

SOUTHERN BLUEFIN TUNA CASE
(AUSTRALIA & NEW ZEALAND V JAPAN)
Cases Nos. 3 and 4 ITLOS (1999)

Facts

- a. This case was held at the World Bank headquarters in Washington as an Arbitral Tribunal
- b. The Southern Bluefin Tuna is a severely depleted species. The main areas to engage in fishing for SBT are Australia, Japan and New Zealand. The three States realized the dramatic reduction of SBT and in May 1993 they signed the Convention for the Conservation of Southern Bluefin Tuna. The main purpose of the CCSBT is to decide measures of management for the SBT and the total allowable catch that may be made. There was a total allowable catch of 11,750 tonnes. In 1998, Japan decided to start an Experimental Fishing Program because of their uncertainty in the SBT stock assessment. New Zealand and Australia rejected the EFP because it is outside the framework of the Commission. The two States submitted the dispute to arbitration and filed a request for provisional measures with ITLOS against Japan. There was a challenge of jurisdiction by Japan to the ITLOS.
- c. Japan claimed that even if the ITLOS claimed jurisdiction, provisional measures were not warranted. Under the CCBST, Japan felt that their actions presented no risk of irreparable injury to the SBT stock and that the two States would be fully compensated by future reductions in Japan's catch. Japan's final claim was that the two States resume negotiations with a new view on the total allowable catch, annual quotas and continuation of EFP.
- d. The defendants claim that the Japanese EFP is a violation of its duty to cooperate in the conservation in the SBT treaty and UNCLOS. Unilateralism is not in the SBT Treaty and would thoroughly hurt the framework of the defined regional fishery organization.

Questions

- a. Does the ITLOS under UNCLOS have jurisdiction to hear and decide this case?
- b. Does New Zealand and Australia have a right to stop Japan's EFP under the CCBST?

Decisions

- a. The arbitral tribunal found that article 16 of the CCSBT constitutes an agreed list of choices for the pursuit of peaceful settlement. The UNCLOS and CCSBT are intertwined in that it implements broad principles set out in UNCLOS. Therefore, this case did have jurisdiction to be heard.
- b. If there is no judicial settlement or other peaceful means of their own choice, they are then referred to the ICJ. The Tribunal prescribed provisional measures for the three States. They were to prevent aggravation or extension of the dispute, parties to keep catches to levels last agreed, refrain from conducting an experimental fishing programme, resume negotiations and to seek agreement with others engaged in fishing for SBT.

Principles

- a. The main principles of this case fall under the articles in the UNCLOS and in the Convention for the Conservation of Southern Bluefin Tuna
- b. Article 290(6) of the UNCLOS was the deciding principle in this case stating that the parties in dispute must comply with the provisional measures set forth under the article.
- c. This case also illustrates the principles of Arbitral Tribunals

Conclusion

There are many current fishery disputes with disagreements over catch limits and conservation. The Law of the Sea is very vague which means that disputes must be addressed thoroughly in the UNCLOS. It seems to be very hard to develop workable policies in the area of fishery management which means that the disputes can worsen and many more cases will develop. This case was important because it shows the importance of cooperation and negotiation in a regional organization. UNCLOS and ITLOS hope that these cases will set precedence for those trying to cause more disputes concerning fishing.

Bibliography

Southern Bluefin Tuna Cases, Judgment, ITLOS 1999

Submitted

Kerry E Hancock, November 5, 2009