

Questions by Professor Bekyashev
[unofficial translation provided by the PCA]

1. Questions to the Organisation:

- a. Paragraph 4 of CMM 1.01 provides that the Commission take into account the Interim Measures when adopting its conservation and management measures, while the Interim Measures themselves are not legally binding. In this context, what is the legal effect of paragraph 4 of CMM 1.01?
- b. The Organisation has clarified in its written submissions that the Executive Secretary does not enjoy his full competence and authority before the Convention's entry into force. Despite this, it appears that in 2010, the Executive Secretary requested that the government authorities of French Polynesia inspect the *Lafayette*, which was at the time fishing under the flag of the Russian Federation. In 2010, the Russian Federation was not yet a member of the Commission under the Convention, and the Convention itself had not entered into force. In light of this, would you say that your orders to inspect the *Lafayette* exceeded your authority at the time and were in violation of international law?
- c. According to Article 1 of the Convention, "fishing" also means "transshipment". Why has the Commission not taken this definition into account with respect to the 2010 catch of the *Lafayette*?
- d. Is the *Lafayette* a "fishing vessel" under the definition of the "fishing vessels" of Article 1 of the Convention?
- e. Given the criteria for the allocation of the total allowable catch under Article 21 of the Convention, and in particular the criteria of "historic catch and past and present fishing patterns and practices" and "contribution to the conservation and management of fisheries resources", how would you respond to the argument of the Russian Federation that these criteria have not been followed when allocating the total allowable catch limit in 2013?
- f. In light of the allocation criteria of Article 21 of the Convention, and in particular the "historic catch" criterion, how would you explain that when allocating the total allowable catch limit in 2013, only the 2010 data was taken into account, and not, say, the past ten years of fishing?
- g. What instrument (document or regulation) defined the procedure for submitting the catch data to the Commission in 2010 and 2011, given that the applicable Interim Measures are not legally binding?
- h. Article 26 of the Convention provides that the documents relating to the inspection of a flag vessel shall be sent to the State of the flag. Have the documents relating to the inspection of the *Lafayette* ever been sent to the Russian Federation?

2. *Questions to the Russian Federation:*

- a. Does the Russian Federation have in its possession documents confirming the status of the *Lafayette* as that of a “fishing vessel” as stated in footnote 2 to CMM 1.01, and if so, why have these documents not been provided to the Review Panel?
- b. Please explain from the legal point of view and with references to the Convention and other international law instruments your statement that the Russian Federation will not comply with CMM 1.01, in particular in the context of footnote 3 to CMM 1.01.
- c. In accordance with Article 17 of the Convention, the Russian Federation was to suggest its alternative measures which would be “equivalent in effect” to the contested measure. What is this alternative measure of the Russian Federation?
- d. Article 26 of the Convention implies that the flag State shall receive a number of formal documents relating to inspections of its flag vessels. Has the Russian Federation received the formal documents in relation to the inspection of the *Lafayette*, and if not, what has been done by the Russian Federation in this regard?
- e. What is the basis for the calculation of 19,000 tonnes of *Trachurus murphyi* in 2013 as claimed by the Russian Federation?
- f. What is the interpretation of the term “fisheries” under Russian law, and does such interpretation imply processing, transshipment and transportation of the catch?
- g. What is the reporting practice in relation to the catch data in various regional fisheries organizations? Do the other fisheries organisations require, for example, that the member States submit data about, for example, the tonnage of trawling and the trawling days?

3. *Questions to the Republic of Chile:*

- a. How would you explain your argument that Article 3 of the Convention demands that the Members supply to the Commission the accurate catch data in light of the fact that in 2010, the Convention had not yet entered into force, the Commission did not exist, and the Russian Federation was not yet a member of the Commission?
- b. Given that the Convention does not regulate the period before its entry into force, and also given that the Interim Measures are not legally binding, what do you think was the legal basis for the Commission's activities before the entry into force of the Convention?