



**INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
TRIBUNAL INTERNATIONAL DU DROIT DE LA MER**

Press Release

(Issued by the Registry)

**DISPUTE CONCERNING SOUTHERN BLUEFIN TUNA
AUSTRALIA AND NEW ZEALAND VERSUS JAPAN
- PROVISIONAL MEASURES REQUESTED -**

HAMBURG, 30 July. Australia and New Zealand today filed with the Registrar of the Tribunal requests for the prescription of provisional measures (interim injunction) in a case against Japan. The dispute between Australia and New Zealand on one side and Japan on the other concerns the conservation of the population of Southern Bluefin Tuna. The species is, according to the applicants, significantly overfished and is below commonly accepted thresholds for biologically safe parental biomass.

Australia and New Zealand claim that Japan's actions amount to a failure to conserve and to cooperate in the conservation of the Southern Bluefin Tuna stock. The applicants claim that Japan, by initiating an unilateral experimental fishing programme for Southern Bluefin Tuna in 1998 and 1999, threaten serious or irreversible damage to the Southern Bluefin Tuna population. The request is for an interim injunction against Japan to immediately cease the unilateral experimental fishing of the Southern Bluefin Tuna, which commenced at the beginning of June 1999.

According to the requests, Southern Bluefin Tuna (*Thunnus maccoyii*) is a highly migratory fish species, which traverses the exclusive economic zone and territorial sea of several countries and the high seas, including the Southern Ocean.

In the absence of agreement between the parties for the settlement of the merits (substance) of the dispute between them, the Governments of Australia and New Zealand decided to submit their dispute with Japan to an arbitration procedure under Annex VII of the United Nations Convention on the Law of the Sea. Pending the constitution of such an arbitral tribunal, the Governments of Australia and New Zealand have requested the International Tribunal for the Law of the Sea to prescribe provisional measures, pursuant to paragraph 5 of Article 290 of the Convention.

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**Press Release ITLOS/Press 24
30 July 1999**

Japan has been notified by the Registrar of the filing of the requests. The President of the Tribunal will consult with the parties concerning the procedure for dealing with the requests. Further details will be announced later.

The United Nations Convention on the Law of the Sea, to which Australia, Japan and New Zealand are all parties, requires States to settle their disputes arising under the Convention by peaceful means. For this purpose, they can choose the International Tribunal for the Law of the Sea, the International Court of Justice, an arbitral tribunal or a special arbitral tribunal. This choice may be exercised in a declaration when signing, ratifying or acceding to the Convention or at any time thereafter, even on an *ad hoc* basis for a particular case.

The requested provisional measures

Australia and New Zealand request the Tribunal to prescribe that:

- Japan immediately cease its unilateral experimental fishing for the Southern Bluefin Tuna;
- Japan restrict its catch to its national quatum as last agreed, reduced by the amount taken in the course of its unilateral experimental fishing;
- the parties act consistently with the precautionary principle (caution and vigilance) in fishing for the Southern Bluefin Tuna pending final settlement of the dispute;
- the parties ensure that no action is taken to aggravate, extend or render more difficult the solution of the dispute; and
- the parties ensure that no action is taken which might prejudice their respective rights pending final decision of the case.

History of the dispute as presented in the requests

Significant commercial harvesting of the Southern Bluefin Tuna began in the early 1950s. Australia, Japan and New Zealand agreed to a global total allowable catch (TAC) in 1985. Despite the catch limits, the parental stock continued to decline.

Following the ratification of the 1993 Convention for the Conservation of Southern Bluefin Tuna, to which Australia, Japan and New Zealand are all parties, the Commission for the Conservation of Southern Bluefin Tuna was established. The Commission, of which all three parties are members, decides, with the assistance of a Scientific Committee, a TAC and its distribution among the member States.

Starting in 1995, Japan has proposed an increase in the TAC, but no agreement was reached. The Commission since 1998 has agreed no change of the TAC. In 1998, Japan undertook what it describes as experimental fishing. In their requests, Australia and New

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Zealand claim this to be essentially for Japanese commercial purposes, with minimal scientific gain, thereby increasing the risk to the Southern Bluefin Tuna stock.

Australia and New Zealand formally notified Japan of the existence of a dispute by Diplomatic Note delivered on 31 August 1998, which was followed by negotiations. Japan proposed to have the dispute settled by mediation, however Japan could not agree on the conditions placed by Australia and New Zealand on submitting the dispute to mediation. Subsequently, Japan notified the applicants that it was ready to have the dispute resolved by arbitration pursuant to the 1993 Convention. The applicants did not accept the Japanese proposal and instead commenced compulsory dispute resolution proceedings under Section 2 of Part XV of the United Nations Convention on the Law of the Sea.

Provisional Measures

Provisional measures are a kind of interim injunction; an order prohibiting certain behaviour pending final decision on the merits (substance) of a case. The Tribunal may prescribe provisional measures when it "considers appropriate under the circumstances to preserve the respective rights of the parties to the dispute or to prevent serious harm to the marine environment" (Article 290 of the United Nations Convention on the Law of the Sea). The Convention specifies that the International Tribunal for the Law of the Sea may prescribe provisional measures, if it considers that certain requirements have been met, namely that *prima facie* the arbitral tribunal which is to be constituted would have jurisdiction and the urgency of the situation so requires.

The Press Releases of the Tribunal, documents and other information are available on the United Nations website: <http://www.un.org/Depts/los/> and from the Registry of the Tribunal, Wexstrasse 4, 20355 Hamburg, Germany, Tel: (49) (40) 35607-227/228, Fax: (49) (40) 35607-245/275 or United Nations DC-1, suite 1140, New York, NY 10017, Tel: (1) (212) 963-6480, Fax: (1) (212) 963-0908, E-mail: itlos@itlos.hamburg.de

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