DECLARATION OF JUDGE LUCKY

I agree with the reasoning in the Judgment; however, I wish to add a few comments in respect of the amount of the bond.

In the context of article 73 of the Convention, the relevant meaning of the word "bond" must be taken as a legal one and as such should be given the meaning ascribed to it in the language of criminal law and procedure. The bond in this context is similar to bail bonds in criminal proceedings which are defined as:

> Written undertakings executed by the defendant … that the defendant will, while at liberty as a result of an order fixing bail and of the execution of a bail bond in satisfaction thereof, appear in a designated criminal action or proceeding when his attendance is required.
> *Black's Law Dictionary, eighth edition*

The primary purpose of bail is to ensure the attendance of a person at court proceedings. There is no evidence that the owner (the Ikeda Suisan Co., a Japanese registered company with a given address) is not well known or is likely to become insolvent, the undisputed evidence being that it was willing to post a reasonable bond. The amount of the bond must not be punitive because the essence of the rule of law is that a person should be punished for crimes he has committed, not when a charge for a criminal offence is pending and the person has not admitted guilt.

In fixing a bond, the interests of the coastal State and of the flag State should be balanced. The bond should secure the coastal State's interest in imposing penalties that take account of the gravity of the alleged offences and in policing its fisheries and marine environment.

In paragraph 67 of the judgment in the *"Camouco" Case (Panama* v. *France), ITLOS Reports 2000*, p. 31), the Tribunal set out the criteria for determining the reasonableness of a bond or security. The Tribunal repeated that dictum in paragraph 79 of the *"Monte Confurco"* judgment in which the Tribunal added that the list of factors was not complete.

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In my separate opinion in the *"Juno Trader" Case* I said:

> It appears to me that in order to consider the gravity of the alleged offence the Tribunal would have to weigh the gravity in the same manner as a national judge determining urgent applications, for example in injunctive proceedings, and find whether a *prima facie* case has been made. In carrying out that exercise, the Tribunal will not be making any finding on the merits *per se* but will be determining whether or not the detaining State violated the provisions of article 73 of the Convention or whether the vessel of the applicant State violated the fisheries legislation of the detaining State.

I still subscribe to the above view.

Article 292 specifies in part that the "court or tribunal shall deal without delay with the application 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".

In prompt release cases the bond should constitute sufficient security that would ensure implementation of a court decision at the end of the proceedings.

In these proceedings the question is whether or not the bond sought for the release of the vessel and crew is reasonable.

For the reasons set out above I am of the opinion that the bond fixed by the Respondent is on the high side. I am in favour of a bond which is less than that fixed by the Respondent

(signed) A.A. Lucky