THE *VOLGA* CASE

RUSSIAN FEDERATION v. AUSTRALIA
(Applicant) (Respondent)

STATEMENT IN RESPONSE OF AUSTRALIA

7 DECEMBER 2002

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PART I

STATEMENT IN RESPONSE OF AUSTRALIA

CHAPTER 1

INTRODUCTION

1. On 2 December 2002 the Russian Federation commenced proceedings against Australia in the Tribunal, and filed a Memorial, concerning release of a fishing vessel, the *Volga*.

2. In accordance with Article 111(4) of the rules of the Tribunal, the Government of Australia files this Statement in Response to the Memorial of the Russian Federation together with the annexed supporting documents.

3. Australia requests that the Tribunal decline to make the orders sought in paragraph 1 of the Memorial of the Russian Federation. Australia requests the Tribunal make the following orders:

(1) that the level and conditions of bond set by Australia for the release of the *Volga* and the level of bail set for the release of the crew are reasonable; and

(2) that each party shall bear its own costs of the proceedings.

CHAPTER 2

STATEMENT OF FACTS

I. Introduction

1. The Commonwealth of Australia and the Russian Federation are both states parties to the United Nations Convention for the Law of the Sea ("the 1982 Convention").

2. The *Volga* ("the vessel") is registered in the ship registry of the Russian Federation.

3. The alleged owner of the vessel is Olbers Co Limited ("the owner").

4. The beneficial owner(s) is not known to Australia as their legal representatives have refused to identify them. It is believed that Sun Hope Investments, a company based in Jakarta, Indonesia and/or its parent company Pacific Andes International Holdings, based in Hong Kong, may be the beneficial owners. It is further believed that Sun Hope Investments managed and controlled the fishing activities of the *Volga* and other vessels.

II. Seizure of the vessel

5. On 6 February 2002, an Australian naval vessel, the HMAS Canberra, apprehended the fishing vessel *Lena* inside the Australian Exclusive Economic Zone ("the AEEZ") around the Territory of Heard Island and McDonald Islands ("the Territory"). The *Lena* was one of at least seven vessels being operated by Sun Hope Investments carrying out illegal fishing operations in the AEEZ surrounding the Territory and also the French EEZ around its territory of Kerguelen Island continuously between November 2001 and February 2002.

6. At, or shortly before, the time of the apprehension of the *Lena*, the *Volga* acted promptly to cease fishing activities and began heading at its maximum speed of 9 knots along the shortest course (072 degrees true) to the EEZ boundary. This coincidence in timing suggests that the *Lena* made contact with the *Volga*, warning them of the presence of Australian naval vessels.

7. At 0843 hours Time Zone Hotel (Universal Time Coordinated plus 8 hours (TZH)) the *Volga* was detected by radar from a C130 Hercules Aircraft of the Royal Australian Airforce at a position of 51.51.68S 77.55.87E, a position assessed to be 32 nautical miles within the AEEZ.

8. By 1000 TZH, the *Volga* was reported at 51.48.60S and 78.14.97E. The HMAS Canberra, along with another Australian naval vessel, the HMAS Westralia, and the now apprehended *Lena* were some 50 nautical miles south of the *Volga*. The HMAS Canberra altered course and increased speed to head northeast towards the anticipated position of the *Volga* with the objective of intercepting it.

9. Seahawk Helicopter Tiger 74 ("the helicopter") was launched from HMAS Canberra at 1145 TZH and reported the *Volga* as being in position 51.38.6S 78.43.8E, one nautical mile within the AEEZ as indicated on chart AUDS 605.

10. At 1203 TZH the helicopter reported the *Volga's* position as 51.37.11S 78.44.03E plotted as 1000 yards inside the AEEZ.

11. At 1205 TZH the *Volga* was reported at 51.36.36S 78.44.10E and a broadcast was made to it from the helicopter on VHF Channel 16. The *Volga* ignored this and subsequent broadcasts.

12. Using the 1:150000 scale chart of Heard Island on chart AUDS 605, the Navigating Officer of HMAS Canberra had determined the eastern extremity of Spit Point (a sand spit) on Heard Island to be 53.06.43S 73.51.86E. The Great Circle distance between the eastern extremity of Spit Point and the *Volga* was calculated at 199.8 nautical miles, a distance confirmed using spheroid trigonometry and plotted on chart D.6338, a Mercatorial plotting sheet using 52.21.4S as the mid-latitude for reference in measuring the AEEZ. On this calculation, the *Volga* was assessed to be 400 yards inside the AEEZ at the time of the first broadcast by the helicopter.

13. The boarding party from the HMAS Canberra was inserted into the *Volga* by fast rope from the helicopter at 1223 TZH. The boarding party included an officer of the Australian Fisheries Management Authority ("AFMA").

14. At his initial interview on 7 February 2002, the fishing master, Manuel Lijo, informed the Australian Fisheries Officer that the *Volga* had departed Jakarta on 6 November 2001 and that there were 120 tonnes of fish on board.

15. In accordance with the applicable Australian legislation, the *Fisheries Management Act 1991* ("the FM Act"), the *Volga* was directed to port at Fremantle in Western Australia, where it arrived on 19 February 2002.

16. The crew of the vessel, with the exception of the master (Alexander Vasilkov), the chief mate (Juan Manuel Gonzalez Folgar), the fishing master (Manuel Perez Ujo) and the fishing pilot (Jose Manual Lojo Eiroa) were subsequently released and repatriated to their respective homelands.

17. Unfortunately, on 25 February 2002, Master Vasilkov consumed a large quantity of cleaning liquid containing methanol in the belief that it was alcohol. He lost consciousness and did not regain it before dying. Whilst most crew members had been removed from the *Volga* when it berthed in Fremantle, Master Vasilkov and some crew remained on board to maintain the vessel. They were subject to supervision by Australian Correctional Management. A nurse from this company noticed that Master Vasilkov and two engineers were ill. The three men initially attributed their stomach ache to something that they had eaten. All three men were taken to hospital as a precaution. The condition of all three men deteriorated overnight and Master Vasilkov subsequently died.

18. A search of the *Volga* located a number of containers of the cleaning liquid, including a bottle that was found in the master's cabin. It appears that the men had obtained access to locked store cabinets and removed the substance for consumption.

III. Criminal Proceedings – Bail Payments

19. On 6 March 2002, the fishing master, fishing pilot and chief mate ("crew members")

were charged with offences under the FM Act, in connection with the illegal activities of the vessel in the AEEZ ("criminal proceedings").

20. The crew members were admitted to bail on the condition of making a cash deposit of AU$75,000 each. In addition, they were each ordered to reside at a place approved by AFMA; to surrender their passports and seaman's papers to AFMA; and to not leave the Perth metropolitan area.

21. The cash deposit for the bail undertaking had not been met by 14 March 2002 and the crew members were remanded in custody.

22. On 23 March 2002, AU$225,000 was posted into court by the owner and the crew members were released from custody.

23. On 30 May 2002 the crew members applied and were successful, in having their bail conditions varied to allow them to obtain their passports and seaman's papers and return to Spain on the condition that they deposit their documents and seaman's papers with the Australian embassy in Madrid.

24. The decision of 30 May 2002 was appealed. On 14 June 2002 the Supreme Court of Western Australia varied the conditions of bail imposed on 30 May 2002 so as to require, in lieu of the existing $75,000, a deposit of $275,000 in respect of each of the crew members.[1]

25. On 23 August 2002, a further charge was laid against the fishing master. Bail in relation to this charge was continued concurrently in relation to the earlier charge with an additional condition requiring the fishing master to deposit a further cash security of AU$20,000. On 27 August 2002, this additional security was paid into court on behalf of the fishing master.

IV. Proceeds of Catch

26. The catch of 131.422 tonnes of Patagonian toothfish and 21.494 tonnes of bait found on board the *Volga* was seized under the FM Act. After a tender process, in which six offers were received, the catch and bait were sold for a total of AU$1,932,579.28. The Australian Government Solicitor is holding these proceeds in trust, pending the finalisation of the domestic proceedings.

V. Forfeiture proceedings

27. On or about 21 May 2002, the owner issued proceedings in the Federal Court of Australia for a declaration that the seizure and detention of the vessel and the catch was illegal and for orders that the vessel, the equipment and proceeds of the catch be released to the owner ("forfeiture proceedings").

VI. Request for release of vessel and crew

28. Various requests have been made on behalf of the owner and the Applicant to the Australian Authorities for the release of the vessel on terms not satisfactory to Australian

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1 *Commonwealth Director of Public Prosecutions v Lijo and ors* [2002] WASC 154, p. 7 (Annex 2, p. 45).

Authorities.

29. By letter dated 26 July 2002, AFMA:

(a) requested information that can be independently verified of:

(i) The ultimate beneficial owners of the vessel, including the name(s) of the parent company or companies to the owner;

(ii) The names and nationalities of the directors of the owner and of the parent company (or companies);

(iii) The name, nationality and location of the managers of the vessel's operations;

(iv) The insurers of the vessel; and

(v) The financiers, if any, of the vessel.

(b) requested that security in the form of a cash deposit or an unconditional bank guarantee in the amount of AU$3,332,500.00 be provided for the release of the *Volga*.

(c) stated that the security amount incorporated an amount for what Australia considered to be reasonable in respect of carriage of a fully operational vessel monitoring system ("VMS") on board the vessel and observing the conservation measures established by the Commission for the Conservation of Antarctic Marine Living Resources, to which both Australia and the Russian Federation are parties, until the conclusion of legal proceedings in Australia.

30. A VMS is a satellite-based system that enables the position of a vessel to be accurately located at any time.

CHAPTER 3

LEGAL ISSUES

I. Preliminary observation

1. The only issue before the Tribunal is the prompt release of the vessel and the three crew who remain in Australia but who are not in detention. In proceedings under Article 292 the Tribunal has no jurisdiction to determine the legality of the arrest of the vessel. This is clear from Article 292(3). The Memorial of the Russian Federation[2] seeks to argue that Australia cannot establish a valid hot pursuit and that this should be taken into consideration in assessing the level of the bond that is reasonable in this case. However, as it is not open to the Tribunal in these proceedings to determine issues concerning the legality of the hot pursuit, it is not open to the Tribunal to consider this issue in assessing what is a reasonable bond. Nor is there any reason to give even preliminary consideration to the merits of that issue. This statement does not deal with the allegation that there was a breach of Article 111 of the 1982 Convention. Australia will, however, argue in any competent proceedings in which the issue may be relevant, that there was a hot pursuit of the vessel in accordance with the requirements of the 1982 Convention.

II Jurisdiction and Admissibility

2. Article 73(2) imposes an obligation to promptly release a vessel and crew arrested under Article 73(1) upon the posting of reasonable bond or other security. The Russian Federation alleges a breach by Australia of this obligation. Australia docs not deny that the vessel in question was seized and detained by Australian Authorities in order to enforce Australian fisheries laws applicable in the AEEZ adopted by it in conformity with Article 73 of the 1982 Convention.

3. It is not sufficient, however, simply to allege a breach of Article 73 in order to establish jurisdiction under Article 292. The Tribunal has to satisfy itself that the allegation of non-compliance is well founded.[3]

4. The Russian Federation has foreshadowed separate proceedings[4] concerning an alleged breach of Article 111 of the 1982 Convention. As has already been noted, this is not an issue relevant to proceedings under Article 292. There is no provision in the 1982 Convention requiring prompt release of a vessel on the ground it was seized unlawfully on the high seas. Article 111(8) contemplates that where the right of hot pursuit was not justified compensation shall be paid for any loss or damage thereby sustained. No reference is made to prompt release in that context.

5. For the claim under Article 292 to be admissible, the Tribunal must in the present proceedings be satisfied that the substance of the action in fact relates to detention of a vessel for a reason within the scope of Article 73. The flag State must establish that the arrest of the

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2 Chapter 4, Paragraphs 25-31.

3 ITLOS Rules, Article 113.

4 Memorial of the Russian Federation, Chapter 4, paragraphs 25-31.

vessel was in fact for a reason covered by the provisions of Article 73, the provision which relevantly imposes an obligation to release and thus supports jurisdiction under Article 292.[5] It is not sufficient for the applicant to assert that is the case. Nor is it sufficient to rely on conduct by the respondent to characterise the dispute. This is particularly the case where the applicant and owner of the vessel seek to challenge that conduct on the ground that it occurred on the high seas contrary to international law and that for that reason the detention was unlawful. Rather, the Tribunal has to satisfy itself as to whether the detention of the vessel occurred under Article 73 or whether in substance the application raises separate issues under Article 111.

6. In this regard, it should be noted that the action to prevent forfeiture brought by the owner in the Federal Court of Australia[6] involves an argument based on unlawful seizure of the vessel on the high seas. There is also a foreshadowed action in this Tribunal or other appropriate forum raising Article 111 issues.[7]

7. Despite this, Australia concedes that the case is admissible in terms of Article 292 because of its clear connection with action taken by Australia under Article 73. As recognised in the *MV "Saiga"* case, a case concerning the merits of the arrest of the vessel could later be submitted to the Tribunal or other competent body under Article 287 of the 1982 Convention. Unlike the *MV "Saiga"* case, the arrest of the vessel in the present case clearly occurred in conjunction with enforcement of Australian fisheries laws. On this basis there is no reason for the Tribunal to consider the merits of any such possible separate proceeding in order to reach a decision on the admissibility of the proceedings. The remarks in the *MV 'Saiga'* case at paragraphs 50 and 51 are not applicable.

8. Australia does not dispute any of the requirements imposed by Article 292 for this Tribunal to have jurisdiction.

III. Reasonableness of the bond

9. The purpose of a bond is to guarantee that in the worst case scenario the detaining State is no worse off by the release of the vessel.

10. In its previous decisions in prompt release applications, the Tribunal has provided guidance on the factors that may be relevant in assessing the reasonableness or otherwise of a bond.[8] These include the gravity of the alleged offences; the penalties imposed or imposable under the laws of the detaining state; the value of the detained vessel and of the cargo seized; and, the amount of the bond imposed by the detaining State, and its form. However, the Tribunal has also stated that the list is not exhaustive. Nor has the Tribunal laid down rules as to the weight to be attached to each factor.[9]

11. The decisions of the Tribunal demonstrate that it retains complete discretion in assessing the reasonableness of a bond set for the release of a vessel or crew. The Tribunal

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5 *MV 'Saiga'* case.

6 Memorial of the Russian Federation, Chapter 2, paragraph 23.

7 Memorial of the Russian Federation, Chapter 4, paragraph 25.

8 International Tribunal for the Law of the Sea, Case no. 5, the *"Camouco"* case, 7 February 2000, Judgment, paragraph 67 (Annex 2, p. 25).

9 International Tribunal for the Law of the Sea, Case no. 6, the *Monte Confurco* case, 18 December 2000, Judgment, paragraph 76 (Annex 2, p. 28).

can decide that the factors identified by it in the past in relation to particular cases should not be considered relevant to a particular case before it. Similarly, the Tribunal may decide that factors that it has not previously identified are relevant to the assessment of the reasonableness of the bond in a case before it. The relevance of the various factors in the current case requires careful consideration.

12. In the *MV "Saiga"* case, the Tribunal indicated that the reasonableness criterion "encompasses the amount, the nature and the form of the bond or financial security."[10] In this respect, Australia agrees with the assertion contained in the Memorial of the Russian Federation that what is reasonable will depend upon all of the circumstances of the case.[11] However, the circumstances of the case cannot be viewed narrowly. Australia contends that it is open to the Tribunal to consider, and there are good reasons why it should consider, additional issues. In the context of this particular case, those additional factors include the serious problem of continuing illegal fishing in the Southern Ocean and the role of vessels like the '*Volga*' in repeated and flagrant violations of applicable national and international conservation measures.

13. Also, it is a legitimate function of a bond to ensure the return of the vessel and the equipment on board for forfeiture if such a forfeiture is ordered under domestic legislation. The bond should include an amount of such a level that the arresting state receives the full value of the vessel and the equipment in the event of failure to return the vessel and equipment following an order for forfeiture. Furthermore, the coastal state is entitled to include in a bond an amount to ensure that measures of a practical nature are taken by the owners of the released vessel that will in turn ensure compliance with the laws of the coastal state pending completion of the domestic legal proceedings. The inclusion of an amount to guarantee the continuing installation and operation of a vessel monitoring system for that period is a reasonable inclusion in the bond.

14. It is clear also that a number of factors will not be relevant. In this respect, the Tribunal should reject completely the invitation of the Applicant "to take notice of the lawfulness under international law to the Respondent's actions in seizing the vessel on the high seas".[12] That is not a matter for consideration of the Tribunal. Secondly, the Tribunal should not conflate the reasonableness of a bond for the release of a vessel with the issue of the level of the bail and security for the release of the crew. The level of that bail and security is additional to the level of bonding for the vessel. These issues are addressed in more detail below. Thirdly, the value of the catch subject to forfeiture under domestic legislation should not be taken into consideration.

V. Bonding of the vessel and of the crew are separate issues

15. Australia contends that the issue of the bonding of the vessel is separate and distinct from the issue of the bonding of the crew. The reasonableness of the amount of bail or security set for the release of the crew must be assessed independently from the reasonableness of the amount of bond set for the release of the vessel. The two amounts

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10 International Tribunal for the Law of the Sea, Case no. 1, the *MV Saiga* case, 4 December 1997, Judgment, paragraph 82 (Annex 2, p. 31).

11 Memorial of the Russian Federation, Chapter 4, paragraph 11.

12 Memorial of the Russian Federation, Chapter 4, paragraph 26.

should then be added together to arrive at the figure for the total bond for the release of the vessel and the crew.

16. The ordinary meaning of the terms of the 1982 Convention supports this conclusion.[13] Article 73(2) provides: "Arrested vessels and their crews shall be promptly released upon the positing of a reasonable bond or other security." That is, the right to prompt release exists in relation to both vessels and their crews. However, in relation to an action alleging non-compliance with Article 73(2), Article 292(1) provides:

> Where the Authorities of a State Party have detained a vessel flying the flag of another State Party and it is alleged that the detaining State has not complied with the provisions of this Convention for the prompt release of the vessel *or* its crew upon the positing of a reasonable bond...(emphasis added).

17. When used in this context, the word "or" is: a "particle co-ordinating two or more words ..., between which there is an alternative."[14]

18. This indicates that the prompt release of each of the vessel and the crew are separate issues. An assessment of what is "reasonable" will depend upon the circumstances of the case. However, the facts that are relevant to an assessment of what is reasonable in relation to the release of the vessel will be different from the facts that are relevant to an assessment of what is reasonable in relation to the release of the crew. This difference is reflected in domestic law. Under Australian law, the setting of a bond for the vessel is an administrative matter and the setting of bail or sureties for the crew is a matter of criminal law. Australian law is not unusual in this respect.

19. Australian law makes a clear distinction between forfeiture of the vessel, catch and equipment and the separate issue of criminal proceedings. The three crew members who remain in Australia have been charged with offences under subsection 100(2) of the FM Act. Forfeiture of the vessel, equipment and catch are not, however, dependent on conviction for these offences. Under section 106C of the FM Act, a notice was given of the seizure.[15] Subsequently, a notice was given under section 106F of the FM Act and on 21 May 2002 the owner commenced proceedings seeking a declaration that the vessel, equipment and catch were not forfeited. The relevant provisions of the FM Act are set out at pp. 361-365 of the Memorial of the Russian Federation.

20. Australia contends, therefore, that the Tribunal should separately consider and decide on the reasonableness of the bond set for the release of the vessel and the reasonableness of the bail and surety set for the release of the crew.

VI. The bond for the release of the vessel

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13 Article 31(1) of the Vienna Convention on the Law of Treaties states: "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."

14 *The Oxford English Dictionary*, Second Edition, Clarendon Press, Oxford, 1989, Volume X, p. 882.

15 See Exhibit 24 referred to in the affidavit of Oleg Sizov, Memorial of the Russian Federation, Annex, p. 89.

21. A consideration of what Australia contends are relevant factors in assessing the reasonableness of the bond set for the release of the *Volga* follows.

VII. Value of detained vessel and equipment

22. The Tribunal has previously identified the value of the cargo seized as one of the factors relevant to an assessment of the reasonableness of a bond.[16] Following the arrival of the vessel in Fremantle, AFMA engaged Mr Kent Stewart of Maritime Engineers Pty Ltd to conduct a condition survey and report on the *Volga's* outfit, machinery and equipment to determine a reasonable valuation for bonding purposes. Mr Stewart conducted this work over the period 20-22 February 2002.

23. In his report, Mr Stewart certified that the valuation of the *Volga* and the fuel, lubricants and fishing equipment that remained on board was US$1,075,200. This translates to a value in Australian dollar terms of approximately AU$1,916,406.75 based on the current exchange rate.[17]

24. The Russian Federation has not disputed the valuation. Indeed, the Russian Federation has relied on the valuation in its submissions on the reasonableness of the bond for the release of the vessel.[18]

25. Australia submits that the valuation provided by Mr Stewart is a relevant factor to the reasonableness of the bond for the release of the *Volga*.

VIII. Gravity of offences as reflected in potential penalties

26. The Tribunal has previously identified the gravity of the alleged offences as one of the factors relevant to an assessment of the reasonableness of a bond.[19] Also, the Applicant concedes that "the offences alleged against officers are serious offences".[20] An examination of the gravity of the offences allegedly committed in this matter demonstrates the reasonableness of the bond set by Australia.

27. Australia submits that the potential penalties under Australian law indicate the grave nature of the offence and support a conclusion that the bond set by Australia is reasonable. Australia submits that it is entitled to take the maximum possible penalties into account when assessing a reasonable bond.

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16 International Tribunal for the Law of the Sea, Case no. 5, the "*Camouco*" case, 7 February 2000, Judgment, paragraph 67 (Annex 2, p. 25), International Tribunal for the Law of the Sea, Case no. 6, the *Monte Confurco* case, 18 December 2000, Judgment, paragraph 76 (Annex 2, p. 28).

17 1 USD = 1.78237 AUD as at 4 December 2002, 22:56:51 GMT.

18 Memorial of the Russian Federation, Chapter 4, paragraph 20.

19 International Tribunal for the Law of the Sea, Case no. 5, the "*Camouco*" case, 7 February 2000, Judgment, paragraph 67 (Annex 2, p. 25), International Tribunal for the Law of the Sea, Case no. 6, the *Monte Confurco* case, 18 December 2000, Judgment, paragraph 76 (Annex 2, p. 28).

20 Memorial of the Russian Federation, Chapter 4, paragraph 21.

28. In making this submission, Australia rejects the assertion that the amount of bail posted is in excess of the likely fines.[21] In any event, an assessment by the Tribunal of the amount of probable fine in the event of a conviction would be replete with uncertainty. Rather, the Tribunal should merely be aware of the level of potential fines and factors that will be taken into account in determining them, when assessing the reasonableness of the bond set by Australia.

29. Section 100 of the *Fisheries Management Act 1991* provides:

> (1) A person must not, at a place in the AFZ, use a foreign boat for commercial fishing unless:
>
> (a) there is in force a foreign fishing licence authorising the use of the boat at that place; or
> (b) if the boat is a Treaty boat-a Treaty licence is in force in respect of the boat authorising the use of the boat at that place.
>
> (2) A person who contravenes subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding 2,500 penalty units.
>
> (2A) Strict liability applies to subsection (2).
>
> (3) An offence against this section is an indictable offence but may be heard and determined, with the consent of the prosecutor and the defendant, by a court of summary jurisdiction.
>
> (4) If an offence is dealt with by a court of summary jurisdiction, the penalty that the court may impose is a fine not exceeding 250 penalty units.

30. Each of the three senior crew members who remain in Australia has been charged under section 100(2) of the FM Act. The fishing master, Mr Lijo, faces two charges and the chief mate, Mr Folgar and the fishing pilot, Mr Eiroa, each face one charge.

31. The charges in this case are proceeding by way of indictment. This means that the maximum penalty in relation to each charge is a fine not exceeding 2,500 penalty units or AU$275,000 (one penalty unit equals AU$110).[22] The total potential fines for the four charges are AU$1,100,000. Both the large amount of potential fines, the strict liability nature of the offence and the fact that the proceedings are indictable indicates the seriousness with which the Australian Parliament views these offences. The fact that the offences in this case are proceeding by way of indictment rather than summons indicates the seriousness with which the alleged activities of the crew members are viewed.

32. The court has discretion to decide the actual quantum of fines in the event of a conviction. The court is required to impose an order of appropriate severity, taking into account all of the circumstances of the offence.[23] Subsection 16A(2) of the *Crimes Act 1914*

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21 Memorial of the Russian Federation, Chapter 4, paragraph 24.

22 *Crimes Act 1914*, section 4AA (Annex 1, p. 21).

23 *Crimes Act 1914*, section 16A(1) (Annex 1, p. 22).

sets out a number of matters that the court must take into account as relevant. Matters that are relevant to this offence include:

- the nature and circumstances of the offence;
- any injury, loss or damage resulting from the offence;
- the degree to which the offender has shown contrition for the offence;
- any guilty plea;
- the degree to which the offender has cooperated with law enforcement agencies in the investigation of the offence;
- the deterrent effect of an order;
- the effect that the order would have on the offender's family;
- the need to ensure that the offender is adequately punished; and
- the character, background and prospects of rehabilitation of the offender.[24]

33. The court is also required to take into account the financial circumstances of the offender when imposing a fine.[25] However, the court is not prevented from imposing a fine because the financial circumstances of the offender cannot be ascertained.[26]

34. A number of Australian courts have commented on the seriousness of fisheries offences. For example, Barwick CJ in *Cheatley v The Queen* (1972) 127 CLR 291 at p. 296 (Annex 2, p. 33), in relation to an appeal against the sentence handed down for a conviction of the owner and master of a foreign boat for fishing in Australian waters commented:

> For the offence the section creates to have been committed, the foreign boat must have been intruded into and used for fishing in the proclaimed waters of a declared fishing zone. If that intrusion and use is deliberate the likelihood of it being done without the complicity of the owner of the boat must be small. If it is accidental that circumstance will be weighed in the exercise of any available discretion.
>
> The protection of the fishing grounds of the nation from foreign exploitation is somewhat akin to the protection of the country from smuggling. Drastic action in protection of the country's interests in each instance may be regarded as warranted, indeed, if not to be expected : each is an area where pecuniary penalties are unlikely to provide an adequate protection.

35. This passage was cited by Underwood J in *Jetopay Pty Limited v Martin Stephen Dix* (1994) 76 A Crim R 427 at 435-436 (Annex 2, pp. 35-36), who also expanded on the deterrence value of sentencing in relation to fisheries offences:

> General deterrence looms large upon the assessment of penalty for breaches of fisheries legislation. Mr Weinberg QC accepted that proposition. The offences are difficult and expensive to detect and the rewards are very

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24 *Crimes Act 1914*, section 16A(2), paragraphs (a), (e), (f), (g), (h), (j), (k), (m), (n) and (p) (Annex 1, p. 22).

25 *Crimes Act 1914*, section 16C(1) (Annex 1, p. 22).

26 *Crimes Act 1914*, section 16C(2) (Annex 1, p. 22).

> substantial for those who take fish to which they are not entitled. Orange roughy and other species of fish constitute a natural resource, the preservation, controlled harvest and proper management of which is a matter in which the whole community has a legitimate interest. The legislation reflects this legitimate interest. Exploitation of the resource by a few for personal financial gain puts at risk the survival of this resource for future generations.

36. Underwood J applied the same reasoning in *Strachan v Graves* (1997) 141 FLR 283 at 303 (Annex 2, p. 38):

> A fisheries resource is a resource which belongs to the public at large. Offences such as those of which the applicant was convicted are difficult and expensive to detect. Abalone constitute a natural resource, the preservation, controlled harvest and proper management of which is a matter in which the whole community has a legitimate interest. It is a notorious fact that the abalone fishery is a precarious resource, one which will be lost forever unless strong deterrent penalties are imposed upon those who exploit it outside the controls imposed by those who are authorised on behalf of the community to manage this resource.

37. This passage was also cited with support by the Full Court of the Supreme Court of Tasmania in a subsequent appeal (Judgment number 68/1998).

38. Australia submits that these factors support a conclusion that the Tribunal should not be guided by the assertions contained in the Memorial of the Russian Federation when considering this aspect of the bond set by Australia. The evidence provided on behalf of the Russian Federation on this issue is of questionable value. For example, that evidence takes as read assertions by the crew members themselves about their circumstances. These assertions are not supported by independent evidence and should be ignored for the purposes of assessing the reasonableness of the bond.

39. Further, Australia does not accept the assessment as to likely fines contained in the affidavit of Mr Thomas Percy.[27] The assessment of Mr Percy differs from the assessment of Wheeler J of the Supreme Court of Western Australia when deciding an appeal on the amount of bail set for the crew.[28] In considering the quantum of a possible fine, Wheeler J indicated that a fine of AU$100,000 "or perhaps somewhat more" would be a starting point in relation to each offence.[29] In any event, as stated above, an assessment by the Tribunal of the amount of probable fine in the event of a conviction would be replete with uncertainty. Rather, the Tribunal should merely be aware of the level of potential fines and factors that will be taken into account in determining them, when assessing the reasonableness of the bond set by Australia.

40. Australia submits that the fact that the offences do not carry the possibility of imprisonment is not an indication of the seriousness with which these offences are viewed, but rather reflects Australia's compliance with Article 73(3) of the Convention. That Article

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27 Memorial of the Russian Federation, Annexes, p. 256.

28 *Commonwealth Director of Public Prosecutions v Lijo and ors* [2002]WASC 154 (Annex 2, p. 39).

29 Judgment p. 6 (Annex 2, p. 44).

prohibits imprisonment for foreign fishing offences. Accordingly, this factor cannot be relied on when assessing the seriousness of the offences under Australian law.

41. Australia rejects completely the contentions of the Applicant that there are certain factors to be balanced against the seriousness of the offence.[30] In particular, an unfounded (and legally irrelevant) allegation of a breach of international obligations by the Respondent is not a factor which can be taken into account. Also, the fact that the alleged owner of the *Volga* has not yet been charged with an offence is not, as a matter of logic, a factor that countervails the seriousness of the offences alleged against the crew. Moreover, it is a surprising suggestion given the initial difficulties encountered by Australia in tracking down the ownership of the *Volga* and the fact that the alleged owner, Olbers, is a foreign company located outside Australia. Efforts have been made to locate Olbers at its registered address of 153 Dimitrovskoe Shosse Building 3, Moscow. The company is unable to be located at that address. Furthermore, no Building 3 exists at that address.[31]

IX. International concern

42. Illegal fishing is an issue of great concern to many States. The international community has established a regime to ensure that fish populations are utilised in a sustainable manner and in accordance with principles of conservation. A number of treaties to which both Australia and the Russian Federation are states parties are central to this regime, including in particular the 1982 Convention, 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 and the Convention on the Conservation of Antarctic Marine Living Resources.

43. Despite these efforts, concern continues to exist in relation to the survival of the Patagonian toothfish (*Dissostichus eleginoides*) fishery. Large quantities of this species were on board the *Volga* at the time of its arrest. Illegal fishing for Patagonian toothfish undermines agreed regimes for the management of the oceans to ensure its sustainable utilisation in a number of ways:

- it results in a decline in the total harvestable biomass;
- it results in an underestimation of the real catch, which can lead to overexploitation and the potential collapse of the fishery; and
- it undermines attempts to scientifically evaluate the state of the fishery and its recovery from past overexploitation.

44. The most recent meeting of the Commission for the Conservation of Antarctic Marine Living Resources ("CCAMLR") noted that illegal fishing had seriously depleted the stocks of Patagonian toothfish in areas in which the illegal activity had been reported.[32] The meeting further noted the potentially catastrophic effect of illegal fishing in the CCAMLR area and that illegal fishing is likely to contribute to a decrease in the allowable catch for legitimate

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30 Memorial of the Russian Federation, Chapter 4, paragraph 21.

31 See affidavit of Justine Nina Braithwaite dated 5 December 2002 (Annex 5, p. 66).

32 Commission for the Conservation of Antarctic Marine Living Resources, Report of the Twenty-First Meeting of the Commission, CCAMLR-XXI, 4 November 202, p. 38 (Annex 4, p. 62).

fishers.[33] States have expressed their concern individually to Australia on these issues. Examples of those expressions of concern are set out in the Diplomatic Note of the New Zealand High Commission in Canberra dated 6 November 2002[34] and the Diplomatic Note from the French Ministry of Foreign Affairs to the Australian Ambassador to France of the same date.[35]

45. Additionally, illegal fishing has a detrimental effect on the seabird population in the CCAMLR area, due to illegal fishers ignoring conservation measures for the protection of seabirds. It was reported at the most recent CCAMLR meeting that current levels of illegal fishing "would substantially reduce populations of seabirds which have been taken as by-catch in longline fishing operations".[36]

46. There is no doubt that the *Volga* had been fishing illegally for an extended period in the AEEZ surrounding the Australian Territory of Heard Island and McDonald Islands prior to its arrest.[37] There is no doubt also that it was carrying large quantities of fresh Patagonian toothfish caught in the Australian fishing zone at the time of its arrest and that it was fishing illegally in concert with other vessels at the time it was first located.[38]

47. This fishing has contributed to the serious depletion of the stocks of Patagonian toothfish and was a violation of Australian sovereign rights. Australia contends that this matter of international concern is a relevant factor for the Tribunal to consider in assessing the reasonableness of the bond for the release of the vessel in this case.

X. Value of seized catch

48. The Respondent rejects the assertion of the Applicant that the proceeds of the sale of the catch should be treated as security by the owner.[39]

49. It is true that the Tribunal has previously identified the value of the cargo seized as one of the factors relevant to an assessment of the reasonableness of a bond.[40] The Applicant submits, however, that it would be inappropriate in the circumstances of this case for the Tribunal to take the value of the catch into account when assessing the reasonableness of the bond set by Australia for the release of the *Volga*.

50. Australia alleges that the fish seized on board the *Volga* are the proceeds of offences against Australian law. Clearly the evidence shows that the fish were caught in the AEEZ. Also, the potential forfeiture of the catch is additional to the potential forfeiture of the vessel. It follows that the value of the catch, which has a potential to be confiscated under domestic

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33 Commission for the Conservation of Antarctic Marine Living Resources, Report on the Working Group on Fish Stock Assessment, SC-CAMLR-XX/4, 17 October 2002, pp. 42-43 (Annex 4, pp. 64-65).

34 The Diplomatic Note forms part of the annex to this response (Annex 3, p. 50).

35 Annex 3, p. 56A.

36 Commission for the Conservation of Antarctic Marine Living Resources, Report of the Twenty-first Meeting of the Commission, CCAMLR-XXI, 4 November 202, p. 38 (Annex 4, p. 62).

37 Affidavit of Mark Andrew Zanker sworn 6 December 2002 (Annex 5, p. 100).

38 Affidavit of Mark Andrew Zanker sworn 6 December 2002 (Annex 5, p. 100).

39 Memorial of the Russian Federation, Chapter 4, paragraph 18.

40 International Tribunal for the Law of the Sea, Case no. 5, the *"Camouco"* case, 7 February 2000, Judgment, paragraph 67 (Annex 2, p. 25), International Tribunal for the Law of the Sea, Case no. 6, the *Monte Confurco* case, 18 December 2000, Judgment, paragraph 76 (Annex 2, p. 28).

legislation, is completely separate from the setting of a bond for the vessel. It is indisputable in international practice as reflected in the domestic laws of States that States may require the forfeiture of a vessel *and* the forfeiture of the catch. If a bond set for the vessel is reduced by the value of the catch, the Tribunal would effectively be eliminating the right of a State under its domestic legislation to the effective forfeiture of the vessel as such. This means the bond would not provide the intended security.

51. In the *Monte Confurco* case, Judge Jesus stated:

> In my view the majority decision was unwise to have taken the value of the fish seized as part of the bond, when the domestic legislation makes it subject to confiscation. One important aspect of legitimate penalties normally imposed by coastal States legislation ... in such cases, is the confiscation of the product of illegal fishing.
>
> It is conceptually wrong, in a case where the Tribunal has no competence on the merits, to consider as part of the bond or security any seized asset that, in the end, might be confiscated, by the decision of the domestic court, as part of the penalties imposable by the national legislation.

52. Australia supports this reasoning.

53. Australia submits that no account should be taken of the value of the catch on board the *Volga* at the time it was arrested in setting the bond for the release of the vessel. To do so would undermine the purpose of the bond and effectively nullify the forfeiture of the catch prescribed by Australian law.

XI. Compliance with Australian laws and international obligations pending completion of domestic proceedings

54. The gravity of the offences impacts on a number of other features of this case that are relevant to the issue of the reasonableness of the bond. The bond set by Australia includes an amount to guarantee "the carriage of a fully operational vessel monitoring system and observance of Commission for the Conservation of Antarctic Marine Living Resources conservation measures until the conclusion of legal proceedings."[41]

55. This element of the bond is designed to ensure that the *Volga* complies with Australian law and relevant treaties to which Australia is a party until the completion of the domestic legal proceedings. A State is entitled to eliminate the prospect of illegal fishing contrary to its laws by a vessel it has arrested and released pending the completion of the relevant legal proceedings relating to the past conduct of that vessel. The purpose of the inclusion of this element of the bond is intrinsically linked to the release of the vessel and the level of that inclusion is reasonable.

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41 Letter of 26 July 2002 from Geoff Rohan, General Manager Operations, AFMA, to Andrew Tetley, Solicitor (Annex 4, p. 59).

XII. Irrelevancy of whether or not there was a breach of Article 111

56. Under Article 292, paragraph 3, of the 1982 Convention, the Tribunal "shall deal without delay with the application for release and shall deal only with the question of release, without prejudice to the merits of any case before the appropriate domestic forum against the vessel, its owner or its crew." Yet the Applicant, allegedly on the basis of aspects of past judgments of the Tribunal,[42] seeks to draw into the question of release and the amount of the bond, matters that it believes are core to the merits of an alleged dispute. The alleged dispute is referred to in paragraph 25 of its Memorial and concerns the circumstances of the seizure of the *Volga* and the right of hot pursuit from an exclusive economic zone. These are not matters relevant to assessing the reasonableness of a bond.

57. The Applicant is clearly inviting the Tribunal to pre-judge the merits of any proceedings threatened by the Respondent in relation to the seizure of the *Volga*. Such a pre-judgement of the merits goes much further than an examination of the "facts and circumstances of the case to the extent necessary for a proper appreciation of the reasonableness of the bond".[43] If the Tribunal were to adopt that approach, it would not be exercising the "restraint" that it has previously counselled and exercised.[44] Also, adopting that approach in this particular case would do "prejudice to the merits" of the cases currently before the Australian courts concerning the *Volga* and its crew.[45]

58. Moreover, for the Tribunal to take a position on the merits of the arrest of the *Volga* in the current proceedings would pre-empt the real question of the jurisdiction of any tribunal over the merits of the pursuit and seizure of the *Volga* in the light of the declaration made by the Russian Federation on becoming a party to the 1982 Convention. That declaration provides in part:

> The Russian Federation declares that, in accordance with Article 298 of the United Nations Convention on the Law of the Sea, it does not accept the procedures, provided for in section 2 of Part XV of the Convention, entailing binding decisions with respect to disputes concerning ... military activities by government vessels and aircraft, and disputes concerning law-enforcement activities in regard to the exercise of sovereign rights or jurisdiction.

59. As set out in paragraph 13 of this Statement, the *Volga* was apprehended using Australian military vessels and aircraft. Furthermore, those vessels and aircraft were engaged in "law-enforcement activities in regard to the exercise of sovereign rights or jurisdiction".

60. In all of these circumstances, it is submitted that the Tribunal should not take into account the validity or otherwise of the pursuit and seizure of the *Volga* in assessing the reasonableness of the bond.

XIII. The bond for the release of the crew

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42 Memorial of the Russian Federation, Chapter 4, paragraphs 13-15.

43 *Monte Confurco Case*, paragraph 74 (Annex 2, p. 27).

44 *M/V* "Saiga" Case, paragraph 50 (Annex 2, p. 30).

45 The 1982 Convention, Article 292.3.

61. Australia submits that the bail set by Australian courts in relation to the three crew members who remain in Australia represents a reasonable element of a bond. The decision on the appropriate conditions of bail was made after a consideration of the full circumstances of the three crew members. Australia submits that both the decision itself and the factors taken into account in making the decision demonstrate its reasonableness. The decision is presently subject to appeal, due to be heard by the Full Court of the Supreme Court of Western Australia on 16 December 2002.

62. The crew members were charged with offences under the FM Act on 6 March 2002 and admitted to bail on that day. Contrary to the Memorial of the Russian Federation, the crew members were not remanded in custody at that time.[46]

63. The factual circumstances surrounding the setting of the bail of the crew are set out in the judgment of Wheeler J in the matter of *Commonwealth Director of Public Prosecutions v Lijo and ors* [2002] WASC 154.[47] Initially, the crew members were admitted to bail on the condition that they deposit AU$75,000 each (AU$225,000 in total), that they reside at a place approved by the relevant officer from the AFMA, that they surrender all passports and seaman's papers and that they not leave the Perth metropolitan area. The crew members had not made the cash deposit by 15 March 2002 and were placed in custody on that day. The owner of the *Volga* made the deposits on 23 March 2002 and the crew members were immediately released.

64. On 30 May 2002, the crew members applied successfully to have their bail conditions varied to allow them to obtain their passports and seaman's papers and return to Spain, on the condition that they deposit their documents and seamen's papers with the Australian embassy in Madrid. This decision was appealed, which is how the matter came to be before Wheeler J.

65. Justice Wheeler varied the conditions of bail imposed on 30 May 2002 "so as to require, in lieu of the existing $75,000, a deposit of $275,000" in respect of each of the crew members.[48]

66. In reaching her decision, Wheeler J took into account the circumstances of each of the crew members, based on the affidavit deposited on behalf of the crew members by Mr Leo Gatica-Evans.[49] In particular, Wheeler J took note of the financial circumstances of each of the crew members, their domestic circumstances in Spain and their situation in Australia.

67. Justice Wheeler then considered the risk that the crew members would not return to Australia if permitted to travel to Spain. In doing so, Wheeler J noted the strength of the prosecution case, the serious nature of the offences alleged (involving an organised illegal fishing venture) and the fact that the defendants would not be entitled to a discount in penalty for pleading guilty. Justice Wheeler concluded that, if found guilty, it was likely that a significant fine would be imposed for each of the offences and adopted AU$100,000 as a

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46 Memorial of the Russian Federation, November 2002, Chapter 2, paragraph 14.

47 Annex 2, p. 39.

48 *Commonwealth Director of Public Prosecutions v Lijo and ors* [2002] WASC 154, p. 7 (Annex 2, p. 45).

49 A copy of this affidavit forms exhibit OS33 to the affidavit of Oleg Sizov, contained in the Memorial of the Russian Federation Annexes at p. 139.

minimum likely fine for each offence.[50] Justice Wheeler also accepted the proposition that the purpose of bail is not just to ensure the payment of fines that may be imposed, but also to ensure the "vindication of the law and in the deterrent effect which such proceedings may have on others."[51]

68. Finally, Wheeler J had regard to the fact that the crew members do not have links to Australia that support a voluntary return, the lack of interest in their employer of ensuring that they return to Australia and the fact that returning would involve costs to the crew members.[52]

69. After considering these factors, Wheeler J decided that bail of $275,000 for each of the crew members would ensure that it was "reasonably probable" that they would return for their trial and varied the bail orders accordingly.[53]

70. On 23 August 2002, a further charge was laid against the fishing master. Bail in relation to this charge was continued concurrently in relation to the earlier charge with an additional condition requiring the fishing master to deposit a further cash security of AU$20,000. On 27 August 2002, this additional security was paid into court on behalf of the fishing master.

71. Australia submits that the bail set in relation to the crew members represents a reasonable bond for the release of the crew members.

72. Australia submits that it would be inappropriate to have regard to the potential fines that may be imposed on the crew members to reduce the bond set for each of them. The purpose of bail is to ensure the attendance of a defendant at a criminal trial. As explained in the judgment of Wheeler J, the object of the money deposited as part of the bail is not just to ensure that a sum equivalent to the appropriate fines can be recovered. It is also intended to ensure that the public interest in the vindication of the law and the deterrence of future offences is met.[54] To reduce the bond to take into account potential fines would lessen the probability that the crew members would return to face trial and so undermine the purpose of the bail.

73. Australia submits, therefore, that the bail set by Australian courts represents a reasonable bond for the release of those crew members.

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50 Judgment pp. 5 and 6 (Annex 2, pp. 43-44).
51 Judgment p. 6 (Annex 2, p. 43).
52 Judgment p. 6 (Annex 2, p. 44).
53 Judgment p. 7 (Annex 2, p. 45).
54 Judgment p. 6 (Annex 2, p. 44).

CHAPTER 4

AMOUNT OF BOND AND ITS FORM

1. Australia submits that an appropriate form of security would be a cash payment to be held in trust by Australian authorities or a bank guarantee from an Australian bank.

CHAPTER 5

COSTS

1. The general principle at international law, deriving from the sovereign equality of States, is that each Party in international proceedings shall bear its own costs.[55] Australia is unaware of any previous instances where costs have been awarded by the Tribunal or under Article 64 of the Statute of the International Court of Justice, upon which Article 34 of the Statute of the Tribunal is modelled.

2. With regard to the matters raised by the Applicants with regard to costs, Australia notes that:

- the bond set by Australia is reasonable; the Applicant could have paid the bond and the vessel would have been released; and

- three of the crew of the *Volga* remain at liberty within Australia and may depart Australia upon the payment of an amount specified by the Western Australian Supreme Court.

3. Australia submits that each party should bear its own costs.

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55 *Application for Review of Judgment No.158 of the United Nations Administrative Tribunal* ICJ Rep 1973, 166 at 212 (Annex 2, p. 46).

CHAPTER 6

ADDITIONAL DOCUMENTATION

1. The Annexes include copies of legislation, cases, additional diplomatic notes, affidavits and other documents referred to in this Statement in Response or otherwise relevant to this matter.

CHAPTER 7

ORDERS

1. For these reasons, Australia requests that the Tribunal decline to make the orders sought in paragraph 1 of the Memorial of the Russian Federation. The Respondent requests the Tribunal make the following orders:

(1) that the level and conditions of bond set by Australia for the release of the *Volga* and the level of bail set for the release of the crew are reasonable; and

(2) that each party shall bear its own costs of the proceedings.

CHAPTER 8

SUMMARY OF ARGUMENTS

1. The Tribunal has jurisdiction to hear and determine the application and the application is admissible (pp. 9-10, paragraphs 2-8).

2. The issues of the reasonableness of the bond for the release of the vessel and the bond for the release of the crew are separate and distinct. The Tribunal should separately consider and decide on the reasonableness of the bond set for the release of the vessel and the bond set for the release of the crew (pp. 11-12, paragraphs 15-20).

3. The bond set by Australia for the release of the *Volga* is reasonable, taking into account:

(a) the value of the *Volga*, its fuel, lubricants and fishing equipment (p. 13, paragraphs 22-25). This value is not in dispute.

(b) The gravity of the offences and potential penalties (p. 13, paragraphs 26-41).

(c) The level of international concern over illegal fishing (pp. 17-18, paragraphs 42-47).

(d) Compliance with Australian laws and international obligations pending the completion of domestic proceedings (p. 19, paragraphs 54-55).

4. The value of the seized catch should not be taken into account when assessing the reasonableness of the bond set by Australia for the release of the vessel, as to do so would undermine the purpose of the bond and domestic forfeiture proceedings (pp. 18-19, paragraphs 48-53).

5. The issue of whether or not there was a breach of Article 111 of the 1982 Convention is irrelevant to the assessment of whether the bond set by Australia for the release of the vessel (pp. 19-20, paragraphs 56-60).

6. The bond set by Australia for the release of the crew members is reasonable (pp. 20-22, paragraphs 61-73).

7. The appropriate form of security should be a cash payment to be held in trust by Australian authorities or a bank guarantee from an Australian bank (p.23).

8. Each party should bear its own costs of the application (pp. 24, paragraphs 1-3).

Dated 7 December 2002

Signed by the appointed agent for Australia

W M Campbell
First Assistant Secretary, Office of International Law,
Attorney-General's Department of Australia

CHAPTER 9

CHRONOLOGY

7 February 2002	0843hrs: Australian surveillance aircraft detected the vessel in position 51 51.68S 77 55.87E. Vessel assessed by aircraft navigator to be 32 nautical miles (nm) inside the Heard Island McDonald Island Exclusive Economic Zone ("HIMI EEZ").
7 February 2002	0957hrs: Vessel reported in position 51 48S 78 15E at 20 nm inside the HIMI EEZ. This position reported to HMAS Canberra (position plotted after the fact as 21.3nm inside HIMI EEZ).
7 February 2002	1000hrs: Vessel reported in position 51 48.60S 78 1.97E assessed as tracking 072 True at 9 knots.
7 February 2002	1145hrs: HMAS Canberra's helicopter launched to intercept the vessel which was attempting to flee the Australian EEZ.
7 February 2002	1159hrs: Helicopter reported vessel in position 51 38.6S 78 43.8E at one nm inside the HIMI EEZ.
7 February 2002	1203hrs: Helicopter reported vessel in position 51 37.11S 78 44.03E at 1000 yards inside the HIMI EEZ.
7 February 2002	1205hrs: helicopter issues signal to stop on VHF channel 16 when vessel was in position 51 36.36S 78 44.10E. Officers aboard HMAS Canberra plotted this position to be 400 yards inside the HIMI EEZ.
7 February 2002	1223hrs: A boarding party including Australian fisheries officers from HMAS Canberra, then aboard the helicopter, boarded the vessel.
7 February 2002	Russell McVeagh Solicitors (of New Zealand) purporting to act on instructions from the owners of the vessel seek its release by facsimile to the Australian Department of Foreign Affairs and Trade ("DFAT").
8 February 2002	DFAT informs Russian Federation by diplomatic note that 2 Russian flagged vessels, the *Lena* and the *Volga* were apprehended in relation to breaches of Australian and international law in the HIMI EEZ and indicates it will keep the Russian Federation informed of developments.
12 February 2002	Facsimile on behalf of the owner requesting an immediate response to its protest. Request made to DFAT, Ministers of Foreign Affairs and Trade, Defence and Agriculture, Forestry and Fisheries.
15 February 2002	DFAT responds to Phillips Fox Solicitors (Australian agents for

	Russell McVeagh solicitors) indicating that the vessel was apprehended under Australian law in accordance with international law.
19 February 2002	The vessel arrives in Fremantle under escort by the Australian navy and a notice of detention is served on the Master.
20 February 2002	Notice of seizure of the vessel served on the Master.
22 February 2002	Australian Fisheries Management Authority ('AFMA') officers interview the master, chief mate, fishing master and fishing pilot.
22 February 2002	Master of vessel makes written protest against the seizure of the vessel.
25 February 2002	Letter on behalf of the owner to DFAT, Commonwealth Department of Public Prosecutions ("DPP") and the Ministers of Foreign Affairs and Trade, Defence and Agriculture, Forestry and Fisheries requesting release of the vessel on the basis that the vessel's seizure was in breach of international law.
28 February 2002	Facsimile on behalf of the owner to DPP requesting release of the vessel on the basis that the vessel's seizure was in breach of international law
1 March 2002	Facsimile on behalf of the owner challenging the legality of the detention of the crew
6 March 2002	The fishing master, fishing pilot and chief mate of the *Volga* ("officers") are charged in court with illegal fishing inside the HIMI EEZ and detained in custody.
6 March 2002	Facsimile on behalf of the owner to the Australian Attorney-General's Department requesting a response to the letter dated 25 February 2002.
16 March 2002	The Russian master of the vessel dies in hospital as a result of voluntarily but mistakenly consuming a large quantity of cleaning liquid containing methanol in the belief that it was alcohol.
18 March 2002	Russian Embassy note to DFAT requesting evidence that the vessel was apprehended in accordance with international law
21 March 2002	The officers are released from custody on conditional bail of AU$75,000 each.
21 March 2002	Facsimile on behalf of the owner to AFMA claiming that the vessel and equipment should not be condemned as forfeit under Australian law.
21 March 2002	Notice from AFMA that the vessel will be condemned as forfeit unless proceedings are commenced against the Commonwealth within two months.

26 March 2002	Letter from Attorney-General's Department re-stating that the vessel was apprehended under Australian law in accordance with international law.
6 May 2002	Note from Russian Embassy to DFAT requesting a response on the legality of the seizure of the vessel
20 May 2002	Note from DFAT to Russian Embassy in response to the Russian Embassy's notes of 18 March 2002 and 6 May 2002 fully informing the Russian Federation of the circumstances surrounding the apprehension of the vessel as well as the legal basis upon which the apprehension was conducted. The note also provides a copy of Australia's answers already provided to questions posed by Russian Federation fisheries Authorities in Moscow, and seeks a response to Australia's questions.
21 May 2002	Application for a declaration against forfeiture filed on behalf of the owner in the Federal Court of Australia ("the forfeiture proceedings").
19 June 2002	Directions hearing in forfeiture proceedings.
19 June 2002	Facsimile on behalf of the owner to AFMA enquiring what conditions AFMA would seek in order to release the vessel.
28 June 2002	Letter from AFMA requesting the owner's company information.
4 July 2002	Amended statement of claim filed on behalf of the owner in forfeiture proceedings.
8 July 2002	Facsimile on behalf of the owner to AFMA requesting to be promptly advised of the amount of bond required for the release of the vessel.
26 July 2002	Letter from AFMA repeating request for company information and requiring security of AU$3,332,500.
7 August 2002	Notice of motion for security for costs filed by Commonwealth of Australia in forfeiture proceedings.
13 August 2002	Directions hearing in forfeiture proceedings.
23 August 2002	Fishing master charged with an additional count of illegal fishing. Bail granted upon payment of an additional AU$20,000.
26 August 2002	Letter on behalf of the owner to AFMA disputing the amount and conditions of the bond proposed by AFMA. Owner counter-proposes a AU$500,000 bond.

26 August 2002	Commonwealth of Australia files defence in forfeiture proceedings.
September 2002	Owner requests further particulars of Commonwealth of Australia's defence in forfeiture proceedings.
10 October 2002	Russian Embassy note to DFAT seeking release of the vessel and officers and compensation for the losses suffered by the owner.
6 October 2002	Commonwealth of Australia's motion for security for costs dismissed.
18 October 2001	AFMA responds to letter of 26 August 2002 indicating a reply will be given in the near future.
23 October 2002	Commonwealth of Australia files answers to owner's request for particulars in forfeiture proceedings.
6 November 2002	Commonwealth of Australia files amended statement of defence in forfeiture proceedings.
22 November 2002	DFAT note to Russian Embassy reasserts the vessel's serious breach of Australian and international law by fishing in the HIMI EEZ, offers to share Australian evidence to prove these allegations. DFAT refers to the vessel's previous breaches within the HIMI EEZ, asserts bond set as reasonable and welcomes discussion with the Russian Federation on the issue of the reasonable bond.