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The Legal Impacts of The Convention for The Conservation of Southern Bluefin Tuna on The Optimum Utilization and Sustainability of Highly Migratory Fish

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Abstract

Southern Bluefin Tuna (SBT), as one of the highly migratory fish, is very valuable due to the high demand in the international market. Hence, the SBT is exploited tremendously and it caused a severe decline in the population. To maintain the sustainability utilization of SBT, the role of the Commission on the CCSBT is imperative. The objective of the research is to examine conceptually the legal impacts of the Convention for the Conservation of Southern Bluefin Tuna (CCSBT) on the optimum utilization and sustainability of the SBT. It is a normative juridical research by applying conceptual and statutory approaches. The results of the research indicates that: first, the role of the Commission of CCSBT in the optimum utilization and the sustainability of the SBT is very significant; second, there are positive legal impacts of the CCSBT to the conduct of the Member States to comply with provisions of the CCSBT; third, the legal impacts of CCSBT are able to oblige the Member States to perform their obligations, however, there are still some challenges to materialize the objective of the CCSBT.

Keywords: conservation; highly migratory fish; optimum utilization; southern tuna bluefin; sustainability.

Abstrak

Tuna sirip biru selatan (TSBS) merupakan salah satu jenis ikan bermuara jauh yang sangat berharga karena banyaknya permintaan di pasar internasional. Oleh karena itu, TSBS dieksploitasi secara besar-besaran sehingga populasi tuna biru selatan berkurang drastis. Tujuan dari penelitian ini adalah untuk mengkaji secara konseptual dampak hukum Konvensi tentang Konservasi Tuna Sirip Biru Selatan (KKTSBS) dalam pemanfaatan yang optimum dan keberlanjutan TSBS. Penelitian ini merupakan penelitian yuridis normatif dengan pendekatan konseptual dan perundang-undangan. Hasil dari penelitian ini menunjukkan bahwa: pertama, peranan Komisi KKTSBS penting dalam konservasi dan pemanfaatan berkelanjutan TSBS; kedua, adanya dampak hukum yang positif KKTSBS terhadap perilaku negara anggota sehingga tindakan yang dilakukan sesuai dengan ketentuan KKTSBT; ketiga, dampak hukum KKTSBT mampu memaksa negara anggota untuk melaksanakan kewajiban yang ditentukan dalam KKTSBT meskipun masih ada beberapa tantangan untuk mewujudkan tujuan KKTSBT.

Kata kunci: ikan bermuara jauh, konservasi, pemanfaatan secara optimum, secara berkelanjutan, tuna sirip biru selatan

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Introduction

Southern tuna Bluefin is one of the highly migratory fish, which is very valuable due to their use for sushi as prevalent Japanese food and sushi bars spread across Japan and, more recently, New York, Paris, and Moscow (Korman, 2011). Since the southern Bluefin tuna, SBT is available in the exclusive economic zone (ZEE) and in the high sea, before the establishment of Regional Fisheries Management Organizations (RFMO), all states

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have the right to catch the SBT. The high sea is subject to every state's exploitation, because there is no state has a right to claim sovereignty upon the high sea. (Wilson, 2010) The exploitation of the SBT was very massive. Consequently, it causes the population of the SBT to decrease tremendously. The SBT is migratory and is known to traverse the Atlantic Ocean in a few months. They are among the largest bony fish in the ocean, reaching over 3.05 meters in length and over 500 kilograms in weight (Boon, 2013).

The SBT as the share resources need to be managed in a sustainable manner to maintain the optimum utilization and sustainability of the SBT for the interest of the present and future generations. Due to the Bluefin's migratory nature, a high international cooperation level is required for regulatory efforts to be effective. There are three main species of Bluefin tuna: the Southern Bluefin, the Pacific Bluefin, and the Atlantic Bluefin (Kato, 2011). All three species are being overfished to meet immediate demand. They face additional depletion by ranching operations that catch smaller Bluefin for fattening. RFMOs around the world carry out the conservation of each species (Boon, 2013).

The SBT were heavily fished in the past, with annual catches reaching 80,000 tones in the early 1960s (Commission of CCSBT, 2015). Heavy fishing resulted in a significant decline in mature fish numbers, and the annual catch began to fall rapidly. In the mid-1980s, it became apparent that it needed a way of limiting catches. To enable the SBT stocks to rebuild, the main nations fishing SBT at the time were Australia, Japan and New Zealand. They agreed to apply strict quotas to their fishing fleets from 1985 (Dorming, 2008). The Convention for the Conservation of Southern Bluefin Tuna (CCSBT) was adopted and signed by Australia, Japan and New Zealand on May 1993 and comes into force on May 1994. (Song, 2006).

The obligation of establishing RFMOs is not only based on Article 118 UNCLOS but it also regulated in the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UN Fish Stocks Agreement) entered into force on 11 December 2001 (FAO, 2020; Ocean and Law of the Sea, United Nation, 2019). Article 2 of the United Nations Fish Stocks Agreement aims to ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks through effective implementation of the relevant provisions within the framework of UNCLOS. The mandate to establish Regional organization is stipulated in Article 8 of the UN Fish Stock Agreement. The RFMO is a unique organizations that develops sustainable conservation of highly migratory fish which has a function to promote high seas fisheries regulation, namely regional fisheries. (Clark, 2011)

The adoption of the Convention for Conservation of Southern Tuna Bluefin (CCSBT) initiates the optimum utilization and the sustainability of SBT. The Convention is mentioned in article 3 of the CCSBT, namely "to ensure, through appropriate management, the conservation and optimum utilization of southern Bluefin tuna". Hence, to achieve the objective need a serious commitment of the Member States to enact their

obligations. The Convention mandates an establishing of the Commission of the CCSBT. The Commission of CCSBT is in charge of the optimum utilization and sustainable conservation of the SBT. Hence, the Commission of CCSBT needs to be strengthened to address the serious need for conservation of the SBT due to the overexploitation by the Member States as well as Illegal, unreported, and unregulated fishing (IUU) fishing conducted by non- Member States. However, it is necessarily, states require tozo reinterpret the “freedom of the seas” (Lubin, 2018), which is stipulated in Article 87 of UNCLOS in order to protect the right of present and future generations to enjoy the SBT as part of biological diversity.

The Member States of CCSBT has obligation to obey the guidance of compliance to utilize and to conserve the SBT in a sustainable manner, though it is not legally binding. In essence, the exploitation of the SBT is not absolute freedom of each member state, but they have to obey the rules and procedure which are established in the CCSBT, such as conducting risk assessment, monitoring and surveillance. Furthermore, the Member States have to demonstrate regional cooperation, transparency, reporting, and compliance. (Brooks, 2014) Based on the customary international law, every state has an open access to the high sea both for navigational purposes and fishing as stipulated in Article 87 UNCLOS (Golitsyn, 2017).

Currently, the right of open access, however, is no longer absolute because it is restricted by the provisions of the Convention on the Law of Sea 1982 (UNCLOS) and RFMO Conventions, such as the Convention for the Conservation of Southern Bluefin Tuna (CCSBT) and Western and Central Pacific Fisheries Convention (WCPFC) (Wold, 2019). For instance, according to Article 117, UNCLOS mentions that states have an obligation to conserve the highly migratory fish to maintain the fish's sustainability. It has been reported that the majority of global ocean fish harvests are of species captured both in exclusive economic zones (EEZs) and in the high sea (Song et al., 2017). There is an excellent intention of states to exploit highly migratory fish such as STB to enhance economic development since the SBT is very valuable due to the high demand of the SBT. Bluefin. However, in order to mitigate overfishing of the SBT and also to prevent IUU fishing. It seems necessary to exercise properly the role of the Commission of CCSBT. The support of all the Member States is very important to embody the objective of the CCSBT. The aim of the article is to analyze the legal impacts of CCSBT to the optimum utilization and the sustainability of the SBT as one of the highly migratory fish. It will be shown that CCSBT depends heavily on cooperation among the Member States of the CCSBT to address over exploitation and illegal, unreported and unregulated (IUU) fishing. Hence, the compliance of the Member State to perform the obligations stipulated in the CCSBT is essential to materialize the objective of the CCSBT.

Research Problems

This paper focuses on the legal impacts of the CCSBT as a regional fishery management organization to the optimum utilization and the sustainability of the SBT.

Based on the previous explanation the research problems that are proposed, namely: First, how is the role of the Commission of CCSBT in the optimum utilization and the sustainability of the SBT. Second, how are the legal impacts of the CCSBT to the conduct of the Member States to comply with CCSBT. Third, what are the legal impacts of CCSBT to materialize the optimum utilization and the sustainability of the SBT as one of the highly migratory fish.

Research Method

This is normative juridical research which uses secondary data consisting of primary legal material, secondary legal material and tertiary legal material. Then, the approaches employed in the research are conceptual approach and statutory approach. The conceptual approach is used to understand the concept of the optimum utilization and the sustainability of the SBT in relating to the conducts of the Member States to comply with the obligations regulated in the CCSBT. the statutory approach is employed to examine the legal instruments applied in the compliance of the Member States to the CCSBT.

Discussion

Overview of the CCSBT

UNCLOS mandates in Article 117 the duty of the Member States to conduct conservation in the high sea (Serdy, 2010). It states that “All States have the duty to take, or to cooperate with other States in taking, such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas”. It can be submitted that the conservation in the high sea has become the obligation of the Member States. Furthermore, UNCLOS also deals with the issue of how to deal with shared fish stocks such as the SBT as one of the highly migratory fish. It is impossible to conserve the highly migratory fish without cooperation with other states. Hence, in Article 118 UNCLOS obliges states to establish regional organization to conserve the highly migratory fish. Article 118 UNCLOS mentions:

“States shall cooperate with each other in the conservation and management of living resources in the areas of the high seas. States whose nationals exploit identical living resources, or different living resources in the same area, shall enter into negotiations with a view to taking the measures necessary for the conservation of the living resources concerned”.

Based on the Article 118 UNCLOS, establishing RFMO is compulsory. It is important to cooperate among states because every state has the right to access in the high sea as stipulated in Article 87 of UNCLOS concerning the freedom of high sea (Krajewsk, 2008).

Furthermore the obligation to establish RFMO also regulated in UN Fish Stock Agreement 1995. Article 8 (1) of the Agreement state:

Coastal States and States fishing on the high seas shall, in accordance with the Convention, pursue cooperation in relation to straddling fish stocks and highly

migratory fish stocks either directly or through appropriate subregional or regional fisheries management organizations or arrangements, taking into account the specific characteristics of the subregion or region, to ensure effective conservation and management of such stocks.

Thus, the obligation of establishing the RFMO is crucial and compulsory due to the function of the RFMO in the sustainable conservation of highly migratory fish. The conservation will not be effective if there is no international cooperation because the nature of highly migratory fish migrate from one EEZ to high sea and then go back to the EEC in the same state or different state,

The CCSBT, as one of the RFMO which is mainly concerned with the management of SBT, establishes the Commission of the CCSBT based on the mandate of the Convention in Article 6. The Commission of CCSBT is in charge of the optimum utilization and sustainable conservation of the SBT. Hence, the Commission of CCSBT needs to be strengthened to address the severe need to preserve the SBT due to the Member States' overexploitation and illegal, unreported, and unregulated (IUU) fishing conducted by non-Member States. Thus, it is necessary; states require to reinterpret the "freedom of the seas," which is stipulated in Article 87 of UNCLOS, which includes freedom of navigation, freedom of overflight, and freedom of fishing (Vignocchi, 2015). The Member States of CCSBT must obey the guidance of compliance to utilize and conserve the SBT in a sustainable manner. In essence, the exploitation of the SBT is not absolute freedom of each member state. Still, they have to obey the rules and procedure established in the CCSBT, such as conducting a risk assessment, monitoring, and surveillance. Furthermore, the Member States have to be able to demonstrate regional cooperation, transparency, reporting, and compliance (Brooks, 2014) The limitation of the exploitation of the SBT, which is regulated in the CCSBT, is by the principle of intergenerational equity (Frink, 2013). The present generation is not the owner of the highly migratory fish such as the SBT; therefore, the future generation also has the same right to utilize and exploit the SBT. To guarantee that the future generation can enjoy the SBT as one of the available resources in the high sea, it is necessary to apply the intergenerational equity principle. In fact, the principle of intergenerational equity is proposed by Edith Brown Weiss (Elsen, 2018), she states:

- a. First, each generation should be required to conserve the diversity of the natural and cultural resource base, so that it does not unduly restrict the options available to future generations in solving their problems and satisfying their own values, and should also be entitled to diversity comparable to that enjoyed by previous generations. This principle is called "conservation of options."
- b. Second, each generation should be required to maintain the quality of the planet so that it is passed on in no worse condition than that in which it was received, and should also be entitled to planetary quality comparable to that enjoyed by previous generations. This is the principle of "conservation of quality."

- c. Each generation should provide its members with equitable rights of access to the legacy of past generations and should conserve this access for future generations. This is the principle of "conservation of access.

Intergenerational equity consists of three pillars, the future generation has the same right with present generation namely the same rights to have the options of resources, the quality of resources and the access of resource, Hence, the principle of intergenerational equity has to be applied in the management of the SBT, so that the sustainability of the SBT can be materialized in order to respect the right of the future generation.

However, in order to materialize the right of the future generation the precautionary principle is applicable in the fishery management including the highly migratory fish which has been stipulated in Chapter XII UNCLOS and Article (5) of the UN Fish Stock Agreement 1995 (Hagan, 2014) as well as in the CCSBT. The precautionary principle which is applicable in the SBT is an extreme idea, but it is the one that will be visible to the optimum utilization and to the sustainability of the SBT. The Commission of the CCSBT has to guarantee that the precautionary principle is applicable in the utilization and conservation of the SBT in order to achieve sustainability of the SBT. Actually, the precautionary principle is adopted in various international agreements, such as Rio Declaration, United Nation Convention on the Climate Change, and Cartagena Protocol. One of the definitions of precautionary principle is stipulated in Principle 15 of the Rio declaration. It states:

“In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation”.

When the precautionary principle is applicable to the SBT, means that the SBT can be classified as a resources which is endangered by overfishing, however, it will cause serious decline of the SBT that can be deemed as a threat to the SBT. Thus, it is necessarily to take appropriate measures to prevent the extinction of the SBT, such as by conducting sustainable conservation, issuing regulations, policies, risk assessment as well as risk management to prevent the extinction of the SBT.

Similar to UNCLOS and the Rio Declaration, the Fish Stock Agreement introduces the precautionary approach and elevates the role of RFMOs. The Same as the CCSBT imposes a duty to cooperate by providing that Members, and those who want to access resources, have to respect a management regime. Additionally, the CCSBT as one of the RFMO also regulates that Parties who are not members of the regional regimes, or who refuse to apply conservation measures, they are not allowed to access to the fishery resources. (Boon, 2013). Regional fisheries management organizations (RFMOs) are established through agreement between states with a common interest in fishing area of the high seas or a particular species.

The CCSBT is not the only international instrument which regulates conservation and utilization of highly migratory fish. Actually, the legal major framework for the international conservation and management of highly migratory fish involves a variety of

regional international agreements. The other International Agreements include the International Convention for the Conservation of Atlantic Tunas (ICCAT), the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC), the Convention for the Establishment of an Inter-American Tropical Tuna Commission (IATTC), and the Indian Ocean Tuna Commission (IOTC) (Ásmundsson, 2016).

The CCSBT sets no geographic limits of competence. It extends over all national waters and the high seas, where southern Bluefin tuna are found. In order to ensure that the conservation and the optimum utilization of the SBT are properly conducted by the Member States. The CCSBT mandates the Member States to establish a Commission. The objective of the establishing of the Commission for the Conservation of Southern Bluefin Tuna (CCSBT) is to ensure, through appropriate management, the conservation and optimum utilization of the global SBT fishery. The Commission is responsible for setting a total allowable catch (TAC) and its allocation among the members; takes decisions to support and implement fishery management; and acts as a coordination mechanism for member's activities in relation to the SBT fishery.

The Role of the Commission of CCSBT in the Optimum Utilization and the Sustainability of the SBT

The Commission of the CCSBT consist of all the Members of the CCSBT, thus each Member State has a representative in the Commission of the CCSBT. Member of the Commission of the CCSBT are Australia, Indonesia, Japan, Republic of Korea, New Zealand and South Africa. While the Members of the Extended Commission: Australia, European Union, Fishing Entity of Taiwan, Indonesia, Japan, Republic of Korea, New Zealand, South Africa and the Co-operating Non –Member is Philippines. (Futerman, 2018). CSBT is an intergovernmental organization responsible for the management of southern BluefinBluefin tuna throughout its distribution. The Commission's objective is to ensure, through appropriate management, the conservation and optimum utilization of the global SBT fishery. The Commission also provides an internationally recognized forum for other countries/entities to actively participate in SBT issues. The functions of the Commission of the CCSBT are regulated in Article 6 (2), states :

- a. Is responsible for setting a total allowable catch and its allocation among the members;
- b. Considers and administers regulatory measures to meet Convention objectives;
- c. Conducts and coordinates a scientific research program aimed at providing information to support the Commission's management objectives (the program is a mixture of member managed activities and activities managed directly by the CCSBT Secretariat);
- d. Takes decisions to support and implement fishery management;
- e. Provides a forum for the discussion of issues relevant to the conservation objectives of the Convention;

- f. Acts as a coordination mechanism for member's activities in relation to the SBT fishery;
- g. Fosters activities directed towards the conservation of ecologically related species (living marine species which are associated with the SBT fishery) and bycatch species;
- h. Encourages nonmembers engaged in the fishery, to accede, apply for cooperating non-membership, or participate as observers in Commission activities;
- i. Cooperates and liaises with other regional tuna fishery management organizations in areas of mutual interest.

Based on the functions that have to be performed by the Commission, however, the Parties establish the Scientific Committee as an advisory body to the Commission. The Scientific Committee is important to assist the Commission when the Commission wants to carry out all the functions. For instance, when the Commission want to determine TAC is impossible if there is no assessment from the Scientific Committee regarding the aspects that have to be considered and to be done in determining the TAC.

Besides that, in order to guarantee that the Commission can carry out its functions properly, the Commission are supplemented by five subsidiary Bodies (Annex I of the CCSBT) which provide advice on their areas of expertise, namely :

- a. the Scientific Committee (SC)/Extended Scientific Committee (ESC) (along with other technical working groups that may be required to complete its work, such as the Operating Model and Management Procedure (OMMP) Technical Meeting),
- b. Ecologically Related Species Working Group (ERSWG),
- c. the Strategy and Fisheries Management Working Group (SFMWG),
- d. Compliance Committee (CC),
- e. The Finance and Administration Committee (FAC).

All the five Subsidiary Bodies area designed to support the Commission to perform all its functions professionally and comprehensively. Each of the Subsidiary Bodies has its specific function to achieve the objective of the CCSBT.

The functions of the Scientific Committee is to support the Commission in performing its functions are regulated in Article 9 (1) of the CCSBT. It states "The Parties hereby establish the Scientific Committee as an advisory body to the Commission". The tasks of Scientific Committee based on Article 9 (2) of the CCSBT shall :

- (a) assess and analyze the status and trends of the population of southern Bluefin tuna;
- (b) coordinate research and studies of southern Bluefin tuna;
- (c) report to the Commission its findings or conclusions, including consensus, majority and minority views, on the status of the southern Bluefin tuna stock and, where appropriate, of ecologically related species;
- (d) make recommendations, as appropriate, to the Commission by consensus on matters concerning the conservation, management and optimum utilization of southern Bluefin tuna;

(e) consider any matter referred to it by the Commission

All the tasks that have to be conducted by the Scientific Committee are aimed to achieve the objective of the Convention and to support the Commission of the CCSBT can be performed properly. All of the Commission's functions will not be able to be conducted without the active role of the Commission. The functional part of the Commission to achieve the objective of the CCSBT is reflected in the functions that have been regulated in article 6 (2) the CCSBT.

The policies, strategies can prove the active role of the Commission, and also determining "Minimum performance requirements to meet CCSBT Obligations Compliance Policy Guideline" and many other activities that have been conducted based on its functions (Commission of CCSBT, 2018). Therefore, all the institutional Bodies which are established based on the Convention are aimed to support the implementation of the Convention as well as to achieve the objective of the Convention. Additionally, the CCSBT also has an Executive Secretary. Thus, all the Institutional Bodies and the obligations of the institutional Bodies will not be successfully implemented if there is no support of all stakeholders involved in the exploitation of the SBT.

For example the research that has been conducted by the Scientific Committee regarding the SBT management will contribute to enhance the management system and also to determine the appropriate TAC. Furthermore, it also to assist another Member to utilize the information and data without conducting the same research of the similar case. For example, research regarding non target fish that may not deliberately to be caught. Thus, the information is important for other Member States to use certain kind of devise which can prevent the non-target trapped into the net. Based on the functions of the Commission on CCSBT which are stipulated in Article 6 (1) of the CCSBT have to be implemented to achieve the optimum utilization and sustainable conservation of the SBT. Hence, the role of the Commission to embody the functions can be exercised properly needs the support of other subsidiary Bodies which are provided by the Convention.

The legal impacts of the CCSBT to the Conduct of the Member States

The CCSBT is a regional Convention that is adopted as a legal basis to establish RFMOs. The existence of the Commission of CCSBT has two primary legal impacts to the Member States in utilizing and conserving the SBT. The first direct legal impact is the obligations that have to be performed by the Member States to obey the TAC that had been agreed by the parties as well as to conduct a critical assessment to guarantee there will be a sustainability of the SBT as one of the highly migratory fish. The second legal impact of the CCSBT is to prevent IUU fishing from the Member States and non-Member States; however, the effort to prevent IUU fishing has not been successful yet. It is often deemed that RFMOs have failed to avoid the overexploitation of high seas living marine resources. However, such claims ignore the reality that RFMOs are the product of state action. It is predominately state action or inaction that has failed to manage in a sustainable manner global fisheries. The success of the CCSBT depends on the Member

States in conducting all obligations which have been determined by the Convention. Hence, before evaluating the legal impacts of the CCSBT to the optimum utilization and the sustainability of the SBT, it is essential to examine the legal impacts of the CCSBT to the Member States. The obligations of the Member States of CCSBT are regulated in Article 5 of the CCSBT. It states:

1. Each Party shall take all action necessary to ensure the enforcement of this Convention and compliance with measures which become binding under paragraph 7 of Article 8.
2. The Parties shall expeditiously provide to the Commission for the Conservation of Southern Bluefin Tuna scientific information, fishing catch and effort statistics and other data relevant to the conservation of southern Bluefin tuna and, as appropriate, ecologically related species.
3. The Parties shall cooperate in collection and direct exchange, when appropriate, of fisheries data, biological samples and other information relevant for scientific research on southern Bluefin tuna and ecologically related species.
4. The Parties shall cooperate in the exchange of information regarding any fishing for southern Bluefin tuna by nationals, residents and vessels of any State or entity not party to this Convention.

Based on the obligations that have to be performed by the Member States of CCSBT cause legal impacts to the conduct of Member States in the national policies, action plan, strategy, regulation, and law enforcement. Based on Article 5, CCSBT can be identified as some of the legal impacts of the CCSBT on states' behavior or conduct as the Members of the Convention in utilizing and conserving the SBT.

First, all of the obligations affect the state conducts as the Party of the CCSBT. Based on the Obligations, Member States have to establish enforcement institutions and mechanisms to enforce sanction to the wrong doer. For instance, Indonesia as the Party of the CCSBT, Indonesia, has to enforce the law when there is a violation of CCSBT, for example, IUU fishing. However, if the wrongdoer violated international obligations regulated in the CCSBT, such as the obligation to conserve the SBT, but many Ships have Indonesian flags conduct IUU. Nonetheless, the Indonesian government keeps silent and let them continue without any sanction. In this case, the ships' conduct is attributable to the Indonesian government, so in this case, the behaviors of the boats are attributable to the state. This is stipulated in Article 8 of the Responsibility of States for Internationally Wrongful Acts 2001. It states:

“The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct.

Based on the Article, a state has to be responsible when the conduct of private actors which is actually under the control of a state breach international obligations and caused disadvantage to other states (Serdy, 2011). However, if Member States failed to perform the obligation based on the CCSBT Member States must be responsible to the negative impacts of their measures.

Second, it is mentioned in Article 5 (2), the Convention obliges the Member States to provide scientific information, fishing catch and effort statistics and other data relevant to the conservation of southern Bluefin tuna and other appropriate, ecologically related species. Hence, the Member States have to conduct research to obtain scientific information, the amount of fishing catch that have to comply with TAC, to observe data and make statistic for the interest of conservation that has to be submitted to the Commission. Furthermore, the conservation also has to be carried out on the ecologically related species. Means, that the conservation also addresses the other species which unintentionally or by catch during the fishery activities, because these species will be endangered by the tuna fishing activities.

Third, the primary means by which the CCSBT aims to impact member behavior is by setting total allowable catch (TAC) quotas each year. The TAC can be used as one of the indicators whether the Member States performed the obligations or they infringe their duties, such as exceed the TAC that has been determined by the Commission of the CCSBT. The TAC represents the annual amount of fish catch permitted to restore SBT stocks to the desired level. The Member States' compliance to obey the TAC determined by the Commission of CCSBT goals and the submission can be used as a parameter regarding the commitment of the Member States to be remarkably conserved the SBT. The assessment of TAC by the Scientific Commission to the Member States occurs annually. Thus, conceptually, there will be a positive legal impact that the Member States will perform because all the obligations in the CCSBT are legally binding to the Member States.

Fourth, Member States in order to maintain the sustainability of the SBT have obligations to cooperate in the exchange of information regarding the information any fishing for southern Bluefin tuna by nationals, residents and vessels of any State or entity not party to this Convention. The obligation will cause the legal impact of Member States to conduct every effort to look for the information based on the capability and technology that own by Member States. Additionally, there is also the duty of transfer of technology from the developed countries to developing countries in one of RFMO. The information is used to determine whether the maximum limit has already reached or there has been exceed the TAC. Thus the exchange of information trigger the State Member to issue regulation regarding the procedure to collect the information properly.

The Legal Impacts of CCSBT to the Conservation and the Sustainability of the SBT RFMO

Undoubtedly, the legal impacts of the CCSBT to the optimum utilization and sustainability of the SBT can be identified based on the obligations and the functions of the Institutional Bodies of the Convention as well as the participation of the Member States to perform the obligations which have been stipulated in the CCSBT Convention. Conceptually, when the Member States perform all their obligation and the Institutional Bodies of the Convention carry out the function properly, so the objective of the Convention will be achieved. However, based on the conduct of the Member States and

the evaluation of the Role of the Commission, it can be argued that there are positive legal impacts of the CCSBT to the optimum utilization and sustainability of the SBT as one of the highly migratory fish.

Consequently, all Institutional Bodies which are provided in the CCSBT are aimed to support the Commission in order to materialized the objective of the CCSBT Convention. Determining conservation measures and enforcing them has long been a substantial problem in many fisheries, because harvest activities occur over large and often remote geographic areas which is not easy to be detected. However, the CCSBT obliges the State Members to have self-assessment put in the Compliance Report. Based on the Compliance Report that has been submitted by the Member States will be examined by the Scientific Commission to carry out an evaluation to guarantee that all the report are reasonable. For example, Indonesia has submitted the annual Report of Compliance every year. Based on the report that can be used by the Commission as the consideration to determine the next TAC or to design the Strategic Plan. Thus, the Compliance Report that has been made by the Member States contributes to the conservation and sustainability of the SBT.

Furthermore, the Commission also establishes strategic plan for the CCSBT. This strategic plan outlines a common vision of the Commission for the Conservation of Southern Bluefin Tuna in the future. Components of that vision include the state of the southern Bluefin tuna stock; how the Commission operates to effectively manage the stock; and how Members are implementing their obligations and benefiting from their successful management of the stock (The CCSBT Secretary, 2015). The Strategic plan has to be carried out also by the Member States, without the participation of the Member States, the strategic plan will not be successful in order to sustain the SBT.

Nonetheless, the Commission are facing challenges regarding the enforcement all of the guidelines and also the management measures established by the Commission of CCSBT. According to the Strategic Plan for the Commission for the Conservation of Southern Bluefin Tuna 2015–2020 (The CCSBT Secretary, 2015) the challenges of the Commission are:

- 1) Providing for the rebuild of the SBT fishery to the level that can sustain maximum sustainable yields (stock re-building);
- 2) Balancing the competing demands of those who harvest SBT against the biological demands of stock rebuilding (TAC setting and allocation);
- 3) Ensuring all SBT mortalities are accounted for within national allocations, and unreported catches are prevented (compliance);
- 4) Ensuring that all countries with an interest in SBT fisheries are cooperating with the Commission; and
- 5) Ensuring CCSBT's systems and processes allow for the rights and responsibilities of all Members, and encourage cooperation from non-members (governance);
- 6) Considering the special requirements and capacity building needs of developing Members and Cooperating Non-Members in terms of compliance with CCSBT obligations.

However, all the challenges have to be addressed which need the participation and contribution of all the Member States and all the Subsidiary Bodies.

In fact, the CCSBT aimed to achieve optimum utilization and sustainable conservation of the SBT is essentially exercising the legal obligation as the Member States of UNCLOS. Article 117 and 118 of UNCLOS obliges the Member States to establish RFMO in order to achieve the sustainability of highly migratory fish. Thus, it can be concluded that it is compulsory for the Contracting Parties of UNCLOS to establish the regional organization to carry out conservation of the resources in the high sea including the SBT. The Establishing of the Commission of CCSBT is very important to guarantee that the objective of the CCSBT will be achieved, since each Member state of the CCSBT also becomes the member of the Commission.

Hence, establishing and conducting conservation of highly migratory fish as share resources are regulated in a single international agreement and held in various contracts. Various international agreements can be used as a legal instrument to support each other; for instance, when there is a loophole in one of the international agreements, it can be supplemented by the different international agreements. For example, UNCLOS only regulates general conservation of the highly migratory fish in the high sea, so the more detailed regulation are enacted by other Convention such as the CCSBT and the Fish Stock Agreement and also FAO Code of Conduct for Responsible Fisheries was adopted in the Resolution 4/95 by the FAO Conference on 31 October 1995 (FAO, 2020; Coll. Martha.et. al. 2012). Each Convention has its purposes and objectives. Thus, the Commission of the CCSBT must ensure the Member States comply with the obligations.

Obviously, it can be identified some legal impacts of the CCSBT to the optimum utilization and the sustainability of the SBT. The primary means by which the CCSBT aims to impact the optimum utilization and the sustainability of the SBT is in accordance with the Commission obligation, namely determining total allowable catch (TAC) quotas each year. TACs can be used as one of the indicators whether the Member States performed the obligations or they infringe their obligations, such as exceed the TAC that has been determined by the Commission of the CCSBT. If they carry out the TAC properly, so it will maintain the sustainability of the SBT. The TAC represents the annual amount of fish catch permitted in order to restore SBT stocks to the desired level.

The assessment of TAC by the Scientific Commission to the Member States occurs annually as well as the determination of Global TAC by The Commission of CCSBT (Cardno Ecology Lab, 2012). Thus, conceptually, there will be a positive legal impacts to the optimum utilization and the sustainability of the SBT. Accordingly, all institutional bodies which are provided in the CCSBT are intended to materialized he objective of the CCSBT Convention to achieve optimum utilization and sustainable conservation of the SBT. Determining conservation measures and enforcing them has long been a substantial problem in many fisheries, because harvest activities occur over large and often remote geographic areas which is not easy to be detected. However, the CCSBT obliges the State Members to have self-assessment put in the Compliance Report. Based on the Compliance

Report that has been submitted by the Member States, the Scientific Commission makes an evaluation to guarantee that all the reports are reasonable.

Conversely, the CCSBT also supplemented by “Minimum performance requirements to meet CCSBT Obligations Compliance Policy Guideline which are provided by the Secretary of the Convention. The purpose of the guideline “is to improve implementation of CCSBT obligations. It enables all Members to have a common understanding of existing obligations and the core elements expected of quality implementation of these obligations” (Commission of the CCSBT, 2018). It also provides for transparency in terms of each Member’s implementation procedures. Thus, if all the Member States comply with the guidance will promote the optimum utilization and the sustainability of the SBT. The guideline is not legally binding, thus, if the Member States do not comply with the Guideline there will be no sanction that can be enforced. However, if the Guideline has been practicing by the whole Members of the CCSBT and recognized as law, it will form customary international law. Thus it will be legally binding, but it need a long time to fulfil the requirements of customary international law, namely state practice and recognized as law (Kadens, 2013).

The case that have been occurred regarding the infringement of the total allowable catch (TAC) was the milestone *Southern Bluefin Tuna Case* which provides insight into the status of both substantive and procedural international legal doctrines with regard to fisheries. The *Southern Bluefin Tuna Case* involved a high seas dispute between Australia and New Zealand against Japan (the Parties) over the conservation and management of SBT. Japan would like to increase the TAC but the intention of Japan did not agree by Australia and New Zealand. On the other hand, Australia and New Zealand invited new fishermen for SBT from South Korea, Taiwan, and Indonesia becoming co-operating non-Members. (Orellana, 2004). Based on the observation of the case there was a tension between the concept of common pool resources and the need for the southern Bluefin tuna to continue to exist within an ecosystem (Young, 2019). What can be learned from the *Tuna Bluefin Case* that a state as a Member of RFMO cannot impose its willingness to other Member States without their consent. Besides that, the sustainable conservation of the SBT as one of the migratory fish which is regulated in the UNCLOS has been recognized as customary international law. The International Tribunal on the Law of the Sea (ITLOS) award in the *Tuna Bluefin Case* supports the sustainability of highly migratory fish (Telesca, 2003).

Additionally, that IUU fishing within EEZs and on the high seas is a major obstacle to maintain the accurate data of the TAC in the RFMO, especially in the CCSBT due to the destruction effect from the IUU fishing. The IUU fishing may be conducted by -Non - Member States or even the Member States. IUU fishing commonly utilizes long line fishing. Long line fishing consists of “thousands of baited hooks,” and “long lines extend for miles, often snaring fish unintentionally, notably sharks, as well as hundreds of thousands of sea turtles, marine mammals, and seabirds every year.” (Erickson, 2008). The unintended death of sea turtles and seabirds are the side effects of such fishing practices.

Institutionally, IUU fishing is facilitated by systematic gaps in the international fisheries regulatory regime. On the high seas, those areas that lie beyond national EEZs, fisheries are regulated by RFMOs. Nations that do not voluntarily become parties to these organizations are not legally subject to their conservation measures. Even nations that are members of RFMOs do not always strongly implement their provisions. Hence, these measures will affect the sustainability of the SBT.

Multilateral agreements can expand inspection authority, but only concerning nations that become the member of those agreements. Several notorious “flag of convenience” states refuse to sign on. This allows large-scale vessels carrying their flag to fish legally without regulation. However, they may be owned by nationals of parties to the relevant agreements to be free from the obligation to carry out conservation (Dorumus, 2013). Consequently, to mitigate the infringement of the responsibilities of CCSBT, the Convention also establishes the Monitoring, Control, and Surveillance system. Members and Cooperating Non-Members to improve compliance, and over time, achieve full compliance with CCSBT’s conservation and management measures. Moreover, the CCSBT has adopted a Compliance Plan that supports its Strategic Plan and provides a framework for the CCSBT, Members and Cooperating Non-Members have to improve compliance, and over time, achieve full compliance with CCSBT’s conservation and management measures. The Compliance Plan also includes a Compliance Action Plan to address priority compliance risks. This Compliance Action Plan is reviewed, and confirmed or updated every year. BY conducting the monitoring, control and surveillance are expected that all the Member States and Cooperating Non-Members will participate and obey the system. Hence, there will affect the sustainability of the SBT.

The existence of the CCSBT Commission and the Scientific Committee and the Secretary as main Bodies of the CCSBT are significant to the conservation and sustainability of the SBT as one of the highly migratory fish. Nevertheless, all of the rules in the regional and global level need to be applied in national level. It is necessary to acknowledge at the beginning that there is always, or should always be, movement of standard setting from the international or regional level to the national level as states implement their international obligations into national law. So, for example, Indonesia as the Member of CCSBT when catch quotas are set in the CCSBY by the Commission, so the Indonesian government has to implement the TAC into national law to ensure that regional management measures are upheld (Natalie, 2011)

The Role of the Commission and the impacts of the Member States' obligations regulated in Article 5 of the CCSBT to the optimum utilization and the sustainability of the SBT as one of the highly migratory fish need to be examined comprehensively. The participation of the Member States in the conservation program contribute to the availability of SBT to enjoy by present and future generation. The establishing of the Commission of CCSBT also strengthens the legal impact of the CCSBT to embody its objective. It can be argued that the role of the Commission of the CCSBT, which has been examining previously, can be used as evidence that the CCSBT can enact the sustainability

of the SBT. Conceptually, if all the functions of the CCSBT Commission and also the obligations of the Member States can be performed without any challenges, the sustainability and the optimum utilization can be materialized.

Conclusion

From the analysis, it can be concluded that CCSBT as a regional fisheries management organization for the SBT established based on Convention for the Conservation of Southern Bluefin Tuna has positive legal impacts to the optimum utilization and sustainability of the SBT. While the role's of the Commission of CCSBT substantially affects the behavior or conduct of Member States to respect and obey the obligations of the CCSBT in order to achieve the optimum utilization and sustainability of SBT. Consequently, positive measures of the Member States which are automatically become the Member of the Commission contribute a lot to the conservation and the sustainability of the SBT. On the other hand, there are still some challenges that are facing by the Commission of the SBT to materialize the sustainability of the SBT, such as IUU fishing conducted by Non- Member States and the absent of participation of Non-Member States to the conservation and sustainable use of SBT. However, the conducts of Non-Member States threat to the sustainability of the SBT.

Suggestion

In order to enhance the participation of the Member States particularly from the developing countries to comply with all the obligations of the CCSBT, the Commission can request the Member States which come from developed countries such as Australia, New Zealand and Japan to carry out transfer of technology and empowering the capability building of the Member States come from developing countries. Furthermore, Commission needs to augment the role of all Member States to combat IUU fishing because IUU fishing will affect the TAC and the sustainability of the SBT as one of the highly migratory fish.

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