

FLAG STATES, IUU FISHING, AND THE WEST AFRICAN PRECEDENT: WHAT ITLOS CASE NO. 21 TAUGHT US

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Illegal, unreported, and unregulated (IUU) fishing is not just an environmental issue but a legal crisis. Nowhere is this more evident than in West Africa, where foreign-flagged vessels exploit regulatory gaps, deplete marine ecosystems, and undermine the sovereign rights of coastal states.

In 2015, the International Tribunal for the Law of the Sea (ITLOS) issued a groundbreaking Advisory Opinion in Case No. 21, requested by the Sub-Regional Fisheries Commission (SRFC). The opinion clarified the legal obligations of flag states whose vessels engage in IUU fishing in third-party states' exclusive economic zones (EEZs).

The West African Context

SRFC member states, including Senegal, Guinea, and Sierra Leone, have long suffered from IUU fishing by foreign-flagged vessels, particularly those flying flags of convenience. These vessels often:

- Fish in restricted zones
- Underreport or falsify catch data
- Engage in transshipment at sea to avoid detection.

The result? Billions in lost revenue, food insecurity, and ecological degradation.

ITLOS Case No. 21: Legal Highlights

In its 2015 Advisory Opinion, ITLOS held that:

- Flag states have a due diligence obligation under UNCLOS to ensure vessels flying their flag do not engage in IUU fishing in the EEZs of other states.
- Failure to exercise effective control may result in international responsibility.
- Coastal states can adopt conservation and enforcement measures to protect their marine resources.

This opinion reinforced the idea that UNCLOS Articles 58, 62, and 94 are not aspirational but enforceable standards of conduct.

Read the full opinion (PDF)

Reports of Judgment, Advisory Opinions and Orders

https://itlos.org/fileadmin/itlos/documents/cases/case_no.21/advisory_opinion_published/2015_21-advop-E.pdf

Enforcement Gaps and the Path Forward

Despite the legal clarity, enforcement remains uneven:

- Many coastal states cannot monitor vast EEZs.
- Flag states often fail to investigate or prosecute violations.
- Port State Measures (PSMA) are underutilized or inconsistently applied.

To close these gaps, states must invest in:

- Regional surveillance and data-sharing
- Market-based traceability systems
- Legal mechanisms to hold flag states accountable

Conclusion

The ITLOS Advisory Opinion in Case No. 21 is a legal milestone, but it is only as effective as the political will behind it. As IUU fishing threatens marine biodiversity and coastal livelihoods, the international community must move from principle to practice.

The law of the sea is not just about freedom of navigation; it is about responsibility on the waterline.

#UNCLOS #IUUfishing #ITLOS #LawOfTheSea #MaritimeGovernance
#FlagStateResponsibility #WestAfrica #LLMLOS

