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# Obligations and responsibilities of flag states related to IUU fishing based on ITLOS case no. advisory opinion 21 and its impacts to Indonesia

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**Abstract.** Illegal, unreported, and unregulated (IUU) fishing is still one of the biggest threats to the marine ecosystem. That is because IUU Fishing can damage a country's national and regional efforts to manage fisheries in a sustainable manner and interface with efforts to conserve marine biodiversity. IUU Fishing has reached about 20 percent of the total world catch and up to 50 percent in some areas. IUU Fishing practices often use bonded labor, destructive fishing methods and deceptive actions to reap profits at the expense of the state's local coastal fishing industry and the marine environment. Fisheries resources that should be available for fishermen are reduced due to IUU Fishing which can cause the collapse of local fisheries. Developing countries have proven to be very vulnerable because they have a large risk of being affected by illegal fishing, with the estimated total catch in West Africa reaching 40 percent higher than reported catches, such as exploitation rates severely almost sustainable management of marine ecosystems.

## 1. Introduction

Illegal, unreported, and unregulated (IUU) fishing is one of the biggest threats for the marine ecosystem. That is because IUU Fishing can damage a country's national and regional efforts to manage fisheries in a sustainable manner and interfere with efforts to conserve marine biodiversity [1]. IUU Fishing accounts for around 20 percent of the world's total catch and up to 50 percent in some areas. Its practices often use bonded labour and destruct fishing methods as well as deceive actions to reap profits at the expense of the state's coastal fishing industry and the marine environment. Fisheries resources should be available for fishermen but in fact they are lack for the fishermen because IUU Fishing cause the collapse of local fisheries. Developing countries have proven to be very vulnerable because they have a large risk of being affected by illegal fishing, with the estimated total catch in West Africa reaching 40 percent higher than reported catches, in which such exploitation rates severely hamper sustainable management of marine ecosystems [2].

The rise of IUU Fishing in the Exclusive Economic Zones (EEZ) of countries in West Africa, created the regional organization of the Sub-Regional Fisheries Commission (SRFC) of West Africa



consisting of 7 countries, such as Cabo Verde, Gambia, Guinea, Guinea-Guinea, Mauritania, Senegal and Sierra Leone to submit an Advisory Opinion request to The International Tribunal for the Law of the Sea (ITLOS) [3]. Advisory Opinion is the court's opinion in the form of advice to overcome problems raised by the competent authority [4]. SRFC submitted an Advisory Opinion request to ITLOS to solicit ITLOS opinions / advice regarding obligations and responsibilities state flag in the event of IUU Fishing. In its request, SRFC submitted four questions of law to the ITLOS, and 2 in whom associated with IUU fishing, namely - what are the obligations of the flag states in the case IUU Fishing carried out within the third party's EEZ?, and to what extent is the flag state responsible for IUU fishing activities carried out by ships sailing under its flag?

In answering questions raised by the SRFC, ITLOS limits its jurisdictional authority to EEZ of the SRFC member countries. This restriction is seen as a response to the fact that some countries oppose ITLOS jurisdiction in providing Advisory Opinion to questions raised by the SRFC [5]. ITLOS states that the Advisory Opinion 'has no binding power and is only given to SRFC members', but ITLOS also adds that he is aware of the fact that the Advisory Opinion will contribute to the implementation of UNCLOS especially regarding marine resources [5]. Based on this fact, it can be seen that ITLOS Advisory Opinion has its own influence, not only on SRFC members who ask questions, but also on all UNCLOS members, including Indonesia as one of the countries that ratified UNCLOS 1982.

## **2. ITLOS jurisdiction in giving advisory opinion case no.21**

It is necessary first to define the meaning of jurisdiction before discussing whether ITLOS has jurisdiction to handle request Advisory Opinion of the SRFC or not. Encyclopaedia Americana defines the meaning "jurisdiction" as "Jurisdiction, in law, a term for power or authority. It is usually applied to courts and quasi-judicial bodies, describing the scope of their right to act. As applied to a state or a nation, the term means the authority to declare and enforce the law" [6].

Jurisdiction in law is a term for power or authority. The term is usually applied to courts and judicial bodies, which describe the scope of the right to act from the court or quasi-court bodies. If applied to a country or nation, the term means the authority to declare and enforce the law [7]. Based on this explanation, jurisdiction in this article is the power of a court in this case ITLOS to decide on a case or issue a decision / decree in this case Advisory Opinion. ITLOS itself is an independent judicial body established under the 1982 UN Convention on the Law of the Sea (UNCLOS). It opens to States participating in the Convention and other non-state entities such as state and private companies [8]. Therefore, before answering to question raised by the SRFC, ITLOS must first determine whether it has jurisdiction to provide opinions/advice requested by the SRFC or not.

Several countries that participated in this process rejected ITLOS jurisdiction in providing Advisory Opinion, but several other countries welcomed and supported ITLOS jurisdiction over it. There are 22 countries in addition to members of SRFC and several organizations internationally who are officially involved participate and give opinion/statement on the question of this. That matter shows that Advisory Opinion from ITLOS will affect other countries. Germany as one of the countries that supports ITLOS jurisdiction in providing Advisory Opinion states in its written statement that "Germany welcomes the possibility of an Advisory Opinion request to the Tribunal. It will strengthen the Tribunal's role in the matter of the Law of the Sea" [9]. However, United Kingdom and several other countries in their written statement reject ITLOS jurisdiction to provide Advisory Opinion with the main reason that UNCLOS does not give ITLOS the authority to provide Advisory Opinion [10].

Meanwhile, ITLOS decides that it has jurisdiction to provide Advisory Opinion for requests from SRFC. ITLOS explains that both UNCLOS and the ITLOS Statute do not contain explicit explanations regarding ITLOS jurisdiction in providing Advisory Opinion. Those who oppose jurisdiction and those who consider that ITLOS has jurisdiction to provide Advisory Opinion focus their arguments on article 21 of the ITLOS Statute [10]. Article 21 ITLOS Statute (Appendix VI of UNCLOS) stipulates that "Tribunal jurisdiction (ITLOS) includes all disputes and all requests submitted to it under the

provisions of this Convention and all matters specifically stipulated in other agreements that give jurisdiction to the Tribunal".

According to the refusing countries, article 21 of the Statute also does not discuss the Advisory Opinion, either express or implied. According to it, this article only refers to ITLOS jurisdiction in adjudicating the subject matter of the dispute (Contentious Jurisdiction). Refusing countries states that article 21 of the Statute must be interpreted in a manner consistent with article 288 paragraph 2 of UNCLOS which addresses the authority of ITLOS and in that article there is no mention of the authority in giving Advisory Opinion [10]. In contrast to the refusing countries as mentioned, according to ITLOS article 21 the Statute does not only explain Contentious Jurisdiction but it also implicitly explains ITLOS jurisdiction in giving Advisory Opinion. ITLOS opposes the argument which states that article 21 of the Statute must be interpreted in accordance with article 288 UNCLOS.

ITLOS makes it clear that the ITLOS Statute contained in Annex VI of UNCLOS is an integral part of UNCLOS itself so that the Statute has the same legal status as UNCLOS. Article 21 of the Statute accordingly should not be considered subordinate to article 288 of UNCLOS. Article 21 of the statute rests on its footing and may not be read or interpreted as the subject of article 288 of UNCLOS [10]. ITLOS then interprets the meaning of article 21 of the Statute. This article stipulates that ITLOS jurisdiction consists of three elements, namely [10]; (1) All disputes submitted to the Tribunal in accordance with UNCLOS; (2) All the applications submitted to the Tribunal in accordance with UNCLOS; and (3) All the matters which are specifically regulated in the 'other agreements' which gives jurisdiction to the ITLOS.

According to ITLOS, the word "dispute" in article 21 of the Statute refers to ITLOS jurisdiction in adjudicating a dispute (Contentious Jurisdiction). Likewise, the word "request" refers to a request in a Contentious Case sent to ITLOS in accordance with UNCLOS provisions. Article 23 of the Statute clearly emphasises "the court will decide all the 'dispute' and 'request' in accordance with Article 293 of UNCLOS." Article 293 of UNCLOS governing the settlement of disputes [10]. The third element, the word "thing", has attracted various interpretations. According to the ITLOS, word "all" (all matters) cannot be considered only referring to the issue of the dispute, because if so, article 21 of the statute will only use the term "dispute". So the word "matters" must mean something that is more than just a "dispute" which according to the ITLOS including the Advisory Opinion [10].

It explains further that the phrase in Article 21 of the Statute states that the jurisdiction of ITLOS include all the matters that are specifically regulated in agreement more give jurisdiction to the ITLOS to does not establish the jurisdiction of ITLOS in giving Advisory Opinion. However, article 21 is a provision that allows the 'other agreements' to give jurisdiction to ITLOS. Therefore, what makes ITLOS have Advisory Opinion jurisdiction is the 'other agreement'. When 'other agreements' give legal jurisdiction to ITLOS, ITLOS is then deemed competent to exercise jurisdiction in respect of "all matters" (Advisory Opinion) specifically regulated in "other agreements" [10].

In this case, the "other agreements" gives jurisdiction to ITLOS to give Advisory Opinion to question raised by SRFC is the MCA Convention (Convention on the Determination of the Minimum Conditions for Access and Exploitation of Marine Resources within the Maritime Areas under Jurisdiction of the Member States of the Sub-Regional Fisheries Commission). This convention is an agreement internationally that is done by the seven countries members of SRFC regarding maritime resources and in this convention a clause giving jurisdiction to the ITLOS to give the Advisory Opinion if there is a legal issue to ask [10]. Therefore, Article 21 of the Statute and "other agreements" are related to each other and constitute the substantive legal basis of ITLOS jurisdiction in providing Advisory Opinion.

After determining that ITLOS has the jurisdiction to give Advisory Opinion, ITLOS actually has discretionary authority to continue to refuse giving Advisory Opinion if there is a "compelling reason". This can be seen in article 138 of the Rules which state that "the Tribunal can give Advisory

Opinion". The word can be interpreted that ITLOS has a discretion to refuse giving Advisory Opinion even if he has jurisdiction for it [10].

However, ITLOS holds that there is no compelling reason to make ITLOS must refuse to give Advisory Opinion because [10]: (1) The questions raised by the SRFC are legal questions and in ITLOS's view, they are clear; (2) By answering this question, ITLOS will not act as a legislative body; (3) This Advisory Opinion has no binding power and is only given to SRFC members; (4) ITLOS is aware of the fact that by giving the Advisory Opinion of this will help the country members of SRFC in determining the actions related to the issue of maritime resources / IUU; (5) ITLOS is aware of the fact that giving Advisory Opinion will contribute to the implementation of UNCLOS.

### **3. Obligation and responsibility of flag state in illegal fishing**

Before elaborating flag state duties, ITLOS starting to answer by defining IUU Fishing based on the Minimum Condition for Access (MCA) Convention, the definition is a general definition of IUU Fishing which is also contained in several national and international rules such as in the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported, Unreported and Unregulated Fishing (IPOA-IUU), and Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (the Port States Measures Agreement") [11]. The terms Illegal, Unreported, and Unregulated Fishing are [11]:

Illegal fishing is : (a) Conducted by a foreign person or ship in a water which becomes the jurisdiction of a country without permission from that country, or contrary to the laws and regulations in force in the country where the fishing activities take place; (b) Conducted by vessels flying the flag of a country that is a member of a regional fisheries management organization but operate not in accordance with the provisions of the conservation and management applied by the organization or the rules of international law applicable; (c) Contrary to national law or international obligations, including the obligations of Regional Fisheries Management Organization (RFMO) member countries to the organization ;

Unreported fishing is ; (a) Fisheries activities that are not reported or reported incorrectly to the national authorities, which are contrary to laws and regulations; (b) The activities of fisheries are conducted in the area of competence of the RFMO which have not been reported or reported are not true, as opposed to reporting procedures of the organization are.

Unregulated fishing is : (a) Fishing activities carried out in the relevant RFMO competency area carried out by vessels without nationality, or by vessels flying the flag of a country that is not a member of the organization , or by fishing companies, which are carried out in ways that are contrary to conservation arrangements and management of the organization ; (b) The activities of fisheries are conducted in area waters or for the preparation of fish in which no settings conservation and management that can be applied, which is conducted in a way that is contrary to the state's responsibility for conservation and management of biological resources sea in accordance with the legal provisions of international.

The definition of a state flag is a country that provides the flag for use by a ship. The flag state exercises jurisdiction or legal authority over the ship. Ships can obtain the nationality of a country through the registration procedure in that country [12]. ITLOS explains that UNCLOS assigns special rights and responsibilities to coastal states in EEZ, the main responsibility in taking the actions necessary to prevent and deal with IUU Fishing located on the coast countries [10]. Even so, ITLOS also stresses that the primary responsibility of the coastal State in taking action against IUU fishing is carried out in EEZ of the flag state to no discharge their obligations in matters of this [10]. According to ITLOS, some of the flag states' obligations related to IUU Fishing based on an analysis of the provisions in UNCLOS, namely:

1. Based on article 94, ITLOS states that the flag state is obliged to actively and effectively exercise its jurisdiction and control the administrative, technical, and social issues of the fishing vessels that fly their flags. ITLOS determines that the implementation of flag State

jurisdiction and control of the vessels flying its flag in particular should include: to maintain the list of the vessel which contains the name and description of the vessel, taking the necessary measures: to ensure the safety of navigation and periodic survey by a qualified surveyor ship; the flag state must also ensure that any ship which is flying the flag manned by a captain, officers, and crew who have qualifications appropriate [10];

2. According to ITLOS, the flag state is obliged to create a law enforcement mechanism to monitor and secure the compliance of ships flying their flags against laws and regulations. Sanctions were applied to vessels which are involved in IUU fishing should be sufficient to be a deterrent effect as well as the sanctions must eliminate the advantage obtained by the offender fishing activities are IUU [10];
3. According to Article 94 paragraph 6, if a country has clear grounds for believing that the state flag has not been carrying out the jurisdiction and control of the right against ships which fly the flag, the country that can report it to the state flag, after receiving the report, the state flag shall oblige to investigate and take action as needed to improve the situation [10]. According to ITLOS, this obligation also applies to flag countries whose vessels are accused of being involved in IUU fishing, when allegations and reports emerge that IUU Fishing has occurred. The flag state is then obliged to investigate this issue and take whatever action is needed to improve the situation and is obliged to inform the reporting country of the actions taken by the flag state. Actions taken by the Flag State must not reduce the right of the coast State to take steps in accordance with article 73 of UNCLOS [10];
4. Article 94 states further that the flag state must take the necessary administrative measures to ensure that the vessels flying the flag are not involved in activities that interfere with the conservation and management of marine living resources. But if such violations occur and are reported by another country, the flag state is obliged to carry out an investigation and, if necessary, take whatever action is necessary to improve the situation [10];
5. ITLOS reconsider the decision in the case of the MOX Plant Case stating that cooperation is a basic principle in the prevention of pollution of the marine environment in accordance with chapter XII of the Convention and general international law. ITLOS believes that the obligation to cooperate also applies to cases of alleged IUU Fishing [10];
6. ITLOS concluded based on article 192 and the decision of the Southern Bluefin Tuna Case that the flag state is obliged to ensure that vessels flying their flag comply with the biological resource conservation measures imposed by coastal states in their EEZ, as concluded by ITLOS that resource conservation life is an integral element in the protection and preservation of the marine environment [10].
7. Article 58 paragraph 3 and article 62 indicate that ITLOS holds that the flag state has the obligation to take the steps necessary to ensure compliance of ships flying their country's flag against the rules adopted by coastal countries in accordance with the provisions of the Convention. The provisions of this article also provide an obligation on the flag state to adopt the steps necessary to prohibit that ship fly the flag of fishing in another country's exclusive economic zone unless you get permission [10]. Article 58 states that In exercising their rights and obligations in EEZ, States must pay attention to the rights and obligations of coastal states and must comply with the laws and regulations stipulated by coastal states in accordance with the provisions of this Convention and other international legal regulations to the extent that they do not conflict with this section. Article 62 shows then that other countries to catch fish in EEZ are obliged to comply with conservation measures as well as with other terms and conditions specified in the laws and regulations of coastal States.

Although those articles as mentioned above does not specifically mention IUU fishing, ITLOS considers that the provisions in article 58 paragraph 3, article 62 paragraph 4, as well as article 192 provide obligations to the flag states to take the steps necessary to ensure that citizens and vessels flying Their flag is not involved in IUU Fishing activities [10]. Although the primary responsibility for the conservation and management of living resources in EEZ is the coastal states, flag states also have

a responsibility to ensure ships that fly the flag does not perform activities of IUU Fishing in the coastal zone of EEZ. In terms of it, ITLOS would like to clarify the meaning of the phrase "to Ensure.". According to ITLOS, phrase "to ensure ships flying its flag do not engage in IUU fishing" is an obligation of conduct of the state flag and not an obligation of result and this obligation has been fulfilled if due diligence is carried out by the flag state.

The due diligence obligation is an obligation that includes not only the enactment of a law, regulation and appropriate action, but this obligation also relates to a certain level of caution in the implementation and enforcement of applicable administrative controls such as monitoring of activities carried out for protecting the rights of other parties. ITLOS views that UNCLOS is the main instrument that provides guidance on actions to be taken by the flag state to ensure the fulfilment of obligations "due diligence" to prevent IUU fishing carried out by vessels flying its flag in the EEZ of the coastal State. In other words, not the obligation of the state flag to 'achieve compliance' ship from committing IUU fishing, but the state flag under obligation due diligence take all measures necessary to ensure compliance and prevent ships that fly the flag doing IUU Fishing. In doing so, the flag state must take action in accordance with obligations number 1 to 7 mentioned above.

Regarding to responsibility of the flag state, ITLOS refers to the provisions in the Draft Articles of the International Law Commission on Responsibility of States for Internationally Wrongful Acts (The ILC Draft Articles on State Responsibility) : (a) in which "every internationally wrongful act of a country requires that country to be internationally responsible (article 1); (b) every international wrongful act if it is in the form of an action or omission that fulfils two elements – called - they are considered to originate from the state under international law and constitute a violation of the country's international obligations (article 2); and (c) the state has an obligation to make reparations for losses caused by their wrong actions internationally (article 31).

ITLOS explains that in the context of state responsibility, the term "liability" refers to secondary obligations that arise as a result of violations of primary obligations. Accordingly, the flag's state obligation to responsibility for an action or omission depends on violations of international obligations of the country. Furthermore ITLOS states that the responsibility of the flag state does not originate from the fact that the ship flying its flag is involved in IUU Fishing. The flag state is not necessarily responsible for the actions of vessels flying the flag because these actions cannot be considered as actions originating or caused by the flag state itself. In contrast, ITLOS believes that the responsibility of a flag state arises only if the flag state fails to fulfil its due diligence obligation to ensure that the ship flying its flag does not engage in IUU Fishing activities.

Violation of due diligence obligations occur if the state does not take necessary and appropriate actions to fulfil its obligations to ensure that vessels flying the flag do not undertake IUU Fishing. As a result, the flag state is not necessarily responsible in the case of non-compliance with its ships provided that the flag state has taken "all necessary and appropriate measures" to fulfil its due diligence obligations. Coastal states can hold the flag state accountable for the actions of its ships carrying out IUU Fishing in the coastal EEZ in the event of a violation caused by the flag state to its international obligations.

#### **4. Effect of ITLOS case 21 advisory opinion on Indonesia**

Indonesia is an archipelagic country which two-thirds of its territory is sea waters with a coastline length of 95,181 km and sea area of 5.8 million km<sup>2</sup>. These geographical conditions provide wealth in the form of abundant marine and fish resources. This potential, if cultivated optimally by sticking to sustainable fishing, will have a significant impact on the economy especially in the Indonesian fishing industry [13].

In addition to providing great potential for the fishing industry, it is also a challenge for the Indonesian government to protect Indonesia's marine resources from IUU Fishing activities. Indonesia is one of the countries that feels a large impact from IUU Fishing activities. Indonesia's losses due to illegal fishing have been calculated by the World Bank and FAO of approximately 20 billion US dollars or equivalent to Rp 240 trillion per year [14]. The massive theft of fish by foreign vessels plus

fishing using environmentally unfriendly fishing gear and even tends to damage nature has made most of Indonesia's waters in critical condition. Some of Indonesia's Fisheries Management Areas are included in the red category for a number of fish species and other marine biota. This condition shows that overfishing is taking place in Indonesian waters [14].

Regarding to this massive background of IUU Fishing activities in Indonesian waters, it is important to see the relevance between ITLOS Case 21 Advisory Opinion and the conditions in Indonesia. It has been explained previously that the Advisory Opinion has no binding power and is only given to members of the Sub-regional Fisheries Commission (SRFC) to assist SRFC member countries in determining their actions related to maritime / IUU resource issues [10]. Although it does not have binding power, in its own way, Advisory Opinion can contribute to the explanation and application of international law. This can be seen in paragraph 77 Advisory Opinion Case 21, in which ITLOS explains that this Advisory will contribute to the implementation of UNCLOS - "The Tribunal is mindful of the fact that by answering the questions it will assist the SRFC in the performance of its activities and contribute to the implementation of the Convention".

The Advisory Opinion, therefore, can indirectly influence UNCLOS participating countries, including Indonesia, specifically regarding Indonesia's obligations as a flag state in relation to IUU Fishing and under what conditions Indonesia can claim flag state responsibility when the ship flying its flag do IUU Fishing. Related to this Advisory Opinion, Indonesia should follow and comply with the obligations outlined by ITLOS in order to prevent ships flying the Indonesian flag from carrying out IUU Fishing activities in the waters of other countries. In addition, one aspect needs to pay attention in an effort to overcome IUU Fishing activities in Indonesian waters is under what conditions can Indonesia hold the state flag responsibility when its ships carry out IUU Fishing activities in the Indonesian EEZ?

Based on its Advisory Opinion, ITLOS is of the view that the provisions in article 58 paragraph 3, article 62 paragraph 4, as well as article 192 UNCLOS give an obligation to the flag state to take the steps necessary to ensure that every vessel flying its flag is not involved in the activities of IUU Fishing [10]. The obligation is an obligation of conduct of the flag state and is not an obligation of result and this obligation has been fulfilled if proper due diligence is carried out by the flag state [10] - "... The State flag is under the" due diligence obligation "to take all necessary measures to ensure compliance and to prevent IUU fishing by fishing vessels flying its flag."

Related to some IUU Fishing activities occur in Indonesian waters, there are several cases where foreign fishermen who carry out Illegal Fishing are escorted by officials from their country, which means the flag state has been directly involved in IUU Fishing activities. For example, a case encountered by the Indonesian Government with a Chinese-flagged fishing boat, namely Kway Fey 10078, which was suspected of conducting IUU fishing activities in the Indonesian EEZ. In this particular case, a Chinese coast guard ship assisted the Kway Fey to escape the Indonesian jurisdiction by ramming into Kway Fey 10078. Consequently, the Indonesian Government could not enforce its jurisdiction upon Kway Fey 10078 and the Chinese Government requested Indonesia to release eight Chinese nationals who had been detained [15]. Another example was in February 2019 the Indonesian Navy managed to arrest four Vietnamese-flagged fishing vessels in North Natuna waters, then the Minister of Maritime Affairs and Fisheries, Susi Pudjiastuti, said that four Vietnamese fishing vessels were escorted by two surveillance vessels fishing in Indonesian waters. Susi Pudjiastuti said the arrest of the four Vietnamese vessels added to the long record of the theft of fish in Indonesian waters by Vietnamese-flagged vessels. In fact, in the past month, fishing vessels from Vietnam often involve Vietnamese government patrol boats, Vietnam Fisheries Resources Surveillance (VFRS) [16]. A similar case occurred in December 2019 when Chinese fishing vessels escorted by Chinese coast guard forces sailed in Natuna waters. Based on the results of the meeting between the Indonesian Ministries confirmed the occurrence of violations of Indonesia's EEZ, including IUU fishing activities and violations of sovereignty by the Coast Guard of the PRC in Natuna waters [17].

The two cases as mentioned shows that the practice of IUU Fishing carried out by foreign fishermen in Indonesia has involved institutions / officials from the flag state. This shows that the flag states

have violated their international obligations by not carrying out their due diligence obligations to ensure that vessels flying their flags do not carry out IUU Fishing activities. The country do not take "necessary and appropriate" actions to fulfil its obligations, even they are actively involved directly through the state apparatus in escorting and helping their fishermen to carry out IUU Fishing activities in Indonesian waters. This is a violation of the international obligations of the flag state. Therefore, if it is associated with ITLOS Case 21 Advisory Opinion, Indonesia can hold the state flags responsibility for taking part in escorting its fishermen in conducting IUU Fishing activities and not carrying out its international obligations in conducting due diligence to prevent vessels flying the flag from conducting IUU Fishing activities.

## 5. Conclusion

It can be concluded that to determine whether or not the jurisdiction of ITLOS in providing the Advisory Opinion, ITLOS base their arguments on Article 21 of the Statute (Annex VI UNCLOS). ITLOS holds that Article 21 of the Statute allows other 'agreements' to give the Advisory Opinion jurisdiction to ITLOS. Although the UNCLOS does not mention directly on IUU Fishing, ITLOS held that the obligations of states in article 58, 62, 94, 192, and 193 can be implemented as a flag state obligations to prevent IUU Fishing. In addition, ITLOS also want to reinforce that flag state obligations in ensuring that ships flying its flag is the duty of due diligence and not an obligation to achieve results. ITLOS Case 21 Advisory Opinion as requested by SRFC can be best practice for Indonesia to protect its ZEE and waters from IUU Fishing conducted by foreign fishermen such as fisherman from Thailand, Vietnam, and PRT.

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