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Legal Appraisal of the Interim Measures  
by the ITLOS in Southern Bluefin Tuna Cases  
between Australia, New Zealand and Japan

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Sun - Pyo Kim

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**Abstract :** The ITLOS (International Tribunal for the Law of the Sea) ordered interim measures on August 27, 1999 in Southern Bluefin Tuna Cases, relying on the para. 5 of Art. 290 of the UNCLOS. This is the second series of interim measures ordered by the ITLOS. The test of the ITLOS to establish jurisdiction on interim measures seems similar to that of the ICJ, which relies on *prima facie* jurisdiction on interim measures since Anglo-Iranian Oil Co. Case in 1951. However, there are some differences between the interim measures of the two judicial institutions. For example, the UNCLOS makes it clear that the interim measure by the ITLOS has a binding force whereas the binding force of the interim measures of the ICJ is doubted. In the Southern Bluefin Tuna Case, the ITLOS has showed its tendency to increase its

\* 1999 ( : , )  
\*\*

jurisdiction relying on the theory of "precautionary principle". As the interim measures prescribed by the ITLOS in the Southern Bluefin Tuna Case relate to the fishing of non-members of CCSBT (Convention for the Conservation of Southern Bluefin Tuna) such as Korea, Korea should make further efforts to join the CCSBT.

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1999 8 27

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(CCSBT :Convention for the Conservation of Southern Bluefin  
Tuna) 가

가

1999 7 30

1998

1999

(Southern Bluefin Tuna, :

*thunnus maccoyii*)

(serious),

(irreparable) 가

가 가

가

가

7

290

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1999

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가 가

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가 가

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6 가 ,

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1993

“ ”

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가

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가 97

1999 8 27 가

가  
5,265 , 6,065 , 420  
1999  
1999 2000  
가(  
) ( )

1. 1)

( 286 ).

( 279 ),

가  
( 280 , 281 ).  
, 가

가,

1) A. O. Adede, *The System for Settlement of Disputes under the United Nations Convention on the Law of the Sea*, Martinus Nijhoff Publishers, 1987, pp.241 251

( 287 ).

287

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( 3 ),

( 5

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가

가

가

가

가

41

“

가

(any provisional measures)

(indicate)

가

”

(subject matter)

가

가

(irre-

parable damage)

가

가

가

2)

가

( 297 ),

(

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Anglo-Iranian Oil Co. *(prima facie)* 가 가

3) 가

Interhandel (1957), Fisheries Jurisdiction (1972), Nuclear Test (1973) . 1972 Fisheries Jurisdiction “

*(prima facie)* 가

” 4) 1973 Nuclear Test

Elicott

Fisheries Jurisdiction 가 가

*(prima facie)* 가

,

, Nuclear Test

, 가

가 5)

“가 가

가

가

”6)

가 가

가

가 가

1976 Aegean Continental Shelf

3) *ICJ Report 1951*, p.89.

4) *ICJ Report 1972*, p.12.

5) Kaiyan Homi Kaikobad, "The Court, the Council and Interim Protection :A Commentary on the Lockerbie Order of 14 April 1992", *The Australian Year Book of International Law*, 1996, Vol. 17, p.119.

6) Nuclear Tests(Australia v France), *ICJ Rep. 1973*, p.99.

, 1992 Lockerbie 가 가 Anglo- Iranian Oil Co. Nuclear Test 가 가 가 “ (indicate)” 가가 가 7) 가 가 290 가 290 가 가 1 5 1 “ 가 (prima facie) ... 가 , (serious harm) (any provisional measure) (prescribe) .” 가 가 “ ” 가 가 가 41 ,

7) D. J. Harris, *Cases and Materials on International Law*, p.955.



“가 (indicate)”  
 , 가 “가  
 (prescribe)” . “indicate”  
 ,  
 “prescribe” 가 . ,  
 가 (enfor-  
 cement jurisdiction)  
 “prescriptive jurisdiction” . ,  
 가 가  
 가 ,  
 290 5 “  
 가 (shall comply promptly)”  
 가  
 . 가  
 가 .  
 290 1 , 5  
 가 . 290 5  
 .  
 “ 가 가  
 가 가, 가  
 2 가  
 ( )가  
 가 , , .  
 가 가  
 ....”  
 5 가 가  
 가  
 , (urgency of the  
 situation) 290 5

가 가

가

가

, “ ” . ,

(temporal dimension)<sup>8)</sup> , (qualitative dimension)

.<sup>9)</sup>

가

가

290 1 가 , 290 5

가 가

가

“ 가

(as a matter of urgency)

.”<sup>10)</sup>

Treves

“가 가 290 5 가 가

1

가 가 가

290 5 .”<sup>11)</sup>

8) Myron H. Nordquist , *United Nations Convention on the Law of the Sea 1982 : A Commentary*, Martinus Nijhoff Publishers, 1989, Vol. V. p.56.

9) Separate Opinion of Judge Treves, ITLOS, Order, Southern Bluefin Tuna Case

10) ITLOS, Southern Bluefin Tuna Cases, Order, para. 80.

### 3. 가

가 가  
Saiga 1998 3 11 가  
St. Vincent & Grenadines Saiga  
1997 12 4  
40 Guinea  
Guinea  
, Saiga 1998 1  
11 가  
가 가 Guinea가 1997 12 4  
St. Vincent & Grenadines  
290 5  
가  
290 1 가  
Saiga 가  
“가  
(*prima facie*)  
가  
297 1  
.”<sup>12)</sup>

11) Separate Opinion of Judge Treves, ITLOS, Order, Southern Bluefin Tuna Case

12) ITLOS, M/ V "SAIGA "(No.2) Case, Order, para. 29 30,

가 .

290 5 가

, 가

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“ 가

가 ”<sup>13)</sup>

가 가 가

. , 가

(irreparability)

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, , 1

( 10° 20° ) , 1

1 4 , ,

30° 45°

, 200kg 가 40

.

4 5 .

, , 1982

(TAC : Total Allowable Catch)

. , , 3 1989

13) ITLOS, Southern Bluefin Tuna Case, Order, para. 62.

가 105

TAC 11,750 , 6,065 , 5,265  
 , 420 . 1993 3 “  
 (CCSBT)” . CCSBT ,  
 , 3 TAC 11,750 .  
 1998 CCSBT (Scientific Committee)  
 1980  
 (biologically safe) ,  
 2020 1980  
 .  
 1993 TAC 1997  
 , 1997 가 .  
 TAC  
 ,  
 .  
 , 1998  
 1,464 .  
 1999 , 3  
 , 1999 6 1 .  
 .14)  
 1997 15,500  
 , , CCSBT  
 10,903 , , 4,206  
 27% . 1982  
 6 , 1993 117 , 1994 147 , 1995  
 317 1996 1179  
 가 . 1960  
 1969 80 , 1

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14) 1998 TAC 가  
 EEZ  
 ( ).

1989 . 1970  
1976 12 1988 180 1989 568  
, 1990 517 , 1991 759 1992 1,232  
1 .15)

1 .

CCSBT (mediation)  
1999 6 30  
CCSBT  
1999 7 14  
1999  
7 15 7  
Sir Keith  
1999 7 15  
가 가  
가  
290 5  
Crawford 가  
Nuclear Test  
15) CCSBT .

가 107

가

가

가 CCSBT

CCSBT

15 2

가 가

1999 6

CCSBT

288 1

287 ( ,

, , )

가

가 가

64

( ,<sup>16)</sup> 116 119 ( ),

300 ( )

가 가 ,

가 CCSBT

287 1 가

3

가

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16) 64

, 1 17가  
가

.17)

CCSBT 16 , CCSBT

.18)

## 2. 가

가 , 290 5 가  
290 1

1998 1700  
12.5% , 1999  
2,400 TAC 20.5%, 39.5%

“ (in both the medium and long term)”

17) 1999 12 287 1

18) CCSBT 16

1. If any dispute arises between two or more of the Parties concerning the interpretation or implementation of this Convention, those Parties shall consult among themselves with a view to having the dispute resolved by negotiation, inquiry, mediation, conciliation, judicial settlement or other peaceful means of their own choice.
2. Any dispute of this character not so resolved shall, with the consent in each case of all parties to the dispute, be referred for settlement to the International Court of Justice or to arbitration; but failure to reach agreement on reference to the International Court of Justice or to arbitration shall not absolve parties to the dispute from the responsibility of continuing to seek to resolve it by any of the various peaceful means referred to in paragraph 1 above.
3. In cases where the dispute is referred to arbitration, the arbitral tribunal shall be constituted as provided in the Annex to this Convention. The Annex forms an integral part of this Convention.



가

(damage)

(irreparable damage)

가

가

가

가

CCSBT

가

3

CCSBT

8

290

1

가

“

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“

”

가

290

5

가

100%

가

(scientific uncertainty)

(pre-

cautionary principle)

,

.19)

19) (precautionary principle), Patrica W.Birnie & Alan Boyle, *International Law & the Environment*, pp.97-98.

1992 Agenda 21  
 “ (precautionary and  
 anticipatory approach)”<sup>20)</sup>

6 “ 가

”

18

가 가

“ 가  
 (with prudence and caution)

, ”<sup>21)</sup>

가

가 . 가

가

20) Agenda 21 Chapter 17, para. 17.1

21) ITLOS, Southern Bluefin Tuna Case, Order, para. 77

가 .

가 CCSBT

가 CCSBT 가 CCSBT  
가 550 1995 1996 2  
76% , 1998 4 CCSBT  
1 , CCSBT 가 .<sup>22)</sup>

CCSBT 가

가

가

가

가

가

.<sup>23)</sup>

가 가 CCSBT 가

22)

23) ITLOS, Southern Bluefin Tuna Case(1999), Order, para. 90.2