

DECLARATION OF JUDGE TREVES

In paragraph 77 of the Judgment, the Tribunal, faced with the opposing contentions of the parties as to whether the Master and the crew are detained along with the vessel, after observing that the restrictions imposed on the free movement of the Master had been lifted on 16 July 2007, notes that “the Master and crew still remain in the Russian Federation”. In the operative part the Tribunal decides that the Russian Federation shall promptly release the *Hoshinmaru* “and that the Master and the crew shall be free to leave without any conditions”. This operative provision might seem questionable, as the Tribunal does not state that the Master and the crew are “detained” under article 292, paragraph 1, of the Convention.

In my view, the observation concerning the Master – whose situation up to 16 July 2007 was similar to that of *contrôle judiciaire* under French law, which the Tribunal has considered as corresponding to “detention” in its judgment on the “*Camouco*” Case (*ITLOS Reports 2000*, p. 10, paragraph 71) – seems to imply that, in the opinion of the Tribunal, neither the Master nor the crew is “detained”, as does the mild statement that Master and crew “still remain in the Russian Federation”. Limitations to their liberty to leave Russia depending on the need to apply for permission under rules applicable to all foreign sailors (paragraph 76), or on the need for crew members to be present on board to ensure the proper maintenance of the ship (paragraph 75), can hardly, in my view, qualify as restrictions to freedom that can be considered as “detention”, even when such notion is broadly interpreted as the Tribunal correctly did in the “*Camouco*” Case. So, why provide that Master and crew “shall be free to leave without conditions”?

In my view, this provision should not be read as concerning the release of the Master and crew from detention. It ought to be read, instead, as a complement to the provision for the release of the vessel. Its function is to prevent resort to conditions of any kind, bureaucratic or otherwise, concerning the departure of Master and crew, that might delay the departure of the vessel. A possible obstacle to the effectiveness of the “prompt” release of the vessel after the posting of the bond set by the Tribunal, as provided in article 292, paragraph 4, of the Convention, is thus eliminated.



The provision in the operative part that the Master and crew are free to leave without conditions, even though they have not been considered as “detained”, is not unnecessary. It serves to preserve the efficacy of the judgment of the Tribunal for the release of the vessel.

(signed) T. Treves

