

**JOINT DECLARATION OF JUDGES KOLODKIN,
ANDERSON AND COT**

1. We agree with the reasoning in the Judgment and would add only a brief comment.

2. As the Judgment makes clear, in making its objective evaluation of the concept of “the gravity of the alleged offences,” the Tribunal takes into account all relevant factors. These include the available information provided by the parties concerning the details of the incident giving rise to a particular case; the charges and the penalties imposed or impossible; and the value of any assets subject to forfeiture under the fisheries laws of the coastal State. In the final analysis, an alleged offence is less likely to be found to be “grave” if it is not supported by evidence. In many countries, including in particular common law jurisdictions,¹ when a magistrate or similar judicial officer is releasing from custody an accused person pending trial on a criminal charge (a situation not dissimilar to the Tribunal’s task under article 292), the amount of the bond or bail is determined after taking into account (among other factors) the nature and strength of the evidence adduced in support of the charges and the likelihood of conviction.² In our opinion, the

¹ In this context, it may be recalled that the procedure of prompt release was first put forward by the delegation of the United States, a common law country.

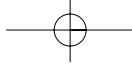
² See A. Samuels, “Bail Principles”, *New Law Journal*, 8 September 1966, quoted by Mr Justice Hibbert, Judges’ Seminar, Jamaica, March 2001 at www.sc.gov.jm/seminars. To give some typical examples of legislative provisions laying down matters to be taken into account by courts when considering release on bond or bail pending further legal proceedings in another court, the following may be noted:

(1) The Bail Act 2000 of Jamaica, section 4(2), provides that the court shall take into account *inter alia* “the nature and seriousness of the offence” and “the strength of the evidence of (the accused’s) having committed the offence . . .”

(2) The Bail Act 1997 of Ireland, section 2(2) provides that the court shall take into account *inter alia* “the nature and seriousness of the offence charged” and “the nature and strength of the evidence in support of the charge . . .”

(3) The United States Code, Title 18, Chapter 207, section 3142 (g) provides that the judicial officer shall take into account *inter alia* of “the nature and circumstances of the offense” and “the weight of the evidence against the person . . .”

(4) The Bail Act 1976 of England and Wales, Schedule I, provides that the court must have regard *inter alia* to the nature and seriousness of the offence and the strength of the evidence.



“JUNO TRADER” (DECL. KOLODKIN, ANDERSON AND COT)

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Tribunal is equally entitled, in assessing the reasonableness of the amount of a bond or other financial security, to take into account the nature and strength of the evidence supporting the charges. This assessment is entirely “without prejudice to the merits of any case before the appropriate domestic forum” as indicated in paragraph 3 of article 292.

3. Turning to the present case, on the above basis, we could have supported a lower amount for the bond determined in paragraph 98 of the Judgment.

(Signed) Anatoly Kolodkin

(Signed) David Anderson

(Signed) Jean-Pierre Cot

