

**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 14.00 hours
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

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.

1 **THE PRESIDENT:** I wish to inform the parties concerning the production of
2 documents during the oral proceedings.

3
4 As agents are aware, in accordance with article 71 of the Rules of the Tribunal, after
5 the closure of the written proceedings, no further documents may be submitted to the
6 Tribunal by either party except with the consent of the other party or if authorized by
7 the Tribunal.

8
9 During the hearing of yesterday, 27 January 2000, and this morning, additional
10 documents were referred to by both parties. I refer to the following documents:

11
12 By the applicant at the hearing on 27 January 2000:

13
14 Judgment of Administrative Tribunal of Saint Denis, Réunion, of 7 July 1999 in
15 a case concerning the fish vessel *Explorer* (in French);

16
17 Order of the Tribunal of Saint-Denis dated 24 January 2000 rejecting the request to
18 allow the Master of the vessel *Camouco* to leave Réunion Island to appear before
19 the Tribunal in Hamburg (in French);

20
21 At the hearing on 28 January 2000:

22
23 Note verbal No EFP-232-00 dated 27 January 2000 of the Embassy of the Republic
24 of Panama to the Prefect of Réunion (in French, with attachment in Spanish)

25
26 Decision of the Appeal Court of Saint-Denis, Réunion, of 8 July 1999 in a case
27 concerning the fishing vessel *Golden Eagle* (in French), together with a copy of
28 a bank cheque.

29
30 By the respondent at the hearing on 27 January 2000:

31
32 Copies of note verbale No 347/AL dated 11 November 1999 of the Embassy of
33 France in Panama to the Ministry for Foreign Affairs of Panama (in Spanish) and
34 note verbale of the Panamanian Ministry for Foreign Affairs No DGPE-DCL 2786-99
35 dated 26 November 1999 to the Embassy of France (in Spanish).

36
37 I understand that parties have copies of these documents. If there is no objection,
38 and I see none, those documents will be filed with the Registry together with, where
39 necessary, a translation in one of the official languages of the Tribunal, certified as
40 accurate by the party submitting the document.

41
42 May I remind the parties that every new document a party intends to submit is
43 subject to the same rules.

44
45 **MR GALLARDO:** Mr President, you requested answers from us to written
46 questions. Shall we submit a written response to the Secretary of the Tribunal?

47
48 **THE PRESIDENT:** We expected you to give your reactions in the course of the
49 hearing this morning. If you have those in writing they may be submitted to the
50 Registry, together with a copy for the other side. You may like to comment on that

1 during the course of your presentation this afternoon or give your comments in
2 response to me by 1000 hrs tomorrow morning at the latest. Is that agreeable to
3 both sides?

4
5 **MR GALLARDO:** It is.

6
7 **MR DOBELLE:** It is.

8
9 **MR DOBELLE** (*Interpretation*): Mr President, Members of the Tribunal, I should like
10 first to reply to the four questions raised by the Tribunal. I shall then make brief
11 comments on what was declared this morning and conclude by reading the
12 submissions of the Government of the French Republic.

13
14 With your permission I shall start by replying to the four questions raised by the
15 Tribunal. In application of the articles 76 and 77 of the Rules of the Tribunal, the
16 Tribunal has raised four questions on which they would like to receive information or
17 clarification. All such questions relate to the application or interpretation of French
18 law.

19
20 However, first it is perhaps appropriate to give you an update. In matters of French
21 law the other party seems to be particularly expert in disguising issues and
22 complicating relatively simple matters.

23
24 It is necessary to recall the facts. The Tribunal of the Law of the Sea is an
25 international tribunal created on the basis of an international convention concluded
26 between states. As such, the Tribunal decides on the basis of international law. The
27 international law of the sea is international law as seen in article 293 of the
28 Convention of Montego Bay to which article 23 of the statutes of the Tribunal refer.

29
30 The rules concerning the national law of a particular state perhaps can be said to
31 concern simply the question of facts. I should like to refer to a well-known formula,
32 referred to by the permanent International Courts of Justice in the Lotus case. The
33 formula states that with regard to the international law of the court, the national laws
34 are simple facts.

35
36 The clarifications which we would like to submit to the Tribunal concerning the
37 elements of domestic law, that is French law, are consequently information for the
38 Tribunal which refer to facts.

39
40 For reasons of clarity and facility, I shall deal with the four questions in the order in
41 which they have been raised. The first two questions raised by the Tribunal require
42 one single response but in two parts. As regards the first question, it is appropriate
43 to recall that any penal sanction cannot be pronounced in French law unless it has
44 followed a public oral hearing and cross-examination. The Tribunal will have
45 determined the reality and seriousness of the charges and will decide on the most
46 appropriate sanctions to be applied.

47
48 The hearing will only lead to a sanction if the facts have been established and
49 confirmed. Sometimes there are difficulties involved. Sometimes the public
50 prosecutor will cite the person to the Tribunal. In other cases, investigations are

1 necessary to establish the reality of certain facts or to determine the participation of
2 certain people in the violation. In this case an inquiry will be opened during which a
3 judge will make the necessary inquiries. When they are concluded, the judges will
4 give a decision or send the case to the next instance.

5
6 In the case in point we have to establish the material nature of the violation which
7 has been raised; that is, did the Captain fish in an illegal way in the French EEZ in
8 the Crozet region. First, we must be sure of the identity of the owners of the vessels
9 and must find out whether and to what extent they participated in committing these
10 violations. It is evident that such inquiries will be lengthy and that the examining
11 judge and the appellate judge will feel the need to make detailed inquiries. An
12 international inquiry has not been launched by the examining judge because of the
13 confidentiality of any such inquiry.

14
15 The Merce-Pesca is, to use an English term, a single-ship company. We know from
16 the declaration of Mr Domingo Fernández Pérez that behind that company is hidden,
17 in reality, two Spanish companies; namely, Pesquera Mellon and Iminal Armadores.
18 It goes without saying that the examining judge of Réunion did not neglect to inquire
19 into the heads of these companies.

20
21 I turn to the reply to the second question raised by the Tribunal. After the
22 examination, the owners will be cited to the Tribunal and will be subject to their
23 orders. It is difficult to be more explicit here to the extent that the examination
24 proceedings in French law are not public. An "act of accusation", as referred to by
25 the International Tribunal for the Law of the Sea, can only be established after the
26 inquiry. I believe, therefore, that I have replied to the first questions raised by the
27 Tribunal.

28
29 With regard to the third question raised by the Tribunal, the reply is quite simply: no.
30 Why is that? The applicable text contained a dual system of penalties: fines and
31 imprisonment or one of these two penalties alone.

32
33 In conformity with article 132-17 of the Penal Code, the jurisdiction can only
34 pronounce on one of these penalties for the violations on which they are deciding.
35 But the French law also imposes the principle of personalisation of penalties. This is
36 one of the main principles of our Penal Code. I refer here to article 132-24 of the
37 Penal Code, which states: The jurisdiction pronounces the penalties and fixes the
38 system depending on the circumstances of the violation and of the personality of its
39 author."

40
41 For the application of this provision, the criminal judge therefore has means at his
42 discretion, obviously within certain limits established by law.

43
44 Since the entry into force of the Convention of Montego Bay, we can no longer
45 impose penalties of imprisonment on masters of foreign fishing vessels, in conformity
46 with article 73, paragraph 3, of the Convention because, pursuant to article 55 of our
47 constitution, the treatise of a court, regularly ratified or approved as soon as they are
48 published, have a superordinate authority over our laws. But, any penalties involved
49 in the French text will of course remain applicable to the masters of French vessels.

50

1 Thus, article 4 of the law of 18 June 1966 provides at the same time for a fine and
2 a penalty of imprisonment, or one of these two penalties.

3
4 The examining magistrate will order the custody of the person being examined,
5 knowing that at the decision level the penalty pronounced by the judges on the
6 merits of the case can only include the penalty of a fine. I would like to underline that
7 until now the jurisdiction in Réunion has never imposed a single penalty of
8 imprisonment on 17 masters who have been judged.

9
10 This brings me now to the fourth question. I would like to recall that, under the terms
11 of article 2 of the law of 1 March 1988, the question of a fine of FF 500,000 on
12 masters of vessels who have falsified the identification of the ship. According to
13 article 2-2 of the same law of 1988, the same penalty, that is FF 500,000, is incurred
14 by any person having attempted to escape from any inspection of the fishing police.

15
16 In the case of illegal fishing, there is a fine of FF 1 million. Article 4 of the law of
17 18 June 1966 says that the legal maximum is increased by FF 500,000 per tonne
18 fished beyond 2 tonnes. In the case in point, we can think that the six tonnes found
19 in the hold of the *Camouco* could have been fished illegally. The fine incurred by the
20 Master of this vessel is therefore FF 3 million. In total the Master, Hombre Sobrido,
21 incurs a fine of FF4 million and, if you add to that the failure to declare his entry into
22 the EEZ in the Crozet area, the increase would amount to FF 5 million fine.

23
24 Moreover, article 9 of the law of 18 June 1966 refers to the provisions of the Penal
25 Code relative to the criminal responsibility of legal persons. Therefore, it is possible
26 to pronounce against these persons the same fines as those imposed on physical
27 persons with these precise details, that these fines can be quintupled. The
28 maximum amount of the fine that can be imposed against the owner is therefore
29 FF 25 million.

30
31 The evidence given by Mr Fernández Pérez yesterday enabled us to find out that
32 behind Merce-Pesca, there are indeed two Spanish companies: Pesquera
33 Mellon and Iminal Armadores.

34
35 French jurisprudence considers that a company whose only object is to acquire
36 a flag has no real activity and constitutes a fictitious company. It is not Merce-Pesca
37 which should be responsible alone to the French authorities but each company, so
38 that each of these companies would incur a fine of FF 25 million. In total, the sum of
39 the fines incurred would therefore increase to FF55 million. To be more precise, this
40 sum does not include the other criteria on which the judges have to decide; that is,
41 the illegal representation of the persons involved and the compensation for damages
42 caused by the violation.

43
44 I therefore consider, President and Members of the Tribunal, that I have now replied
45 to the four questions raised by your Tribunal.

46
47 With your permission, I would like to reply briefly to certain points raised or enlarged
48 on this morning. My response will be brief and limited to five comments.

49

1 First, we talked a great deal this morning about the violation of the presumption of
2 innocence but I would say that this question has nothing to do with the question with
3 which we are dealing here. It is enough to recall that presumption refers to the
4 material nature of the facts.

5
6 In the case in point the objective affirmations will permit us to presume that violation
7 of the fishing laws has been committed. It is precisely up to the examining judge,
8 who has to decide whether these facts were committed or not. It is up to the
9 Tribunal to decide whether these violations were committed.

10
11 The second comment is with regard to the appeal against the orders for placing
12 somebody in custody. First, I would like to recall that here we have had no
13 intermediate appeal against the first order for custody that was taken by the
14 examining judge. Mr Sobrido has never launched an appeal, at least before
15 24 January 2000. But I underline that, as this is a factor which is after the date at
16 which the Tribunal was called upon to deal with the case, this cannot be brought up.

17
18 To get rid of any misunderstanding concerning the French system, it is appropriate to
19 say the following.

20
21 Anyone subject to examination can launch an appeal on the order which places him
22 in custody -- that is, the appeal would be before the appropriate court -- within
23 a period of 10 days. Moreover, the person in custody at any time can request the
24 examining judge for prompt release. This must be done within the time period of five
25 days.

26
27 If the examining judge pronounces an order which rejects this request for release, an
28 appeal is possible before the accusation chamber that will make a decision within
29 20 days. An appeal is also possible before this chamber in cases of the examining
30 magistrate making no pronouncement.

31
32 I would like to recall that if the chamber has not made a decision within the 20 days,
33 the release from custody will take full force. In other words, we have a system here
34 which is protective. I do not see how it could be insinuated that this system would be
35 in conflict with the provisions of the Convention on Human Rights. None of these
36 provisions have been used by the opposing party.

37
38 My third comment: mention was made this morning of a letter of 27 January 2000
39 from the Panamanian Embassy in Paris. I would like to note that this letter confirms
40 simply that this Embassy does not have the letter of the Prefect of Réunion of
41 1 October 1999 in its files. This is not surprising at all because this letter was
42 addressed to the General Consulate of Panama.

43
44 I would also recall that, pursuant to article 73-4 of the Convention, the coastal state
45 notifies the measures taken against the vessel. That means that it is up to the flag
46 state therefore to draw the consequences which it judges appropriate and normal.

47
48 It was certainly normal that the most appropriate way would be to go via the General
49 Consul of Panama in Paris. Why is that? It is simply in view of the traditional
50 attributions of consuls in maritime affairs. Moreover, from this point of view it is very

1 telling that it is the Consular Department of the Ministry of Foreign Affairs of Panama
2 that replied to the "verbale" note from the French Embassy.

3
4 The fourth and penultimate comment: a certain number of references have been
5 made this morning in a rather confusing manner. They were partial and rather in
6 disorder because they referred to vessels that were subject to other proceedings.
7 These references refer to ships flying the flags of third countries and they have
8 nothing to do with our debate here.

9
10 My final remark: it was confirmed this morning that it was appropriate to stick to the
11 file and of course the French party is sticking to the file. I would disagree with any
12 allegation to the contrary. I think it is necessary to stick to the file but I do not really
13 see how, if the French legal system has been called into question and also there is
14 doubt about French national representation, that would in any way be contrary to the
15 discussions on the questions raised by the Tribunal.

16
17 This brings me to the last part of my intervention and, with your permission, I will
18 read the submissions of the French Government. On the basis of the facts and
19 consideration of the law, the government of the French Republic requests the
20 Tribunal to reject the accusations brought forward by Panama and say that the
21 request asking the Tribunal to promptly release the *Camouco* and the release of its
22 Master is not admissible.

23
24 Secondly, if they agree promptly to release the *Camouco*, this should be done on the
25 posting of a bond and this bond should not be less than the sum of FF 20 million and
26 this sum should be deposited in the form of a certified cheque or bank cheque.

27
28 Mr President, members of the Tribunal, I thank you for your kind attention in listening
29 to my submissions.

30
31 **THE PRESIDENT:** Thank you. That brings us to the end of the oral proceedings in
32 *Camouco* case. I would like to take this opportunity to thank the Agents and Counsel
33 of both parties for the excellent presentations that they have made before the
34 Tribunal over the past two days. In particular, the Tribunal appreciates the
35 professional competence and personal courtesies that have been exhibited so
36 consistently by the Agents and Counsel on both sides.

37
38 The Registrar will now address concerns in relation to documentation.

39
40 **THE REGISTRAR:** In conformity with article 86, paragraph 4, of the Rules of the
41 Tribunal, the parties have the right to correct the transcripts of their presentations
42 and statements made by them in oral proceedings. Any such corrections should be
43 submitted as soon as possible, but in any case not later than the end of Wednesday,
44 2 February 2000.

45
46 In addition, the parties are requested to certify that all the documents that have been
47 submitted and which are not originals are true and accurate copies of the originals of
48 those documents. For that purpose they will be provided with a list of the documents
49 concerned.

50

1 **THE PRESIDENT:** The Tribunal will now withdraw to deliberate on the case. The
2 judgement will be read on a date to be notified to the Agents.

3
4 The Tribunal has tentatively set a date for the delivery of the judgement. That date is
5 7 February 2000. The Agents will be informed reasonably in advance if there is any
6 change to this schedule.

7
8 In accordance with the usual practice, I request the Agents kindly to remain at the
9 disposal of the Tribunal in order to provide any further assistance and information
10 that it may need in its deliberation of the case prior to the delivery of the judgement.

11
12 The sitting is now closed.

13
14 **(The hearing concluded at 14.32 hours)**

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18