



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

Press Release

(Issued by the Registry)

SOUTHERN BLUEFIN TUNA CASES (PROVISIONAL MEASURES)
(Australia and New Zealand v. Japan)

HEARINGS CONCLUDE – JUDGES DELIBERATE – DECISION DUE ON 27 AUGUST

HAMBURG, 26 August. On Friday, 20 August 1999, the hearings closed in the Southern Bluefin Tuna Cases (Requests for provisional measures) concerning the conservation and optimum utilization of Southern Bluefin Tuna. Australia, New Zealand and Japan maintained that their relations were multifaceted and strong and would not be affected by the current dispute. The hearings came to an end with the Agents of the parties reading their final submissions in open court. The President of the Tribunal thanked the representatives of the parties for their presentations and announced that the Tribunal had tentatively set the date for the delivery of its decision for 27 August 1999. He asked the Agents to remain at the disposal of the Tribunal while the Tribunal continued its deliberations.

ORDER WILL BE DELIVERED ON 27 AUGUST 1999, AT 3 P.M.

The President of the Tribunal, Judge Thomas A. Mensah, will read the Order at a public sitting in the Tribunal's courtroom at its temporary premises. Please contact the Office of the Registrar or the Press Office (see below at page 6) for further information and to guarantee admission.

During the oral proceedings, which lasted for three days, the representatives of the parties presented the case for each side; Australia and New Zealand as Applicants and Japan as Respondent. The Applicants called an expert to testify and address the Tribunal. The Agents, Counsel and Advocates on both sides enhanced their oral presentations by the use of up-to-date courtroom multimedia facilities. The speeches could be followed while simultaneously viewing maps, statistical charts and graphics as well as highlighted quotations from documents. The computerized visual presentations could be viewed on flat-screen LCD monitors for the Judges and Registrar, the parties, the registry officials and the interpreters. Three large flat-screen displays were set up to provide continuous coverage of the proceedings to the general public.

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The proceedings took place in the two official languages of the Tribunal: French and English. On an unofficial basis, at the special request of Japan, facilities were made available for the proceedings to be interpreted into Japanese for the benefit of those attending the hearings.



Presentation using multimedia facilities

The facts about Southern Bluefin Tuna as presented by the parties

- 90% of the catch of Southern Bluefin Tuna is consumed by Japan
- Southern Bluefin Tuna can live as long as 40 years, weigh up to 200 kilograms and grow to be over two meters (6 feet) long
- An adult fish can be worth between US\$ 30,000 - 50,000
- Southern Bluefin Tuna reaches maturity late (at age eight according to Japan and at age twelve according to Australia and New Zealand)
- Southern Bluefin Tuna is identified as a highly migratory species under Annex I of the 1982 United Nations Convention on the Law of the Sea.

The applicant Governments protested what they called Japan's unilateral decision to conduct an experimental fishing programme. The programme was planned for a period of three years. It started last year with a pilot fishing programme and is scheduled to go on this year until the end of August. The Applicants argued that, while the stock is at its historically lowest level, the experimental fishing programme would effectively mean an increase of Japan's catch by an added 30 per cent. Australia and New Zealand had confined their catch to the limits agreed in previous years. Cooperation between Australia

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and New Zealand on one side and Japan on the other had broken down and their arrangements for the conservation and rational utilization of this valuable species of tuna had come to an impasse. The stress on the stock is compounded by increased fishing by other States.

Japan responded that the dispute was a matter regulated under the 1993 Convention for the Conservation of Southern Bluefin Tuna and should be settled by the procedures under that Convention. Therefore, Japan contended that the Tribunal has no jurisdiction. Japan argues that even if the Tribunal had jurisdiction, the prescription of provisional measures would not be appropriate in this case, because there is no risk of irreparable damage to the Southern Bluefin Tuna stock. 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.

Opening of the hearings -- oral presentations by Australia and New Zealand

A large audience of interested public, including members of the press, attended when on Wednesday, 18 August 1999, the President declared the hearing open. The Registrar of the Tribunal, Mr. Gritakumar E. Chitty, read out the Requests of Australia and New Zealand for the prescription of provisional measures and Japan's Counter-Request for provisional measures.

The presentations by Australia and New Zealand commenced with a short introduction by the Agent of New Zealand, Mr. Timothy Bruce Caughley, International Legal Adviser and Director of the Legal Division of the Ministry of Foreign Affairs and Trade. He was followed by the Attorney-General of Australia, His Excellency Mr. Daryl Williams AM QC MP. In his statement the Attorney-General quoted a recent report from the Food and Agriculture Organization of the United Nations (FAO) saying that "at present, a large proportion of the world's exploited fish stocks are fully exploited, over-exploited, depleted or in need of recovery". He stated that the stock of Southern Bluefin Tuna is seriously depleted and at its historically lowest levels.

The Tribunal was also addressed by the Agent of Australia, Mr. William McFadyen Campbell, First Assistant Secretary, Office of International Law, Attorney-General's Department on the history of the dispute and the scope of the 1993 Convention for the Conservation of Southern Bluefin Tuna. Following this presentation, Counsel for New Zealand, Mr. Bill Mansfield addressed the Tribunal on its jurisdiction in this case. Australian Counsel, Professor James Crawford SC, Whewell Professor of International Law at the University of Cambridge, then presented the factual situation of the Southern Bluefin Tuna stock as seen by Australia and New Zealand. Professor Crawford also led evidence on the status of the Southern Bluefin Tuna stock from Expert Dr. John

Beddington, Professor of Applied Population Biology at Imperial College, London, who, was called by Australia and New Zealand. Dr. Beddington was first examined as to his

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competence and independence as an expert in a procedure known as a “voir dire” by Mr. Matthew D. Slater of Cleary, Gottlieb, Steen & Hamilton, Advocate for Japan. Thereafter, he was examined by Professor Crawford on the status of the Southern Bluefin Tuna stock and cross-examined by Mr. Slater.

The Chief General Counsel of the Australian Government, Mr. Henry Burmester QC, addressed the individual measures requested and with that concluded the oral pleadings of Australia and New Zealand on the first day of pleadings.

Oral presentations by Japan

On Thursday, 19 August 1999, the Agent for Japan, Mr. Kazuhiko Togo, Director General of the Treaties Bureau, Ministry of Foreign Affairs, made the opening statement on behalf of Japan, presenting an overview of the subject matter. He stressed the importance of marine living resources for Japan, fishery products being the major source of protein for the Japanese people. He emphasized that Japan is firmly committed to the conservation of Southern Bluefin Tuna and that the dispute was really about different scientific interpretations of the facts.

The Agent for Japan was followed by Mr. Robert T. Greig, partner in the law firm of Cleary, Gottlieb, Steen & Hamilton, New York, who presented the factual background to the Japanese case. Counsel for Japan, Professor Nisuke Ando, Professor of International Law of the Doshisha University in Kyoto, then presented Japan’s legal arguments.

Second round of oral presentations - closure of proceedings

The second round of oral pleadings took place on Friday, 20 August 1999. At the opening of the second round, the Tribunal through its President addressed questions to the parties about the period of the year during which fishing for Southern Bluefin Tuna takes place. The parties responded to the questions in writing.

The Agent for New Zealand noted that Australia and New Zealand had not come to the Tribunal lightly. He reiterated that Australia and New Zealand request the Tribunal to prescribe that: Japan immediately cease its unilateral experimental fishing of Southern Bluefin Tuna; Japan restrict its catch to its national quatum as last agreed, deducting 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 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.

The Agent of Japan referred to the novelty of the proceedings for Japan, which has not been involved in international adjudication for over 90 years. He called on the parties to overcome the differences through dialogue and negotiations. He asked that the

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Requests of Australia and New Zealand for the prescription of provisional measures be rejected. If, however, the Tribunal found that the matter is properly before it, Japan requested 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, annual quotas, and the continuation of the experimental fishing programme; and that if there is no agreement on these matters within six months, any remaining disagreements should be referred for resolution to the independent scientists who have been engaged by the parties.

Joinder of the proceedings

The two Requests for the prescription of provisional measures (cases nos. 3 and 4 on the Tribunal's List of cases) were instituted separately by New Zealand and Australia against Japan. After consultations with the parties, and taking into consideration that Australia and New Zealand state they are in the same interest, the Tribunal, by order of 16 August 1999, joined the two cases. Some of the practical consequences of the joinder are common oral pleadings and the issuance of one order (decision) on the Requests instead of two separate ones.

Swearing in of Judge ad hoc Ivan A. Shearer AM

On Monday, 16 August 1999, a brief public sitting of the Tribunal was held during which Professor Ivan A. Shearer AM, was sworn in as Judge ad hoc for Australia and New Zealand (See Press Release No. 26). On this occasion Judge ad hoc Shearer made the solemn declaration that he will exercise his powers impartially and conscientiously.

General background information

Australia and New Zealand filed their Requests for provisional measures with the Tribunal on 30 July 1999. The Requests are for the prescription of provisional measures (an interim injunction) by the Tribunal that Japan immediately cease the unilateral experimental fishing of Southern Bluefin Tuna, which commenced at the beginning of June 1999 (See Press Release No. 24). Japan filed its response to the Requests on 9 August 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 (See Press Release No. 25).

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 (interim injunction), pursuant to paragraph 5 of Article 290 of the Convention.

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Further details concerning the case are contained in Press Releases Nos. 24 to 26 of the Tribunal. Earlier Press Releases and further information can be obtained from the Tribunal's Registry. Please contact Mr. Robert van Dijk, Legal Officer at the Tribunal, at Tel: (49) (40) 35607-228 or Ms. Isabelle Kreiner, Press Assistant, at Tel: (49) (40) 35607-227 or Fax: (49) (40) 35607-245. Press information will also be available at the sitting itself. Because there will be only a limited number of seats available, members of the Press are requested to contact the Registry to guarantee admission. Identification will be required for admission.

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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