International Tribunal for the Law of the Sea

Republic of Panama v. the French Republic

The *Camouco*

Statement in response of the French Government

Paris, 25 January 2000

Introduction

By way of introduction, the French Government must necessarily refer to the context of illegal, uncontrolled and undeclared fishing in the Antarctic Ocean, and more especially in the exclusive economic zone of the Crozet Islands where the facts of the case occurred.

Illegal, uncontrolled and undeclared fishing has, for some years now, assumed extremely preoccupying proportions. There exists a competent regional international organization on fishing and the environment which is devoted to combating this phenomenon. This is the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) instituted by the Convention of Canberra of 20 May 1980, to which France is party. The activity of this organization, as indeed of France in its capacity as coastal State, is thwarted by factors that are essentially economic in nature. Indeed, the toothfish, the price of which varied between US $ 5 and 7 per kilogram in 1998 on the Japanese market, is currently approaching $ 12 on landing mainly because of the rise in the yen, thus making it one of the dearest fish in the world. In the United States, the price of the topped, tailed and gutted product has practically tripled since July 1998. A market has been thriving in China for some time. This very attractive situation has resulted in over-fishing, well beyond the quotas fixed by the CCAMLR.

This phenomenon must also be put down to the depletion of stocks of this same species initially along the Chilean and Argentine coasts which were overexploited until the beginning of the 90s by the same fleets of ship-owners currently active off our southern territories. One of the consequences of this development worth mentioning is the spectacular reduction in French activity of this type in our own economic zone where now only four operators continue to fish with a yield 50% lower than the average of previous years.

If we consider all zones concerned, it was estimated in 1997 that these poaching activities were being conducted by more than 80 longline fishing boats throughout the region. For the current year, crosschecking our information on the landings in harbours in the region with materials abandoned enables us to estimate that there are some 15 ships involved in illegal fishing activities in the Crozet zone alone. On the basis of an estimated average catch of 150 tons per ship per fishing season one can estimate the resulting "turnover" of this illicit activity at 120 million dollars, or 8 million dollars for a ship of the capacity of the *Camouco*.

The illegally fished toothfish, often caught by ships flying flags of convenience, are sent to their destination in considerable quantities via non-member countries of the CCAMLR, such as Namibia, Mauritius or Mozambique. Over the past three years, illegal fishing has increased to about 90 000 tonnes in the zone covered by the Convention, this being more than twice the volume of regular catches. This phenomenon, that places a considerable strain on the ecosystem, has resulted in drastic reductions of toothfish stocks in some sectors of the Convention zone. The mortality of sea birds, mainly albatross and petrel, which are often also caught up in the longlines used to capture the toothfish, should also be mentioned. This is extremely worrying and has resulted in a decline in the population of these species. At the latest meeting of the CCAMLR, in October-November 1999, the Scientific Committee stressed that illegal fishing would have serious consequences for long-term output and that total catches in some sectors could, over the short term, seriously compromise the status of reproductive stock.

It indicated, in this respect, that the present situation of the southern toothfish with respect to illegal fishing was reminiscent of that of another species in the zone a few years ago, the

"*Notothenia rosii*", the stocks of which have since then practically disappeared. More than 20 years after the cessation of the large-scale commercial fishing of this species in the Convention zone, it still seems hardly to have recovered to assume its former biomass level. It is worth noting, in this respect, that the evaluations of the biomass around the Crozet Islands has to such an extent declined as to be only 25 to 30% of its original level. The CCAMLR Scientific Committee concluded that the level of uncontrolled and undeclared illegal fishing in the area covered by the Convention continued to be unacceptable and that the strictest possible measures had to be taken to counter such activities.

Although there would seem to be no danger of a general extinction of the toothfish, in the scientific sense of the term, this situation is being followed with increasing attention by the ecological organizations, by politicians and the media. Thus, in March-April 1999, a ship chartered by the "Greenpeace" organization pursued the *Salvora*, a ship flying the Belize flag, suspected of having fished toothfish illegally in the French economic zone of the Kerguelen Islands and of which the identification marks were concealed. Mauritius refused the *Salvora* authorization to land its catch on its territory.

At the latest meeting of the CCAMLR, which was of particular interest because of the adoption of a system of documentation on toothfish catching, the host country (Australia), for the first time, wanted the adoption to be made by a ministerial meeting. That meeting did not take place for technical reasons, but the idea of convening it marks the awakening of a political awareness.

The conference was broadly covered by the international press, which is becoming increasingly sensitized to matters relating to illegal fishing.

More recently (2 December 1999), the Council of the Indian Ocean Commission (IOC) adopted a resolution according to which:

"1. The States Members of the IOC agree to seek the best ways and means to permit effective control of fishing vessels considered as having fished illegally in exclusive economic zones or international waters, whether covered or not by a regional organization, when vessels call at their ports.

2. The States Members of the IOC agree to consult with a view to creating a legal framework making it possible to prohibit landing and transshipment when it has been established that the species on board, particularly toothfish, have been fished in violation of existing measures of conservation and management adopted by coastal States or competent fisheries organizations."

The French Administration intends to make reasonable use of the legal means at its disposal to counter the threat presented by this illegal fishing.

I - The facts

28 September 1999 at 1328 hours
The commander of the helicopter carried on board the National Navy surveillance frigate the *Floreal* located a longline ship involved in laying its fishing line, at a position situated inside the Exclusive Economic Zone (EEZ) of the Crozet Islands, 160 nautical miles from its northern limit. This ship failed to answer VHF radio calls and took flight. The identification marks (name, registration, radio call-sign) were concealed by grease and paint.

28 September 1999, from 1330 to 1350 hours
The fleeing ship, after having cut its fishing line, jettisoned documents and 48 green and white bags. Subsequently one of the bags was recovered and was found to contain 34 kg of fresh toothfish. Fresh topped, tailed and gutted toothfish were also recovered.

28 September 1999, at 1431 hours
The vessel stopped.

28 September 1999, at 1433 hours
Three lines were released into the sea, aft of the vessel.

28 September 1999 at 1435 hours
The rear of the longline hoisting gear was hosed down.

28 September 1999 at 1450 hours
Two crew members jettisoned documents into the sea.

28 September 1999 at 1529 hours, the *Floreal* inspection team approached and boarded the ship. They identified it as being the *Camouco*, flying the Panamanian flag and captained by Mr. HOMBRE SOBRIDO.

Here it should be mentioned that most of the crew, the list of which is given in annex 4 to the petition was, including captain HOMBRE SOBRIDO, on board the *Camouco* when, flying the French flag, it had been called the *Saint-Jean* and was necessarily informed of the fishing areas as well as the applicable fishing rules in the Crozet EEZ as it had fished there legally, between 1 September 1998 and 30 June 1999.

The captain had, moreover, served as second-in-command on the ship *Mar Del Sur II* when it had been cited for similar acts in February 1998.

It should moreover be noted that before being called *Saint-Jean*, the *Camouco* had in 1997 been called *Merced* and, flying the Panamanian flag, and had already committed several infringements in this same Crozet economic zone.

During the inspection of the ship, 6 tons of frozen toothfish were found in the holds. New fishhooks and bleeding waste matter were also found as were a toothfish fin and three filets. The fish was fresh, bleeding, odourless and unfrozen. Pieces of sardine used as bait were also found.

Furthermore, the helicopter also recovered the transmission log. Interrogation of the second-in-command was to show that he had thrown the radio-electric service book into the sea, knowing that it showed the daily positions of the ship.

28 September 1999 at 2028 hours
A log-book and a ring-binder containing maps of the shallows in the zone were discovered hidden in a container in the galley.

28 September 1999 at 2140 hours
A buoy was recovered.

29 September 1999 at 1313 hours
The Protocol of Violation drawn up by the *Floreal* inspection team noted that the *Camouco* was committing an offence for the following reasons:

- for having fished without authorization in the Crozet Islands EEZ under French jurisdiction;
- for not having declared, on entering the Crozet Islands EEZ, that it had 6 tonnes of toothfish aboard;
- for having concealed the ship's identification characteristics while flying a foreign flag;
- for having attempted to avoid verification by the *Floreal* inspection team by taking flight.

The commander of the frigate *Floreal* informed the captain of the *Camouco* of the seizure of the *Camouco*, its fishing equipment, the product of its fishing, the navigation and transmission material and the ship's documents. The ship was escorted to Port-des-Galets in La Réunion.

1 October 1999
The Prefect of La Reunion informed the Consul-General of Panama in Paris that a protocol had been drawn up against the captain of the ship for infringing the fishing regulations in the Crozet Islands exclusive economic zone and that the ship was being diverted to Port-des-Galets, in La Réunion, so that its captain could be tried before the Saint-Denis High Court.

5 October 1999
The *Camouco* docked at Port-des-Galets in La Réunion.

During the preliminary investigation, the captain admitted that the *Camouco* radio log had been jettisoned into the sea but gave no reason for this act. He said that he did not know why it had not been properly kept after 26 September, and did not convincingly explain either why he had not, for over an hour, responded to the summons by the *Floreal* and its helicopter to identify and to stop his ship. The captain merely said that he was bedridden and was suffering from tooth and mouth ache. He admitted, upon a second interrogation, that he was in breach in hiding the identification marks of his ship. He claimed that these marks were to be repainted during the days following the summons by the *Floreal*.

6 October 1999
- At the 2nd hearing, the captain admitted that he had been in breach of the regulations by failing to signal his presence and declaring that he was carrying 6 tons of toothfish aboard inside the Crozet EEZ, despite his knowledge of French legislation.
- At another hearing, the captain contradicted himself by claiming not to have fished inside the Crozet EEZ and, at the same time, not knowing where he had fished because he had not kept his ship's log up to date.

7 October 1999

The Public Prosecutor applied for the opening of a preliminary investigation into Captain HOMBRE SOBRIDO:

(1°) for failure to declare entry into the Crozet Islands economic zone and the tonnage of fish he was carrying aboard;

(2°) for fishing in the Crozet Islands EEZ without authorization;

(3°) for concealing the ship's identification marks;

(4°) for refusal to submit to verification by the agents charged with policing fishing.

These offences and the penalties applicable thereto are covered by articles 2 and 4 of the law of 18 June 1966 as amended by the law of 18 November 1997, articles 2 and 4 of the law of 5 July 1983, and articles 1 and 2 of the law of 1 March 1888 as amended by the law of 5 July 1996.

Acting on the due request of the Public Prosecutor, the investigating magistrate orders the accused to be placed under judicial supervision to guarantee his appearance in court.

7 October 1999, at 0730 hours

During a hearing Mr. HOMBRE SOBRIDO was informed that all members of the Camouco crew had recognized the toothfish in a bag recovered from the sea by the helicopter as belonging to their ship, a fact denied by the captain.

The Regional and Departmental Director of Maritime Affairs of La Réunion notified the Captain of the Camouco of the seizure of his ship and its catch.

8 October 1999

The Chief Magistrate of the District Court of Saint-Paul confirmed the seizure of the ship and ordered that the lifting of the seizure be subject to payment of a 20 million French francbond.

13 October 1999

The crew was repatriated on the initiative of the shipowner.

14 December 1999

Following the summary writ brought by the shipowners' defence, the Chief Magistrate of the District Court of Saint-Paul confirmed its decision of 8 October and ordered Mr. SOBRIDO to pay damages to the French State in the amount of 10,000 French francs.

27 December 1999

The Saint-Denis Appeal Court notified the Regional and Departmental Directorate of Maritime Affairs of the appeal lodged by the shipowners against the aforementioned decision.

The date of the judgment on the merits of the case by the Saint-Denis criminal court has not yet been set and will follow upon the investigation procedure that is currently being conducted and is nearly completed.

III - In Law

1.In the Application submitted on 17 January 2000 on behalf of the Republic of Panama (hereinafter "Panama") against the French Republic (hereinafter "France") on the basis of Article 292, paragraph 1, of the United Nations Convention on the Law of the Sea (hereinafter "the Convention"), in the case concerning the vessel *Camouco*, the International Tribunal for the Law of the Sea (hereinafter "the Tribunal") is asked to declare that it has jurisdiction to deal with Panama's Application and to declare that that Application is admissible. It is therefore asked to rule on a number of claims which, in the view of France, either do not fall within the jurisdiction of the Tribunal, are inadmissible, or are not founded.

A/ On the jurisdiction of the Tribunal

2. The jurisdiction conferred upon the Tribunal pursuant to Article 292 of the Convention is beyond dispute insofar as the conditions set out in that paragraph are met. It is established that France and Panama are States Parties to the Convention and have not agreed to bring the matter now submitted to the Tribunal before another international court.

3. However, the Tribunal's jurisdiction in the context of Article 292 is a limited one by virtue of the object and purpose of that Article. For its provisions were adopted in an effort to avoid the injustices which might result from the seizure of a foreign vessel by a coastal State if no domestic judicial proceedings had been instituted in that State after the seizure, or if the domestic legal system of the State having seized or detained the vessel did not provide for release by the posting of a bond. This is why, in the framework of this particular failsafe procedure laid down by the Convention, the Tribunal finds that its jurisdiction is narrowly circumscribed. Its jurisdiction is limited to the single question of release, as Article 292, paragraph 3, of the Convention and Article 113, paragraph 1, of the Tribunal's Rules of Procedure make clear. In this case, it is only competent to determine whether Panama's allegation that France did not respect the provisions of the Convention relating to the *Camouco*'s release from detention is or is not founded. These are the only elements the Tribunal may have to consider in order to reach a decision on the question of the release, "but it does require that the Tribunal do so with restraint," as indicated in a preceding case (case concerning the "*Saïga*"), decision of 4 December 1997, paragraph 50).

4. Hence, the Tribunal's jurisdiction cannot be extended to the other grounds of Panama's claim. In particular, the Tribunal lacks jurisdiction to rule on various allegations in the Application relating to alleged violations of other substantive provisions of the Convention by the French authorities.

5. The Tribunal's lack of jurisdiction is manifest as regards an evaluation of the claimed incompatibility between French legislation and the Convention. It cannot consider and must therefore immediately set aside the ground relied on by Panama of an alleged "violation of the international law of freedom of navigation in the exclusive economic zone, more specifically as to presumptions under French law pertaining to failure to notify entry into the EEZ" (paragraph V.1 of the Application). The question of whether the laws and regulations of a coastal State and the application made of them do or do not correspond to what is laid down or permitted by the Convention is a question completely extraneous to the question of the release from detention of a vessel. It cannot therefore be contemplated, or even raised, in the context of the procedure laid down in Article 292 of the Convention. Consequently, all the elements in paragraphs 97 to 108 of Panama's Application can only be ignored by the Tribunal, as they are unrelated to the admissible object of the present case.

6. Similarly, the Tribunal does not have jurisdiction, under Article 292 of the Convention, to rule on the alleged "violation of the requirement of prompt notification of the arrest to the flag State laid down by Article 73, paragraph 4" (paragraph V. 2 of the Application). It must therefore refuse to rule on Panama's 3rd submission, by which it is asked to "declare that the French Republic has failed to comply with Article 73, paragraph 4, by failing promptly to notify the Republic of Panama of the arrest of the *Camouco"*.

Further, it should be emphasized that not only is this argument not admissible in law, but it is also totally absent in fact, and that paragraphs 110 to 126 of the Panamanian Application are without merit, in that they were drawn up in total disregard of the fact that, as already stated, France advised Panama, as early as 1 October 1999, by the appropriate channels, of the steps taken with respect to the *Camouco*, which is to say even before the vessel was detained at Port-la-Réunion (see *supra*).

7. Nor does the Tribunal have jurisdiction to consider, in the framework of the present proceedings, the argument derived from an alleged "violation of Article 73, paragraph 3, on the non-imposition of penalties of imprisonment in cases of fishing offences in the EEZ" (paragraph V.3 of the Application). If the Tribunal considered thisargument, it would have to rule on a matter extraneous to the provisions of Article 292, paragraph 3, according to which it 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". Indeed, it should not be overlooked that the procedure laid down in Article 292 is a special one which runs the risk of becoming bogged down on the issue of the jurisdiction of national legal authorities and which must therefore be used with caution, as it also has well-defined limits.

Furthermore, the argument thus put forward by Panama rests on a false appraisal of the legal situation of the Captain of the *Camouco* with respect to French law. In no wise does the judicial supervision to which the Captain has been subject constitute a penalty of imprisonment, nor can it be equated with detention. It is not a measure of deprivation of liberty and it is therefore inaccurate to speak of "release" or "releasing" when it is terminated. It is a measure which compels the person under examination to submit to one or more legally defined obligations, chosen by the court undertaking the preliminary investigation in keeping with the requirements of the judicial investigation. The decision to place someone being investigated under judicial review is taken by an investigating magistrate through an Order, against which there is no appeal; however, the person concerned can immediately file a request forthe lifting of the judicial supervision, on which the judge in charge of the investigation must rule within a period of five days with the possibility of an appeal before the appellate chamber [*chambre d'accusation*], which must rule within a period of 20 days. Neither the Captain of the *Camouco* nor his counsel have filed a request for the lifting of judicial supervision since the start of the investigation relating to him on 7 October 1999.

Consequently, it is clear that any request for the "release" of the Captain is devoid of purpose and that the Tribunal cannot rule on Panama's 5th, 6th and 7th submissions, by which the Tribunal is asked, in turn, "to find that the French Republic has failed to comply with the provisions of the Convention concerning the prompt release of the Masters of arrested vessels"; "to order the French Republic to promptly release Captain Hombre Sobrido, without bond"; and lastly, "to find that the French Republic has failed to comply with the provisions of Article 73, paragraph 3, in applying to the Captain criminal measures which de facto constitute an unlawful detention". It follows that paragraphs 127 to 136 of the Panamanian Application must also be regarded as of no relevance to the proceedings instituted on the basis of Article 292 of the Convention.

B/ On the admissibility of the Application

8. The at least partial inadmissibility of the Application might first be invoked on the ground that it is similar to an "abuse of legal process". France is of course not unaware that the preliminary proceedings laid down in Article 294 of the Convention are not applicable in principle and, moreover, would be difficult to apply in practice, in the context of a case relating to a question of release as covered by Article 292. However, the notion of the abuse of process, to which the procedures laid down in Article 294 are intended to serve as a response, is not entirely alien to the present case. In alleging that France has violated the provisions of Article 58 of the Convention (see paragraph 5 above), the Panamanian Application purely and simply "alleged that the coastal State has acted in contravention of the provisions of the Convention with respect to the freedoms and rights of navigation" (Article 297, paragraph 1 (a)). Even though, as has been shown above, this allegation does not fall within the jurisdiction of the Tribunal in the proceedings forming the object of the present case, the fact nevertheless remains that Panama thus appeared to be submitting "an application in respect of a dispute referred to in Article 297", to quote the terms of Article 294. This would entitle France to regard the application making such a request as an "abuse of process".

9. Although strict compliance with the rule of the exhaustion of domestic remedies, set out in Article 295 of the Convention, is not considered as a necessary prerequisite of the institution of proceedings under Article 292, it must nevertheless be pointed out nevertheless that domestic legal proceedings are currently pending before the Court of Appeal of Saint-Denis de la Réunion, whose purpose is to achieve precisely the same result as that sought by the present proceedings here. Indeed, the Order of 8 October 1999, by which the Court of First Instance of Saint-Paul confirmed the seizure of the *Camouco* the previous day by the Administration of Maritime Affairs formed the object, on the part of the owner (in the person of Maître García Gallardo) and of the Captain of the *Camouco*, of an application for revocation which was rejected by an Order of the same court dated 14 December 1999. An appeal was made against this second Order by the Applicants on 23 December 1999, in other words, less than a month before the present proceedings were instituted. Among the various arguments put forward in support of its claim in the present case, Panama relies on "the absence of grounds given" [**motivation**] which allegedly characterizes the Order by the Court of Saint-Paul, now subject to appeal before a higher domestic forum (see paragraphs 184 to 186 of the Application), as well as the error of judgement which appears to have been made in that Order (see paragraphs 187 to 191 of the Application). In other words, Panama seems to consider that the procedure laid down in Article 292 of the Convention can be used as a second remedy against a decision of a domestic forum. This it certainly is not. However, on this specific point, the Panamanian Application clearly points to the existence of a situation of *lis pendens* which casts doubt on the admissibility of that Application.

10. This doubt is increased by scrutiny of the conditions for the filing of the Application. Whereas the appeal before the Court of Saint-Denis was made on 23 December 1999, five days later, on 28 December 1999, Maître García Gallardo obtained a warrant from the Panamanian Minister for Foreign Affairs authorizing him to represent Panama before the Tribunal and, by letter dated 7 January 2000, he informed the French Ministry of Foreign Affairs of his intention to institute proceedings on behalf of Panama pursuant to Article 292 of the Convention. However, the Application dated 17 January 2000 makes a curious application of the provisions of that Article when it states: "Following expiration of the ten-day time limit laid down by Article 292, there has been no reply to the above-mentioned letter…" (Application, paragraph 4) The time-limit of ten days mentioned in the Article concerned begins "10 days from the time of detention" (Article 292, paragraph 1) and not from the date when a letter is sent indicating the intention to institute proceedings for release before the Tribunal. As the detention of the *Camouco* took place on 7

October 1999 (date of the protocol of seizure issued by the Administration of Maritime Affairs), the time-limit of ten days laid down in Article 292 therefore ended on 17 October 1999. It is with effect from this date that a request for prompt release could be submitted to the Tribunal if appropriate. However, three months elapsed before the Tribunal was formally seized of such a request. During this period of three months, when priority would seem to have been given to domestic remedies, Panama, as the flag State, is seen to have been completely inactive. In view of Panama's silence and bearing in mind the characteristics of dispatch and urgency which are inherent to the notion of "prompt release", France is entitled to hold that, by its conduct, Panama allowed a situation of estoppel to arise and also that its Application is thus inadmissible.

11. The Tribunal must therefore reject Panama's Application on the ground that it did not meet the essential condition laid down in Article 292 of the Convention. Indeed, any claim submitted on the basis of this provision is only admissible if it is shown that "the detaining State has not complied with the provisions of this Convention for the prompt release of the vessel" (Article 292, paragraph 1). As regards the seizure of the *Camouco* following its boarding in the French economic zone for violating the laws and regulations applicable to it, the Convention provision relevant in this case is that in Article 73, paragraph 2, the French text of which "*Lorsqu'une caution ou une autre garantie suffisante a été fournie, il est procédé sans délai à la mainlevée de la saisie dont un navire aurait fait l'objet et à la libération de son équipage"*. The English text, which much more clearly indicates the need for posting a bond or security, reads "Arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security". The actual posting of a bond is thus considered by the Article to be a necessary condition prior to release from arrest. Moreover, the prior nature of the posting of the bond is expressly stated in the Spanish text of Article 73, paragraph 2: "*Los buques apresados y sus tripulaciones seran liverados con prontitud, previa constitucion de una fianza razonable u otra garantia*" (the Spanish adjective "previo" means "prior"). This interpretation is confirmed by the terms used in Article 292, paragraph 4, both in the French version ("*Dès le dépôt de la caution*…") and in the English version ("Upon the posting of the bond…") or in the Spanish version ("*Una vez constituada la finanza*…").

The Tribunal itself, in the first case involving prompt release submitted to it, sought to emphasize that the posting of a bond was a condition laid down by the provisions of the Convention, violation of which would make the procedure laid down in Article 292 applicable: "the posting of the bond or security is a requirement of the provisions of the Convention whose infringement makes the procedure of article 292 applicable" according to the authentic English text (The M/V "SAIGA", Judgment of 4 December 1997, paragraph 76). And it is noteworthy that the Applicant itself expressly acknowledges that the bond is the "*sine qua non* of the (…) prompt release of the vessel from detention" (Application, paragraph 145).

Since the owner of the *Camouco* (the Merce-Pesca Company) or the flag State (Panama) failed to post the bond laid down both by Article 73, paragraph 2, of the Convention and by French legislation, the allegation that France did not respect the obligation to promptly release the vessel is unfounded in the present case. Hence, Panama's Application is inadmissible and its 8th submission must be regarded as null and void.

The same applies *a fortiori* to Panama's 9th submission, which calls for "the prompt release of the *Camouco*, without any bond, bearing in mind the losses and costs already sustained by the operator". In any event such a request could not be satisfied, as it contravenes the explicit provisions of Article 292, paragraph 4, and runs counter to the Tribunal's case-law in the field concerned. For example, in its Judgment of 4 December 1977 it stressed the need for the posting of a bond: "The posting of a bond or security seems to the Tribunal necessary in view of the nature of

the prompt release proceedings." (The M/V "SAIGA", Judgment of 4 December 1997, paragraph 81).

C/ On the appropriateness of the bond determined

12. If, however, by some extraordinary chance the Tribunal declared Panama's application admissible and decided to take a decision concerning the amount, the nature and the form of the bond, it would have to exercise caution. For, while it has already recognized that "... domestic courts, in considering the merits of the case, are not bound by any findings of fact or law that the Tribunal may have made in order to reach its conclusions" as far as the release of the vessel is concerned (M/V "SAIGA", judgment of 4 December 1997, para. 49), the Tribunal should take great care not to interfere with the functions of the French courts seized of the same question.

Account should also be taken of the fact that the fixing of the bond required for the release of the *Camouco* at 20 million francs, confirmed by court decision on 8 October 1999, cannot in any case be regarded as unreasonable or exorbitant**,** having regard to the following considerations.

13. Pursuant to article 142 of the Code of Criminal Procedure, the essential purpose of the bond required is to guarantee payment of the fines incurred. In accordance with the French legislation applicable to this case, the Captain of the *Camouco* is liable to several fines in respect of the four offences of which he stands accused: fishing without authorization, failure to give notice of his entering the exclusive economic zone, concealing the vessel's identification markings and attempting to evade controls. The grand total of the maximum fines incurred by the Captain for these four offences is 5,500,000 francs. Moreover, the company that owns the vessel is also criminally liable for the offences committed by the Captain. This principle is set forth in article 121-2 of the Penal Code: "Legal persons [...] shall be criminally liable [...] for the offences committed, on its behalf, by their organs or representatives." And that same article specifies, in its third paragraph: "The criminal liability of the legal persons does not exclude that of the natural persons who are the perpetrators of or accomplices to the same acts." However, concerning the penalties applicable to legal persons, articles 131-38 and 131-41 of the Penal Code provide that, for ordinary offences and minor offences alike, "the maximum level of the fine applicable to legal persons shall be five times that provided for in the case of natural persons by the law [the regulation] prosecuting and punishing the offence." This means that in the present case the total fines incurred by the Merce-Pesca Company amount to more than 25 million francs. The maximum total amount of the fines to which the Captain of the *Camouco* and the Merce-Pesca Company could be sentenced thus amounts to more than 30 million francs. This figure alone suffices to demonstrate the reasonableness of the amount of the bond required by the French authorities.

14. Neither is the amount exorbitant**,** bearing in mind that the bonds recently required in other similar cases have been fixed by the same French court in amounts of 10 million, 65 million and 45 million francs (Cf. Application). Furthermore, that amount is fully comparable to the amount imposed in certain cases by other coastal States of the southern hemisphere. Thus, for instance, in 1983 Australia required a bond of 5.5 million Australian dollars (about 22 million francs) following the seizure of a Japanese fishing vessel. In New Zealand, the law applicable in this matter provides that the bond must be "in an amount not less than the aggregate of the value of the craft, the cots that the crown may recover under section 24(12) of this Act if the defendant is convicted of the offence, and the maximum fine to which the defendant will beliable if he is convicted of the offence." (Article 25, paragraph 2, Territorial Sea and Exclusive Economic Zone Act 1977 028)

Conclusion

On the basis of the foregoing statement of facts and legal grounds, the Government of the French Republic, while reserving the right to add to or amend, if necessary, this conclusion at a later stage in the proceedings, requests the Tribunal, rejecting all arguments to the contrary submitted on behalf of the Republic of Panama, to declare and rule that the application requesting the Tribunal to order the prompt release of the *Camouco* and its Captain is not admissible.

The Agent of the Government
of the French Republic

Jean-François DOBELLE,
Deputy Director of Legal Affairs
at the Ministry for Foreign Affairs