

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



2000

Public sitting

held on Friday, 28 January 2000, at 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)

Verbatim Record

Present:

President	P. Chandrasekhara Rao
Vice-President	L. Dolliver M. Nelson
Judges	Lihai Zhao
	Hugo Caminos
	Vicente Marotta Rangel
	Alexander Yankov
	Soji Yamamoto
	Anatoli Lazarevich Kolodkin
	Choon-Ho Park
	Thomas A. Mensah
	Paul Bamela Engo
	Joseph Akl
	David Anderson
	Budislav Vukas
	Rüdiger Wolfrum
	Edward Arthur Laing
	Tullio Treves
	Mohamed Mouldi Marsit
	Gudmundur Eiriksson
	Tafsir Malick Ndiaye
	José Luis Jesus
Registrar	Gritakumar E. Chitty

Panama represented by:

Mr. Ramón García Gallardo, Advocate, []

as Agent;

and

Mr. Jean-Jacques Morel, Advocate, Saint-Denis, Réunion,
Mr. Bruno Jean-Etienne, Advocate, [],

as Counsel.

France represented by:

Mr. Jean-François Dobelle, Deputy Director of Legal Affairs of the Ministry of Foreign
Affairs of France,

as Agent;

and

Mr. Jean-Pierre Queneudec, Professor of International Law at the University of Paris
I, Paris, France,
Mr. Francis Hurtut, Assistant Director for the Law of the Sea, Fisheries and the
Antarctic, Office of Legal Affairs of the Ministry of Foreign Affairs of France,
Mr. Bernard Botte, Drafting Officer, Sub-Directorate for the Law of the Sea, Fisheries
and the Antarctic, Office of Legal Affairs of the Ministry of Foreign Affairs of
France,
Mr. Vincent Esclapez, Deputy Regional Director for Maritime Affairs, Réunion,
Mr. Jacques Belot, Advocate, Saint-Denis, Réunion,

as Counsel.

1 **THE PRESIDENT:** Mr Gallardo, are you ready to make your presentation? Please
2 do so.

3
4 **MR GALLARDO (Interpretation):** Mr President, Mr Vice-President, Members of the
5 Tribunal, during this session we will try to present the end of our conclusions and
6 arguments to finish our oral presentation. I shall give an initial outline of the facts of
7 the matter and the counter arguments which the Representative of the French
8 Republic gave yesterday. My colleague, Jean-Jacques Morel, will then present his
9 plea on a number of points which are perhaps not so clear, and then I shall return to
10 the argument that was advanced yesterday regarding the reasonable level of the
11 bond. We shall then present some final conclusions to the Tribunal in writing.

12
13 With regard to the facts we heard yesterday from the Agent representing France, the
14 Republic of Panama in the course of these proceedings, and even less within these
15 oral proceedings, does not want to reopen a debate with the French Republic on the
16 rights of international fishing in the southern seas and in its own waters in the Crozet
17 and Kerguelen Archipelago. This is, first, because we are not in a position to
18 examine and deal with non-regulated, non-declared illegal fishing. I believe that at
19 the moment there are other international forums to deal with these subjects, and the
20 debate has already been opened at that level – the Rio Conference the FAO,
21 CCAMLR, the UN.

22
23 Secondly, the French Agent's plea yesterday afternoon was based on certain points,
24 which have not yet in fact been proved. We have only had vague information given
25 by him. Let me give you some examples. The evidence given by the French Agent
26 yesterday is not in fact based on any documentary evidence or proof. The price of
27 the kilo of toothfish was never \$12; it has always been \$8. You can deduce this
28 from French shipping owners selling the fish in the Japanese market at the moment.

29
30 Thirdly, the French Agent indicated that up to 80,000 tonnes had been fished and
31 that they got about 1000 tonnes each on average. These are rather surprising
32 calculations. If you consider what the shipping owner said yesterday, a vessel such
33 as the *Camouco* with up to three fishing seasons (or even three and a half) during
34 one year would yield, under the best circumstances, up to 600 tonnes in the hold, not
35 1000 tonnes as was stated. This is an exorbitant figure.

36
37 France, contrary to what was said, has not reduced the number of its vessels. At the
38 moment up to eight, as opposed to four, vessels are fishing in the Kerguelen and
39 Crozet Archipelagos. There are two Ukrainian vessels fishing in the archipelagos on
40 the basis of an international agreement between France and Ukraine; trawlers which
41 are longer than 120 metres and four longliners which have been chartered by French
42 ship owners in the last year. France cannot say that all the tonnage of fish
43 announced yesterday was in fact caught in the EEZ. Yesterday we heard that the
44 southern seas are very big. There are enormous areas of fishing banks that the
45 longliners can work with international licences under international law relating to the
46 sea, based on the principles of freedom of fishing and navigation in these waters.

47
48 Finally, I would say that the approach was rather demagogic. They have
49 amalgamated various points and are saying that social exploitation and the quality of
50 the vessel are bad, so all the misery of the world seems to be found in *Camouco* and

1 also in the Republic of Panama, which, I would point out, has a fully legal system
2 recognised by international conventions.

3
4 Finally, as I have said, I am not going to enter into a debate on illegal fishing.
5 I would just like to make a few comments concerning our vessel, *Camouco*. Once
6 again, I must comment on the information given by the French Agent yesterday.
7 With regard to the fact that in 1987 the *Camouco* apparently tried to flee, there is no
8 evidence to prove this. As for the fact that they entered the EEZ without notification,
9 I have a copy of a fax from the French and Spanish notifying their authorization for
10 the vessel to enter the area. There was also someone who was injured on board on
11 1st February 1998.

12
13 Speaking as an attorney, I can confirm that the judge, along with Maître Morel and
14 Mr Hombre Sobrido, said that the Captain should change his approach. I also
15 confirm that I was told to tell the shipping owner that he should appear to be
16 interrogated before the judge. The judge obviously did not like the shipping owner's
17 attorney. The idea of having this person interrogated is a question of having
18 someone interrogated or investigated in the jurisdiction in which they live, but the
19 judge obviously did not like him, so we can see that there was no attempt made by
20 the judge to pursue the matter outside Réunion. In French criminal law -- and I am
21 not a French lawyer -- one can, for example, be represented by an attorney. One
22 does not need to be present oneself in the case of offences that involve less than
23 two years' imprisonment. So how can he ask for the shipping owner himself to
24 appear before the court in Réunion?

25
26 Moreover, the Panamanian Consulate in Paris sent us confirmation that nothing was
27 received from the Prefect of Réunion on 1st October. We shall give you the text.
28 This is a letter in French. I can read it out. This was sent to the Prefect of Réunion:

29
30 "The Embassy sends you its greetings and via the Consular Chargé
31 d'Affaires, Mr Watson, states that no documentation with reference to the
32 *Camouco* flying a Panama flag in the EEZ of Crozet is in our files. Therefore,
33 this was not received at our Embassy. We would like to thank the prefecture
34 and send you their greetings.

35
36 Paris, 27 January".

37
38 Yesterday evening we received from the other side the memo which the Embassy of
39 France in Panama sent to the Panamanian Foreign Affairs Ministry. Reading this
40 letter, you can see that it is dated 11th November, 44 days after the date of the
41 seizure. The text is in Spanish and has been translated to be submitted to the
42 Tribunal. This does not contain the obligations included in 73(4). In other words, the
43 notification to the flag state must contain a number of details. Taking the text of the
44 article, it says "In the case of a seizure, the flag state shall inform the flag state by
45 the appropriate channels and shall inform him of the sanctions which are applied", or
46 words to that effect. We are going to have the letter translated. Neither the
47 measures taken nor the sanctions applied were notified. Therefore, the conclusion is
48 that France wished to notify on 1st October the seizure of the vessel to the Consulate
49 in Paris. Then the Embassy in Panama notified this 44 days later, after the date of
50 the seizure, but this was done incompletely and late.

1
2 There are two final arguments. The Agent of France yesterday did not really state
3 the complete truth with respect to the fine and the bond not being paid. In our
4 Application we have given you a copy of the *Golden Eagle* ruling, whereby
5 a 10 million bond was asked for by the French authorities. These were posted by
6 the shipping owner.

7
8 Later, there were criminal proceedings before the Saint-Denis Criminal Court. A fine
9 of 4 million was applied. In the course of the appeal procedure, that amount was
10 increased to 6 million. After the proceedings, reimbursement of the difference was
11 still awaited.

12
13 The last vessel to be seized before *Camouco, Vieirasa XXII*, was identified in 1998 in
14 these waters. The Master was brought before a criminal court and a decision was
15 taken on 18 December 1998, a copy of which is included in our application. His only
16 offence was to enter the EEZ without notification. Sixteen months after the date of
17 seizure, the vessel is still there. Why? The reason is that the same tribunal which
18 applied the bond to *Camouco* applied a 45.5 million franc bond. However, these are
19 two different instances. Even if such criminal legislation was not appealed against,
20 either by the French authorities or the prosecutors, it is still there, sixteen months
21 later. The excuse given is that the vessel was observed in 1997 in the Kerguelen
22 archipelago.

23
24 However, no proof was notified, either to the shipping owner or to various other
25 persons. But that is not all. It was noted that there was no illegal fishing and the fish
26 were sold for about 4000 francs. That money should have been reimbursed to the
27 French shipping line. This was 13 months ago and that amount is still outstanding.

28
29 The shipping owner has had to file against the Director of Maritime Affairs of
30 Réunion Island for not having paid it back. That gentleman is present. Further,
31 given the late communication of the documentation that the vessel was seized
32 16 months ago, a file had to be made against that official asking for the return of the
33 15 million francs. The vessel has been there for 16 months and no documentation
34 has been given to the shipping owner.

35
36 We have made a diligent examination of all cases of vessels being seized in recent
37 months. Panama understands the concern of the French Republic to follow illegal
38 fishing in this area. However, we must respect national and international law which
39 binds the French authorities. The operators should be able to fish in line with the
40 UN Convention and international public law.

41
42 In considering what has happened in the past few years, Panama understands the
43 problems in dealing with such a number of cases. On the other hand, there must be
44 individual analysis on a case-by-case basis, not only by the military administration
45 but also by the French jurisdiction. We understand that France is fully competent to
46 deal with such files. Nevertheless, the applicant believes that this file should have
47 been examined more objectively and reasonably.

48
49 I now give the floor to my colleague, Mr Morel, who will deal with another aspect.
50

1 **MR MOREL** (*Interpretation*): Mr President, Members of the Tribunal, this morning
2 I shall try to rectify a number of legal errors which seem to have been made
3 yesterday afternoon. I have noted six comments which should enable the Tribunal to
4 form its opinion and to say, at the end of the day, in view of the facts and the
5 applicable law, that our application is grounded, as we believe it is.
6

7 Yesterday afternoon a great deal of comment was made. A comment was made that
8 there is legal presumption in matters of fishing and that the text foresees that, as the
9 ship had not been announced and had been detained in the EEZ of France, there
10 was a violation concerning illegal fishing and that all the fish on board were
11 presumed to have been fished illegally.
12

13 It has even been conceded magnanimously that such presumption was only a simple
14 presumption and that the opposite proof could be brought. If there is such legal
15 presumption I should be shown the text. Where is the law in France which provides
16 for that? It does not exist. It only exists in the minds of the administration. That is
17 where, in the first instance, the arguments fail.
18

19 As Mr Hombre admits, he made no notification of entrance into the EEZ. If he is to
20 be fined for that -- we will learn of the amount -- under the pretext that he did not
21 make the necessary notification, one could assume that the 6 tonnes found on board
22 were fished illegally. However, that interpretation of the text is seriously erroneous.
23

24 That brings me to another error. Yesterday I heard said and saw written in the
25 conclusions of the Agent of France that an order of a judge placing an individual in
26 custody is not subject to appeal. All such decisions of judges are subject to appeal.
27 That is one of the elements of French law. How can that be thought when the
28 French system benefits from a certain number of protections? We shall see that all
29 decisions of judges are subject to appeal, including an order placing a person in
30 custody. This morning we are before an international tribunal. However, if the
31 French authorities do not apply their own texts, how can we hope that ultimately the
32 superior standards of international conventions should be respected?
33

34 If I am to believe what I heard yesterday afternoon, the presumption of guilt being
35 brought here -- as I have said before, it does not exist -- could only be valid at the
36 instruction stage. Yesterday I heard it said that such instruction does not mean an
37 imposition of a penalty but that we must bring evidence to prove that the
38 presumption is unfounded.
39

40 Fortunately, in our law there is no presumption of guilt. In criminal proceedings and
41 even before a judge an individual is always presumed innocent. He is presumed to
42 have done nothing and the burden of proof is on the person bringing the accusation.
43

44 You will note by my initial comments that we do not agree with the interpretation of
45 our law. It seems to me that the rules I have just put forward, with a great deal of
46 modesty but conviction, are in favour of a more positive application of laws which
47 exist in France, and nothing else. I am surprised that we are trying to make a
48 travesty of law to arrive at a means. As I indicated yesterday, the end never justifies
49 the means. Those are my initial remarks.
50

1 I turn to the posting of the bond. Yesterday Professor Queneudec indicated that
2 there was a link between the posting of the bond and promptness. I shall return to
3 that. We also heard said that the posting of the bond should be a *sine qua non* for
4 bringing the case to the Tribunal. That also appears in the conclusions of France.
5 I believe that there is a slight misunderstanding here. There are two possibilities.
6 The first is that the internal jurisdiction fixes a reasonable bond. At this stage it is
7 true that the posting of this bond is a *sine qua non* to address the Tribunal. That is
8 the first hypothesis. The second hypothesis is that the bond itself is exorbitant, as
9 alleged here. In this hypothesis, as has been said in the *Saiga* case, the previous
10 posting of the bond is not required. I wonder why France insist that the bond is
11 necessary? We believe that the bond is arbitrary and astronomical. Based on the
12 second hypothesis, we can approach the Tribunal without having posted the bond.
13

14 The third remark that arose yesterday was that the International Tribunal was
15 addressed at a very late stage. I think that we should come back to what the text
16 says. Article 292 of the Convention talks about a bond, a reasonable bond. How do
17 we know whether this bond is reasonable or not? First of all, you have to obtain the
18 sum. You have to know, at least in the first instance, the sum imposed on us by the
19 Tribunal.
20

21 If you look at the procedure, how can the party, Mr Hombre Sobrido, and the owners
22 know the sum of the caution? We know that three orders were presented by the
23 maritime authorities. The Judge confirmed *ipso facto* without hearing us. This Order
24 was brought to our notice. We are contesting it in front of the Tribunal to ask the
25 Tribunal to judge, in the presence of the two parties.
26

27 The Court of Instance in Saint Paul came up with another order, the second one,
28 requesting the reduction of a certain number of pieces of evidence and the opening
29 of discussions once more. There was a third order on 14 December 1999. This
30 decision is in one of the annexes. This decision indicates to us in a definitive way, at
31 least in the first instance, that the bond was 20 million francs. We have to put
32 ourselves in this situation. We have to highlight the moment on 14 December when
33 we were made aware of our fate, when we were able to take a decision to request
34 prompt release and to plead in front of the International Tribunal. We obtained the
35 mandate from the Republic of Panama from 14 December from 28 December. The
36 request was made on 22 January, one month and three days after the moment when
37 the judge told us definitively and irrevocably that the bond would be 20 million francs.
38

39 You see that we were perfectly diligent and the rules of procedure of the Tribunal are
40 such that this is the normal situation. We can only come to plead in front of you at
41 the time when the facts are established, and that was the first week in December in
42 this case, The information that was kindly forwarded to us by the Registrar said that
43 the third week in January would be the first useful date to open the proceedings. We
44 cannot agree with the accusation that we are in the situation of estoppel. I think
45 there again this is a totally inexact interpretation of reality.
46

47 Let me add, to finish on this point, that when it is indicated that we approached you
48 too late, what deadline have we gone beyond? There is no deadline mentioned in
49 the text. Even if you analyse the document, the convention, you cannot seriously

1 maintain that we are precluded because nowhere in the Convention of Montego Bay
2 is a deadline mentioned beyond which we cannot validly approach the Tribunal.

3
4 The fifth and penultimate comment, Mr President and Members of the Tribunal: we
5 have been accused of having violated the instruction. We cannot simply accept such
6 an accusation. You will see that there again we are going far away from the
7 procedure here and we are trying to establish a completely different approach, for
8 reasons of which I am unaware. How could we have violated the instruction?

9
10 We have brought together a certain number of annexes, which have been passed on
11 to our learned colleagues, our opponents. What do they contain? You have, first of
12 all, two protocols, which mainly concern the vessel because they are about the
13 violation and the seizure. The first protocol of seizure is evidence, which it is
14 necessary to submit in the civil proceedings before the Court of Saint Paul. That is,
15 apart from any other criminal proceedings, to bring the matter to the judge and to
16 establish the bond, we need this evidence. The Court of Appeal of Saint-Denis in an
17 order made by a judge clearly indicated, and we will submit this to the Tribunal, that
18 this evidence was imperative to enable the parties to discuss the documents freely.
19 The principle of examination and cross-examination or our Civil Code should be
20 respected. This evidence must be submitted to the parties and to the judge for
21 discussion.

22
23 Also in the annexes you have the declarations of Mr Hombre Sobrido. We
24 considered it prudent to bring these to your knowledge in an attempt to be
25 transparent and intellectually honest in front of the Tribunal. The confidentiality of
26 the inquiry was never violated with regard to Mr Hombre Sobrido. Again I am very
27 surprised at the lack of knowledge of the criminal procedures. It is not contested.
28 Nothing has prevented anyone from discussing this freely.

29
30 You understand that, if Mr Hombre Sobrido had wished to communicate this
31 evidence, if he was a party to the case before you -- and this concerns not only the
32 release of the vessel but also the release of its Master -- the defence has no right to
33 prevent this. There is no possibility to plead his cause. What is he doing, other than
34 trying to defend himself by appealing to you? He had the impression that he had not
35 been heard by the jurisdiction of domestic law. The right of defence is sacred. You
36 and I are more experienced in these matters. Anyone has the right to produce
37 evidence to defend himself, no matter in what country. This evidence has been
38 brought forward by the person involved himself, correctly and in all honesty. He has
39 a perfect right to produce such evidence.

40
41 With regard to this penultimate remark, I add that in France sometimes we ignore the
42 principles behind our Penal Code, the presumption of innocence, for example.
43 Nevertheless we have seen that very often it is a presumption of guilt which is
44 presented to the judges, and that provision for detention is used excessively and to
45 such an extent, Mr President and Members of the Tribunal, that our national courts
46 have been subject to criticism.

47
48 The sixth and final point: what is the maximum sum of fines? What we are being
49 accused of is something that is very theoretical. If we admit, just for reasons of
50 demonstration, that we were guilty of all that we have been accused of, what would

1 be involved? First of all, FF 500,000 for disguising the identification marks of the
2 vessel. Also, there is a second maximum penalty theoretically of FF 500,000 for an
3 attempt to escape but, as I said before, this was not serious. A fishing vessel
4 advancing at a certain rate of knots cannot escape from a modern frigate of the
5 national navy that is well equipped with trained crew and a helicopter. If we did
6 admit that, the theoretical fine of FF 500,000 would be FF 1 million.

7
8 There is a third aspect, which exists in the violation of fishing laws, of which we have
9 also been accused. This has not been notified. Again, there is a divergence here as
10 to what has been maintained by the Agent of France and by ourselves. This second
11 aspect of failure to notify fishing is in violation of the French law which has been
12 amended. That states: liability to a fine of FF100,000 and a term of imprisonment
13 of six months, or one of these penalties, where the person has failed to announce his
14 arrival in the EEZ or failed to declare the amount of fish on board. So we are talking
15 about a fine of FF 1 million here. It states that, if you have forgotten to announce
16 your arrival in the EEZ you will have a maximum fine of FF 1 million. If you fished
17 illegally, you will have a maximum fine of FF 1 million. But, if the two violations have
18 occurred, then the maximum fine will still be FF 1 million.

19
20 We are dealing with a criminal matter here. I return to the interpretation of the text
21 and that should be restrictive. We cannot, for want of a better text, multiply these
22 violations like the miracle of the loaves and the fishes. If these two violations have
23 been constituted, then Article 4 of the law of 18 June 1986 applies. That would be
24 1 million, plus 500,000, plus 500,000, making FF 2 million in practice.

25
26 Mr President, has this maximum fine been imposed? The reply is: no.

27
28 Let me give you an example from recent case law. In a case which I spoke about
29 previously, the court fined the person responsible for failing to announce his arrival in
30 the EEZ, not the FF 500,000 but only FF 200,000. That is to say, there is a certain
31 gap here, and this is normal. That is a gap between the maximum provided for in the
32 text and the actual fine that has been imposed. This is a case in point.

33
34 We said there is no presumption and the six tonnes were frozen at -28°. How can
35 we prove that this amount was not fished in the few hours prior to detention? The
36 French Republic has no evidence that we could not have fished this amount of
37 six tonnes in French waters. This amount was fished in international waters. What
38 are we talking about? We are talking about a bag of 34 kilos of fish and an
39 accusation that we tried to escape.

40
41 This is the case of the *Camouco*, which is of course not the case of the century. If
42 what I have said this morning has enabled you to come to the conclusion that you
43 can bring this case into proportion by saying that, at the end of the day -- even if all is
44 fair in love and war -- we do not have a painting but an apocalyptic fresco, then
45 I believe that we should return to legal reality and look at what is in the file and only
46 at what is in the file -- nothing else. This is the way I see things.

47
48 If our intervention has helped to enable you also to share our concerns in
49 establishing the truth, in respecting the texts, in respecting the great principles on
50 which our law is based and in respecting the great principles of international law,

1 because we cannot be presumed to be guilty, then our submissions have been
2 useful.

3
4 Mr President, I would like to hand over once again to my colleague, Mr Gallardo.

5
6 **MR GALLARDO** (*Interpretation*): Mr President, Mr Vice-President, Members of the
7 Tribunal, I now come to an analysis of the final argument and the final violation
8 concerning the reasonable nature of the bond for the prompt release of the vessel
9 and the Master.

10
11 The obligation of prompt release is contained in article 73(2) of the Convention, and
12 this cannot be isolated from the procedure in article 292, which lays down “a
13 reasonable amount” as a *sine qua non* for the prompt release of the detention of the
14 vessel and the Master. The request for 20 million French francs is disproportionate
15 when you consider the value of the vessel and what was in its hold at the time of its
16 seizure.

17
18 I would now like to analyze the aspect of reasonableness. When you analyse the
19 UN Convention on the Law of the Sea, we can confirm the following points: An
20 in-depth analysis of the various versions of the Convention in the languages show
21 that it has to be reasonable and has to take account of the facts of the matter.

22
23 Article 73(2) uses “reasonable bond or other security”; in Spanish “*fianza razonable*
24 *u otra garantía*”; and in French, “*caution ou d’une garantie suffisante*”. We therefore
25 have these terms in the three versions.

26
27 Article 226 uses the English term “subject to reasonable procedures such as bonding
28 or other appropriate financial security”; in Spanish, “*una vez cumplidas ciertas*
29 *formidades razonables, tales como la constitución de una fianza u otra garantía*
30 *financiera apropiada*”; and in French, “*après l’accomplissement de formalités*
31 *raisonnables, telles que le dépôt d’une caution ou d’une autre garantie financière*”.

32
33 The article of this procedure, article 292, uses the English term “reasonable bond or
34 other financial security”; in Spanish, “*fianza razonable u otra garantía financiera*”; in
35 French, “*caution raisonnable ou d’une autre garantie financière*”.

36
37 Therefore, in the light of the arguments of the French side, they did not want to look
38 into the semantic aspect which we mentioned in our Application. I shall not go into
39 any further detail. I think it is sufficiently clear that the word used in the Convention,
40 and interpreted in this case, is “reasonable” as opposed to “sufficient”. I am not
41 going to analyze the preparatory work which is mentioned in our Application
42 justifying the analysis of the word “*raisonnable*” as opposed to “*suffisante*”, because
43 there are differences in French between these two words.

44
45 In the Rules of Procedure of the Tribunal, article 111.2.d) uses the word
46 “*raisonnable*” and says “...*pour la détermination du montant d’une caution ou autre*
47 *garantie financière raisonnable ou pour toute autre question...*”. It says in English,
48 “...to the determination of the amount of a reasonable bond or other financial
49 security and to any other issue...”. The same interpretation can be seen in
50 paragraph 113.1 of the Rules of Procedure: in French, “*concernant la mainlevée de*

1 *l'immobilisation du navire ou la libération de son équipage dès le dépôt d'une caution*
2 *raisonnable ou d'une autre garantie financière...*"; in English, "...for the prompt
3 release of the vessel or the crew upon the posting of a reasonable bond or other
4 financial security..."

5
6 An analysis of the term "reasonable" under international law, if you look into the
7 doctrine, demonstrates what the scope of this term might be. Professor
8 MacCormick, for example, in an article published in Brussels entitled *Les Notions á*
9 *contenu variable en droit*, (which incidentally is included in our Application) points out
10 that, "reasonableness is indeed, we might all admit, a good thing in itself, even if, like
11 moderation, good only within reason and in moderation".

12
13 Professor Marcel Fontaine, in the *Revue de Droit des Affaires Internationales*, a copy
14 of which we have, embroiders a little more on this concept. He says:

15
16 "What is the meaning of 'reasonable'? We must differentiate between
17 'reasonable' and 'rational'. 'Reasonable', in this context, does not mean
18 'logical' in terms of philosophy but in line with practical, general common
19 sense. These practical reasons can be found in cases in which behaviour
20 depends on the consideration or the weighing up of various factors, the
21 various circumstances which may influence a decision to be taken".

22
23 He goes on to say:

24
25 "Reference is often made to the behaviour often following the same
26 circumstances. 'Reasonable' has a clear link with concepts admitted in social
27 *milieus*. The requirement may also be reinforced by reference to a cautious,
28 experienced person and what this person would do in these cases. Finally,
29 the term 'reasonable' refers to what other people would have done in the
30 same or similar circumstances".

31
32 Looking at the case law in *The Saiga* case before this Tribunal, I think all the
33 Members of the Tribunal agree with this because there was no criticism made at this
34 level in the form of a dissenting opinion and the initial interpretation given to the term
35 "reasonable". Point 77 of the ruling of 4th December 1997, which was mentioned in
36 yesterday's proceedings, states:

37
38 "There may be a violation of article 73(2) of the Convention, even if no bond
39 has been posted. The requirement for prompt release is a value in itself and
40 may apply if the bond has been rejected or is not laid down by the coastal
41 state, or if it is alleged that it is exorbitant".

42
43 Point 82 of the *Saiga* ruling provides us with further references to interpret the words.
44 It states:

45
46 According to the Rules of Procedure of the Tribunal, the Tribunal shall
47 determine the amount, nature and form of the bond or any other financial
48 security to be posted. The most important indication is found in article 292(1)
49 of the Convention itself, according to which the financial security or bond must
50 be 'reasonable'. In the Tribunal's view, this refers to the amount, the nature

1 and the financial guarantee. There is an overall balance between the form,
2 amount and level, and this must be 'reasonable'.
3

4 With regard to the case at hand, let us look at the decision of the Saint Paul Court,
5 justifying the 20 million francs:
6

7 "In the light of these aspects and in particular the value of the vessel and the
8 penalty incurred, the prompt release can only be carried out if a 20 million
9 French franc bond is paid beforehand (equivalent to US\$ 3,120,000)".
10

11 It is unrealistic to estimate the value of a vessel at FF 20 million. Evidence has been
12 given of the value of this vessel and we had the technical support of our expert, who
13 gave you a full, in-depth report of this vessel, details of when it was bought, the
14 repair work and modernisation work that had been carried out and its trips to the
15 southern seas, and so on.
16

17 The conclusion was that the value of the vessel was about (3,200,000 or
18 FF 3,300,000). Our Application also contains a certificate from an auditor
19 concerning European legislation on the depreciation of second-hand commodities or
20 vessels such as this. It is normally applied in the following way: There is a
21 depreciation at fiscal and value level of up to 20 per cent per year; this is contained
22 in the Annex. Therefore, we feel that the depreciation that is applied in our
23 Application to calculate the value which would be valid for the audit or fiscal
24 authorities today, taking account of the value of the vessel since its purchase, would
25 be a depreciation of about 36 per cent. According to the certificate, we could have
26 applied a much higher depreciation rate of 20 per cent per year, which would give
27 60 per cent.
28

29 Let us now look at the scope of other rulings issued by the same court concerning
30 illegal fishing or fishing offences in this area. The ruling in the *Golden Eagle* case on
31 8th July 1999, with 22 tonnes of fish in its hold, was 20 million. In the case of the
32 *Vieirasa Doce*, the ruling was given before the later decision of the criminal court.
33 This was on 30th December 1998. 91 tonnes were found on the ship, resulting in
34 a bond of 45.5 million. In the ruling on 17th September 1998 in the case of *Ercilla*, in
35 which there were 130 tonnes of fish, the bond was set at 65 million. One can
36 perfectly understand how the Saint Paul Court normally calculates the fines by
37 applying French law, i.e. a maximum of 1 million French francs for illegal fishing plus
38 half a million per tonne of illegally fished over two tonnes. Now, in the present case
39 the sum obtained by the Saint Paul Court is identical to that mentioned in the
40 protocol of the departmental authority's 20 million value of the vessel, without taking
41 account of the fact that the tonnage found in the hold was in fact only six tonnes.
42

43 However, I would like to add that in relation to the concept of reasonableness with
44 respect to article 292, this procedure is an independent and autonomous procedure
45 and that the International Tribunal has full competence and jurisdiction to set the
46 amount of the bond, which should be of a reasonable character. In my submission,
47 given the facts of the matter, even without moving too far away from the French
48 legislation about which we have just heard from my colleague, but taking account of
49 the independence of the Tribunal (which may not even take account of domestic law)

1 the bond that we are going to explain to you now would have been reasonable on
2 the basis of the facts of the matter.

3
4 A reasonable amount can be considered, taking account of the form and nature of
5 the bond, and this will take account of the following aspects: the vessel has now
6 been detained now for more than 100 days; the six tonnes of fish were sold by the
7 French Government; the lack of notification of entry into the EEZ could be set at
8 200,000 French francs; the concealment of the identification mark of the vessel,
9 again taking account of the statements made by the Master and the shipowner,
10 could be set at 500,000 francs. In addition to this, we could have up to 1 million
11 French francs to cover the possible liability for illegal fishing, if the domestic court
12 later rules that the 30 kilos of toothfish were in fact caught by the *Camouco*. This
13 results in a total of 1.3 million French francs, minus 350,000 for the load which had
14 been discharged and already sold, as we had in *The Saiga* case.

15
16 Therefore, the amount of the bond would be 1.3 million francs, which we feel is
17 reasonable to cover the procedural administrative matters. We have deducted
18 350,000 francs for the fish which has been sold by the authorities.

19
20 When making a decision on what is reasonable, account must be taken of the fact
21 that the *Camouco* has been detained since 5 October last year. That has cost
22 Merce-Pesca 1,435,000 francs (\$220,000) in terms of various bills, including legal
23 bills, and so on and so forth. That is prejudicial to Merce-Pesca and means that they
24 could not pay another level of security given the facts of the matter.

25
26 I turn to the form of payment of this amount. We ask the Tribunal to set a
27 reasonable bond on the basis of a posting of a bank guarantee, not in cash as
28 requested by the French Authorities. I refer to the location of posting and to the
29 jurisdiction of the court in article 113(3) to post a reasonable amount to be fixed
30 guaranteeing not only the release of the vessel so that it may leave the port in
31 Réunion Island but also to guarantee the release of the Master when the payment of
32 the reasonable bond is made. We heard the arguments of the investigating judge
33 who is keeping the Master under judicial supervision. Even if a reasonable bond is
34 posted, the Master would be detained on the island so that he can appear before a
35 domestic court.

36
37 We can see that the French authorities still insist, in violation of article 292, that the
38 bond is posted for prompt release. The release of the vessel is one matter. The
39 release of the Master is another. I ask the Tribunal to take account of that point.

40
41 Finally, there are no sound reasons given for the amount of the bond, which, when
42 one considers the real value of the vessel and its load when it was arrested, is
43 completely disproportionate. That is not in line with articles 73 and 292 of the
44 Convention and what is said about "reasonable", particularly when one considers the
45 case law of the Tribunal in the *Saiga* case.

46
47 I shall now present my final conclusions which will also be submitted in writing to the
48 Tribunal and the Registrar. In accordance with the submissions already made in our
49 application, our oral submissions and article 75(2) of the Rules of Procedure, I shall

1 read our final pleadings on behalf of this party without going over the arguments
2 once more.

3
4 First, we request that you find that the Tribunal is competent under article 292 of the
5 United Nations Convention on the Law of the Sea to entertain the application.

6
7 Second, we request the Tribunal to declare that the present application filed on
8 17 January 2000 is admissible.

9
10 Third, we request the Tribunal to declare that the French Republic has failed to
11 comply with article 73(4) by failing promptly and completely to notify the Republic of
12 Panama of measures taken and measures to be taken following the arrest of the
13 *Camouco* flying the Panamanian flag.

14
15 Fourth, we request the Tribunal to find that the French Republic has failed to comply
16 with the provisions of the Convention concerning the prompt release of the Master of
17 the arrested vessel.

18
19 Fifth, we request the Tribunal to find that the French Republic has failed to comply
20 with the provisions of the Convention concerning the prompt release of the vessel,
21 *Camouco*.

22
23 Sixth, we request the Tribunal to find that the French Republic has failed to comply
24 with the provisions of article 73(3) in applying to the Captain criminal measures
25 which *de facto* constitute an unlawful detention.

26
27 Seventh, we request the Tribunal to order the French Republic to release promptly
28 the vessel *Camouco* and its Master against payment of the following reasonable
29 bond: FF 1,300,000 divided up as follows: FF 200,000 for failure to notify entry;
30 FF 100,000 for incomplete identification of distinguishing features of the vessel and
31 1 million francs to cover the possible responsibility for fishing 34 kilos of toothfish. In
32 view of the fact that, according to the French authorities the value of the impounded
33 fish in the vessel was 350,000 francs, we have to deduct that amount from the total;
34 that is 950,000 francs. Those are our arguments used in calculating that sum.

35
36 Eighth, to determine that the said sum be posted by means of a bank guarantee of
37 a first-rate European bank, to be placed in the hands of the International Tribunal for
38 the Law of the Sea to be duly transmitted to the French authorities in exchange for
39 the prompt release of the vessel, *Camouco* and its Master.

40
41 Finally, pursuant to the rules of procedure, the Republic of Panama requests a
42 translation into Spanish of the decision emanating from the International Tribunal for
43 the Law of the Sea.

44
45 **THE PRESIDENT:** Have you concluded your submissions?
46

1 **MR GALLARDO:** We have.

2

3 **THE PRESIDENT:** The hearing is adjourned until 1400 hrs.

4

5 **(Luncheon adjournment)**

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