



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

Press Release

JUDGMENT DELIVERED IN THE "VOLGA" CASE RUSSIAN FEDERATION v. AUSTRALIA

HAMBURG, 23 December. The Tribunal today delivered its Judgment in *The "Volga" Case (Russian Federation v. Australia), Prompt Release*, ordering the prompt release of the fishing vessel *Volga*, upon the posting of a bond or other security of AU\$ 1,920,000. The President of the Tribunal, Judge Dolliver Nelson, read the Judgment in open court.

The dispute arose as a result of the arrest of the *Volga* on 7 February 2002 by Australian military personnel in the Southern Ocean for alleged illegal fishing in the Australian fishing zone. On 2 December 2002, the Russian Federation submitted an Application to the Tribunal under article 292 of the United Nations Convention on the Law of the Sea. In its Application, the Russian Federation requested the release of the *Volga* and three members of its crew.

THE JUDGMENT

The Tribunal unanimously found that it has jurisdiction under article 292 of the Convention to entertain the Application made by the Russian Federation, and that the Application, with respect to the allegation of non-compliance with article 73, paragraph 2, of the Convention, was admissible.

The Applicant submitted that the bond sought by Australia imposed conditions for the release of the vessel and the three members of the crew which were neither permissible nor reasonable under article 73, paragraph 2, of the Convention. The Respondent maintained that the bond sought by the Australian authorities was reasonable, having regard to the value of the vessel, its fuel, lubricants and fishing equipment; the gravity of the offences and potential penalties; the level of international concern over illegal fishing; and the need to secure compliance with Australian laws and international obligations pending the completion of domestic proceedings.

The Tribunal found by 19 votes to 2 that the allegation made by the Applicant that the Respondent had not complied with the provisions of the Convention for the prompt release of the vessel or its crew upon the posting of a reasonable bond or other financial security was well-founded and decided by 19 votes to 2 that Australia shall

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promptly release the *Volga* upon the posting of a bond or other security to be determined by the Tribunal.

In its Judgment, the Tribunal took note of the concern of the Respondent with regard to the depletion of stocks of Patagonian Toothfish in the Southern Ocean. It "understands the international concerns about illegal, unregulated and unreported fishing and appreciates the objectives behind the measures taken by States, including the States Parties to CCAMLR, to deal with the problem". The Tribunal, however, emphasized that, in prompt release proceedings, it is called upon to decide if the bond set was reasonable in terms of article 292 of the Convention.

With respect to the three crew members, the Tribunal noted that the Full Court of the Supreme Court of Western Australia upheld the appeal of the three officers of the *Volga* on 16 December 2002 and ordered that they be permitted to leave Australia upon the amount of bail already posted, and was informed that the officers left Australia on 20 December 2002. The Tribunal therefore considered that setting a bond in respect of the three officers no longer served any practical purpose.

As regards the release of the vessel, the Tribunal stated that the amount of AU\$ 1,920,000 sought by the Respondent for the release of the vessel, which represents the full value of the vessel, fuel, lubricants and fishing equipment and is not in dispute between the parties, is reasonable in terms of article 292 of the Convention. The Tribunal, however, considered that the non-financial conditions set down by the Respondent with regard to the vessel carrying a vessel monitoring system (VMS) and the submission of information about the owner of the ship could not be considered as components of the bond or other financial security for the purposes of article 292 of the Convention.

The Tribunal also stated that the circumstances of the seizure of the *Volga* were not relevant to the proceedings for prompt release under article 292. With regard to the proceeds of the catch found on board the *Volga* at the time of arrest, the Tribunal declared that, although the proceeds represent a guarantee to the Respondent, they have no relevance to the bond to be set for the release of the vessel and that accordingly the question of inclusion in or exclusion from the bond does not arise in this case.

The Tribunal determined, by 19 votes to 2, that the bond or other security for the release of the vessel shall be of AU\$ 1,920,000 to be posted with Australia. The Tribunal determined unanimously that the bond shall be in the form of a bank guarantee from a bank present in Australia or having corresponding arrangements with an Australian bank or, if agreed to by the parties, in any other form and that each party shall bear its own costs.

Vice-President Vukas and Judge Marsit have appended declarations to the Judgment. Judge Cot has appended a separate opinion. Judge Anderson and Judge *ad hoc* Shearer have appended dissenting opinions. The text of the Judgment and the declarations and opinions appended thereto is available on the website of the Tribunal.

The Press Releases of the Tribunal, documents and other information are available on the Tribunal's websites: <http://www.itlos.org> and <http://www.tiddm.org> and from the Registry of the Tribunal. Please contact Ms. Julia Pope at Am Internationalen Seegerichtshof 1, 22609 Hamburg, Germany, Tel.: +49 (40) 35607-227, Fax: +49 (40) 35607-245;
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