same area throughout the year. This species is found all along the tropical seaboard of the eastern Atlantic from Morocco to Angola.

The horse mackerel migration follows the normal seasonal changes in the upwelling patterns. In spring and summer, horse mackerel move towards the Azores and in autumn and winter, a period of increased upwelling along the continental shelf, they move towards the coast.

The CECAF Working Group, which met in 2012, conducted an assessment of small pelagic fish stocks in north-western Africa. The scientists concluded that most of these stocks were fully exploited or over-exploited. They recommended that current catch levels should be reduced in order to avoid collapse of the stock.

For flat and round sardinella, the total catch was 707,000 and the stock was over-exploited; it seems advisable to reduce the total catch to 257,000 tonnes in order to maintain the stock.

The stock of mackerel, with a catch of 259,000 tonnes per year, was also over-exploited. It was recommended that the total catch be maintained at 257,000 tonnes in order not to deplete the stock.

The horse mackerel catch was 343,000 tonnes. The stock was fully exploited or over-exploited. The scientists recommended that the fishing effort be reduced and catches maintained at the 2011 level. The annual bonga catch was estimated at 67,000 tonnes and the stock was also over-exploited. The scientists recommended a reduction in the fishing effort.

Mr President, ladies and gentlemen of the Tribunal, these small pelagic species which are harvested in the Commission’s area are a pillar of the economies of our countries. Fishing is one of our main economic activities and provides most of the edible animal protein consumed by our populations.
Additionally, 1.4 million people are employed directly or indirectly in fishing-related activities in our member States. In Senegal, the artisanal subsector offers direct employment to approximately 60,000 fishermen, of whom 20 per cent – 12,000 people – are involved in fishing the small pelagic species.

In 2006, 3,000 fishermen – roughly 50 per cent of the small fishermen in the Gambia – focused primarily on the small pelagic species, particularly bonga.

The contribution of fisheries to the national economy varies from one State to another. In Mauritania, it accounts for roughly 5 per cent of gross domestic product (GDP) and 20 to 25 per cent of the national budget; in Senegal, its contribution to actual GDP and export income is estimated at 1.3 per cent and 12.3 per cent, respectively; and in the Gambia, fishing accounts for 3 per cent of GDP.

It should also be noted that fishmeal and fish oil exports are an increasingly important source of foreign currency for Mauritania, particularly at a time when the price of these commodities has been soaring on the world markets.

After this rapid summary of some of the socioeconomic and biological aspects of the small pelagic species, let me now move to the second part of my statement, which will concern the large pelagic species.

These are highly migratory species, essentially the tuna family, similar species and other species that are harvested in the Atlantic tuna fisheries.

The large pelagic species are managed internationally by an intergovernmental organization which includes most of the Atlantic coastal states, including the SRFC member States with the exception of the Gambia and Guinea-Bissau; it also includes all of the African, Asian, American and European fishing States.

All of the large pelagic species which are harvested in the SRFC zone are listed in Annex I to the Convention (“Highly migratory species”). I will now consider the three species – yellowfin, skipjack and bigeye – which are commercially the most important and therefore account for 80 per cent of the catch.

As with the small species, I will now provide an overview of the status of the large pelagic fish stocks.

I will be using a graph technique known as the Kobe diagram, which was adopted by the world’s tuna fishing management organizations in Kobe in 2007, in order to show you the results of the tuna stock assessments. It comprises four quadrants and uses three colours to better present the data on the status of the stocks.

Green indicates that the stock has not been overfished or overexploited, which is obviously the goal of all the institutions responsible for managing tuna fisheries.

Red indicates that the resource is overfished or overexploited and that there is a high risk of collapse of the stock.

Yellow is a warning sign indicating overfishing or overexploitation of the stock.
The first species on which I shall focus is the yellowfin.

This species is found in the open waters of the tropical and subtropical areas. It spends over 90 per cent of its time in waters that have a uniform temperature of approximately 22 degrees centigrade. The maximum size reported is 2.39 metres for a weight of 200 kilos. The maximum age recorded for this species is estimated at eight years.

The equatorial area is the main spawning area for yellowfin and the season runs from October to March.

In the northern equatorial area – Senegal and Guinea – the reproductive season runs from April to June. Yellowfin also spawn around Cabo Verde during the hot season from June to October, although there is some variation from year to year.

I shall now turn to the movements of marked individuals in the Atlantic.

The recovery sites are shown on this chart.

Some individuals leave the African area and head towards the American coast, while other species migrate from the Gulf of Guinea to the Canaries. Perhaps more than ever before, monitoring the extensive migratory patterns of these stocks requires international cooperation.

The juveniles remain in the coastal areas around the Equator while the pre-adults and adults move to higher latitudes and more open waters.

Individuals up to 50 centimetres in length remain in the coastal areas and have moderate migratory patterns. Some juveniles migrate westward with seasonal feeding movements along the eastern and western Atlantic coasts.

It is generally believed that most of these individuals return to their spawning grounds once they have reached sexual maturity. In particular, during the first three months of each year, they migrate across the ocean north-west and south-east along the tropical coasts. The adults also migrate towards the higher latitudes during summer for feeding reasons and across the ocean for breeding reasons at an average speed of 1.74 miles per day.

According to the latest evaluation, the catches were 101,000 tonnes. This is below maximum sustainable yield, which is estimated at 114,000 to 155,000 tonnes.

The scientific advice resulting from the most recent stock evaluations is based on two types of model and the figures are relatively pessimistic. There is considerable uncertainty as to the status of the stock; with a probability of 26 per cent, its status seems to be in line with the management objectives, so apparently it has not been overfished.
The fishing effort has not reached the threshold either; the total allowable catch (TAC) limits adopted on the recommendation of ICCAT are apparently being respected.

The next species is the skipjack, which is an open-sea fish. It tends to be concentrated in the convergence areas near the demarcation lines between temperate and cold-water bodies. Skipjack are generally found in waters with a surface temperature of 20 to 30 degrees centigrade. They can be up to one meter long and have a maximum weight of 18 kilos and a maximum lifespan of five years.

Skipjack spawn opportunistically all year around across broad areas of the Atlantic. In the eastern Atlantic, they spawn on either side of the Equator from the Gulf of Guinea up to 20 or 30 degrees west. Spawning peaks between November and March.

This chart shows the movements of skipjack across the Atlantic and their recovery sites. Some of these species migrate from the Gulf of Guinea and slightly north towards the Canaries, crossing the maritime areas of SRFC Member States.

Their movements depend on ambient conditions and on their propensity to cluster around floating objects, forming mixed shoals of juveniles and adults of this and other tuna species. Their average observed speed is 2.8 miles per day.

There have also been reports of movements from the Gulf of Guinea to the south-east in summer and the north-west in October, which suggests that this species ranges widely in mixed shoals outwards from the Gulf of Guinea.

I will now turn to the status of skipjack. Even taking an extremely conservative approach, it seems unlikely that this stock is over-exploited.

Historically, the indicators for this stock in terms of mortality and biomass appear to predict sustainability. The average catch over the past five years was approximately 161,000 tonnes, while the estimated window for maximum sustainable yield ranges from 143,000 to 170,000 tonnes.

The last tuna species that I will discuss is bigeye, which lives at temperatures of approximately 29 degrees centigrade. However, it is a deep-diving fish and will sometimes venture as deep as 500 metres, where the ambient temperature is roughly 5 degrees centigrade.

The maximum size reported for the bigeye is 2.5 metres, its estimated maximum weight is 210 kilos and its maximum lifespan is 15 years.

Spawning is mostly nocturnal. It is generally believed that the species spawns from about 6 p.m. until midnight on a regular and almost daily basis. This tendency to spawn during the night is a way of averting the threat posed by both predators and ultraviolet radiation.

Spawning occurs throughout the year in a broad zone extending around the Equator from the Brazilian coast to the Gulf of Guinea. It peaks between January and June in...
the southern area; however, in the northern Atlantic, the spawning season is reduced to July through September and in the southern part (off Congo and Angola), to November and December.

This chart shows the movements and recovery sites for bigeye and explains the high mobility of this species. Like most tuna species, it covers enormous distances in the Atlantic.

The species is highly migratory. The tagging data show that it moves at a speed greater than that of yellowfin and comparable to that of skipjack; there are also seasonal movements determined by age group and the nature of the migration, which may be either feeding- or breeding-related.

Skipjack remain in their spawning area from birth to the following spring, when they start to move towards the tropics. In so doing, they swim along the African coast from Cape Lopez to Senegal and Mauritania. Some of them will then continue to the Azores, the Canaries and Madeira at an average speed of 10 miles per day.

Pre-adults may move northward to Senegal or southward to Angola. Between October and November, the bigeye that moved to the islands return southwards to their spawning grounds.

Tagging studies have shown the existence of transatlantic migrations from the Gulf of Guinea to the Brazilian coast and from the Gulf of Guinea along the African coast to the islands of Madeira and the Azores.

As with yellowfin and skipjack, transatlantic migrations from the American coast towards the Gulf of Guinea have been recorded. In the eastern Atlantic, movements from the Gulf of Guinea to the fishing areas located northward in the Azores and southward off Angola, as well as return journeys, have been observed.

I will now turn to the status of bigeye stocks.

The estimates seem to indicate that this stock is not overfished and that last year’s catch was around 70,536 tonnes, below the maximum sustainable yield of 78,000 to 101,600 tonnes.

The indicators suggest that this stock is not overfished and that the catch is below the maximum sustainable yield.

Apart from the few areas of uncertainty that I have mentioned, this fish resource appears to be sustainable if the parties continue to respect the TAC level of 85,000 tonnes as suggested by the ICCAT Scientific Committee.

The main conclusion to be drawn from the stock assessments for these three species, which are found in the SRFC tropical area, is that there are serious shortcomings in the data concerning IUU fleets, which have forced scientists to develop a number of theories regarding catch by size. These scientific opinions contain an enormous amount of uncertainty, which makes life difficult for the officials responsible for developing fishery management plans.
Mr. President, this brings my scientific assessment of these fisheries to a close. I would like to thank you and to request that you call to the bar Ms Diénaba Bèye Traoré, who will complete her legal argument concerning question 4.

THE PRESIDENT (Interpretation from French): Thank you, Mr Kebe. I now give the floor to Ms Bèye Traoré to conclude.

MS BÈYE TRAORÉ (Interpretation from French): Thank you, Mr President, distinguished Members of the International Tribunal for the Law of the Sea. The SRFC will conclude its submissions by addressing the shortcomings in international law with respect to question 4.

In the light of the shared nature of certain stocks, the provisions of articles 61, paragraph 2, 63, paragraph 1, and 64 of the Convention underscore the need for consultation either directly or through appropriate sub-regional or regional fisheries organizations to coordinate and ensure their conservation and development.

However, whereas article 63, paragraph 1, explains the content of the word “conservation” of shared stocks, there is clearly a need to clarify the interpretation of the word “development” in the same paragraph.

According to the interpretation of Satya Nandan et al.,¹ this word “development” in article 63, paragraph 1, should be applied on the basis of the requirements laid down in article 61, under which it must be ensured through proper conservation and management measures that the maintenance of the living resources is not endangered by over-exploitation, envisaging a long-term strategy of maintaining the stock as a viable resource.

In addition, article 61, paragraph 3, of the Convention requires coastal States to take into account international standards generally accepted by the international community when they define conservation and management measures for their shared fisheries resources. It is vital for the Tribunal to give its opinion on the legal instruments in which the Sub-Regional Fisheries Commission can find such measures.

These measures will have to include those referred to in articles 5 and 6 of the Fish Stocks Agreement. The general principles contained in article 5 and the provisions of article 6 of the Agreement on the precautionary approach, on the determination of reference points for each stock, and the measures to be taken if they are exceeded, and the ecosystem-based approach to fisheries that are also included in voluntary instruments such as the Code of Conduct for Responsible Fisheries should now be considered as accepted minimum international standards and, as such, should be applicable to all stocks, including pelagic fish stocks.

As a State in the area in which the fishing activity is taking place, international law gives the coastal State the right to secure the fisheries resources in the waters under

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its national jurisdiction by defining conditions of access for both domestic and foreign vessels. That right brings with it duties, in particular as regards management of shared stocks.

Furthermore, under article 63 of the Convention, States are invited to cooperate either directly or through appropriate sub-regional or regional organizations “where the same stock or stocks of associated species occur within the exclusive economic zones of two or more coastal States” (para. 1). Similarly, where “the same stock or stocks of associated species occur both within the exclusive economic zone and in an area beyond and adjacent to the zone” (para. 2).

Article 63 of the Convention calls on the coastal States involved in the management of shared stocks to seek “to agree upon the measures necessary to coordinate and ensure the conservation and development of such stocks” but nothing else is indicated, for instance, as regards the definition of a shared stock or the objectives of the management or allocation of catches between the States involved, on which the States do need to agree with a view to the sustainable management of those resources.

Although article 63, paragraph 1, and case law\(^2\) call on States to agree in good faith upon the conservation and management measures to be taken to ensure the sustainability of shared stocks, there is no obligation on those States to reach agreement. If there is no agreement, each coastal State will simply manage the shared stock when it crosses the waters under its national jurisdiction. The result is a poorly managed stock and an unequal allocation of the profits arising from its exploitation if one coastal State takes strict conservation measures so as to increase the maximum long-term yield by substantially reducing its short-term catches, while the other States concerned heavily exploit the stock in order to achieve a quick short-term gain.

Many coastal States that share the same stocks sign fisheries agreements without any prior consultation on conservation or sustainable management measures for those resources.

In addition, the legal status of pelagic fish stocks that are not managed by a regional fisheries management organization should also be addressed and solutions found.

The Tribunal could, within the framework of its opinion, provide clarification on the rights and obligations of the coastal State in terms of sustainable management of shared stocks or stocks of common interest. Those rights and obligations need to be clarified by international law.

Mr President, distinguished Members of the Tribunal, those are the arguments of the Sub-Regional Fisheries Commission.

I trust that these statements, the content of our oral statement and the previous written statements, will help to clarify the legal issues upon which your informed opinions are requested.

As was stated earlier by the Chairman-in-Office of the Conference of Ministers of the Sub-Regional Fisheries Commission, the SRFC looks forward to any clarification that the Tribunal may provide of the key provisions of the Convention and other international legal instruments with regard to the rights and obligations of the flag State in cases of IUU fishing in the EEZ of the flag State or in a third-party State or in the high seas, as well as clarification of the rights and obligations of the coastal State with a view to the sustainable management of shared stocks and stocks of common interest.

A clear interpretation and correct implementation of the provisions of the Convention, and of the rights and obligations of the flag State, the port State and the coastal State in cases of IUU fishing, are in the interests of all the States parties to the United Nations Convention on the Law of the Sea.

Mr President, distinguished Members of the Tribunal, that brings our statement to a close. Thank you for your kind attention.

THE PRESIDENT (Interpretation from French): Thank you very much, Ms Bèye Traoré.

That brings us to the end of today’s sitting. The Tribunal will sit again tomorrow morning at 10 a.m., when it will hear the representatives of Argentina, Australia, Germany, Chile and Spain, who will present their oral statements.

(The sitting was closed at 5.55 p.m.)