Annex 5

DRAFT AGREEMENT ESTABLISHING THE CARIBBEAN COMMUNITY COMMON FISHERIES POLICY (ADOPTED IN 2011)

Agreement establishing the Caribbean Community Common Fisheries Policy

The Participating Parties:

Being guided by the Principles and Rights enunciated in the Revised Treaty of Chaguaramas, which was signed by Heads of Government in Nassau, Bahamas on 5 July 2001, and by the Principles expressed in the Agreement establishing the Caribbean Regional Fisheries Mechanism, which was signed in Belize City, Belize on 4 February 2002;

Conscious of the decision of the Conference of Heads of Government of the Caribbean Community at the Fourteenth Inter-Sessional Meeting held in Trinidad and Tobago, 14 to 15 February 2003, to elaborate a Common Fisheries Regime;

Conscious also of the directive of the Ministers responsible for fisheries at the First Meeting of the Ministerial Council of the Caribbean Regional Fisheries Mechanism, held in Saint Vincent and the Grenadines on 16 January 2009, to elaborate the Common Fisheries Policy and defer consideration of matters relating to the Common Fisheries Regime;

Committed to fostering cooperation and collaboration among Participating Parties in the conservation, management and sustainable utilisation of fisheries resources and related ecosystems for the welfare and well-being of the peoples of the Caribbean;

Mindful of the relevant provisions of the 1982 United Nations Convention on the Law of the Sea; the 1983 Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region; the 1990 Protocol concerning Specially Protected Areas and Wildlife in the Wider Caribbean; the 1992 United Nations Convention on Biological Diversity; the 1993 Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas; the 1994 Barbados Programme of Action for the Sustainable Development of Small Island Developing States; the 1995 FAO Code of Conduct for Responsible Fisheries; the 1995 United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks; the 2002 Johannesburg Declaration on Sustainable Development and the Plan of Implementation of the World Summit on Sustainable Development; the 2005 Mauritius Strategy for the Implementation of the Barbados Programme of Action; and the 2009 FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing;

Recognising the Caribbean Sea as a large marine ecosystem that is shared by Members of the Caribbean Community and non- Member States and Territories;

Recognising also the importance of fisheries to social and economic development, food and nutrition security and the welfare of the peoples of the Caribbean;

Conscious that there exists within the jurisdiction of Participating Parties underexploited or unexploited fisheries resources of great value which represent a safeguard for the future development of fisheries and, when used sustainably, present an opportunity to increase the contribution of fisheries to the social and economic development of the Caribbean Community;

Aware that many commercial species are fully or overexploited and are in need of management, conservation and rehabilitation;

Aware also that certain living marine resources, which are of interest to the peoples of the Caribbean, are shared, straddling or highly migratory and in some cases are harvested by Third States;

Conscious of the need to promote the sustainable utilisation of fisheries resources and the need to protect associated ecosystems through the efficient development, management and conservation of such resources;

Noting that Article 60 of the Revised Treaty provides that the Caribbean Community, in collaboration with competent national, regional and international agencies and organisations, shall promote the development, management and conservation of the fisheries resources in and among the Members of the Caribbean Community on a sustainable basis;

Noting also that Article 4(a) of the Agreement establishing the Caribbean Regional Fisheries Mechanism has among its objectives the efficient management and sustainable development of marine and other aquatic resources within the jurisdictions of the Members of CRFM;

Determined to ensure the long-term sustainable utilisation and conservation of the living aquatic resources within the jurisdictions of Participating Parties;

Recalling the United Nations General Assembly Resolutions supporting sustainable ocean management in the Caribbean;

Convinced that the implementation of the Caribbean Community Common Fisheries Policy will contribute to the enhanced treatment of the Caribbean Sea as a special area in the context of sustainable development;

Recognising the need to develop the Caribbean Community Common Fisheries Policy in consultation with all relevant parties, including representatives of fisherfolk organisations;

Have agreed as follows:

Article 1 Definitions

For the purpose of this Agreement, the following definitions shall apply:

(a) "access agreement" means an agreement concluded between or among Participating Parties or between or among one or more Participating Parties and one or more Third States, for the purpose of exploiting the fisheries resources of a State or group of States;

(b) "aquaculture" means all activities in fresh, brackish or salt waters aimed at the husbandry or culturing of fish or aquatic flora and includes ranching and hatchery-reared re-stocking practices;

(c) "aquatic flora" means any aquatic plant, including parts or derivatives;

(d) "Competent Agency" means an organisation designated by Participating Parties to support them in achieving the objectives of this Agreement;

(e) "conservation" means the maintenance, improvement and use of natural resources according to principles that will assure both the sustainability of those resources and economic and social benefits for present and future generations;

(f) "ecosystem" means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit;

(g) "ecosystem approach to fisheries management" means the balancing of diverse societal objectives, by taking account of the knowledge and uncertainties about biotic, abiotic and human components of ecosystems and their interactions and applying an integrated approach to fisheries within ecologically meaningful boundaries;

(h) "fish" means any aquatic animal, including parts and derivatives;

(i) "fisheries management and development plan" means a specific plan, policy or strategy for the management and development of single-species or multi-species fisheries in a sustainable manner;

(j) "fisheries resources" means any harvestable fish or aquatic flora, natural or cultured;

(k) "fishing" means:

i) the actual or attempted searching for, catching, taking or harvesting of fisheries resources;

ii) engaging in any activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fisheries resources, for any purpose;

iii) placing, searching for or recovering fish aggregating devices or associated electronic equipment, such as radio beacons;

iv) any other operations at sea, on a lake, in a river or within any other water body in connection with, or in preparation for, any activity described in paragraphs (i) to (iii), including transhipment; and

v) use of any other vessel, vehicle, aircraft or hovercraft, for any activity described in paragraphs (i) to (iv),

but does not include any operation related to emergencies involving the health or safety of crew members or the safety of a vessel;

(l) "fishing effort" means the level of fishing, as may be defined, *inter alia*, by the number of fishing vessels, the number of fishers, the amount of fishing gear and technology that may enhance catchability and the time spent on fishing or searching for fish;

(m) "fishing vessel" means any vessel, boat, ship or other craft, including associated equipment, which is used for or is intended to be used for fishing;

(n) "Participating Party" means any State or Territory that has signed or acceded to this Agreement;

(o) "precautionary approach to fisheries management" means an approach to management according to which:

i) Participating Parties shall be more cautious when information is uncertain, unreliable or inadequate; and

ii) the absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures;

(p) "Revised Treaty" means the Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy, signed by Heads of Government in Nassau, Bahamas on 5 July 2001;

(q) "Secretary-General" means the Secretary-General of the Caribbean Community;

(r) "SPS" means sanitary and phytosanitary standards;

(s) "stock" means fisheries resources in a given management area; and

(t) 'Third State" means a State or Territory that is not a party to this Agreement.

Article 2 Establishment of the Caribbean Community Common Fisheries Policy

This Agreement establishes the Caribbean Community Common Fisheries Policy.

Article 3 Participation

Participation in this Agreement is open to:

(a) Members of the Caribbean Community, in accordance with Article 25 or Article 26; and

(b) any other Caribbean State or Territory that is, in the opinion of the Participating Parties, able and willing to exercise the rights and assume the obligations under this Agreement, in accordance with Article 26.

Article 4 Vision, Goal and Objectives

4.1 Vision

The vision of the Caribbean Community Common Fisheries Policy is effective cooperation and collaboration among Participating Parties in the conservation, management and sustainable utilisation of the fisheries resources and related ecosystems in the Caribbean region in order to secure the maximum benefits from those resources for the Caribbean peoples and for the Caribbean region as a whole.

4.2 Goal

The goal of the Caribbean Community Common Fisheries Policy is to establish, within the context of the Revised Treaty, appropriate measures for: the conservation, management, sustainable utilisation and development of fisheries resources and related ecosystems; the building of capacity amongst fishers and the optimisation of the social and economic returns from their fisheries; and the promotion of competitive trade and stable market conditions, so as to realise the vision expressed in Article 4.1.

4.3 Objectives

The objectives of the Caribbean Community Common Fisheries Policy are to:

(a) promote the sustainable development of fishing and aquaculture industries in the Caribbean region as a means of, *inter alia*, increasing trade and export earnings, protecting food and nutrition security, assuring supply to Caribbean markets and improving income and employment opportunities;

(b) develop harmonised measures and operating procedures for sustainable fisheries management, post-harvest practices, fisheries research and fisheries trade and the administration of the fishing industry;

(c) improve the welfare and livelihoods of fishers and fishing communities;

(d) prevent, deter and eliminate illegal, unreported and unregulated fishing, including by promoting the establishment and maintenance of effective monitoring, control, and surveillance systems;

(e) build the institutional capabilities of Participating Parties, *inter alia*, to conduct research, collect and analyse data, improve networking and collaboration among Participating Parties, formulate and implement policies and make decisions;

(f) integrate environmental, coastal and marine management considerations into fisheries policy so as to safeguard fisheries and associated ecosystems from anthropogenic threats and to mitigate the impacts of climate change and natural disasters;

(g) transform the fisheries sector towards being market-oriented, internationally-competitive and environmentally-sustainable, based on the highest international standards of quality assurance and sanitary and phytosanitary systems;

(h) strengthen, upgrade and modernise fisheries legislation; and

(i) facilitate the establishment of a regime for SPS for the fisheries sector.

Article 5 Fundamental Principles

The following fundamental principles shall guide the implementation of this Agreement:

(a) use of the best available scientific information in fisheries management decision-making, taking into consideration traditional knowledge concerning the resources and their habitats as well as environmental, economic and social factors;

(b) application of internationally-recognised standards and approaches, in particular the precautionary approach to fisheries management and the ecosystem approach to fisheries management;

(c) the principle that the level of fishing effort should not exceed that commensurate with the sustainable use of fisheries resources;

(d) the participatory approach, including consideration of the particular rights and special needs of traditional, subsistence, artisanal and small scale fishers;

(e) principles of good governance, accountability and transparency, including the equitable allocation of rights, obligations, responsibilities and benefits; and

(f) the principle of subsidiarity, in particular that the Competent Agency will only perform those tasks which cannot be more effectively achieved by individual Participating Parties.

Article 6 Scope

6.1. The Agreement shall apply to: the development and management of fisheries and aquaculture; the conservation, sustainable development and management of fisheries resources and related ecosystems; the production, processing, marketing and trading of fishery and aquaculture products; and to the welfare of fishers.

6.2. The Agreement shall apply within areas under the jurisdiction of Participating Parties, on board fishing vessels flying the flag of a Participating Party and, subject to the primary jurisdiction of the flag State when fishing takes place on the high seas or the coastal State when fishing takes place in the waters of a Third State, to nationals of Participating Parties.

Article 7 General Undertakings on Implementation

7.1. Participating Parties shall take all appropriate measures to secure the fulfilment of obligations arising under this Agreement and shall abstain from any measures which could jeopardise the attainment of its objectives.

7.2. Participating Parties undertake to adopt, as appropriate, detailed rules for the implementation of this Agreement, in particular by preparing Protocols in accordance with Article 20.

7.3. Participating Parties undertake to establish or designate a regional organisation as the Competent Agency with responsibility for implementing this Agreement and, as appropriate, any Protocols adopted under it and, if necessary, to establish such an organisation by means of a Protocol adopted under Article 20.

Article 8 Role of the Competent Agency

8.1. The Competent Agency, where requested by one or more Participating Parties, and in accordance with the principle of subsidiarity in Article 5(f), shall cooperate with and provide assistance to those Participating Parties in order to support them in achieving the objectives of this Agreement or in discharging their obligations under it.

8.2. The functions which may be performed by the Competent Agency pursuant to Article 8.1, shall include:

(a) providing technical assistance and advice in connection with the implementation of this Agreement, including where appropriate technical assistance and advice on national policy, management or law or on subregional, regional or global policy, management or law;

(b) making recommendations on any of the matters referred to in paragraph (a);

(c) coordinating or undertaking data collection, research and development activities;

(d) providing coordination or cooperation facilities, services or mechanisms, as may be required to fulfil the objectives of this Agreement;

(e) identifying and mobilising technical and financial resources, in collaboration with multilateral and bilateral donor agencies, to build the research, administrative and management capacities of Participating Parties;

(f) supporting Participating Parties in their relations with Third States, directly or in relevant international organisations, including by providing representation at the international level of the Participating Parties collectively;

(g) any other functions which may be requested by one or more Participating Parties for purposes related to implementation of this Agreement.

8.3. In providing assistance and facilitation under Article 8.1 and in carrying out its functions under this Agreement, the Competent Agency shall:

(a) give effect, as far as possible, to the Vision, Goal and Objectives set out in Article 4; and

(b) be guided by the Principles set out in Article 5 and by applicable principles set out in the Community Agricultural Policy and the Fisheries Management and Development provisions of the Revised Treaty and by principles provided for in any other applicable international agreements concerning fisheries.

8.4. Participating Parties and the Competent Agency shall agree on rules of procedure, including as necessary any budgetary contributions or other financial regulations, for the carrying out functions by the Competent Agency under this Agreement.

8.5. The Participating Parties shall review the role and functions set out for the Competent Agency by this Agreement and if necessary shall modify, supplement or remove those functions by means, as appropriate, of a Protocol adopted under Article 20 or by amendment to this Agreement under Article 22.

Article 9 Access to Fisheries Resources

9.1. Without prejudice to the jurisdiction and authority of Participating Parties over fisheries resources in areas under their national jurisdiction, and existing obligations under the Revised Treaty, Participating Parties may consider entering into:

(a) arrangements, including access agreements, with other Participating Parties for the purpose of providing access to fishing opportunities in their waters; and

(b) such arrangements or access agreements with Third States or international organisations; and

in doing so, subject to the limits of their capabilities, shall take account of the applicable provisions of the United Nations Convention on the Law of the Sea and other instruments, including the objective of optimum utilisation and the provision of access to surplus fisheries resources.

9.2. Participating Parties shall seek to:

(a) develop opportunities and to promote the equal participation of Participating Parties in fisheries on the high seas, and

(b) develop opportunities in areas within the national jurisdiction of Third States,

and to this end shall collaborate directly or through the Competent Agency and other competent regional and international fisheries bodies.

Article 10 Fisheries Sector Development

Participating Parties, to the extent of their capabilities, will endeavour to promote and adopt measures to enhance the development of the fisheries and aquaculture sectors and to improve the welfare and socio-economic conditions of fishers and fishing communities, including, *inter alia*, by:

(a) improving the business, financial and insurance environment;

(b) promoting and facilitating joint ventures;

(c) promoting access to training;

(d) supporting capital investment;

(e) promoting the involvement of stakeholders, in particular in planning and management activities, including by supporting the formation and strengthening of fisherfolk organisations; and

(f) supporting and protecting the rights of traditional, subsistence, artisanal and small-scale fishers.

Article 11 Statistics and Research

The Participating Parties, acting directly and, where appropriate, in collaboration with other Participating Parties, Third States, the Competent Agency or relevant international organisations, and in an effort to achieve the objectives of this Agreement, are required, *inter alia*, to:

(a) collect and compile fisheries catch and fishing effort, registration and licensing data as well as biological, ecological, economic, social, aquaculture and any other relevant data;

(b) conduct research in order to:

i) ascertain the status of fish stocks;

ii) determine the effects of environmental changes on fisheries and aquatic ecosystems;

iii) analyse the effectiveness of management and conservation measures;

iv) evaluate the social and economic performance of fisheries and aquaculture;

v) determine the development potential of underutilised and unutilised fisheries resources; and

vi) otherwise contribute to the fulfilment of an objective of this Agreement;

(c) develop and maintain national and regional databases relating to (a) and (b) and develop and adopt appropriate standards for data and information sharing ; and

(d) analyse data and information collected and, subject to any confidentiality requirements, to disseminate it periodically to Participating Parties and the Competent Agency.

Article 12 Conservation and Management of Fisheries Resources

12.1. The Participating Parties shall formulate, adopt, implement and revise conservation and management measures and, where appropriate, fisheries management and development plans on the basis of the best available information, including traditional knowledge.

12.2. The Participating Parties shall formulate, adopt and implement conservation and management measures and development strategies on the basis of:

(a) fisheries management and development plans and other fishery-specific conservation, management and recovery plans;

(b) the Fundamental Principles set out in Article 5; and

(c) as appropriate, other provisions of this Agreement and other relevant international standards in fisheries management.

12.3. In implementing Article 12.1, Participating Parties shall, where appropriate, seek to adopt harmonised measures, legislation, plans or strategies.

12.4. The Participating Parties shall cooperate with regional fisheries management organisations and, as appropriate, other international organisations in the management of shared, straddling and highly migratory fish stocks.

12.5. Participating Parties shall discourage the use of measures and practices that will contribute to unsustainable fishing.

Article 13 Registration and Licensing

13.1. Participating Parties shall take into account the status of available fisheries resources and existing fishing capacity when registering and licensing fishing vessels, fishers and other operators in the fisheries and aquaculture sector.

13.2. In order to maintain the balance between fishing capacity and fisheries resources, Participating Parties, to the extent of their capabilities, shall, *inter alia*:

(a) establish and maintain a national register of fishing vessels flying its flag;

(b) establish and maintain a national licensing system for fishing vessels flying its flag;

(c) establish and maintain a record of licences or authorisations issued to fishing vessels, fishers and other operators in the fisheries and aquaculture sector; and

(d) cooperate with the Competent Agency to establish and maintain a regional fishing fleet register.

13.3. In implementing Article 13.2, Participating Parties, where appropriate through the Competent Agency, shall consider the development of harmonised procedures or common standards in relation to licensing systems.

13.4. The Participating Parties shall, in accordance with agreed procedures, share with the Competent Agency information collected through the national registers established under Article 13.2(a) and the records under Article 13.2(c) for the purpose of maintaining a regional register under Article 13.2(d).

Article 14 Inspection, Enforcement and Sanctions

14.1. Each Participating Party, to the extent of its capabilities, shall develop, either directly or through cooperation with other Participating Parties or the Competent Agency, as appropriate, such inspection and enforcement measures as are necessary to ensure compliance with:

(a) the rules contained in and adopted pursuant to this Agreement;

(b) national regulations relating to fisheries; and

(c) rules of international law, binding on the Participating Party concerned.

14.2. The inspection and enforcement measures referred to in Article 14.1 shall apply to rules applicable in the territory of the Participating Party, in waters under its jurisdiction, on fishing vessels flying its flag and, where appropriate, and subject to the primary jurisdiction of the flag State when fishing takes place on the high seas or the coastal State when fishing takes place in the waters of a Third State, to its nationals, wherever they may be.

14.3. In implementing Article 14.1, Participating Parties shall, *inter alia*:

(a) monitor, control and undertake surveillance of their maritime space and co-operate in monitoring, controlling and undertaking surveillance of areas contiguous to their maritime space in order to prevent, deter and eliminate illegal, unreported and unregulated fishing as appropriate;

(b) establish an appropriate vessel monitoring system to monitor the position and activity of vessels flying their flag;

(c) adopt port and "at sea" inspection schemes;

(d) take inspection and enforcement measures necessary to ensure compliance with the rules of this Agreement;

(e) ensure that appropriate and effective measures are taken against violators of the applicable rules and in particular that such measures are capable, in accordance with the relevant provisions of national law, of effectively depriving those responsible of the economic benefit of the infringements and of producing results proportionate to the seriousness of such infringements.

Article 15 Confidentiality and Intellectual Property Rights

15.1. Participating Parties shall retain ownership of any data, information or product made available to other Participating Parties or to the Competent Agency as a result of the implementation of this Agreement.

15.2. All intellectual property rights in data, documents and products developed by the Competent Agency in the course of implementing this Agreement shall, subject to and in accordance with any relevant contractual obligation, belong to the Competent Agency.

15.3. All intellectual property rights in data, documents and products developed by the Competent Agency from material made available by one or more Participating Parties shall jointly belong to the Competent Agency and the Participating Parties involved.

15.4. The Competent Agency shall make available to public institutions and others, for non-commercial and educational purposes, such of its informational products as it considers appropriate.

15.5. The Competent Agency and Participating Parties shall maintain the confidentiality of any proprietary information or any other information provided on a confidential basis by any other Participating Party and shall refrain from disclosing such information to third parties or using it for purposes other than those for which it was provided.

15.6. The identity of individuals from whom research data or information is obtained shall be kept strictly confidential. No information revealing the identity of any individual shall be included in any report or other communication, unless the individual concerned has given prior consent in writing to such inclusion.

Article 16 Dissemination of Information

16.1. Participating Parties shall disseminate to other Participating Parties and to the Competent Agency:

(a) statistical data on fisheries;

(b) information on research findings;

(c) information on proposed management programmes;

(d) information resulting from implementation of management programmes; and

(e) information on the activities taken for the implementation of this Agreement.

16.2. Participating Parties and the Competent Agency shall disseminate relevant information to stakeholders to enable them to be familiar with regional and international developments in fisheries and thereby facilitate informed decision-making and widespread acceptance of and participation in this Agreement.

16.3. Participating Parties shall promptly notify the Competent Agency and other Participating Parties of any localised threats, whether actual or potential, to their fisheries and marine ecosystems which may cause harm to the fisheries resources, environment or economic interest of other Participating Parties.

16.4. Nothing in this Agreement shall be deemed to require a Participating Party, in fulfilment of its obligations under this Agreement, to supply information, the disclosure of which is contrary to its national security interests.

Article 17 Public Awareness

The Participating Parties shall promote public awareness of good conservation, exploitation and management policies and practices in relation to this Agreement by, *inter alia:*

(a) informing stakeholders of the status of this Agreement;

(b) strengthening regional and subregional institutions working with citizens, especially fishers and fishing communities, with a view to increasing knowledge and understanding of methods of conserving, sustaining and preserving living aquatic resources and of avoiding overexploitation of them;

(c) collaborating with relevant educational institutions to introduce sustainable use of living aquatic resources into their programmes;

(d) establish research and education programmes to raise awareness of the impact of global warming, climate change, sea level rise and other environmental changes on the fisheries sector; and

(e) promoting recognition of the Caribbean Sea as a special area in the context of sustainable development.

Article 18 Marketing and Trade of Fisheries Resources

18.1. The Participating Parties, acting where appropriate in collaboration with other Participating Parties, Third States, the Competent Agency or relevant international organisations, and in an effort to achieve the objectives of this Agreement, shall develop, *inter alia*:

(a) harmonised food quality assurance legislation;

(b) harmonised intra-regional SPS measures;

(c) common marketing standards for fisheries and aquaculture products; and

(d) national or common policies, measures and standards to:

i) encourage stable market conditions;

ii) promote the production and marketing of fishery products;

iii) develop new and existing markets in fishery products including external markets for the Caribbean region's fisheries products;

iv) enhance intelligence on developments in internal and external markets at all levels;

v) facilitate trade between the Participating Parties;

vi) strengthen relevant human, institutional and technological capacities, including the transfer and development of relevant technologies; and

vii) otherwise improve the management of fish-handling practices, marketing or trade in the Participating Parties.

18.2. In implementing Article 18.1, Participating Parties shall act consistently with their obligations under relevant international agreements, and in particular those under the Revised Treaty and the World Trade Organisation agreements, where applicable, and shall also take into account relevant international standards on trade, marketing and SPS.

Article 19 Links with International Organisations

In order to promote the objectives of this Agreement, the Competent Agency shall facilitate the development of strategic alliances and partnerships with relevant agencies created by multilateral environmental agreements as well as regional fisheries management organisations and arrangements and other relevant national, regional and international agencies and organisations, whether governmental or non-governmental.

Article 20 Protocols

20.1. Participating Parties undertake to prepare Protocols relating to:

(a) the Competent Agency;

(b) research on fisheries and associated ecosystems;

(c) harmonisation of fisheries legislation;

(d) cooperation in monitoring, control and surveillance to combat illegal, unregulated and unreported fishing;

(e) establishment of a common fisheries zone;

(f) aquaculture;

(g) establishment of a regional fisheries management organisation or arrangement;

(h) sanitary and phytosanitary measures;

(i) data and information sharing;

(j) enforcement;

(k) settlement of disputes; and

(l) any other matter for which protocols are necessary for the implementation of this Agreement.

20.2. Pending the preparation of the Protocols set out in Article 20.1, Participating Parties may cooperate on arrangements of a provisional nature in the above fields.

20.3. Participating Parties shall agree, with respect to each Protocol, on the procedure for the preparation and adoption of each Protocol.

20.4. Protocols which have been concluded under this Agreement shall form an integral part of this Agreement and, unless expressly provided otherwise, a reference to this Agreement includes a reference to the Protocols.

Article 21 Reporting, Review and Development

21.1. The Competent Agency shall submit annual reports to the Council for Trade and Economic Development (COTED) and the Council for Foreign and Community Relations (COFCOR) on the implementation of this Agreement.

21.2. Participating Parties shall, in light of changing circumstances, and in any event no later than 5 years after its entry into force, review this Agreement, as may be required to achieve its vision, goal and objectives.

21.3. The review and development referred to in Article 21.2 may include, *inter alia*:

(a) consultation with stakeholders to assess the impacts of this Agreement and, if required, development of proposals for its implementation or amendment;

(b) provision by the Competent Agency of technical support for the consultations and the analysis of the consultation results in order to inform decision-making;

(c) such other formal procedures or other methods as Participating Parties consider necessary to facilitate the implementation of this Agreement.

Article 22 Amendments

22.1. A Participating Party may, by written communication addressed to the Secretary-General, propose an amendment to this Agreement.

22.2. This Agreement may be amended by the unanimous decision of the Participating Parties.

22.3. An amendment to this Agreement shall enter into force one month after the date on which the last Participating Party has signed the amendment or such other date as the Participating Parties have agreed.

Article 23 Dispute Settlement

The procedures for the settlement of disputes set out in the Revised Treaty shall apply *mutatis mutandis* to the settlement of disputes concerning the interpretation or application of this Agreement, whether or not the parties to the dispute are Parties to the Revised Treaty.

Article 24 Depositary

The Secretary-General shall be the depositary of this Agreement and any amendments or revisions thereto. The depositary shall register this Agreement with the Secretary-General of the United Nations in accordance with Article 102 of the Charter of the United Nations.

Article 25 Signature

This Agreement is open for signature by any Member of the Caribbean Community.

Article 26 Accession

Members of the Caribbean Community and, subject to the consent of a majority of Participating Parties, any other Caribbean State or Territory, may accede to this Agreement after it has entered into force.

Instruments of Accession shall be deposited with the Secretary-General who shall transmit certified copies to Participating Parties.

Article 27 Entry into Force

This Agreement shall enter into force signature by eight Members of the Caribbean Community under Article 25.

Article 28 Withdrawal

28.1. A Participating Party may withdraw from this Agreement by giving written notice to the Secretary-General. The withdrawal shall take effect one year after the date of notification unless the notification specifies a later date.

28.2. A notification given under Article 28.1 may be cancelled at any time before it becomes effective by giving further written notice to the Secretary-General.

28.3. The Secretary-General shall promptly notify the other Participating Parties of any notification received under Article 28.1 or 28.2.

28.4. Withdrawal from this Agreement shall not:

(a) affect any financial obligations incurred by the withdrawing Participating Party prior to its withdrawal becoming effective; or

(b) remove or limit any obligations in respect of confidentiality of data or intellectual property rights to which the withdrawing Participating Party was subject prior to its withdrawal becoming effective.

IN WITNESS WHEREOF the Participating Parties, being duly authorised thereto, have appended their signature to this Agreement.

DONE AT , this day of Two Thousand and Eleven.

Annex 6

"THE POTENTIAL OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA IN THE MANAGEMENT AND CONSERVATION OF MARINE LIVING RESOURCES," PRESENTATION GIVEN BY THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA TO THE MEETING OF THE FRIENDS OF THE TRIBUNAL AT THE PERMANENT MISSION OF GERMANY TO THE UNITED NATIONS IN NEW YORK, 21 JUNE 2007

Presentation given by
the President of the International Tribunal for the Law of the Sea
to the Meeting of the Friends of the Tribunal
at the
Permanent Mission of Germany to the United Nations
in New York
21 June 2007

The potential of the International Tribunal for the Law of the Sea in the management and conservation of marine living resources

I. Introductory remarks

It is well known that the current state of global fisheries is alarming. Experts agree that the causes of unsustainable fisheries are complex and due to many factors: illegal fishing; overfishing; inadequate or ineffectively implemented conservation and management measures; disregard for the interdependency of marine living resources; and environmental degradation, to mention but a few. The main factor may be illegal, unregulated and unreported fishing ("IUU fishing"). What has become clear to the international community in the last few years is that IUU fishing not only seriously undermines efforts to conserve and manage fishery resources but also has serious economic implications for some of the poorest countries in the world, which are dependent on fisheries for their food, livelihood and revenue, to quote from *High Seas Task Force (2006), Closing the Net: Stopping illegal fishing on the high seas, Final report of the Ministerially-led Task Force on IUU Fishing on the High Seas (page 16).*

Customary international and treaty law have developed sophisticated legal regimes governing the utilization and management of maritime resources. At the heart of the oceans regimes are the fundamental freedoms of the high seas, which include freedom of navigation and freedom of fishing. All States have the freedoms of the high seas, which they exercise primarily through the vessels flying their flags. The management of living resources rests with organs and institutions of the international community. Since the adoption of the rudimentary rules in this respect by the United Nations Convention on the Law of the Sea ("the Convention"), several international instruments have been developed. Compared with the Convention, those instruments follow a different, more ecologically-oriented approach. In the exclusive economic zones, the management of marine living resources falls under the competence of the respective coastal State. However, when drawing up appropriate measures, coastal States do not have total freedom. In coastal and archipelagic waters, it is again the coastal States which manage marine resources. In these areas the influence of international law is limited. In general, it is safe to say that international law distributes the prescriptive and the executive functions for the management of marine living resources between coastal States, organs and institutions of the international community and flag States. It is obvious that such a system, involving several actors, requires dispute-settlement mechanisms. Before I deal with the potential role of the International Tribunal for the Law of the Sea in this respect, let me briefly explain the distribution of competences as outlined by the Convention and later modified or supplemented by specific international agreements.

II. The sectoral approach to fishing

a) *In the territorial sea and archipelagic waters*

The territorial sea and archipelagic waters are part of the territory of a coastal State. As a rule, fishing activities in these two maritime zones fall under the exclusive jurisdiction of the coastal State. The Convention does not give coastal States specific guidance as to how to exercise their law-making jurisdiction over the management and conservation of living resources in these zones. Foreign vessels exercising the right of innocent passage in the territorial sea and through archipelagic waters are not allowed to engage in fishing activities. In addition, foreign ships exercising the right of innocent passage have to comply with the laws and regulations of the coastal State with respect to the conservation of the living resources of the sea and the prevention of infringement of fisheries laws and regulations. It may, however, be argued that, in exercising their sovereign rights as concerns marine living resources, coastal or archipelagic States have to take into account article 193 of the Convention. According to that provision, they have the sovereign right to exploit their natural resources in accordance with their environmental policies and their duty to protect and preserve the marine environment. This means that the respective international rules on the protection of the marine environment come into play. Those international rules were very basic when the Convention was adopted, now they are beginning to take on substance.

b) *In the exclusive economic zone*

The main competence for establishing legislative measures for the conservation and management of living resources in the exclusive economic zone falls on the coastal State. Paragraph 4 of article 62 of the Convention confirms the primacy of the competence of the coastal State to regulate fishing in the exclusive economic zone for aspects such as fishing licences, fishing gear, fishing season, etc. The list contained in article 62, paragraph 4, is not exhaustive. However, when designing its policy on the management of living resources in the exclusive economic zone, a coastal State is not totally free, as article 61, paragraph 2, of the Convention clearly indicates. The coastal State must ensure that the living resources in the exclusive economic zone are not overexploited. There is also the obligation to maintain populations at or restore them to levels which can produce the maximum sustainable yield, taking account of the interdependence of stocks and any internationally recommended minimum standard.

Under article 73 of the Convention, the coastal State has the right to enforce fisheries and conservation regulations in the exclusive economic zone. Paragraph 1 of article 73 authorizes the coastal State to take such measures as may be necessary to ensure compliance with its laws and regulations, including boarding, inspection, arrest and judicial proceedings.

The coastal State's jurisdiction to legislate and enforce laws and regulations in the exclusive economic zone is a logical and perfect corollary to its exclusive sovereign rights to explore, exploit, manage and conserve living resources in that zone. These jurisdictional competences have to be respected by the flag State, which has to make every effort to ensure that coastal States implement them efficiently.

What is the role in this respect of flag States whose vessels fish in exclusive economic zones of other States? The Convention says nothing explicitly on this subject. Nevertheless, the role of the flag State is not as restricted as is it may seem. It is under the obligation to ensure that vessels flying its flag abide by the rules of the coastal State by exercising its competencies as a flag State. To uphold that obligation, two lines of argument may be invoked. The first is that international law, based at it is upon the sovereign equality of States and mutual respect, requires States to make every effort to ensure that no activities are carried out under their jurisdiction that might undermine activities which are performed by others covered by their jurisdiction and which are in conformity with international law. Secondly, as far as the protection of the marine environment is concerned, it may be argued that there is a mutual obligation to reinforce each other's efforts to manage and conserve the marine environment. It may further be argued that every effort made to conserve and manage marine living resources – be it at national or international level – also serves common interests. This again would call for mutual respect and the enforcement of national measures.

In the case of straddling fish stocks, the Convention goes a step further. Article 63 of the Convention calls for cooperation between the flag State and the coastal State in the area adjacent to the exclusive economic zone, but not within the exclusive economic zone itself. This is in keeping with the principle of exclusivity of coastal States' rights and jurisdiction over living resources in the EEZ. Article 63 of the Convention has been criticised for not providing substantive guidance as to how the problems of regulating migratory stocks should be addressed.

Flag States whose nationals fish for highly migratory species that occur both within the exclusive economic zone and beyond have a duty to cooperate with the coastal State directly or through appropriate international organizations, to ensure that such species are preserved and used optimally throughout the region. If there is no regional organization, the flag State whose nationals harvest such species and the coastal State should cooperate to establish an organization in the region and participate in its work (Convention, article 64, paragraph 1).

c) On the high seas

Article 87 provides that States are free to fish on the high seas but, as article 116 of the Convention states, the freedom to fish is not absolute: it is subject to the following limitations:

- the State's treaty obligations;
- the rights, duties and interests of coastal States provided for, *inter alia*, in article 63, paragraphs 1 and 2 (for stocks occurring within the exclusive economic zones of two or more coastal States or both within the exclusive economic zone and in an area beyond and adjacent to it) and articles 64 to 67 (highly migratory species, marine mammals, anadromous stocks, catadromous species); and
- the provisions of the Convention on the conservation and management

of the living resources of the high seas (articles 117 to 120).

The specific provisions of articles 63 and 64 to 67 ensure that the conservation and management of particular fish stocks in the exclusive economic zone and in areas of the high seas are harmonized.

The Convention provides the general obligation for all States to take measures to ensure that their nationals fishing on the high seas conserve the living resources thereof. Article 118 requires States to cooperate in the conservation and management of living resources in the high seas. The same article requires States whose nationals exploit identical or different living resources in the same area to enter into negotiations in order to take the measures necessary for the conservation of the living resources concerned. States should, as appropriate, cooperate to establish subregional or regional fisheries organization to that end. Article 119 shows that the principle upon which the conservation and management measures should be based is that of the best scientific evidence available.

Articles 117 to 120 underscore the obligation to cooperate of flag States or States whose nationals fish on the high seas. The duty imposed on flag States to cooperate with other States in order to conserve and manage fisheries in areas of the high seas confirms the law of nationality of ships and exclusive flag-State jurisdiction as contained in articles 91 and 94 of the Convention. Order on the oceans with respect to high seas fisheries is maintained principally through flag States.

III. Obligations of flag States under the 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 (Fish Stocks Agreement)

Unlike the Convention, the Fish Stocks Agreement provides an elaborate list of measures which the flag State is obliged to take. The listing of the duties of the flag State does not mean that the Fish Stocks Agreement does not conform to or goes beyond the Convention. On the contrary, it confirms and strengthens the well-established law on nationality of ships and the principle of exclusive flag-State jurisdiction on the high seas as set forth in article 91 of the Convention and elaborated in article 94.

Part V of the Fish Stocks Agreement lists the duties of the flag State as regards the observation and implementation of rules in order to ensure that vessels flying its flag do not undermine conservation and management objectives in the high seas areas. Article 18, paragraph 2, of the Fish Stocks Agreement requires the flag State to authorize vessels flying its flag to fish on the high seas only when it can exercise its responsibilities in respect of such vessels effectively. Measures to control the vessels flying the flag of Contracting States include: i) granting fishing licences; ii) establishing regulations concerning the terms and conditions of the licence; iii) prohibiting unlicensed or irregularly licensed vessels from fishing; iv) ensuring that vessels flying its flag do not carry out unauthorized fishing in waters of national jurisdiction; v) establishing a national record of vessels authorized to fish on the high seas and granting access to that information to interested States; vi) requiring vessels to be marked appropriately; vii) establishing systems for determining the position of vessels and catches of targeted and non-targeted species; viii) requirements for verifying the catch through observer programmes and inspection schemes; and ix) controlling, monitoring and surveillance of fishing and related activities (Fish Stocks Agreement, article 18, paragraph 3).

Flag States principally remain responsible for enforcing compliance with conservation and management measures on the high seas. However, if the relevant fishing area is covered by a regional fisheries arrangement, the duly authorized inspector of a member State of that regional fisheries arrangement is authorized to board and inspect fishing vessels of another State to ensure compliance (Fish Stocks Agreement, article 21, paragraph 1). If there are clear grounds for believing that a vessel has engaged in fishing activities contrary to conservation and management measures for a particular high seas fishing area, the inspecting State should secure evidence and promptly notify the flag State of the alleged violation (Fish Stocks Agreement, article 21, paragraph 5).

IV. Obligations of flag States under the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (Compliance Agreement)

The Compliance Agreement confirms the law of nationality of ships and exclusive flag State jurisdiction, as contained in article 91 and elaborated in article 94 of the Convention, and the obligation of States to conserve and manage fisheries in areas of the high seas, as contained in article 118 of the Convention. Nevertheless, the value of the Compliance Agreement goes beyond the reiteration of long-established laws and principles. It is the first global instrument that details the duties of the flag State with respect to vessels fishing on the high seas in the context of conservation and management of fisheries. These duties concern not only ship registration and fishing licences but now also include the obligation to exchange and provide information. Fisheries experts have emphasized how critical appropriate information is for the implementation and enforcement of conservation and management measures.

Article III of the Compliance Agreement sets out the responsibility of the flag State concerning conservation and management measures in areas of the high seas. Each party is obliged to take the necessary steps to ensure that fishing vessels flying its flag do not engage in activities that undermine the effectiveness of international conservation and management measures. In particular, no party should allow any fishing vessel entitled to fly its flag to fish in the seas or to be used for fishing on the high seas without the authorization of that party (Compliance Agreement, article III, paragraph 2). When granting authorization to carry out fishing, the party must be satisfied that it is able to exercise effectively its responsibilities over the vessel pursuant to the Compliance Agreement (article III, paragraph 3). Parties also have a duty not to authorize fishing vessels previously registered in another territory that undermined international conservation and management measures to be used for fishing on the high seas unless certain conditions are met (Compliance Agreement, article III, paragraph 5,).

Aside from providing details of flag State responsibility over fishing vessels on the high seas, the Compliance Agreement also puts additional pressure on flag States in that it requires them to take enforcement measures. Such measures could include, where appropriate, making the contravention of the provisions of the Agreement an offence under national legislation (Compliance Agreement, article III, paragraph 8). In addition, the Compliance Agreement requires that "[t]he sanctions applicable in respect of such contraventions shall be of sufficient gravity as to be effective in securing compliance with the requirements of this Agreement and to deprive offenders of the benefits accruing from their illegal activities. Such sanctions shall, for serious offences, include refusal, suspension or withdrawal of the authorization to fish on the high seas".

The other duties of the flag State under the Compliance Agreement concern the free exchange of information about the high seas. The flag State is responsible for ensuring that the requirements for marking vessels and obtaining information from the vessel about fishing operations, catches and landings are carried out (Compliance Agreement, article III, paragraphs 6 and 7).

V. Obligations of flag States concerning the conservation and management of fisheries in regional fisheries instruments

The main objective of many regional fisheries instruments is the conservation of marine living resources in the convention area covered by the regional instrument. Several of those instruments mention specific duties which flag States have to fulfil in respect of conservation and management of marine living resources, but in most cases they are directed to coastal States.

VI. The potential role of third party dispute settlement, in particular the International Tribunal for the Law of the Sea

a) *Introduction*

I hope I have illustrated sufficiently clearly the complex interaction between coastal States, institutions of the international community and flag States which is necessary for the management of marine living resources. Evidently, in such a system, disputes may arise concerning:

- the interpretation or application of the respective rules of the international instruments referred to;

- the fulfilment of its obligations by a flag State; and

- the appropriateness of measures taken by the coastal State (legislative or enforcement measures).

I shall deal with these questions from three angles; namely, by briefly describing the functions of ITLOS in general; by elaborating on them on the basis of article 73 of the Convention; and, finally, by briefly explaining the decision of the Tribunal in the bluefin tuna cases.

According to article 288 of the Convention, the International Tribunal for the Law of the Sea has jurisdiction over disputes concerning the interpretation and application of the Convention, "disputes" meaning legal disputes. However, measures taken by a coastal State or a flag State – be it at legislative or executive level – concerning the management of living resources fall squarely under that provision. There is, however, a caveat to be taken into account as far as coastal States are concerned. Article 297, paragraph 3, of the Convention exempts certain disputes concerning the management of living resources from compulsory dispute settlement. If such an exemption is invoked, the dispute should be submitted to compulsory conciliation.

I must also to refer to article 290, paragraph 1, of the Convention. In a dispute involving the management of marine living resources, the International Tribunal for the Law of the Sea can prescribe provisional measures, which it has done. The orders issued in that respect are binding. I would like to draw your attention to one fact. According to article 290, paragraph 1, of the Convention, provisional measures may be prescribed not only to protect the rights of either party but also to prevent serious harm to the marine environment. The protection of a stock from total depletion would meet that criterion. However, it should not be assumed that disputes concerning the management of living resources will generally be directed against coastal States. It is equally possible to challenge before the Tribunal the activities of flag States – or rather the lack of measures ensuring that the rules concerning the protection and proper management of fishery resources are fully and efficiently implemented. I hope I have made it clear that the responsibility for the proper management of living resources is a shared one; it places not only coastal States but also flag States and – more recently – port States under an obligation. In particular as far as IUU fishing is concerned, port States play an increasing role in the implementation of the rules governing the elimination of IUU fishing as their purpose is to prohibit the landing of fish whose origin is clearly documented and show that it was harvested legally. Dispute-settlement procedures may be the most appropriate means of preventing the development of ports where fishing inspections do not live up to the applicable international standards.

As already indicated, disputes concerning high seas fisheries may be submitted to the Tribunal on the basis of the Fish Stocks Agreement as, for disputes concerning its interpretation or application, that agreement incorporates the mechanism set out in Part XV of the Convention. That mechanism applies to disputes between States parties to the Fish Stocks Agreement, whether or not they are parties to the Law of the Sea Convention (article 30). In addition, the jurisdiction of the Tribunal may also cover disputes concerning subregional, regional or global fisheries agreements relating to straddling or highly migratory fish stocks, since the Fish Stocks Agreement makes the Part XV mechanism applicable to them. In addition, parties may have recourse to the Tribunal with respect to disputes relating to fisheries whenever these disputes concern the interpretation or application of the provisions of the Convention, subject to the limitations and exceptions contained therein. Furthermore, parties may, at any time, conclude a special agreement to submit a fisheries dispute to the Tribunal and parties have done so on one occasion, namely, the case concerning swordfish stocks [*Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile/European Community)*].

I should also like to draw your attention to article 31 of the Fish Stocks Agreement, which provides for the prescription of provisional measures. That provision is *lex specialis* with regard to article 290 of the Convention. It differs from the latter in two respects: according to article 31, paragraph 2, provisional measures may also be prescribed to prevent damage to the stocks in question as well as in situations referred to in article 7, paragraph 5, of the Agreement (compatibility of conservation and management measures) and in article 16, paragraph 2, thereof (measures to be taken in high seas areas entirely surrounded by the exclusive economic zone of one State). It is safe to say that article 31 of the Fish Stocks Agreement is a further innovative development waiting to be used by States.

b) *Article 73 of the Convention*

I should like to be more specific and deal with the competences of the Tribunal as far as article 73 of the Convention is concerned.

That article deals with the measures a coastal State may take to 'ensure compliance with the laws and regulations adopted by it in conformity with this Convention'. Paragraph 3 states that violations of fisheries laws in the exclusive economic zone may not include imprisonment. However, there are other provisions of relevance in the Convention. Yet more have been established in specific international arrangements.

Whenever measures to enforce the national rules on the management and conservation of marine living resources in an exclusive economic zone are enforced against foreign vessels, they may be challenged before the Tribunal. In such a case, the adjudicative body in question may consider whether such laws were adopted in accordance with the Convention. The functions of the Tribunal in that respect are similar to those which national constitutional or supreme courts exercise at national level.

However, the Tribunal may be seized not only of cases where enforcement measures have been taken but also in those where there are doubts as to whether action or inaction on the part of coastal States or flag States is considered not to conform to the rules on the management and conservation of marine living resources. The Fish Stocks Agreement has broadened and detailed respective obligations and thus the potential of the Tribunal for the Law of the Sea.

c) *The* Southern Bluefin Tuna Cases

The *Southern Bluefin Tuna Cases* were submitted by New Zealand and Australia under article 290, paragraph 5, of the Convention. The applicants alleged that Japan had breached its obligations under articles 64 and 116 to 119 of the Convention in relation to the conservation and management of southern bluefin tuna by failing to adopt the necessary conservation measures for its nationals fishing on the high seas, as required by article 119 of the Convention. I would like to emphasize that the cases confirm the point I made earlier, namely that flag States have an obligation to adopt conservation measures. The adoption of such measures requires not only that they be implemented and appropriate legislation be adopted but also that the necessary control and monitoring measures be taken. Such measures – or the lack thereof – can be challenged *in abstracto* and in specific situations, as in the bluefin tuna cases.

New Zealand and Australia further alleged that Japan had failed to cooperate with them in good faith and invoked article 64 of the Convention, which deals with fishing in exclusive economic zones. This was an interesting allegation since it assumed that specific obligations would ensue from the flag States' duty to cooperate with coastal States, as envisaged in article 64 of the Convention.

Let me indicate how the Tribunal dealt with these two allegations. It did not really decide on the first one. This may be due to several reasons, one of them being that Japan had undertaken to stop its experimental fishing for southern bluefin tuna. But the Tribunal made a pronouncement on the second allegation, stating that Japan had failed to comply with its obligation to cooperate under articles 64 and 118 of the Convention, which requires parties to cooperate in the conservation and management of marine living resources. I believe this decision was a good reflection of the growing need to conserve and manage marine living resources and the Tribunal's commitment to that cause.

Although the Tribunal's decision provoked the question as to whether in fact it had jurisdiction, the measures it prescribed prevailed. Recently, the Tribunal was informed that cooperation between States and entities fishing for bluefin tuna has intensified as a result of the Order of the Tribunal.

VII. Conclusion

To summarize briefly: the United Nations Convention on the Law of the Sea and subsequent international instruments provide detailed rules concerning the management and conservation of marine living resources. They oblige coastal States and the flag States of fishing vessels, in particular to cooperate to ensure that the management and conservation measures the latter have taken are fully and efficiently implemented. The International Tribunal for the Law of the Sea has jurisdiction to ensure that this system of obligations is applied in accordance with the relevant legal instruments. The rules on provisional measures provide the Tribunal with the necessary tools to act expeditiously and prevent damage to fish stocks.

Annex 7

EXTRACT FROM *THE FLAG STATE'S OBLIGATIONS FOR MERCHANT VESSELS*, BERNAERTS' GUIDE TO THE 1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

VESSELS

Issue	Flag State Obligations - Merchant Vessels	Other Circumstances
Jurisdiction	*General* Vessels are subject to exclusive jurisdiction of flag state on the high seas (Article 92, Paragraph 1) (For pollution measures in general, see Articles 194, Subparagraph 3(b); 211; 217) *Particular* Flag state required to assume jurisdiction under its internal law with respect to administrative, technical, and social matters *Collision incidents on the high seas* - In respect to penal jurisdiction: arrest/ detention flag state (Article 97, Paragraph 3) - Penal and disciplinary matters exclusive jurisdiction of flag state (Article 97, Paragraph1) *except:* withdrawal of certificates issued by other states (Article 97, Paragraph 2) - Inquiry (Administrative jurisdiction) (Article 94, Paragraph 7)	Except in cases expressly provided for in international treaties and this Convention (Article 92, Paragraph 1; e g , Articles 99-111, Articles 218 and 221) - In penal cases, home state can institute proceedings against its nationals (Article 97, Paragraph 1) - Inquiry by other states possible (Article 94, Paragraph 7)
Administration	*Registration* - Fix conditions for grant of nationality (Article 91, Paragraph 1) - Maintain a register of ships (Article 94, Subparagraph 2(a)) - Inspect before registration (Article 94, Subparagraph 4(a)) - Issue flag documents (Article 91, Paragraph 2) *Other measures* - Require master to help persons in danger or distress (Article 98, Subparagraphs 1 (a-b)) and assist in collision cases - Investigate allegations of improper control (Article 94, Paragraph 6)	- Registration may take place only where "genuine link" (Article 91, Paragraph 1) - Nationality follows flag (Articlel 91, Paragraph 1) - "Treatment" as ship without nationality (Article 92, Paragraph 2)
Technical Matters	Required to ensure - Construction, equipment, seaworthiness, manning, training of crew, use of signals, maintenance of communication, collision prevention (Article 94, Paragraph 3) - Inspection at intervals (Article 94, Subparagraph 4(a)) - Charts, nautical publications, navigational equipment is on board (Article 94, Subparagraph 4(a))	Flag state measures are to - Comply with generally accepted international regulations, procedure and practice (Article 94, Paragraph 5) - Ensure appropriate crew qualification and numbers of crew (Article 94, Subparagraph 4(b)) - Ensure that crew is conversant with and required to observe international regulations. safety, collision, pollution, radio communication (Article 94, Subparagraph 4(c))
Social Matters	- Labour conditions (Article 94, Paragraph 3)	
WARSHIPS, etc.: Immunity (Articles 89-90), Pollution (Articles 236, 304) *VESSELS OF UNITED NATIONS*, etc. Article 93		

Annex 8

MARITIME DELIMITATION TREATY BETWEEN JAMAICA AND THE REPUBLIC OF COLOMBIA (1993)

Maritime delimitation treaty between Jamaica and the Republic of Colombia, 12 November 1993

The Government of Jamaica and the Government of the Republic of Colombia;

Considering the bonds of friendship existing between both countries;

Recognizing the common interests of both countries in considering issues related to the rational exploitation, management and conservation of the maritime areas between them, including questions relating to the exploitation of living resources;

Acknowledging the interests which both countries have in concluding a maritime delimitation treaty;

Taking into account recent developments in the law of the sea;

Desirous of delimiting the maritime areas between both countries on the basis of mutual respect, sovereign equality and the relevant principles of international law;

Agree as follows:

Article 1

The maritime boundary between Jamaica and the Republic of Colombia is constituted by geodesic lines drawn between the following points:

	Latitude (North)	Longitude (West)
1.	14° 29' 37"	78° 38' 00"
2.	14° 15' 00"	78° 19' 30"
3.	14° 05' 00"	77° 40' 00"
4.	14° 44' 10"	74° 30' 50"

5. From point 4, the delimitation line proceeds by a geodesic line in the direction to another point with coordinates 15° 02' 00"N, 73° 27' 30"W, as far as the delimitation line between Colombia and Haiti is intercepted by the delimitation line to be decided between Jamaica and Haiti.

Article 2

Where hydrocarbon or natural gas deposits, or fields are found on both sides of the delimitation line established in article 1, they shall be exploited in a manner such that the distribution of the volumes of the resource extracted from said deposits or fields is proportional to the volume of the same which is correspondingly found on each side of the line.

Article 3

1. Pending the determination of the jurisdictional limits of each Party in the area designated below, the Parties agree to establish therein a zone of joint management, control, exploration and exploitation of the living and non-living resources, hereafter called "The Joint Regime Area".

(a) The Joint Regime Area is established by the closed figure described by the lines joining the following points in the order in which they occur. The lines so joining the listed points are geodesic lines unless specifically stated otherwise.

Point	Latitude (North)	Longitude (West)
1.	16° 04' 15"	79° 50' 32"
2.	16° 04' 15"	79° 29' 20"
3.	16° 10' 10"	79° 29' 20"
4.	16° 10' 10"	79° 16' 40"
5.	16° 04' 15"	79° 16' 40"
6.	16° 04' 15"	78° 25' 50"
7.	15° 36' 00"	78° 25' 50"
8.	15° 36' 00"	78° 38' 00"
9.	14° 29' 37"	78° 38' 00"
10.	15° 30' 10"	79° 56' 00"
11.	15° 46' 00"	80° 03' 55"

The limit of the Joint Regime Area then continues along the arc of 12 nautical miles radius centred on a point at 15° 47' 50"N, 79° 51' 20"W, such that it passes to the west of Serranilla Cays to a point at 15° 58' 40"N, 79° 56' 40"W. The figure is then closed by the geodesic line to point 1.

(b) The Joint Regime Area excludes the maritime area around the cays of Serranilla Bank comprised within the outermost arc of the circle of 12 nautical miles radius centred at a point 15° 47' 50"N, 79° 51' 20"W, such that it passes to through points 15° 46' 00"N, 80° 03' 55"W and 15° 58' 40"N, 79° 56' 40"W.

(c) The Joint Regime Area will also exclude the maritime area around the cays of Bajo Nuevo comprised within the outermost arc of the circle of 12 nautical miles radius centred at the point 15° 51' 00"N, 78° 38' 00"W.

2. In the Joint Regime Area, the Parties may carry out the following activities:

(a) Exploration and exploitation of the natural resources, whether living or non-living, of the waters superjacent to the seabed and the seabed and its subsoil, and other activities for the economic exploitation and exploration of the Joint Regime Area;

(b) The establishment and use of artificial islands, installations and structures;

(c) Marine scientific research;

(d) The protection and preservation of the marine environment;

(e) The conservation of living resources;

(f) Such measures as are authorized by this Treaty, or as the Parties may otherwise agree for ensuring compliance with and enforcement of the regime established by this Treaty.

3. Activities relating to exploration and exploitation of non-living resources, as well as those referred to in paragraph 2 (c) and (d), will be carried out on a joint basis agreed by both Parties.

4. The Parties shall not authorize third States and international organizations or vessels of such States and organizations to carry out any of the activities referred to in paragraph 2. This does not preclude a Party from entering into, or authorizing arrangements for leases, licences, joint ventures and technical assistance programmes in order to facilitate the exercise of the rights pursuant to paragraph 2, in accordance with the procedures established in article 4.

5. The Parties agree that in the Joint Regime Area, each Party has jurisdiction over its nationals and vessels flying its flag or over which it exercises management and control in accordance with international law.

Provided that in any case where it is alleged by one Party that nationals or vessels of the other Party have breached, or are breaching the provisions of this Treaty and any measures adopted by the Parties for their implementation, the Party alleging the breach shall bring it to the attention of the other Party, following which both Parties shall forthwith commence consultations with a view to arriving at an amicable settlement within 14 days.

On receipt of the allegation, the Party to whose attention the allegation has been brought shall, without prejudice to the consultations referred to in the above paragraph:

(a) In relation to an allegation that a breach has been committed, ensure that the activities, the subject-matter of the allegation, do not recur;

(b) In relation to an allegation that a breach is being committed, ensure that the activities are discontinued.

6. The Parties agree to adopt measures for ensuring that nationals and vessels of third States comply with any regulations and measures adopted by the Parties for implementing the activities set out in paragraph 2.

Article 4

1. The Parties agree to establish a Joint Commission, hereinafter called "The Joint Commission", which shall elaborate the modalities for the implementation and the carrying out of the activities set out in paragraph 2 of article 3, the measures adopted pursuant to paragraph 6 of article 3, and carry out any other functions which may be assigned to it by the Parties for the purpose of implementing the provisions of this Treaty.

2. The Joint Commission shall consist of one representative of each Party, who may be assisted by such advisers as is considered necessary.

3. Conclusions of the Joint Commission shall be adopted by consensus and shall be only recommendations to the Parties. Conclusions of the Joint Commission when adopted by the Parties shall become binding on the Parties.

4. The Joint Commission shall begin its work immediately on the entry into force of this Treaty and shall, unless the Parties agree otherwise, conclude the tasks identified in paragraph 1 of this article within six months from the commencement of its work.

Article 5

Geodetic data are based on the World Geodetic System (1984).

Article 6

For illustrative purposes only, the delimitation line and the Joint Regime Area are shown on a United States Defence Mapping Agency Chart 402, which is attached. In the event of conflict between the coordinates and the Chart, the coordinates will prevail.

Article 7

Any dispute between the Parties on the interpretation or application of this Treaty shall be settled by agreement between the two countries in accordance with the means for the peaceful settlement of disputes provided for by international law.

Article 8

This Treaty shall be subject to ratification.

Article 9

This Treaty shall enter into force on the date of exchange of instruments of ratification.

Article 10

Done in English and Spanish, each text being equally authentic.

IN WITNESS WHEREOF, the Ministers for Foreign Affairs of both countries have signed the present Treaty.

DONE at Kingston this 12th day of November 1993.