

# IMLI<sup>e</sup>-News

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## **JUDGE AND PRESIDENT OF THE CHAMBER FOR FISHERIES DISPUTES OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA (ITLOS) VISITS IMLI**

The Director, staff and students of the IMLI Class of 2014/2015 had the pleasure of welcoming Judge Tafsir Malick Ndiaye, Judge and President of the Chamber for Fisheries Disputes at ITLOS, who visited the Institute recently. During his visit, Judge Ndiaye also delivered a lecture on illegal, unreported and unregulated (IUU) fishing.



*Judge Tafsir Malick Ndiaye meeting the students of the IMLI Class of 2014/2015*

In his lecture Judge Ndiaye dealt with the concept of IUU Fishing, contributing factors to IUU Fishing, its legal limitations and compliance. He explained that overfishing and overexploitation and overcapacity in an environment of competition for fewer resources have contributed a lot to IUU Fishing. He defined IUU Fishing as a generic term which encompasses a range of activities with the common aim to avoid regulation in areas including coastal seas, and the high seas. IUU Fishing has exploited the limitation in international law of the sea which was not apparent when the United Nations Convention on the Law of Sea (UNCLOS) was negotiated. In other words, like climate change, this is also a new challenge on international law of the sea.

Discussing further the factors contributing to IUU fishing, Judge Ndiaye mentioned that the creation of the EEZ and the consequent displacement of high seas fishing vessels and the use a zone approach based on distance of the EEZ is also a contributing factor. In addition, he stated further, 35% of the world's ocean is enclosed within coastal states waters, automatically making it inaccessible to the rest of the world. Another contributory factor proffered by Judge Ndiaye was that the fishing capacity now exceeds 12 times than what the ocean can offer and that a recent study has shown that by 2084 there would not be enough fish in the world and therefore many countries are focusing on aqua culture.

Judge Ndiaye, in deliberating on the legal implications of IUU fishing, stated that the practice of flag state control can be weak, especially the practice of reflagging under flags which are non-compliant to international rules. In explaining the above, he used the Genuine Link requirement for States, together with decided cases such as the *Nottebohm* case and the *MV Saiga* case. He stated that as there is an absence of an internationally accepted definition of this concept of the Genuine Link, the duty of flag state responsibility have become difficult, and worse still, is the fact that States are reluctant to deal with this issue. This disagreement has been one left in the hands of the Tribunal in cases of dispute brought before it.

In this regard, he stated, the need has been felt to address this situation. Therefore, when the international community realized that long distance fishing states were depleting fishes, they demanded a new conference for fish stock of migratory fishing.

Judge Ndiaye also discussed the application for prompt release as one of the functions of the Tribunal, to serve as a mechanism to deal with certain types of cases that may arise under UNCLOS that require urgency. He explained the procedure of the Tribunal upon receiving such applications.

He concluded by stating that there is a lot of research and work to be done in international law, not only on IUU fishing but also in many other developments due to climate change and encouraged the students to take active interest in these areas.



*Professor David Attard (Director, IMLI), Judge Tafsir Malick Ndiaye (Judge, and President of the Chamber for Fisheries Disputes, ITLOS) with the IMLI Class of 2014/2015*

Judge Ndiaye has a Diploma from the Institute of Advanced International Studies, University of Paris (first in year, 1980); Postgraduate Diploma in public law, specializing in public international law, University of Paris (*cum laude*, first in year, 1980); Postgraduate Diploma in political studies, specializing in international relations, University of Paris (1981); Diploma from the Centre for Studies and Research in International Law and International Relations, The Hague Academy of International Law (1981); and a Doctor of Law, University of Paris (*magna cum laude*, 1984).

Judge Ndiaye has a vast professional experience. He was Assistant Lecturer, University of Paris X (1981); Assistant, Collège de France, Professor René Jean Dupuy Chair of International Law (1981); Lecturer, University of Dakar (1984); Director of the Research Centre, Faculty of Law, University of Dakar (1985); Counsel and Co-Agent of the Government of Senegal in the case of the delimitation of the maritime boundary between Senegal and Guinea-Bissau (1985), Arbitration Tribunal, Geneva (1986–1989), International Court of Justice, The Hague (1989–1991); Adviser to the Government of Senegal on Senegambia (1986); UN consultant, wherein he undertook several missions for the UN, 1989; Legal Adviser to the Senegalese Government in the negotiations concerning Senegal's commercial debt, London Club (1989); Rapporteur, Commission on the Reform of the Senegalese Electoral Code (1991); and Expert, Global Coalition for Africa, Washington (1992); Jurisconsult (1992).

He is a visiting professor at various universities, member of various thesis committees, lecturer at both The Summer Academy of The International Foundation for the Law of the Sea (2008, 2009, 2010) and the Nippon Foundation's Capacity building programme concerning International Disputes Settlement (2009, 2010, 2012).

Judge Ndiaye is a Member of several learned societies, Advisory Board: *State Practice and International Law*, Brunel University, Uxbridge, UK.

He is also a widely published author of many books, articles and papers in the fields of international law, constitutional law, international organizations and the law of integration.

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