We submit that the majority's finding is correct. The dissent's interpretation of the Convention is based on *a contrario* arguments, inference, and selected references that would permit Part XV dispute settlement bodies to address and decide major and long-standing territorial sovereignty questions. In our view, that is not what was agreed on at the conference on the law of the sea. Many states parties to the Convention, including major powers, are embroiled in such politically sensitive, not to say explosive, disputes. We cannot believe that knowingly, and without comment in their approval of the Convention, they determined that these long-standing territorial sovereignty disputes would henceforth be subject to the dispute settlement regime of the Convention.

Finally, the award sidesteps the question whether military/security issues were/are the real motivation for the MPA. The Tribunal refused to take into account the U.S. Embassy cable dated May 15, 2009, recording a meeting of U.S. and British officials—released by WikiLeaks—that formed the basis of Mauritius's Article 300 claim.[10] Further, it is open to question whether the award advances the interests of the exiled Chagos Islanders. If anything, by finding that the Lancaster House Undertakings are legally binding, the award would seem to have only reinforced the status quo.

We believe the award will ultimately be remembered for upholding the strict view that the states parties to the Convention have not authorized its dispute settlement bodies to decide questions of sovereignty over land territory. One must expect, however, that the issue will arise again in pending and future proceedings.

DAVID A. COLSON AND BRIAN J. VOHRER
District of Columbia

UN Convention on the Law of the Sea—advisory jurisdiction—illegal, unreported, and unregulated fishing in the exclusive economic zone—Convention on Minimal Conditions for Access—flag state liability—due diligence—duty to cooperate

REQUEST FOR AN ADVISORY OPINION SUBMITTED BY THE SUB-REGIONAL FISHERIES COMMISSION (SRFC). Case No. 21. *At* https://www.itlos.org.
International Tribunal for the Law of the Sea, April 2, 2015.

On April 2, 2015, the International Tribunal for the Law of the Sea (ITLOS or Tribunal) rendered an advisory opinion on the rights and obligations of flag states and coastal states regarding illegal, unreported, and unregulated (IUU) fishing within the exclusive economic zone (EEZ).[1] ITLOS confirmed that the full Tribunal—not just its Seabed Disputes Chamber—has jurisdiction to render advisory opinions, a matter of controversy that had previously been untested. The Tribunal also held that under the 1982 United Nations Convention on the Law of the Sea (UNCLOS or Convention),[2] flag states have a "due diligence" obligation to

[10] *See* U.S. Embassy London, HMG Floats Proposal for Marine Reserve Covering (May 15, 2009), *at* http://www.theguardian.com/world/us-embassy-cables-documents/207149.

[1] Request for an Advisory Opinion Submitted by the Sub-regional Fisheries Commission (SRFC), Case No. 21, Advisory Opinion (ITLOS Apr. 2, 2015), *at* http://www.itlos.org [hereinafter *SRFC* Opinion]. Documents relating to the case cited below can be accessed at http://www.itlos.org/cases/list-of-cases/case-no-21/ [hereinafter Case No. 21].

[2] United Nations Convention on the Law of the Sea, *opened for signature* Dec. 10, 1982, 1833 UNTS 397 [hereinafter UNCLOS], *available at* http://www.un.org/depts/los/.

ensure that vessels flying their flag do not engage in IUU fishing activities, and that the flag state may be held liable if that obligation of due diligence is breached. In addition, the Tribunal clarified that where fisheries competence has been transferred from a state to an international organization, it is the organization, not the flag state, that may face liability for a failure to have taken adequate measures to prevent IUU fishing. Finally, the Tribunal confirmed that coastal states have a duty to consult and cooperate with each other in the sustainable management of shared stocks and highly migratory species.

The advisory opinion had been requested by the Sub-regional Fisheries Commission (SRFC), an intergovernmental organization composed of seven West African states.[3] The SRFC member states are parties to a multilateral agreement—referred to as the Convention on Minimal Conditions for Access (MCA Convention)—that regulates fishing activities within their EEZs.[4] The MCA Convention in Article 33 authorizes the SRFC Conference of Ministers to request an advisory opinion from the Tribunal on "a given legal matter."

On March 27, 2013, the permanent secretary of the SRFC, pursuant to a resolution of the Conference of Ministers, transmitted such a request to ITLOS. The request posed three questions about the obligations of flag states regarding IUU fishing activities within the EEZs of coastal states, as well as an additional question on the rights and obligations of coastal states in the management of shared fisheries stocks.

Twenty-two states parties to UNCLOS, which established ITLOS, participated in the case, as did the SRFC and six other international organizations.[5] The United States is not a party to UNCLOS but made a written submission in its capacity as a member state of the United Nations and various organizations that were invited to comment.[6]

Several states argued that the Tribunal lacked jurisdiction to consider the request for an advisory opinion because neither the main text of the Convention nor the ITLOS statute (contained in Annex VI to the Convention) refers expressly to the exercise of an advisory function by the full Tribunal (para. 40).[7] The Convention and the statute refer only to the advisory jurisdiction of the Tribunal's Seabed Disputes Chamber, which deals exclusively with the exploitation of the seabed beyond the limits of national jurisdiction.[8] By contrast, Article 138 of the Tribunal's rules, which were drafted by the Tribunal itself and first adopted in 1997, states that the full Tribunal "may give an advisory opinion on a legal question if an international agreement

[3] The SRFC member states are Cape Verde, the Gambia, Guinea, Guinea-Bissau, Mauritania, Senegal, and Sierra Leone.

[4] Convention on the Determination of the Minimal Conditions for Access and Exploitation of Marine Resources Within the Maritime Areas Under Jurisdiction of the Member States of the Sub-regional Fisheries Commission (SRFC), June 8, 2012 [hereinafter MCA Convention], *at* Case No. 21.

[5] A memorial submitted by the World Wildlife Federation was not included in the case file, but was circulated to participating entities and posted on the Tribunal's website, *at id.*, Statement from an NGO (Nov. 29, 2013).

[6] Written Statement of the United States, para. 3, *id.*, Written Proceedings First Round (Nov. 27, 2013).

[7] Argentina, Australia, China, Ireland, Spain, Thailand, the United Kingdom, and the United States argued that the full Tribunal has no advisory jurisdiction, and several other states expressed skepticism (e.g., France, Portugal) or urged that any advisory opinion be limited to interpreting the MCA Convention (e.g., Japan, the Netherlands).

[8] *See* UNCLOS, *supra* note 2, Arts. 159(10), 191; Statute of the International Tribunal for the Law of the Sea, *id.*, Annex VI, Art. 40(2). The Seabed Disputes Chamber has issued one advisory opinion to date. Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area, Case No. 17, Advisory Opinion of Feb. 1, 2011, 11 ITLOS Rep. 10 [hereinafter *Area* Opinion].

related to the purposes of the Convention specifically provides for the submission to the Tribunal of a request for such an opinion."[9]

The Tribunal found unanimously that it had jurisdiction to entertain the SRFC request (para. 69). Article 21 of the ITLOS statute states that the Tribunal's jurisdiction "comprises all disputes and all applications submitted to it in accordance with this Convention and all matters specifically provided for in any other agreement which confers jurisdiction on the Tribunal." The Tribunal reasoned that the term "all matters" necessarily refers to "something more" than disputes—if not, the provision would have repeated the word "disputes"—and thus "must include advisory opinions" (para. 56). Article 138 of the rules "only furnishes the prerequisites that need to be satisfied before the Tribunal can exercise its advisory jurisdiction," which is conferred jointly by Article 21 and the "other agreement" authorizing the submission of a request for an advisory opinion (para. 59).

The Tribunal then determined that the SRFC's request satisfied Article 138. It found that the MCA Convention is an international agreement "closely related" to the purposes of UNCLOS and that it duly authorizes the SRFC Conference of Ministers to request an advisory opinion (paras. 62–63). In addition, the questions fell "within the scope of the MCA Convention" (para. 68); were "framed in terms of law"; and would require the Tribunal to interpret relevant provisions of UNCLOS and the MCA Convention, and "to identify other relevant rules of international law" (para. 65). The SRFC's request also manifested a "sufficient connection" to the "purposes and principles" of the MCA Convention, a requirement not apparent from Article 138 (para. 68).

Borrowing from the jurisprudence of the International Court of Justice (ICJ), the Tribunal then found no "compelling reasons" to exercise its discretionary power to refuse the request (paras. 71, 78). In particular, it rejected the argument that it "should not pronounce on the rights and obligations of third States not members of the SRFC without their consent" (para. 75) because the advisory opinion would have "no binding force and is given only to the SRFC," which had sought "guidance in respect of its own actions" (para. 76).

Turning to substance, the Tribunal considered the SRFC's first question, which asked it to identify the obligations of flag states vis-à-vis IUU fishing activities within the EEZs of coastal states. As a preliminary matter, the Tribunal noted that it would address only the obligations of flag states not parties to the MCA Convention and only with regard to such activities within the EEZs of SRFC member states (para. 90). It then explained that the coastal state bears "primary responsibility" under UNCLOS for the conservation and management of living resources within the EEZ, which includes taking "necessary measures to prevent, deter and eliminate IUU fishing" (para. 106). Flag states, however, have "the responsibility to ensure that vessels flying their flag do not conduct IUU fishing activities within the [EEZs] of the SRFC Member States" (para. 124). The Tribunal described this responsibility as an obligation of due diligence—an obligation of conduct, not of result.[10]

The Tribunal inferred this obligation from various UNCLOS provisions: Article 58(3) (requiring states parties to have "due regard" for the rights and duties of coastal states), Article 62(4) (requiring that nationals of other states parties fishing in the EEZ comply

[9] Rules of the Tribunal, *as amended*, Art. 138(1), UN Doc. ITLOS/8 (Mar. 17, 2009).

[10] In this context, the Tribunal referred extensively to the *Area* Opinion, *supra* note 8, which addressed the due diligence obligation of states regarding entities involved in deep seabed exploitation. SRFC Opinion, paras. 125–29.

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with coastal state laws and regulations) (paras. 121–22), Article 94 (requiring the flag state to exercise effective jurisdiction and control over ships flying its flag) (paras. 116–19), and Article 192 (requiring states parties to protect and preserve the marine environment) (para. 120). The Tribunal declined to prescribe detailed guidance on what due diligence requires but held that flag states must adopt "enforcement mechanisms to monitor and secure compliance" with their regulations to prevent IUU fishing and that "[s]anctions applicable to involvement in IUU fishing activities must be sufficient to deter violations and to deprive offenders of the benefits accruing from their IUU fishing activities" (para. 138). In addition, the flag state has an obligation to investigate reported instances of IUU fishing, a point emphasized by the SRFC (para. 139).

The second question asked to what extent the flag state may be "held liable" for IUU fishing activities. The Tribunal first explained that it would treat the term "liable" as referring to the consequences of the breach of a primary obligation under the law of state responsibility (para. 145). It then found that a vessel's failure to comply with the laws and regulations of an SRFC member state is not per se attributable to the flag state. Rather, the liability of the flag state "arises from its failure to comply with its 'due diligence' obligations concerning IUU fishing activities" by such vessels (para. 146). Thus, a flag state may be held liable only if it has not taken "all necessary and appropriate measures" to ensure that the vessels flying its flag are not engaging in IUU fishing activities (para. 148).

The third question addressed liability in situations in which a fishing license is issued to a vessel pursuant to a fisheries access agreement between a coastal state and a flag state or between a coastal state and an "international agency." First, the Tribunal stated that the due diligence obligation of the flag state continues to apply when a vessel is licensed within the framework of a fisheries access agreement between the coastal state and the flag state. Second, the Tribunal turned to situations involving an "international agency," which the Tribunal understood to mean an "international organization" (para. 152). As a practical matter, this question related to the European Union (EU), which exercises exclusive competence over fisheries matters vis-à-vis EU member states and has entered into fisheries access agreements with SRFC member states. The Tribunal held that in the absence of provisions to the contrary, "the obligations of the flag State become the obligations of the international organization" (para. 172). An international organization may therefore have a due diligence obligation to ensure that vessels flagged by its member states do not engage in IUU fishing within the framework of a fisheries access agreement; and only the international organization, not the member state, may be held liable for any breach of its obligations arising from that agreement (para. 173).

The fourth and final question, on the coastal state's rights and obligations in ensuring the sustainable management of migratory species and shared stocks, especially small pelagic species and tuna, was prompted by the failure of SRFC member states to coordinate their policies in this regard. The SRFC explained that its member states "continue[d] to act in isolation," issuing licenses to third parties to fish for migratory species and "undermining the interests of neighbouring States and the initiatives of the SRFC" (para. 177). The Tribunal focused its response on UNCLOS Article 63(1), which provides that neighboring coastal states shall seek "to coordinate and ensure 'conservation and development' of shared stocks" through direct negotiation or through subregional or regional organizations (para. 197). With regard to tuna, a highly migratory species listed in Annex I to UNCLOS, the Tribunal noted that UNCLOS

Article 64(1) mandates a "cooperation regime" to manage the conservation of tuna stocks (para. 203). In short, the Tribunal held that SRFC member states are obliged to cooperate in the sustainable management of shared stocks, including highly migratory stocks. This obligation requires ensuring that such stocks are "not endangered by over-exploitation" and that conservation and management measures are based on the "best scientific evidence available" or, where the evidence is "insufficient," that those measures be guided by the precautionary approach (para. 208).

* * * *

It may have been wishful thinking on the part of some states to have expected the Tribunal to disavow Article 138, a rule of its own making, in determining its advisory jurisdiction. But the Tribunal's unsurprising decision to entertain the SRFC request is no less troubling for that fact. In particular, one can only be struck by the apparent disregard for certain basic tenets of treaty interpretation in the Tribunal's approach to jurisdiction.

As noted above, the Tribunal found that the phrase "all matters specifically provided for in any other agreement which confers jurisdiction on the Tribunal" in Article 21 of the ITLOS statute necessarily extends to advisory opinion requests because it otherwise would have specified that only disputes could be referred to the Tribunal by a related agreement. If read in isolation, Article 21 might reasonably be understood in this way, but it ignores the context—namely, the provisions on the Tribunal's jurisdiction in the main text of the Convention. In particular, UNCLOS Article 288 provides that ITLOS has jurisdiction over disputes between states parties concerning the interpretation or application of the Convention, and, in addition, that an international agreement "related to the purposes of the Convention" may provide for the submission of "any dispute concerning the interpretation or application" of that agreement to the Tribunal. It does not mention the referral of advisory opinion requests based on other agreements. As Australia put it, Article 21 of the statute—which appears to have been meant to track Article 288 of the Convention—"cannot have been intended to confer a broader jurisdictional basis than that provided for under Article 288."[11] The Tribunal reasoned that Article 21 of the statute is not "subordinate" to Article 288 of the Convention (para. 52), but this view fails to explain why Article 21 should not be interpreted in light of the corresponding provision in the main text.

The Tribunal offered no response to additional factors that cast doubt on its literal reading of Article 21. Noting the practice of other international courts, the United States argued that the express reference in the Convention to an advisory function "for one chamber of the Tribunal on a specified subject matter implies the absence of a broader advisory function for the entire Tribunal."[12] The United Kingdom observed that the inclusion of a provision giving the Tribunal express authority "would have been straightforward."[13] Several states emphasized the lack of any evidence in the Convention's negotiating history, or in draft rules for the Tribunal proposed in 1995 by a preparatory commission of states parties, to suggest that the full

[11] Written Statement of Australia, para. 26, Case No. 21, Written Proceedings First Round (Nov. 28, 2013).

[12] Written Statement of the United States, *supra* note 6, para. 13; s*ee also* Written Statement of Australia, *supra* note 12, para. 13; Written Statement of the People's Republic of China, paras. 24–28, Written Proceedings First Round (Nov. 26, 2013).

[13] Written Statement of the United Kingdom, para. 24, Written Proceedings First Round (Nov. 28, 2013).

Tribunal was intended to have an advisory function.[14] The advisory opinion, however, does not mention the *travaux préparatoires* or the draft rules.

Although the Tribunal confirmed its jurisdiction unanimously, Judge Cot disagreed with the approach. Describing the Tribunal's reasoning as "convoluted" and "misguided," he found the ambiguity of the term "all matters" in Article 21 to be "blindingly obvious" and noted that neither the *travaux préparatoires*—nor the French text of Article 21—supported the Tribunal's approach.[15] Judge Cot argued that the Tribunal should instead have based its jurisdiction on the fact that the Convention does not expressly prohibit it from exercising an advisory function in plenary, and, of greater interest, because states parties had offered "no reaction at all" to Article 138 of the rules for nearly two decades.[16] The legal significance of that silence is open to question, but the provision's novelty does prompt the question why no one previously objected to Article 138.

The decision of the Tribunal to exercise its jurisdiction also merits comment (on this point, Judge Cot was the lone dissenter). Some states argued that the Tribunal should refrain from issuing an opinion because, among other reasons, the broadly worded request did not strictly relate to the terms of the MCA Convention and would require the Tribunal to interpret UNCLOS and other legal instruments—not all of which are in force or enjoy wide subscription. The Tribunal's strained effort to narrow the scope of the opinion to IUU fishing activity within the EEZs of SRFC member states paid lip service to these arguments, but this formalistic approach did nothing to mask the general applicability of the Tribunal's pronouncements on the obligations and potential liability of flag states related to IUU fishing. The opinion does not provide any reason why a flag state's due diligence obligation—which derives from UNCLOS, not the MCA Convention—would not apply to IUU fishing within the EEZs of other coastal states as well.

The Tribunal also spent little time rejecting the related argument that it should refrain from addressing the rights and obligations of non-SRFC member states without their consent. The Tribunal emphasized the nonbinding nature of advisory opinions and, referring to ICJ jurisprudence, described the issue of consent as "not relevant" (para. 76).[17] Judge Cot took issue with this approach, explaining that advisory opinion requests are submitted to the ICJ only by the General Assembly or the Security Council, or with their authorization. As such, requests to the ICJ are "the subject of a preliminary discussion within a body in which all interested parties are represented," whereas the SRFC request was drafted by the commission's member

[14] Final Draft Rules of the Tribunal, Working Paper by the Secretariat, *in* Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea, Report Containing Recommendations for Submission to the Meeting of States Parties at 26, UN Doc. LOS/PCN/152(Vol. I) (Apr. 28, 1995).

[15] Declaration of Judge Cot, SRFC Opinion, paras. 2, 3. The French text of statute Article 21 reads: "Le Tribunal est compétent pour tous les différends et toutes les demandes qui lui sont soumis conformément à la Convention et toutes les fois que cela est expressément prévu dans tout autre accord conférant compétence au Tribunal." It does not refer to "matters" (i.e., *matières*) in the second clause, which instead appears to restrict the jurisdiction conferred upon the Tribunal by other agreements to the "disputes" and "applications" mentioned in the first clause.

[16] *Id.*, para. 4; *see also* Separate Opinion of Judge Lucky, SRFC Opinion, para. 21.

[17] The ICJ has consistently held that the exercise of its advisory jurisdiction does not require the consent of states that may be affected, even when the advisory opinion (unlike the present one) relates to an actual dispute; but nonconsent may bear on whether a request should be declined. *See, e.g.,* Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 ICJ REP. 136, 157–59, paras. 46–50 (July 9).

states, without input from the flag states that are the focus of its first three questions.[18] In his view, the Tribunal also confused the notion of "binding force" with that of "legal effect," and he assailed the Tribunal for opining on matters, including state responsibility, not mentioned in the MCA Convention. More broadly, Judge Cot noted the potential for "abuse and manipulation" of Article 138 of the rules, by which states could enter into an agreement to request an advisory opinion and seek to disadvantage third states.[19]

The considerable attention given to whether the Tribunal could proceed without the consent of non-SRFC member states serves mainly to highlight the unusual scope of Article 138 and the lack of any clear legal basis for the full Tribunal's advisory jurisdiction. Those issues are distinct from whether the consent of a third party is necessary because an advisory opinion will affect its interests. If two parties agree to international adjudication, the judgment could always shape the rights and obligations of third states, notwithstanding that international judgments are binding only between the parties.[20] The effect of an ITLOS advisory opinion on third parties, regardless of the source of the request, is perhaps not much different in practice. That is, the better argument is not that individual states parties had failed to consent to the full Tribunal's jurisdiction in response to a specific advisory opinion request, but that states parties had not consented to the full Tribunal's exercise of advisory jurisdiction over any matter whatsoever.

On substance, the advisory opinion is comparatively uncontroversial. Its conclusions largely reflect the majority view of the participating entities.[21] The pronouncement that flag states have a due diligence obligation over their fishing fleets gives teeth to the Convention and lays the groundwork for future litigation against flag states alleged to have been derelict in that duty. The Tribunal did little, however, to articulate the specific contours of the flag state's obligations. Its reluctance to do so—for example, by drawing on other legal instruments that directly address flag state duties—may stem from the uneven subscription of flag states to such instruments.[22] Moreover, the Tribunal did not address the practical difficulties that coastal states may face in seeking to hold flag states liable. The burden of proof in interstate litigation typically rests with the party seeking to establish a claim, but if an act of IUU fishing is identified by the coastal state, it may be sensible to shift the burden of proof to the flag state, by requiring it to demonstrate that adequate oversight was in place.[23] The Tribunal also avoided several other issues that were raised, including what form reparation might take if a flag state is found to have breached its due diligence obligation and whether the due diligence obligation is heightened when the flag state's vessels are operating within the EEZs of coastal states that lack

[18] Declaration of Judge Cot, *supra* note 15, para. 7. Regrettably, no prominent open registry flag state (e.g., the Bahamas, Liberia, Panama) made a submission in the case. Such states, which register high numbers of foreign-owned vessels, might have provided relevant perspectives on existing practice and the level of oversight that can reasonably be expected of flag states.

[19] *Id.*, paras. 9–12.

[20] *See, e.g.,* ICJ Statute Art. 59.

[21] A notable exception is question 3 on liability under an international agreement. Most participants argued that in the absence of specific rules to the contrary, the flag state and the international organization could each face liability.

[22] Judge Paik criticized the failure to consider these materials, many of which the SRFC had specifically invoked in its submissions. *See* Separate Opinion of Judge Paik, SRFC Opinion, paras. 5, 22–29.

[23] The ICJ has discussed this type of approach in another context. *See* Ahmadou Sadio Diallo (Guinea v. Dem. Rep. Congo), 2010 ICJ REP. 639, 660–61, paras. 54–56 (Nov. 30).

enforcement capacity. These questions may now be addressed by future litigation. In the long run, it may be preferable for the law of flag state obligations to develop in response to concrete cases, rather than to hypothetical situations.

In sum, the Tribunal has effected a remarkable expansion of its powers. The decision to respond to the SRFC request for an advisory opinion represents a victory in the fight against IUU fishing—a problem whose gravity and ubiquity seem beyond dispute—but may also have invited "controversy and confusion about the ability of States Parties to control the interpretation and application of the agreements they negotiate."[24] Moreover, this controversy over the Tribunal's jurisdiction could likely have been avoided. An SRFC member state might have established the flag state's obligation and liability instead by litigating an actual IUU fishing dispute before the Tribunal.

Nonetheless, the advisory opinion highlights the extraordinarily broad scope of the full Tribunal's new-found advisory jurisdiction and raises the prospect of the submission of any number of novel and important questions to ITLOS. In the future, an agreement to request an advisory opinion from ITLOS on a particular legal question could even itself become a bargaining chip in a negotiation. It remains uncertain, however, whether states parties—in light of the concerns raised by Judge Cot and various states—will seek to place some limits on the Tribunal's advisory jurisdiction. Amending the statute to create express authority for a narrower version of the advisory function than the Tribunal has appropriated to itself is improbable. Alternatively, the Tribunal on its own initiative (or at the urging of states parties) could seek to amend Article 138 of the rules—for example, to restrict the full Tribunal's advisory jurisdiction to interpreting the agreement that authorizes such a request. But whether such an amendment would be consistent with the Tribunal's expansive reading of Article 21 is problematical. Moreover, such self-restraint seems unlikely given the new opportunities for engagement that the advisory function may provide and that the Tribunal appears eager to seize.

MICHAEL A. BECKER
University of Cambridge

Investment arbitration—lack of jurisdiction under statute, treaty, and ICSID Convention—denunciation of ICSID Convention—lack of foreign ownership or control

VENOKLIM HOLDING B.V. v. BOLIVARIAN REPUBLIC OF VENEZUELA. ICSID Case No. ARB/12/22. *At* https://icsid.worldbank.org.
International Centre for Settlement of Investment Disputes, April 3, 2015.

On April 3, 2015, the ICSID tribunal in *Venoklim Holding B.V. v. Bolivarian Republic of Venezuela*[1] issued the first public decision to consider the effect of a state's denunciation of the ICSID Convention (Convention).[2] The tribunal decided that Venezuela's denunciation on

[24] Written Statement of the United States, *supra* note 6, para. 38.

[1] Venoklim Holding B.V. v. Bolivarian Republic of Venezuela, ICSID Case No. ARB/12/22 (Apr. 3, 2015), *at* https://icsid.worldbank.org [hereinafter Award].

[2] Convention on the Settlement of Disputes Between States and Nationals of Other States, Mar. 18, 1965, 17 UST 1270, 575 UNTS 159 [hereinafter ICSID Convention].