

**RESPONSE BY THE CUBAN STATE TO
THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
(CASE NO. 21, ADVISORY OPINION)**

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 Zones of third party States?

Any State which grants its flag to a ship establishes a real and genuine link with that ship which is manifested not only in the right to represent it vis-à-vis other States, but also in the effective exercise, under its internal law, of its jurisdiction and control over the ship and its master, officers and crew in respect of administrative, technical and social matters concerning the ship in conformity with international conventions and practices generally accepted by States. The link established by granting the flag is retained even in the case of an agreement to charter the ship to a third party. That agreement must include the obligations arising from the grant of the flag.

In the view of the Cuban State, those obligations are:

- to obtain from the coastal State concerned the evidence which led to the adoption of the measures in question and to conduct the inquiry into the matter in ongoing cooperation with the coastal State.
- to take disciplinary measures against the master of the ship if he is a national of the flag State or to establish contact with the State of which the master is a national so that it can take appropriate disciplinary measures against him.

These obligations have been enshrined in articles 4, 241 and 242 of the Cuban Penal Code (Law 62 of 1987) which relate, respectively, to the application of criminal law in space and illegal fishing.

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

IUU fishing activities constitute infringements of the rules adopted by the coastal State in the exercise of the sovereignty conferred upon it by the Convention for the purposes of exploration, exploitation, conservation and management of natural resources, in this case fishery resources.

It has always been the practice of the Republic of Cuba to notify the flag State of infringements committed by ships falling under the jurisdiction of the flag State and of sanctions imposed on their crews.

3. Where a fishing licence 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?

If the fishing licence has been issued within the framework of an international agreement, the flag State is also liable for infringements of fisheries legislation since the licence has been granted to that State as a member of the organisation and even though it transfers its rights, it is still accountable for them.

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?

Within their exclusive economic zone coastal States have the rights and obligations laid down in the Convention, in particular in article 73, under which they may take such measures, including boarding, inspection, arrest, imposition of administrative sanctions in accordance with their internal law and judicial proceedings, as may be necessary to ensure compliance with the laws and regulations adopted by them in conformity with the Convention, on the understanding that those powers may be exercised over fishing vessels flying the flag of a foreign State.

In the case of international fisheries management arrangements which impose on coastal States, along with other States, rules laying down obligations relating to the conservation and sustainable management of pelagic species, fishing quotas are awarded on the basis of the results of investigations into the status of stocks, although coastal States generally have some flexibility in terms of what they fish within their exclusive economic zone.