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

Dra. Mar Campins Eritja
Universitat de Barcelona

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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)


- 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?