

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



2000

Public sitting

held on Thursday, 27 January 2000, at 10.00 a.m.,  
at the International Tribunal for the Law of the Sea, Hamburg,

President P. Chandrasekhara Rao presiding

The “Camouco” case  
(Application for prompt release)

*(Panama v. France)*

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**Verbatim Record**

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*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

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*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 REGISTRAR:** Today the Tribunal will take up the hearing in Case No. 5 in the  
2 list of cases. It has been listed as The *Camouco* Case (Panama *versus* France).

3  
4 Agents and Counsel for both Panama and France are present.

5  
6 The Application was duly filed in the Registry of the Tribunal on 17 January 2000 on  
7 behalf of the Republic of Panama against the Republic of France for the prompt  
8 release of the *Camouco* and its Master.

9  
10 The application is made under article 292 of the United Nations Convention on the  
11 Law of the Sea.

12  
13 **THE PRESIDENT:** This public sitting is held pursuant to article 26 of the Statute of  
14 the Tribunal to hear the parties present their evidence and arguments in the  
15 *Camouco* Case.

16  
17 I call on the Registrar to read out the submissions of Panama as contained in its  
18 Application.

19  
20 **THE REGISTRAR:** The Applicant requests the Tribunal:

21  
22 “1. To find that the Tribunal is competent under article 292 of the United Nations  
23 Convention on the Law of the Sea to entertain the Application filed this day;

24  
25 2. To declare that the present Application is admissible;

26  
27 3. To declare that the French Republic has failed to comply with article 73,  
28 paragraph 4, by failing promptly to notify the Republic of Panama of the arrest  
29 of the *Camouco*.

30  
31 **A) With respect to the Captain of the *Camouco*, Mr Hombre Sobrido**

32  
33 4. To request, as an interlocutory measure with a view to due process, that the  
34 French Republic permit Captain Hombre Sobrido to attend the hearing which  
35 is soon to take place in Hamburg;

36  
37 5. To find that the French Republic has failed to comply with the provisions of  
38 the Convention concerning the prompt release of the Masters of arrested  
39 vessels;

40  
41 6. To order the French Republic promptly to release Captain Hombre Sobrido  
42 without bond;

43  
44 7. To find that the French Republic has failed to comply with the provisions of  
45 article 73, paragraph 3, in applying to the Captain criminal measures which *de*  
46 *facto* constitute an unlawful detention.

1 **B) With Respect of the vessel *Camouco***

2  
3 8. To find that the French Republic has failed to comply with the provisions of  
4 the Convention concerning prompt release of the vessel *Camouco*.

5  
6 9. To order the French Republic promptly to release the vessel *Camouco*,  
7 without bond, in light of the losses and costs already sustained by the owner  
8 of the *Camouco*.

9  
10 10. Subsidiarily, to determine the amount, nature and form of the bond or other  
11 financial guarantee to be posted by the Merce-Pesca Company in order to  
12 secure the release of the *Camouco* and of Captain Hombre Sobrido;

13  
14 In this connection, the Applicant requests the Tribunal to take note of its  
15 preference for a bond in the form of a bank guarantee from a leading  
16 European bank, rather than a cash payment, and for payment to be made to  
17 the International Tribunal for the Law of the Sea, for transmission by  
18 appropriate means to the French authorities in exchange for the release of the  
19 vessel.

20  
21 As regards the amount of the bond, and bearing in mind the rules  
22 applicable in similar cases, this party proposes that the Tribunal should  
23 fix a bond not greater than the sum of 100,000 FF (ONE HUNDRED  
24 THOUSAND FRENCH FRANCS, i.e. approximately US \$15,000) in  
25 which the Tribunal will take into account the many expenses already  
26 incurred by the Merce-Pesca Company since the boarding of the  
27 *Camouco*.

28  
29 11. To declare that the French Republic will bear the costs of the Applicant arising  
30 from the present proceedings.”

31  
32 **THE PRESIDENT:** On the same day that the Application was filed in the Registry, a  
33 copy of the Application was transmitted to the Government of France. By Order of  
34 17 January 2000, the President of the Tribunal fixed 27 and 28 January as the dates  
35 for the hearing of the case. The Respondent filed its Response with the Registrar of  
36 the Tribunal on 25 January 2000.

37  
38 I call on the Registrar to read out the submissions of France as contained in its  
39 Response.

40  
41 **THE REGISTRAR:** In its Response the Government of France concludes as  
42 follows:

43  
44 “On the basis of the foregoing statement of facts and legal grounds, the  
45 Government of the French Republic, while reserving the right to add to or  
46 amend, if necessary, this conclusion at a later stage in the proceedings,  
47 requests the Tribunal, rejecting all arguments to the contrary submitted on  
48 behalf of the Republic of Panama, to declare and rule that the Application  
49 requesting the Tribunal to order the prompt release of the *Camouco* and its  
50 captain is not admissible.”

1  
2 Copies of the Application and the Response have been made available to the public  
3 in accordance with the Rules of the Tribunal.  
4

5 **THE PRESIDENT:** The Tribunal notes the presence in court of Mr Ramón García  
6 Gallardo, Agent of the Republic of Panama, and Mr Jean-François Dobelle, Agent of  
7 the Republic of France.  
8

9 I now call on the Agent for the Applicant, Mr Ramón García Gallardo, to note the  
10 representation of Panama.  
11

12 **MR GALLARDO:** Mr President, Mr Vice-President, Members of the Tribunal,  
13 Representatives of the French Republic, I would like to introduce my delegation:  
14 first, Maître Jean-Jacques Morel, Counsel at the Court of Saint-Denis in the Island of  
15 Réunion. He is a specialist in maritime law and criminal law; secondly, M Bruno  
16 Jean-Etienne, of French nationality, also a lawyer and a colleague of ours in our  
17 offices in Brussels.  
18

19 **THE PRESIDENT:** I now call on the Agent of France to note the representation of  
20 France.  
21

22 **MR DOBELLE:** Mr President, Mr Vice-President, Members of the Tribunal, Agent  
23 Representatives of the Republic of Panama, it has my honour to introduce the  
24 members of the French delegation: M Jean-Pierre Queneudec, Professor of  
25 International Law at the University of Paris 1; M Francis Hurtut, Assistant Director  
26 for the Law of the Sea, Fisheries and the Antarctic in the Office of Legal Affairs of the  
27 Ministry of Foreign Affairs; M Bernard Botte, Drafting Officer in the Sub-Directorate  
28 for the Law of the Sea, Fisheries and the Antarctic in the Office of Legal Affairs of the  
29 Ministry of Foreign Affairs; M Vincent Esclapez, Deputy Regional Director for  
30 Maritime Affairs in Réunion; and M Jacques Belot, an Advocate at the Bar of Saint  
31 Denis on the Island of Réunion.  
32

33 **MR PRESIDENT:** Thank you. Following consultation with the Agents of the parties,  
34 it has been decided that the Applicant, Panama, will be the first to present its  
35 evidence and arguments. Accordingly, the Tribunal will hear Panama first. In the  
36 afternoon, the Tribunal will hear France.  
37

38 I now give the floor to the Agent of Panama, Mr Gallardo.  
39

40 **MR GALLARDO:** Mr President, Mr Vice-President, Members of the Tribunal and  
41 representatives of the French Republic, as the agent of the Republic of Panama it is  
42 a pleasure and an honour to speak before the International Tribunal for the Law of  
43 the Sea in the case dealing with the fishing vessel in respect of article 292 for the  
44 prompt release of the vessel and the crew.  
45

46 I shall make my submissions in French and ask for your indulgence for my Spanish  
47 accent. If the Members of the Tribunal wish, I am prepared to answer any questions  
48 in English during the proceedings.  
49

1 The present case concerns the boarding of the longline fishing vessel *Camouco*,  
2 flying the Panamanian flag, on 28 September last year within the exclusive economic  
3 zone of the Crozet Archipelago, which belongs to the French Republic. Since that  
4 date the Master of the vessel, M Hombre Sobrido of Spanish nationality has been  
5 detained at 15,000 km from his home for a period of four months. The same applies  
6 to the vessel.

7  
8 The prompt release can only take place after the posting of a bond of 20 million  
9 French francs, (US\$ 3,115,000). At present no date has been established to deal  
10 with the case in front of a French criminal court at Réunion Island which would put an  
11 end to this stage of the case and release the vessel.

12  
13 The French Government has accused the vessel of fishing in the exclusive economic  
14 zone on the Islands of Crozet. The fish concerned are Patagonian toothfish. The  
15 Republic of Panama considers it more important than ever to allow vessels free  
16 passage in the Arctic Ocean. In that respect, the Republic of Panama has started to  
17 reduce the number of vessels having the possibility of operating in this zone and also  
18 imposed restrictions on fishing.

19  
20 Since 3 November last, all of the vessels flying the Panamanian flag have to have a  
21 blue box on board for satellite localisation of Panamanian ships. At present the only  
22 convention in force is the United Nations Convention on the Law of the Sea. The  
23 states ratifying the code of responsible fishing conduct agree that fishing should be  
24 restricted. Panama has not yet ratified this part of the code and no members of the  
25 European Union, including France, have ratified it either.

26  
27 The applicant notes that this is the first time it has appeared before an international  
28 tribunal in matters of fishing, although ships flying the Panamanian flag have been  
29 boarded by various member states of CV Montego.

30  
31 The Republic of Panama considers that the present case has not been sufficiently  
32 analysed on the part of the French authorities. It appeals to the jurisdiction of the  
33 International Tribunal for the Law of the Sea to post a reasonable bond requested by  
34 France and to deal with the other matters in our application.

35  
36 I should now like to outline the points which the delegation of the Republic of  
37 Panama will submit. We will show you some naval charts to give you a geographical  
38 indication of where this took place. We will then show you a video film, lasting about  
39 seven minutes, on the technical situation of longline fishing. We will then show you  
40 some slides to substantiate our arguments.

41  
42 With the permission of the President I shall then submit a brief outline of the facts  
43 which have led to the dispute and the examination of the representatives of the  
44 owner. My colleague, Jean-Jacques Morel, will then present an outline of the  
45 applicable French law in this case. Finally, as regards the law, we have submitted to  
46 the Tribunal a table on the main points of law which we will discuss if agreed by the  
47 President.

48  
49 I should now like to show you the maritime charts to give you an impression of where  
50 this took place. Chart No 1 shows a map of the Indian Ocean. Here we can see the

1 archipelago of the Crozet Islands which form a very small part of the maritime map  
2 showing all the southern oceans from the Atlantic to the Indian Ocean. On the right  
3 we can see Australia and New Zealand. When fishing vessels are sailing in the  
4 southern seas, they would normally return to Namibia, for example, or Réunion  
5 Island or Mauritius.

6  
7 Chart No 2 shows more closely the southern part of Africa and Madagascar. On the  
8 right of the chart we can also see Australia. We can see the northern part of the  
9 southern oceans showing the distance between Réunion Island and Crozet and to  
10 the left the distance between the Crozet Islands and South Africa. On the right is the  
11 Kerguelen archipelago. To the right is Australia.

12  
13 On chart No 3 we have drawn a green line on the left hand side to indicate the  
14 crossing made by the vessel *Camouco* before it arrived in the fishing area. The  
15 vessel arrived there on 27 September and came from Namibia. Perhaps you would  
16 continue along the green line from outside the zone. Master Hombre Sobrido  
17 declared that his idea was to go to the southern ocean to a fishing bank which we  
18 will see on the next chart.

19  
20 For reasons we have submitted, Master Hombre Sobrido decided to change his mind  
21 within the zone of the Isles Crozet, to cross towards the north east of the  
22 Crozet Islands.

23  
24 Chart No 4 shows the south of the Crozet Islands and Kerguelen. We can see the  
25 area in which the vessels may engage in fishing in international zones. Below the  
26 Kerguelen Islands we see the Elan Bank, mentioned in the presentation of facts,  
27 which Master Hombre Sobrido was trying to head towards.

28  
29 To conclude, we would like to show you a slide facilitating the explanation which you  
30 will later receive of deep longline fishing. The line is between 10 and 15 km. You will  
31 see each of the lines descending to a depth of about 1,500 metres. They are  
32 supported by buoys. We can also see another buoy supporting another line and  
33 between the line with the hooks is the attaching line. This is the system used for  
34 deep sea fishing using longlines.

35  
36 In the video film we will see a brief reference to the method of longline fishing in the  
37 southern oceans with a longline deepfreeze vessel.

38  
39 This first submission has been somewhat lengthy but will help us in our subsequent  
40 deliberations.

41  
42 I should also like to show you the video film using the system of deep longline fishing  
43 in the southern oceans. (*Video shown*) We can see the meteorological conditions  
44 which are normal in this area: storms, lack of light during the day and more than  
45 10 m of waves which make fishing very difficult in the Antarctic areas. We can see  
46 that the lines are let out to the aft of the ship and the starboard. Sometimes other  
47 equipment is used to raise the fish from the ocean.

48  
49 Perhaps we can move forward in the film a little further. (*Film fast forwarded*) we  
50 will try to shorten the film by about one minute. When the fish have been taken on

1 board they are taken to the factory area where they are topped, tailed and gutted.  
2 Sea water is used to hose down the equipment. The fish are then taken to the  
3 deep-freezing plant and put into the holds.  
4

5 You can see that it is very easy for small pieces of fish to be left and they may land  
6 on the floor. After the cleaning operation of the fish, it is necessary to clean up.  
7

8 You can see that the atmospheric conditions in which the crew is working are very  
9 humid. It is very difficult for them to work under these circumstances. The average  
10 temperature would be between 0 and 100 degrees, so small pieces of fish can  
11 remain on the floor of the vessel without emitting any smell or without rotting.  
12

13 I think we can stop the video here. There are pictures of the factory part of the  
14 vessel.  
15

16 To conclude the audio-visual part of my presentation, I will show you two or three  
17 photographs showing the vessel in full operation when raising the fishing lines. You  
18 have a toothfish here which is being raised on the line and this is on the starboard  
19 side and not on the poop. This is the system for raising the fish. The Spanish  
20 longline system, which is different from the Japanese or the American system, is  
21 more manual and requires that the people, especially the Spanish fishermen, master  
22 this technique.  
23

24 This is the vessel, the *Camouco*, in Réunion under the French flag. This was taken  
25 several months ago. You will see the French indications here. This is the vessel  
26 which the expert will talk to us about later, giving us the technical details. It is  
27 a small vessel, as you see and you can see during this four months of immobilisation  
28 the repair work is being carried out.  
29

30 Mr President, I would now like to examine the experts or, if you wish, we can give  
31 you a brief submission of the facts leading up to the dispute.  
32

33 **THE PRESIDENT:** I leave it to you. If you would like to make a presentation of the  
34 facts, you can do so; otherwise, you can deal with your experts, if you wish.  
35

36 **MR GALLADO (Interpretation):** First of all, I shall give a brief summary of the facts  
37 of the case and then later I shall return to the presentation of the experts and the  
38 witnesses.  
39

40 We are not going to repeat everything. We do not want to reiterate what we have  
41 said in our application with respect to this. On the other hand, given the facts from  
42 the Respondent and their notice of response, we would like to make a number  
43 comments in accordance with the procedures, especially with respect to Case No. 1,  
44 before the Tribunal, paragraph 50.50 of that said decision, the last part thereof, and  
45 also point 71 where it is permissible to make a statement which just differs from what  
46 the French authorities have put forward. This will give the Tribunal an objective  
47 overview of the situation, in our view.  
48

49 Now, there are in fact a lot of points which are not quite exact in the French version  
50 of this. I will deal with this and then I will go into it in my general reasoning.

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First and foremost, I would like to say that, contrary to what the French authorities maintain in their defence memo, there has been infraction carried out with respect to this vessel or the Master having been observed in the Crozet Islands in 1997 and 1998, so there are no problems there. Despite the documentation, which the French authorities submitted yesterday, the vessel was chartered under French flag for one year and from June 1998 until June or July 1999. During this chartering it ran under the French flag.

At that time, if any note had been seen by the French authorities of infractions carried out, then this would have been indicated and would not, in fact, have been hidden until today's proceedings.

I would also like to say that you should consider the bodies which work very closely with CCAMLR. There is for example an agency which works and is based in Austria and the French authorities have drawn up lists, which have been seen in CCAMLR, or the Crozet area and of those carrying out longline fishing. On the basis of this list, no observation was made of this vessel when it was chartered under French flag without any change in ownership. In fact the vessel was under the ownership of Merce Pesca. Then it was said that in the archipelago of the Crozet Islands no violation was noted, that there was no report of a violation. No report of a violation was in fact sent out. At the time the law did not say that any move into these waters of the two archipelagos had to be reported – that is the waters under French competence.

Some years ago there was a vessel under Legarrec under the French flag and the French authorities put this on the blacklist and then refused to sign any agreements, although the appropriate agreements had already been prepared. This is just to show you that it is not really quite fair to produce these documents now without any additional proof.

My second point: I am going to tell you very briefly what happened between *Camouco* and the frigate *Floréal* on 28/29 September. I am going to show you the point about which I am still very surprised, despite the fact it has been going on for four years. The protocol of violation and the protocol of the capturing of the vessel were not in fact signed by the Master. The communications between the vessel and the owner and its agents were in fact cut off after the first day of consideration of this case. That is, the Master was in fact detained or placed in detention. All notifications and communications were cut off within five or six days. There was no contact with the representatives of the land-based authorities or with our Master. When you consider the practice of marine law and fishing, you might in fact have doubts about the validity and objectivity of the documentation and evidence put forward.

The vessel did in fact not escape as such. It was there with the entire crew on board. Of course, there were a few minutes of detention before the frigate arrived and when the helicopter arrived on the vessel. This, however, cannot prove that it was trying to escape when you consider the speed of this vessel, 12 miles, compared to that of the helicopter or the frigate. No fresh fish were seen. When you

1 consider the factory that we were shown and the conditions on board, in fact no line  
2 was demonstrated to show that the vessel was actually fishing at this time.

3  
4 Eight days or a week later the Master was shown a photograph in black and white --  
5 this is when he was on land – which, surprisingly, is rather different from the rest of  
6 the colour photographs we were shown. This shows a bag in which there were  
7 34 kilos of fish apparently. After all this time, you cannot say that this was the bag  
8 found by the helicopter. There is no confirmation of this.

9  
10 With reference to the fact that a buoy was found eight hours later, it is not shown by  
11 the evidence of the authorities in Réunion in this case that 34 kilos were caught.  
12 They said that they found a line of 1,500 but they do not say how many kilos were  
13 found. Neither do they say what tonnage of fish was in fact caught on the basis of  
14 the said buoy. We cannot really see whether any fish at all are linked to this buoy.

15  
16 My next point is: to whom does this line, which was found a week later, belong? It is  
17 of the same material as far as the experts are concerned. The owners say that this  
18 really has no relevance because there are a lot of masters who come from Galicia  
19 and of course there are a lot of Galician longline fishermen which use the Japanese  
20 and American systems and use this type of material for the line. Just because  
21 a buoy has been found, we cannot say that it belonged to this vessel. It could have  
22 belonged to any vessel. There is a whole list of vessels which can be found in the  
23 Crozet Islands, according to the list of the French authorities. It could have belonged  
24 to the previous passing of this vessel when it was under the French flag. You must  
25 not forget that it worked or fished within these waters under a French flag. This has  
26 been said not only by the previous Master, who is also a Spaniard, but also by  
27 a French master who worked on it when it was flying the French flag. So, during the  
28 fishing season the line may have been lost to various problems – stormy seas or  
29 whatever.

30  
31  
32 To wind up my presentation of the case and to return to earth, as it were, that is  
33 when the vessel arrived at Réunion Island, no respect was given to the Master. He  
34 was put into detention, with no assistance from his lawyer, and was put under all  
35 types of pressure by the Maritime Police - not by the Magistrates or the Judges,  
36 because they did not appear until later.

37  
38 As you will see in our Exposé of Response, the Master was in the following position:  
39 if you look at our Application and what Mr Hombre Sobrido has said, there are six or  
40 seven different reports which are in little pieces, as it were, and you can see that the  
41 Master refused to sign three of these pieces of report, even if he was aided by a  
42 sworn interpreter. I wonder why he did not want to sign these and why, on the other  
43 hand, he signed other parts of the protocol which are in the same deposition. He  
44 told us later that the conditions of his interrogation were not all that good.

45  
46 Another legal point that I would like to raise here is that the entire crew was  
47 interrogated over two or three days following the arrival of the vessel. The  
48 depositions relating to their interrogations were not signed by any members of the  
49 crew. There are some occasions on which people have signed, but in this case no  
50 signature has been noted. Therefore, this is not evidence under French law. In fact,

1 this will not provide evidence until they are put before a penal court. On the other  
2 hand, the Master in these protocols recognised and signed to the effect that he failed  
3 to say that they were entering into the exclusive economic zone in violation of French  
4 legislation, of which he was aware; that is true. He gave an explanation to confirm  
5 that the identification of the vessel was not clear. It was hidden.  
6

7 He also gave an explanation which, in my submission, should be brought to the  
8 Tribunal's attention. Three or four months prior to that, the vessel was under the  
9 French flag and was named *Saint Jean* and there was no change of name on the  
10 vessel. That was to be done at the end of the fishing season. Given these  
11 conditions, 10 metre waves in waters such as the waters here, waters close to  
12 Canada, Iceland or in the Antarctic in the southern seas, you can appreciate that  
13 after two or three months of navigation in these waters the vessels tend to lose a lot  
14 of their paint, so the new name was not fully painted on. This is why he decided that  
15 he would not put the new name on. He thought that he could simply strike out the  
16 name. In any event, he has explained all this in the case, and we do not believe that  
17 this can be considered to be a serious violation.  
18

19 Finally, the company has so far not been faced with such cases in the past. The  
20 French authorities, it seems, have now decided to take Merce-Pesca before the  
21 courts. We therefore cannot have an increase in the bond based on the fact that  
22 there may be problems if in the final analysis the company was deemed to be guilty.  
23

24 It would be very appropriate to have the Master here as a witness, so that we could  
25 hear his evidence. Unfortunately, this has not been possible under French law.  
26 Therefore, we believe that this *de facto* debate will always lack objectivity, perhaps  
27 on both sides.  
28

29 Finally, I would like to confirm that the damage to the vessel and the company since  
30 the boarding of the vessel amounts to \$250,000 or 1.5 million French Francs.  
31 Otherwise, I believe that the facts of the matter are clear.  
32

33 If the Members of the Tribunal deem it fit, perhaps I could now enter into the  
34 question of the witnesses.  
35

36 **THE PRESIDENT:** Are you talking about experts being called?  
37

38 **MR GALLARDO:** Yes. Mr Domingo Fernandez Pérez.  
39

40 **THE PRESIDENT:** The expert witness will have to make a solemn declaration.  
41 Similarly, the interpreters provided by the party will also have to make a declaration.  
42 (*Interpreters sworn*)  
43

44 **DOMINGO FERNANDEZ PEREZ, sworn**

45 **Examined by MR GALLARDO**

46  
47 Q Could you tell the Members of the Court your name and profession?

48 A Domingo Fernandez Pérez. I am a shipping owner.

1  
2 Q Could you give us information about the Merce-Pesca Company?  
3 A It is under Panamanian law and it carries out fishing vessels.  
4  
5 Q How many fishing vessels are owned by Merce-Pesca?  
6 A The *Camouco*.  
7  
8 Q How many longline vessels?  
9 A The *Camouco*, which of course is a longliner.  
10  
11 Q How many are in operation in the southern seas?  
12 A There was the *Camouco*, which is the only one that the company has.  
13  
14 Q Could you tell us what the status is of the crew here?  
15 A Most of them are in fact European.  
16  
17 Q Did they have any working contracts with Merce-Pesca?  
18 A Yes.  
19  
20 Q Do they still have a labour contract?  
21 A Not at the moment.  
22  
23 Q What about the Master?  
24 A The Master does have a contract.  
25  
26 Q Are they insured?  
27 A Yes, they are.  
28  
29 Q What does the boarding of the vessel mean for them?  
30 A For them it means that they have lost their jobs basically, and they have to  
31 look for work elsewhere on another vessel.  
32  
33 Q When did you purchase the vessel?  
34 A In November of 1996.  
35  
36 Q Was this a good bargain, as it were?  
37 A Yes, it was in fact second-hand. It was about 10 years old when I bought it.  
38  
39 Q Was there any renovation work carried out when it was purchased around  
40 1996?  
41 A The only repair work that was carried out was to adapt it to the new  
42 circumstances in which it was going to be working.  
43  
44 Q What has it been doing in the last three years? Where has it been working?  
45 A In the last three years it was in the southern seas, two years under a  
46 Panamanian flag and one year under a French flag.  
47  
48 Q What was the agreement with the French shipping owner?  
49 A There was a participating company, along with the French civil mark.  
50

1 Q Have you received any remarks from the French authorities with respect to  
2 the French flag?  
3 A No, I have no information on this.  
4  
5 Q What about the French shipping owner - did they receive any such  
6 information?  
7 A Not that I know of.  
8  
9 Q Was your vessel on a blacklist of France or CCAMLR?  
10 A I have no information on this.  
11  
12 Q Did you have any problems before the boarding? Did you have any problems  
13 with the French authorities before that date?  
14 A No, sir.  
15  
16 Q The information from the French authorities states that the vessel was  
17 observed in the Crozet Islands in 1997. Is this correct?  
18 A No, it is not.  
19  
20 Q At this time was it necessary to notify the fact that you were entering the area  
21 of the Crozet Islands?  
22 A No, it was not necessary in that year.  
23  
24 Q So it entered into this area in 1998, is that correct?  
25 A Yes, the vessel and the crew under Peiner Peiner(?) was taken to the  
26 scientific base in the Crozet Islands and it was left there. I would like to point out that  
27 we were given very good treatment at the time.  
28  
29 Q To return to the agreements with the French shipping owner, was the  
30 relationship satisfactory, in your opinion?  
31 A Yes, very satisfactory. We simply had minor problems but, in general, it was  
32 very satisfactory indeed.  
33  
34 Q What does it cost to equip a longliner in the southern seas – the bait, the  
35 hooks and so on and so forth?  
36 A More or less \$70,000.  
37  
38 Q What is the extent of an overall trip?  
39 A Normally, the autonomy of the *Camouco* would go out for about 90 days.  
40  
41 Q How much fish can you store in the *Camouco*?  
42 A About 180 tonnes.  
43  
44 Q How often did you in fact fill the holds in recent years. When it was under the  
45 French flag, how many trips could you have, including the holidays of the crew?  
46 A Three and a half. More than three and a half would be a bit problematic.  
47  
48 Q What is the cost of an overall trip in dollars?  
49 A Let us say 100,000 pesetas, about \$700,000.  
50

1 Q What about the fact that an overall hold would be about \$4 – is that correct?  
2 A This would be about \$120,000.  
3  
4 Q And if it was \$8, the cost of the toothfish?  
5 A It would be double.  
6  
7 Q If you have three-quarters of the hold filled, how much would it give you, that  
8 is if the toothfish is about \$4?  
9 A Three-quarters of the hold would be more or less 130 tonnes.  
10  
11 Q So this would give you, multiplied by \$4...?  
12 A \$520,000.  
13  
14 Q If it was \$8, you would multiply that by 2. The French Agent has said in his  
15 Response that a vessel such as the *Camouco* could have an \$8 million turnover per  
16 year. What do you think about this?  
17 A Impossible, impossible!  
18  
19 Q Could you explain this? Could you elaborate on that?  
20 A If you have \$8, to have \$8 million, this would mean 1000 tonnes. This would  
21 mean that the *Camouco* would have to make about six full trips, and that is  
22 physically impossible.  
23  
24 Q To give an example, how much would a vessel fish in the southern seas  
25 without counting the days of sailing in international waters?  
26 A It is between 1 to 3 tonnes on better days; 1 to 2 tonnes normally.  
27  
28 Q What was its average when it was flying the French flag?  
29 A During the year under the French flag the average was 4 to 6 tonnes.  
30  
31 Q Did you know Mr Hombre Sobrido before contracting him?  
32 A No, I did not.  
33  
34 Q In the contract of employment of the Master you can see that he should not  
35 enter the EEZ. That suggests that your company wanted to respect the International  
36 Law of the Sea.  
37 A Yes. That is why this was included in the contract of employment. That was  
38 his obligation.  
39  
40 Q Can you guarantee that no one from your company has ever told him to fish in  
41 the Crozet area, the Crozet waters?  
42 A I do not think anyone did so.  
43  
44 Q What, according to you, are the reasons which led to the boarding of the  
45 *Camouco*?  
46 A I think that the *Camouco* was the victim of the French Navy and for about a  
47 year or so it had not in fact seized any vessel.  
48  
49 Q How do you explain why the French Government seized this vessel and the  
50 crew if the French authorities considered that fishing was illegally being carried out?

1 A I think it is impossible that they were allowed to take everything out of the  
2 ship. I still do not understand why they were allowed to do all this.  
3  
4 Q Have you received any news from Mr Hombre Sobrido?  
5 A The firm is in contact with him almost on a daily basis. We know that he is  
6 pretty depressed because for four months now he has been detained in the  
7 Réunion Islands.  
8  
9 Q He is suffering, is he?  
10 A Yes, of course he is suffering because it is not for a fortnight; it is four months  
11 now and he does not seem to have any possibility of leaving.  
12  
13 Q Did he receive the assistance of a attorney once the frigate arrived?  
14 A When the frigate arrived, the French authorities detained him for two days  
15 *incommunicado* so he was not given any assistance from a lawyer when the boat  
16 arrived at Réunion.  
17  
18 Q How would you explain the bad state of the vessel, and especially the  
19 identification mark which could not be seen or was hidden?  
20 A The vessel for about two years had not gone to the shipyard. We said that  
21 this should be done at the end of 1999 and the beginning of the year 2000. We  
22 would have everything painted. It would go into the shipyard to be painted and so on  
23 and so forth. This was the general idea. The point is when you consider the big  
24 demand in Walvis Bay in the shipyards there, they said that at the end of 1999, the  
25 beginning of 2000, it would go to the shipyard to be painted up.  
26  
27 Q So why do you think that the identification mark, the name, was hidden?  
28 A Identification marks are always painted. When you consider the seas, the  
29 storms in the seas out there, they delete, erase, everything.  
30  
31 Q Consider the economic aspect. How much has this cost you to date; that is,  
32 the fact that the *Camouco* is detained, especially the Master and the members of the  
33 crew, overall?  
34 A So far our expenditure is 36 million to 37 million pesetas (\$250,000) more or  
35 less.  
36  
37 Q How many members do you have owning your company?  
38 A Three.  
39  
40 Q How many owners are there of the Merce-Pesca?  
41 A As I said, three.  
42  
43 Q Do they have any other shipping vessels?  
44 A Yes, they do.  
45  
46 Q What has been the loss in earnings since the detention of the vessel?  
47 A The loss is rather difficult to put in figures. *Camouco* will have to be repaired  
48 once it is released. When you consider the four months it is in Réunion Island, that  
49 means it has done a lot of damage to the vessel.  
50

1 Q Are you prepared to pay a reasonable bond?  
2 A Yes, we are but this term “reasonable” is becoming less and less reasonable  
3 over the last four months.  
4

## 5 **Cross-examined by PROFESSOR QUENEUEDEC**

6  
7 **PROFESSOR QUENEUEDEC** (*Interpretation*): Mr President, Members of the  
8 Tribunal, sometimes it happens in the International Court of Justice that I am allowed  
9 to cross-examine the expert witness presented by the opposing party. However, I  
10 simply ask M Fernández Pérez the following questions.  
11

12 Q Who are the owners of Société Merce-Pesca?

13 A The owners of this company, Merce-Pesca are Pesquera and Bempesia  
14 Armadore.  
15

16 Q Could you give us further details of where these companies are registered?

17 A These are also Panamanian companies – no, sir, they are not Panamanian;  
18 they are Spanish.  
19

20 Q The notion of “reasonable bond” was brought up. Mr Pérez, as an expert, in  
21 your opinion, in a case of this type what would be a reasonable amount of a bond.

22 A A reasonable amount? I think there are judges here to decide that. What is  
23 wrong is the bond which has been set by the French authorities.  
24

25 (*The witness withdrew*)  
26

## 27 **ANTONIO ALONSO PEREZ, sworn**

### 28 **Examined by MR GALLARDO**

29  
30 Q (Interpretation) Mr Pérez, could you give us your first name, second name and  
31 profession?

32 A Antonio Alonso Pérez is my name. I am a merchant navy captain and marine  
33 surveyor.  
34

35 Q Are you connected in any way with or related to Merce-Pesca? Did you work  
36 for them, for example, before this case?

37 A No, sir.  
38

39 Q What do you do in your profession as a marine surveyor?

40 A What do we do? As marine surveyors we carry out assessment of goods and  
41 transport: air transport, maritime transport. We evaluate damage, calculate goods  
42 and commodities for the hold of vessels and so on and so forth.  
43

44 Q Have you been authorised by any courts in Spain?

45 A I have worked before courts involving insurance with respect to goods and so  
46 on.  
47

1 Q What type of vessels have you carried out reports on and given expert opinion  
2 on?  
3 A Various types: longliners, fishing vessels, high or deep-sea fishing – different  
4 types of vessel.  
5  
6 Q So you have given an expert opinion on vessels in the past which would  
7 include longliners?  
8 A Yes, I have some experience in this field because I have also assessed cases  
9 for longliners and other fishing vessels in the past for courts.  
10  
11 Q As we have saw in the video (which you did not see) longline fishing is a  
12 rather difficult task for both the vessel and the crew. What are the consequences of  
13 these extreme conditions of use which you find in these stormy seas such as the  
14 southern seas?  
15 A We know that they are very stormy, there are very high winds, very low  
16 temperatures and this means that there is a lot of wear, erosion, on the vessel and  
17 the engines due to what they have to go through in navigation.  
18  
19 Q My understanding is correct then: the conditions under which the longliners  
20 work in difficult seas, such as the southern seas, have a certain impact on their  
21 value?  
22 A Yes, indeed, because there is more lack of value in these vessels than for  
23 vessels working in calmer seas. This means that the repair work is much more  
24 necessary.  
25  
26 Q Mr Pérez, what can you tell us about *Camouco* as a vessel?  
27 A On the basis of my information, it is a longliner. I have some notes with me.  
28 It is registered in Panama. It was built in 1986 in Asahi Zosen in Sumoto, in Japan.  
29 It has a steel hull and it is a deep freezer as well. It is 20 metres long. It has a  
30 frozen charge capacity of 555 cubic tonnes. The motor is an Akasaka, that is  
31 a DM26KFD diesel.  
32  
33 Q Was it affected by the fact that it has been used to fish in southern seas?  
34 A I do not really know what you are saying by "the vessel"?  
35  
36 Q Has there been an impact on the vessel due to the fact that it has been fishing  
37 in the southern seas for the last three years?  
38 A Well, as I said just now, there was a lot of wear on the engines and also the  
39 hull. This is of course due to the stormy weather, as I have said, and the different  
40 temperature levels. This has quite an impact on these vessels.  
41  
42 Q This vessel has been detained in the port of Réunion Island for some time  
43 now, for four months. What effect would this have on the hull?  
44 A It has been detained for this time and that is prejudicial to any vessel really  
45 because it means it will get very dirty in the frozen areas. A lot of mussels can cake  
46 onto the body of the vessel. This would need considerable cleaning of the hull and  
47 the deep frozen facility.  
48  
49 Q Has it lost value due to its use in the southern seas?

1 A Yes, of course. Any vessel will devalue because of use. When you consider  
2 that this vessel has been fishing in areas where there are all these storms and so on,  
3 the loss of value would be higher.

4  
5 Q How would you evaluate the value of a vehicle if it has been purchased  
6 second-hand? What criteria would you use to evaluate the value of a second-hand  
7 vessel?

8 A The criteria for second-hand vessels are different. There is no specific  
9 method. Generally, if they work on regular lines, you have a constant level applied,  
10 but then in other cases you have to consider a higher level of loss of devaluation.  
11 With regard to fishing vessels, their devaluation is higher when you consider the trips  
12 they carry out. Normally we apply valuations which are higher or lower on the basis  
13 of the repair work to be carried out over the years and so on and so forth.

14  
15 Q What method do you use to calculate on a date X the second-hand value of  
16 a vessel such as *Camouco*?

17 A This is a particular case. It is not only a question of the market value. In  
18 November 1996 there was some work carried out. There was about 90 million yen,  
19 I believe, spent on this. I am checking this in my notes. This is \$448,000 at the time.

20  
21 Q Later, after that, was some repair work carried out so that it could fish in the  
22 southern seas and that was \$1 million plus?

23 A So the value was quite high, by the way, when it was built. This was about  
24 400 million pesetas. I am just working this out in dollars. It is \$3.5 million. As from  
25 then, there is this devaluation of the vessel. It normally would work for more than  
26 20 years. You have to work out the amortisation over eight years and this would be  
27 at about 12 per cent.

28  
29 Q On the basis of these methods, could you tell us what the current value of  
30 *Camouco* would be in the technical circumstances that it is working in?

31 A The value is 12 per cent, as I have indicated, of the surrender value. This  
32 would be 92 million pesetas and with the exchange rate it would be \$575,000. That  
33 is as of the official dollar exchange rate of today.

34  
35 Q How can you explain that it has been estimated at 20 million French francs?

36 A I am just working out how much that is. How much is that in dollars? Let me  
37 just work this out. 500,000 pesetas would be for a new vessel purchased or built  
38 today. I think that someone is saying this would not have much knowledge of the  
39 subject.

40  
41 Q Would you say therefore that a vessel such as *Camouco* prepared for longline  
42 fishing in difficult waters, a new construction from a European company, could cost  
43 that?

44 A Yes, it would cost about that from a European shipyard.

45  
46 Q Finally, have you any original documents of your report, which has been  
47 submitted? Do you have an original copy?

48 A Yes, I can give you this report. This is the original copy.

49

1 **MR GALLADO (Interpretation):** This is the original document that was filed earlier.  
2 Thank you..

3  
4 **THE PRESIDENT:** Would the respondent like to cross-examine?

5  
6 **MR DOBELLE (Interpretation):** No.

7  
8 **MR GALLADO (Interpretation):** Mr President, Mr Vice President and Members of  
9 the Tribunal, I would ask to have a break five minutes before the scheduled time for  
10 the break and continue my submissions later..

11  
12 **THE PRESIDENT:** We will adjourn until 11.45.  
13

14 **(Adjourned for a short time)**

15  
16 **THE PRESIDENT:** Mr Gallardo, you now have the floor.

17  
18 **MR GALLARDO:** It will be the other Agent of Panama, Mr Jean-Jacques Morel, a  
19 French lawyer working in maritime law and criminal law in Réunion Island.

20  
21 **MAITRE MOREL:** Mr President, in taking the floor in front of the Tribunal, I would  
22 like to express to you, Mr President, to the Members of the Tribunal and to the  
23 Representatives of the French Republic the honour and the great pleasure that I  
24 have in addressing you this morning.

25  
26 The mandate that I and my colleagues have is to defend the interests of the  
27 Panamanian fishing vessel, but it also seems to me that it is a question of defending  
28 the rights of the accused party and its flag in law. It is true that in international law  
29 these rights are very often of a declamatory nature on behalf of states that are very  
30 jealous of their privilege, in terms of Professor Jean Dupuy, and these rights on the  
31 one hand have to do with French law and, on the other hand, international law based  
32 on the Convention of Montego Bay. Before my colleague Mr Gallardo and I go into  
33 further detail, I would like to give you some indication of French law.

34  
35 French law is based on three texts. First, there is an old text which is the law of 1<sup>st</sup>  
36 March 1888, which indicates the principle that fishing is forbidden for vessels flying  
37 foreign flags in French waters or waters under French jurisdiction. This text also  
38 provides for a maximum fine of 500,000 francs for the offence of disguising the  
39 identity of the ship and a maximum fine of 500,000 francs for escape. You can see  
40 how we have shown that this accusation is absurd. The vessel the *Camouco* never  
41 tried to flee from the French Navy.

42  
43 Besides this very old text, there is also a more recent text of 18<sup>th</sup> June 1966, which  
44 was revised on 18<sup>th</sup> November 1997. This is one of the basic texts that we are  
45 using. It contains a particular provision stating that a ship entering the exclusive  
46 economic zone is obliged to indicate its presence to the TAAF (the French, Southern  
47 and Antarctic Territories) and also the tonnes of fish on board. This text states that if  
48 this provision is not respected, or in the case of illegal fishing, there is a fine of

1 £1 million francs to be paid, that is 500,000 francs per tonne fished over the amount  
2 of two tonnes. Therefore, there is in existence this very original provision which  
3 provides for a fine in proportion to the quantity of fish on board.  
4

5 In addition to these two texts, there is another procedural text, which is the law of 5<sup>th</sup>  
6 July 1983, which makes certain provisions of a procedural nature. Without going into  
7 too much detail, this text states that there is a sub-division of the jurisdiction of civil  
8 judges in relation to provisional measures. It also outlines what has to be dealt with  
9 on questions of merit. In this case, it would be a criminal court that would have  
10 jurisdiction. All the measures taken when the ship arrives, namely the provisional  
11 measures, the seizure, would fall within the jurisdiction of the civil court. On the  
12 other hand, if the person is guilty of a violation, it would be the criminal court that  
13 would make a decision. This is the French law.  
14

15 At this point of my explanation, I would like to give you three examples of anomalies  
16 in French law which may arise in the application of French law by the French  
17 authorities. These examples are very simple. The first one is as follows: I said that  
18 the judge at first instance takes provisional measures on the arrival of a vessel. The  
19 conditions stated in article 142 of the Criminal Code - and the Cour de Cassation has  
20 confirmed this – provide that the judge can say that part of the bond is to ensure the  
21 presence of the Captain and also that part of the bond is to ensure the payment of  
22 fines and any interest accrued. Therefore, of the 20 million francs, what is the  
23 amount which is used to guarantee the presence of Mr Hombre Sobrido for illegal  
24 acts, and what is the amount which is to pay fines to France and also to pay any  
25 interest to the civil parties? What we are seeing is that the decision which you have  
26 in your file indicates nothing. We are told simply that the bond should be 20 million.  
27 They do not indicate at all what part of this is to ensure the representation of  
28 Mr Hombre, and what part is to ensure the payment of damages, interest and fines.  
29 There is absolutely no explanation. That is the first example.  
30

31 The second example is that the law of 5<sup>th</sup> July 1983, which is the law that refers to  
32 procedures, states in article 2 that the coastal state, the authorities, must seize the  
33 fishing gear and the nets. To give you an example, these represent the bagatelle  
34 amount of 1.4 million francs. As my colleague previously asked, have the French  
35 authorities proceeded with this seizure? Were the French authorities coherent in  
36 their approach in keeping this material? The answer is “no”. This material could  
37 have come from French territory with the approval of the authorities, and this proves  
38 the extent to which the attitude of the opposing party is inconsistent.  
39

40 The third example I should like to give of the anomalies I have mentioned in applying  
41 this text is as follows. The decision of Saint- Paul, Réunion to set a bond of  
42 FF20 million indicates at the bottom of page one that the fact that the ship was taken  
43 by surprise in the exclusive economic zone without having indicated its presence,  
44 nor declared the quantity of fish on board, leads us to presume that the total catch  
45 was illegally fished within the exclusive economic zone.  
46

47 You will see that the French judge is basing his arguments on a deduction, a  
48 presumption. This legal presumption does not exist. At no point in the law is it  
49 written that under the pretext that the vessel did not indicate its presence all the fish  
50 on board were necessarily fished within the French exclusive economic zone. This

1 presumption is erroneous. The French law says that a presumption is a  
2 consequence that one may draw from an unknown fact towards a known fact. This  
3 is a process which enables the person invoking this possibility to do without the need  
4 to prove an unknown fact. We are talking about a certain element and there is a  
5 deduction which leads us to an uncertain fact.

6  
7 In the case in point we are dealing with a case based on criminal law. The French  
8 state is trying to invoke something but they cannot do so; on the contrary a  
9 presumption of innocence must prevail. Members of the Tribunal, who come from  
10 various countries throughout the world, know well that the presumption of innocence  
11 is applied in all the legal systems and an individual is *a priori* presumed innocent.

12  
13 Perhaps I may remind the French authorities that in France this presumption of  
14 innocence is provided for not only in the French Criminal Code but also in the  
15 Declaration of Human Rights. In this case under the pretext of political will they want  
16 to get around these texts and say that one is not presumed innocent, one is  
17 presumed guilty.

18  
19 You see to what extent the application of the text, including the French text, is rather  
20 difficult. I would go even further. Let us suppose, for the sake of example, that this  
21 presumption did exist -- I would like to say that that is not possible; in criminal  
22 proceedings one cannot presume the guilt of an individual but let us suppose -- we  
23 would have to prove the contrary. This presumption must be able to be rebutted.

24  
25 When the judge considers that this presumption exists, even if it contradicts the  
26 norms of our systems, the contrary must be true to get rid of it. The toothfish on  
27 board were deep-frozen. They were so frozen when the French authorities entered  
28 on board the vessel that they could not even insert a thermometer. That means that  
29 at a temperature of  $-18^{\circ}$ , the fish cannot have been recently fished and were several  
30 days old. This so-called presumption should be dissipated in view of the evidence  
31 we are bringing that the 6 tonnes of fish were not fished within this zone.

32  
33 In brief, these are the anomalies we have been able to find in the application of the  
34 national French law which led us to apply to the higher level, international law. This  
35 brings me to the second part of our submission. The French Constitution of  
36 5<sup>th</sup> Republic on 4 October in article 55 states :

37  
38 Standards of the Montego Bay Convention are above our law

39  
40 That is the reason why we have applied to the International Tribunal for the Law of  
41 the Sea to let our case be heard.

42  
43 **MR GALLARDO:** According to our plan; that is, our draft exposé, I should now like  
44 to refer to the competence of the Tribunal. Although France does not call into  
45 question the jurisdiction of the Tribunal on the basis of article 292, with respect to  
46 this article and whereby France and Panama are contracting states to the  
47 Convention, this question is brought before the Tribunal today. Nevertheless, the  
48 French Republic considers that some of the points of law we have raised cannot be  
49 submitted to this Tribunal, not being within its competence.

1 France stated that with respect to the competence of the Tribunal under article 292,  
2 it is limited to the objectives of this article. Its provisions were adopted to prevent  
3 injustice being carried out by a foreign state on another vessel even if no legal  
4 proceedings had been started in these countries or if the legal systems of the state  
5 which led to the detention did not make it possible to have this lifted by the posting of  
6 a bond.

7  
8 These are quite clear provisions but are not complete. We say with full respect for  
9 the French authorities that they have forgotten one of the most important words,  
10 which is the “reasonable character” of this bond. It is not reasonable. The scope of  
11 the whole of the first paragraph of article 292 is void of substance. We will not  
12 repeat the *Saiga* case, Case No 1. Paragraph 77 states:

13  
14 There may be a violation of article 73(2) of the Convention even if no bond  
15 has been posted. Prompt release has an intrinsic value and may be applied if  
16 the posting has not been:

17  
18 (a) Applied,

19  
20 (b) rejected,

21  
22 (c) if it is not envisaged by the coastal state concerned, or

23  
24 (d) even if it is alleged that the bond posted is of an exorbitant nature.

25  
26 With respect to a reasonable level of bond, we cannot now trigger any internal  
27 French proceedings for the prompt release of the vessel and  
28 Master Hombre Sobrido. As a result, the jurisdiction of the Tribunal, in our  
29 submission, may be applied to the other parts or points of our application; namely,  
30 the violation of international law on the basis of freedom of navigation in the EC and,  
31 more specifically, the presumption laid down by French law. That is article 58(a).  
32 Article 58(b) concerns violation of 73(3) on non-imposition of sanctions in the case of  
33 violation of fishing rights in the EC, and (c) concerns violation of the obligation to  
34 release the captain and the vessel as well as subsequent measures to be applied.

35  
36 We wish to observe all the provisions of the Convention in the framework of analysis  
37 and proceedings of article 292. That also means that we have to consider the fact  
38 that this violation is very much related to the question of the bond and whether or not  
39 it is reasonable. In our opinion, the three violations cannot be seen in isolation from  
40 the demonstration of the unreasonable or exorbitant character of the bond.  
41 Therefore, we can conclude that the Republic of Panama confirms that this Tribunal  
42 is fully competent and has the full jurisdiction to analyse all the points in our  
43 application.

44  
45 Maître Morel, my colleague, has already given his analysis of French legislation and  
46 the question of presumption under French law. There are three four points I should  
47 like to mention concerning the violation of article 58 of the International Convention.

48  
49 In the ruling of October 1999, the First Instance Judges which laid down this bond at  
50 20 million said that because the vessel was taken by surprise in the EEZ without

1 having notified its presence and given the quantity of fish detained, it was presumed  
2 that the totality of the catch was illegally caught within the EEZ. This refutable  
3 presumption has led this court to consider that the catches were illegal. The fish was  
4 frozen before entering the EEZ. This has to be calculated to take account of the  
5 level of the bond.

6  
7 The applicant believes it is inadmissible for the French authorities to base their  
8 position on this presumption before considering the idea of the violation of French  
9 law. We feel that that would be out of inproportionate. There was no notification of  
10 the entry into the zone and that does not merit the measures taken by the Court of  
11 First Instance.

12  
13 Very briefly, what are we saying here? What is our line of reasoning? Article 58 of  
14 the Convention refers to the liberty or freedom of navigation. That also says that it is  
15 possible for the coastal state to determine conditions for passage within the territorial  
16 waters of their state and also within the exclusive economic zone.

17  
18 On the basis of this argument, we believe that this presumption may have other  
19 elements, which prove that the catch of fish might have been caught within this zone.  
20 On this basis we cannot consider this presumption as being strong evidence and  
21 consistent proof.

22  
23 **MAITRE MOREL (Interpretation):** The second violation which we have referred to  
24 in our application is as follows. The second violation is linked to the application of  
25 Article 73(4) of the Convention on the notification to be made by the state to the flag  
26 state once such measures have been taken.

27  
28 On the basis of this paragraph, there is a preliminary point I would like to make. In  
29 this case one often has the impression that the legal dispute, the litigation, is only  
30 tasked to give approval to the arrest of a vessel as already applied. We can  
31 understand the concern of coastal states to preserve a natural species but I do not  
32 feel that the end justifies the means. You will see in the violations that we have  
33 indicated from international tests that one gains the impression too often that the end  
34 justifies the means. The most obvious example of this, as I have said, is the  
35 absence of a notification to the flag state of these serious measures of an extensive  
36 character which have been applied to the vessel *Camouco* and the Master of the  
37 vessel.

38  
39 What are we saying on our side? Why should this measure not be applied in our  
40 view? We have a decree of a Court of Cassation of 1999 which in substance states  
41 that persons, that is private individuals, cannot be above the level of violations of  
42 international law. This also applies to individuals carrying out violations. I would  
43 reply to this that Merce-Pesca is not a company against which a case or proceedings  
44 are being applied or interrogations being made by a court.

45  
46 We have also got to consider international standards and the jurisdiction of your  
47 Tribunal. Even in France certain decisions lay down that one cannot with impunity  
48 simply set aside these provisions of international law. I have a judgement here of  
49 the Administrative Court of La Réunion, of which the opposite party is aware, dated  
50 7July last year. It is a recent case. This is a ruling with respect to an ownership

1 case. As in the case today, the flag state must be notified of measures taken. The  
2 Saint-Denis court revoked the procedure of the French state by indicating that a lack  
3 of notification to the state authorities concerned by the decision with respect to the  
4 rights of the applicant shows substantial irregularity. The adoption procedure of this  
5 decision is that the applicant company therefore asks for it to be revoked.

6  
7 You can see that the case law which has been applied and mentioned by the other  
8 side, the other party, is something not applicable in this case. There are of course,  
9 even in France at national level, divergent points whereby the flag state must be  
10 informed.

11  
12 On the basis of this notification, we have never on our side over the two and a half  
13 months of the proceedings in Réunion at the Saint Paul court in fact taken account of  
14 this notification at the Embassy of Panama, whereas normally the onus of proof is on  
15 the person who has the obligation. This is not our problem. This is what the French  
16 authorities say but how can they say that it is a non-compliance with this provision?  
17 We feel this is very serious because we, the flag state, do not know what measures  
18 have been taken against our vessel in this case. In the course of the proceedings  
19 before the International Tribunal for the Law of the Sea, this is like taking a rabbit out  
20 of a hat. This is a notification which apparently was faxed by the Prefect of Réunion  
21 to the Panamanian Consulate and counsel.

22  
23 We are saying that there is no proof that it was received by the Consulate of  
24 Panama. Having discussed the matter with the gentleman in Paris, he told us that  
25 there was no notification made. We can give you a written submission from the  
26 consulate confirming that no notification was made. Furthermore, President and  
27 Members of the Tribunal, a notification from one state to another should have been  
28 effected and sent to the only authority responsible to represent Panama in France;  
29 viz., the Ambassador of Panama at the Embassy in Paris. This should not have  
30 been sent to a consulate which has the task of dealing with litigation under private  
31 law.

32  
33 Therefore, this example clearly illustrates wonderfully how – and this is regrettable –  
34 this international provision has not been observed.

35  
36 I would like to give you another example. This is the third example. I have  
37 mentioned Articles 58 and 73 and now I would like to refer to a third example of  
38 non-compliance of the Convention. I refer to paragraph 3 of Article 73 on the  
39 non-imposition of imprisonment sanctions. I will give the floor back to my colleague.

40  
41 **MR GALLARDO (Interpretation):** The French Republic in its response concerning  
42 this violation presents the following argument.

43  
44 The evidence produced by Panama deals with the position of the Master, and this  
45 *controle judiciaire* does not constitute any kind of criminal sanction. It is similar to  
46 a state of detention. It is not a deprivation of his liberty. Consequently, it is  
47 erroneous to talk about release of the Master.

1 The Master, Sobrido, is involved in criminal proceedings, which may result in the  
2 imposition of a prison sentence. This constitutes *de facto* detention. It is in violation  
3 of Article 73, paragraph 3, of the Convention.  
4

5 The Master was placed under *controle judiciaire* and he was forbidden to leave the  
6 island of Réunion and his Spanish passport has been withheld. Even if Spain and  
7 France are part of the European Union, the freedom of movement of persons  
8 obviously does not apply to Réunion because when people coming from the  
9 European Union go to Réunion they have to show their passports. This constitutes  
10 a violation of the Master's personal rights because, even no prison sentence has  
11 been formulated, he is being held against his will on the island of Réunion for more  
12 than five days and the proceedings have not been closed.  
13

14 Since the opening of the proceedings against the Master on the island of Réunion --  
15 and I had the pleasure of attending those proceedings -- no subsequent steps have  
16 been taken against the Master. He has to appear every week or every two weeks  
17 before the nearest French authorities on Réunion. Four months have now passed  
18 and he has not been brought before the magistrates or the prosecutor to make any  
19 kind of declaration or give any kind of evidence. This is not compatible with the  
20 provisions of Article 73, paragraph 3, of the Convention. Even if formally the Master  
21 is not, strictly speaking, imprisoned, the fact that he has been deprived of his  
22 passport and is prevented from moving freely is a violation of the Article.  
23

24 Also, French legislation does not provide, in my experience at least, for the  
25 separation of a bond for a person and the bond applying to a vessel. The French  
26 authorities commented to the Tribunal that they have refused to permit the Master to  
27 attend these proceedings because the necessary measures were not taken on our  
28 side.  
29

30 In October on the island of Réunion the judge was very clear. The French  
31 Government confirmed, in its response, that neither the Captain of the *Camouco* nor  
32 his lawyers have asked for an injunction against this *controle judiciaire*. He was  
33 aware of the fact that there were problems with respect to the holidays and about the  
34 courts being closed during the summer in the southern hemisphere. In any case,  
35 these measures with respect to prompt release had been requested by Mr Sobrido's  
36 lawyer and that request was refused on 24 January.  
37

38 It states: "Given the examination of a foreigner with no links to Reunion and given  
39 the pending imprisonment and the high level of the security, and since his  
40 appearance before the International Tribunal does not prejudice his position under  
41 international law, then this should be dealt with at state level, that is between states".  
42 This is what the judge stated.  
43

44 I would like to finish with just a few final reflections on the matter. If international law  
45 does not lay down imprisonment in the case of violations in fishing, the judge cannot  
46 lay down measures under French law which may lead to imprisonment being laid  
47 down, as is carried out by the so-called Judiciary Control for Fishing Violations,  
48 which under international law cannot be sanctioned by putting people in prison.  
49 Under French law, this judicial control cannot be applied internally because  
50 international law, that is article 73(3), states that one cannot imprison persons

1 committing fishing offences. Therefore, the doctrine and case law in France which is  
2 mentioned in our Application lay down that these measures of judiciary control, such  
3 as withdrawing a passport, cannot be carried out in a case in which the maximum  
4 measure which can be applied is a fine and not imprisonment. This has been  
5 applied in similar cases before the courts in Reunion where no imprisonment was  
6 applied because, according to the prosecutor in the oral proceedings, this would  
7 have been in contradiction of international law. Therefore, the measure applied by  
8 the presiding judge against the Master over and above all these arguments is  
9 discriminatory, because taking away someone's passport cannot be applied to  
10 foreign nationals, even if the Spanish Master is in fact an EU citizen.

11  
12 **MAITRE MOREL (Interpretation):** I would like to add to what my colleague has  
13 said. If France respected article 73(3), according to which the sanctions applicable  
14 by the coastal states for fishing offences cannot include imprisonment, you can  
15 therefore see that France cannot apply the *Controle Judiciaire*, because the law  
16 which introduced this, which dates back to 1990, can only be applicable in cases in  
17 which imprisonment is possible. Therefore, this is an alternative sanction to  
18 imprisonment. Rather than sending the offender to prison, you put them under  
19 judiciary control, reducing the possibility of his movement. You do not put them into  
20 prison. Therefore, it is not possible to apply judiciary control. You can therefore see  
21 how all this has in fact been turned around by the French authorities.

22  
23 Incidentally, this person, Mr Hombre Sobrido, is an EU citizen and has been  
24 detained in Réunion Island for four months, and the question is whether this is a  
25 violation of article 6(1) of the European Convention on Human Rights in relation to  
26 having a fair trial within a reasonable period of time. The fact that he has been  
27 forced to stay on the island puts a certain degree of pressure on Mr Hombre Sobrido.  
28 Even if this is not said expressly, the implication is that in order to leave the island of  
29 Réunion he has to make an admission. Admit what - things that he did not do?

30  
31 At this stage I would like to turn to the admissibility of our Application, because this  
32 has been called into question by France. Having demonstrated a violation of  
33 international law, we would now like to turn briefly to the question of the admissibility  
34 of the Application.

35  
36 Four arguments are put forward by the Agent of France. First, I shall deal briefly with  
37 the contention that addressing this Tribunal on the basis of article 292 would be an  
38 abuse of legal process. I would simply reply that the use of legal means is never in  
39 itself an abuse. Coming to seek justice in front of an International Tribunal is not *per*  
40 *se* an abuse. There is nothing here to prevent us from doing so, because these texts  
41 apply also to France and they provide the flag state with an opportunity to act.

42  
43 There is a second argument put forward by France according to which we cannot  
44 address this Tribunal until the local remedies, that is the French remedies, have  
45 been exhausted. It is said that we can only do so after all the jurisdiction in the  
46 French system, that is the Court of First Instance, the Court of Appeal and the Cour  
47 de Cassation, has first intervened. However, I think that this demonstrates a lack of  
48 knowledge of the very clear provisions of article 292 of the Convention and also a  
49 lack of knowledge of your jurisprudence.

50

1 In this connection, I respectfully refer you to the decision of 4<sup>th</sup> December 1997 in the  
2 case of *The Saiga*, which indicates, without any ambiguity, the independence of the  
3 procedure of article 292 of the Convention with regard to other international  
4 procedures. It states clearly that recourse to article 292 does not constitute an  
5 incidental proceeding with regard to proceedings on the merits. It is an independent  
6 process which does not prevent French internal or national jurisdiction dealing with  
7 the merits of the case. The recourse to you in the case of prompt release is a  
8 special process which is concurrent with that which exists in the French national  
9 system and what you clearly stated in your decision in *The Saiga* case (Case No.  
10 50). I believe, therefore, that the second argument is no more tenable than the first  
11 one.

12  
13 The third argument on admissibility which was put forward by the Agent of France  
14 relates to the question of estoppel. It is contended that we have done nothing for  
15 several months. You know that when the vessel was seized we immediately and  
16 urgently appealed to the Court of First Instance. However, more than two months  
17 elapsed before an order was pronounced on the hearing of this appeal. Each day  
18 spent on the quayside costs thousands of dollars to Merce-Pesca, whereas the State  
19 of Panama is still unaware of the measures taken and the sanctions imposed against  
20 the people who are involved. Therefore, the situation of estoppel, which Maître  
21 Gallardo will address later, does not correspond to reality.

22  
23 **MR GALLARDO:** With regard to the question of estoppel, this is another reason put  
24 forward by the French Government against the admissibility of our Application. I am  
25 not going to say much more than my colleague. However, I would like to call into  
26 question what the French Agent has said in his Response. Three months passed  
27 before this was formally put before the court. Internal possibilities of appeal seem to  
28 have been considered during this three month period, and there was a total lack of  
29 action on the part of Panama as the flag state.

30  
31 What does this mean? What does this boil down to. In addition to working on behalf  
32 of the Republic of Panama, I was also the Agent of the shipowner in the French  
33 case. What does all this mean? It means that on this question, which respects  
34 compliance, the French authorities, especially the judicial authorities, should have  
35 given us the opportunity to give them our arguments in the corresponding conditions.  
36 Unfortunately, this procedure to have a second ruling from the second court which  
37 laid down the bond at 20 million francs was only taken on about 15<sup>th</sup> December, in  
38 other words 60 days later.

39  
40 Therefore, once it was realised that unfortunately the arguments of the French Court  
41 of First Instance were the same as those in the first court ruling, I was in a position to  
42 say that this might well be a case which could seriously be analyzed in depth by an  
43 international court. It was only then that I filed the Application to the Panamanian  
44 authorities informing them of the subject matter of the dispute and the litigation. Of  
45 course, getting a power of attorney takes some time. Once we got this in January,  
46 we prepared the Application, we waited for a few days before convening the  
47 Members of the Tribunal, as is natural, and then we filed the application.

48  
49 Secondly, in response to the French arguments, we cannot say that we should have  
50 filed the Application immediately after the boarding. Paragraph 1 of article 292 refers

1 to “within 10 days” following the deadline laid down there. We therefore consider  
2 that this is a minimum deadline, within 10 days from the time of detention.  
3 Therefore, one should not submit this to the arbitration of an international court  
4 before the expiry of 10 days to see if a bond can be fixed to lead to the prompt  
5 release of the Master and the vessel. I will not dwell on this matter any longer.  
6

7 I would like to finish our analysis of the question concerning the reasonability of the  
8 bond on the basis of the analysis that we have already outlined in our Application.  
9 With respect to the text of the International Convention, it is in line with article 73. It  
10 says that it should be reasonable, taking account of the various elements and the  
11 conditions of the case. We have so far analyzed in depth the discussion which led to  
12 the signing of the International Convention. We have also analyzed the position of  
13 the various states, including the United States among others, and this confirms the  
14 objective of this article being included in the Convention. In fact, we do not have to  
15 go that far, because these are reflected both in the rules of procedure establishing  
16 how cases are to be dealt with under article 292 and also concerning the case law  
17 and the dissenting opinions in *The Saiga* case. One can therefore interpret from  
18 this, especially having regard to the decision in *The Saiga* case at points 82 and 77,  
19 that the bond must be in proportion with the *de facto* situation. In other words, it  
20 should be reasonable.  
21

22 I remain at the disposal of the Tribunal to analyze the term “reasonable” in private  
23 and public law. Tomorrow we may expand on the question. I would like to refer to  
24 the *de facto* elements which we feel the Tribunal must bear in mind in considering  
25 what a reasonable bond would be in this particular case, that is on the basis of their  
26 fully-fledged jurisdiction to deal with this matter of a bond.  
27

28 Tomorrow, in more detail, we shall enter into all the legal aspects involved. I would  
29 prefer to rest my case at that for the time being and continue tomorrow morning  
30 when we will have the time to give our legal exposé and submit our final conclusions.  
31 However, perhaps I may give the floor to Maître Morel.  
32

33 **MAITRE MOREL:** I should like to add one final point. In the arguments of  
34 admissibility put forward by the agents of France, there is one point to which we  
35 have not responded, which is quite simple.  
36

37 It has been indicated that having failed to post a bond, we do not have recourse to  
38 article 292 and to the Tribunal. This interpretation of the Convention is erroneous,  
39 for two reasons. First, the sum of the bond in hard cash is astronomical,  
40 unreasonable and exorbitant. We cannot pay a bond which we contest in terms of  
41 this sum or even in terms of its very existence. To pay it would be to make an  
42 admission. That is not why we are here before you today.  
43

44 However, there is also legal argument which seems to me to be essential. I refer to  
45 your own case law in the *Saiga* case. In paragraphs 76 and 97 you stated that under  
46 article 292 the posting of a bond is a condition provided for in the Convention and the  
47 violation of that is not a necessity for applying article 292. To apply 292, the posting  
48 of a bond or other security can come into force. There may be a violation of  
49 article 73 of the Convention but the request for prompt release is an intrinsic value.

1 The posting of the bond was not possible and that leads me to say that the bond  
2 which has been requested is exorbitant.

3

4 That brings me to the end of our submissions. We terminate by saying that in view  
5 of the time and distance involved and the wind and waves, which you saw in the  
6 video, it seems to me that the International Tribunal for the Law of the Sea must  
7 decide that the force of law is prevalent in this case.

8

9 ***(Luncheon adjournment)***

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