

**STATEMENT IN RESPONSE OF THE RUSSIAN
FEDERATION**

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

THE *HOSHINMARU* CASE

JAPAN
(Applicant)

v.

THE RUSSIAN FEDERATION
(Respondent)

STATEMENT IN RESPONSE OF THE RUSSIAN FEDERATION

15 JULY 2007

TABLE OF CONTENTS

PART I	STATEMENT IN RESPONSE	
INTRODUCTION		paras. 1-3
CHAPTER I	Statement of facts	paras. 4-27
CHAPTER II	Legal issues	paras. 28-48
CHAPTER III	Respondent has fully complied with its obligations under para.2 Article 73 of the Convention	paras. 49-88
CHAPTER IV	Summary of arguments	paras. 89-97
PART II	ANNEXES	

STATEMENT IN RESPONSE OF THE RUSSIAN FEDERATION

INTRODUCTION

1. On 6 July 2007 Japan commenced proceedings against the Russian Federation in the Tribunal, and filed an Application concerning the prompt release of a fishing vessel, the *88th Hoshinmaru* and of its crew.
2. In accordance with Article 111(4) of the rules of the Tribunal, the Government of the Russian Federation files this Statement in Response to the Application of Japan together with the annexed supporting documents.
3. The Russian Federation requests the Tribunal to decline to make the orders sought in paragraph 1 of the Application of Japan. The Russian Federation requests the Tribunal to make the following orders:
 - (a) that the Application of Japan is inadmissible;
 - (b) alternatively, that the allegations of the Applicant are not well-founded and that the Russian Federation has fulfilled its obligations under paragraph 2 of Article 73 of the United Nations Convention on the Law of the Sea.

CHAPTER I STATEMENT OF FACTS

I Introduction

4. The Russian Federation (“the Respondent”) and Japan (“the Applicant”) are both Parties to the United Nations Convention on the Law of the Sea (“the Convention”).
5. The 88th *Hoshinmaru* (“the vessel”) was registered in the ship registry of Japan and was flying a Japanese flag at the time it was detained by the competent authorities of the Respondent.
6. The owner and user of the vessel is: Ikeda Suisan Co., Ltd, 370 Ashizaki, Nyuzen-machi, Shimoniikawa-gun, Toyama Prefecture, Japan (“the owner”).

II Circumstances of seizure of the vessel and relevant actions of the Russian competent authorities

7. The 88th *Hoshinmaru* was licensed by the Federal Service for Veterinary and Phytosanitary Supervision (certificate No. HKS-07-01, issued on 14 May 2007) to fish in the Russian EEZ for the period starting 15 May 2007 until 31 July 2007.
8. On 1 June 2007 88th *Hoshinmaru* that was fishing in the Respondent’s exclusive economic zone (EEZ) at 56°09’N, 165°28’E was stopped and checked by the inspection group of the State Sea Inspection of the Northeast Border Coast Guard Directorate of the Federal Security Service of the Russian Federation.
9. It follows from the Protocol of 1 June 2007 and from the Protocol of Detention of the Fishing Vessel of 2 June 2007, both issued by the State Sea Inspection, that the substitution of the fish species have taken place. Furthermore, the logbook contained totally false information as per the actual catch.
10. The Northeast Border Coast Guard Directorate of the Federal Security Service of the Russian Federation immediately informed

(on 2 June 2007) the Consulate-General of Japan in Vladivostok about the fact of inspection and detention of the vessel.

III Administrative and criminal proceedings

11. By the Decision of the State Sea Inspection of the Northeast Border Coast Guard Directorate of the Federal Security Service of the Russian Federation of 4 June 2007, the administrative proceedings in relation to the owner of the vessel were instituted.
12. It is evident from the Decision of the State Sea Inspection of the Northeast Border Coast Guard Directorate of the Federal Security Service of the Russian Federation of 8 June 2007 that the Master refused to accept the vessel for safe-keeping. The vessel was later transferred to the “Kamchatka Logistik Center” LLC for safe-keeping.
13. On 4 July 2007 the term of the administrative proceedings was prolonged due to the complexity of the case at issue.
14. On 26 June 2007 Northeast Coast Guard Directorate of Federal Security Service of the Russian Federation instituted criminal proceedings against the Master of the vessel based on para. 1 of Article 256 of the Criminal Code of the Russian Federation that relates to illegal catch of marine living resources.
15. On 11 July 2007 the Master of the vessel was asked to sign a written undertaking not to leave the city of Petropavlovsk-Kamchatsk and to behave properly. The Master refused to sign it.
16. The members of the crew, with exception of the Master, have never been detained. They remained on board of the vessel. The owner of the vessel did not demonstrate an interest in cooperating with the Respondent’s competent authorities in the efforts to make an arrangement for the return of the crew to Japan. It should be observed that according to normal practice members of the crew could leave the vessel and return to Japan once so requested by the owner.

IV Examination procedure preceding determination of bond

17. On 6 June 2007 the vessel was forwarded to Petropavlovsk-Kamchatsk for further examination.
18. On 6 June 2007 the Embassy of Japan in the Russian Federation sent to the Ministry of Foreign Affairs of the Russian Federation a Note Verbale with a request to “institute the necessary proceedings” to immediately release the vessel and its crew “upon the posting of a reasonable bond or other security to be set in accordance with the relevant provisions of international agreements”, although the crew was not detained. Similar notes were sent to the Embassy of the Russian Federation on 12 June 2007 in Japan and on 14 June 2007 to the Ministry of Foreign Affairs of the Russian Federation.
19. In the Decision of 6 June 2007 the State Sea Inspection of the Northeast Border Coast Guard Directorate of the Federal Security Service of the Russian Federation instituted the examination procedures to determine the questions relating to fish species and actual catch. By the Decision of 13 June 2007 the documents needed to facilitate administrative proceedings were requested (received only on 4 July 2007).
20. In the Decision of 29 June 2007 the State Sea Inspection instituted the examination procedures to evaluate the vessel. On 6 July 2007 the State Sea Inspection sent to the representative of the owner of the vessel a request to provide information on the estimated cost of vessel. No reply was received.
21. On 6 July 2007 the Ministry of Foreign Affairs of the Russian Federation forwarded a Note Verbale to the Embassy of Japan with an assurance that the detained vessel would be promptly released upon the posting of a reasonable bond or other security, the amount of which is in the process of determination.
22. On 11 July 2007 the Inter-District Prosecutor’s Office for Nature Protection in Kamchatka informed the Consulate-General of Japan in Vladivostok that the amount of damage caused to the marine living resources is 7 927 500 roubles.

23. On 13 July 2007 the Ministry of Foreign Affairs of the Russian Federation informed the Embassy of Japan in the Note Verbale 8199/da that the bond was set. Its amount is 25 000 000 roubles including the above-mentioned damage (7 927 500 roubles). The details of the bank account were provided.

IV Context of the case

24. In 1984 the Agreement between the Government of the USSR and the Government of Japan on the mutual relations in the field of fisheries off the coasts of the two countries was concluded (hereinafter, “the 1984 Agreement”). According to paragraph 1 of Article 4 of this Agreement each Party shall take all the necessary measures to ensure that its nationals and fishing vessels, conducting fisheries in the exclusive economic zone of the other Party, observe measures for the conservation of the living resources and other provisions and conditions established in the laws and regulations of that Party.
25. Unfortunately, the Applicant does not fully comply with these obligations and, therefore, with its duties of a flag State under the international law.
26. As the Applicant rightly states itself in paragraph 46 of its Application, the arrest of the 88th *Hoshinmaru* is not an isolated incident. In the course of the last few years the Northeast Border Coast Guard Directorate of the Federal Security Service of the Russian Federation revealed numerous violations of the laws and regulations concerning fisheries in the Russian EEZ by vessels flying the flag of Japan. For example, in 2006 25 such violations were registered. As for the arrested vessels mentioned in the Application of Japan, the damage caused by their illegal catch constitutes:
- for the 88th *Hoshinmaru* (2007) – 7 927 500 roubles;
 - for the 53rd *Tomimaru* (2006) – 9 328 600 roubles;
 - for the 5th *Youkeimaru* (2006) – 1 002 700 roubles;
 - for the 28th *Marunakamara* (2005) – 294 544 roubles;
 - for the 35th *Jinpomaru* (2005) – 2 716 455 roubles.
27. The issue of the growing debt that the Japanese vessels owners have incurred for not having paid fines imposed on them by Russian

authorities in the periods between 1979-1985, 1991-1992 and 1999-2005 was, *inter alia*, raised in the course of the 23rd session of the Russian-Japanese Commission on fisheries established in accordance with article 6 of the 1984 Agreement. No serious steps, however, have been by now taken by the Japanese authorities to ensure the prompt acquittance of this debt which continues to increase.

CHAPTER II LEGAL ISSUES

I Introduction

28. The first action that the Tribunal needs to take when it receives an application for prompt release of vessel is to satisfy itself that it has jurisdiction under Article 292 of the Convention to adjudicate on the case. It is worthy of note in this regard that the Applicant in subparagraph 1 (a) of Section A of its Application requests the Tribunal to declare that it has jurisdiction under Article 292 on the assumption that the Respondent has breached its obligation under Article 73, paragraph 2 of the Convention in the case of detention of the vessel and the crew of the 88th *Hoshinmaru*. In view of the Respondent the establishment by the Tribunal of its jurisdiction to adjudicate on the case cannot and should not imply that the allegations made by the Applicant regarding the non-compliance by the Respondent with the provisions of Article 73, paragraph 2 of the Convention are well grounded and therefore should be accepted. Consequently, the Respondent cannot agree with what is stated in subparagraph 1 (a) of Section A of the Application.

II Admissibility

29. In the view of the Respondent, the Application of Japan is inadmissible on the following **two grounds**.

A

30. First of all, the application became moot on 13 July 2007 when by the Note Verbale No.8199/da the competent Russian authorities informed the Applicant that the bond was set in the amount of 25 000 000 roubles (approximately 970 000 dollars) and that upon payment of it the vessel and its crew, including the Master (please see paragraphs 14-16 of the present Statement in Response regarding status of the crew and its Master), would be allowed to leave the territory of the Russian Federation.
31. Though normally the critical date for the determination of the admissibility of an application is the date when it was filed, the International Court of Justice acknowledged on several occasions

that events subsequent to the filing of an application may "render an application without object" (*Border and Transborder Armed Actions Nicaragua v. Honduras*), *Jurisdiction and Admissibility, Judgment, I.C.J. Reports, 1988, p.95, para.66*) and "therefore the Court is not called upon to give a decision thereon" (*Nuclear Tests (Australia v. France)*), *Judgment, I.C.J. Reports 1974, p.272, para.62*).

32. One of the main grounds invoked by the Applicant for the institution of proceedings under article 292 of the Convention is contained in paragraph 8 of the Application which states that "no bond or other security has been fixed which would enable the vessel and crew to leave Petropavlovsk-Kamchatsk upon its posting". This statement is no longer relevant.
33. Furthermore, as the Applicant itself states in paragraph 57 of the Application, "article 292 of the Convention is designed to free a ship and its crew from prolonged detention on account of the imposition of unreasonable bonds in municipal jurisdictions, or the failure of local law to provide for release on posting a reasonable bond [...]". On the date of the consideration of present case by the Tribunal, the statement is no longer valid for the reasons explained above.
34. As the reasonable bond has already been set by the Respondent, the Tribunal should in the view of the Respondent exercise judicial propriety and order that the application concerning the prompt release of the 88th *Hoshinmaru* is inadmissible.

B

35. In the view of the Respondent the submission in sub-paragraph 1 (c) of Section A of the Application is too vague and general.
36. The Application is inadmissible in the Respondent's view because its central submission requesting the Tribunal "to order the Respondent to release the vessel and the crew of the 88th *Hoshinmaru*, **upon such terms and conditions as the Tribunal shall consider reasonable**" (emphasis added), is formulated in such general and vague terms, that it goes beyond the scope of the procedure envisaged in Article 292 of the Convention.

37. The submission under sub-paragraph 1 (c) of Section A of the Application is so unspecified that it does not allow the Tribunal to consider it properly. Nor does it allow the Respondent to reply to it. Moreover, in this submission the Applicant actually requests the Tribunal to exercise functions which are not normally attributed to it by Article 292 of the Convention.
38. According to the general rule of international litigation (reflected in paragraph 2 of Article 54 of the Rules of the Tribunal) the application shall specify the precise nature of the claim. This provision is essential from the point of view of legal security and good administration of justice. Thus, in its Order of 4 February 1933, in the case concerning the *Prince von Pless Administration (Preliminary Objections)*, the Permanent Court of International Justice stated that: "it is the Application which sets out the subject of the dispute, and the Case, though it may elucidate the terms of the Application, must not go beyond the limits of the claim as set out therein..." (P.C.I.J., Series A B, No.52, p.14).
39. The precise nature of the Applicant's claim in this case is for the Tribunal to determine "the terms and conditions", upon which the arrested vessel should be released. It is obvious, however, that the Tribunal, acting under Article 292 of the Convention, does not have competence to determine such general terms and conditions.
40. According to paragraph 2 of Article 113 of the Rules, when the Tribunal finds that the Application for the release of a vessel or its crew is well-founded, it only has to "determine **the amount, nature and form of the bond or financial security to be posted for the release of the vessel or the crew**" (emphasis added). What is essential for the prompt release cases, therefore, is the determination of a reasonable bond or other security and not of some general "terms and conditions" that the Tribunal shall consider reasonable.
41. In none of the other cases for the prompt release of a vessel or its crew, that the Tribunal has dealt with so far, submissions of applicants were formulated in such an imprecise manner. The reference to the unreasonable "conditions" rather than to an "unreasonable bond" was used in the submission of Saint Vincent and Grenadines in the *Juno Trader* case, but it was specified by the reference to paragraph 2 of Article 73 of the Convention (para.30, Judgment of 18 December 2004).

42. In the *Saiga* case, the Tribunal stated that "the posting of a bond or security seems to the Tribunal necessary in view of the nature of the prompt release proceedings" (para.81, Judgment of 4 December 1997). Therefore, it did not accede in this case to the request of Saint Vincent and the Grenadines that no bond or financial security (or only a "symbolic bond") should be posted.
43. In the *Camouco* case, the Tribunal further stressed that Article 292 equally "safeguards the interests of the coastal State by providing for release **only upon the posting of a reasonable bond or other financial security** determined by a court or tribunal referred to in Article 292" (emphasis added; para.57, Judgment of 7 December 2000).
44. In the *Volga* case the Tribunal pointed out that "the object and purpose of Article 73, paragraph 2, read in conjunction with Article 292 of the Convention, is to provide the flag State with a mechanism for obtaining the prompt release of a vessel and crew arrested for alleged fisheries violations by posting a security of a financial nature whose reasonableness can be assessed in financial terms. The inclusion of additional non-financial conditions in such a security would defeat this object and purpose" (para.77, Judgment of 23 December 2002).
45. Thus, it is evident that the Tribunal acting under Article 292 of the Convention has always determined not "terms and conditions" but a reasonable bond or other financial security, upon posting of which the vessel (and its crew) shall be promptly released.
46. For the reasons referred to above, the Respondent requests the Tribunal to declare the Application inadmissible.

III Comments with regard to issue of responsibility

47. In paragraph 44 of its Application, the Applicant "reserves all rights to pursue the responsibility of the Respondent under international law arising from detention of the vessel and the crew, including the reparation".

48. Noting that the present procedures before the Tribunal relates solely to the prompt release of the 88th *Hoshinmaru*, the Respondent in connection with the above-mentioned observations of the Applicant reserves all rights to respond to them as may be necessary.

**CHAPTER III RESPONDENT HAS FULLY COMPLIED WITH
ITS OBLIGATIONS UNDER PARA.2 ARTICLE 73 OF THE
CONVENTION**

I Introduction

49. Paragraph 2 of Article 73 provides that arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security. It follows from the text of paragraph 2 that setting of bond or other security is an important step and that the coastal State should have all the necessary information in order to fix bond or other security which are reasonable. In order to ensure the reasonableness of bond or other security the coastal State needs to take various factors into account and therefore should have sufficient time to properly assess all these factors.
50. The bond for the prompt release of the 88th *Hoshinmaru* and its crew was set by the competent Russian authorities on 13 July 2007.
51. As shown below, this bond is (II) reasonable in the light of the circumstances of the case and the case-law of the Tribunal; (III) was fixed in a reasonable time limit. Therefore, the Respondent has fully complied with its obligations under para.2 article 73 of the Convention.

**II The bond set for the release of the 88th *Hoshinmaru* is
reasonable**

A

Factors relevant to the assessment of reasonableness of bond

52. The Tribunal in its previous judgments concerning prompt release cases has addressed on several occasions the complexity of assessment of the reasonableness of a bond.
53. In the *Camouco* case it provided general guidance with regard to the factors that may be relevant in assessing the reasonableness of a bond by stating the following:

“The Tribunal considers that a number of factors are relevant in an assessment of the reasonableness of bonds or other securities. They include the gravity of the alleged offence, the penalties imposed or imposable under the law of the detaining state, the value of the detained vessel and of the cargo seized, the amount of the bond imposed by the detaining State and its form” (para.67, Judgment of 7 February 2000).

54. In the *Monte Confurco* case the Tribunal confirmed the above statement on relevant factors and provided further clarifications on the matter by pointing out that ‘this is by no means a complete list of the factors. Nor does the Tribunal intend to lay down rigid rules as to the exact weight to be attached to each of them’ (para.76, Judgment of 18 December 2000).
55. Moreover, in this case the Tribunal stressed that for a proper appreciation of the reasonableness of the bond it “is not precluded from examining the facts and circumstances of the case to the extent necessary”, because “reasonableness cannot be determined in isolation from facts” (para.74). Similarly, in order to be able to set a reasonable bond the detaining States have to determine all the relevant facts, which in particular circumstances can be time-consuming.
56. In the *Volga* case the Tribunal shed some light on one element that should be taken into account in defining the factor of ‘gravity’, which is one of the factors listed by the Tribunal. In paragraph 69 of its Judgment the Tribunal stated, *inter alia*, the following:

“Among the factors to be considered in making the assessment are the penalties that may be imposed for the alleged offences under the laws of the Respondent. It is by reference to these penalties that the Tribunal may evaluate the gravity of the alleged offences.”

57. It follows from the above clarifications provided by the Tribunal that the coastal State in determining a reasonable bond or other security should identify all the factors relevant to the particular case as the Tribunal itself acknowledged that the list provided by it is not complete. The coastal State is then required to assess level of relevance of each factor. Since what is reasonable depends upon all the circumstances of each case, the coastal State should also

evaluate all the circumstances surrounding the particular case, for example to determine whether the detained or arrested vessel has been involved in repeated and flagrant violations of applicable laws and regulations of the coastal State.

58. Another relevant factor that, from the point of view of the Respondent, should be taken into account for the purpose of setting a reasonable bond is the gravity of damage caused by the arrested vessel to the living resources and marine environment. Thus, in the *Volga* case, the Respondent has invited the Tribunal to take into account “the serious problem of continuing illegal fishing in the Southern Ocean and the dangers this poses to the conservation of fisheries resources and the maintenance of the ecological balance of the environment”. The Tribunal took note of these submissions of the Respondent (para.68, Judgment of 23 December 2002). Equally, it took note of the concern of Guinea-Bissau in the *Juno Trader* case regarding serious depletion of fisheries in its EEZ because of illegal, unregulated and unreported fishing (para.87, Judgment of 18 December 2004).
59. The amount of reasonable bond also depends on what has happened to the cargo of the detained vessel. Thus, in the *Saiga* case the Tribunal considered that 5 000 tons of gasoil of a value of approximately 1 million US dollar discharged from the tanker should be considered as part of the security to be held (para.84, Judgment of 4 December 1997). In the *Juno Trader* case, it took into consideration the Applicant's statement that “given the frozen fish cargo remains unsold at this late stage, there is a good chance that its market value has been considerably reduced, perhaps even to zero” (para.93, Judgment of 18 December 2004).
60. The setting of bond in no way releases the owner of the vessel from liability under the applicable laws and regulations of the coastal State for violation of these laws and regulations. Consequently, in deciding on a reasonable bond or other security to be set by it, the coastal State should establish sufficient guarantees which are supposed to ensure proper implementation of any decision that will be taken upon completion of the pending judicial or other legal proceedings of the coastal State.
61. As for the statement of Japan in paragraph 46 of its Application that the Applicant and the Respondent are in agreement concerning

the approach to the determination of what is 'reasonable bond' or other security, the Respondent would like to note that this approach, according to the Applicant consisting in setting bonds at a certain percentage of the total potential exposure to fines and confiscation, was not supported by the Tribunal.

62. In reality, it follows from the foregoing examples that the setting of bond or other security can not be such a simple matter as some kind of mathematical formula. It requires thorough analyses of all the relevant factors, assessment of extent of their relevance to a particular case, examination of all surrounding circumstances and the setting of the amount of bond or other security at a level providing sufficient guarantees for the proper implementation of any decision that may be adopted following the completion of the pending judicial or other legal proceedings in this case.
63. The above task would not be possible to achieve within reasonable period of time without full cooperation of the owner of the vessel and the competent authorities of the flag State and on the understanding that the information provided to the coastal State is accurate, adequate, contain no discrepancies, and corresponds to the facts established following the detention of the vessel.

B

Criteria applied by the competent Russian authorities to the setting of bond

64. Cooperation between the Russian Federation and Japan in fishery matters is currently regulated by two Agreements concluded respectively on 7 December 1984 and 12 May 1985. Both agreements provide for the establishment of Joint Commissions, which are entrusted with the responsibility to ensure a proper implementation of the respective Agreements. Representatives of the Russian Federation and Japan in Joint Commissions, as well as their Deputies, are appointed by the Governments of the Russian Federation and Japan. Both Commissions, as a rule, meet annually. Following the conclusion of a session of a Joint Commission, a Protocol is prepared reflecting deliberations and decisions of the Joint Commission at that session. The Protocol is then submitted for signature to the Representatives of the two countries in the Joint Commission but only after the text of the Protocol, its Annexes as

well as other documents related to it and clarifying its provisions have been discussed and all possible disagreements are resolved through bilateral consultations.

65. In the course of the last two sessions of the Joint Commissions, the Russian representatives briefed the Japanese representatives about the procedure, which would be applied for the purpose of prompt release in case of detention of Japanese fishing vessels in the Russian EEZ. The criteria to be applied for the assessment of bond in such cases were also specified in the course of these sessions. They are consistent with the criteria elaborated by the Tribunal: the bond should be comparable to the amount of potential fines, compensation for the damage caused, cost of illegally harvested living resources, products of their processing and instruments of illegal fishing (i.e. vessel, equipment etc.). The Japanese representatives have not raised any objections with regard to this methodology. Subsequently documents containing such methodology were forwarded to the Japanese side as official documents clarifying provisions of the respective Protocols and Annexes to them. In the case of the 1984 Agreement this information is contained in Annex 10 to the Protocol of the 23rd session of the Joint Commission, dated 14 December 2006. In the case of the 1985 Agreement this information is contained in the Annex 4-2 of the Protocol of 26 April 2007 on bilateral consultations between the two countries. As it is stated in the Annex 2 to the Application of Japan the decisions of those Commissions served as a basis for issuing the license to the vessel.
66. The criteria applied by the competent Russian authorities to the setting of bond in the particular case of the 88th *Hoshinmaru* were also based on this methodology and, thus, corresponded to those elaborated by the Tribunal.

III The bond for release of the 88th *Hoshinmaru* and its crew was set in a reasonable time limit

A

The “reasonableness” criterion of the bond does not include the requirement of “promptness”

67. Respondent objects to the Applicant’s allegation in paragraph 49 of the Application that ‘in order to be reasonable a bond or other security must be set promptly’.
68. Neither the Convention nor the practice of the Tribunal attest to Applicant’s assertion referred to above as the *only* requirement, which is contained in the Convention in this regard, is that bond or other security must be **reasonable**. In *M/V Saiga* case (para.82, Judgment of 4 December 1997) the Tribunal clearly stated that “reasonableness” includes the “amount, the nature and the form of the bond”. This strong accent of the Tribunal on the “economic” aspects makes the Respondent believe that the requirement of “promptness” which has different nature is attributable only to the aspects of release.
69. Respondent acknowledges the fact that the Tribunal does not consider that the list of factors identified by it that should be taken into account in the setting of bond is not exhaustive (para.76, Judgment of 18 December 2000 in the *Monte Confurco* case). Nevertheless, it may be assumed from the reasoning of the Tribunal that any additional criteria should also bear a penumbra of economic character. Thus, the proposal of the Applicant to employ in defining reasonableness of bond, a criterion of a completely different nature, namely time requirement, should be rejected.
70. The textual approach to interpretation of paragraph 2 of Article 73 of the Convention that Applicant employs in paragraph 38 of its Application proposes to refer to the understanding of the ordinary meaning of the terms of the treaty. Respondent fully appreciates this approach of Applicant. The textual analysis of the discussed paragraph suggests that the Convention is *silent* on the issue of the particular time limit for setting of bond or other security.

71. The criteria relating to the bond should be distinguished from criteria relating to the release. The paragraph is composed of two corresponding parts – release of vessel and crew and payment of the bond. Evidently, the term "prompt" relates to the first part. Its consideration in the context of the second part of the paragraph is not logical.
72. The Tribunal in its previous examination of cases concerning determination of the bond did not employ time considerations (*The M/V Saiga Case (Saint Vincent and the Grenadines v. Guinea)*, Judgment, 4 December 1997; *The Camouco Case (Panama v. France)*, Judgment, 7 December 2000; *The Monte Confurco Case (Seychelles v. France)*, Judgment, 18 December, 2000; *The Grand Prince Case (Belize v. France)*, Judgment, 20 April 2001; *The Volga Case (Russian Federation v. Australia)*, Judgment, 23 December 2002; *The Juno Trader Case (Saint Vincent and the Grenadines v. Guinea-Bissau)*, Judgment, 18 December 2004).
73. In the *Camouco* case the Tribunal clearly stated that "the 10-day period referred to in article 292, paragraph 1, of the Convention is to enable the parties to submit the question of release from detention to an agreed court or tribunal" (para. 54, Judgment of 7 December 2000). Thus, in the view of the Tribunal, the reference to the 10-day period in this provision may mean only that after the end of this period the question of release from detention is admissible for the judicial settlement. It does not have the meaning that if by the end of the 10-day period the detaining State has not yet posted a reasonable bond, that this State is in violation of paragraph 2 Article 73 of the Convention.
74. According to the Tribunal's reasoning in the *Volga* case the expression "bond or other security" used in paragraph 2 of Article 73 of the Convention should be interpreted in the context of other "provisions of the Convention concerning the prompt release of vessels and crews upon the posting of a bond or security. These provisions are: article 292; article 220, paragraph 7; and article 226, paragraph 1(b)" (para. 77, Judgment of 23 December 2002). Consequently, the expression "prompt release" itself should be also interpreted in the light of this relevant context. Thus, Article 226 of the Convention regulating the prompt release of vessels suspected in pollution of the marine environment indicates in its paragraph 1 (a) that "States shall not delay a foreign vessel longer than is essential for purposes of the investigations". Interpreting this

provision *a contrario* leads to the conclusion that while the pertinent investigation, for which the physical accessibility of the vessel and its crew is indispensable, is still being conducted, setting of the bond for the release of a foreign vessel may be delayed.

75. Moreover, in paragraph 45 of its Application in the 53rd *Tomimaru* case Japan states that the setting of time limits within which prompt release claims could be brought to the Tribunal may discourage the pursuit of amicable settlements of disputes between States through bilateral negotiations. It could be argued in the same vein that the setting of precise time limits within which a reasonable bond must be fixed could equally discourage the pursuit of a mutually acceptable and just settlement.

B

Assuming *arguendo* that the time for setting the bond should be reasonable, the Respondent insists that this time should be sufficient as well

76. Due to the absence of concrete requirements regarding the time limit for the setting of bond it is assumed that the coastal state enjoys certain flexibility in this respect. However, that does not imply that this flexibility is unlimited. The Respondent recognises that bond should be fixed by the coastal state within a reasonable period of time and without undue delay.
77. The Respondent strongly believes that recourse by the Applicant to “promptness” lacks practical rationale in the context of determining the conditions of bond or security measures. It is obvious enough that in order to ensure that the set bond is correct, the competent bodies of the detaining state should conduct effective and thorough examination in each case.
78. To meet these requirements the competent authorities of the coastal state should have access to the necessary information regarding the vessel, which should be expeditiously provided to them by the owner. Any delay may complicate the setting of bond.

C

Time period since the detention of 88th Hoshinmaru is reasonable

79. The sufficient lapse of time required by the Respondent in this particular case is due to its intention to minimize the risk of unreasonable bond, thus ensuring, *inter alia*, the interests of the Applicant.
80. The circumstances of the case and especially grave violations account for the sufficient period of time required for investigation, calculation of the damages and final determination of the bond.
81. By a letter dated 2 June 2006 to the Consulate-General the Northeast Border Coast Guard Directorate of the Federal Security Service of the Russian Federation immediately informed the Applicant about the fact of detention and provided it with comprehensive information on the circumstances.
82. The examination procedure that is pre-requisite for final determination of the bond was considerably complicated by several circumstances.
83. As it is stated in the Protocol of 1 June 2007 and in the Protocol of Detention of the Fishing Vessel of 2 June 2007, issued by the State Sea Inspection of the Northeast Border Coast Guard Directorate of the Federal Security Service of the Russian Federation, the fish that was fixed in the vessel's logbook and in the fishing license was substituted by different fish species. Under the upper cover of chum salmon the sockeye salmon was hidden.
84. Furthermore, as it is outlined in the Decision of the State Sea Inspection on institution of the administrative proceedings of 2 June 2007, the Master of 88th *Hoshinmaru* (i) transmitted false daily vessel reports; (ii) intentionally registered and provided false information on actual catch; (iii) intentionally fixed false information in the logbook; (iv) did not effectively control the fishing quota issues.
85. This strategy of 'covering up the traces' adopted by the Master of 88th *Hoshinmaru* resulted in huge discrepancies between the information provided by the Master and facts discovered during the

investigation which explains the amount of time spent for clearing up the matter.

86. Furthermore, the Master and the owner of the vessel did not fully cooperate with the Respondent's competent authorities. It is with a considerable delay that the requested basic information on the owner of the vessel could be obtained. The State Sea Inspection of the Northeast Border Coast Guard Directorate of the Federal Security Service of the Russian Federation on 8 June 2007 stated that the Master of the vessel refused to safe-keep it. Respondent's competent authorities where to find a company to safe-keep the vessel which was later transferred to the "Kamchatka Logistik Center" LLC.
87. The examination procedure included several stages. In the Decision of 6 June 2007 the State Sea Inspection of the Northeast Border Coast Guard Directorate of the Federal Security Service of the Russian Federation instituted first stage of examination procedure to determine the questions relating to fish species and actual catch. Particular questions that the experts should answer were set, among them (i) to determine overall amount of illegal catch; (ii) to determine amount of different fish species; (iii) to determine average weight of a single fish; (iv) to determine average cost of fish species and illegal catch; this list is not exhaustive. Since despite a number of oral and written requests no information on the cost of the vessel has been provided by the ship-owner, a time consuming procedure had to be started in order to evaluate it.

D

Balance and reciprocity of interests

88. Respondent acknowledges the reasoning of the Applicant with respect to the balance and reciprocity of interests (para.39 of the Application), which is indeed a matter of particular importance. However, the Respondent's is of the view that this consideration leads to a different conclusion. Paragraph 2 of article 73 of the Convention establishes a fair balance between the interest of the flag State in the prompt release of its vessel and the interest of the coastal State to ensure full compliance with its applicable national laws and regulations which includes its right and responsibility to

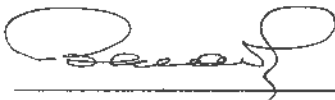
access thoroughly the incurred damage in its entirety prior to the setting of bond. This implies that the coastal state should have sufficient time to exercise this right. In the Respondent's view the balance of interests provided for in paragraph 2 of Article 73 should be understood as explained in this paragraph.

CHAPTER IV SUMMARY OF ARGUMENTS

89. The Russian Federation set on 13 July 2007 a reasonable bond and informed the owner of the 88th *Hoshinmaru* of its readiness to release the vessel following the payment of the bond as required by paragraph 2 of Article 73 of the United Nations Convention on the Law of the Sea.
90. By setting the bond and expressing its readiness to release the 88th *Hoshinmaru* upon the payment of the bond the Russian Federation has complied with its obligations under paragraph 2 of Article 73 of the Convention and the Application submitted by Japan for the prompt release of the 88th *Hoshinmaru* should be declared by the Tribunal inadmissible.
91. Reasonableness of bond should be determined by the coastal State by taking into account all the factors relevant to a particular case and then assessing the level of relevance of each factor and how much weight should be attached to it.
92. The factor of gravity of the offence may be assessed by the coastal State by taking into account penalties that may be imposed for such offence under its applicable national law.
93. In deciding on the amount of bond, the coastal State should establish sufficient guarantees for the proper implementation of any decision that may be taken in this case upon the completion of the pending national judicial proceedings.
94. Setting of bond by a coastal State would not be possible to achieve within a reasonable period of time without full cooperation of the competent authorities of the flag State and the owner of the arrested vessel and could be delayed if the information provided by them is not accurate, contains discrepancies and does not correspond to the facts established following the detention of the vessel.
95. The criterion of “reasonableness” of the bond does not imply the requirement of its “promptness”, which is confirmed by the clarifications provided by the Tribunal with regard to the factors that should be taken into account in assessing “reasonableness” of

the bond wherein the Tribunal puts strong accent on economic character of such factors.

96. While it is understood that the period of time required for the setting of the bond should be reasonable and without undue delay, the coastal State at the same time enjoys sufficient flexibility in spending reasonable time for the setting of the bond by thoroughly assessing all the factors that need to be taken into account in each particular case.
97. Particular gravity of the offences committed in the 88th *Hoshinmaru* case and discrepancies in the available information, as demonstrated in the relevant provisions of the present Response, made it necessary to undertake additional efforts to ensure thorough investigation of this case and accurate assessment of damages so that a reasonable bond could be determined with sufficient certainty in this case.



Evgeny Zagaynov

Agent for the Russian Federation

PART II ANNEXES

1. Note No.8199/1da dated 13 July 2007 from the Ministry for Foreign Affairs of the Russian Federation to the Embassy of Japan in the Russian Federation.
2. Letter dated 13 July 2007 from Mr. S.Y.Surin, Acting Chief of Northeast Boarder Coast Guard Directorate of the Federal Security Service of the Russian Federation to the Consulate-General of Japan in Vladivostok
3. Note No.8199/1da dated 13 July 2007 from the Ministry for Foreign Affairs of the Russian Federation to the Embassy of Japan in Moscow.
4. Letter dated 11 July 2007 of Mr. A.N.Tepliakov, Senior Counselor of Justice, Prosecutor of the Inter-District Prosecutor's Office for Nature Protection in Kamchatka to the Consulate-General of Japan in Vladivostok.
5. Protocol dated 1 June 2007 (No.003483) of inspection of vessel (extracts).
6. Protocol of detention of the vessel "88th Hoshinmaru" dated 2 June 2007 (extracts).
7. Decision on institution of administrative proceedings dated 2 June 2007 (extracts).
8. Decision of the State Sea Inspection dated 8 June 2007 (extracts).
9. Calculation of the amount of compensation for the damage caused by the illegal fishing activities.
10. Regulation No 724 of 26 September 2007 issued by the Government of the Russian Federation (extracts).
11. Decision of the State Sea Inspection dated 13 June 2007 (extracts).
12. Decision of the State Sea Inspection dated 14 June 2007 (extracts).
13. Decision of the State Sea Inspection dated 29 June 2007 (extracts).

14. Agreement between the Government of the Union of Soviet Socialist Republics and the Government of Japan on Mutual Relations in the Field of Fisheries off the Coasts of the Two Countries of 7 July 1984 (extracts).
15. Agreement between the Government of the Union of Soviet Socialist Republics and the Government of Japan on Mutual Cooperation in the Field of Fisheries of 12 May 1985 (extracts).
16. Protocol of the XXIII session of the Russian-Japanese Commission on Fisheries of 14 December 2006 (extracts).
17. Memorandum dated December, 14, 2006 of the Department of Fisheries of the Ministry of Agriculture of the Russian Federation to the Department of Fisheries of the Ministry of Agriculture, Forestry and Fisheries of Japan with Annexes (extracts).
18. Protocol of the Russian-Japanese Intergovernmental Consultations on harvesting of Russia originated salmon by Japanese fishing vessels in 200-miles zone of the Russian Federation of 26 April 2007 (extracts).
19. Memorandum II dated 26 April 2007 of the Department of Fisheries of the Ministry of Agriculture of the Russian Federation to the Department of Fisheries of the Ministry of Agriculture, Forestry and Fisheries of Japan with Annexes (extracts).
20. Letter of the Northeast Boarder Coast Guard Directorate of the Federal Security Service of the Russian Federation to the acting Consul-General of Japan in Vladivostok of 1 July 2007.
21. Letter of the representative of the owner of the vessel I.Y.Dyachenko to the State Sea Inspection dated 4 July 2007.
22. Letter of the State Sea Inspection to the Director-General of “Ikeda Suisan Co.” dated 5 July 2007.
23. Letter of the State Sea Inspection to the Director-General of “Ikeda Suisan Co.” dated 6 July 2007.
24. Report of Mr. Ya.Zborovskiy, the Acting Deputy Chief of State Sea Inspection of the Northeast Coast Guard Directorate of the Federal Security Service of Russia to Mr. Monakhov A.V., the

Chief of State Sea Inspection (SMI) of the Northeast Coast Guard Directorate of the Federal Security Service of Russia, dated 9 July 2007.

[Note by the Registry: For annexes, see “Additional documents submitted before the closure of the written proceedings” below.]

Corrigendum:**Letter from Mr Zagaynov to the Registrar dated 17 July 2007 correcting one entry in the list of annexes**

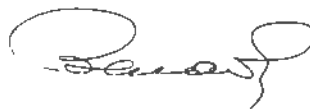
Mr. Philippe Gautier,
The Registrar,
International Tribunal for the Law of the Sea
Am Internationalen Seegerichtshof 1
22609 Hamburg
Germany

Moscow
17 July 2007

Dear Mr.Gautier,

Referring to the documentation in support of the Statement in Response of the Russian Federation (Case No. 14) sent to you on 16 July 2007 I would like to kindly request you to take into account the following information. Annex 13 should be disregarded due to technical mistakes in the translation. The correct number and date of the Note Verbale mentioned in Point 3 of the list of Annexes are 7940n/1da, 6 July 2007.

Yours sincerely,



Evgeny ZAGAYNOV
Agent for the Russian Federation