14 November 2013
File Ref: GD/4.1

The Registrar
International Tribunal for the Law of the Sea
Am Internationalen Seegerichtshof 1
22609 Hamburg
Germany

Fax No. (49) 40350607-275

Dear Sir,

**ITLOS REQUEST FOR VIEWS ON THE REQUEST FOR AN ADVISORY OPINION ON THE QUESTIONS PUT TO IT BY THE SRFC**

I refer to the request received from the Registry of the International Tribunal for the Law of the Sea for comments on the following questions:

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?*

The Forum Fisheries Agency (FFA) is an intergovernmental organisation established in Convention to provide a range of services and assistance to member countries in the management of fisheries resources.

I do not intend to reply to questions 1, 2 and 4. As there may be a range of views within the FFA membership on these questions these are best left to individual members to respond to should they wish.
I do however propose to provide some limited comments on question 3 in view of the fact that, on one interpretation, it could apply to a treaty in the Pacific (attached) where the FFA issues licences as a regional organisation. The full name of the treaty is:

*Treaty on Fisheries between the Governments of Certain Pacific Islands States and the Government of the United States of America.*

Before addressing that treaty, I wish to draw attention to the fact that there is a significant discrepancy between the French version of question three and the English version.

The French version reads:

3. *Une organisation internationale détenteur de licences de pêche peut-elle être tenue pour responsable des violations de la législation en matière de pêche de l'Etat côtier par les bateaux de pêche bénéficiant desdites licences?*

It will be noted that there is no reference to "within the framework of an international agreement with the flag State or with an international agency", as stated in the English version. Crucially, the "or" is also missing in the French version. This gives the English version a much wider scope.

When question 3 is viewed in the context of the SubRegional Commission on Fisheries (SRFC) where the question originated, it would be reasonable to assume that object and purpose of the question is directed towards a situation where the European Union (EU) obtains licences for vessels flagged to one of its members. In the context of the area covered by the SRFC, the only international agency ("Organisation" in the French version) would be the EU.

On this basis, the question would not have any application to the Treaty on Fisheries between the Governments of Certain Pacific Islands States and the Government of the United States of America where the Administrator grants licences to vessels on behalf of the coastal States Parties to fish in their EEZs.

Under this Treaty, the Administrator is defined as the "person or organization designated by the Pacific Island parties to act on their behalf pursuant to this treaty and notified to the Government of the United States."

The Director-General of the Forum Fisheries Agency is the Administrator.

The Administrator receives monies on behalf of the Pacific Island parties, receives notifications regarding agents capable of responding to legal process, notifies parties of certain information, including transhipment reports on vessel position, licensing area reports, licence applications. He can suspend the good standing of a vessel on the regional register where there is reasonable cause to believe that the vessel failed to report entry and exit from Zones, fails to report while in Zone, misreporting position and catch while on board, improper marking of vessel and gear. The Administrator is to notify the flag State (US) where good standing has been suspended.

A Pacific Island party in certain circumstances can request suspension of good standing, as well as provisions for flag State responsibility, and coastal State enforcement.
There have been instances where vessels have been investigated and prosecuted by the flag State and by coastal States. The parties meet regularly, and so far, issues in contention are dealt with at these meetings.

The treaty also contains its own dispute settlement clause. This has not to date been invoked.

In the light of the above considerations, I respectfully suggest that question 3 should not be interpreted as extending to the situation covered by the Treaty on Fisheries between the Governments of Certain Pacific Islands States and The Government of the United States of America.

I look forward to the outcome of this request for an Advisory Opinion with considerable interest.

Yours sincerely,

James T. Movick
DIRECTOR-GENERAL.