

DECLARATION OF JUDGE TÜRK

1. In the present case the vessel was detained on 2 June 2007 and the bond was set by the Respondent on 13 July 2007. The Applicant maintained that contrary to article 73, paragraph 2, of the Convention the bond was not set promptly. This allegation was denied by the Respondent. However, both parties agreed in principle that a bond should be set within a reasonable time, taking into account the complexity of the given case (see paras. 78 and 79 of the Judgment).

2. In paragraph 80 of the Judgment the Tribunal notes that the Convention does not set a precise time-limit for setting a bond. The Tribunal further notes that, given the object and purpose of article 292 of the Convention, the time required for setting a bond should be reasonable. It observes, that article 292 of the Convention does not require the flag State to file an application at any particular time after the detention of a vessel or its crew and that the earliest date for initiating such procedure before the Tribunal is, in accordance with article 292, paragraph 1 of that provision, 10 days from the time of detention.

3. I fully agree with the position of the Tribunal set forth in paragraph 80 of the Judgment; the matter, however, calls for some further observations:

The Convention in article 73, paragraph 2, wisely avoids laying down a precise time-limit for the setting of a bond or other financial security, thus maintaining the necessary flexibility for dealing with the particular circumstances of each individual case. As the Tribunal already stated in the "*Camouco*" Case (*ITLOS Reports 2000*, p. 28, para. 54) and reiterated in paragraph 80 of the present Judgment, the Convention also does not require the flag State to file an application at any particular time after the detention of a vessel or its crew.

It must, however, be borne in mind that the prompt release procedure is designed as an expeditious procedure with the objective of ensuring that a detained vessel is not immobilized until the completion of the domestic administrative or criminal procedures of the detaining State, which might take many months. Furthermore, important humanitarian considerations must be

taken into account for shortening, as far as possible, the time during which the crew of the detained vessel is not permitted to leave the detaining State.

In keeping with the fundamental objective and purpose of the prompt release procedure a bond or other financial security should be set at the earliest possible point in time. The due diligence which may in this regard be expected from the detaining State, however, also applies to the shipowner and the flag State. The shipowner should take prompt action in complying with the bond set by the detaining State, unless it considers the bond not to be “reasonable” – as required by articles 292, paragraph 1, and 73, paragraph 2, of the Convention. In such case the prompt release procedure under article 292 should, as soon as possible, be initiated through the flag State or, as the case may be, on its behalf.

The exact time-period for the setting of a bond will certainly depend on the degree of complexity of the investigations carried out by the detaining State and will thus have to vary from case to case. Nevertheless the ten-day time-frame enshrined in article 292, paragraph 1, of the Convention for seizing the Tribunal in prompt release cases, the requirement of article 292, paragraph 2, for the competent court or tribunal to deal without delay with an application for release and the stringent time limits imposed on the Tribunal by its Rules for dealing with such an application and the rendering of a judgment should be taken into consideration. Thus, a maximum period of approximately one month after the detention of a vessel and its crew would seem reasonable for the setting of the bond. In case the flag State engages the prompt release procedure under article 292, if it considers the bond or other financial security not to be reasonable, the time of detention of the vessel and/or its crew would then altogether not exceed approximately two months.

Although the flag State has the right to initiate a prompt release procedure already after ten days from the time of detention of vessel and crew, international litigation should, in general, be considered a last rather than a first resort for the settling of a dispute.

(signed) H. Türk