INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
TRIBUNAL INTERNATIONAL DU DROIT DE LA MER

2000

Public sitting

held on Friday, 28 January 2000, at 10.00 a.m.,

at the International Tribunal for the Law of the Sea, Hamburg,

President P. Chandrasekhara Rao presiding

The “Camouco” case

(Application for prompt release)

(Panama v. France)

Verbatim Record

Uncorrected
Non-corrigé

Present:	President	P. Chandrasekhara Rao
	Vice-President	L. Dolliver M. Nelson
	Judges	Lihai Zhao
		Hugo Caminos
		Vicente Marotta Rangel
		Alexander Yankov
		Soji Yamamoto
		Anatoli Lazarevich Kolodkin
		Choon-Ho Park
		Thomas A. Mensah
		Paul Bamela Engo
		Joseph Akl
		David Anderson
		Budislav Vukas
		Rüdiger Wolfrum
		Edward Arthur Laing
		Tullio Treves
		Mohamed Mouldi Marsit
		Gudmundur Eiriksson
		Tafsir Malick Ndiaye
		José Luis Jesus
	Registrar	Gritakumar E. Chitty

Panama represented by:

Mr. Ramón García Gallardo, Advocate, [ ]

as Agent;

and

Mr. Jean-Jacques Morel, Advocate, Saint-Denis, Réunion,
Mr. Bruno Jean-Etienne, Advocate, [ ],

as Counsel.

France represented by:

Mr. Jean-François Dobelle, Deputy Director of Legal Affairs of the Ministry of Foreign Affairs of France,

as Agent;

and

Mr. Jean-Pierre Queneudec, Professor of International Law at the University of Paris I, Paris, France,
Mr. Francis Hurtut, Assistant Director for the Law of the Sea, Fisheries and the Antarctic, Office of Legal Affairs of the Ministry of Foreign Affairs of France,
Mr. Bernard Botte, Drafting Officer, Sub-Directorate for the Law of the Sea, Fisheries and the Antarctic, Office of Legal Affairs of the Ministry of Foreign Affairs of France,
Mr. Vincent Esclapez, Deputy Regional Director for Maritime Affairs, Réunion,
Mr. Jacques Belot, Advocate, Saint-Denis, Réunion,

as Counsel.

THE PRESIDENT: Mr Gallardo, are you ready to make your presentation? Please do so.

MR GALLARDO (Interpretation): Mr President, Mr Vice-President, Members of the Tribunal, during this session we will try to present the end of our conclusions and arguments to finish our oral presentation. I shall give an initial outline of the facts of the matter and the counter arguments which the Representative of the French Republic gave yesterday. My colleague, Jean-Jacques Morel, will then present his plea on a number of points which are perhaps not so clear, and then I shall return to the argument that was advanced yesterday regarding the reasonable level of the bond. We shall then present some final conclusions to the Tribunal in writing.

With regard to the facts we heard yesterday from the Agent representing France, the Republic of Panama in the course of these proceedings, and even less within these oral proceedings, does not want to reopen a debate with the French Republic on the rights of international fishing in the southern seas and in its own waters in the Crozet and Kerguelen Archipelago. This is, first, because we are not in a position to examine and deal with non-regulated, non-declared illegal fishing. I believe that at the moment there are other international forums to deal with these subjects, and the debate has already been opened at that level – the Rio Conference the FAO, CCAMLR, the UN.

Secondly, the French Agent's plea yesterday afternoon was based on certain points, which have not yet in fact been proved. We have only had vague information given by him. Let me give you some examples. The evidence given by the French Agent yesterday is not in fact based on any documentary evidence or proof. The price of the kilo of toothfish was never $12; it has always been $8. You can deduce this from French shipping owners selling the fish in the Japanese market at the moment.

Thirdly, the French Agent indicated that up to 80,000 tonnes had been fished and that they got about 1000 tonnes each on average. These are rather surprising calculations. If you consider what the shipping owner said yesterday, a vessel such as the *Camouco* with up to three fishing seasons (or even three and a half) during one year would yield, under the best circumstances, up to 600 tonnes in the hold, not 1000 tonnes as was stated. This is an exorbitant figure.

France, contrary to what was said, has not reduced the number of its vessels. At the moment up to eight, as opposed to four, vessels are fishing in the Kerguelen and Crozet Archipelagos. There are two Ukrainian vessels fishing in the archipelagos on the basis of an international agreement between France and Ukraine; trawlers which are longer than 120 metres and four longliners which have been chartered by French ship owners in the last year. France cannot say that all the tonnage of fish announced yesterday was in fact caught in the EEZ. Yesterday we heard that the southern seas are very big. There are enormous areas of fishing banks that the longliners can work with international licences under international law relating to the sea, based on the principles of freedom of fishing and navigation in these waters.

Finally, I would say that the approach was rather demogogic. They have amalgamated various points and are saying that social exploitation and the quality of the vessel are bad, so all the misery of the world seems to be found in *Camouco* and

also in the Republic of Panama, which, I would point out, has a fully legal system recognised by international conventions.

Finally, as I have said, I am not going to enter into a debate on illegal fishing. I would just like to make a few comments concerning our vessel, *Camouco*. Once again, I must comment on the information given by the French Agent yesterday. With regard to the fact that in 1987 the *Camouco* apparently tried to flee, there is no evidence to prove this. As for the fact that they entered the EEZ without notification, I have a copy of a fax from the French and Spanish notifying their authorization for the vessel to enter the area. There was also someone who was injured on board on 1st February 1998.

Speaking as an attorney, I can confirm that the judge, along with Maître Morel and Mr Hombre Sobrido, said that the Captain should change his approach. I also confirm that I was told to tell the shipping owner that he should appear to be interrogated before the judge. The judge obviously did not like the shipping owner's attorney. The idea of having this person interrogated is a question of having someone interrogated or investigated in the jurisdiction in which they live, but the judge obviously did not like him, so we can see that there was no attempt made by the judge to pursue the matter outside Réunion. In French criminal law -- and I am not a French lawyer -- one can, for example, be represented by an attorney. One does not need to be present oneself in the case of offences that involve less than two years' imprisonment. So how can he ask for the shipping owner himself to appear before the court in Réunion?

Moreover, the Panamanian Consulate in Paris sent us confirmation that nothing was received from the Prefect of Réunion on 1st October. We shall give you the text. This is a letter in French. I can read it out. This was sent to the Prefect of Réunion:

> "The Embassy sends you its greetings and via the Consular Chargé d'Affaires, Mr Watson, states that no documentation with reference to the *Camouco* flying a Panama flag in the EEZ of Crozet is in our files. Therefore, this was not received at our Embassy. We would like to thank the prefecture and send you their greetings.
>
> Paris, 27 January".

Yesterday evening we received from the other side the memo which the Embassy of France in Panama sent to the Panamanian Foreign Affairs Ministry. Reading this letter, you can see that it is dated 11th November, 44 days after the date of the seizure. The text is in Spanish and has been translated to be submitted to the Tribunal. This does not contain the obligations included in 73(4). In other words, the notification to the flag state must contain a number of details. Taking the text of the article, it says "In the case of a seizure, the flag state shall inform the flag state by the appropriate channels and shall inform him of the sanctions which are applied", or words to that effect. We are going to have the letter translated. Neither the measures taken nor the sanctions applied were notified. Therefore, the conclusion is that France wished to notify on 1st October the seizure of the vessel to the Consulate in Paris. Then the Embassy in Panama notified this 44 days later, after the date of the seizure, but this was done incompletely and late.

There are two final arguments. The Agent of France yesterday did not really state the complete truth with respect to the fine and the bond not being paid. In our Application we have given you a copy of the *Golden Eagle* ruling, whereby a 10 million bond was asked for by the French authorities. These were posted by the shipping owner.

Later, there were criminal proceedings before the Saint-Denis Criminal Court. A fine of 4 million was applied. In the course of the appeal procedure, that amount was increased to 6 million. After the proceedings, reimbursement of the difference was still awaited.

The last vessel to be seized before *Camouco*, *Vieirasa XXII,* was identified in 1998 in these waters. The Master was brought before a criminal court and a decision was taken on 18 December 1998, a copy of which is included in our application. His only offence was to enter the EEZ without notification. Sixteen months after the date of seizure, the vessel is still there. Why? The reason is that the same tribunal which applied the bond to *Camouco* applied a 45.5 million franc bond. However, these are two different instances. Even if such criminal legislation was not appealed against, either by the French authorities or the prosecutors, it is still there, sixteen months later. The excuse given is that the vessel was observed in 1997 in the Kerguelen archipelago.

However, no proof was notified, either to the shipping owner or to various other persons. But that is not all. It was noted that there was no illegal fishing and the fish were sold for about 4000 francs. That money should have been reimbursed to the French shipping line. This was 13 months ago and that amount is still outstanding.

The shipping owner has had to file against the Director of Maritime Affairs of Réunion Island for not having paid it back. That gentleman is present. Further, given the late communication of the documentation that the vessel was seized 16 months ago, a file had to be made against that official asking for the return of the 15 million francs. The vessel has been there for 16 months and no documentation has been given to the shipping owner.

We have made a diligent examination of all cases of vessels being seized in recent months. Panama understands the concern of the French Republic to follow illegal fishing in this area. However, we must respect national and international law which binds the French authorities. The operators should be able to fish in line with the UN Convention and international public law.

In considering what has happened in the past few years, Panama understands the problems in dealing with such a number of cases. On the other hand, there must be individual analysis on a case-by-case basis, not only by the military administration but also by the French jurisdiction. We understand that France is fully competent to deal with such files. Nevertheless, the applicant believes that this file should have been examined more objectively and reasonably.

I now give the floor to my colleague, Mr Morel, who will deal with another aspect.

MR MOREL (*Interpretation*): Mr President, Members of the Tribunal, this morning I shall try to rectify a number of legal errors which seem to have been made yesterday afternoon. I have noted six comments which should enable the Tribunal to form its opinion and to say, at the end of the day, in view of the facts and the applicable law, that our application is grounded, as we believe it is.

Yesterday afternoon a great deal of comment was made. A comment was made that there is legal presumption in matters of fishing and that the text foresees that, as the ship had not been announced and had been detained in the EEZ of France, there was a violation concerning illegal fishing and that all the fish on board were presumed to have been fished illegally.

It has even been conceded magnanimously that such presumption was only a simple presumption and that the opposite proof could be brought. If there is such legal presumption I should be shown the text. Where is the law in France which provides for that? It does not exist. It only exists in the minds of the administration. That is where, in the first instance, the arguments fail.

As Mr Hombre admits, he made no notification of entrance into the EEZ. If he is to be fined for that -- we will learn of the amount -- under the pretext that he did not make the necessary notification, one could assume that the 6 tonnes found on board were fished illegally. However, that interpretation of the text is seriously erroneous.

That brings me to another error. Yesterday I heard said and saw written in the conclusions of the Agent of France that an order of a judge placing an individual in custody is not subject to appeal. All such decisions of judges are subject to appeal. That is one of the elements of French law. How can that be thought when the French system benefits from a certain number of protections? We shall see that all decisions of judges are subject to appeal, including an order placing a person in custody. This morning we are before an international tribunal. However, if the French authorities do not apply their own texts, how can we hope that ultimately the superior standards of international conventions should be respected?

If I am to believe what I heard yesterday afternoon, the presumption of guilt being brought here -- as I have said before, it does not exist -- could only be valid at the instruction stage. Yesterday I heard it said that such instruction does not mean an imposition of a penalty but that we must bring evidence to prove that the presumption is unfounded.

Fortunately, in our law there is no presumption of guilt. In criminal proceedings and even before a judge an individual is always presumed innocent. He is presumed to have done nothing and the burden of proof is on the person bringing the accusation.

You will note by my initial comments that we do not agree with the interpretation of our law. It seems to me that the rules I have just put forward, with a great deal of modesty but conviction, are in favour of a more positive application of laws which exist in France, and nothing else. I am surprised that we are trying to make a travesty of law to arrive at a means. As I indicated yesterday, the end never justifies the means. Those are my initial remarks.

I turn to the posting of the bond. Yesterday Professor Queneudec indicated that there was a link between the posting of the bond and promptness. I shall return to that. We also heard said that the posting of the bond should be a *sine qua non* for bringing the case to the Tribunal. That also appears in the conclusions of France. I believe that there is a slight misunderstanding here. There are two possibilities. The first is that the internal jurisdiction fixes a reasonable bond. At this stage it is true that the posting of this bond is a *sine qua non* to address the Tribunal. That is the first hypothesis. The second hypothesis is that the bond itself is exorbitant, as alleged here. In this hypothesis, as has been said in the *Saiga* case, the previous posting of the bond is not required. I wonder why France insist that the bond is necessary? We believe that the bond is arbitrary and astronomical. Based on the second hypothesis, we can approach the Tribunal without having posted the bond.

The third remark that arose yesterday was that the International Tribunal was addressed at a very late stage. I think that we should come back to what the text says. Article 292 of the Convention talks about a bond, a reasonable bond. How do we know whether this bond is reasonable or not? First of all, you have to obtain the sum. You have to know, at least in the first instance, the sum imposed on us by the Tribunal.

If you look at the procedure, how can the party, Mr Hombre Sobrido, and the owners know the sum of the caution? We know that three orders were presented by the maritime authorities. The Judge confirmed *ipso facto* without hearing us. This Order was brought to our notice. We are contesting it in front of the Tribunal to ask the Tribunal to judge, in the presence of the two parties.

The Court of Instance in Saint Paul came up with another order, the second one, requesting the reduction of a certain number of pieces of evidence and the opening of discussions once more. There was a third order on 14 December 1999. This decision is in one of the annexes. This decision indicates to us in a definitive way, at least in the first instance, that the bond was 20 million francs. We have to put ourselves in this situation. We have to highlight the moment on 14 December when we were made aware of our fate, when we were able to take a decision to request prompt release and to plead in front of the International Tribunal. We obtained the mandate from the Republic of Panama from 14 December from 28 December. The request was made on 22 January, one month and three days after the moment when the judge told us definitively and irrevocably that the bond would be 20 million francs.

You see that we were perfectly diligent and the rules of procedure of the Tribunal are such that this is the normal situation. We can only come to plead in front of you at the time when the facts are established, and that was the first week in December in this case, The information that was kindly forwarded to us by the Registrar said that the third week in January would be the first useful date to open the proceedings. We cannot agree with the accusation that we are in the situation of estoppel. I think there again this is a totally inexact interpretation of reality.

Let me add, to finish on this point, that when it is indicated that we approached you too late, what deadline have we gone beyond? There is no deadline mentioned in the text. Even if you analyse the document, the convention, you cannot seriously

maintain that we are precluded because nowhere in the Convention of Montego Bay is a deadline mentioned beyond which we cannot validly approach the Tribunal.

The fifth and penultimate comment, Mr President and Members of the Tribunal: we have been accused of having violated the instruction. We cannot simply accept such an accusation. You will see that there again we are going far away from the procedure here and we are trying to establish a completely different approach, for reasons of which I am unaware. How could we have violated the instruction?

We have brought together a certain number of annexes, which have been passed on to our learned colleagues, our opponents. What do they contain? You have, first of all, two protocols, which mainly concern the vessel because they are about the violation and the seizure. The first protocol of seizure is evidence, which it is necessary to submit in the civil proceedings before the Court of Saint Paul. That is, apart from any other criminal proceedings, to bring the matter to the judge and to establish the bond, we need this evidence. The Court of Appeal of Saint-Denis in an order made by a judge clearly indicated, and we will submit this to the Tribunal, that this evidence was imperative to enable the parties to discuss the documents freely. The principle of examination and cross-examination or our Civil Code should be respected. This evidence must be submitted to the parties and to the judge for discussion.

Also in the annexes you have the declarations of Mr Hombre Sobrido. We considered it prudent to bring these to your knowledge in an attempt to be transparent and intellectually honest in front of the Tribunal. The confidentiality of the inquiry was never violated with regard to Mr Hombre Sobrido. Again I am very surprised at the lack of knowledge of the criminal procedures. It is not contested. Nothing has prevented anyone from discussing this freely.

You understand that, if Mr Hombre Sobrido had wished to communicate this evidence, if he was a party to the case before you -- and this concerns not only the release of the vessel but also the release of its Master -- the defence has no right to prevent this. There is no possibility to plead his cause. What is he doing, other than trying to defend himself by appealing to you? He had the impression that he had not been heard by the jurisdiction of domestic law. The right of defence is sacred. You and I are more experienced in these matters. Anyone has the right to produce evidence to defend himself, no matter in what country. This evidence has been brought forward by the person involved himself, correctly and in all honesty. He has a perfect right to produce such evidence.

With regard to this penultimate remark, I add that in France sometimes we ignore the principles behind our Penal Code, the presumption of innocence, for example. Nevertheless we have seen that very often it is a presumption of guilt which is presented to the judges, and that provision for detention is used excessively and to such an extent, Mr President and Members of the Tribunal, that our national courts have been subject to criticism.

The sixth and final point: what is the maximum sum of fines? What we are being accused of is something that is very theoretical. If we admit, just for reasons of demonstration, that we were guilty of all that we have been accused of, what would

be involved? First of all, FF 500,000 for disguising the identification marks of the vessel. Also, there is a second maximum penalty theoretically of FF 500,000 for an attempt to escape but, as I said before, this was not serious. A fishing vessel advancing at a certain rate of knots cannot escape from a modern frigate of the national navy that is well equipped with trained crew and a helicopter. If we did admit that, the theoretical fine of FF 500,000 would be FF 1 million.

There is a third aspect, which exists in the violation of fishing laws, of which we have also been accused. This has not been notified. Again, there is a divergence here as to what has been maintained by the Agent of France and by ourselves. This second aspect of failure to notify fishing is in violation of the French law which has been amended. That states: liability to a fine of FF100,000 and a term of imprisonment of six months, or one of these penalties, where the person has failed to announce his arrival in the EEZ or failed to declare the amount of fish on board. So we are talking about a fine of FF 1 million here. It states that, if you have forgotten to announce your arrival in the EEZ you will have a maximum fine of FF 1 million. If you fished illegally, you will have a maximum fine of FF 1 million. But, if the two violations have occurred, then the maximum fine will still be FF 1 million.

We are dealing with a criminal matter here. I return to the interpretation of the text and that should be restrictive. We cannot, for want of a better text, multiply these violations like the miracle of the loaves and the fishes. If these two violations have been constituted, then Article 4 of the law of 18 June 1986 applies. That would be 1 million, plus 500,000, plus 500,000, making FF 2 million in practice.

Mr President, has this maximum fine been imposed? The reply is: no.

Let me give you an example from recent case law. In a case which I spoke about previously, the court fined the person responsible for failing to announce his arrival in the EEZ, not the FF 500,000 but only FF 200,000. That is to say, there is a certain gap here, and this is normal. That is a gap between the maximum provided for in the text and the actual fine that has been imposed. This is a case in point.

We said there is no presumption and the six tonnes were frozen at -28°. How can we prove that this amount was not fished in the few hours prior to detention? The French Republic has no evidence that we could not have fished this amount of six tonnes in French waters. This amount was fished in international waters. What are we talking about? We are talking about a bag of 34 kilos of fish and an accusation that we tried to escape.

This is the case of the *Camouco,* which is of course not the case of the century. If what I have said this morning has enabled you to come to the conclusion that you can bring this case into proportion by saying that, at the end of the day -- even if all is fair in love and war -- we do not have a painting but an apocalyptic fresco, then I believe that we should return to legal reality and look at what is in the file and only at what is in the file -- nothing else. This is the way I see things.

If our intervention has helped to enable you also to share our concerns in establishing the truth, in respecting the texts, in respecting the great principles on which our law is based and in respecting the great principles of international law,

because we cannot be presumed to be guilty, then our submissions have been useful.

Mr President, I would like to hand over once again to my colleague, Mr Gallardo.

MR GALLARDO (*Interpretation*): Mr President, Mr Vice-President, Members of the Tribunal, I now come to an analysis of the final argument and the final violation concerning the reasonable nature of the bond for the prompt release of the vessel and the Master.

The obligation of prompt release is contained in article 73(2) of the Convention, and this cannot be isolated from the procedure in article 292, which lays down "a reasonable amount" as a *sine qua non* for the prompt release of the detention of the vessel and the Master. The request for 20 million French francs is disproportionate when you consider the value of the vessel and what was in its hold at the time of its seizure.

I would now like to analyze the aspect of reasonableness. When you analyse the UN Convention on the Law of the Sea, we can confirm the following points: An in-depth analysis of the various versions of the Convention in the languages show that it has to be reasonable and has to take account of the facts of the matter.

Article 73(2) uses "reasonable bond or other security"; in Spanish "*fianza razonable u otra garantía*"; and in French, "*caution ou d'une garantie suffisante*". We therefore have these terms in the three versions.

Article 226 uses the English term "subject to reasonable procedures such as bonding or other appropriate financial security"; in Spanish, "*una vez cumplidas ciertas formidades razonables, tales como la constitución de una fianza u otra garantía financiera apropriada*"; and in French, "*aprés l'accomplissement de formalités raisonnables, telles que le dépôt d'une caution ou d'une autre garantie financiére*".

The article of this procedure, article 292, uses the English term "reasonable bond or other financial security"; in Spanish, "*fianza razonable u otra garantía financiera*"; in French, "*caution raisonnable ou d'une autre garantie financiére*".

Therefore, in the light of the arguments of the French side, they did not want to look into the semantic aspect which we mentioned in our Application. I shall not go into any further detail. I think it is sufficiently clear that the word used in the Convention, and interpreted in this case, is "reasonable" as opposed to "sufficient". I am not going to analyze the preparatory work which is mentioned in our Application justifying the analysis of the word "*raisonnable*" as opposed to "*suffisante*", because there are differences in French between these two words.

In the Rules of Procedure of the Tribunal, article 111.2.d) uses the word "*raisonnable*" and says "…*pour la détermination du montant d'une caution ou autre garantie financiére raisonnable ou pour toute autre question*…". It says in English, "…to the determination of the amount of a reasonable bond or other financial security and to any other issue…". The same interpretation can be seen in paragraph 113.1 of the Rules of Procedure: in French, "*concernant la mainlevée de*

l'immobilisation du navire ou la libération de son équipage dés le dépôt d'une caution rainsonnable ou d'une autre garantie financi'ere…"; in English, "…for the prompt release of the vessel or the crew upon the posting of a reasonable bond or other financial security…"

An analysis of the term "reasonable" under international law, if you look into the doctrine, demonstrates what the scope of this term might be. Professor MacCormick, for example, in an article published in Brussels entitled *Les Notions á contenu variable en droit*, (which incidentally is included in our Application) points out that, "reasonableness is indeed, we might all admit, a good thing in itself, even if, like moderation, good only within reason and in moderation".

Professor Marcel Fontaine, in the *Revue de Droit des Affaires Internationales*, a copy of which we have, embroiders a little more on this concept. He says:

> "What is the meaning of 'reasonable'? We must differentiate between 'reasonable' and 'rational'. 'Reasonable', in this context, does not mean 'logical' in terms of philosophy but in line with practical, general common sense. These practical reasons can be found in cases in which behaviour depends on the consideration or the weighing up of various factors, the various circumstances which may influence a decision to be taken".

He goes on to say:

> "Reference is often made to the behaviour often following the same circumstances. 'Reasonable' has a clear link with concepts admitted in social *milieus.* The requirement may also be reinforced by reference to a cautious, experienced person and what this person would do in these cases. Finally, the term 'reasonable' refers to what other people would have done in the same or similar circumstances".

Looking at the case law in *The Saiga* case before this Tribunal, I think all the Members of the Tribunal agree with this because there was no criticism made at this level in the form of a dissenting opinion and the initial interpretation given to the term "reasonable". Point 77 of the ruling of 4th December 1997, which was mentioned in yesterday's proceedings, states:

> "There may be a violation of article 73(2) of the Convention, even if no bond has been posted. The requirement for prompt release is a value in itself and may apply if the bond has been rejected or is not laid down by the coastal state, or if it is alleged that it is exorbitant".

Point 82 of the *Saiga* ruling provides us with further references to interpret the words. It states:

> According to the Rules of Procedure of the Tribunal, the Tribunal shall determine the amount, nature and form of the bond or any other financial security to be posted. The most important indication is found in article 292(1) of the Convention itself, according to which the financial security or bond must be 'reasonable'. In the Tribunal's view, this refers to the amount, the nature

> and the financial guarantee. There is an overall balance between the form, amount and level, and this must be 'reasonable'.

With regard to the case at hand, let us look at the decision of the Saint Paul Court, justifying the 20 million francs:

> "In the light of these aspects and in particular the value of the vessel and the penalty incurred, the prompt release can only be carried out if a 20 million French franc bond is paid beforehand (equivalent to US$ 3,120,000)".

It is unrealistic to estimate the value of a vessel at FF 20 million. Evidence has been given of the value of this vessel and we had the technical support of our expert, who gave you a full, in-depth report of this vessel, details of when it was bought, the repair work and modernisation work that had been carried out and its trips to the southern seas, and so on.

The conclusion was that the value of the vessel was about (3,200,000 or FF 3,300,000). Our Application also contains a certificate from an auditor concerning European legislation on the depreciation of second-hand commodities or vessels such as this. It is normally applied in the following way: There is a depreciation at fiscal and value level of up to 20 per cent per year; this is contained in the Annex. Therefore, we feel that the depreciation that is applied in our Application to calculate the value which would be valid for the audit or fiscal authorities today, taking account of the value of the vessel since its purchase, would be a depreciation of about 36 per cent. According to the certificate, we could have applied a much higher depreciation rate of 20 per cent per year, which would give 60 per cent.

Let us now look at the scope of other rulings issued by the same court concerning illegal fishing or fishing offences in this area. The ruling in the *Golden Eagle* case on 8th July 1999, with 22 tonnes of fish in its hold, was 20 million. In the case of the *Vieirasa Doce*, the ruling was given before the later decision of the criminal court. This was on 30th December 1998. 91 tonnes were found on the ship, resulting in a bond of 45.5 million. In the ruling on 17th September 1998 in the case of *Ercilla*, in which there were 130 tonnes of fish, the bond was set at 65 million. One can perfectly understand how the Saint Paul Court normally calculates the fines by applying French law, i.e. a maximum of 1 million French francs for illegal fishing plus half a million per tonne of illegally fished over two tonnes. Now, in the present case the sum obtained by the Saint Paul Court is identical to that mentioned in the protocol of the departmental authority's 20 million value of the vessel, without taking account of the fact that the tonnage found in the hold was in fact only six tonnes.

However, I would like to add that in relation to the concept of reasonableness with respect to article 292, this procedure is an independent and autonomous procedure and that the International Tribunal has full competence and jurisdiction to set the amount of the bond, which should be of a reasonable character. In my submission, given the facts of the matter, even without moving too far away from the French legislation about which we have just heard from my colleague, but taking account of the independence of the Tribunal (which may not even take account of domestic law)

the bond that we are going to explain to you now would have been reasonable on the basis of the facts of the matter.

A reasonable amount can be considered, taking account of the form and nature of the bond, and this will take account of the following aspects: the vessel has now been detained now for more than 100 days; the six tonnes of fish were sold by the French Government; the lack of notification of entry into the EEZ could be set at 200,000 French francs; the concealment of the identification mark of the vessel, again taking account of the statements made by the Master and the shipowner, could be set at 500,000 francs. In addition to this, we could have up to 1 million French francs to cover the possible liability for illegal fishing, if the domestic court later rules that the 30 kilos of toothfish were in fact caught by the *Camouco*. This results in a total of 1.3 million French francs, minus 350,000 for the load which had been discharged and already sold, as we had in *The Saiga* case.

Therefore, the amount of the bond would be 1.3 million francs, which we feel is reasonable to cover the procedural administrative matters. We have deducted 350,000 francs for the fish which has been sold by the authorities.

When making a decision on what is reasonable, account must be taken of the fact that the *Camouco* has been detained since 5 October last year. That has cost Merce-Pesca 1,435,000 francs ($220,000) in terms of various bills, including legal bills, and so on and so forth. That is prejudicial to Merce-Pesca and means that they could not pay another level of security given the facts of the matter.

I turn to the form of payment of this amount. We ask the Tribunal to set a reasonable bond on the basis of a posting of a bank guarantee, not in cash as requested by the French Authorities. I refer to the location of posting and to the jurisdiction of the court in article 113(3) to post a reasonable amount to be fixed guaranteeing not only the release of the vessel so that it may leave the port in Réunion Island but also to guarantee the release of the Master when the payment of the reasonable bond is made. We heard the arguments of the investigating judge who is keeping the Master under judicial supervision. Even if a reasonable bond is posted, the Master would be detained on the island so that he can appear before a domestic court.

We can see that the French authorities still insist, in violation of article 292, that the bond is posted for prompt release. The release of the vessel is one matter. The release of the Master is another. I ask the Tribunal to take account of that point.

Finally, there are no sound reasons given for the amount of the bond, which, when one considers the real value of the vessel and its load when it was arrested, is completely disproportionate. That is not in line with articles 73 and 292 of the Convention and what is said about “reasonable”, particularly when one considers the case law of the Tribunal in the *Saiga* case.

I shall now present my final conclusions which will also be submitted in writing to the Tribunal and the Registrar. In accordance with the submissions already made in our application, our oral submissions and article 75(2) of the Rules of Procedure, I shall

read our final pleadings on behalf of this party without going over the arguments once more.

First, we request that you find that the Tribunal is competent under article 292 of the United Nations Convention on the Law of the Sea to entertain the application.

Second, we request the Tribunal to declare that the present application filed on 17 January 2000 is admissible.

Third, we request the Tribunal to declare that the French Republic has failed to comply with article 73(4) by failing promptly and completely to notify the Republic of Panama of measures taken and measures to be taken following the arrest of the *Camouco* flying the Panamanian flag.

Fourth, we request the Tribunal to find that the French Republic has failed to comply with the provisions of the Convention concerning the prompt release of the Master of the arrested vessel.

Fifth, we request the Tribunal to find that the French Republic has failed to comply with the provisions of the Convention concerning the prompt release of the vessel, *Camouco.*

Sixth, we request the Tribunal to find that the French Republic has failed to comply with the provisions of article 73(3) in applying to the Captain criminal measures which *de facto* constitute an unlawful detention.

Seventh, we request the Tribunal to order the French Republic to release promptly the vessel *Camouco* and its Master against payment of the following reasonable bond: FF 1,300,000 divided up as follows: FF 200,000 for failure to notify entry; FF 100,000 for incomplete identification of distinguishing features of the vessel and 1 million francs to cover the possible responsibility for fishing 34 kilos of toothfish. In view of the fact that, according to the French authorities the value of the impounded fish in the vessel was 350,000 francs, we have to deduct that amount from the total; that is 950,000 francs. Those are our arguments used in calculating that sum.

Eighth, to determine that the said sum be posted by means of a bank guarantee of a first-rate European bank, to be placed in the hands of the International Tribunal for the Law of the Sea to be duly transmitted to the French authorities in exchange for the prompt release of the vessel, *Camouco* and its Master.

Finally, pursuant to the rules of procedure, the Republic of Panama requests a translation into Spanish of the decision emanating from the International Tribunal for the Law of the Sea.

THE PRESIDENT: Have you concluded your submissions?

MR GALLARDO: We have.

THE PRESIDENT: The hearing is adjourned until 1400 hrs.

(**Luncheon adjournment**)