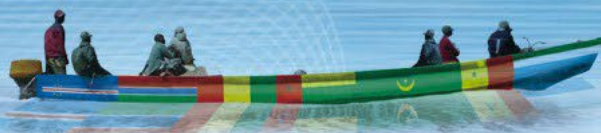




COMMISSION SOUS-RÉGIONALE DES PÊCHES
SUB-REGIONAL FISHERIES COMMISSION



PROPOSAL TO THE CSR EM

Draft request for an advisory opinion to the
International Tribunal for the Law of the Sea

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(Version 2)



Preamble

The intensification of illegal, unreported, and unregulated (IUU) fishing activities highlights the urgent need for stricter regulations on the use of vessel monitoring systems (real-time or semi-deferred).

For instance, the Automatic Identification System (AIS), which is mandatory for certain vessels under the SOLAS Convention, is used to a limited extent among fishing vessels. This loophole facilitates the concealment of illegal activities and hinders international cooperation in fisheries monitoring. In this context, the Sub-Regional Fisheries Commission (CSRP) plans to initiate a process aimed at promoting international regulations that would mandate the use of a monitoring system for all fishing vessels operating on the high seas.

The CSRP presented this initiative at the third United Nations Ocean Conference (UNOC-3, June 12, 2025, France), leveraging its own experience. It is proposed that the CSRP seek an advisory opinion from the International Tribunal for the Law of the Sea (ITLOS) on the legal and institutional implications of such regulations. This request would follow up on ITLOS's 2015 advisory opinion on combating IUU fishing.

Proposed Questions for Submission to ITLOS

To secure the legal basis for international regulations on a high seas fishing vessel monitoring system, two questions could be submitted to ITLOS.

Question 1. In light of the United Nations Convention on the Law of the Sea (UNCLOS), what are the legal implications of Regional Fisheries Management Organisations (RFMOs) or States imposing the mandatory use of a monitoring system for fishing vessels operating on the high seas? Is such an imposition compatible with the principles of the freedom of the high seas and the exclusive jurisdiction of the flag State, considering the obligation of international cooperation to strengthen maritime security and combat illegal, unreported, and unregulated (IUU) fishing?

ANALYSIS

- The vessel monitoring system (e.g., AIS) is not mandatory for all fishing vessels on the high seas. Unilateral imposition by RFMOs or States could be perceived as an infringement on the freedom of the high seas (which includes the freedom to fish) and the exclusive jurisdiction of the flag State over its vessels. However, the absence of a vessel monitoring system seriously hinders the surveillance and control of IUU fishing.
- This question directly addresses the tension between the "freedom of the high seas" and the necessity of "international cooperation" for resource conservation and the fight against illicit activities. An advisory opinion from ITLOS (International Tribunal for the Law of the Sea) could determine whether the obligation to use a fishing vessel monitoring system, as a measure of transparency and maritime security, can be legitimately imposed on the high seas, even if it places a burden on the flag State and operators. This could pave the way for more robust international regulation for AIS in the fisheries sector.

Question 2. Can the imposition of a monitoring system on all fishing vessels on the high seas be considered a "due diligence" measure for the conservation of fishery resources?

ANALYSIS

- The concept of "due diligence" is a fundamental principle of international environmental law and has been applied in other contexts by international tribunals. It implies that States must take all reasonable measures to prevent environmental harm. Applying this concept to the mandatory use of a monitoring system (e.g., AIS) would strengthen the legal basis for such a measure.
- By classifying the mandatory use of a monitoring system as a "due diligence measure," an ITLOS advisory opinion could establish a general international obligation for flag States to ensure transparency in high seas fishing operations. This would mean that failing to require the mandatory use of a monitoring system could be considered a breach of a due diligence obligation in the conservation of fishery resources, which would have significant legal implications for States.

An Opportunity for the CSRP to Strengthen Its Leadership

By formulating a request for an advisory opinion from ITLOS (International Tribunal for the Law of the Sea) and advocating for international regulations on a Vessel Monitoring System (VMS) for fishing vessels on the high seas, the CSRP (Sub-Regional Fisheries Commission) would strengthen its role as a key player in fisheries governance in West Africa. This initiative would also legally secure the maritime surveillance efforts of Member States, while calling for increased flag State responsibility.

Appendix 1: Proposed Additional Questions

These three additional questions, while potentially covered in theory by existing international law¹, seem to us to merit clarification from ITLOS.

Question 3. In the context of combating illegal, unreported, and unregulated (IUU) fishing, to what extent does Article 94 of UNCLOS (United Nations Convention on the Law of the Sea) impose obligations on the flag State and confer upon it adequate jurisdiction to ensure it exercises control over fishing vessels flying its flag, in order to prevent and suppress IUU activities on the high seas?

LEGAL ANALYSIS

- Article 94 of UNCLOS establishes the obligations of the flag State concerning control and jurisdiction over its vessels. However, the effectiveness of this control is a major challenge in the fight against IUU fishing, particularly on the high seas where coastal States have limited jurisdiction. Many vessels involved in IUU fishing exploit "flags of convenience" or gaps in flag State control. The international law of the sea, as codified by UNCLOS, primarily relies on the responsibility of the flag State. Yet, in cases of IUU fishing, the flag State often lacks the resources or the will to exercise effective control, or it may itself be complicit through convenience registration.
- An advisory opinion from ITLOS (International Tribunal for the Law of the Sea) could clarify the precise extent of the flag State's "effective jurisdiction" and "obligations." This could strengthen the accountability of States that do not exercise sufficient control, making it more difficult for IUU operators to hide behind lax flags. ITLOS, through its 2015 advisory opinion on IUU fishing, has already underscored the importance of flag State due diligence. This question aims to push that clarification further, specifically in the context of practical enforcement and suppression. It can be said that the fourth question builds upon the third; they are complementary.

Question 4. Given the obligations arising from UNCLOS (United Nations Convention on the Law of the Sea) and the UNFSA (United Nations Fish Stocks Agreement), what legal clarifications are necessary concerning the modalities for exercising flag State jurisdiction, particularly regarding the extent of its obligations in terms of control, enforcement, and sanction measures, to ensure a more effective and equitable fight against IUU (Illegal, Unreported, and Unregulated) fishing activities on the high seas?

LEGAL ANALYSIS

- Although UNCLOS and UNFSA establish general obligations for flag States concerning the conservation and management of fish stocks, the precise details of "control, enforcement, and sanction measures" are often left to the discretion of States or RFMOs (Regional Fisheries Management Organisations). This leads to inconsistencies and loopholes that are exploited by IUU fishing.
- This question seeks concrete clarifications on the "modalities" for exercising this jurisdiction. An opinion from ITLOS (International Tribunal for the Law of the Sea) could guide what constitutes an adequate set of measures (including monitoring, surveillance, inspection, and proportionate sanctions) that the flag State should implement. This is crucial for harmonising efforts to combat IUU fishing and preventing certain States from becoming "havens" for these activities.

¹ CNDM, FAO Compliance Agreement of 1993

Question 5. What is the extent of a flag State's jurisdiction for the inspection and control of its vessels within the Exclusive Economic Zone (EEZ) of a third coastal State, considering the latter's sovereign rights and jurisdiction in that zone?

LEGAL ANALYSIS

- There is a persistent discrepancy between the normative framework of international law of the sea and its practical application, particularly within the Exclusive Economic Zone (EEZ). This divergence poses substantial challenges to the actual exercise of State jurisdiction and raises fundamental questions for the conservation and management of marine resources. While Article 94 of the United Nations Convention on the Law of the Sea (UNCLOS) sets out the duties of the flag State, the effectiveness of this jurisdiction is nuanced by the specific characteristics of the EEZ. The flag State does retain the prerogative to inspect and control its own vessels, even when they operate in the EEZ of a third coastal State. These controls aim to ensure compliance with its national legislation and international conventions to which it is a party, especially concerning maritime safety, pollution prevention, and working conditions on board. These activities are part of the continuity of its jurisdiction over its vessels, provided they do not hinder or contravene the rights and regulations of the coastal State. The EEZ, defined by Part V of UNCLOS, constitutes a sui generis legal regime, distinct from the territorial sea, where the State exercises full sovereignty, and the high seas, characterised by freedoms. Article 56 of UNCLOS grants the coastal State sovereign rights to explore, exploit, conserve, and manage natural resources (both living and non-living). It also has jurisdiction over specific activities such as the establishment and use of artificial islands, marine scientific research, and the protection of the marine environment.

- Concurrently, Article 58 of UNCLOS specifies that other States enjoy, in the EEZ, the freedoms of navigation and overflight, as well as the freedom to lay submarine cables and pipelines. These freedoms are exercised under the same conditions as those enjoyed on the high seas (Article 87). However, their exercise is subject to the relevant provisions of the Convention and the laws and regulations adopted by the coastal State in conformity with the Convention, and must be carried out without prejudice to the rights of the coastal State. UNCLOS established the fundamental rules governing State jurisdiction in the EEZ, defining the right to regulate. Nevertheless, the extent of enforcement jurisdiction (i.e., the right to intervene, arrest, inspect, and prosecute) often proves more complex to implement in this zone. The Convention encourages cooperation between States. In the context of the EEZ, this cooperation is essential to reconcile the rights of the flag State and the coastal State. However, the concrete modalities of this cooperation (such as information exchange and joint inspections) can vary and are not always universally defined.

Although the international law of the sea has defined the prerogatives of States in the EEZ, the interpretation and implementation of these rules continue to pose significant challenges. This situation highlights the need for in-depth reflection on mechanisms that ensure effective jurisdiction and strengthened cooperation to overcome the persistent gap between legal text and State practice.

An advisory opinion from the International Tribunal for the Law of the Sea on this matter would provide major clarification within the framework of the Port State Measures Agreement (PSMA) and the certification of catches by Europe in our member States.

Appendix 2 : Draft Resolution of the Conference of Ministers of the CSRP Authorizing the Permanent Secretary to Request an Advisory Opinion from ITLOS

Request for Advisory Opinion to ITLOS

Resolution of the Conference of Ministers of the Sub-Regional Fisheries Commission (CSRP) authorizing the Permanent Secretary to request an advisory opinion in accordance with Article 33 of the Convention on the Determination of Minimum Conditions for Access to and Exploitation of Fishery Resources (CCMA).

The Conference of Ministers of the Sub-Regional Fisheries Commission,

Considering the United Nations Convention on the Law of the Sea of 1982 ;

Convinced that the International Convention for the Safety of Life at Sea (SOLAS) can significantly contribute to improving the safety of ships and property at sea, and that its provisions can, indirectly, support efforts for the surveillance and control of fishing vessels, as well as the safeguarding of human life on board vessels, particularly its Chapter V ;

Emphasizing the importance of the 1993 Agreement which aims to promote compliance by fishing vessels on the high seas with international conservation and management measures ;

Taking into account the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks ;

Reaffirming their commitment to the principles and standards established in the Code of Conduct for Responsible Fisheries of the Food and Agriculture Organization of the United Nations (FAO) ;

Recalling their will to implement the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing adopted in 2001 by the FAO Conference ;

Considering the Convention of 29 March 1985 establishing the CSRP, as amended in 1993, particularly in its aspects aimed at strengthening cooperation between its Member States for the benefit of the well-being of their respective populations ;

Considering also that the Convention of 14 July 1993 on the Determination of Conditions for Access to and Exploitation of Fishery Resources off the coasts of the CSRP Member States (CCMA) makes an essential contribution to the harmonization of fisheries policies and legislation of the States of the sub-region;

Desirous of adapting the Convention of 14 July 1993 to the technical and legal developments that have occurred since its adoption, particularly concerning the definition of the conditions for responsible fishing, the incorporation of the ecosystem approach to fisheries for sustainable management of fishery resources, and the fight against illegal, unreported and unregulated fishing, in accordance with international law;

Considering the provisions of Article 33 (referral to the International Tribunal for the Law of the Sea for advisory opinion) of the CCMA of 08 June 2012, worded as follows: "The Conference of Ministers of the CSRP may authorize the Permanent Secretary of the CSRP to refer a specific legal question to the International Tribunal for the Law of the Sea for advisory opinion";

Considering Article 20 of the Statute of the Tribunal and Article 138 of the Rules of the Tribunal ;

Decides,

In accordance with Article 33 of the CCMA, to authorize the Permanent Secretary of the Sub-Regional Fisheries Commission (CSRP) to refer to the International Tribunal for the Law of the Sea (ITLOS), pursuant to Article 138 of the Rules of the said Tribunal, for the purpose of rendering an advisory opinion on the following questions :

HERE, PASTE THE SELECTED QUESTIONS

Appendix 3: Draft Letter to ITLOS

Subject: Request for Advisory Opinion from ITLOS by the CSRP

His Excellency, Judge Tomas Heidar,

I have the honour to address you on behalf of the Sub-Regional Fisheries Commission (CSRP) to submit to the Honourable International Tribunal for the Law of the Sea (ITLOS) a request for an advisory opinion regarding the aforementioned questions.

Thank you for your kind attention to this request.

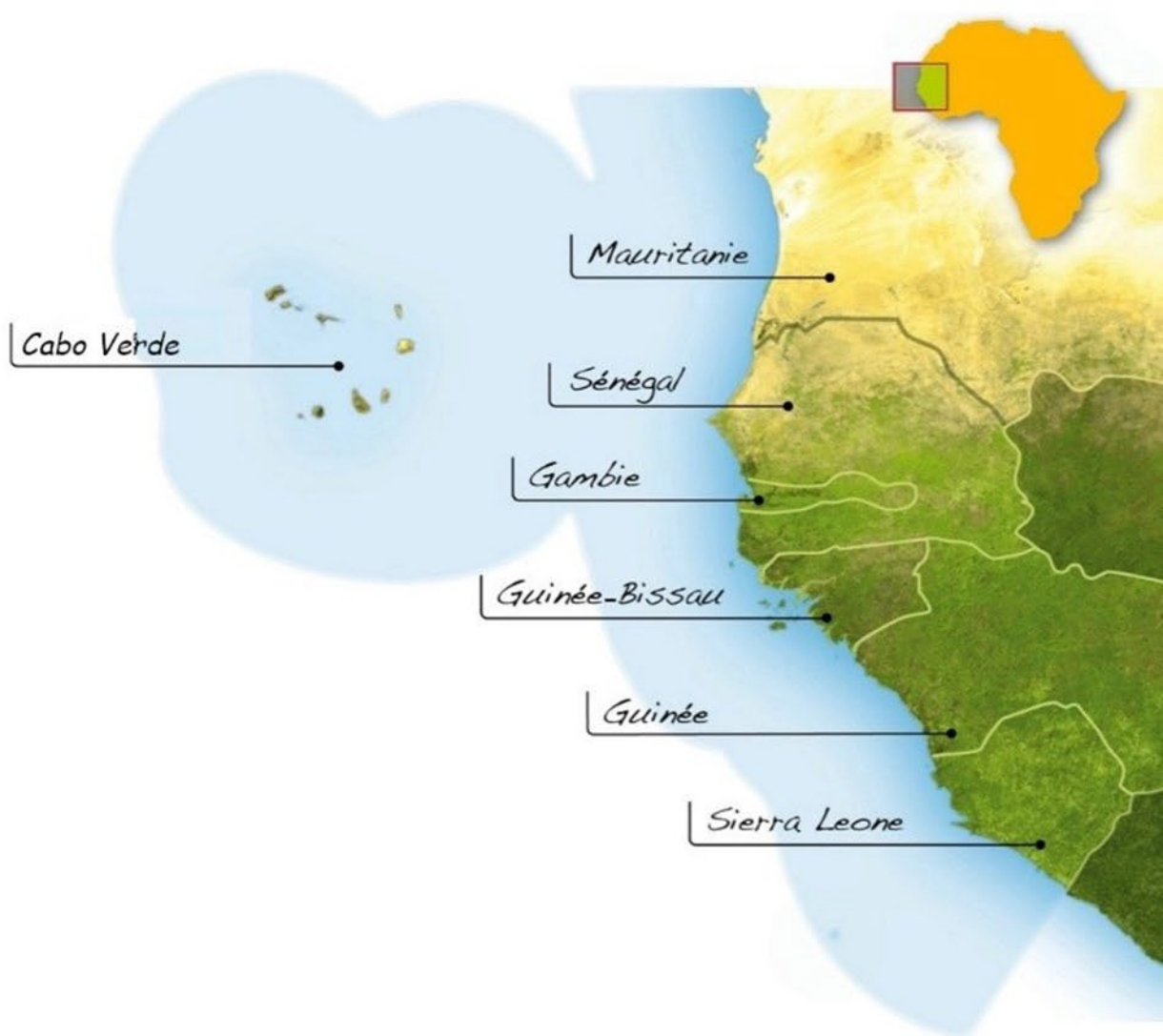
Please accept, Excellency, the assurance of my highest consideration.

Dr. Khallahi BRAHIM
Permanent Secretary of the CSRP

Summary

This document highlights the pivotal role the CSRP (Sub-Regional Fisheries Commission) can play by seeking an advisory opinion from the International Tribunal for the Law of the Sea (ITLOS). This move would help secure the legal foundation for international regulations that mandate the use of a monitoring system for all fishing vessels on the high seas.

To that end, we have formulated two questions for ITLOS. By clarifying the compatibility of this obligation with both the freedom of the high seas and flag State jurisdiction, and by establishing whether such a system constitutes "due diligence" for resource conservation, the CSRP will not only more effectively combat IUU (illegal, unreported, and unregulated) fishing, but also promote sustainable fisheries management. It will also solidify its leadership as a key player in fisheries governance, while simultaneously promoting increased flag State accountability and better harmonisation of maritime surveillance efforts. In addition to these inquiries, we are submitting three further questions, specifically concerning flag State jurisdiction within a coastal State's Exclusive Economic Zone (EEZ) and the extent of its enforcement obligations. This only further strengthens the ambition of this initiative.



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