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“Diversidad biológica y derecho
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problemas y tendencias”



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ITLOS’ judicial interpretation of the precautionary principle within the framework of the UNCLOS

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Summary

- The International Tribunal for the Law of the Sea (ITLOS)
- ITLOS and principles of environmental law
- ITLOS and the precautionary principle
- Concluding remarks

The International Tribunal for the Law of the Sea (ITLOS)

- United Nations Convention on the Law of the Sea 1982 (UNCLOS): Part XV and Annex VI
- International Tribunal for the Law of the Sea (ITLOS): specialized judicial body under the compulsory dispute settlement provisions of the Convention.

The International Tribunal for the Law of the Sea (ITLOS)

- Jurisdiction and competence
- Organization
- Access to ITLOS
- Interim measures

The International Tribunal for the Law of the Sea (ITLOS)

- Contentious jurisdiction:
 - Arrest of a vessel for violation of regulations related to the protection or preservation of the marine environment
 - Interim measures in cases where prevention of harm to the marine environment is a key issue
- Advisory jurisdiction

ITLOS and Principles of Environmental Law

- Conflicts with a direct impact in the marine environment
- Conflicts with an indirect impact in the marine environment
- References to the principles of international environmental law

The precautionary principle at ITLOS

- Cases No. 3 and 4: Southern Bluefin Tuna (New Zealand v. Japan; Australia v. Japan), Interim Measures, 1999
- Case No. 10: MOX Plant (Ireland v. United Kingdom), Interim Measures, 2001
- Case No. 12: Land Reclamation in and around the Straits of Johor (Malaysia v. Singapore), Interim Measures, 2003
- Case No. 17: Responsibilities and obligations of States with respect to activities in the Area (Request for Advisory Opinion submitted to the Seabed Disputes Chamber), 2011

The precautionary principle at ITLOS

- « Prudence and precaution » justifying the suspension of overfishing
 - The Southern Bluefin Tuna Case 1999 (SBT)
- Precautionary approach or precautionary principle?
 - The Southern Bluefin Tuna Case 1999 (SBT)
 - The MOX Plant Case 2001

The precautionary principle at ITLOS

- The standard of proof and the threshold to demonstrate urgency and seriousness of potential harm
 - The Southern Bluefin Tuna Case 1999 (SBT)
 - The MOX Plant Case 2001
- The precautionary approach and the due diligence
 - Responsibilities and obligations of States with respect to activities in the Area 2011

Concluding remarks

- ITLOS challenges and merits to the precautionary principle
- What role for the precautionary principle in relation to international marine environmental law?