

IN PROCEEDINGS CONDUCTED BY

THE REVIEW PANEL ESTABLISHED UNDER ARTICLE 17 AND ANNEX II  
AND OF THE CONVENTION ON THE CONSERVATION AND MANAGEMENT OF  
HIGH SEAS FISHERY RESOURCES IN THE SOUTH PACIFIC OCEAN

with regards to

THE OBJECTION BY THE REPUBLIC OF ECUADOR TO A DECISION OF  
THE COMMISSION OF THE SOUTH PACIFIC REGIONAL FISHERIES  
MANAGEMENT ORGANIZATION (CMM 01-2018)

ORAL HEARING

Wednesday, May 23, 2018

The Permanent Court of Arbitration  
Peace Palace, Japanese Room  
Carnegieplein 2, 2517 KJ The Hague  
The Netherlands

The hearing in the above-entitled matter came on  
at 9:45 a.m. before:

PROF. DON MACKAY, Chair

MS. CECILIA ENGLER, Panel Member

PROF. ERIK J. MOLENAAR, Panel Member

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ALSO PRESENT:

Registry, Permanent Court of Arbitration:

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MR. RICARDO AMENABAR CANTOS

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ATTENDEES: (Continued)

On behalf of the Commonwealth of Australia:

MR. LEWIS CASEY  
Embassy of Australia to The Netherlands

On behalf of Chinese Taipei:

MR. CHIH-HSIANG WU  
First Secretary, Taipei Representative Office  
in the Netherlands

DR. YU-TSANG WU  
Adjunct Assistant Professor, National Defense  
Medical Center

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ATTENDEES:

On behalf of the SPRFMO Commission:

MR. OSVALDO URRUTIA  
Chairperson

On behalf of the Republic of Ecuador:

ENG. JORGE COSTAIN CHANG  
Undersecretary of Fisheries of Ecuador

AMB. FERNANDO BUCHELI  
Consul of Ecuador in The Hague

MR. JOSÉ ANTONIO YTURRALDE VILLAGÓMEZ  
Vice-Consul of Ecuador in The Hague

MR. JIMMY ALFREDO VILLAVICIENCIO NAVIA  
Legal Advisor

ENG. GUILLERMO MORÁN VELÁSQUEZ  
Technical Advisor

On behalf of the Republic of Perú:

MR. LUCAS OTERO  
Embassy of Perú

On behalf of New Zealand:

MR. LUKE ROUGHTON  
New Zealand Ministry of Foreign Affairs and  
Trade

On behalf of the Republic of Chile:

MR. EDUARDO RIQUELME  
Undersecretary of Fisheries and Aquaculture

AMBASSADOR MARIA TERESA INFANTE  
Ambassador of Chile to The Netherlands

MR. JUAN ENRIQUE LOYER  
Embassy of Chile in The Netherlands

MR. MAURO URBINA  
MS. KATHERINE BERNAL  
Undersecretariat for Fisheries and Aquaculture

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## P R O C E E D I N G S

1 CHAIRMAN MACKAY: Well, good morning,  
2 colleagues--I think that everyone is in the room--and I'd  
3 like to welcome everyone to today's hearing. It's  
4 certainly a great pleasure and honor for me to open today's  
5 hearing on the objection of the Republic of Ecuador to the  
6 Conservation and Management Measure for Trachurus murphyi,  
7 CMM 01-2018, which was raised pursuant to Article 17 and  
8 Annex II of the Convention on the Conservation and  
9 Management of High Seas Fishery Resources in the South  
10 Pacific Ocean.

11 First of all, I'd like to formally introduce my  
12 fellow Review Panel Members.

13 On my right is Ms. Cecilia Engler, the Member of  
14 the Panel appointed by the Republic of Ecuador; and, to my  
15 left, is Professor Erik Molenaar, who was appointed by the  
16 Organisation.

17 My name is Don MacKay, and I have the pleasure,  
18 as you will have gathered, of acting as the Chair of the  
19 Review Panel.

20 As you know, we are assisted in these proceedings  
21 by the outstanding staff of the Permanent Court of  
22 Arbitration, Martin Doe and Helen Brown, sitting here at  
23 the podium here with us; and also Elena Alvarez, Jorge Luis  
24 Manrique de Lara Seminario, and Camilla Pondel to the

1 Panel's left, and I'd like to thank them and welcome them  
2 also for joining us today.

3 We're also assisted by our Court Reporter, David  
4 Kasdan, who is sitting there, and by our interpreters who  
5 are somewhat less visible but very central to our  
6 proceedings, and they are Victoria Perez Orr and Ricardo  
7 Amenabar Cantos, and I'd like to thank them for the  
8 assistance that they will be giving us today.

9 I should say that, finally, and we don't yet have  
10 the colleague in the room, but we have a proposal to allow  
11 a junior researcher at the Netherlands Institute for the  
12 Law of the Sea, Ms. Madalena Vissa, who works with  
13 Professor Molenaar. She's asked if she could come and  
14 observe the Hearing, and the Panel is certainly minded to  
15 grant that request, unless there was any objection from any  
16 of the participants in the room. And I don't see any  
17 indication of that, so I think we could invite her to come  
18 in and join us at the Hearing.

19 So, having introduced all of those on this side  
20 of the table, I'd now like to once again welcome the  
21 participants in today's Hearing, starting with the distinct  
22 representatives of the Commonwealth of Australia and  
23 Chinese Taipei as sitting on my right just in front of the  
24 Interpreters, both of which have indicated that they would  
25 like to attend the Hearing but have not indicated that they

1 plan to speak today, but it's very nice to have them here  
2 as well.

3 And, of course, I'd like to very much welcome  
4 those who will be speaking at today's Hearing, and I, in  
5 this respect, refer to the Chairman of the Commission, the  
6 representatives of the Republic of Ecuador, the  
7 representative of the Republic of Perú, the representatives  
8 of the Republic of Chile, and representative of New  
9 Zealand.

10 And what I'd like to do at this point in time is  
11 to invite the participants around the table to introduce  
12 the members of their delegations or if there are any  
13 delegation of one, to introduce themselves, so that we all  
14 know who we have sitting around the table.

15 And if I may, I would like to begin with the  
16 Commission Chair and proceed clockwise around the table  
17 from the distinguished Chair of the Commission, to whom I  
18 give the floor.

19 MR. URRUTIA: Good morning, Mr. Chair and  
20 distinguished Panel Members. Yes, I'm here today on behalf  
21 of the Commission as the Chairman of the South Pacific  
22 SPRFMO Commission, and the Secretariat has not been able to  
23 attend, but as you know, we have prepared a joint  
24 submission.

25 (Comment off microphone.)

1 CHAIRMAN MACKAY: Thank you very much, Chairman.

2 I'll just go around the room, around the table  
3 and give colleagues the opportunity to introduce  
4 themselves, and we'll then come back to some additional  
5 items of business, and then we'll proceed with the  
6 submissions, the oral submissions from participants. So,  
7 if we could now proceed to the representative, the  
8 distinguished representative of Perú.

9 MR. OTERO: I'd like to wish a good morning to  
10 all. My name is Lucas Otero. I come from the Embassy of  
11 Perú.

12 Thank you very much, Mr. Chair.

13 CHAIRMAN MACKAY: Thank you very much.

14 So, I'd now pass the floor to the distinguished  
15 representative of Ecuador to introduce himself and the  
16 members of his delegation.

17 ENG. COSTAIN CHANG: Good morning, Mr. President.  
18 Thank you for inviting us to this opportunity. My name is  
19 Jorge Costain. I am the Undersecretary of Fisheries of  
20 Ecuador, and with me I have Mr. José Antonio Yturralde from  
21 the Consulate here in The Hague, and the Legal Advisor,  
22 Mr. Villaviciencio Navia.

23 CHAIRMAN MACKAY: Thank you very much.

24 I thank the distinguished representative of  
25 Republic of Ecuador for introducing his delegation, and I

1 now pass to the distinguished representative of Chile.

2 MR. RIQUELME: Good morning. My name is Eduardo  
3 Riquelme. I'm the Undersecretary of Fisheries and  
4 Aquaculture of Chile, which corresponds to--which responds  
5 to the Ministry of Economic Development of our country, and  
6 with me I have the Ambassador of Chile to The Netherlands,  
7 Maria Teresa Infante on my left; and on my right we have  
8 Katherine Bernal, Undersecretariat, the Legal Advisor; and  
9 Mauro Urbina, also Undersecretariat for Fisheries and  
10 Aquaculture; as well as another representative of the  
11 Embassy, Juan Enrique Loyer.

12 Thank you.

13 CHAIRMAN MACKAY: Thank you very much.

14 I thank the representative of Chile for  
15 introducing his delegation, and I give the floor to the  
16 distinguished representative of New Zealand.

17 MR. ROUGHTON: Thank you, Chair. Good morning  
18 Panel and colleagues. My name is Luke Roughton. I am a  
19 Legal Advisor at New Zealand's Ministry of Foreign Affairs  
20 and Trade.

21 CHAIRMAN MACKAY: Thank you very much, New  
22 Zealand.

23 So, thank you, colleagues, for the introductions  
24 which are obviously appreciated.

25 And let me also at this stage just express some

1 Now, with regard to interpretation and  
2 transcription, I just had a couple of comments on that for  
3 the information of colleagues. As you will have gathered,  
4 today's proceedings are being interpreted simultaneously  
5 from English into Spanish and vice versa, and are being  
6 simultaneously transcribed in English. So, in order for  
7 those aspects of the Hearing to function well, we would  
8 request that speakers ensure that their microphones are on  
9 when they are speaking, and I was just about to break the  
10 very rule that I was suggesting we should adhere to.

11 The other dimension, of course, is that, to  
12 assist our Interpreters, if colleagues could speak  
13 reasonably slowly when they're speaking so that our  
14 colleagues, the Interpreters, are able to follow clearly  
15 what is being said.

16 Now, the next thing I wanted to turn to is the  
17 Hearing Schedule, and you will all have received the  
18 schedule. It's, I think, on the table in front of you, if  
19 you haven't seen it before that. And at the outset, I'd  
20 like to emphasize that the Hearing Schedule is indicative  
21 only in that the Panel may make adjustments to it as the  
22 Hearing proceeds.

23 And obviously, what this really depends on is how  
24 long colleagues speak for. Colleagues do have time  
25 allotted to each of them, but, of course, it is not

1 additional appreciation to the Organisation and also to the  
2 Members of the Commission for the very comprehensive  
3 submissions and supporting materials that have been  
4 presented to us. And we're very conscious of the fact that  
5 all of these materials were prepared under the very tight  
6 timelines that we face, given the deadlines that are  
7 imposed on all of us and by the Convention.

8 And I'd also at this stage like to express the  
9 Panel's wholehearted appreciation, too, to our colleagues  
10 from the Permanent Court of Arbitration for the sterling  
11 support that they have given us and also operating under  
12 these very tight timelines, and their support has been  
13 extraordinary, so thank you very much for that.

14 Now, I didn't actually pass the floor to  
15 Australia or to Chinese Taipei, both of whom are present  
16 although not going to make submissions as I understand it,  
17 but I should, as a matter of courtesy, invite those  
18 colleagues also to introduce themselves, and I pass the  
19 floor to Australia.

20 You don't have the microphone by the look of it,  
21 so that actually deals with that particular issue.

22 But again, both colleagues from Australia and  
23 Chinese Taipei are most welcome at the proceedings, and we  
24 appreciate your taking the time and making the effort to  
25 join us today.

1 compulsory to utilize all of that time. And if colleagues  
2 are able to be brief, then that will give us some  
3 additional time for the question-and-answer session this  
4 afternoon, which is certainly something that I know that  
5 everyone in the room will want to see maximum time given  
6 to. So, I would, therefore, encourage colleagues to be  
7 brief to the extent that they can.

8 Now, one other point about the Hearing Schedule  
9 is that our colleague from Perú has requested a variation  
10 to the schedule so that it can go last in its  
11 presentation--in other words, after the submission of  
12 Chile--and this would be in both the morning and afternoon  
13 sessions, and the Panel is certainly open to making this  
14 change at the request of our colleague from Chile.

15 And I wonder, may I take it that other colleagues  
16 in the room are also comfortable with that?

17 I don't see any indication to the contrary, so I  
18 thank the colleagues for their flexibility.

19 As far as the interventions are concerned, our  
20 colleagues from the PCA will be keeping track of the time  
21 used for each intervention and will indicate to us when the  
22 allotted time is nearly up; and I'm sure, in this respect,  
23 that participants will have taken note of the Panel's  
24 direction that speakers should avoid repeating orally what  
25 has already been submitted to the Panel in writing. You



1 today, and especially to the South Pacific SPRFMO  
2 Secretariat for helping this Chair to draft this submission  
3 we presented together.

4 I am fully aware of the tight procedural  
5 deadlines that we all have had to face, and that adds to my  
6 personal gratitude to you all.

7 Distinguished Panel, from the outset, I would  
8 like to emphasize that the right of any Member to object to  
9 a measure is recognized in under the Convention, and the  
10 exercise of this right should not be seen as a disruptive  
11 action by any other Member of this Commission.

12 Experience shows that we have been able to solve  
13 the fundamental disagreements underlying an objection, and  
14 I trust that with your help, distinguished Panel, and your  
15 guidance, the Commission will again be able to overcome  
16 this disagreement. I, therefore, appreciate that the Panel  
17 takes Ecuador's objection into full consideration.

18 Before going into the substance of the issue we  
19 need to address today, may I also emphasize today that I  
20 will not repeat the facts and the arguments as you ask,  
21 Mr. Chair, presented in the memorandum I submitted in  
22 conjunction with the Secretariat. I think there is enough  
23 there for the Panel Members to consider.

24 We'll have the chance to clarify further  
25 questions in the afternoon as well.

1 So, I will now continue by addressing following  
2 four parts in my intervention: First, the alternative  
3 measures proposed by Ecuador concerning the allegation of  
4 discrimination;

5 Second, some specific points regarding Ecuador's  
6 allegation on the inconsistency of the objective Measure;

7 Three, considerations of Ecuador's aspirations  
8 and the work of the Commission;

9 And finally, some proposals by this Chair to move  
10 forward.

11 Let me go into the first part.

12 Regarding the allegations of discrimination and  
13 the alternative measures, in relation to Ecuador's  
14 assertion that Conservation and Management Measure, CMM  
15 01-2018 on Jack mackerel. Is this meritory? We shall  
16 closely consider letters (a), (b), and (c) of Paragraph 10,  
17 in Annex II of the Convention text. I will not refer to  
18 the substance of the allegations of discrimination  
19 themselves, as I suspect, I'm quite sure, that several  
20 Members are keen to intervene on that particular point.

21 I would rather like to draw the attention of the  
22 Panel Members of what might seem quite obvious at this  
23 stage. All the options envisaged in letters (a), (b), and  
24 (c) rely on assessing the alternative measures proposed by  
25 Ecuador, and whether they are equivalent in effect to the

1 measure objective.

2 And the problem here, distinguished Panel, is  
3 that the alternative measures proposed by Ecuador are  
4 unfeasible because they fall short of being equivalent in  
5 effect.

6 I think there are three reasons for this:

7 First, they will impact on the rights of all the  
8 Members of the Commission, in particular Perú, which is a  
9 highly sensitive matter.

10 Second, they will, in practice, entail  
11 undermining the rights of a Coastal State within its  
12 exclusive economic zone, and again I'm referring mainly to  
13 Perú, which is beyond the scope of the Convention and,  
14 therefore, beyond what the Panel can do.

15 Three, it is apparent that in the case before us,  
16 any other decision to accommodate Ecuador's request to  
17 directly increase its allocation would mean either  
18 affecting the rights of other Members or raising the total  
19 catch limit for the whole range of the stocks.

20 Concerning this last point I'm extremely opposed  
21 for two simple reasons:

22 Firstly, I do not need to emphasize the  
23 importance of the efforts made by the Commission in  
24 rebuilding the Jack mackerel stock. We have grounds to be  
25 optimistic, but we should not lose sight that we have had

1 what we have got here is a stock that still needs a strong  
2 conservation measures, so its exploitation can be  
3 sustainable in the future.

4 And the second reason is because raising the  
5 total catch limit would be an extremely negative precedent  
6 that in the future may encourage any dissatisfied Member to  
7 pursue an Objection procedure for the sake of obtaining  
8 more individual quota.

9 May I remind the distinguished Panel of the 2013  
10 Decision where there was no increase in the TAC or the  
11 total catch limit for the whole range of the stock.

12 To understand why the alternative measures  
13 proposed by Ecuador are unworkable, we need to consider one  
14 evident fact: There is no, and I quote, "reserve" as such  
15 as it has been asserted by Ecuador. I think this has been  
16 explained thoroughly by several Members, including  
17 Australia, Chile and Perú. Ecuador seems to have a  
18 misconception about the legal nature of the amount of tons  
19 that are left outside the area of the application of the  
20 Jack mackerel Measure. This number--and this is very  
21 important for the Panel to understand--this number was not  
22 left outside the measure randomly. It was part of the  
23 whole negotiation process, and some Members agreed to the  
24 outcome precisely because this number was also part of the  
25 deal.

1 If the Panel looks at the Jack mackerel Measure,  
2 all of them since 2013, you will see in paragraph 10 the  
3 careful language that we use. When we set a total catch  
4 for the whole range of the stock, we use--the Commission  
5 uses the words "should not exceed," and this is because the  
6 Commission cannot set a TAC inside the EEZ of the coastal  
7 States of Perú and Ecuador unless with their express  
8 consent, which is exactly what happened in the case of  
9 Chile, so this is the reason why to look carefully at the  
10 numbers that are left outside the application of the Jack  
11 mackerel Measure, and I'm referring to 58,418 tons that we  
12 are now.

13 I think we don't need to go into that in more  
14 details, unless the Panel may have further questions in the  
15 afternoon.

16 May I go beyond what Ecuador has proposed as  
17 alternative measures and to explain why it is so difficult  
18 to think about measures equivalent in effect in this  
19 particular case. The provisions of Annex II(10) were  
20 drafted with different conservation measures inside. It is  
21 possible to think on alternative measures equivalent in  
22 effect when we talk about proper fisheries management  
23 measures such as the regulation of fishing gear, seasonal  
24 restrictions, surveillance and the sort.

25 Let me give you one example that could work out

1 to explain this point: In the future, the SPRFMO  
2 Commission may adopt specific requirements for the  
3 certification of an observer program, for example. By  
4 reference to a third-party certification scheme including  
5 matters such as who certifies how and under what Standards  
6 this should be possible.

7 Let's pretend for a minute that a Member objects  
8 to that CMM. This Member could propose alternative  
9 measures by reference to a different third-party scheme or  
10 perhaps to its own Standards under domestic law. It would  
11 be the task of a Review Panel like this one to assess  
12 potentially whether the two alternative Standards for a  
13 third-party observer are equivalent in effect. This  
14 assessment could be an objective and feasible exercise, and  
15 the question of whether the two Standards are equivalent in  
16 effect would not be a question of conflicting rights in a  
17 zero-sum game.

18 This is precisely the difference when it comes to  
19 the allocation of the Total Allowable Catch. Leaving aside  
20 the option of trading or transferring individual allocation  
21 among Members--and I will refer to that in due course--the  
22 options here are limited because there would be no  
23 equivalent effect since accommodating a Member means  
24 affecting the right of other Members. In the current case,  
25 this is aggravated by the fact that Ecuador transferred its

1 entire allocation for this year.

2 To conclude this first part, distinguished Panel,  
3 notwithstanding any findings on discrimination, which I  
4 don't believe is the case, I think the Panel needs to rule  
5 out letters (a) and (b) of paragraph 10, Annex II of the  
6 SPRFMO Convention for the reasons I have explained; and, in  
7 relation to the possible findings of the commendation for  
8 equitable measures in effect as foreseen in letter C, the  
9 Panel needs to be aware of and respect all the Commission  
10 Members' rights.

11 Let me now move to the second part of my  
12 presentation, please, concerning the allegation of  
13 inconsistency of the CMM 01-2018 on Jack mackerel.

14 I am sure other Members may want to touch upon  
15 the particular arguments in this regard. I am personally  
16 convinced that the measures objected by Ecuador are fully  
17 consistent--is fully consistent with the Law of the Sea  
18 Convention and the United Nations Fish Stock Agreement to  
19 which most of the SPRFMO Members are contracting Parties  
20 themselves. The Panel might wish to look at some important  
21 sources of guidance for the work of our FMOs in general.

22 For example, the way no one recommended these  
23 practices for our FMOs adopted in 2007 by the independent  
24 panel commissioned by the Chapman House, which I'm sure we  
25 all know, says, and I'm quoting Paragraph 9.2--Page 92 of

1 the report available on-line--it says that: "In relation  
2 to developing countries, the special requirements will  
3 vary, depending on the nature and degree of the impact of  
4 the fisheries on Developing States, including, first,  
5 vulnerability; second, the degree of impact on subsistence  
6 and the extent to which a measure might transfer; three, a  
7 disproportionate burden of conservation actions on the  
8 Developing State.

9 I think that Ecuador might wish to explain how  
10 this criteria apply to its case. This hasn't happened so  
11 far.

12 I will not refer to any specific justification of  
13 CMM 01-2018 under Article 21 of the SPRFMO Convention.  
14 Again, as I am also sure other Members will be keen to do  
15 so, but I think it is important for the Panel to know the  
16 dynamics of the negotiation. Some of this is explained in  
17 my memorandum, but let me highlight three aspects that are  
18 probably not clear or not mentioned there:

19 First, Article 21 does not bind the Commission to  
20 give an express relative weight to each single criterion of  
21 Article 21. This would have been simply impossible in  
22 practice, and this is important for the Panel to  
23 understand. This would have created more problems and  
24 would have made the whole negotiation simply unworkable.

25 The Commission has, in practice, always set up a

<p style="text-align: center;">26</p> <p>1 special Working Group to discuss allocation, except in Lima  2 2018 for the reasons that you understand. There has been  3 no written report of the Working Group because it is an  4 informal Working Group by definition. Members have agreed  5 on this practice since the beginning of the discussions on  6 the Jack mackerel allocation and have decided to maintain  7 that, all of them.</p> <p>8       The context of the 2018 negotiations must be  9 taken into account. In Lima, Commission Members were not  10 eager to discuss new allocation, but rather to apply the  11 2017 formula. Members wanted to make progress in other  12 areas of the SPRFMO's work such as what we did regarding  13 the VMS conservation Measure while we did on a service  14 Programme, two measures that were highly technical and  15 highly time-consuming.</p> <p>16       But because Ecuador did not present a formal  17 proposal to amend the Jack mackerel measure, my perception  18 is that Members were not expecting Ecuador to bring the  19 discussion regarding 2017 agreement to the table. Members  20 were, in short, not prepared to discuss the numbers again.</p> <p>21       Let me now move to the third part of my  22 intervention, please, Mr. Chair: Concerning Ecuador's  23 aspirations and the work of the Commission in this regard.</p> <p>24       Distinguished Panel, the SPRFMO Commission is  25 serious about cooperation, and our history as an</p>	<p style="text-align: center;">28</p> <p>1 expectations, plans and evidence of the real intention to  2 develop a fishery would be an important step. The  3 Commission had not seen this.</p> <p>4       I have the impression that Members do not want to  5 increase the allocation of a Member if they believe this  6 Member is only going to try this allocation later.</p> <p>7       Ecuador may also want to consider more and better  8 engagement with other Commission Members. This decisional  9 work is able to build rapport and to understand each  10 other's positions and aspirations. To the best of my  11 knowledge, this has been very limited in the case of  12 Ecuador. As Commission Chair, I was not aware of Ecuador's  13 expectations and intentions in 2018 until very late in the  14 meeting. And as I said, Members were unprepared to discuss  15 Ecuador's request.</p> <p>16       Distinguished Panel, may I elaborate on a broader  17 point here: Ecuador is a Coastal State, and as such, it  18 should be a key player in any Regional Fisheries Management  19 Organisation in the Eastern Pacific. I recognize the  20 continued presence of Ecuador through all these years in  21 the work of SPRFMO but I personally would like to see  22 Ecuador be more active in the Organisation, taking leading  23 positions, contributing to science and working  24 intercessionally with other Members to draft the  25 substantive Conservation and Management Measures beyond</p>
<p style="text-align: center;">27</p> <p>1 organisation can attest to this. This goes from agreeing  2 to refrain from fishing to recover the Jack mackerel stock  3 to manage allocation over time. The SPRFMO Commission is  4 neither against Ecuador nor any other Member. They all  5 have the right to fish, and the facts show that our  6 Commission has been open to new entrants to the fishery.</p> <p>7       However, my personal perception is that there  8 have been several reasons why Ecuador has not been able to  9 convince the Commission of its case and aspirations, and  10 let me try to explain why.</p> <p>11       Ecuador could have objected in 2017, despite not  12 attending the other like meeting. They did not. Members  13 assumed Ecuador was reasonably comfortable with the  14 agreement, at least temporarily. The fact that Ecuador did  15 not present a formal proposal for the 2018 meeting to  16 discuss a change in the current allocation contributed to  17 this perception.</p> <p>18       Secondly, Ecuador has always transferred its  19 individual allocation quota and has been explained in  20 detail in some of the submitted memorandum by Perú and  21 others. In 2018, this year, this happened even earlier,  22 despite Ecuador lodging this objection afterwards.</p> <p>23       And three, I personally believe that Ecuador may  24 want to consider bringing objective information to support  25 some of its claims, for instance, clarity about the costs,</p>	<p style="text-align: center;">29</p> <p>1 merely discussing allocation in one fishery.</p> <p>2       This should certainly give Ecuador the chance to  3 build up rapport with other Commission Members.</p> <p>4       What I'm trying to say, Mr. Chair, is that I  5 don't see any fundamental reason why the Commission could  6 not work to accommodate Ecuador's aspiration in the  7 mid-term as long as this process is undertaken in an  8 appropriate manner.</p> <p>9       This last point of my intervention takes me to  10 the final part of my speech today. This is the part four  11 of my presentation concerning the possible ways forward  12 that I would like to introduce to the Panel.</p> <p>13       To summarize the main points I have presented  14 today, the Panel may wish to consider the limitations to  15 the Panel that I have highlighted, arising from the  16 impossibility of accepting Ecuador's alternative measures  17 because they cannot be considered as equivalent in effect.  18 The alternative measures will affect the right of other  19 Members, including the right of Coastal State, which is  20 beyond the scope of the Convention. Any attempt to  21 directly accommodate Ecuador might prompt a full  22 renegotiation of the current Measure, something that most  23 of the Members, if not all, want to avoid. This would  24 aggravate the current disagreement rather than solving it.  25       The fact that Ecuador already traded its</p>

1 allocation for this year makes the alternative measures  
2 even harder to consider. The Panel may consider it as  
3 well.

4 The Commission recognizes the right of all  
5 Members to fish including, of course, Ecuador.

6 The allocation process is a complex exercise, but  
7 it has to be undertaken by negotiations in good faith by  
8 all Members of the Commission. Preparing tabling  
9 proposals, allowing time for others to consider and engage,  
10 expressing concerns and understanding them are all  
11 necessary steps in this process, this is a task to be  
12 solved by the Commission.

13 Bearing in mind that the process of rebuilding  
14 the Jack mackerel stock shows promising signs and is going  
15 in the right direction, I personally believe that the  
16 Commission could accommodate Ecuador over time and as the  
17 stock increases. This is, of course, subject to further  
18 considerations. Some of them I have referred to, others go  
19 beyond my role as Chair.

20 One example of the latter is a proposal submitted  
21 by Vanuatu to improve the utilization of the individual  
22 allocation which was explained in my memorandum, and I'm  
23 not going into those details now.

24 The Commission has been characterized by  
25 cooperation and constructive engagement, and I'm here

1 quoting one of my predecessors, Mr. Bill Mansfield, who  
2 said this in 2013, before the first Review Panel  
3 established under the SPRFMO Convention.

4 I agree with these views, and they continue to  
5 hold true. Ecuador can rest assured that if it brings what  
6 is needed for a proper negotiation and a proper engagement,  
7 Commission Members will be receptive, I will listen  
8 carefully. In this context, Mr. Chair, distinguished  
9 Panel, and for these reasons the Panel may wish to consider  
10 that any future negotiation to solve and accommodate  
11 Ecuador's aspirations shall also at the same time respect  
12 the rights and aspirations of other Members, and I'm sure  
13 that you, distinguished Members of the Panel, can certainly  
14 contribute to illuminate this process and guide the  
15 Commission with your Findings and Recommendations.

16 Before closing, Mr. Chair, let me try to tackle  
17 your question, and I recognize I still have sufficient time  
18 for that.

19 "How does the transfer process work?" was the  
20 first question, if I'm correct. You may want to look at  
21 paragraph 9 of Jack Mackerel Measure, CMM 01-2018. A  
22 Member can first electronically notify its intent to  
23 transfer catch entitlements to another Member. The  
24 negotiations behind this notification rests upon Members.  
25 I will refer to that in a second, but the important point

1 here is that they are not made public.

2 After receiving such a letter, the Secretariat  
3 forwards the information on to all Members of the  
4 Commission. Shortly thereafter, there is no fixed  
5 timeframe but usually within one week, the receiving Member  
6 will write to the Secretariat an advice they have approved  
7 the transfer. This is the practical operation of the  
8 transfer.

9 Once the transfer has been approved, the  
10 Secretariat records the adjustment to each Member's current  
11 year entitlement, and this is reflected in the monthly  
12 catch summary report that is circulated 25 days after the  
13 end of each month. For example, the catch summary from  
14 January to March was circulated on the 26th of April.

15 Often either the transferring or receiving Member  
16 or both will allocate or endorse arrangements between the  
17 companies participating in the transfer, but because catch  
18 entitlements for SPRFMO are at Member levels, the  
19 Secretariat does not record nor use this information. I  
20 think this is an important point. It is our understanding  
21 that there is an active secondary market for Jack mackerel  
22 catch entitlements. And that in many cases, they  
23 entitlements are being traded or sold by individual  
24 companies who then ask the Government to advise the  
25 Secretariat on what happened. But this is made at

1 Commission members' level.

2 As I said, the Secretariat has no details  
3 concerning those private arrangements that then are taken  
4 up by the Government. I hope that is reasonably clear,  
5 Mr. Chair.

6 Now, regarding whom to transfer catch  
7 entitlements to, as I said the decisions are taken by the  
8 Members participating in the transfer and the reason behind  
9 those decisions are not made public, but as I tried to  
10 explain, they are taken up by the Commission Members  
11 themselves, and that operates at a State level.

12 What restrictions or incentives are provided for  
13 transfer of catch entitlements? Currently--and this is an  
14 important question, I think--currently, there are no  
15 restrictions beyond the amount a Member has available to  
16 transfer from its initial catch limit. I refer to the  
17 Vanuatu proposal. Vanuatu has proposed a catch entitlement  
18 incentive scheme. This scheme has not been approved and is  
19 not currently in force. We were very close to adopting  
20 this scheme at the annual meeting, and I'm personally  
21 confident that we should be able to do so at the next  
22 meeting. Of course, this is my personal opinion, but  
23 probably Members might want to intervene on that particular  
24 point.

25 Now, concerning against what period can transfer

1 to catch entitlements be applied? As you said, Mr. Chair,  
2 transfers are effectively able to occur any time between  
3 the end of the Commission Meeting at which the catch  
4 entitlements are set, as we know, by late January or early  
5 February, depending on the date of the meeting, and the  
6 31st of December of the same year.

7 Now to the final and perhaps more difficult  
8 question to answer, Mr. Chair: Is there enough time to  
9 make arrangements to utilize the transfer quota including  
10 for a Commission Member who would like to arrange a vessel?  
11 I'm not in a position to fully answer this question with  
12 objective facts, but it should be noted that the High Seas  
13 Fishery, and I mean outside Chile's E set, generally does  
14 not operate during January and February. Catches start to  
15 increase during March--these are the numbers--and April,  
16 with the peak being generally in May of each fishing  
17 season, between May and August. And after August, catches  
18 tend to fall away sharply.

19 So, I would say to your question, Mr. Chair,  
20 there is some time, some time. Whether it's reasonable or  
21 not, will depend on each particular case and on the  
22 arrangement that each Member of the Commission may have  
23 concerning its fleet.

24 And finally, I think--you probably know this  
25 information, but fish available earlier within the Chilean

1 with Article 17 of the Convention. Ecuador is a developing  
2 nation, and that's why within our production sector we need  
3 to develop fisheries, among them the Jack mackerel.

4 In Ecuador, we already have a plan for the Jack  
5 mackerel, and we have it within the Ministry, with the  
6 assigned quota of 1,770 tons, we cannot develop it, and  
7 that's why we request to recast that conservation measure,  
8 which, unfortunately, was not equitable to our country, and  
9 that's why we are requesting this revision.

10 It's true that Ecuador transfers its quota, but  
11 we transfer it because we cannot develop fisheries, and the  
12 arguments have already been submitted in all the documents  
13 we have sent. In order to develop fisheries, we need a  
14 better quota, and that's why we are submitting this  
15 request.

16 To give you more information or more arguments,  
17 the reasons why we requested it, I give the floor to lawyer  
18 Jimmy Villaviciencio, who is our Legal Advisor, who will be  
19 able to give you more detailed information about our  
20 request.

21 MR. VILLAVICIENCIO NAVIA: Mr. Chair,  
22 distinguished Members of the Panel, and colleagues, thank  
23 you to our Secretary for giving me the floor. First of  
24 all, I would like to say that in line with the proceedings  
25 that were set out, our request was already submitted and

1 EEZ Gazette beginning between January and May, while the  
2 northern EEZ, I mean Perú and Ecuador, shows much less  
3 monthly bi-ratios, although often January and April are  
4 peak months. I think that information might also be of  
5 interest to answer your question, Mr. Chair.

6 I hope that I answered your concerns, but if not,  
7 please I remain keen and eager to clarify what is needed.

8 Thank you very much, distinguished Panel and  
9 Mr. Chair.

10 CHAIRMAN MACKAY: Thank you very much. I thank  
11 the distinguished Chairman of the Commission for that  
12 intervention and also for the way in which he has addressed  
13 the question that we had directed to him. I would also  
14 like to thank him for keeping well within his time limits.  
15 I thank you very much, indeed. You've established a very  
16 good precedent for colleagues to follow, I'm sure.

17 Could I then move and invite the distinguished  
18 representative of Ecuador to make the presentation on  
19 behalf of the Republic of Ecuador.

20 I give him the floor.

21 OPENING STATEMENT BY THE REPRESENTATIVES OF THE REPUBLIC OF  
22 ECUADOR

23 ENG. COSTAIN CHANG: Thank you, Mr. Chair, and  
24 distinguished Members of the Panel.

25 Ecuador has requested to form this Panel in line

1 we've given detailed information, enrolled memorandums that  
2 we've already sent to the Revision Panel. At the same time  
3 I would like to say that our request intends to bring more  
4 equitable situation for our country, respecting also the  
5 other Members of the Commission, but we cannot deny, and it  
6 is needed to give an answer, to give more detailed  
7 information in line with all the arguments that all the  
8 other Members have submitted opposing to our request.

9 I would like to allude to the intervention by the  
10 Chair of the Commission. If we had been heard in a fair  
11 way, in a legal way, in line with what, in the norms of the  
12 Convention of the Agreement of 1995 and you enclose, we  
13 wouldn't have had to come to this forum, to the Revision  
14 Panel based on Article 17 of the SPRFMO Convention.

15 When human beings in different countries sit down  
16 to draft a conservation measure, they do it with two things  
17 in mind: The first one is to preserve the resources, but  
18 why do we need to preserve the resources? We do it to  
19 ensure that human beings continue existing in the planet,  
20 and that's why it's important the development of countries.  
21 That's why we have different articles out of three legal  
22 entities I referred to, which are the Convention, the 1995  
23 Agreement, and you enclose, they protect and guarantee  
24 measures for developing nations.

25 Ecuador's submission as a Member of this

1 Organisation is based at all times on those principles:  
2 Sustainability of resources and the right for countries to  
3 develop.

4 So, based on that legal framework, we are not  
5 looking for ways to breach, to stop sustainability of our  
6 resource. Ecuador is a country which, in all the different  
7 SPRFMO participates, and we defend the conservation  
8 management measures, and especially we defend the  
9 well-being of the different stocks in the fisheries, so  
10 certainly we wouldn't have submitted this request if we  
11 were breaching at any time the maximum Jack mackerel  
12 production.

13 So, at this intervention, I would like to refer,  
14 first of all, to the alternative measure. What do we  
15 understand by the "alternative measure"? Is it for the  
16 different types of fishing techniques or is it also there  
17 to repair in case a mistake--I mean, good-faith mistake, is  
18 actually made. When we participate in organizations such  
19 as this, we do it in good faith. And when we are looking  
20 for ways to protect resources, we also do it in good faith.  
21 That's why Ecuador understands that this Commission  
22 operates under good faith, and we understand that it's a  
23 mistake, a good-faith mistake, the fact of not applying in  
24 a correct way the assignation of the quotas as is set out  
25 in Article Number 21.

1 As you all know, the Scientific Committee which  
2 held a meeting in Chile in 2017 set out an amount, a  
3 maximum that we shouldn't go over in these fisheries, and  
4 it was 576,000 tons, and scientists have said that it  
5 shouldn't go above that amount; and it should be, in fact,  
6 less than that. Out of this figure, which was submitted by  
7 a Scientific Committee after carrying out plenty of  
8 research, we distributed 517,582 among different Members.

9 Out of the amount, which was recommended by this  
10 Scientific Committee and the amount that was actually  
11 distributed, there is a gap. We can call it with different  
12 names. We can call it a "difference," a "reserve," a  
13 "threshold." We can use different names, but that's  
14 irrelevant. So, we can be talking about the reserve.

15 But, Mr. Chair and Members of Panel, what's  
16 certainly a fact is that at no time the Scientific  
17 Committee has pointed out that in a specific way it should  
18 be held within an exclusive zone. We must point out here  
19 that our Peruvian friends, to date, do not recognize that  
20 set amount as that stock that is within their waters. To  
21 the point that there is a research being carried out still,  
22 of course, to point out to show that the stock in internal  
23 waters is higher. So, it would be difficult for us to sit  
24 on a bilateral meeting, as is pointed out in the documents  
25 that were submitted by Perú to negotiate on an allocation

1 of what? Does the Scientific Committee set out in a  
2 scientific manner that that gap, that difference, is in the  
3 Exclusive Economic Zones? It could be the case. I'm not  
4 going to argue whether it is there or not. It could also  
5 be in Australia or in New Zealand or in any other coastal  
6 country because--and I'm going to--I would like to quote  
7 the scientific report in its original language in which  
8 it's written in English: "It is expected to increase from  
9 the 2017 estimated of 5.3 millions to 7.4 millions in 2018  
10 with approximately 90 percent confidence vote of  
11 5.5/9.9 million."

12 But the interesting bit happens in the following  
13 paragraph:

14 The second tier of the Jack mackerel rebuilding  
15 plan could be applied, thereby substantially increasing the  
16 potential catch. Considering the uncertainties in the  
17 assessment, however, the Science Committee adopted a  
18 precautionary approach and advises to maintain 2018 catches  
19 for the entire Jack mackerel range in the south. It's  
20 specific at or below 576 tons.

21 (In English) What does that mean?  
22 (In Spanish through interpretation.) The  
23 Scientific Committee is not telling us specifically that  
24 that gap must be in one place, in one geography, or the  
25 other. No. It is referring to the whole area covered by

1 the Convention. It is true that the Commission cannot  
2 decide about resources that are in Exclusive Economic  
3 Zones, if the Member State doesn't allow it.

4 But not deciding that the Members of the Review  
5 Panel are not being asked to decide regarding those  
6 resources that have been shown within an exclusive economic  
7 zone such as in the case of Chile, resources are  
8 incorporated in the control or quantified by the  
9 Commission, which means that we cannot base ourselves on  
10 assumptions but on scientific data.

11 Unless we've made a mistake and we have not yet  
12 found a scientific recommendation that indicates that those  
13 resources are in the proven and Ecuadorian waters because,  
14 based on how the precedent manifested and how we have  
15 already read in the different memorandums, it is assumed or  
16 said the such resources or that difference in resources  
17 would be in those EEZs, and we cannot accept these  
18 assumptions. We can only accept scientific facts.

19 Of course, we are not discussing whether Ecuador  
20 is a developing country or not. We are not asking this  
21 Panel, nor are we asking the Commission, to violate the  
22 basic laws of protection of this resource. What the  
23 pretension--or the intention of having the recognition of a  
24 country is based on the implementation of this rule, and we  
25 are not inventing of this. It's all written. What we are

1 asking for from Ecuador is that our position be respected  
2 and that the provisions of the Convention are applied.

3 We have analyzed why we presented this objection,  
4 and not only because we find that it goes against the norms  
5 of the Convention and the New York Agreement of 1995 and  
6 UNCLOS, but Article 17 of the Convention establishes that  
7 the two conditions to present a review such as this one  
8 have to be based on the discrimination and the violation of  
9 the norms.

10 Have you ever been invited to a party, but it  
11 turns out that not all the guests are treated equally?  
12 Ecuador has been invited to the party, but when it comes to  
13 dinner, all we get is a little piece of the dessert. Do  
14 you consider that it's possible to develop and to be an  
15 active part in a fishery when, based on the current  
16 allocation system, we would have to wait no less than 25  
17 years to be able to operate only one vessel? Is that fair  
18 or is that discrimination?

19 I carefully read the written submissions  
20 presented by Australia. And it said that for the  
21 allocation of a quota, Article 21, with its ten criterias,  
22 should be applied holistically. The President of SPRFMO  
23 today said that that is not applicable, and independently  
24 that ten criteria at the same time or two criteria or one  
25 criteria must try to find a balance, but is a signing

1 for it, are we going against the interests of other  
2 countries? We're not asking for redistribution of the  
3 assigned allocations. We are asking a very small  
4 percentage, which is very far from the threshold  
5 established by the Scientific Committee, and yet the answer  
6 is no.

7 We had 50 days to present the disagreement  
8 procedure. In 2017, Ecuador, due to force majeure facts,  
9 due to an earthquake, was not able to be present; yet  
10 Ecuador already sent a communication asking for a  
11 significant raise of the allocation. What was the result?  
12 97 tons.

13 If we applied the norms of the Convention  
14 exactly, we wouldn't even have to be here. This is a  
15 situation of justice. Why do we write that we have to  
16 support the development of some countries when we're then  
17 ignoring it? We're not applying it.

18 In the different memorandums that were submitted,  
19 it is mentioned that there are ways of developing our  
20 fisheries through transfers, and even the way that we  
21 transferred our allocation is interpreted in a negative  
22 way. But if--let me put this in a different way, and  
23 touching upon what the President mentioned. When we carry  
24 out a transfer due to its use of internal elements, it's  
25 not done only due to a random decision. It is carried out

1 allocating insignificant quotas guaranteeing the  
2 development of the people guaranteed under the Convention?  
3 No, it's not. So, are we in a discriminated position? Yes  
4 or no? Any of your respected memorandums has said we are  
5 considering that Ecuador is a developing country and,  
6 therefore, the current allocation has been established, so  
7 you are recognizing these two elements in your memorandums.

8 And our position--and this is how we presented it  
9 in our last memorandum of the 21st of May--is irrefutable  
10 evidence of discrimination. Considering that, can we move  
11 forward? Can we develop as a country? This brings to mind  
12 the strategy of giving a child a piece of candy just to  
13 keep them quiet. Are we educating them? Are we teaching  
14 them? Are we helping them grow? No, that child needs  
15 education and support. That is the development of people  
16 through the fisheries, which is our case, requires the  
17 necessary attention, but that necessary and fair attention,  
18 my dear colleagues, is not coherent with 97 tons, 117 tons.  
19 We celebrate that, in 2017, Perú was given 2,069 tons that  
20 did not respond to the criteria of allocation of the  
21 percentage.

22 And we think that's excellent, that's fine, but  
23 why Perú, who has all the rights of the world, was able to  
24 receive a right above the quota, but when Ecuador asked for  
25 it we are breaking the balance? Why, when Ecuador asked

1 because those who exploit the quotas have the mechanisms,  
2 have the markets to be able to realize that quota, such as  
3 we see in the case of Chile. Congratulations. Chile has  
4 the necessary circumstances. Ecuador, European Union,  
5 transfers to Chile, Perú. But why? Because they have the  
6 infrastructure to realize that amount. But us, Ecuador or  
7 Vanuatu or Cuba, we don't have the infrastructure, but we  
8 need to exploit the resources in the benefit of our people.  
9 Obviously, I will have to find a way to do it, or should I  
10 just keep my allocation, my quota? Well, this is a way of  
11 participating in fishery.

12 But we cannot sustain a fishery with 1,377 tons.  
13 It's inviolable. And when we talk about transfers, don't  
14 you think the Faroe Islands, the EU or any other would  
15 rather transfer to other countries of Ecuador? I was in  
16 the rendezvous meeting, and we carried out all the  
17 necessary paperwork.

18 Where is the quota of Faroe Islands, and I  
19 believe the EU and then transferred to Chile, if I'm not  
20 wrong, but I know that there are some circumstances that do  
21 not depend on the will of some countries. Ecuador cannot  
22 depend on a minimum that it cannot control.

23 And that is why, Mr. President and dear  
24 Colleagues, under the framework established to not violate  
25 the law, we are asking for the recognition that, based on

1 the implementation of the Convention, is applicable and  
2 corresponds to us. We cannot say as some mentioned in the  
3 written submissions, we are not asking for this  
4 200-300 percentage allocation. No.

5 I would just like to remind you of that extra  
6 allocation that was given to Perú. What percentage was  
7 that? And I think that was perfectly fine, and I think  
8 those increases are fine as long as we don't go above the  
9 maximum amount established by the Scientific Committee.

10 I think that the international proposals are not  
11 only good in Perú, but they are an example to follow, but  
12 how can we do the same if we don't even--how can we  
13 implement measures that can be an example to follow if we  
14 didn't even have the fisheries? We just want to  
15 participate in this activity. That's what we're asking  
16 for.

17 In many of the memorandum it has been mentioned  
18 that recognizing a quota that is legitimate would  
19 constitute a violation of the procedure. Let's review the  
20 procedure. It's true that this SPRFMO, like many others,  
21 has a period of 50 days to present any comments or  
22 proposals, but there are legal forums that have to be  
23 respected. And when I express my opinion, I do not intend  
24 at all to offend or to harm the position of the colleagues  
25 of this RFMO. We are very thankful and grateful for being

1 Review Panel was called upon to review a measure that goes  
2 beyond the procedure. But if we're talking about the  
3 procedure--and we're talking about legal and safety, where  
4 is this legal safety? In that, we're in the lack of  
5 application of the norm. Is it the case that why applying  
6 the norm of capacity for Ecuador, would this be leading to  
7 legal unsafety, or is this an injustice in terms of the  
8 allocation of the quota?

9 Mr. President and dear Members of the Review  
10 Panel, I must also recognize that you have a very hard task  
11 upon your shoulders, but not due to the recognition of the  
12 right of power but because you have to make sure that all  
13 these Conventions are implemented and respected; that the  
14 way in which Developing States have to be treated  
15 adequately and respecting the Convention.

16 But we do find some cases unfair, especially in  
17 the case of Cuba, and I would like to mention this case  
18 because it has already been used in some of the  
19 submissions.

20 Having said that, the elements that Ecuador has  
21 mentioned have not only been proved through the material  
22 sent in our memorandum, but we must also depart from the  
23 application itself of the Articles of the Convention.

24 To conclude, dear Members of the Panel, I would  
25 like to mention a few points to be taken into

1 part of this RFMO, but we must be clear.

2 The rules, ladies and gentlemen, have to be fair.  
3 If the world were a fair place, we would not be here  
4 gathered, talking about this.

5 If we start talking about procedures, firstly, in  
6 the meeting of 2017 when the first table was established,  
7 we already justified why we were not present. Yet, one  
8 communication was made and it is gathered or it is  
9 mentioned in New Zealand's or Australia's memorandum.

10 In 2018, the two proposals that were touched  
11 upon--I may be wrong, so do correct me if I'm wrong--but  
12 none of them were presented in that 50-day deadline. The  
13 comments of Ecuador were presented under the same meeting  
14 where Chile presented theirs, and it was taken up and  
15 solved which resolves any legal aspect, so we can't speak  
16 about things of the past. If Ecuador's petition weren't to  
17 be taken up, then it would have been so, but it was taken  
18 up, and it was resolved, with a prerogative.

19 If we want to be a little bit more technical,  
20 according to the Convention, at that same moment, a  
21 consensus negative would have been applied instead of what  
22 happened for Chile, which was carried out through a  
23 majority vote. Yet, whatever the case, that did not  
24 happen.

25 And, moreover, based on Article 17, Annex II, a

1 consideration:

2 I am here in the court of The Hague which  
3 transfers, which means respect and transparency in relation  
4 to legal framework. And I am not here to ask for the  
5 vulneration of these. You have spoken. You are here to  
6 represent the impartiality and the independence of the  
7 legal system.

8 And I would like to appeal to that. We must  
9 respect the legal basis that we are working on; otherwise,  
10 what use would we have for having them if we're not  
11 implementing them?

12 And I would like to approach the conclusion of my  
13 intervention by expressing some final points:

14 Firstly, I am aware that not only is it so  
15 because the statutes to the Convention establishes it, but  
16 because I also believe in the goodwill of those countries  
17 that want to sit down to find regulation to protect the  
18 resources. I am aware of that. And I'm aware that the  
19 Convention and the signatory Members act in good faith.

20 But I am also aware that some mistakes are made;  
21 and, therefore, it is time to correct them. And the main  
22 place to do that is the meetings for the Convention.

23 But if we had equal treatment, we would not have  
24 to be here asking for the provisions of the Conventions to  
25 be respected and implemented. That's why we are here.

1 We are here because there is a flagrant  
2 discrimination when the allocations that are given to us  
3 are so insignificant that we cannot be self-sufficient.

4 We are here because the dispositions of the norms  
5 are not being respected. There is a very fine line between  
6 the ignorance and the violation. And the lack of  
7 application of the norms is already creating a  
8 discrimination.

9 And I would like to call upon reflection and I  
10 would like that our colleagues and friends from the Member  
11 Countries of this forum understand that we do not want  
12 break the rules. We do not want anybody to break the  
13 rules. But we do invite you all to be more fair.

14 We do not intend to be the big players of this  
15 case. We just want to participate in fishery. We want to  
16 develop a country. But for that, we need you to recognize  
17 and provide us the means that the Convention establishes.

18 And I would like to thank, in my first  
19 intervention, all of you for the interest that has been  
20 expressed, and we are ready and open to answer any query  
21 you may have. And, of course, we keep some comments for  
22 the afternoon.

23 Thank you very much, Mr. President, Members of  
24 the Panel, dear colleagues.

25 CHAIRMAN MACKAY: Thank you very much. I'd like

1 designed to achieve a prompt resolution to issues of  
2 concern to Members, and New Zealand fully respects the  
3 right of Ecuador to invoke these procedures. For further  
4 background on New Zealand's interests in SPRFMO and the  
5 background information we consider to be relevant to this  
6 Objection, I would refer the Panel to New Zealand's written  
7 Memorandum, but I will not seek to traverse those  
8 particular points again today.

9 This submission will have three parts:

10 First, I will address the claim that the Decision  
11 of the Commission is inconsistent with the Convention and  
12 other international law.

13 Second, I will make some comments on the claim  
14 that the Decision resulted in unjustifiable discrimination.

15 And, third, I will provide some views on the  
16 meaning of "equivalent in effect" in relation to an  
17 alternative measure to a Catch Allocation Decision.

18 In each of these parts, I will endeavor to  
19 elaborate further on matters covered in New Zealand's  
20 Memorandum, while minimizing repetition, as requested by  
21 the Panel.

22 The Panel is tasked with reviewing whether the  
23 Decision taken by the Commission in adopting CMM 01-2018 is  
24 inconsistent with the Convention or other international  
25 law. The provisions of the Convention which have been

1 to thank the distinguished representatives of the Republic  
2 of Ecuador for those comments and for keeping within the  
3 time, which is appreciated.

4 In fact, we're running slightly ahead of time.  
5 We had morning break scheduled for 11:15, and the next  
6 presentation on our Hearing Schedule is from New Zealand.  
7 And if New Zealand was in a position to proceed, I'd like  
8 to give them the floor, and then we'll follow that with  
9 morning tea.

10 So, I give the floor to the distinguished  
11 representative of New Zealand.

12 OPENING STATEMENT OF THE REPRESENTATIVE OF NEW ZEALAND

13 MR. ROUGHTON: Thank you, Chair and distinguished  
14 Panel Members. It is an honor to present New Zealand's  
15 oral submission to this hearing.

16 And, at the outset, I would just like to  
17 reiterate that New Zealand is not a participant in the  
18 Fishery for Jack mackerel, but New Zealand is a  
19 constructive and engaged Member of the Commission, and one  
20 that is very committed to SPRFMO's success in ensuring the  
21 long-term conservation and sustainable use of the fishery  
22 resources in the Convention area. It is in that spirit  
23 that we share our views on the present Objection, and in  
24 the hope that they may be of some assistance to the Panel.

25 The Objection procedures in the Convention are

1 invoked on those grounds are Article 3(1)(a)(viii),  
2 Article 9(1), Article 19(2)(c), Article 19(3)(a), and  
3 Article 21(1)(e) to (f).

4 The other international law which has been  
5 invoked is Article 119(1)(a) of the 1982 Convention and the  
6 1995 Agreement, namely Article 5(b), Article 24(2)(c), and  
7 Article 25(1)(a).

8 These Articles are relevant in the context of a  
9 Catch Allocation Decision made pursuant to Article 21.  
10 However, it is New Zealand's submission that with respect  
11 to such a decision, all of the relevant provisions of the  
12 Convention must be considered together in a holistic  
13 fashion, including with reference to Article 2, the  
14 objective of the Convention.

15 Article 21 of the Convention establishes the  
16 fundamental framework for Commission Decisions on catch  
17 allocation. It provides that the Commission is required to  
18 take into account the status of the fishery resource and  
19 the existing level of fishing effort, as well as a further  
20 10 criteria to the extent they are relevant.

21 Article 3 sets out the ten principles and two  
22 approaches that must be followed in giving effect to the  
23 objective of the Convention, including by the Commission  
24 when it makes a decision pursuant to Article 21.

25 Article 19 requires the Commission to give full

<p style="text-align: center;">54</p> <p>1 recognition to the special requirements of Developing State  2 Parties, to take those special requirements into account in  3 giving effect to the duty to cooperate, and for Members to  4 cooperate to assist Developing State Parties.</p> <p>5       Therefore, in making a decision on catch  6 allocation, the Commission is required to consider a  7 multitude of criteria, principles, and approaches, while  8 recognizing the special requirements of Developing States  9 and giving effect to the objective of the Convention.</p> <p>10       New Zealand's view is that it is not appropriate  11 to consider that Article 21 and its criteria are intended  12 to be applied in a rigid step-by-step manner. New Zealand  13 would also be hesitant to accept that the mere fact of the  14 relevance of a particular criterion in a given case should  15 presume a particular outcome. In this respect, New Zealand  16 recalls Article 31 of the Vienna Convention on the Law of  17 Treaties of 1969.</p> <p>18       New Zealand submits that a good-faith  19 interpretation of the relevant provisions of the  20 Convention, based on their ordinary meaning and in light of  21 its object and purpose, should be understood to provide  22 Commission Members with broad latitude to apply the various  23 criteria in Article 21 to the extent they are relevant, and  24 consistent with Articles 3 and 19 as those Members consider  25 appropriate for any given decision.</p>	<p style="text-align: center;">56</p> <p>1 25(1) (a) of the 1995 Agreement are contained within  2 Articles 19(2) (c) and Article 19(3) (a) respectively. On  3 this basis, a decision that is consistent with those  4 provisions of the Convention will also be consistent with  5 those provisions of the 1982 Convention and the 1995  6 Agreement.</p> <p>7       New Zealand, therefore, sees no reason to  8 consider that the decision made by the Commission in CMM  9 01-2018 is inconsistent with the Convention or other  10 applicable rules of international law.</p> <p>11       I will now move to the question of whether the  12 decision represents unjustifiable discrimination.</p> <p>13       As mentioned, it has been claimed that the  14 Commission only considers historical catch in reaching  15 allocation decisions, and that because of this, a Member  16 with no historic catch will be faced with unjustifiable  17 discrimination. For reasons I have just stated, New  18 Zealand's view is that this claim is not supported by the  19 evidence. If it were, however, New Zealand considers that  20 it would more appropriately a question of consistency with  21 the Convention, not discrimination.</p> <p>22       As to whether there was unjustifiable  23 discrimination in fact, New Zealand offers the following  24 views:</p> <p>25       Applying the question strictly to the Allocation</p>
<p style="text-align: center;">55</p> <p>1       It is also important to consider the nature of  2 the task the Commission is faced with when making an  3 article 21 decision. The criteria in Article 21 are  4 interdependent; will, at times, be competing; and are made  5 not just with respect to the situation of one participant  6 in the fishery but with respect to all participants, each  7 with different circumstances and history.</p> <p>8       In the present Objection, it is claimed that the  9 decision made in CMM 01-2018 is based entirely on historic  10 catch. New Zealand has not seen evidence to show that this  11 is the case; rather, as a number of written memoranda  12 allude to, the fact that various participants have received  13 allocations despite having no historic catch demonstrates  14 that additional factors have informed subsequent allocation  15 decisions by the Commission.</p> <p>16       Further, the Memorandum of Australia recalls that  17 the Jack Mackerel Working Group in 2017, which formulated  18 the percentages that were also used in 2018, did refer to  19 and consider the criteria in Article 21(1).</p> <p>20       With respect to the other relevant international  21 law, New Zealand submits that the relevant components of  22 Articles 119(1) (a) of the 1982 Convention and Article 5(b)  23 of the Fish Stocks Agreement are substantively contained  24 within Articles 3, 19, and 21 of the Convention.</p> <p>25       Similarly, Articles 24(2) (c) and Articles</p>	<p style="text-align: center;">57</p> <p>1 Decision made in Lima in CMM 01-2018, the percentages used  2 to allocate the Total Allowable Catch were unchanged from  3 those agreed in 2017 and, therefore, each participant saw a  4 proportional increase. In this sense, the outcome of the  5 Decision being objected to in the present Objection did not  6 discriminate between participants. Each participant  7 received the same increase, in relative terms, as every  8 other participant.</p> <p>9       As to whether there was unjustifiable  10 discrimination in form--which here, we interpret as being  11 related more to the process of reaching the  12 allocations--New Zealand has submitted that such a finding  13 would require evidence that the Commission was unwilling to  14 treat the request by Ecuador on the same basis as a similar  15 request by other Members, or that the Commission insisted  16 on an unreasonable level of information from Ecuador about  17 the basis for their request.</p> <p>18       As New Zealand has further submitted, a finding  19 of unjustifiable discrimination in form should be required  20 to meet a high bar on the basis that Members of a Regional  21 Fisheries Management Organisation should be presumed to be  22 acting in good faith in the absence of strong evidence to  23 the contrary.</p> <p>24       New Zealand does not consider that evidence has  25 been presented which would demonstrate unjustifiable</p>

<p style="text-align: center;">58</p> <p>1 discrimination in form.</p> <p>2 In advance of the 2018 Commission meeting, no</p> <p>3 formal proposals were made within the agreed time limits</p> <p>4 for an adjustment to the percentages agreed in 2017. It is</p> <p>5 New Zealand's understanding that Commission Members had no</p> <p>6 reason to believe that the allocation percentages agreed in</p> <p>7 2017 did not represent an outcome agreed to and considered</p> <p>8 to be consistent with the Convention by all.</p> <p>9 In this context, it is New Zealand's suggestion</p> <p>10 that the desire of a Member to adjust the percentages in an</p> <p>11 annual review of the Jack Mackerel Measure should be</p> <p>12 signaled well in advance of the next Commission meeting,</p> <p>13 and should be accompanied with sufficient evidence to</p> <p>14 substantiate an argument for why the agreed percentages</p> <p>15 should be changed.</p> <p>16 I now move to the issue of alternative measures</p> <p>17 and whether they are equivalent in effect.</p> <p>18 The objective of the Convention is to ensure the</p> <p>19 long-term conservation and sustainable use of fishery</p> <p>20 resources. New Zealand holds the firm view that, in order</p> <p>21 to meet this objective, decisions of the Commission must be</p> <p>22 based on the best scientific information and the advice of</p> <p>23 the Scientific Committee as required by Article 3(1)(a)(v)</p> <p>24 of the Convention.</p> <p>25 The Commission has not deviated from the advice</p>	<p style="text-align: center;">60</p> <p>1 Perú and Ecuador--to take place without exceeding the</p> <p>2 limits recommended by the Scientific Committee.</p> <p>3 Article 56(1)(a) of the 1982 Convention sets out that</p> <p>4 coastal States have sovereign rights for the purpose of</p> <p>5 exploring and exploiting, conserving and managing the</p> <p>6 natural resources in their EEZs. Article 20(4)(c) of the</p> <p>7 SPRFMO Convention states that measures adopted by the</p> <p>8 Convention are without prejudice to those sovereign rights.</p> <p>9 However, Article 63(2) of the 1982 Convention and</p> <p>10 Article 7(1)(a) of the 1995 Agreement require States</p> <p>11 fishing for the same stock in the high seas, which also</p> <p>12 occurs in the EEZ of a coastal State, to agree upon the</p> <p>13 Measures necessary for the conservation of that stock.</p> <p>14 Further, the Commission is required to take into</p> <p>15 account the catch of the same fishery resource within the</p> <p>16 areas under national jurisdiction in determining a Total</p> <p>17 Allowable Catch under Article 20(3)(c) of the Convention.</p> <p>18 New Zealand submits that the decisions of the</p> <p>19 Commission to set aside an allowance for catch in areas</p> <p>20 under national jurisdiction not included in the area of the</p> <p>21 Measure are taken in accordance with Article 63(2) of the</p> <p>22 1982 Convention, Article 7(1)(a) of the 1995 Agreement, and</p> <p>23 Article 20(3)(c) of the SPRFMO Convention, while also not</p> <p>24 encroaching on the sovereign rights of the coastal States</p> <p>25 in their EEZs.</p>
<p style="text-align: center;">59</p> <p>1 of the Scientific Committee in setting the Total Allowable</p> <p>2 Catch for Jack mackerel for the range of the stock. New</p> <p>3 Zealand considers that this is appropriate and consistent</p> <p>4 with the Convention.</p> <p>5 For this reason, New Zealand cannot agree that an</p> <p>6 alternative measure would be equivalent in effect if it</p> <p>7 would result in a Total Allowable Catch in the range of the</p> <p>8 stock exceeding the recommendations of the Scientific</p> <p>9 Committee.</p> <p>10 New Zealand is also of the view that an</p> <p>11 alternative measure cannot be equivalent in effect if it</p> <p>12 were to adversely affect the rights and interests of other</p> <p>13 Commission Members or participants under the measure being</p> <p>14 objected to, where they remain subject to its terms.</p> <p>15 With respect to a catch allocation decision, this</p> <p>16 means that an alternative measure should not affect the</p> <p>17 allocations of others under the measure being objected to.</p> <p>18 It has been well traversed in various written memorandum,</p> <p>19 the tonnage of stock represented by the difference between</p> <p>20 the total catch in the range of the stock and in the area</p> <p>21 of the measure is not a reservation but is, rather, an</p> <p>22 intentional set-aside.</p> <p>23 The purpose of the set-aside is to allow for</p> <p>24 catches of Jack mackerel within the range of the stock but</p> <p>25 outside the area of the measure--in effect, the EEZs of</p>	<p style="text-align: center;">61</p> <p>1 New Zealand would also suggest that, in the</p> <p>2 absence of an agreement between Perú and Ecuador on how the</p> <p>3 set-aside is to be allocated between them, in the</p> <p>4 alternative measure, which sought to reduce the set-aside</p> <p>5 in favor of the in-zone allocation of any member would</p> <p>6 adversely affect the sovereign rights of one or both of</p> <p>7 Perú and Ecuador; and, therefore, could not be considered</p> <p>8 to be equivalent in effect.</p> <p>9 For these reasons, New Zealand is of the view</p> <p>10 that no alternative measure which alters the Total</p> <p>11 Allowable Catch within the area of the measure can be</p> <p>12 considered to be equivalent in effect to the measure being</p> <p>13 objected to.</p> <p>14 That concludes my initial remarks on the</p> <p>15 substance of this Objection, however, I would like to take</p> <p>16 the opportunity to reiterate that, notwithstanding New</p> <p>17 Zealand's views on the present objection, New Zealand</p> <p>18 believes that if Ecuador does desire to fish for Jack</p> <p>19 mackerel on the high seas and is able to present a</p> <p>20 sufficiently compelling proposal in a timely manner,</p> <p>21 perhaps with the assistance of the Secretariat or other</p> <p>22 Members, then that interest will be accommodated by the</p> <p>23 Commission appropriately and in accordance with the</p> <p>24 Convention.</p> <p>25 Finally, New Zealand believes that after today</p>

1 this Review Panel will be in a good position to provide  
2 valuable suggestions to the Commission on how it might give  
3 due consideration to Ecuador's aspirations in future  
4 Commission meetings.

5 I would be happy to answer any questions the  
6 Review Panel may wish to address to New Zealand.

7 Thank you.

8 CHAIRMAN MACKAY: I thank the distinguished  
9 representative of New Zealand for his comments. We will  
10 take up questions after lunch in the course of the general  
11 question and answer segment.

12 I'd propose now that we break for morning tea.  
13 It's 25 past 11:00, so we will resume promptly at 20 to  
14 12:00.

15 And I thank colleagues for their participation in  
16 the morning session.

17 The meeting is adjourned.

18 (Brief recess.)

19 CHAIRMAN MACKAY: Good morning, again,  
20 colleagues. Can I welcome everyone back to our resumed  
21 session, and we will continue with the presentations from  
22 delegations.

23 The next delegation to speak on the list is the  
24 Republic of Chile, and I'd like to give the floor to the  
25 distinguished representatives of the Republic of Chile.

1 OPENING STATEMENT BY THE REPRESENTATIVE FOR THE REPUBLIC OF  
2 CHILE

3 MR. RIQUELME: Dear Members of this revision  
4 Panel, which has been formed in line with the Convention  
5 for the conservation and management of fishing stocks in  
6 the South Pacific. Ms. Engler, Mr. MacKay, Mr. Molenaar,  
7 it is a pleasure for us to be here representing the  
8 Republic of Chile.

9 As a part of the Convention and as an active  
10 Member before the regional organization for the SPRFMO, I'd  
11 like to start by saying that I'm going to focus on six  
12 things which are on the Memorandum submitted by Chile and  
13 the preliminary conclusion. First of all, we will refer to  
14 the different procedures and on the decision-making  
15 process, and we'll start by alluding to the process of  
16 decision-making process: First of all, dealing with the  
17 Amendment of the Measures, which I think is needed. We  
18 need to assess this in this forum.

19 Along these lines, the assignment was agreed in  
20 2017 and not in 2019, and it wasn't questioned by any other  
21 Member of the Commission after it had been adopted by the  
22 CMM 01-2017. Along those lines, CMM 01-2017, not only it  
23 wasn't opposed by Ecuador, but Ecuador upheld the decision  
24 authorizing on the 17th of May 2017 the transfer of the  
25 capture rights that have been allocated on that occasion,

1 and that was done in line with paragraph 9 of the  
2 Resolution.

3 We saw the same with regards to the current  
4 CMM 01-2018. Ecuador upheld originally the measure, and it  
5 transferred the tonnage that had been allocated to Ecuador.  
6 Going back to the Roman times, it is a basic principle in  
7 law is the venire contra factum proprium non valet. That  
8 is to say, that is forbidden to uphold something, in this  
9 case objecting it, against an action that had been already  
10 supported. And with that support, if Ecuador bears in mind  
11 that it supported it for two years, the quota that it  
12 upheld and is now opposing.

13 Based on the documents that we've supported on  
14 our Memorandum, documents one and two, you can find that  
15 information there, we think it's important to bear in mind  
16 that the Commission has adopted procedural rules by which  
17 it is set out the way in which the State must act. The  
18 rules respecting the forms, this is the external  
19 manifestation of justice. It is what Ecuador is  
20 contesting.

21 So, Rule number 4, Order of Business, encompasses  
22 in paragraph 5 the tool, the relevant tool, in order to  
23 modify conservation Measures or other decisions that are in  
24 place. Along these lines, the Republic of Ecuador should  
25 have submitted at the right time a proposal to amend CMM

1 01-2017 as it has been pointed out by New Zealand in its  
2 memorandum.

3 If it had done that, the Members of the  
4 Commission could have understood it well during the Sixth  
5 Annual Meeting, which was held in Lima, in Perú.

6 But the Republic of Ecuador didn't submit a  
7 modification request.

8 Dear Members of this Panel, what I've just said  
9 is very relevant because the Convention and the decisions  
10 that are taken set out the ways and the procedures we must  
11 follow within this Organisation. If we don't stick to the  
12 Rules, then there are--we will be incurring in legal,  
13 negative legal implications. We must comply with these  
14 rules in the whole process of negotiation; otherwise, we  
15 would question the whole rules and procedures which, by  
16 virtue of the Convention, have already been adopted by the  
17 Commission in order to make its decisions.

18 Secondly, we will talk about the lack of  
19 existence of reserves and the powers of the Commission  
20 beyond the Convention.

21 I'm going to talk now about two elements which,  
22 according to Chile, are really important:

23 First of all, the ability and the competencies of  
24 the Commission and the non-existence of that reserve which  
25 has been alluded by the Republic of Ecuador; and we'd like

1 to refer to it as a country which is a Coastal State in an  
2 area which is adjacent to the Convention and referring to  
3 the 1982 Convention and in line with the sovereignty rights  
4 which we have over the waters in our jurisdiction.

5 As the Republic of Perú submitted, we also think  
6 that it is not admissible to give the Commission powers to  
7 decide on the allocation of catches that it could access in  
8 the Exclusive Zone when adjacent countries are in the  
9 border area and when those States haven't given their  
10 previous consent. And we base this not only in the 1982  
11 Convention, but also in the Convention which rules this  
12 organization.

13 So, we referred to Article 56 of the 1982  
14 Convention over rights, jurisdiction and duties of border  
15 States in the Exclusive Zone which in Number 1(a) reads:  
16 "Sovereignty rights for exploration, exploitation,  
17 administration and administration of natural resources,  
18 either live resources or non-live resources." The  
19 Convention which rules sets out one exception to assign, to  
20 allocate a tonnage, which is when one State, a Coastal  
21 State decides to allow a total permissible catch in line  
22 with Article 20(4)(a)(iii) in waters under its  
23 jurisdiction, which is the case of Chile, as we can see in  
24 paragraph--CMM 01-2017 on Jack mackerel.

25 Article 21, Articles--2, 3, and 4 of the

1 decide what are the measures that we would implement in  
2 line with our legislation, not with the standing doing it,  
3 cooperating always in line with the compatibility  
4 principle, which is set out in Article number 4 of the  
5 Convention.

6 Dear Members of the Panel, we'd like to state  
7 that our opinion is that one of the options to decide the  
8 allocation of the resources for the jurisdictional waters  
9 of the coastal States--in this case Ecuador and Perú--would  
10 be by carrying out cooperation, bilateral cooperation,  
11 either directly or by the organization of the South Pacific  
12 SPRFMO, and Ecuador has proposed an alternative measure to  
13 the allocated stock, an increase based on what they call  
14 "reserve." On the Convention of 5,000 tons. Chile  
15 considers that, in line with what the President of the  
16 Commission said, that reserve does not exist. That  
17 so-called "reserve" is difference between the total allowed  
18 catches recommended by the scientific committee for the  
19 whole resource, Paragraph 10, of CMM 01-2018 and the  
20 permissible total catch for the Convention and the  
21 Exclusive Economic Zone of Chile, Paragraph 5 CMM 01-2018.  
22 And we can see this on Tables 1 and 2 of CMM 01-2018, those  
23 that do not refer to the tonnage and percentages that are  
24 linked to the jurisdictional areas which are close to the  
25 Convention Areas, but exclusively only within the Economic

1 Convention set out in Numeral--Number 2 that when we  
2 participate in fishing stock, when the Convention sets out  
3 a total permissible catch to any fishing resource in line  
4 with Article 20(4)(a)(ii) or (iii), also it can decide on  
5 the participation in fishing activities within all the area  
6 when, the other Contracting Parties, the other Parties,  
7 coastal States, have given their agreement.

8 And then on Number 3, by adopting decisions in  
9 line with paragraph 2, the Commission will study the  
10 historic captures and the fishing patterns and the  
11 practices in all the range, and the criteria that are set  
12 out in paragraph 1(a) to (j).

13 Finally, on Number 4, it sets out when it is not  
14 submitted--when we don't have the Agreement of the  
15 different Contracting Parties that must be coastal States,  
16 the Commission will then decide in anything related to the  
17 field of the Convention, and the Convention and the Party  
18 States and the interested parties will operate in line with  
19 Article 4. Based on what I've just said, the Commission  
20 doesn't have powers to decide on what Ecuador is  
21 suggesting. This is very important for Chile, and we'd  
22 like to point it out because it has good implications. We  
23 believe, in line with the law that's international law,  
24 that we should give our consent in order to apply measures  
25 in our Exclusive Economic Area in such way that we could

1 Zone, Economic Zone of Chile.

2 Thirdly, we'd like to talk about on whether the  
3 decision, which we can read in the CMM 01-2018 is in line  
4 or not with the dispositions of the Convention or other  
5 international legislation as we can read in the 1992  
6 Convention or the Agreement of 1995 Agreement. We refer  
7 here to the alleged lack of consistency by the Commission.  
8 It's what Ecuador is saying. And that would come from the  
9 application of just one of the criteria which is set out in  
10 Article 21--this is to say the historic catches in the area  
11 of the Convention as a way to assign quotas and not based  
12 on the aspirations of Ecuador as a Developing State to  
13 participate in the fishing activities of the Jack mackerel  
14 as a Coastal State in the area near the Convention. The  
15 Republic of Chile considers that the criteria used to  
16 allocate, to assign a quota are different to the ones that  
17 appear expressed in Article 21(1)(a) and as a Coastal State  
18 and as a Developing Nation to develop fishing activities of  
19 Jack mackerel, Article 21(1)(e) and (f). We think that  
20 since Ecuador is saying that it doesn't have a register of  
21 historic catches, it is obvious that allocating the quota  
22 which was given to Ecuador is based on the other criteria.  
23 And this has been recognized by the different Members who  
24 have expressed their opinion about the request by Ecuador.

25 Along these lines, we need to bear in mind that

1 since there's been talk about the fact of being a Coastal  
2 State in order to organize the allocation, we must also  
3 understand the legal framework of the Objection; and this  
4 is part of the different criteria of assignation allocation  
5 set out in Article 21, such as what we can see in  
6 Article 61 and 62 of the 1982 Convention on preservation of  
7 live resources and how to use live resources. Also, what's  
8 set out on the agreement on the stock, 1995, especially in  
9 sub--Articles 7(2) and (7) on compatibility of conservation  
10 measures and management, and Article 4 of the Convention on  
11 compatibility of the conservation management measures,  
12 especially Number 2.

13 So, why do we need to assess the compliance?  
14 Because we see another criteria of assignation which is in  
15 Article 21, what we can see in letters (d) and (j).

16 So, we may have to ask the Republic of Ecuador on  
17 what measures do they have for the preservation and  
18 management of the Jack mackerel, and how have they worked  
19 in order to preserve their resources, and how those  
20 measures will not affect in a negative way the live  
21 resources, bearing in mind what the Convention says, and  
22 how that is incompatible with the measures already in place  
23 by the Commission.

24 At the same time, in order to understand better  
25 the situation, we would like to ask Ecuador about how

1 they've carried out scientific assessment of these  
2 fisheries, and if they carried out these scientific  
3 studies, they should put them in knowledge of everybody  
4 else.

5 Ecuador has stated that it cannot develop its  
6 fisheries because it doesn't have a bigger allocation.  
7 Nevertheless, the tonnage that Ecuador is requesting, they  
8 can already fish them in their Exclusive Zone.

9 As we said, these already correspond to Perú and  
10 Ecuador, and is not within the framework of the Convention.  
11 We're not talking about tonnage to develop fisheries. It's  
12 more about where do we fish those stocks.

13 Fourthly, we'll refer to what Ecuador says that  
14 CMM 01-2018 discriminates Ecuador. The Republic of Ecuador  
15 points out that they have suffered discrimination based on  
16 the decision taken by the Commission on CMM 01-2018, and  
17 they base this on the fact that the allocation was given  
18 within the field of the Convention and the Exclusive Zone,  
19 and it's just based on one criterion, which is the historic  
20 catches, and I quote their memorandum: "Since the  
21 allocation system cannot be justified and it discriminate  
22 because they just look at the historic catches based on  
23 their practices, it puts smaller nations at a disadvantage,  
24 countries such as Ecuador which hasn't kept a register of  
25 the catches of Jack mackerel."

1 For the Republic of Chile, it's difficult to  
2 uphold a position like that because not only that would  
3 disregard the work carried out by the Commission going back  
4 to its First Meeting in 2013, and this has been already  
5 recognized by the different Members of the Commission which  
6 are here present, but also we wouldn't recognize that the  
7 only criteria to allocate quotas is the historic catches.  
8 We would like to say that if the Republic of Ecuador did  
9 have an allocation of percentages and tonnage, the fact  
10 that they have it is evidence that the allocation is also  
11 based on other criteria which are set out in Article 21 of  
12 the Convention, which are different to the historic  
13 catches.

14 Based on all this, Ecuador should explain, since  
15 they're saying that the only criteria for the assignation,  
16 for the allocation or the historic catches and then they  
17 say that they haven't got the historic catches, we could  
18 ask them what are the criteria that were the basis for the  
19 current allocation?

20 Also, we would need to have more background with  
21 regards to what are the number of years of historic  
22 information in case we had only used a criteria of  
23 Article 21(a).

24 We would like to highlight that specifically  
25 based on the fact that is considered a developing and

1 Coastal State, the Republic of Ecuador receive an  
2 allocation, a specific allocation, under this Convention.  
3 So, considering these criteria for a larger allocation for  
4 Ecuador would imply that it would receive an allocation  
5 based twofold on the same criterias, which would imply an  
6 arbitrary discrimination for the rest of the participants.

7 I must remind you that, on the Fifth Meeting of  
8 the Commission of 2017, an allocation for five years was  
9 adopted, the first one based on a quota in tons for  
10 Years 2018 to 2021, inclusive, in percentages. And based  
11 on that, as we have already mentioned not only for Chile  
12 but for the other States that have expressed their opinion,  
13 this allocation was agreed by consensus, and its results  
14 were materialized in CMM 01-2017 adopted based on  
15 Articles 8 and 21 of the Convention and, therefore, adopted  
16 by the Commission in agreement with all the criteria of  
17 allocation of such provision.

18 Moreover, we must be aware that the measure  
19 01-2017 is the base that leads to the allocation of quotas  
20 and of which table 2, which is subject to objection, was  
21 borne in mind when adopting CMM 01-2018. The allocation  
22 were based on the updating that had to be done based on the  
23 maximum quota that was recommended by the Scientific  
24 Committee.

25 Moreover, I must mention that, based on the fact

<p style="text-align: center;">74</p> <p>1 that TAC of 2018 rose in approximately 16.84 percent in  2 relation to the previous year, all the participants in the  3 fishery received a raise of their allocation in equal  4 proportion, with any type of discrimination, and these  5 allocations were adopted by 13 votes in favor, one against.  6 Moreover, I would like to refer to the  7 alternative measures that have been suggested and other  8 measures that could affect to the one of CMM 01-2018.  9 In relation to the suggested alternative measures  10 and based on the previous explanation of the reasons, we  11 consider it should be invalid. We also consider that the  12 Republic of Ecuador has mentioned that their allocation is  13 economically unviable and, as the Republic of Perú  14 mentioned in their memorandum, could now develop their  15 fishery activities through the measure of transfers such as  16 is established in paragraph 9 of the measure. Therefore,  17 the transfer of quotas is true that the fishery States have  18 used to enlarge in their allocations such as the case of  19 Chile, who, having the largest allocation, still acquires  20 further allocation from other Members, and yet it seems  21 that this is not enough to satisfy the needs of the sector  22 that, however, depends on this fishery. Ecuador not only  23 recognizes that this mechanism. Which it has used on  24 several occasions, for example, with selling their quota to  25 our country.</p>	<p style="text-align: center;">76</p> <p>1 Convention, the procedural rules, and any other rules must  2 be respected to regulate the formal processes of this  3 organization. Otherwise, we will attempt against the  4 legality of our actions. We consider that the Commission  5 does not have competence to assign a larger part beyond the  6 total TAC, and that that reserve does not fall under the  7 scope of this Agreement. That is an amount that falls  8 under the jurisdiction of those States, and they could only  9 make you space on the Legal Framework in their Exclusive  10 Economic Zone.  11 In this sense, when the Republic of Ecuador  12 requests a larger allocation, which would correspond to the  13 adjacent coastal States that have not given their express  14 consent to this transfer, the Commission does not have  15 competence to allocate that part; and, therefore, this  16 proposal from Ecuador does not have the equivalent effect  17 which is one of the prerequisites for alternative measures.  18 The allocation process adopted in CMMs 01-2017  19 and 01-2018 for the participants of this fishery is  20 implemented based on the different criteria of Article 21  21 of the Convention and not only the criteria of historical  22 capture as the Objection presents. And, therefore, bearing  23 in mind the different criteria, the objecting Party has not  24 been treated in discrimination. Based on the mechanisms  25 adopted by the Commission, there are different measures</p>
<p style="text-align: center;">75</p> <p>1 Moreover, I would like to refer to the mechanism  2 that provides support in terms of the allocation to  3 countries that require more support such as what was  4 mentioned by the submission and in relation to Vanuatu.  5 Lastly, in relation to the process of allocation,  6 which is one the hardest exercises within this  7 organization, we consider that in order to comply with the  8 allocation for such countries, we should follow the  9 suggestions made by Vanuatu, which is the following: It  10 promotes the complete use of the Jack mackerel allocation  11 quotas amongst the Members and to avoid it through fishing  12 or transfer, that country or a country were to lose their  13 access to industry.  14 We would also like to mention that, in the last  15 meeting of the Commission, the proposal was largely  16 supported by the Members. Yet, no agreement was achieved,  17 and it was pulled back. As mentioned in the first section  18 of CMM 01-2017, Chapter 6 of the Report of the 6th Meeting  19 of the Commission, the Members will continue to work on  20 this proposal and will try to provide a revised version in  21 the next meeting of 2019.  22 In conclusion, Mr. President, Members of the  23 Panel, I would like to conclude my brief presentation  24 highlighting some essential points.  25 Chile considers that the provisions of the</p>	<p style="text-align: center;">77</p> <p>1 such as the transfer of quotas contemplated in paragraph 9  2 of version 2018 and previous versions. This is a mechanism  3 that is in effect and has been used by several countries,  4 amongst them the objecting country.  5 Lastly, distinguished Members of the Panel,  6 should you consider that the measure proposed by Vanuatu,  7 once the Commission can adopt it, will enable new players  8 into the Jack mackerel fisheries and different criterias so  9 that those countries that have lower allocations will be  10 able to enlarge their quota. And we, of course, will  11 continue to help these new States and, of course, our  12 colleagues from Ecuador.  13 Thank you.  14 CHAIRMAN MACKAY: Thank you very much. I thank  15 the distinguished representative of Chile for his  16 intervention.  17 And I now give the floor to the distinguished  18 representative of the Republic of Perú.  19 OPENING STATEMENT BY THE REPRESENTATIVE OF THE REPUBLIC OF  20 PERÚ  21 MR. OTERO: Thank you.  22 In relation to the Convention on the Conservation  23 and Management of High Seas Fishery Resources in the South  24 Pacific Ocean and in relation to the Objection from  25 Ecuador, we would firstly like to thank the Review Panel</p>

<p style="text-align: center;">78</p> <p>1 for inviting us to take the floor, and we would also like  2 to thank the Permanent Court of Arbitration for holding  3 this case.</p> <p>4         So, in relation to this case, the Republic of  5 Perú highlights its commitment with the conservation and  6 systematic use of the fishing resources, specifically that  7 of Jack mackerel which is subject to a recovery measure  8 based on the Convention for the Conservation and Management  9 of High Seas Fishery Resources in the South Pacific Ocean.</p> <p>10         Our country would like to highlight the excellent  11 work carried out by the Scientific Committee of the SPRFMO  12 which every year establishes limits for catch based on the  13 best technical and scientific data available, as well as  14 based on the principle of precaution and the report on  15 ecosystems, in which Perú participated actively since the  16 Convention was adopted in 2009.</p> <p>17         Another framework, we recognize the importance of  18 the measures of conservation and management adopted by  19 SPRFMO in accordance with the procedure of decision-making  20 indicated in Article 16 of this Convention, focused on  21 guaranteeing long-term sustainability of fishing resources,  22 promoting the responsible exploitation, and avoiding  23 excessive fishing, amongst others.</p> <p>24         We would like to remind that, when making  25 decisions regarding participation in the fishing resource,</p>	<p style="text-align: center;">80</p> <p>1 Members of the Commission because it would try to extend  2 their capacity of catch to 6,500 tons, which would apply  3 over a 370-percent increase, whilst the rest of the Members  4 of the RFMO would continue with their allocated quotas.</p> <p>5         Moreover, some of the Members would see their  6 quotas reduced if Ecuador were to receive this raise in  7 allocation. Therefore, we would like this proposal to be  8 rejected.</p> <p>9         Moreover, this concept of reserve which they are  10 appealing to is not used in any of the documents or the  11 Convention nor in the UNCLOS; that is, any of the  12 international instruments that Ecuador has used to support  13 their Objection. We consider that the Ecuadorian proposal  14 could lead to a procedure that would not fall under the  15 competencies of this Committee because it would imply that  16 the coastal States would have to give their acceptance in  17 relation to the tonnages that they can capture based on the  18 1995 agreement.</p> <p>19         Since 2013, we have a mechanism through which the  20 Members and the PCNCs can transfer their assigned quota  21 allocation, which means that if a non-contracting party is  22 really interested in raising their allocation, they can use  23 this transfer mechanism. And we would like to remind that  24 Ecuador has transferred to other Members their quota for  25 the allocation of 2016 and '17, also the allocation</p>
<p style="text-align: center;">79</p> <p>1 including the allocation, the establishment of TAC, the  2 Commission will bear in mind the fishing resources and the  3 effort of fishing resources when making this decision, as  4 well as the articles of the first paragraph of the  5 Convention.</p> <p>6         Perú considers that CMM 01-2018 was adopted in  7 accordance with the procedure of decision-making of the  8 Convention which requires the support of three-fourths of  9 the Members of the Commission. And with 13 votes in favor  10 out of 14 Members present, this procedure was respected.</p> <p>11         According to the CMM, the allocations in Table 2  12 were maintained from the CMM of 01-2017 and 01-2018, based  13 on the results of, and the considerations expressed, in the  14 Fifth Commission of 2017, and all of this based in the  15 agreements of 2013.</p> <p>16         Having said that, Ecuador did not present any  17 objections to CMM 01-2017 when it had the occasion.</p> <p>18         Mr. President, our country rejects the Objection  19 presented against CMM 01-2018 by the Republic of Ecuador  20 because it has not proven the existence of a discriminatory  21 act in relation to the rest of the Members of the SPRFMO,  22 neither does it go against the provisions of the Convention  23 or the agreements of 1982 and 1995.</p> <p>24         Perú considers that the position of Ecuador is  25 actually more of a discrimination against the rest of the</p>	<p style="text-align: center;">81</p> <p>1 established by the CMM 01-2018.</p> <p>2         Moreover, decision-making, in terms of the  3 Convention for the Conservation and Management, also has  4 criteria based on socioeconomic, technical, scientific and  5 resources, all of it to guarantee the sustainability of  6 fishing resources, and bearing in mind the ecosystemic  7 viability and respecting the international Law of the Sea.</p> <p>8         Perú would like to highlight that, by exercising  9 their sovereign right in relation to their jurisdictional  10 areas we should continue implementing the most appropriate  11 fishing conservation regulation based on the most reliable  12 and updated scientific data carried out by, amongst others,  13 their own institutions as well as those coming from the  14 Scientific Committee, when pertinent, and any other  15 scientific entity, if available.</p> <p>16         Our country would like to highlight its  17 ratification of the CMM 01-2018, especially that regarding  18 to the limits of catch and the participation allocation  19 based in the area of application of the Convention.</p> <p>20         Based on this, Perú considers that Ecuador's  21 position of CMM 01-2018 is unviable, in terms of the  22 modification or extension of the limits or allocation of  23 Jack mackerel, which was already established in the CMM  24 01-2017, and which will be extended from this year up until  25 2021.</p>

<p style="text-align: center;">82</p> <p>1 I think this is all for now, and if you have any  2 questions, I will be glad to answer them. Thank you.  3 CHAIRMAN MACKAY: Thank you very much. I thank  4 the distinguished representative of Perú for his comments,  5 for Perú's intervention.  6 That brings us to the end of the formal  7 presentation, so we will break a bit early for lunch. We  8 will break now, and we will resume a bit early as well--so,  9 we'll resume at 2:30 rather than at 3:00.  10 As the Programme indicates, and as I'd said  11 earlier, when we resume, we will resume with questions from  12 the Review Panel, and the fact that we are concluding  13 somewhat earlier than provided in the Programme means that  14 we will have more time available for that.  15 We will distribute, in writing, questions to  16 delegations in their delegation rooms within a very short  17 period of time after we break for lunch. So, if  18 delegations could kindly ensure that they're in a position  19 to receive those written questions in their delegation  20 room.  21 As I'd indicated, some of the questions are  22 specifically directed to specific delegations or a specific  23 delegation. Some questions are more general in nature.  24 But it is open to any delegation to comment or  25 respond with regard to any of the questions; any or all of</p>	<p style="text-align: center;">84</p> <p>1 questions will be distributed to colleagues. Thank you  2 very much, indeed.  3 The session is adjourned.  4 (Whereupon, at 12:36 p.m., the Hearing was  5 adjourned until 2:30 p.m., the same day.)  6  7  8  9  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p>
<p style="text-align: center;">83</p> <p>1 the questions. Of course, a delegation is under no  2 obligation to respond to any particular question that is  3 not directed to it. That is a matter of judgment for each  4 delegation.  5 Delegations should proceed on the basis that they  6 will have approximately 20 minutes available for their  7 presentation of answers and comments with regard to the  8 questions. But I would say that--just as a comment--that  9 it is also quite possible that Panel Members will want to  10 follow up some of the written questions with some oral  11 questions as well, depending on the nature of the responses  12 that we get.  13 But given the way in which we have proceeded in  14 terms of time, we do have somewhat longer for the  15 consideration of questions and answers this afternoon. At  16 the moment, the afternoon session has the questions and  17 answers concluding at 2:00. And as I'd indicated, we  18 will--sorry, at 4:00. As I'd indicated, we will resume  19 again at 2:30, so we'll have at least an hour-and-a-half  20 for the answers to the questions and answers.  21 Can I ask if my comments are clear to colleagues?  22 Does anyone have any questions with regard to that?  23 If not, I'd once again thank colleagues for their  24 interventions during the course of the morning, and we will  25 resume again at 2:30. And very shortly, the written</p>	<p style="text-align: center;">85</p> <p>1 AFTERNOON SESSION  2 QUESTIONS FROM THE REVIEW PANEL  3 1. Does Ecuador believe that equivalent weight  4 should be given to all criteria under Article 21(1), or is  5 Ecuador arguing that particular criteria, such as Articles  6 21(1)(e)-(f), should carry more weight than others? If so,  7 why?  8 2. For the benefit of the Panel, does Ecuador  9 have any other information it wishes to share in relation  10 to its position that CMM 01-2018 unjustifiably  11 discriminates in form or in fact against it?  12 3. Why did Perú and Korea get  13 more-than-proportional increases in CMM 01-2017 and Ecuador  14 did not?  15 4. What are the nature and characteristics of the  16 Ecuadorian Trachurus murphyi fishery within areas under  17 national jurisdiction? What are the limitations, legal,  18 operational or otherwise, to develop a high seas fishery  19 with the existing Ecuadorian pelagic fleet, rather than a  20 dedicated vessel?  21 5. What steps has Ecuador taken to explore the  22 possibility of acquiring a greater catch entitlement on the  23 high seas through transfers, as suggested by other  24 Commission Members?  25 6. Is it the position of those Commission Members</p>

1 opposing Ecuador's proposed alternative measures that it is  
2 beyond the Panel's competence to modify in any way the  
3 allocations to Commission Members as set forth in Tables 1  
4 and 2 of CMM 01-2018?

5 CHAIRMAN MACKAY: Good afternoon, colleagues. I  
6 trust that everyone had a good lunch, and I apologize that  
7 it may have been a working lunch to some extent because of  
8 the questions that we presented, but we are most  
9 appreciative of the two colleagues for their willingness to  
10 put the time in at lunchtime to address and to prepare  
11 their answers.

12 As regards the schedule for the rest of the day,  
13 we will, as you know, move to the questions and answers,  
14 and as far as the order for the presentation of those, as  
15 far as that is concerned, we'd follow the order of this  
16 morning. So initially I would invite the Chairperson of  
17 the Commission, if he has any comments to make with regard  
18 to those questions, then the Republic of Ecuador, then New  
19 Zealand, then the Republic of Chile, and then the Republic  
20 of Perú following the revised order that we agreed to this  
21 morning.

22 Once we've concluded the presentation of answers  
23 on the questions and any supplementary questions that may  
24 be dealt with from the Members of the Panel, we would then  
25 proceed with the concluding remarks. And we've received a

02:42:00 1 inviting the distinguished Chairperson of the Commission to  
2 respond to in relation to any of the questions that he may  
3 wish to deal with.

4 RESPONSES TO THE REVIEW PANEL QUESTIONS FROM THE  
5 REPRESENTATIVE OF THE SPRFMO COMMISSION

6 MR. URRUTIA: Thank you very much, Mr. Chairman.  
7 Good afternoon to distinguished Panel Members. I will try  
8 to answer two questions only, I think. Most of them are,  
9 of course, directed to Ecuador itself, so I would like to  
10 refer to Question Number 3 and Question Number 6, if I may.

11 On Question Number 3, why did Perú and Korea get  
12 more than proportional increases in CMM 01-2017 and Ecuador  
13 did not? I think there is an explanation for each case,  
14 and it's rather factual, I think.

15 Korea has been an active fishing nation in this  
16 organization, and I think I need to be clear in the figure  
17 here. Korea received 1,426 tons. And as we noted in our  
18 submission with the Secretariat and also Australia pointed  
19 out, 1,000 tons of this figure growth came from a one-off  
20 transfer from Chile. In addition to this, Korea has always  
21 attempted to actually operate and catch the fish on the  
22 high seas. They can easily argue they meet several  
23 criteria of Article 21(a), that was (a), (b), (c), (d) and  
24 (j), for example, and they, in fact, mentioned some of  
25 these criteria at the meeting.

02:40:11 1 request from Ecuador asking whether it could be the last  
2 delegation to make remarks in the afternoon session, and  
3 the Panel is minded to grant that request, given that  
4 Ecuador's, of course, the Party that has presented the  
5 Objection and that they were asked to present at the  
6 beginning of this morning's session.

7 So, with regard to the dealing--the presentation  
8 of questions, as you know, during the lunch break, each  
9 delegation was provided with a series of questions from the  
10 Review Panel; and, in the question-and-answer session, I  
11 will give the floor to each delegation for 20 minutes to  
12 provide answers to any of the questions to which they wish  
13 to respond.

14 As I noted this morning, some questions are  
15 specifically directed at specific delegations, and I guess  
16 that in that respect that it's primarily the delegation of  
17 Ecuador, but colleagues from other delegations as well  
18 should feel free to answer whatever questions they wish to  
19 respond to.

20 It's possible that after each delegation has  
21 provided their answers to the questions, that Members of  
22 the Panel may wish to follow up with additional oral  
23 questions relating to those answers so that we have a  
24 useful exchange of information around the table.

25 So, if it's reasonably clear, I would begin by

02:44:02 1 Their initial allocation was low precisely  
2 because their history was not particularly high. They  
3 entered lately the fishery. Yet, they have continued to  
4 engage with Members, and they did so in 2017 arguing that  
5 their activities were real but economically unsustainable.

6 So, Members agreed to approve Korea's position,  
7 and I think Chile made a factual demonstration and proof of  
8 that.

9 Now, in 2018, the situation was different. Korea  
10 did not receive that transfer of 1,000 tons, which has been  
11 given by Chile, so in reality the increase for Korea was  
12 smaller in 2018, of course, proportionally.

13 So, for Korea, the idea was that as the stocks  
14 recovers, they will get a better entitlement and a better  
15 allocation, which is exactly one of the options that  
16 Ecuador should be ready to accept and I think has been  
17 mentioned here.

18 In the case of Perú, I think it's rather  
19 different. Perú received 2,069 tons, the largest increase  
20 proportionally speaking. That's true. But Perú--and this  
21 is something that the Panel should bear in mind and I  
22 encourage you to do so--is Perú was the main loser in the  
23 negotiations that led to the 2014 Decision. The figures  
24 for the catches in 2014 for Perú on the high seas were  
25 18,636; and in 2014, the next year, were down to

<p style="text-align: center;">90</p> <p>02:45:53 1 4,238 tons. So, again from 2013 on the high seas, from  2 more than 18,000 to roughly over 4,000 tons. They were up  3 again in 2015 to 7,400 tons.  4 So, the proper allocation done in 2014 for the  5 first time saw Perú going down on its entitlement.  6 In addition in the same year, 2013, the figures  7 set aside for the area outside the Jack Mackerel Measure  8 was 78,000 tons; and, in 2014, so the next year, they were  9 lowered to 50,000 tons.  10 So, for these reasons, clearly Perú felt that it  11 was the loser in those negotiations, and the Commission  12 decided to heed this argument and to accommodate Perú's  13 Request, so Perú's positions improved in 2016-17 for these  14 reasons.  15 There is a third and factually important point  16 here: The Commission had abandoned information and clear  17 positions from both Korea and Perú at the meeting itself.  18 That is also factual. But in the case of Ecuador, the fact  19 that they were not there was not, as a matter of principle,  20 something that prevented the Commission for taking  21 Ecuador's request on board. It was rather that as the  22 meeting evolved, Ecuador's position somehow was weakening  23 because they were not there to defend their case, to make  24 their case. This is something that also happens in every  25 single negotiation and I think in every single FMO in the</p>	<p style="text-align: center;">92</p> <p>02:49:46 1 And it will be the same in the case of Chile  2 because as Chile, with this express consent, includes its  3 EEZ, the whole exercise for Chile will be taken into  4 account, also part of its EEZ.  5 But even if purely considering the high seas,  6 even if purely considering the Convention Area, how taking  7 from one member to increase the entitlement of another  8 Member will be equivalent effect is something that to me at  9 least I struggle to make the case. I don't see that this  10 would be a sensible result, a sensible outcome.  11 In addition to this, we have to consider that not  12 every single Member of this SPRFMO Commission is here  13 today, so any decision in that regard might affect the  14 rights of other Members of the Commission, so we need to be  15 careful.  16 In practical terms, distinguished Panel, it will  17 all depend on the language that you will use and how strong  18 the recommendations and findings might be. But I think  19 there is a second part on the questions, and it's the  20 following: What if the Panel decides that the Decision is  21 inconsistent with Article 21 or any other international law  22 agreement that is relevant for this Decision? I'm not  23 moving now into the realm of discrimination, but in the  24 realm of inconsistency.  25 So, I think that here the Convention is slightly</p>
<p style="text-align: center;">91</p> <p>02:47:51 1 world. So, there is nothing actually extraordinary or  2 remarkable in that. So the Commission could not at that  3 time do more for Ecuador's request. And as I said, the  4 difference was that the information and the reasons that  5 Korea and Perú could pointed out there were obviously quite  6 solid, and they evolved as the Commission also evolved.  7 Let me go to Question 6. This is a very good  8 question but also a very difficult one, has to be very  9 honest, and it takes us to the very core of the legal  10 argument that is here and in some gray areas I have to  11 admit in the text of the Convention.  12 I think there are two questions, if I understand  13 correctly, Question Number 6, in a further distinction that  14 needs to be made, so I would like to highlight the words  15 "in any way" in your question, in case I understand  16 correctly.  17 On the first part when it comes to the  18 explanation, I think the letter (c) of part of 10, Annex II  19 is clear. The Panel could in theory modify the allocation  20 only if the Panel could recommend equivalent measures  21 regarding allocation. I don't personally see how such a  22 decision could mean measures equivalent in effect. This is  23 completely clear in the case of the area outside the  24 Convention, outside the measure because we will be taking  25 and effecting the EEZ of the coastal States.</p>	<p style="text-align: center;">93</p> <p>02:51:22 1 open--and this is my personal view again--the Convention is  2 clear that there will be an extraordinary meeting, but  3 nothing said regarding what the Panel might say or not. I  4 don't think there is an explicit limitation to the Panel  5 here, but again, if the Panel finds it has such a  6 competence, it should be exercised with extreme care, and  7 again the language would be extremely important.  8 I will put this intervention personally as my  9 position as the Chairman of the Commission because I know  10 the Members might have different interpretations of this  11 provision of the Convention.  12 Before I finish, let me please remind you of one  13 important paragraph of the Review Panel Decision back in  14 2013, and I'm referring to Paragraphs 98 and 99,  15 especially. Let me please quote, Mr. Chair, with your  16 indulgence:  17 Part of 99 of the 2013 Decision says: "The  18 Review Panel, therefore, believes that the alternative  19 measure, to have equivalent effect to CMM 1.01"--Jack  20 mackerel back then--"should seek to avoid inconsistency not  21 only with the Total Allowable Catch, but also with the  22 allocations to other Members and CNPCs."  23 And I think this is reasonably clear about the  24 sort of precedent that the Panel might want to consider.  25 Thank you.</p>

<p style="text-align: center;">94</p> <p>02:53:04 1 CHAIRMAN MACKAY: Thank you very much. I thank 2 the distinguished Chair of the Commission for his 3 presentation and response to the questions. 4 PANEL MEMBER ENGLER: Thank you, Mr. Urrutia. 5 One quick question regarding your remark about 6 that the Commission did not have abundant information to 7 address Ecuadorian request. I have read some of the 8 documents of early meetings, and it seems to me that 9 Ecuador has consistently highlighted its aspiration to 10 develop a fisheries for Jack mackerel in the high seas, and 11 it made specific requests in that regard. So, how do you 12 reconcile these two facts in your assertion? 13 MR. URRUTIA: Thank you, Ms. Engler. 14 I think that appearing--and again, this opinion 15 has to be taken with extreme care because this is my 16 personal opinion as the Chair of the Commission, and I'm 17 sure that Members might have different interpretations or 18 views of what I'm going to say. 19 We, as Commission, could not make a final 20 decision on Ecuador's request only with a letter. A single 21 letter does not contain all the information. 22 And on the question that Members had to Ecuador 23 itself in 2017. 24 So, just because a Member requested increase in 25 its entitlement or its allocation doesn't answer all the</p>	<p style="text-align: center;">96</p> <p>02:56:28 1 the phrase "should seek to avoid inconsistency," which kind 2 of implies that in certain situations it may still be 3 necessary to come up with recommendations that cause some 4 changes with the allocations, but I'm very well aware of 5 your observation that this is very--a dangerous thing to 6 do, and it could potentially undermine all the efforts on 7 negotiations and allocations that have been carried out in 8 SPRFMO. 9 But I think also the establishment of the TAC and 10 the allocation of that TAC among Members is the most 11 important conservation and management measure of an RFMO, 12 and it would be quite unreasonable if that would be beyond 13 the remit of the Review Panel as such, and I would be very 14 interested in your views on this. 15 MR. URRUTIA: Thank you, Professor Molenaar. I 16 think you're right, and I share your statement. I think 17 you're correct in the scope of that potential decision like 18 that might have on other Commission Measures. 19 Let me try to answer your question by the 20 following distinction: I would like to make the 21 distinction between legality and legitimacy when tackling 22 your question. And when it can comes to legality, I think 23 we also need to make a further distinction. When it comes 24 to legality, I think--and I think Members are clear about 25 this including Ecuador--I think, in terms of legality</p>
<p style="text-align: center;">95</p> <p>02:54:53 1 questions that Members might have. 2 So, in this regard, I would like to highlight 3 that both Korea and Perú were able to maintain their case 4 to modify their positions and to send out their requests to 5 other Members of the Commission, which is naturally an 6 essential part of any negotiation. 7 Ecuador, unfortunately, was not in a position to 8 do so. In theory, they could have by continuing sending 9 letters during the negotiation. In practical terms, that's 10 not possible. 11 So, yes, the fact that Ecuador was not there 12 obviously weakened their position. But as I said, as a 13 matter of principle, we consider what we could from 14 Ecuador's perspective, but only with a letter, I insist, 15 Ecuador could not satisfy all the questions--all the 16 questions--that Members had back to Ecuador. 17 That's my attempt to reply to your question. I 18 hope that is reasonably clear. Thank you. 19 And just--I didn't mention it, please, I came to 20 answer any other questions that you, Mr. Chairman, have or 21 any Panel Members, please. 22 PANEL MEMBER MOLENAAR: Yes, I would like to have 23 one further question on this. 24 So, you refer to the--in the findings and 25 recommendations of the 2013 Panel, and of course, that has</p>	<p style="text-align: center;">97</p> <p>02:58:17 1 affecting the rights, of course, of the State within the 2 EEZ is out of the question. I think that's quite clear. 3 To me, no intervention that we have heard today. 4 When it comes now only to the area of the 5 Convention on the high seas, I think that it might be 6 different, and I share your views that legally the word 7 "should" does not prevent a difficult position, if the 8 Panel believes that it has to do so. In terms of legality, 9 I think I agree with your initial assessment. 10 Now, in terms of legitimacy, I'm afraid that, 11 once again, we're going to very muddy waters and 12 unchartered waters. And again, some of the language here, 13 too, how strong the Panel might that its recommendations 14 and findings should be. 15 I think that Members of the Commission--and this 16 is my interpretation as Chair--will be happy with guidance, 17 will be happy with recommendations, but changing the 18 numbers straightaway will be something difficult for many 19 Members here to accept, and I have to be honest that that 20 would probably change the dynamics of the negotiation in 21 very dangerous fashion. 22 I believe personally that the task that we have 23 ahead to accommodate in the long term and in the mid term, 24 Ecuador's position is something for the Members of the 25 Commission and for the negotiation process to achieve.</p>

<p style="text-align: center;">98</p> <p>02:59:52 1 Thank you.  2 CHAIRMAN MACKAY: Thank you very much. I thank  3 the Chair of the Commission for those additional comments,  4 which are most useful.  5 I think we are ready now to move to the  6 delegation of the Republic of Ecuador and invite them to  7 respond to the questions, and the delegation of the  8 Republic of Ecuador will, of course, note that some of the  9 questions are specifically directed to the delegation of  10 Ecuador.  11 I give them the floor.  12 RESPONSES TO THE REVIEW PANEL QUESTIONS FROM THE  13 REPRESENTATIVE OF THE REPUBLIC OF ECUADOR  14 MR. VILLAVICIENCIO NAVIA: Thank you very much,  15 Mr. Chair.  16 The Ecuadorian delegation is going to make a few  17 comments. We are going to answer to six questions.  18 The first one, I'm going to read it from the  19 Minutes: "Does Ecuador believe that equivalent weight  20 should be given to all criteria under Article 21(1), or is  21 Ecuador arguing that particular criteria, such as Articles  22 21(1)(e) and (f), shall carry more weight than others? If  23 so, why?"  24 I will say it now in Spanish.  25 Article 21, and I strongly believe in the</p>	<p style="text-align: center;">100</p> <p>03:04:01 1 So, we must bear in mind those criteria in line  2 or depending on in line with the Members that have got  3 something to say with the Decision. Ecuador will have to  4 give as much importance to (e) and (f) without disregarding  5 the rights that other Members have with the historic  6 catches.  7 We must be clear: We do not oppose to any  8 Member. We do not want to have assignment of the  9 distribution of the allocated quotas because that would be  10 detrimental to those that already have got an assignation.  11 But in this particular case, I would like to say  12 the following: When we talk about bearing in mind this  13 criteria, it's not just that if you need 6,500, I'm going  14 to increase by 190 because then the literal concept, the  15 law that says "aspiration interest in terms of  16 development," we don't aspire to have an increase of  17 190 tons. Later on, to one of the questions I answer why  18 we cannot accept this type of situation.  19 To conclude, I would like to say that yes, dear  20 President, yes, Members of this Panel, depending on the  21 Member, we may have to go for one or the other criteria  22 inasmuch as the stocks remain healthy and we act in a fair  23 way and in line with the norms.  24 With regard to Question Number 2, which says:  25 "For the benefit of the Panel, does Ecuador have any other</p>
<p style="text-align: center;">99</p> <p>03:01:55 1 principle of respecting deliberation, inasmuch as it was  2 drafted and clearly set out, and we understand that there  3 are inconsistencies in the way in which it has been  4 applied. Furthermore, the main element is discrimination.  5 What does Article 21 say? When decisions linked  6 to the participation in fishing are adopted from any  7 fishing resource, including the admissible totals of  8 catches, the Commission will bear in mind again the  9 situation of the fishing resources, that's a main point,  10 bearing in mind that we need to start by having acceptable  11 levels of stock and being exercised in line with that  12 resource, also in line with the following criteria, and  13 this is very important.  14 According to it may be deemed applicable, we  15 cannot think about the holistic interpretation of the ten  16 criteria because the norm by itself is talking inasmuch as  17 it's possible. So, in order to allocate, to give an  18 assignation, it must be linked based on the origins. And  19 we understand Number 1(a) of the historic catches. We  20 think it's fine, but that criteria is for those that have  21 got historic catches and not for Ecuador and not for those  22 that don't have it. So, in the case of Ecuador and the  23 Members of the Commission who fall under those criteria,  24 there must be--the criteria must be understood in line with  25 the presidents of the country.</p>	<p style="text-align: center;">101</p> <p>03:06:28 1 information it wishes to share in relation to its position  2 that CMM 01-2018 unjustifiably discriminates in form or in  3 fact against it?"  4 Not only in this case we must consider, as I said  5 earlier, how we apply (e) and (j) from Article 21, but also  6 we must see what is the scope of applying those numbers.  7 Is it just because we've allocated certain cubic meters and  8 I've sort of helped a developing nation, or does the normal  9 want to help in the development itself? The allocation not  10 only must be based on Criteria (e) and (j), but it must  11 also be well carried out.  12 Looking at the third question: "Why did Perú and  13 Korea get more-than-proportional increases in CMM 01-2017  14 and Ecuador did not?"  15 This is really interesting, because an  16 explanation was already made by the President of the  17 Commission. And as I always say, dear colleagues, all  18 those explanations are valid. It's fine that Perú has got  19 recognition based on the reasons that they submitted. It's  20 okay to recognize it for Korea, but why is it not valid for  21 Ecuador? Why the criteria that Ecuador submits are not  22 valid? We've objected to the Decision CMM 01-2018. It's  23 obvious. If we didn't submit it in 2017, it's because we  24 couldn't. We didn't have time. We had a problem  25 internally in our country and we didn't have the time, the</p>

<p style="text-align: center;">102</p> <p>03:09:03 1 capacity to be able to do it.  2 But as it's already been said by our colleagues,  3 it's interesting to see that the 2018 Decision is linked to  4 the 2017 Decision, as we couldn't oppose the 2017 Decision,  5 we have opposed to the Decision of 2018, and it's clearly  6 linked because it's the effect of the Decision taken in  7 2017.  8 So, why the claims from Perú are valid; why the  9 submissions of Korea are valid; why they need it for  10 development, which is in the Convention, is not valid for  11 Ecuador. Several times--and I may not be too clear or  12 maybe I haven't been heard properly--I would really like to  13 know where are the recommendations coming from the  14 Scientific Committee setting out that the difference, we  15 could call it or give it whatever name we want. Let's  16 forget about the working reserves. As I said this morning,  17 we do have it. We have it. There is not any decision  18 saying that it's within an Exclusive Economic Zone. So far  19 I've heard different interpretations but I haven't seen any  20 documents stating it.  21 Inasmuch as we don't have a scientific report  22 setting it out, based as I read it in English this morning,  23 the difference is within the field of the Commission,  24 unless there is a document showing the opposite contrary to  25 Chile, which does have it taken into account. That cannot</p>	<p style="text-align: center;">104</p> <p>03:13:45 1 Trachurus murphyi fishery within areas under national  2 jurisdiction? What are the limitations, legal, operational  3 or otherwise, to develop a high-seas fishery with existing  4 Ecuadorian pelagic fleet, rather than a dedicated vessel?"  5 Ecuador does not have currently a fleet  6 specifically assigned for the Jack mackerel. We have  7 limitations when it comes to distance in catches. Our  8 fisheries are in that situation.  9 Let's remember that this is a trans-zonal appeal  10 in waters also beyond their Exclusive Economic Zone.  11 That's why we request that based on the current conditions,  12 an amount is given to us, a quota, a sufficient quota so  13 that we can support these boats, these vessels. Later on  14 in the question, if I'm not mistaken, we will refer to the  15 reason why Ecuador does not transfer quota from other  16 countries.  17 We insist, as I said earlier, or really several  18 times in several meetings we've asked where is the transfer  19 quota going to go? To Ecuador? This is not a decision  20 that Ecuador takes. This is a decision made by those that  21 are in control of the quota.  22 So, Ecuador does not have its own fleet for this,  23 specialized fleet. Ecuador would like to have it and would  24 like to start operating in a trans-zonal fishery, and that  25 would be, at time, within Ecuadorian waters, but we mustn't</p>
<p style="text-align: center;">103</p> <p>03:11:15 1 be denied, but in this case it is not. It is so, dear  2 Members of the Panel, that not even Perú has accepted that  3 difference as if it was part of its stock because, in  4 theory, if Perú accepted it, they would be limiting the  5 stock which, according to Perú, is higher.  6 So, that's why we cannot say that we are opposing  7 or going against a sovereign right of a country. Ecuador  8 would never do that.  9 So, it's important, as it was pointed out by a  10 Member of the Panel--sorry, I cannot read the name from  11 here--he asked about the reason why we didn't go, but we  12 were there in 2018, and the annex to our objection--you can  13 find it--it's a document in which we substantiate and we  14 want to have the quota to 1,500 based on two elements. We  15 are not violating--we don't want to go over a threshold of  16 maximum sustainable achievement.  17 Based on the differences recommended by the  18 scientists of 58,000 as a hundred percent, Ecuador wants  19 5,123, and out of that is 8.76 percent, so we still have a  20 difference even in that case which would be sufficient  21 according to the recommendation of 53,295 tons. And so I  22 wonder where are the detrimental effects to the stock.  23 Where are we breaching the sovereignty of the States?  24 When it comes to Question Number 4, which reads:  25 "What are the nature and characteristics of the Ecuadorian</p>	<p style="text-align: center;">105</p> <p>03:16:16 1 forget that fish migrate, and it goes to other zones, so  2 that's why we need the proper tools in order to exploit  3 these fisheries.  4 Question Number 05: "What steps has Ecuador  5 taken to explore the possibility of acquiring a greater  6 catch entitlement on the high seas through transfers, as  7 suggested by other Commission Members?"  8 I've just explained it, we've looked for ways.  9 We haven't sat, just waiting. But as I said, there are  10 moments in which the markets dictate. But the developing  11 nations, we must start being in control of our quotas as a  12 development tool, and we cannot impose a third party to  13 transfer a quota to us. That's why developing these  14 fisheries must not be subject to transferring a quota which  15 we do not control, which is the third-party quota.  16 When it comes to Question 6, this is very  17 interesting, and I say it as a lawyer. The President, the  18 Chair of the Commission at the end of his intervention,  19 he's a very intelligent man, and he obviously had to refer  20 to Annex II, something we can find in Annex II of the  21 statute. Obviously, you're completely competent, and you  22 can change the situation.  23 We see in Question Number 6 the following: "Is  24 it the position of those Commission Members opposing  25 Ecuador's proposed alternative measures that is beyond the</p>

<p style="text-align: center;">106</p> <p>03:18:30 1 Panel's competence to modify in any way the allocation of  2 Commission Members as set forth in Tables 1 and 2 of CMM  3 01-2018?"  4 To give an answer to this, I'm going to  5 read--sorry, just one moment.  6 If I may, I would like to read directly from the  7 very Convention that deals with Annex II with this type of  8 revision group. Under the Header "Conclusions and  9 Recommendations," we can read the following:  10 "Number 10, Conclusions and Recommendations  11 coming from the Revision Panel will be treated as follows:  12 Conclusion regarding discrimination if the revision group  13 decides that the Decision taken discriminates against a  14 Member or Members from the Commission and that the  15 alternative measures would be equivalent to the Decision on  16 which the Objection was submitted, we will consider that  17 the alternative measures are equivalent and that they're  18 binding for that Member or Members from the Commission that  19 have been affected, linked it this Decision."  20 So, if Ecuador, the case of Ecuador, was  21 categorized like this, then the recommendation would be  22 binding, according to this framework.  23 There are other subclauses/literals which set out  24 other situations or circumstances on the powers that this  25 Revision Panel has.</p>	<p style="text-align: center;">108</p> <p>03:23:47 1 representative of the Republic of Ecuador for those very  2 comprehensive responses to the questions, and there are a  3 couple of--at least one follow-up question from the Panel.  4 Professor Molenaar.  5 PANEL MEMBER MOLENAAR: Thank you so much,  6 distinguished delegate from the Republic of Ecuador, for  7 your very extensive response to our questions.  8 One issue that still remains unclear to the  9 Members of the Panel is the so-called "reserve" or anything  10 how you would like it, so maybe I will do one last attempt  11 to maybe seek clarification on this.  12 So, CMM 01-2018 establishes a TAC for the high  13 seas and the maritime zones of Chile, and then there is  14 another TAC which applies to the stock throughout the  15 range. So, obviously, the difference between those two  16 TACs cannot be caught in the high seas or the maritime  17 zones of Chile, and so I would like to ask the delegation  18 of Ecuador where this difference should then be caught, if  19 it's not the areas under the national jurisdiction of Perú  20 and Ecuador?  21 MR. VILLAVICIENCIO NAVIA: In Ecuador, in order  22 to submit this alternative measure, which is about  23 replacing the lack of response to our requirement, where is  24 the resource going to come from? What measure, and how do  25 we think this problem could be resolved? Well, to this we</p>
<p style="text-align: center;">107</p> <p>03:21:31 1 The Chair said that we must be careful whenever  2 we understand legality and legitimacy. I think one is  3 linked to the other, because inasmuch as we comply with the  4 mandate of the Convention and the 1995 New York Agreement  5 and the UNCLOS, whenever we operate under the legal  6 framework, we're also being legitimate. If we want to  7 protect the resources and we comply with that, if the  8 condition is to recognize the rights of developing nations,  9 and we comply with it, if we need to respect the  10 sovereignty of the different Members and we comply with it,  11 why can we not be heard in an equitable manner?  12 This Revision Panel, as I said this morning,  13 faces a difficult task and not just because we will have to  14 submit a conclusion that will have to recognize quotas  15 without having a negative impact on any other Member, but  16 also because it brings--because in doing it, it must be  17 applied fairly and it must respect the norms, because not  18 applying all these would contravene or would go against the  19 text.  20 So, why when Ecuador submits it's not responded  21 properly? That's why, dear Members of the Revision Panel,  22 you are competent. The Commission has set it out already  23 in all the Articles of Annex II.  24 Thank you.  25 CHAIRMAN MACKAY: I thank the distinguished</p>	<p style="text-align: center;">109</p> <p>03:26:08 1 have read the scientific report dating back to 2017, in  2 which, when talking about that difference, they talk about  3 the whole area of the Commission. It doesn't specifically  4 refer to any Exclusive Economic Zone.  5 So, based on the scientific report, we are  6 talking about--that it doesn't have to fall exclusively  7 within the Exclusive Economic Zone, bearing in mind that if  8 we carry out fishing activities in any areas controlled by  9 the Commission, we must be reminded one thing: Is that the  10 Commission may not decide what is within the EEZ or not,  11 but something else is a total that we are fixing. But that  12 fixed total. We cannot assume that it's within a country.  13 So, inasmuch as the Scientific Committee does not  14 set out the opposite, that difference would fall within the  15 area of the Commission. That is our criteria.  16 CHAIRMAN MACKAY: I thank the distinguished  17 representative of Ecuador for that additional response to  18 the Panel.  19 And I would now like to move on to the next  20 delegation, which is the delegation of New Zealand, and  21 invite them to respond to any of the questions that they  22 wish to respond to.  23 RESPONSES TO THE REVIEW PANEL QUESTIONS FROM THE  24 REPRESENTATIVE OF NEW ZEALAND  25 MR. ROUGHTON: Thank you, Chair. Good afternoon,</p>

<p style="text-align: center;">110</p> <p>03:28:17 1 distinguished Panel Members and colleagues.  2 I will seek to answer only Question 6. And to  3 that end, the Panel will be aware that the Convention,  4 through Annex II, gives it the ability to substitute the  5 decision of the Commission with an alternative equivalent  6 measure which will be binding on the objecting Member.  7 This ability is present following a finding of  8 discrimination, in which case the Panel may also amend the  9 proposed alternative measure to make it equivalent; or, if  10 it is found that the Objection is not justified but that  11 the alternative measure proposed by the objecting Member is  12 equivalent in effect.  13 The Convention does not envisage that the Panel  14 could amend the proposed alternative measure to make it  15 equivalent in the case of a finding of non-justification of  16 Objection.  17 Therefore, it would be only within the Panel's  18 competence to amend the allocations in the tables in CMM  19 01-2018 if to do so would result in an equivalent effect,  20 and only if a finding of discrimination were found, or if  21 Ecuador's proposed alternative was considered equivalent in  22 effect without modification.  23 For the reasons stated earlier, New Zealand does  24 not consider that an alternative measure can be considered  25 equivalent if it increases the Total Allowable Catch,</p>	<p style="text-align: center;">112</p> <p>03:31:19 1 New Zealand would, therefore, answer this  2 question in the affirmative due to the nature of the  3 measure being objected to. This is not to suggest,  4 however, any limitation on the ability of the Panel to make  5 recommendations not falling within the provisions relating  6 to the substitution of a Decision for an alternative  7 measure.  8 Thank you.  9 CHAIRMAN MACKAY: I thank the distinguished  10 representative of New Zealand for that response to the  11 question, Question Number 6.  12 There are no follow-up questions from Members of  13 the Panel, and so I would move on to the next delegation on  14 my list, the distinguished representatives of the Republic  15 of Chile to whom I give the floor.  16 RESPONSES TO THE REVIEW PANEL QUESTIONS FROM THE  17 REPRESENTATIVE OF THE REPUBLIC OF CHILE  18 MR. RIQUELME: Thank you, Mr. President.  19 I will try to reply to Question Number 6 and  20 present Chile's position in that respect.  21 In the case of Chile, in particular, considering  22 our particular situation, having based or having offered  23 our Exclusive Economic Zone to be subject to the CMM, and  24 assuming larger obligations in waters that are under our  25 national jurisdiction, we consider that an additional</p>
<p style="text-align: center;">111</p> <p>03:29:48 1 including by reducing the set-aside tonnage.  2 The only other way that the allocations could be  3 changed without affecting the Total Allowable Catch would  4 be to lower the allocation, either in tons or in percentage  5 terms, of other Members or CNCPs.  6 As New Zealand has also submitted, an alternative  7 measure cannot be considered equivalent in effect if it  8 would adversely affect the rights and interests of the  9 other Members. In relation to this, New Zealand would also  10 observe that substitution of a Commission Decision for an  11 alternative measure is framed in the Convention in Annex II  12 as being binding only on the objecting Member, not the  13 other Members or CNCPs, who would remain bound by the  14 original Decision. This would result if the allocations  15 were adjusted in a situation in which the Total Allowable  16 Catch would, by default, be increased.  17 This illustrates further, I think, the point made  18 by the Chairperson of the Commission this morning, and  19 which New Zealand has also made in its written Memorandum,  20 that the scope for a Review Panel to impose alternative  21 measures is inherently more limited in the case of an  22 allocation decision than in, for example, a decision  23 relating to gear to be used in fishing or, as the Chairman  24 said this morning, in the case of an Observer Programme, et  25 cetera.</p>	<p style="text-align: center;">113</p> <p>03:33:12 1 limitation not accepted by our country expressly would  2 imply an unacceptable modification of the circumstances  3 that we were presented when we accepted the Agreement.  4 This restriction, in our opinion, is not  5 acceptable in terms of the Convention, considering the  6 elements that Chile had to consider when entering into  7 agreement of this Convention.  8 Chile does not distinguish the captures carried  9 out in our jurisdiction from those made in high seas;  10 therefore, any restriction would affect our sovereign  11 rights by giving our express consent, which we consider we  12 would have to give the express consent. Therefore, we  13 consider that some countries need support to develop their  14 fishery.  15 And, therefore, we consider that the proposal of  16 "NRT" (phonetic) could be a viable alternative that  17 expresses that those countries that transfer their quota,  18 or that do not catch their quota, lose their allocation in  19 the following years in favor of those countries that do  20 have intention and actually develop this fishery.  21 Thank you.  22 CHAIRMAN MACKAY: I thank the distinguished  23 representative from Chile for those comments in response to  24 the questions. And there are no follow-up questions from  25 the Panel with regard to those responses. So, I thank you</p>

<p style="text-align: center;">114</p> <p>03:35:20 1 very much for them.  2 I would now turn to the distinguished  3 representative of the Republic of Perú and invite him to  4 address those of the questions that he wishes to speak to.  5       RESPONSES TO THE REVIEW PANEL QUESTIONS FROM THE  6       REPRESENTATIVE OF THE REPUBLIC OF PERÚ  7       MR. OTERO: Thank you very much, Mr. President.  8       Very briefly, I would like to answer  9 Question Number 3.  10       The comments of the President of the Commission  11 are shared by Perú, in terms of the background that has  12 been presented. Moreover, considering the CMM 01-2013,  13 Perú received a quota of around 20,000 tons, considering  14 that our captures reached 40,000 tons in 2010. But then,  15 when the changes were introduced, our allocation was forced  16 to be reduced to 18,000.  17       Then, in 2014, in CMM 01-2014, our allocation was  18 reduced to around 4,000--all of that bearing in mind that  19 this non-assigned quota, which led to a weakened position,  20 went in the allocation in 2017.  21       So, having said this, and in relation to the  22 question, I would like to add that we must bear in mind  23 that the SPRFMO does not have the competence in the  24 Peruvian waters nor in those of countries that have not  25 accepted the RFMO to determine their catch quota.</p>	<p style="text-align: center;">116</p> <p>03:39:54 1 specific, and say in that the total range in the Southeast  2 Pacific is not talking about to any internal agua belongs  3 to the Exclusive Economic Zone of the Member. Those are  4 the specific recommendations in this technical science  5 document.  6       Thank you.  7       CHAIRMAN MACKAY: Thank you very much.  8       Distinguished colleagues, if there are any  9 further comments that anyone wish to make, I saw the  10 distinguished Chair of the Commission indicating, I think.  11       I give him the floor.  12       MR. URRUTIA: Thank you, Mr. Chair. Just a quick  13 question: Are we going to have an opportunity to make  14 closing remarks at some point?  15       CHAIRMAN MACKAY: Thank you very much.  16       Yes, I was about to move on and address the next  17 stage of our work. What I was proposing to do now, as we  18 resumed somewhat earlier after lunch than had been provided  19 for in the Programme, we'll break now for afternoon tea.  20 And when we resume, we will address any additional  21 questions that there may be from Members of the Panel, if  22 they wish to raise any additional questions orally.  23       Should that not be the case, we would then move  24 to concluding comments, concluding remarks, and they would  25 follow the order that I'd indicated earlier, which would</p>
<p style="text-align: center;">115</p> <p>03:37:52 1 I would like to hold my right to add any comments  2 to possible questions while I wait for further answers and  3 confirmations from my boss.  4       Thank you.  5       CHAIRMAN MACKAY: Thank you. I thank the  6 distinguished representative of Perú for those responses.  7       Can I ask if there are any additional comments  8 that colleagues wish it make with regard to the questions?  9 If not, I give the floor to the distinguished  10 representative of Ecuador.  11       MR. VILLAVICIENCIO NAVIA: Thank you,  12 Mr. President.  13       I just wanted to answer in more detail to the  14 question of Mr. Molenaar, and this, based on what is  15 written in the scientific report.  16       FURTHER RESPONSES TO THE REVIEW PANEL QUESTIONS FROM  17       THE REPRESENTATIVE OF THE REPUBLIC OF ECUADOR  18       MR. VILLAVICIENCIO NAVIA: I read it this morning  19 but I will read it out again. You can find it in  20 Numeral 52.  21       And the pertinent parts say: "The Scientific  22 Committee adopt a precautionary approach and advises to  23 mainly 2018 catches for the entire Jack mackerel range in  24 the Southeast Pacific at or below 57,600,000 tons."  25       How you can notice the recommendation is so</p>	<p style="text-align: center;">117</p> <p>03:41:42 1 begin with the Chairman of the Commission, then New  2 Zealand, Chile, Perú, and Ecuador. And I would then have  3 some closing comments to make.  4       So, on that basis, we will now break for 15  5 minutes and will resume at five minutes to 4:00.  6       The Hearing is suspended.  7       (Off the record.)  8       CHAIRMAN MACKAY: Good afternoon, again,  9 colleagues.  10       So, we'll now move to concluding remarks by  11 various delegations, and I'd begin by inviting the  12 Chairperson of the Commission to make--  13       MR. URRUTIA: Two minutes?  14       CHAIRMAN MACKAY: Two minutes, okay.  15       (Pause.)  16       CHAIRMAN MACKAY: And take your time,  17 Mr. Urrutia. We have some time up our sleeves, so don't  18 feel rushed.  19       MR. URRUTIA: Thank you, Mr. Chairman. May I ask  20 for your indulgence and give me just three or four minutes?  21 Thank you.  22       (Pause.)  23       CHAIRMAN MACKAY: If it's suited you better,  24 Mr. Urrutia, we could start with another delegation, if  25 you'd prefer?</p>

<p style="text-align: center;">118</p> <p>04:14:31 1 MR. URRUTIA: I'm ready.  2 CHAIRMAN MACKAY: You're ready, okay.  3 CONCLUDING REMARKS BY THE REPRESENTATIVE OF THE SPRFMO  4 COMMISSION  5 MR. URRUTIA: Thank you, Mr. Chair, for your  6 patience, and for the distinguished Panel as well.  7 I will be brief in my final remarks; however, I  8 was doubtful over the last break whether I should address  9 still one point that I think is still outstanding from our  10 previous discussions.  11 After listening again to Ecuador in its last  12 intervention occur and when they can be caught, actually.  13 And I'm sure that the Panel understands very well what the  14 picture is and what the reality is, but I couldn't stop  15 thinking that I would need to intervene again on this point  16 not for you, perhaps, not for the delegations here today,  17 but also for those who are not here today and they will  18 read the Hearings and Transcriptions in the future.  19 So, with your indulgence, may I take just two  20 minutes--two minutes--to again try to make this point to  21 Ecuador that I'm sure they will find a satisfactory  22 explanation, I hope.  23 The Jack Mackerel Measure adopted by the South  24 Pacific RFMO Commission applies to the Convention area.  25 The high seas as defined Article 5; it's clear in the area</p>	<p style="text-align: center;">120</p> <p>04:17:59 1 Perú and that's the reason why Perú has treated this number  2 as an extremely important number within the negotiation.  3 So I hope this explanation is reasonably clear,  4 but I hope also that the transcription are clearly as well  5 for those Members who are not here today.  6 Now, Mr. President, and again I appreciate your  7 patience, and I will move to my final and closing remark as  8 follows:  9 As I have said here today many times, I'm  10 confident that the decision we adopted in 2018 and also in  11 2017 is not discriminatory, and is not against the  12 Convention or any other relevant international instrument.  13 I am also confident that we will, as Commission,  14 sort out the differences we have in the mid-term with  15 Ecuador by negotiation. I do believe that we can  16 accommodate Ecuador, but Ecuador needs to bring more to the  17 table.  18 There are still, I feel, I believe, some  19 outstanding questions that need to be addressed. For  20 example, what if the Commission decides tomorrow to  21 allocate Ecuador 6,000 tons or whatever the number is? Are  22 we clear that the 6,000 tons are enough for Ecuador to  23 develop its fishery? What if Ecuador is not able to  24 develop a proper fishery in the certain time? What are we  25 going to do with those tons? Are they going to come back</p>
<p style="text-align: center;">119</p> <p>04:16:08 1 of the Convention as it is defined there. This TAC, Total  2 Allowable Catch, also applies to the EEZ for the reasons  3 that we all know. I don't need to repeat that. But in  4 addition to this and according to Article 20, the  5 Commission agrees on a total catch limit for the whole  6 range of the struggling stock called Jack mackerel.  7 The "whole range" means the high seas and  8 something else, but pure logic in the Law of the Sea, if it  9 is not the high seas, it means some area under national  10 jurisdiction. This means the EEZ of coastal States.  11 So, the mathematic difference of subtracting the  12 TAC for the area of the Convention to the total catch for  13 the whole area of the stock is 58,000 tons roughly. This  14 figure cannot refer to the Convention Area, not to Chile's  15 EEZ, either. The figure must refer then to all areas  16 outside the measure, so there's no need for the scientific  17 Committee to say that expressly. This is the way we have  18 understood this Measure for years.  19 This might mean, yes, the EEZs of Ecuador, Perú,  20 and perhaps other States, other coastal States if the Jack  21 mackerel in the future for climate change or whatever  22 reasons moves to different areas, New Zealand, Australia,  23 Colombia, perhaps, we don't know. But so far the stock  24 straddles basically the area under the jurisdiction of Perú  25 and Ecuador, so that's the reason why it's so important for</p>	<p style="text-align: center;">121</p> <p>04:19:42 1 to the Commission? Are they going to come back to the  2 allocated figure? Could they be distributed in the future  3 again? What happened again if Ecuador does not or is not  4 able to develop a Jack mackerel fishery on the high seas?  5 So, the point I'm trying to make in this final  6 remark, Mr. Chair and distinguished Panel, is that the  7 terms of that future negotiation can be directed and guided  8 by you, and I think that is exactly what the Commission is  9 looking forward to receive from you.  10 Just to conclude, Mr. Chair and distinguished  11 Panel Members, and distinguished colleagues here today, let  12 me finish by expressing my appreciation to you, Mr. Chair,  13 to Ms. Engler and Professor Molenaar, for the outstanding  14 job that you have done so far, and to encourage you once  15 again to continue your efforts until we have your Findings  16 and Recommendations to help and guide this Commission.  17 Thank you very much.  18 CHAIRMAN MACKAY: Thank you very much. I think  19 the distinguished Chair of the Commission for those  20 comments.  21 I now move to the next delegation on my list, New  22 Zealand.  23 CONCLUDING REMARKS BY THE REPRESENTATIVE OF NEW ZEALAND  24 MR. ROUGHTON: Thank you, Chair. I hope that it  25 is evident from New Zealand's participation in this</p>



<p style="text-align: center;">126</p> <p>04:28:01 1           And therefore, we consider that having taken into 2 consideration the different criterias, the Republic of 3 Ecuador was not unjustifiedly discriminated, and that the 4 criteria of historical capture was not the only criteria 5 taken into consideration. 6           Therefore, we consider that there is currently a 7 mechanism that was adopted by the Commission and recognized 8 by the Republic of Ecuador that can be used to develop the 9 Jack mackerel catch in the area of application of the 10 Convention, and that is the measure of transfer of the 11 quota, which is considered in the CMM 01-2018 and previous 12 versions, and this is a mechanism that Ecuador has actually 13 used themselves. 14           And therefore, Chile would like to highlight 15 again the suggestion from Vanuatu which once adopted by the 16 Commission would allow new players to enter in the fishery 17 of Jack mackerel, and this would also allow other Members 18 to have lower allocations to increase their allocations. 19 Our commitment is to continue working together with the 20 different Members of the Commission, and of course together 21 with our brothers of the Republic of Ecuador, in order to 22 adopt the mentioned agreement in our next meeting, and we 23 would like to thank you for having giving us the 24 opportunity to speak before this Panel. 25           Thank you very much.</p>	<p style="text-align: center;">128</p> <p>04:31:10 1   and consensus where the Republic of Ecuador participated 2 without having submitted any objection. 3           This negotiation started in 2013, the 1st Meeting 4 was held then, and they finalized in 2017, when the 5 Commission introduced the CMM Measure 01-2017 to set up a 6 mid-term mechanism to regulate the participation of the 7 Members and in the fishing of Jack mackerel exclusively in 8 the area where the Convention is applicable outside of the 9 jurisdictional waters of any Member. 10           The alternative to have this submitted by Ecuador 11 is to increase its number of catches unilaterally for the 12 next year to reach 6,500 tons of Jack mackerel, more than 13 70 percent. To achieve that, the quotas would have to be 14 reduced within the other Members, and that would be 15 discriminatory for the other parts. CMM 01-2018 hasn't 16 changed the percentages of catches of Jack mackerel 17 according to the CMM 01-2017, respecting the Agreements 18 that were adopted at the 5th Meeting held in January 2017. 19           And bearing in mind also the negotiations which 20 the SPRFMO Parties held in 2013, so Ecuador didn't object 21 to this. 22           We understand the Ecuadorian proposal to result 23 is--to expand to zones under national jurisdiction, and 24 Perú is completely against this proposal. Perú cannot 25 recognize any measure which would affect the sovereignty in</p>
<p style="text-align: center;">127</p> <p>04:29:34 1           CHAIRMAN MACKAY: Thank you very much. I thank 2 the distinguished representative of Chile for those 3 concluding remarks. 4           And I now turn to the distinguished 5 representative of Perú. 6 CONCLUDING REMARKS BY THE REPRESENTATIVE OF THE REPUBLIC OF 7 PERÚ 8           MR. OTERO: Good afternoon. I'm grateful to have 9 the word, Mr. President. 10           The Republic of Perú again recognizes the 11 importance of the conservation measures which were adopted 12 by the procedure of adopting measures, ensuring 13 sustainability in the long run of fishing stocks and 14 ensuring responsible exploitation to prevent overfishing 15 and the excess--the overcapacity. 16           At the same time, Perú does not accept the claim 17 submitted by the Republic of Ecuador because it considers 18 such claim as a discriminatory against Members of the 19 Convention because it was adopted in line with the making 20 decisions procedure number 16 of the Convention for which 21 three-fourths were needed, three-fourths Members of the 22 Commission with a certain number of votes. 23           We would like to point out that the percentages 24 to set out the thresholds on limits of catches are the 25 process--are the result of a long process of negotiation</p>	<p style="text-align: center;">129</p> <p>04:33:01 1   its jurisdictional waters because the measures by the 2 Commission are outside of our jurisdictional waters. Perú 3 States that exercising its sovereignty, we will continue 4 ensuring the Measures, existing measures, are complied with 5 based on the latest information, including the results of 6 the research carried out by their own institutions, the 7 Scientific Committee results whenever it applies, and any 8 other scientific important information. 9           Also, Ecuador has said that they would like to 10 develop Jack mackerel fisheries, but that wouldn't be 11 needed because they have transferred the quota allocated in 12 the 2016-17, also the quota assigned allocated in CMM 13 01-2018. They want to expand the quota. Ecuador has not 14 proved before this Panel that it wants to develop a 15 national Jack mackerel fishery, and it can be done with the 16 quotas that they have. We don't think that--we don't agree 17 with the surplus reserve. It's not in the Agreement 1995 18 or any of the international instruments that have been 19 pointed out by Ecuador in order to support the argument. 20           So, the claim, Ecuadorian claim, could set a 21 precedent, and in the future, any article of the Commission 22 could be questioned by the Members. We complied with the 23 CMM 01-2018, especially with the limits of catches and 24 thresholds of participation allocated to the different 25 Parties. Along these lines, Perú considers non-violable a</p>

<p style="text-align: center;">130</p> <p>04:34:57 1 claim by Ecuador which intends to modify the percentages to  2 allocate thresholds and participations in the Jack mackerel  3 fisheries set out by CMM 01-2017 until 2021.  4 Thank you very much, Mr. President.  5 CHAIRMAN MACKAY: I thank the distinguished  6 representative of Perú for those concluding remarks, and I  7 now invite the distinguished representative of Ecuador to  8 address us with his concluding remarks.  9 CONCLUDING REMARKS BY THE REPRESENTATIVE OF THE REPUBLIC OF  10 ECUADOR  11 MR. VILLAVICIENCIO NAVIA: Thank you, Chair.  12 This morning, when I started my speech, I said  13 that when human beings develop rules, they do it in order  14 to ensure that resources are preserved, and in our case  15 we're talking about live resource.  16 I also said that there is a reason for it. There  17 is a clear justification. The reason is that we need to  18 ensure sustainability for the very human beings, and part  19 of that sustainability is linked to development. That's  20 why this Convention foresees those principles. If we  21 aren't able to ensure the survival of the human beings and  22 the development of nations, the norms that we draft are not  23 justified.  24 A lot of times, I ask myself if I'm being clear  25 in what I say. Sometimes I rather speak in Spanish because</p>	<p style="text-align: center;">132</p> <p>04:39:06 1 that principle because that is the very, very principle.  2 It's equity before all; it's justice.  3 As I said this morning, I am certain that this  4 Commission and our brothers here in our organization, are  5 acting in good faith as we can see in the Convention.  6 Nevertheless, the way in which it's applied is false. It's  7 wrong. It's not about correcting this discrimination  8 against Ecuador. It's also about applying the Convention  9 as it should be applied. I've heard different things such  10 as we need to recognize these rules because if we breach  11 the rules, that would set a precedent. That's what Ecuador  12 wants. We want the rules to be recognized. We want  13 equity. We want justice. We also want to be heard in an  14 equitable, fair way, as I said when I talked about the case  15 of Perú. That's our intention.  16 And why are we here? Because we haven't been  17 able to resolve this matter within the Commission. We are  18 facing this entity because this is foreseen by the  19 Commission because this is the only organ that can correct  20 the process, at least now.  21 If tomorrow Ecuador receives a vessel and is  22 happy with it, I'm not sure about that. It all depends on  23 how much can those fisheries grow. That doesn't mean that  24 any Member should have its right withdrawn, that right to  25 participate.</p>
<p style="text-align: center;">131</p> <p>04:37:11 1 I speak it better than English, but occasionally I ask  2 myself if I've made myself understood, if I have been  3 clear. We have been extremely clear, and nevertheless I  4 see that my colleagues repeat over and over again the same  5 arguments, so I wonder if I have been clear or not.  6 When we say that our claim is based on respecting  7 the stocks or the intention of sustainability, it's not  8 something that just came up that Ecuador decided to do it  9 just for the sake of doing it. There is a scientific  10 report behind. All the legal entities that have been  11 called to give an opinion, they have done it by using a  12 scientific report, by using a scientific report. I have  13 read several times the scientific report, and it's not  14 Ecuador which has decided where are the resources, where  15 exactly are these resources.  16 No, they're scientists. I've asked once and over  17 again whether there is any document pointing out the  18 opposite, and none of the delegations has given any  19 supporting evidence with documents.  20 This morning, I quoted--I gave an example, and I  21 like to do that in this type of forum, to make my  22 explanation simpler, and I said that, in order to ensure  23 development with children, we don't need to give them a  24 sweet. We need to give them education, support,  25 assistance. So, if we want to develop, we need to ensure</p>	<p style="text-align: center;">133</p> <p>04:41:16 1 We have an expression which is, I touch wood, if  2 when I leave this Tribunal, I'm not sure if I will be run  3 over by a car and die. I'm not sure. But I know that at  4 this very moment I need to be responsible and carry out my  5 work.  6 Today, we can only do our best so that our  7 actions would have a positive impact in the future. This  8 is the moment to correct what wasn't done when it should  9 have been done.  10 We have spoken about the alternative measure. I  11 will be very clear, dear colleagues: Never, Ecuador, we  12 will have a negative effect on the constitutional rights of  13 the sovereignty of any country. Never Ecuador will attempt  14 to cause damage to friend nations. It's not this  15 delegation from Ecuador that has come here about  16 allocations, "Where is the stock?"  17 No--it's the Scientific Committee that has defied  18 the whole region. We cannot talk on a hypothetical basis  19 because then we could be talking not about 575,000 tons.  20 We could speculate and say that if the Committee read the  21 Scientific Committee's report, we would be talking about  22 1 million tons or 50,000. We cannot speculate in that way.  23 As my mathematics teacher: two plus two is always four,  24 never five or three.  25 So, here we are working on scientific grounds.</p>

<p style="text-align: center;">134</p> <p>04:43:19 1 It's not up to me to guess that a stock is within an area  2 of the EEZ, a certain territory within the EEZ. I must act  3 based on the scientific information which I have.  4 This said, the alternative measure which has been  5 proposed by Ecuador is an equivalent. We are not asking  6 here in this Revision Panel to give a recommendation so  7 that we would have to redistribute what we've already got.  8 No. That's not our intention.  9 What we would like is that, based on the  10 scientific reports, we would set out a differential which  11 would not have an impact on the resources. It wouldn't  12 have a negative impact on countries. We wouldn't meddle  13 ourselves into the sovereignty of any country. We want  14 that amount to be the right amount based on the norms for  15 our fisheries to be developed.  16 And this also means the development of our  17 nation. By that, we would help a country to achieve  18 development.  19 Finally, I would like to say again here before  20 this Revision Panel that you have the competencies. You  21 can suggest and come to the conclusion that this  22 Commission, in good faith, should fairly and correctly  23 treat according to Article 21: Act ensuring sustainability  24 and also the development of those Members which need it.  25 Before I conclude, I'd like to make use of this</p>	<p style="text-align: center;">136</p> <p>04:47:58 1 So, I invite again, you all that, regardless of  2 what the Decision of this Revision Panel is, our  3 Alternative Measure, since it's already proven, is  4 welcomed.  5 And this discrimination, which is a blatant  6 truth, why are we claiming? Do we have overcapacity? Are  7 we carrying out an activity? Why do we have to transfer to  8 another country our quota? We simply transfer it because  9 we haven't got the ability to exploit it. It's proven, by  10 applying the norms, that a differential, different  11 treatment, different treatment as the one given to Ecuador  12 is clear discrimination.  13 So, I ask, before this Revision Panel, to  14 understand this proposal submitted by Ecuador within the  15 framework, because that would change things for the good of  16 this Commission.  17 And I would like to finish by saying that Ecuador  18 does not intend to attack anybody. We'd like, what we are  19 searching for is truth or, it's said, justice, the respect  20 of rights, and we'd like to continue participating as we do  21 in other SPRFMOs as an active Member of all the management  22 measures.  23 Finally, I'm grateful to you, first of all, to  24 the Revision Panel here present, based on the excellent  25 work carried out; Martin Doe, who has helped us a lot, and</p>
<p style="text-align: center;">135</p> <p>04:45:37 1 occasion to invite our friends, our colleagues to consider  2 the respect of the current norms, to think about what is  3 equitable, what is fair. By being fair, things are given  4 to people in line with what they need. I'd like this  5 Commission to think about better guidelines, better  6 treatment, so that we have tools that ensure an equilibrium  7 among all the different Members of the Commission who are  8 part and also the ones that cooperate.  9 Before I conclude my remarks, I'd like to say,  10 well, that I heard people saying that the recommendation  11 that could be given by this Revision Panel, anything that  12 could alter the decision taken by CMM 01-2018 could not be  13 welcome.  14 Dear colleagues, this is something that should be  15 dealt with at the Commission. This Tribunal has got a  16 mandate--sorry, this Revision Panel has got a mandate, and  17 that can be read in Annex II of the Convention. We should  18 set a precedent, a good precedent, on what is a good,  19 equitable and fair management, so that other Members do not  20 have to come to a tribunal or wouldn't have to go before a  21 Revision Panel.  22 Do you believe that this problem had been  23 properly dealt with here? Certainly not. If we comply  24 with the norms, the concept, the intention, then it  25 wouldn't be needed to appeal to these entities.</p>	<p style="text-align: center;">137</p> <p>04:50:09 1 his colleague; and especially all of you because, in the  2 end of the day, in families, we may have disputes, but in  3 the end of the day, they're family. And that's something  4 that must be present, must be there. We must correct  5 certain things, but we will continue walking.  6 Again, thank you very much, Members of the  7 Revision Panel. Thank you to all of you, dear colleagues,  8 for all your efforts and for being here with us today at  9 this meeting. Thank you.  10 CHAIRMAN MACKAY: Thank you very much, indeed. I  11 thank the distinguished representative of the Republic of  12 Ecuador for those concluding remarks.  13 CLOSING OF THE HEARING BY THE CHAIRMAN OF THE REVIEW PANEL  14 CHAIRMAN MACKAY: Distinguished colleagues, that,  15 then, brings us to the conclusion of today's proceedings.  16 And I would like to echo the sentiments expressed by the  17 distinguished representative of Ecuador in thanking all  18 colleagues here in the room for their participation in the  19 process, in their active and wholehearted participation in  20 the process, in both the prepared presentations that they  21 have presented, but also for their responses to the written  22 questions and also the oral questions that were addressed  23 to them by the Panel.  24 It's been an extremely useful day for the Panel  25 to hear these presentations, and I'd like to express</p>

04:51:58 1 appreciation to colleagues who are taking the trouble to  
2 come here today to ensure that we are fully informed with  
3 regard to the issues.

4           The written materials were also extremely useful,  
5 and we will, of course, now move to reflect upon those and  
6 on the oral presentations in our deliberations so that we  
7 can conclude our deliberations and issue some findings, our  
8 findings, within the time limit that is prescribed.

9           I would like to issue some final words of  
10 appreciation, of course, to our Interpreters, to the Court  
11 Reporter, and also, last but not least at all, to the  
12 Permanent Court of Arbitration and to its staff for their  
13 invaluable assistance in the process, and certainly, we  
14 have been extraordinarily well served by our colleagues,  
15 the staff of the Permanent Court of arbitration.

16           Thank you once again, and I wish you a very safe  
17 journey home. And my colleagues, I think, unless they have  
18 further comments to make at this stage, we will now  
19 conclude the proceedings formally, and thank you once  
20 again.

21           The proceedings are concluded.

22           (Whereupon, at 4:53 p.m., the Hearing was  
23 concluded.)

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#### CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

  
DAVID A. KASDAN