

APPLICATION SUBMITTED ON BEHALF OF BELIZE

**INTERNATIONAL TRIBUNAL FOR THE
LAW OF THE SEA**

**APPLICATION FOR PROMPT RELEASE OF FISHING
VESSEL "GRAND PRINCE" UNDER ARTICLE 292 OF
THE UNITED NATIONS CONVENTION ON THE LAW OF
THE SEA**

ON BEHALF OF: THE STATE OF BELIZE, represented by:

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AGAINST : FRANCE

TABLE OF CONTENTS

<u>Statement of facts</u>	Paragraphs 1 - 34
<u>Statement of Law</u>	
Jurisdiction	35
Authorization	36
Non compliance with article 73 paragraph 2 of the Convention:	
- As to the exigency of prompt release	37
- As to the nature of the bond	38
- As to the form of the bond	39
- As to the amount of the bond	40
<u>Summary</u>	41 - 50
<u>Submissions</u>	50

LIST OF DOCUMENTS

Number 1.- Authorization

Number 2.- Original Bill of Sale

Number 3.- Copy of provisional patent of navigation

Number 4.- Crew list

Number 5.- Proces Verbal D'Apprehension of the vessel

- Number 6.- Proces Verbal D'Apprehension of the navigational equipment
- Number 7.- Proces Verbal D'Apprehension of the fishing gear
- Number 8.- Copy of the act of Proces Verbal D'Interpellation
- Number 9.- Copy of the act of Proces Verbal de Saisie of the vessel
- Number 10.- Copy of the act of Proces Verbal de Saisie of the fishing material
- Number 11.- Copy of the act of Proces Verbal de Saisie of the fishing gear
- Number 12.- Copy of the act of Proces Verbal de Saisie of the fish on board
- Number 13.- Copy of the Ordennance n° 3/2001 of the Tribunal D'Instance de Saint Paul
- Number 14.- Fax to the Maritime Authorities in Reunion justifying the fishing licence in Brazil
- Number 15.- Request for release the vessel
- Number 16.- Ordennance n° 6/2001 of the Tribunal D'Instance of Saint Paul rejecting the request for release.
- Number 17.- Expertise appraisal of the vessel market price , by the naval engineer , Faustino Carceller Villalta , of "Taxo Valoración, S.L"
- Number 18.- Expertise appraisal of the vessel market price , by the Marine Surveyor, Captain Antonio Alonso Pérez

Annex 1 Authorization of M. Pineda Alvarez from the Attorney General of Belize dated 8 March 2001 (reproduced *infra* under the title Documents

– Authorizations)

Annex 1-1 Letter from the Director of INMARBE to the Registrar dated 13 March 2001 transmitting the authorization (not reproduced)

Statement of facts

1.- The Grand Prince is a fishing vessel, flying the flag of Belize. It's owner is PAIK COMMERCIAL CORP, a company registered in Belize at 35A Regent Street PO Box 1777, Belize City, Belize, who bought it on the 27 March 2000 in the amount of forty five million (45.000.000.-) Pesetas, in virtue of the purchase contract, duly legalised and apostilled on the date of signature, which is enclosed as **document number 2**, together with its translation into english language.

The vessel characteristics are:

Flag	Belize
Call Letters	V 3 UJT
IMO number	6701656
Registration number	07972047
Material of the hull	Steel
Gross Tonnage	669
Net Tonnage	267
Number of decks	1
Number of masts	2
Number of bridges	1
Number of funnels	1
cargo capacity	186 MT
Year of built	1.966
Place of built	Portweller Drydocks, Ltd, Canada
Lengh	39,67 Meters
Breath	10,00 Meters
Depth	4,80 Meters
Engine	1 Diesel GM, General Motors

The above is evidenced by documents enclosed as numbers **2 and 3**.

2.- Grand Prince crew is composed by thirty seven (37) workers, who are listed in **document number 4**.

3 - The vessel was engaged in the fishing of lobster (as an experimental campaign) and toothfish in the international waters of the southern seas. Its master was Mr. Ramón Francisco Pérez Novo, of Spanish nationality, who was working on board the ship for the first time.

4 - On 26 December 2000 at approximately 08 53 hours was boarded by the crew of the French surveillance frigate Nivose in the Exclusive Economic Zone of the Kerguelen Islands in the French Southern and Antarctic territories.

5 - According to the Captain of Grand Prince, he had never before that date, fished within the said area. However, he recognised that, in fact, he entered in the zone on the 26 December 2000, and that he was decided to fish. He also recognised since the first moment, that he had very clear instructions from the shipowner not to enter into the Exclusive Economic Zone of the Kerguelens or other restricted areas. I refer in this respect to page two (first paragraph) of document number 8° ("Procés Verbal D'Interpellation), where the statement of the Captain was recorded.

It must be pointed out that also according to the statements of the Maritime Authorities in Reunion the Grand Prince was fishing out side french waters on the days before she was detained.

6 - The vessel has never been adjudged nor condemned before any Tribunal of any State for any reason whatsoever, not even for illegal fishing.

7 - From the first moment the said Captain followed the orders and requirements given by the Captain of the frigate, and fully cooperated with the french authorities, facilitating the inspection on board Grand Prince and showing all the books and documents related to the same.

8 - The Grand Prince had on board approximately 16 / 18 Tons of toothfish and two Hundred (200) Kilos of lobster.

9 - The Captain of the Frigate recorded the apprehension of the Grand Prince, the fish catch, the navigation and communication equipment in the documents of "Procés Verbal D'Apprehension" enclosed as **documents numbers 5, 6 and 7**

10 - The Grand Prince was rerouted and escorted by the Frigate to Port-des-Galets (Reunion), where it arrived on 9 January . 2001.

11 - On 11 January 2001, the Regional and Departmental Director of Maritime Affairs of Reunion drew up one "Procés Verbal D'Interpellation" and four "Procés Verbal de Saisie", with the content stated in **documents 8, 9, 10, 11 and 12**, enclosed.

On the four procès - verbaux of seizure it was decided the seizure of all the fish on board the vessel, (that should be sold by means of a limited tender and the proceeds be credited to the public treasury), the fishing gear and the vessel.

The following estimations were made by the Maritime Authorities of Reunion:

- Fishing equipments	24.392 Euros
- Fishing gear	5.610 Euros
- Vessel	1.981.837 Euros
- Fish on board	123.848 Euros
TOTAL	2.135.323.- Euros

12.- By Order n° 3/2001 of 12 January 2001, the Court of First Instance of Saint Paul confirmed the seizure of the Grand Prince. Copy of the Order is enclosed as **document number 13**, with its translation into English language

13.- The same Order ruled that <<the release of the vessel seized shall be carried out after the payment to the official Receiver of a bond amounting to a total of 11,400,000.00 FF or 1,737,918.70 Euros >>

14 - On the amount of the said bond, the Court took the following into account:

- 1) the value of the ship appraised by Mr. Chancerel, marine surveyor, at 13,000,000.00 FF
- 2) the fines incurred by the Master of the vessel (on the basis of 18 Tons of fish on board), estimated in an amount to a maximum of 9,000,000.00 FF,
- 3) damages caused by the offence, at 400,000.00 FF

This must be put in relation with the amount of the fine and damages imposed by the Correctionnel Court, to which we will refer later: a fine of 200,000.- FF and Damages; 21,000 FF

15 - In attention to the said valuations, the Court set the Bond as follows:

- to secure the representation of the Captain of the arrested vessel: 1,000,000 FF
- to secure payment of damages caused by the contraventions found, 400,000 FF
- to secure payment of the fines incurred and the confiscation of the vessel, 10,000,000.00 FF

The total amount of the bond was thus fixed on 11,400,000.00 FF or 1,737,918.70 Euros

16 - As to the form or nature of the bond the said Court ordered that should be "in kind, by certify cheque or by bank cheque"

Bank guarantee is not (and as we will refer , was not) allowable.

17 - The Court also observed that, by virtue of the provisions of articles 73 paragraph 2 and 292 of the Convention, the bond must be 'reasonable', and 'that this means more precisely, that the overall balance to be established between the amount , the form and the nature of this bond must be reasonable'.

18.- As we will refer later, the bond set by the said Court is far from being a "reasonable bond or other security" within the meaning of article 73, paragraph 2, of the Convention, neither on it's amount nor on it's form or nature.

19 - Despite the shipowner's disagreement with the amount and form of the bond set by the Court, and without prejudice of legal actions, several arrangements with the authorities in Reunion were done in order to be able to avoid the detention of the vessel, and in turn the commencement of legal actions by the vessel creditors (crewmembers and workers ashore, suppliers, reparators, ship agents , banks , etc ..) , by posting the bond in the form of bank guarantee.

More precisely, the intention of the shipowner was to place the said bank guarantee in the amount fixed by the mentioned Court , get the vessel released , and afterwards put the matter of the unreasonableness of the amount of the Bond to an conciliation or arbitration procedure or before this Tribunal.

20.- In this regard, the shipowner commenced all the banking arrangements in order to prepare the bank guarantee.

21 - The intended wording of the said bank guarantee was in similar terms to that specified to by this Tribunal under paragraph 95 of the Judgement on the Monte Confurco case

22.- The Maritime Authorities in Reunion were informed that the vessel , at the moment of the detention, was going to be reflagged and registered in Brasil, were she had allocated a fishing licence

As document number 14, with it's translation, we enclose the communication which was sent to the Maritime Authorities , at their request, in order to evidence the importance that the prompt release of the ship had, otherwise the vessel could loose the fishing licence

23.- However , In first place, it was not allowed a bond in the form of bank guarantee but only by payment in cash or by cheque. (we refer in this regard to document number 13)

24 - Furthermore, only eight (8) days after the notification to the Captain of Grand Prince of the said Ordinance where the bond was fixed, the "Tribunal Correctionnel of Saint Denis" (Reunion), on the 23 January, 2001, decided to confiscate the ship and, in order to avoid prompt (or late) release upon the posting of the guarantee sanctioned by article 73.2 of the Convention, also decided to execute provisionally the confiscation. A fine was imposed to the Captain in the amount of 200.000 FF, plus 20.000 FF as indemnification for the four french shipowners (the companies Les Mascaraignes, La Comata, Legarrec and Sapmer), plus 1 FF for the Regional Fishing Comite

25 - Through such "artifice" the said Correctionnel Tribunal managed, at least for the moment, to evade the clear and relevant exigencies for the States parties to the Convention contained in it's article 73.2°, and very clear remarked and construed by this high Tribunal with occasion of the previous cases ("Saiga", "Camouco", Monte Confurco")

26 - Neither the shipowner, nor the Captain, have received as yet any formal notification of the said decision, but the fact is that the vessel cannot be released by posting a guarantee, which supposes that the ship will remain under arrest and detained during all the time of duration of legal proceedings.

27.- Despite lack of notification of the decision of the Correctionnel Court, the shipowner, in order to safeguard his rights, announced the appeal of the decision, on the understanding that it is an unlawful decision, being the punishment extremely disproportionate with the nature and extent of the offence.

The appeal will be heard at the Court of Appeal of Saint Denis, but no date for the hearing has been appointed as yet.

28 - As result the vessel could not be released neither upon posting a reasonable guarantee nor upon posting the bond initially fixed by the First Instance Tribunal of Saint-Paul.

29.- And the above, Honorable members of the Tribunal, as we will refer in the legal grounds of this application, constitutes a grave infringement by France of the provisions of the Convention and of the Jurisprudence of this Tribunal, on prompt release of vesseis.

30.- Just in order to get some kind of evidence of this abnormal situation it was file before the Tribunal D'Instance of Saint Paul a request of release of the ship upon posting of a bank guarantee in the amount fixed by the Tribunal (**document number 15**), which was rejected by Ordonnance n° 6/2001 (**document number 16**) alleging that, as far as the tribunal correctionnel ordered confiscation and provisional execution, it ha no competence "to order the release of the vessel **in view of a simple bank guarantee**"

What France calls a "simple bank guarantee" is precisely what this Tribunal considered in previous cases a reasonable nature or form of the bond.

31.- We have exposed above the infringement by France of the provisions stated under article 73 of the Convention, and the Jurisprudence of this Tribunal, by not allowing the posting of a bond in the form of bank guarantee, and, in parallel, by evading the exigency of prompt release through the artifice of deciding the confiscation of the vessel, and its provisional execution, with the enough celerity to prevent its release by posting of any kind of guarantee.

We will now treat in detail the matter related to the amount of the bond.

We understand that a bond in the amount of 11.400.000,00 FF or its equivalent of 1.737.918 Euros, cannot be regarded, from any point of view, to be a "reasonable bond or other security" within the meaning of article 73, paragraph 2 of the Convention.

In effect, the marine surveyor who made the appraisal of the vessel on behalf of the maritime authorities in Reunion, Mr. Chancerel, seems to have forgotten about the following:

a) that we are talking about a vessel of more than **34 years old**

b) that, as stated in page 7 of the report of the Marine Surveyor, Captain Antonio Alonso, enclosed as document 17, the price of a new built vessel of the characteristics of Grand Prince is approximately 2.560.240 Euros.

c) That Grand Prince was built as a stern trawler, and afterwards was remodelled being converted to a bottom-liner by the dismantelation of her trawling windlass and astern ramp. Every expert in fishing vessels knows that this adaptation implies that the vessel lacks the optimal characteristics, such as size, general arrangement and power for her present fishing activity. We refer in this regard to the reports enclosed as documents 17 and 18, were this issue is dealt with in detail

In fact, the international market price for a vessel of the age and characteristics of Grand Prince is in the region of **360.000.- Euros** which is less than a third party of the value indicated by Mr. Chancerel.

In order to evidence that what we are saying is true and accurate, we have enclosed as **documents numbers 17 and 18** the expert opinions of two remarkable experts on the fishing vessel's market, the Marine Surveyor Captain Mr. Antonio Alonso Pérez and the naval Engineer Mr. Faustino Carceller Vilalta.

All this makes sense with the purchase price of the vessel paid by the shipowner (paik Commercial Corp) on the 27/03/00, which, as we have evidenced through the Bill of

Sale duly signed before a Public Notary and apostilled , enclosed as document number 2. was : 45.000 000.- Pesetas (271 084 Euros)

For all these circumstances, it is impossible to accept that the amount of the bond fixed by France is "reasonable"

32.- Furthermore, we must recall that, as stated by this Tribunal in paragraph 86 of the Judgement pronounced in the Monte Confurco case <<the value of the fish and of the fishing gear seized is also to be taken into account as a factor relevant in the assesment of the reasonableness of the bond>>, which , as far as we understand, supposes that the value (as determined by the french authorities) of the fish (123.848 Euros) and of the fishing gear (24.393 Euros) and fishing materials (5.610 Euros) , should be considered as part of the guarantee, as it was decided in the mentioned previous case

This means that the sum of those three concepts , 153.851 Euros , should be computed when fixing the amount of the guarantee.

33.- For all the above reasons , we consider that , even contemplating the worst scenario for the shipowner, and trying not to take into account that the vessel did not catch any fish inside the EEZ of Kerguelen any fish , the final and firm decision of the case by the french Courts would be fully guaranteed by a bank guarantee in the amount of **206.142 Euros**

34.- A large number of third parties (crewmembers , workers ashore, suppliers, reparators, ship agents , banks, etc.) are being affected by the unjustified detention of the vessel.

Statement of Law

Jurisdiction

35.- The Tribunal has jurisdiction in virtue of article 292 paragraph 1 of the Convention, and provided that

a) Belize and France are both parties to the Convention Belize ratified the Convention on the 13-8-1983, and France on the 11 05 1996

b) the Grand Prince flew the flag of Belize at the time of the detention subject matter of this application

c) the parties did not agree to submit the question of the detention to any other court or tribunal within 10 days of the time of detention

d) the submissions stated in this application concern the alleged violations of article 73 paragraph 2 of the Convention.

Authorization

36.- The undersigned has been duly authorised to make the present application on behalf of the State of Belize in virtue of the Letter enclosed as document number 1.

Non compliance with article 73, paragraph 2, of the Convention

37.- As to the exigency of prompt release:

The arrest of the Grand Prince was made by the french authorities alleging that she was fishing illegally within the **Exclusive Economic Zone** of Kerguelen Islands, and basing said actuation on article 73 of the United Nations Convention of the Law of the Sea to which, both Belize and France are parties, which reads as follows:

(1) The coastal State may, in the exercise of its sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone, take such measures, including boarding, inspection, **arrest and judicial proceedings**, as may be necessary to ensure compliance with the laws and regulations adopted by it **in conformity with this convention** .

(2) Arrested vessels and their crews shall be promptly released upon de posting of a reasonable bond or other security

It is evident that when the Convention allows the States to take measures to protect the resources of the EEZ, including arrest and judicial proceedings, sets very clearly the following limits that must be observed by the States:

- a) the measures must be adopted in conformity with the Convention,
- b) the vessels (and crews) must be promptly release

In this regard, the Tribunal, with occasion of previous cases ("Saiga", "Monte Confurco" and "Camouco") made very clear what is the interpretation that must be given to the mentioned article

"Article 73 identifies two interests, the interest of the Coastal State to take appropriate measures as may be necessary to ensure compliance with the laws and regulations adopted by it on the one hand and the interest of the flag State in securing prompt release of this vessels and their crews from detention on the other. It strikes a fair balance between two interests. It provides for release of the vessel and its crew upon

the posting of a bond or other security, thus protecting the interests of the flag State and other persons affected by the detention of the vessel and its crew. The release from detention can be subject only to a 'reasonable' bond." (point 70 - pag 25- Judgement related to The Monte Confurco Case.

It is equally evident that States cannot use any kind of subterfuges or tricks to evade such crucial requirements.

France, in this particular case, fixed initially a bond for release of the vessel, and only a few days later decided to confiscate the vessel (and its equipment and fish), as well as to execute provisionally the decision, which in practical terms supposed that the vessel could not be released even by posting the bond fixed by France

We are conscious, that this way of proceeding has been carefully designed, so that - apparently the State complies with the requisite of fixing a bond for prompt release, but in reality the release becomes impracticable because whilst the arrested party is either making the arrangements to prepare the bond or questioning the reasonableness (amount, nature or form) of the same, the confiscation is decided and executed provisionally.

And with all respects, this is nothing else but a "trick", which in most Statel legislations is regulated as "Fraud of Law". Fraud of Law consists of using a provision of Law just with the objective of evading the compliance with a legal requirement.

If this type of actuations were permitted, then article 73 of the Convention would be "dead letters", and every State could arrest vessels for infringements in the EEZ and upon arrival to Port (or even before) put the matter to a Court and decide immediately the confiscation and its provisional execution, irrespectively of any remedies of appeal (as did France in the present case; confiscation was decided by the Court by the way)

We are confident that this Tribunal will restore the legality in this respect

38 - As to the nature of the bond

Irrespectively of what has been explained in paragraph 36, France did not comply neither with the requisite of "reasonableness of the bond" as to its form or nature

Let me recall what this Tribunal decided in previous matters with regard to this aspect:

In the "Saiga" case it was decided for the first time that the form of the bond shall be "a letter of credit or bank guarantee" (paragraph 85 of the Judgement)

With occasion of the cases Camouco and Monte Confurco the Tribunal went against over this issue, and insisted on the same exigency as follows:

"The Tribunal notes that, in the 'Camouco' case, it decided that the bond should be in the form of a bank guarantee (judgement of 7 February 2000, paragraph 74). No difficulty was encountered in the implementation of this judgement. Consequently, the claim of the respondent that cash or certified cheque are the only possible forms for the bond does not seem reasonable to the Tribunal." (paragraph 93 of the judgement of 18 December 2000, in the Monte Confurco case)

In our particular case, France has again limited the nature of the bond by requesting a "certified cheque or a bank cheque" (which does not differ to much from a payment in cash), not allowing a bank guarantee.

Consequently, the bond cannot be considered "reasonable" as to its nature or form, and we are confident that the Tribunal will determine that it shall be in the form of a bank guarantee.

39. - As to the form of the bond

Following the criteria of the Tribunal in the previous cases referred above, we understand that the form and wording of the bank Guarantee shall be as follows:

"The bank guarantee is issued in consideration of France releasing the Grand Prince, in relation to the incidents dealt with in the Order of 12 January 2001 of the Court of First Instance of Saint-Paul and that the issuer undertakes and guarantees to pay to France such sums, up to 206.149 Euros, as may be determined by a final and firm judgement or decision of the appropriate domestic forum in France or by agreement of the parties. Payment under the guarantee would be due promptly after receipt by the issuer of a written demand by the competent authority of France accompanied by a certified copy of the final and firm judgement or decision or agreement."

40. - As to the amount of the bond

Article 73.2 of the Convention requires that the amount of the bond must be reasonable

The Tribunal, with occasion of the previous cases ("Saiga", "Camouco" and "Monte Confurco") specified a number of relevant factors to be taken into consideration in an assessment of the reasonableness of bonds, which include: (a) the gravity of the alleged offences; (b) the penalties imposed or imposable under the laws of the detaining State; (c) the value of the detained vessel and the cargo seized (e) the quantity of fish carried on board

As to the value of the vessel we have evidenced that

- it was bought in the price of 45.000.000.- Pesetas equal to 271 000 Euros (document number 2^o)

- it's market price is in the region of 360.000 Euros (documents numbers 17 and 18)

- the appraisal made by the French surveyor is near the cost of a new built ship of similar characteristics of Grand Prince. (documents numbers 19 and 20)

There are other several circumstances that should be take into account in this particular case, such as ;

- the short quantity of fish carried on board (18 Tns)
- that although the Captain had the intention to fish within the EEZ of the Kerguelen, fact that we do not deny, he had clear instructions from the shipowner not fish in the said area.
- that this vessel was about to proceed to Brazil where she had good possibilities to fish under a Brazil fishing licence.
- the attitude of full cooperation by the Captain crew and shipowner of Grand Prince with the french authorities.
- that the correctionnel court of Saint Denis , which decision has been appealed, has imposed a fine to the Captain in the amount of 200.000 FF.

The result, is that even contemplating the worst scenario for the shipowner, the final and firm decision of a domestic Court would be fully guaranteed by a bank guarantee in the amount of **206.149 Euros**

SUMMARY OF ARGUMENTS

41 - Grand Prince was detained on the 26 December 2 000 by the french authorities accused to fish within the EEZ of the Kerguelen Islands (page 4 paragraph 4)

42.- At the time of the detention the vessel flied Belize flag , being both, France and Belize, parties to the Convention. (page 3 - paragraph 1)

43.- The Captain declared that although the vessel did not catch any fish in the area he was in fact dispossed to fish, despite the clear instructions given to him by the shipowner not to enter in the zone. (page 4 - paragraph 5)

44 - The vessel had on board approximately 2 Tns of lobster 18 Tns of toothfish (page 4 - paragraph 8)

44.- The vessel was about to proceed to Brazil, were he had been allocated with a fishing licence.(page 7 - paragraph 22)

45.- By order n° 3/2001 of 12 January 2.001, the Court of first instance of Saint Paul confirmed the seizure of the vessel, the fishing gear and materials and the fish on board, fixing a bond for release of the vessel in the amont of 1,737,918 .70 Euros, to be posted in the form of certify cheque or bank cheque. The form of bank guarantee was not allowed (pages 5 and 6 - paragraphs 12 to 18, both inclusive)

46 - The said bond cannot be considered "reasonable" neither as to it's form , (as it not allows a bank guarantee) nor in respect of it's amount, as it exceeds three times de current market price of the vessel. (page 8- paragraph 31, 32 and 33, pages 13, 14 and 15 , paragraphs 38, 39 and 40)

47 - Irrespectively of the unreasonableness of the bond, it happened that a few days after the said Order was notified , the Tribunal Correctionnel of Saint Denis , on the 23 January 2.001, decided to confiscate the vessel and that the said decision was provisionally executed. (pages 7 and 8- paragraphs 24 to 30, both inclusive, and pages 12 and 13 - paragraph 37)

48.- As result thereof the vessel could not be released by posting any kind of bond (reasonable or not) , and that she will remain detained whilst the proceedings of appeal of the said decision are in course and a final and firm decision is pronounced.(page 8 - paragraph 28)

49.- Through said subterfuge or "fraud of law" France, in addition to having fixed a unreasonable bond, has evaded the crucial and clear requirement of prompt release sanctioned under article 73.1 of the Convention. (page 8 - paragraph 29 and and pages 12 and 13 - paragraph 37)

50.- In the meantime, the infringement by France of article 73.1 is affecting very seriously . apart from the shipowner, the rights of third parties with interests on the vessel , such as the company workers (37 members of the crew and 6 ashore) suppliers, ship agents , reparators banks , etc... (page 10 - paragraph 34)

On the basis of the foregoing facts and statements of law, and after having been carefully studied and considered by the flag State the circumstances of this matter, I make the following;

50.- SUBMISSIONS

1 - To declare that the Tribunal has jurisdiction under article 292 of the United Nations Convention on the Law of the Sea to hear the present application

2.- To declare the present application admissible.

3.- To declare that France failed to comply with article 73, paragraph 2, of the Convention, as the guarantee fixed for release of Grand Prince is not reasonable as to it's amount, nature or form.

4 - To declare that France failed to comply with article 73, paragraph 2, of the Convention by having evaded the requirement of prompt release under this article by not

allowing the release of the vessel upon the posting of a reasonable, or any kind, of guarantee alleging that the vessel is confiscated and that the decision of confiscation has been provisionally executed.

5 - To decide that France shall promptly release the Grand Prince upon the posting of a bond or other security to be determined by the Tribunal

6.- To determine that the bond or other security shall consist of an amount of two hundred and six thousand one hundred forty nine (206.149) Euros or it's equivalent if French Francs.

7 - To determine that the monetary equivalent to (a) 18 tones of fish on board the Grand Prince held by the french authorities, and valued on 123.848 Euros (b) the fishing gear , valued on 24.393 Euros (c) the fishing materials valued on 5.610 Euros , totalising 153.851 Euros , shall be considered as security to be held or, as the case may be, returned by France to this party.

8- To determine that the bond shall be in the form of a bank guarantee .

9.- To determine that the wording of the bank guarantee shall , among other things, state the following:

A.- In case France returns to the shipowner the concepts referred to under point 7 (of the present submissions):

"The bank guarantee it is issued in consideration of France releasing the Grand Prince , in relation to the incidents dealt with in the Order of 12 January 2.001 of the Court of First Instance of Saint-Paul and that the issuer undertakes and guarantees to pay to France such sums, up to 206.149 Euros . as may be determined by a final and firm judgement or decision of the appropriate domestic forum in France or by agreement of the parties. Payment under the guarantee would be due promptly after receipt by the issuer of a written demand by the competent authority of France accompanied by a certified copy of the final and firm judgement or decision or agreement."

B - In case France does not return to the shipowner the concepts referred to under point 7 (of the present submissions):

"The bank guarantee it is issued in consideration of France releasing the Grand Prince , in relation to the incidents dealt with in the Order of 12 January 2.001 of the Court of First Instance of Saint-Paul and that the issuer undertakes and guarantees to pay to France such sums up to 52.298 Euros as may be determined by a final and firm judgement or decision of the appropriate domestic forum in France or by agreement of the parties. Payment under the guarantee would be due promptly after receipt by the issuer of a written demand by the competent authority of France accompanied by a certified copy of the final and firm judgement or decision or agreement."

10.- To determine that the bank guarantee shall be invoked only if the monetary equivalent of the security held by France is not sufficient to pay the sums as may be determined by a final and firm judgement or decision of the appropriate domestic forum in France.

21st March , 2001

Agent's Signature:



Alberto Penelas-Alvarez



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