



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

# **Press Release**

(Issued by the Registry)

## **JAPAN FILES RESPONSE AND COUNTER REQUEST FOR PROVISIONAL MEASURES IN CASE CONCERNING CONSERVATION OF TUNA**

HAMBURG, 9 August. Japan, today, filed a response to the requests for provisional measures filed by Australia and New Zealand on 30 July 1999. In its response Japan submits that the Tribunal should deny the provisional measures requested by Australia and New Zealand. The response also contains a counter-request by Japan for provisional measures.

Japan challenges the jurisdiction of the International Tribunal for the Law of the Sea to prescribe the provisional remedies requested by Australia and New Zealand. Provisional measures can only be ordered if the arbitral tribunal under Annex VII to the Convention on the Law of the Sea (see below) to which the main case would be submitted would itself have jurisdiction. Japan argues that such an arbitral tribunal would not have jurisdiction and consequently the International Tribunal for the Law of the Sea would lack jurisdiction to order provisional measures pending the setting-up of the arbitral tribunal. Japan contends that the dispute with Australia and New Zealand arises from the 1993 Convention for the Conservation of Southern Bluefin Tuna concluded between the three States and accordingly the dispute should be settled by reference to the procedure provided for in that Convention.

Japan also maintains that, even if the Tribunal has jurisdiction over the case, the prescription of provisional measures is not appropriate in this case because there is no risk of irreparable damage to the Southern Bluefin Tuna stock.

Japan states that to stop the experimental fishing in its last few days of the 1999 programme could not have any material effect on the Southern Bluefin Tuna stock,

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because it may concern only a few hundred tons of Southern Bluefin Tuna. Japan claims that it would, however, cause irreparable damage to its scientific research to stop the experimental fishing programme now, in mid-course.

Japan also contends that there is no urgency in the requests of Australia and New Zealand and that therefore the Tribunal should decline to prescribe provisional measures. It states that Australia and New Zealand could be fully compensated by future reductions in Japan's catch.

**The counter request for provisional measures**

In the event that the Tribunal decides that the matter is properly before it, Japan requests the Tribunal to prescribe that:

- Australia and New Zealand urgently and in good faith resume negotiations and consultations with a view toward reaching agreement on the Total Allowable Catch (TAC), annual quotas, and the continuation of the experimental fishing programme on a joint basis.
- If there is no agreement on these matters within six months, Australia and New Zealand should agree to have the unresolved issues referred for resolution to the independent scientists that have been engaged by the parties.

**Background information**

Australia and New Zealand filed their requests for provisional measures with the Tribunal on 30 July 1999. They 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. (See Press Release No. 24)

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.

**Provisional Measures**

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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](mailto:itlos@itlos.hamburg.de)

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