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

2007

Public sitting
held on Friday, 20 July 2007, at 10.00 a.m.,
at the International Tribunal for the Law of the Sea, Hamburg,
President Rüdiger Wolfrum presiding

THE "HOSHINMARU" CASE

(Application for prompt release)

(Japan v. *Russian Federation)*

Verbatim Record

Uncorrected
Non-corrigé

Present:	President	Rüdiger Wolfrum
	Vice-President	Joseph Akl
	Judges	Hugo Caminos
		Vicente Marotta Rangel
		Alexander Yankov
		Anatoli Lazarevich Kolodkin
		Choon-Ho Park
		L. Dolliver M. Nelson
		P. Chandrasekhara Rao
		Tullio Treves
		Tafsir Malick Ndiaye
		José Luis Jesus
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		Anthony Amos Lucky
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THE PRESIDENT: Good morning, everybody. This morning we will resume the oral proceedings and I give the floor to Mr Zaganyov, the Agent of the Russian Federation.

MR ZAGAYNOV: Thank you very much, Mr President. Mr President, distinguished Members of the Tribunal, honourable representatives of Japan, for me and for all members of our delegation it is a great honour to represent the interests of the Russian Federation before this venerable Tribunal.

At the outset, we would like to thank very sincerely the Registrar of the Tribunal and the members of the staff for their kind assistance, which has been extremely helpful in our preparation. This assistance was of particular value to us taking into consideration the time constraints of the prompt-release procedure. For the Russian Federation the homework before these hearings required especially arduous efforts.

It is the first time in the practice of the Tribunal that two cases have been instituted simultaneously. Obviously, this puts high pressure on those who prepare the pleading, especially on the Respondents' side. In our view, the issue of simultaneous applications should be addressed in the future in an appropriate way.

In this context, it would also be important to us to explain to you, Mr President, and to the honourable Judges, some geographic peculiarities of the region concerned. The point is that the facts underlying the Japanese applications took place off the coast of Kamchatka peninsula situated some 8,000 km from Moscow. The time difference between our capital and Petropavlovsk-Kamchatskii is nine hours, so normally when we start our working day in Moscow our colleagues in the Far East are already leaving their offices for home. The usual time required to receive correspondence from that part of Russia is four days. In the mean time, it is obvious that in order to prepare a response to the Japanese applications we had to receive first all the necessary information from Kamchatka.

In these circumstances, we did our best to provide the Tribunal with well prepared information and documentation. If it is not well structured or exhaustive, we would certainly try to make our points clear during the hearings.

Mr President, four and a half years ago the Russian delegation visited the premises of the Tribunal, though on that occasion it was appearing before this distinguished Tribunal in the position of an Applicant. Of course, I am talking here about the *Volga* case quoted by the Applicant on numerous occasions. *A propos*, I believe this is also the first time in the history of the Tribunal that a state which has appeared before it as an Applicant now appears before it as a Respondent.

As rightly pointed out in the Application, the Union of Soviet Socialist Republics made a special statement with respect to the jurisdiction of the Tribunal on issues of prompt release. This shows that our country from the very beginning has attached great importance to the role of the Tribunal, especially in these matters, to its contribution to the peaceful resolution of interstate conflicts pertaining to the most contradictory issues of the law of the sea.

The Russian Federation is one of the major maritime powers and one of the major coastal states in the world at the same time, and we are determined to protect and ensure by available legal means the rights and interests of Russia both as a flag state and as a coastal state.

As was pointed out yesterday by Japan, Russia is entitled to exercise in its Exclusive Economic Zone in accordance with the international law sovereign rights of exploration and exploitation of natural resources. At the same time, as a coastal state, Russia has to discharge certain obligations, one of the most important being the protection and sustainable use of the marine living resource. In order to discharge this obligation, Russia is required to ensure through proper conservation and management measures that the maintenance of living resources in its EEZ is not endangered by over-exploitation.

This case was initiated by Japan against the Russian Federation for the alleged violation of Article 73 of the Convention. As the Tribunal stated in the *Monte Confurco* case, and, as Japan itself acknowledged in its Application, Article 73 of the UNCLOS is designed to strike a fair balance between the interests of the persons connected with the detained vessel and of the flag state in securing the prompt release and the interests of the detaining coastal state to take appropriate measures as may be necessary to ensure compliance with its fisheries laws and regulations adopted in accordance with paragraph 1 of Article 73.

Now let me say a few words about the unique place which is Kamchatka. This part of Russia can boast particularly diverse and abundant wildlife, which is in many respects due to the highly productive waters from the North Eastern Pacific Ocean and the Bering and Okhotsk Seas. In particular, it contains perhaps the world's greatest diversity of salmonid fish. Nonetheless, commercial over-exploitation of marine resources in recent years has taken its toll on several fish species. Illegal catch of some species now exceeds biologically safe limits, which has severely depleted some precious fish stocks of that region.

It is obvious that in order to address this danger a wide international co-operation is needed. In our relations with Japan we have had a long history of such co-operation. Thus, two agreements on co-operation in fishery matters were concluded between the Soviet Union and Japan in 1984 and 1985. Both of them provide for the establishment of Joint Commissions, entrusted with the responsibility to ensure a proper implementation of the respective agreements.

In accordance with paragraph 1 Article 4 of the 1984 Agreement, each party has to take all the necessary measures to ensure that its nationals and fishing vessels conducting fisheries in the 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. The flag states have not only rights and interests, as stated in paragraph 40 of the Japanese application, but also obligations.

As the Applicant rightly stated in its Application, the arrest of the *Hoshinmaru* was not an isolated incident. In the course of the last few years the North East 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 Exclusive Economic Zone by vessels flying the flag of Japan. For example, only in 2006 twenty-five such violations were registered. In the course of the 23rd session of the Joint Commission in December 2006 the Russian authorities expressed to Japan its concern with respect to the fact that the number of violations increased during that year. Moreover, at sessions of both Commissions Russia repeatedly drew attention of the Japanese side to the increasing debt of Japanese companies for non-payment of accumulated damages caused to the living marine resources in the Russian EEZ. No measures with respect to the problem have ever been taken. All these problems represent serious concern both for the Russian authorities and for public opinion.

We acknowledge that according to paragraph 3 of Article 292 of the Convention, in prompt-release cases the Tribunal has to deal with the question of release only, without prejudice to the merits of any case before the appropriate domestic forum against the vessel and ship owner. Therefore, it is not, in general, the task of the Tribunal to consider the motives of the detaining state in applying measures to prevent violations of its legislation in the EEZ.

As the Tribunal itself has pointed out, however, it is not precluded from examining the facts and circumstances of the case to the extent necessary, for the reasonableness cannot be determined in isolation from facts. That is why the Tribunal did take note of the environmental concerns of Guinea-Bissau and Australia as Respondents in the *Juno Trader* and *Volga* cases respectively.

President Nelson in the *Camouco* case similarly mentioned that the Tribunal should take account of what, in the introduction to the Statement in Response of the French Republic, was referred to as "the context of illegal, uncontrolled and undeclared fishing in the Antarctic Ocean and more especially in the Exclusive Economic Zone of the Crozet Islands, where the facts of the case occurred." You, your Honour, in the same case referred to the need to protect the fishing regime established in the Convention for the Conservation of Antarctic Marine Living Resources, and the conservation measures taken thereunder.

In this connection, we would likewise ask the distinguished Tribunal to consider the general context of the seizure of the Japanese vessel *Hoshinmaru* and the efforts of the Russian competent organs to combat illegal and unsustainable fishing practices in the Russian Far East.

I would now like to turn to some of the allegations in the Application of Japan, to which the Russian Federation cannot consent. First of all, we consider it a misrepresentation that 17 Japanese crew members, including its Master, have been detained since 5 June 2007. Yesterday Japan raised the issue of the humanitarian aspects of the case and of the allegedly deplorable situation of the crew members, who were obliged to remain in a country the language and customs of which are totally unfamiliar to them. Moreover, according to Japan, the members of the crew were at risk of suffering from serious mental disorders because of the permanent stress and one of them even had some med problems with his stomach.

I would like to state in this connection that, first of all, in the case of the *Hoshinmaru*, to our knowledge, no information on health problems has been communicated to the

Russian authorities. Obviously, it should be one of the first things to do. On the contrary, in the case of the *Tomimaru*, which is an object of the second Application of Japan filed to the Tribunal, there were indeed complaints concerning the state of health of one of the crew members. Accordingly, the Russian authorities took appropriate measures for his expeditious return to Japan.

As for the language problems, the crew members at all stages have had access to the consular agents of Japan, who speak perfect Russian.

Besides that, as we mentioned in our Statement in Response, the members of the crew, with the exception of the Master, have never been actually detained. The Agent for Japan told you yesterday that ostensibly only two members of the crew each day were allowed to walk along the quay under the surveillance of the Russian guards. We have to clarify, nonetheless, that even if it is true, this is due not to their status as detained offenders, but to the fact that as foreign sailors, they do not have formal permission to go ashore on the territory of the Russian Federation.

According to the clarification of the Russian competent authorities, in order to get such a permission the owner of a foreign vessel or its agent has to apply for it to the competent Russian authorities. It is absolutely a common and simple procedure. Once the crew members are given this permission, they can go ashore, buy tickets and fly home or wherever they want to go, and this rule applies not only to the crew members of the detained vessels, but to all foreign sailors arriving at Russian ports. It would be rather illogical if the crew of an arrested vessel were in a better position than other seamen.

In the case of the *Hoshinmaru,* the owner of the vessel did not demonstrate much interest in obtaining such permission for the crew members, as well as the destiny of the crew in general. By the way, it was only on 4 July that he sent to the Respondent an application for the prompt release, which was received even later. Neither did he make any efforts to arrange for their return to Japan. As a result, the members of the crew remained on board the vessel without actually being detained. In other cases of detained Japanese vessels, however, such permission was given without any problems and the crew members actually left for Japan.

We cannot accept the argument that the crew is detained because someone has to take care of the detained vessel and the fish. Obviously, that would mean that it would be impossible to detain a vessel at all without detaining its crew.

As for the Master of the *Hoshinmaru*, on 11 July 2007, that is nearly 40 days after the detention of the vessel, he was asked to sign a written undertaking not to leave the city of Petropavolovsk-Kamchatskii. However, according to our competent authorities, on 16 July this restriction was withdrawn upon the completion of the necessary requirements of the Russian authorities conducting an investigation. In other words, nobody from the crew was detained when the application was filed and nor is detained now.

I would like to address the statement of Japan in paragraph 46 of its application. According to the Applicant, Russia and Japan are in agreement concerning the

approach to the determination of what is a “reasonable bond” or other security. To support this statement, Japan quotes an extract from the presentation of the counsel for the Russian Federation in the *Volga* case, Mr David, stating that the Tribunal is setting bonds varying in amounts between 9 and 25 per cent of the total potential exposure to fines and confiscation. This conclusion derived by Mr David from the declaration of Judge Laing in the *Camouco* case was not supported by the Tribunal, however. The bond set by the Tribunal was much higher. On the other hand, Mr David repeatedly mentioned that Russia considered it appropriate to apply this approach to that particular case, the *Volga* case.

We do share the opinion of our opponents, nevertheless, that the parties indeed agreed some time ago on the approach to the criteria for setting a “reasonable” bond or other security.

It is worth explaining in this regard that in the course of the last two sessions of the above-mentioned Joint Commissions on Fisheries, the Russian representatives briefed the Japanese side about the criteria to be applied for the assessment of a bond for the purpose of prompt release in the case of the detention of Japanese fishing vessels in the Russian Exclusive Economic Zone. According to the documents subsequently forwarded to the Japanese side as official documents clarifying the Russian position on that issue and annexed to our Statement in Response, the bond should be comparable to the amount of potential fines, compensation for the damage caused, the cost of the product of illegally harvested living resources, the products of their processing and the instruments of illegal fishing (i.e. vessel, equipment, et cetera). These criteria are, in our view, consistent with the criteria elaborated by this distinguished Tribunal. The Japanese representatives have not raised any objections with regard to them; therefore, it can be implied that they have acquiesced to them. It is rather hard to understand why the Japanese side have preferred to challenge this criteria and methodology before the Tribunal and not during the bilateral meetings on fisheries issues.

Mr Monakhov, who is supposed to speak after me, will explain in detail the way the amount of the bond was calculated. I would only like mention that in our view the setting of the bond should not deprive the coastal state of ensuring the proper application of all relevant provisions of the national legislation, including imposing fines and damage compensation. A prominent Japanese expert in the field of international law, Professor Oda, stated in one of its recent publications (*Fifty Years of the Law of the Sea*) that

> “the arrested vessel is to be promptly released on the understanding that the captain or owner will be tried before a judicial court of the coastal State in due course. In fact, however, the appearance of the captain and owner of the arrested vessel is highly unlikely. In addition, no hint is given in the UN Convention of what is ‘reasonable bond or other security’. It might be pointed out that the reasonableness of a bond or other security can never be proved from the objective point of view. Thus, the amount of the bond or other security might in practice be fixed by each coastal State at an amount equivalent to the fine that might be imposed by its courts at a later stage”.

In our view, also the bond in this case should cover all applicable fines and damage compensation.

Japan has raised the issue of state responsibility and eventual reparation in its application. We consider it unnecessary to remind you that the question of responsibility goes beyond the scope of the prompt release procedure under Article 292 of the Convention. We would, however, reiterate our position that the Russian Federation reserves rights to respond to these statements of Japan, as may be necessary.

Mr President, as mentioned in our Statement in Response, in the framework of this judicial procedure, we are asking the Tribunal to declare the application of Japan inadmissible before a reasonable bond for the release of the *Hoshinmaru* was set by the competent Russian authorities.

In case the Tribunal decides that the application is admissible, however, we are requesting it to declare that the Russian Federation did not breach its obligations under paragraph 2 of Article 73 of the 1982 Convention because it has fixed a reasonable bond for the release of the *Hoshinmaru* and because, in the particular circumstances of this case, for example the non-cooperation of the owner of the vessel, this was done within a reasonable time limit.

Mr President, distinguished members of the Tribunal, honourable representatives of Japan, thank you for your careful consideration of my opening statement.

THE PRESIDENT: Thank you very much, Mr Zagaynov.

We will now hear the statement of Mr Monakhov. However, before we proceed to do so, we will first call the interpreters who will interpret his statement from Russian into one of the official languages of the Tribunal to make the declarations set out in Article 85(4) of the rules of the tribunal.

Could the interpreters please come forward? The interpreters have to come from their booth at the top of the building.

(Pause)

MR LAKEEV: Mr President, I am Vladimir Lakeev, interpreter. I formally declare upon my honour and conscience that my interpretation will be faithful and complete.

MS EVEROVSKAYA (Interpretation): Mr President, I am Violetta Everovskaya. I solemnly declare upon my honour and conscience that my interpretation will be faithful and complete.

THE PRESIDENT: We will continue when you have arrived back in your booth.

[*Interruption*]

Mr Monakhov, when you speak, please take into consideration that you will be translated into one language and then into another language. Therefore, please speak slowly, otherwise we will become lost.

MR MONAKHOV (Interpretation): [*Interruption*] Distinguished Mr President, I am the Head of the State Sea Inspection of the Northeast Border Coast Guard Directorate of the Federal Security Service of the Russian Federation, which under the law is in charge of monitoring the observance of the rules of taking living marine resources in Russian waters, in particular in the Exclusive Economic Zone. In line with my duty, I took direct part in the consideration of the situation of the 88th *Hoshinmaru* vessel and its Master. That is why I know about the matter not by hearsay.

Allow me to dwell upon some aspects that, in my opinion, are important in the context of the Tribunal's conclusion on the issue of the amount of a reasonable bond to be applicable in the case under consideration.

As the Russian party notes in paragraph 53 of its statement on the case under consideration, the level of gravity of the alleged offence which formed grounds to detain and/or arrest the vessel and its crew, as well as sanctions fixed by the laws of the detaining state for committing such an offence, are among the criterion of "reasonableness" of the bond – the conclusion in the *Camouco* case.

In the case under consideration, the checking and inspection of the 88th *Hoshinmaru* vessel, recorded in accordance with the procedure fixed by law, revealed the fact of substituting the species composition of the products, which served as grounds for instituting a case of an administrative offence against the owner and Master of the vessel. The responsibility for such an offence is provided for in Part 2, Article 8.17 of the Code on Administrative Offences of the Russian Federation.

The subject of the provisions of the Article amounts to the establishment of responsibility and administrative punishment, *inter alia*, for violation of rules or conditions of the licence which regulate activities in internal sea waters, territorial sea, the continental shelf and/or the Exclusive Economic Zone of the Russian Federation.

Speaking about the level of gravity of the act which served as the ground for detaining the vessel, I would like to emphasize the following aspects.

First, with regard to the serious nature of the offence, the owner and Master violated not individual technical requirements with regard to fishing operations but, in fact, the whole set of rules, norms and standards with which strict compliance is the essential prerequisite for Russia to exercise efficiently its sovereign rights to preserve and manage living marine resources in its Exclusive Economic Zone and to allow access of foreign fishing vessels for fishing and hunting.

Article 61 of the UN Convention on the Law of the Sea states:

> "The coastal state shall determine the allowable catch of the living resources in its Exclusive Economic Zone, and shall ensure through proper conservation

and management measures that the maintenance of the living resources in the Exclusive Economic Zone is not endangered by over-exploitation."

We consider that this norm establishes not only the right but the obligation of the coastal state.

It should be particularly noted that the offence the subject of the case at issue amounts to the illegal catch of a species, namely sockeye salmon, which belongs to the anadromous stocks. Pursuant to Article 66, paragraph 1, of the UN Convention on the Law of the Sea, "the states in whose rivers the anadromous stocks originate shall have the primary interest in and responsibility for such stocks."

In the context of the implementation of these rights and responsibilities, the Russian Federation has adopted national laws and rules regulating the EEZ regime and its related fishing operation, which are binding upon Russian and foreign individuals and legal entities.

The fundamental principle which forms the basis of laws and rules is the obligation of all users of the EEZ biological resources to comply with laws and rules, including the standards of fishing operations, catch limits, as well as conditions of authorization (licence) to catch water biological resources in good faith and to the full extent. This obligation is provided for in Part 2, Article 12 of the Federal Law on the Exclusive Economic Zone of the Russian Federation and Part 2, Article 33 of the Federal Law on Wildlife. The non-compliance of the users of resources under such an obligation, especially regular and clandestine in nature, causes serious concerns, for it casts doubt on the very possibility to adopt proper measures to preserve and manage the water biological resources and, in the final analysis, can result in the threat to the preservation of water biological resources stocks.

THE PRESIDENT: I have just been informed that our system has broken down. Could you stop for a moment, please? [*Interruption*] The power has now been restored and the interpretation can continue. Mr Monakhov, you may proceed, but will you please speak as slowly as possible? I have been informed that the French interpreters cannot follow. If you speak as slowly as possible, we will manage both languages. Please continue.

MR MONAKHOV (Interpretation): I would like to clarify from what point I should continue my intervention?

THE PRESIDENT: Continue from where you referred to Article 66 and anadromous stocks.

MR MONAKHOV (Interpretation): Pursuant to Article 66, paragraph 1 of the UN Convention on the Law of the Sea, "the states in whose rivers the anadromous stocks originate shall have the primary interest in and responsibility for such stocks."

In the context of implementation of these rights and responsibilities, the Russian Federation has adopted national laws and rules regulating the Exclusive Economic Zone regime and its related fishing operation, which are binding upon Russian and foreign individual and legal entities.

The fundamental matter that forms the basis of laws and rules is the obligation of all users of biological resources of the EEZ to comply with laws and rules, including the standards of fishing operation, catch limits, as well as conditions of authorization (licence) to catch water biological resources in good faith and to the full extent. This obligation is provided for in Part 2, Article 12 of the Federal Law on the Exclusive Economic Zone of the Russian Federation and Part 2, Article 33 of the Federal Law on Wildlife. The non-compliance of the users of resources with such an obligation, especially regular and clandestine in nature, causes serious concerns, for it casts doubt on the very responsibility to adopt proper measures to preserve and manage the water biological resources and, in the final analysis, can result in the threat to the preservation of water biological resources stocks.

Noting the importance of homogeneous and efficient implementation of the legislation on responsibility for environmental offences, the Plenary of the Supreme Court of the Russian Federation, in its Statement No. 14 of 5 November 1998 on practical application by courts of legislation on responsibility for environmental offences, noted:

> "The high level threat to the public from such kinds of offences is explained by the fact that the sustainability of environmental nature's resource potential, as well as the right of everybody to a friendly environment, are the subject of encroachment of the said offences",

including Article 42 of the Constitution of the Russian Federation that everyone shall have the right to a friendly environment.

Under Article 10 of the Federal Law on Fishing and Preservation of Water Biological Resources, water biological resources, including fish stocks, in the Exclusive Economic Zone are the federal property of the Russian Federation. The right to use them by private persons arises from the authorization to catch (or take) issued by the competent body in accordance with the established procedure. According to Part 2, Article 16 of this Federal Law, "fishing is executed in accordance with the rules regulating the catch (take) and preservation of water biological resources." A similar norm is found in Part 3, Article 35 of the Federal Law on Wildlife.

Taking the above-mentioned into account, I would like to draw the attention of the Tribunal to the fact that in the *Hoshinmaru* case a complex of interrelated and complementary rules, standards and norms which regulate the fishing operation in the Russian EEZ made the subject of the offence.

In the course of the administrative investigation carried out by competent Russian authorities and in complete compliance with the legislation in force, it was established that the owner and Master violated the federal law on the Exclusive Economic Zone of the Russian Federation and the federal law on fishing and preservation of water biological resources as well as the following rules regulating fishing operations.

The owner and Master violated paragraphs 7.1, 9.2 and 9.4 of fishing rules in the Far East fishery basin, which require the users of water biological resources to commit to

provide for a separate account of the catch and delivery of water biological resources by species; to specify the weight ratio of biological resources species and the catch in the vessel logbook and other reporting documents. The daily logbook reports on *Hoshinmaru 88* obviously violated Order 338 of the Russian Federation of 30 November 1990 of the Russian Commission on Fisheries and consciously false information of the catch was registered.

In the course of those rules, the user is not entitled to accept, deliver, or carry aboard the vessel the catch of water biological resources or products made of one species named by another or without specifying the species composition, as per paragraph 9.2 of the fishing rules. Also, the owner has no right to register and provide information in false amounts of the catch and its species composition, paragraph 9.3; also, to carry aboard the fishing vessel products not recorded in the vessel logbook and technological journal, paragraph 9.4.

The USSR and Russia in their relations with Japan also regularly took and continue to take measures to better organize activities related to preservation, reproduction and optimal use and management of living resources in the Northern Pacific. To this end, both countries concluded inter-governmental agreements on mutual relations in fishing in the coastal areas of both countries on 7 December 1984 and on co-operation in fishery on 12 May 1985, which foresee the establishment of joint inter-governmental commissions. In the framework of those commissions, the parties regularly discuss and inform each other of rules and standards applicable in the Exclusive Economic Zone of each state party.

In this connection, after the results of the Russia-Japan inter-governmental consultations on the catch of salmons of Russian origin by Japanese fishing vessels within a 200-mile zone of the Russian Federation, and in accordance with paragraph 8 of the minutes of consultations, the Russian party informed the Japanese party on the rules of catching anadromous species of fish inhabiting rivers of the Russian Federation and measures for their preservation. As a result of the efforts of the Russian and Japanese parties exerted within the framework of the above-mentioned commissions, each Japanese vessel engaged in fishing in the EEZ of Russia carries a complete set of documents regulating this kind of catch in the Russian and Japanese languages.

Such a compilation of papers I have here in Japanese and it contains all the norms and rules which could be observed by a Japanese Master while working in the Exclusive Economic Zone of Russia. It contains all the details of the fishing operations.

So the owner and Master of *Hoshinmaru 88* were completely conscious of the illegal nature of the actions and their negative consequences. However, pursuing their vested interests committed pre-determined violation of the laws and rules of the coastal state. If the substitution of the species on *Hoshinmaru* vessel had not been revealed by the competent authorities of the Russian Federation, then 20 tons of raw sockeye salmon would simply have been stolen and taken out of the EEZ of Russia illegally. This amount of water biological resources could not have been accounted for by the competent bodies of the Russian Federation in exercising control over the percentage of total allowable take of this species, i.e. sockeye salmon. So in this

case we are witnessing evidence of a classical manifestation of illegal, unreported and unregulated fishing, an offensive activity giving rise to serious concern in the international community with regard to the preservation of resources, paragraph 2 of Article 61 of the UN Convention.

This offensive act could not be considered as a purely technical error while making respective records in the logbook during the fishing operation which, as the Agents of the Japanese party insist, was allegedly legal, within the licence quota and in accordance with the available fishing licence. This fishing can only be legal when it is executed in compliance with all the applicable rules and norms established by the coastal state, including timely and exhaustive reporting of data on species and amounts of the catch to its competent bodies. This point of view in particular has been confirmed in the practice of Russian courts. The hidden products of sockeye salmon have nothing to do and cannot have anything to do with the available quota permitted to the owner.

Twenty tons of illegally caught raw sockeye salmon indicated in the investigative documents were not mentioned in the daily ship record and were not fixed in the logbook as sockeye salmon caught according to licence number XKC-07-10, a copy of which is contained in Annex 2 to the Application of Japan. Therefore, there are no grounds to say that 20 tons of illegally caught raw sockeye salmon were caught according to the licence and within the limit of the quota.

As I have already noted, according to the case law of the Tribunal, it is well founded to assess the gravity of offences taking into consideration the penalties that may be imposed for the corresponding offences under the laws of the Respondent.

Pursuant to the current legislation of the Russian Federation, these penalties in relation to the present case include three elements: first, administrative or criminal responsibility of the Master; second, administrative responsibility of the owner of the vessel; and third, civil liability for causing ecological damage.

The punishment provided for in Part 2 of Article 8.17 of the Code on Administrative Offences in regard to the owner or vessel-legal person is a fine constituting from double to triple the cost of the marine biological living resources which were the object of the administrative offence, accompanied or not by the confiscation of the vessel and other instruments used to commit crime. The severe character of this punishment also proves the fact that the Russian legislator considers this offence as serious and grave.

I would like to note that while investigating the case, we were confronted with the clear unwillingness both of the Master and of the owner to co-operate in the matter in order to speed up the proceedings of the case, including for the purpose of the soonest determination of the reasonable bond. All the problems which arose with regard to the vessel *Hoshinmaru* could have been avoided if the Captain had not offered passive resistance to the investigation by having refused point blank to sign all the procedural documents and to re-route voluntarily to the port, where the necessary proceedings were to be established. It took additional time to bring the vessel in tow to the port.

In order to have a thorough investigation according to the determination of the bond, initially it was necessary to witness and to fix the following data: documentary confirmation of the owner of the ship; whether the Master, who has committed the offence, is an employee of the respective legal entity; proof of the fact that the vessel is registered in a Japanese port with a specific ship owner.

On June 13, 2007 necessary facts were received from the ship owner party on the basis of the State Sea Inspectorate on the necessity to receive facts. The facsimile copies of the documents indicating the requested data, which however may not be used as reliably establishing respective legal facts, were received by the State Sea Inspectorate from the legal counsel of the alleged ship owner only on 27 June this year, certified copies but without any translation into Russian, which was only supplied on 4 July this year.

As to the elements of which the amount of the bond consists that is to say, the appropriate standard, which, in our understanding, was previously adopted by both parties within the framework of the above mentioned Russian-Japanese inter-governmental consultations referred to above and is reflected *inter alia* in Item 4, Annex II-1 to the Memorandum II of 26 April 2007.

In accordance with this standard, and this is reflected in the Annex, the bond shall include the amount of the fines, compensation for the damage caused, the value of illegally harvested live marine resources, as well as products for processing and the value of instruments of committing the offence, i.e. the vessel and the tools of illegal fishing.

On July 25, on the basis of these criteria, the Russian Federation established the bond as 25 million roubles. Taking into account the time factor, the bond was calculated proceeding from the preliminary appreciation of the cost of the vessel that was set at 14.4 million roubles. On 18 July we received final appreciation expertise conducted by a Russian consulting group, Capital Plus. Since this document was received at the very last moment, we could not present it as an annex to our statement in full text and we provide only the final conclusion of that document. The calculations themselves take up some 60 pages in Russian and translation could hardly be done in such limited terms. Nevertheless, we kindly request the Tribunal to take into consideration these detailed materials and we are prepared to attach them to the case.

The appreciation of the vessel was conducted in accordance with federal law on assessment procedures in the Russian Federation and the criteria established by Governmental Decree No. 519 of 6 July 2001. As for the calculation methodology, a kind of combination of comparative and costs/expenses approach was applied in this case.

Following the type of vessel, the experts took into account the following parameters: year of production, technical parameters, engine power. This was made on the basis of the analysis of the other six vessels in Russia and abroad by the comparative method. In accordance with the comparative approach, the expert took into consideration the following parameters: physical wear and tear, functional, and appearance of the vessel.

In accordance with the first approach, the value of the vessel was established roughly at 10.3 million roubles whereas the second approach brought 12 million roubles. The joint appreciation result was 11,350,000 roubles.

Proceeding from this fact, the Russian side brought the proposed bond down to 22 million roubles. This sum includes fines which may be imposed on the Master of the vessel and also compensation to the damage caused to living marine resources.

In accordance with Paragraph 2, Article 8.17 of the Code on Administrative Offences of the Russian Federation, the fine imposed against a legal person may amount to threefold the level of the costs of the marine biological resources that constitute the object of this administrative case.

The cost of one kilo of sockeye salmon according to technological expertise is 33.25 roubles. This amount should be multiplied by the weight of this illegal catch of sockeye salmon, 20,063.8 tons and multiplied by three. That is established by the sanctions law. Thus, the total is 2,001,364.05 roubles. Additionally, this Article 8.17 Part 2 also stipulates the possibility of confiscating the vessel. Thus, the bond should include the above-mentioned value of the vessel of 11,350,000 roubles.

The Master, in accordance with Article 256 of the Criminal Code, may be fined up to 500,000 roubles. This sum is also included in the bond.

In accordance with the Civil Code of the Russian Federation, Articles 1064 and 1068, and the Federal Law on Wildlife, Articles 4, 40, 55, 56 and 58, compensation may be imposed for the caused damage that is calculated under Government Decree No. 724 of the Russian Federation of 26 September 2000. I would like to emphasize that we are talking only about compensation and not about fine. This Decree of the Government stipulates that compensation for one piece of sockeye salmon is set at 1,250 roubles, thus 6,342 pieces of sockeye salmon come to 7,927,500 roubles. The amount of this compensation is prescribed strictly by Russian legislation and cannot be reduced or increased in any circumstances.

For carrying out the expertise and other procedural actions 240,000 roubles was spent from the federal budget, the so-called administrative costs of this case. The costs with regard to the legal person in accordance with Article 24.7 of the Code on Administrative Offences of the Russian Federation are covered by the ship owner, the legal entity. This sum is also included on the calculated bond. The value of the illegal catch of legal marine resources of 667,12.35 roubles and the processed catch produced from this illegal catch of 387,596.2 roubles is not included in the bond, although it was foreseen in our consultations that the illegal product was realistically taken or removed from the vessel.

Thus, the total sum of the bond proposed by the Russian side is 25 million roubles. Let me point out once again that this sum is calculated on the basis of the criteria set out in the documents of the bilateral Russian-Japanese fisheries commission and reflects the amount of the eventual fines under Russian legislation and, in our view, correlates with the criteria set up by the Tribunal.

At the same time, in our opinion, the Tribunal in its conclusions should not limit the possibility of a respective national judicial body limiting in advance its powers to limit the fines established by the national legislation.

I would like to draw your attention to the following: the body which is in charge of investigation of this offence, the State Commission, received a request not to pay the bond only on 18 July.

Distinguished President and members of the Tribunal, I thank you for your kind attention.

THE PRESIDENT: Thank you, Mr Monakhov. Mr Zagaynov, you wanted to say something?

MR ZAGAYNOV: Thank you, Mr President. I want to clarify that the final amount of the bond proposed by the Russian Federation is 22 million roubles and not 25 million.

THE PRESIDENT: That was well understood.

It is now the turn of Mr Golitsyn. We have scheduled a break at 11.45. You can interrupt your statement whenever you believe it proper. I do not want to interrupt you.

MR GOLITSYN: Mr President, distinguished judges of the Tribunal, it is a great privilege and honour for me to appear before this Tribunal and to address legal issues arising in the *Hoshinmaru* case.

The Applicant in its application requests the Tribunal to do three things by way of judgment. Firstly, to declare that the Tribunal has jurisdiction under Article 292 of the Convention to hear the application concerning the detention of the vessel and the crew of the *88th Hoshinmaru* in breach of the Respondent's obligations under Article 73(2) of the Convention. Secondly, to declare that the application is admissible, that the allegation of the Applicant is well-founded, and that the Respondent has breached its obligations under Article 73(2) of the Convention. Finally, to order the Respondent to release the vessel and the crew of the *Hoshinmaru* upon such terms and conditions as the Tribunal shall consider reasonable.

The Respondent, for its part, requests the Tribunal to decline to make these orders and to order: first, that the application of the Chair of Japan is inadmissible; and, secondly, 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.

In my observations I will try to address in a comprehensive way legal issues arising in the light of these requests. I will start with the crucial matter of whether the allegation of the Applicant is well-founded and whether there are any grounds to claim that there has been a breach of obligations by the Respondent under paragraph 2 of Article 73 of the Convention. Paragraph 2 of Article 73 of the

Convention states that: “arrested vessels and their crews shall be promptly released upon posting of a reasonable bond or other security”.

In paragraph 23 of the Statement in Response, the attention of the Tribunal is brought to the fact that a bond, the setting of which is required by paragraph 2 of Article 73, was set by the Russian Federation on 13 July 2007.

The competent Japanese authorities and the owner of the vessel have been promptly informed about the setting of the bond, as well as about the concrete details regarding payment of the bond, including the bank account. Consequently, in this case we have to address two issues: namely, the time frame within which the bond was set and the issue of whether the bond is reasonable as required by the Convention.

I will first speak about the time frame for setting the bond. The Applicant alleges in paragraph 48 of its application that “in order to be reasonable, a bond or other security must be set promptly”. This assumption was reiterated by the Applicant during oral hearings yesterday.

The Applicant claimed yesterday that it follows from the Convention that in order for the vessel to be promptly released, the bond should also be set promptly. It was noticeable that while inventing the requirement of the prompt setting of the bond, the Applicant was silent on whether a bond or other security should be paid promptly, a conclusion which may be reached with sufficient certainty in analyzing the text of paragraph 2 of Article 73.

The Respondent is of the view that the textual analysis of paragraph 2 of Article 73 clearly shows that the Convention in this paragraph does not set any precise time limit for the setting of the bond or other security. We believe that the criteria relating to the setting of the bond should be distinguished from the criteria relating to the release of the arrested vessel.

The textual analysis of paragraph 2 of Article 73 proves, in our view, without any doubt, that this paragraph is composed of two corresponding parts, and that the term “prompt” relates only to the part which requires that the arrested vessel and its crew be released promptly.

The above conclusion is indirectly, in our view, confirmed by judgements in prompt release cases rendered by this distinguished Tribunal. Thus, in the *Saiga*, case, and I refer to paragraph 82 of the Judgment of 4 December 1997, the Tribunal, by stating that reasonableness includes “the amount, the nature and the form of the bond” put strong emphasis on economic aspects. Consequently, the requirement of promptness is attributable to the aspects of release.

An examination of cases delivered by the Tribunal in connection with the prompt release procedures in our view confirms that the Tribunal has never considered that there is any precise time limit which is imposed by the Convention on the coastal states in the case of prompt release. I refer to the cases: *Comouco, Monte Furco, Grand Prince, Volga* and *June Trader.*

Distinguished judges, while objecting to the invoking by the Applicant of the concept of promptness in respect of the time frame, the Respondent does not want to create an impression that it is of the view that the coastal state is not bound by any time considerations at all under paragraph 2 of Article 73. What the Respondent wants to state is that the Convention is silent on this issue and that because of the absence of precise time requirements regarding the setting of the bond, the coastal state enjoys certain flexibility in this regard. The latter does not imply – and I would like to stress this – that this flexibility is unlimited. Quite the contrary: the Respondent recognizes that the bond should be fixed by a coastal state within a reasonable period of time and without undue delay.

However, it is understood that in order to set a reasonable bond, the competent authorities of a coastal state need to conduct an effective and thorough investigation of each case. The circumstances surrounding such investigations may differ as cases may differ from one another. For example, in order to set a reasonable bond, the coastal state should have access to all necessary information concerning the vessel and its activities. Such information should be provided by the owner of the vessel and its master. Any lack of cooperation in this regard may delay the process of setting the bond. Another consideration is the gravity of the offences. Offences which are of a grave nature usually require lengthy investigation, which may result in the delay of setting the bond.

I will now address the circumstances that affect the time frame in the *Hoshinmaru* case.

The Respondent strongly believes that in the *Hoshinmaru* case the bond was set within a reasonable period of time. The circumstances that affected the setting of the bond in this case, *inter alia*, include the following.

In the *Hoshinmaru* case we are dealing with the particularly grave violation of the applicable laws and regulations of the coastal state, as demonstrated in Chapter 1 of the Statement in Response and demonstrated by the previous speaker. The Statement of Response states that: fish fixed in the vessel's logbook were substituted by different fish species. Under the upper cover of chum salmon, the sockeye salmon was hidden. The Master of the *88th Hoshinmaru* vessel transmitted false daily information, vessel reports; intentionally registered and provided false information on actual catch; intentionally fixed false information in the logbook; and did not effectively control the fishing quota issues. The Master and the owner of the vessel did not fully cooperate with the Respondent's competent authorities. The Master of the vessel refused to keep the vessel safe and the Respondent's competent authorities had to find a company for its safekeeping – Kamchatka Logistik Center – to which the vessel was later transferred. All this proves that we are dealing in this case with grave offences.

In the oral hearing yesterday, the Applicant claimed that it has taken all necessary measures to ensure proper compliance by its fishermen with the laws and regulations of coastal states in their Exclusive Economic Zones, including the activities of the Japanese fishermen in the Russian Exclusive Economic Zone. However, there is an obvious disconnect between what was stated by the Applicant yesterday and harsh reality.

As documented during the last two sessions of the Joint Russian-Japanese Commission established under 1984 Agreement, which is acknowledged by Japan as a member of that Commission, we are witnessing a growing number of violations by Japanese fishermen in the Russian Exclusive Economic Zone. The gravity of such offences is also rising.

In oral hearings yesterday, the Applicant, in addressing the question of the gravity of the alleged offences, brought the attention of this honourable Tribunal to the fact that the *Hoshinmaru* vessel was not over-fishing and that it was not fishing unlicensed and that actually the amount of fish on board and the fish species correspond to the licence. Furthermore, the Applicant stated that the Master of the vessel was entitled to have all the fish that it had caught on board.

The Applicant concluded that if the Master did not exceed the licence limit and did not catch the fish prohibited to fish, no particular grave violation of the applicable laws and regulations of the coastal state took place.

The Applicant suggested that false information in the vessel logbook and false daily reports, as well as substitution of one fish for another, does not constitute grave violation and does not lead to over-exploitation of living marine resources in the Respondent's Exclusive Economic Zone.

In fact, however, it should be observed that the substitution of the more expensive fish by a cheaper fish in the vessel logbook and false reporting may potentially lead to consequences that are even more grave than simple over-fishing.

Let us assume that the *Hoshinmaru* vessel had not been inspected and detained on 1 June 2007. The Master of the vessel then reported that he caught a certain amount of cheap fish, although what he actually caught was expensive fish. That misrepresentation was intentional and was done by the Master with the obvious intention to over-fish the expensive fish during the licence period, a quota for which was allocated to this vessel under the licence. Stating it simply, let us assume that on 1 June the *Hoshinmaru* caught 20 tons of expensive fish and substituted it for cheap fish. It means that in the following days of the licence period the *Hoshinmaru* could catch 20 tons of expensive fish out of the quota.

Violation is violation, no matter what kind of explanation is provided for it, because there was a clear intention to commit crime by violating the laws and regulations of the coastal state.

It was also notable during the oral hearings that the Applicant deliberately picked up only one or two elements of the crime committed by the Master – for example, the substitution of expensive fish for cheap fish. At the same time, the Applicant sidestepped other offences that were committed by the Master (referred to above) which proves that the crimes committed by the Master, were of a grave character.

Because of the gravity of the offences in the *Hoshinmaru* case, the competent Russian authorities had to undertake a thorough and time-consuming examination during which they were required to determine the overall amount of the illegal catch,

the amount of different fish species, the average weight of a single fish, and the average cost of fish species and illegal catch. This list is not exhaustive. The speaker before me addressed it in a more comprehensive way.

In the view of the Respondent, all the above observations prove without any doubt that the bond in the case of the *Hoshinmaru* was set within a reasonable period of time, without any undue delay, and that the Respondent has fully complied with its obligations under paragraph 2 of Article 73 of the Convention.

I now address the issue of the reasonableness of the bond. As I stated earlier, another issue that arises from paragraph 2 of Article 73 of the Convention is the reasonableness of a bond or other security. In that paragraph, the Convention clearly states that the bond or other security fixed by the coastal state in the case of prompt release should be reasonable.

As the Tribunal itself acknowledged in its judgments on the prompt release of vessels, the issue of the reasonableness of a bond is a complex one. There are various factors that need to be taken into account by the coastal state in setting a bond, and the Tribunal provided some guidance in this regard.

I know that the case of the *Camouco* has been extensively and frequently cited in other pleadings and that the Respondent also makes reference to it in paragraph 53 of the Statement in Response. However, because of the importance of what was stated by the Tribunal in that case, I believe that it is worth repeating its provisions, as follows:

> "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." [Paragraph 67, Judgment of 7 February 2000].

In subsequent cases, the Tribunal provided further clarifications on the issue of factors that may be relevant to the assessment of the reasonableness of a bond by pointing out that the list of factors provided by it is not a complete list and that, which I emphasize, the exact weight of each factor depends on the particular case.

Of particular importance in this regard was a clarification provided by the Tribunal in the *Volga* case, where, in paragraph 69 of its judgment, the Tribunal stated, *inter alia*, as follows:

> "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."

As demonstrated in paragraphs 57 to 59 of the Statement in Response, while examining particular cases, the Tribunal placed emphasis on specific factors that played a significant role in accepting the reasonableness of a bond in those cases.

Gravity of damage caused by the arrested vessel to living resources and to the marine environment has always been considered to be an important factor that plays a crucial role in assessing the reasonableness of a bond.

The Respondent strongly believes that in evaluating various factors affecting the setting of bonds, it should always be borne in mind that the setting of a bond under paragraph 2 of Article 73 of the Convention in no way releases the owner of the arrested vessel from liability under the applicable laws and regulations of the coastal state for violations of those laws and regulations.

Consequently, as emphasized by the Respondent in paragraph 60 of its Statement in Response, 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 may be taken upon completion of the pending judicial or other legal proceedings of the coastal state.

What is sometimes forgotten is that those who are responsible for the establishment of a bond are kept accountable for satisfying the requirement that the bond would constitute a sufficient security, as highlighted yesterday by the Applicant, which would ensure implementation of the court's decision to be delivered following the conclusion of the court proceedings. For any harsh decisions taken by those responsible for the establishment of a bond without thorough investigation of the case, they may be reprimanded and held accountable if the bond does not constitute a sufficient security for the implementation of the judgment; and this human factor should also be taken into account when we speak about the reasonableness of a bond.

Thus, as highlighted in paragraph 62 of the Statement in Response, the setting of a bond requires a thorough analysis of all the relevant factors, an assessment of the extent of their relevance to a particular case, an examination of all surrounding circumstances, and establishing the amount of bond or other security at a level that will provide sufficient guarantees and security 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.

The setting of the bond therefore requires that the owner of the vessel and the flag state provide to the coastal state information that is accurate, adequate, contains no discrepancies and corresponds to the facts established following the detention of the arrested vessel.

It is the Respondent's view that in the *Hoshinmaru* case the bond that has been established is reasonable and that it was set by taking into account all the factors that were relevant to this particular case and were of significant importance.

The previous speaker provided to the distinguished judges detailed information on factors that affected the setting of the bond in the *Hoshinmaru* case and the procedures that were meticulously observed by the competent Russian authorities in this case.

That concludes my observations on the time frame for the establishment of a bond or other security under paragraph 2 of Article 73 and on the requirements relating to the reasonableness of a bond. I hope that these observations will persuade the distinguished judges to find that the Respondent has complied fully with its obligations under paragraph 2 of Article 73 of the Convention and that the Applicant's allegations are not well founded.

I would now like to refer to the Applicant's request that the Tribunal should order the release of the vessel upon such terms and conditions as the Tribunal considers reasonable. I refer to sub-paragraph 1(c) of the Application.

Before I make any comments on this issue, I would like to reiterate that, in the Respondent's view, the Application is inadmissible and that the Applicant's allegations concerning the non-fulfilment by the Respondent of its obligations under paragraph 2 of Article 73 of the Convention are not well founded.

In sub-paragraph 1(c), the Applicant requests 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". In the Respondent's view, the Tribunal is actually requested by the Applicant to exercise functions that are not attributed to it by Article 292 of the Convention.

As noted in paragraph 38 of the Statement in Response, 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 requirement is essential from the point of view of legal security and good administration of justice.

It is obvious that the Tribunal, acting under Article 292 of the Convention, does not have competence to determine in general terms the conditions upon which the arrested vessel should be released. As stated in paragraph 2 of Article 113 of the Rules of the Tribunal, in cases when the Tribunal finds that the application for the release of an arrested vessel and its crew is well founded, it has only to determine the amount, nature and form of the bond or other financial security to be posted for the release of the vessel or the crew. Consequently, the Tribunal is not requested to determine general conditions and terms that the Tribunal may consider reasonable.

The Statement in Response contains references to several judgments rendered by this distinguished Tribunal – the cases of the *Juno Trader*, the *Saiga*, the *Camouco* and the *Volga* – which, in our view, confirm without any doubt that in all those cases the Tribunal has determined not terms and general conditions but a reasonable bond or other financial security, upon the posting of which the vessel and its crew shall be promptly released.

Because of the shortness of time allocated to my presentation, I do not refer to those particular cases in detail, but information about them can be found in paragraphs 41 to 44 of the Statement in Response.

During the oral pleadings yesterday, the Applicant claimed that in its request under sub-paragraph 1(c) it had never intended to go beyond what is provided in Article

292 of the Convention. However, in analyzing this request, we are not dealing with what Japan hypothetically had in mind, implied or dreamed about when it submitted it. We are dealing with what the request actually asks the Tribunal to do. In our view, there is no doubt that the request as formulated goes beyond what is provided for in Article 292 of the Convention.

I now touch on the issue of jurisdiction. I would like to address the issue of the establishment of the jurisdiction of the Tribunal as it is presented in sub-paragraph 1(a) in the Application of Japan.

It is obvious that the first action that the Tribunal needs to take when it receives an application for the prompt release of a vessel is to satisfy itself that it has jurisdiction under Article 292 of the Convention to adjudicate on the case. If one looks at the request addressed to the Tribunal by the Applicant in this regard, one will find that the Tribunal is requested to declare its jurisdiction under Article 292 on the assumption that the Respondent is in breach of its obligations under paragraph 2 of Article 73 of the Convention. This is a very unusual request.

We believe that in establishing its jurisdiction to adjudicate on the case, the Tribunal cannot and should not imply in advance that the allegations made by the Applicant regarding the non-compliance by the Respondent with the provisions of paragraph 2 of Article 73 of the Convention are well grounded and therefore should be accepted. Therefore, the Respondent cannot agree, as stated in paragraph 28 of its Response, with the Applicant's request in sub-paragraph 1(a) of its Application.

I would now like to make some observations on what was stated yesterday during the oral proceedings. Quite a few observations were made yesterday by the Applicant that are questionable and require some comment. In my presentation I have chosen only some of them.

First, I would like to comment on the observation by which it was implied that the Russian Federation lacks proper procedures to meet some of its obligations under international law in relation to the prompt release procedures defined in paragraph 2 of Article 73 of the Convention. The Respondent cannot agree with this observation, because it is not accurate. The Russian Federation has proper procedures that allow it to take all the necessary actions in the light of the obligations contained in paragraph 2 of Article 73 of the Convention.

These procedures have been effectively applied over the years, and the fact that the Applicant decided to bring the case to the Tribunal under the prompt release procedures in no way may be used as a justification to make a claim that the Russian Federation does not have proper procedures.

Secondly, it was also claimed that the Russian criminal and administrative procedures applied in prompt release cases are confusing and complicate the implementation of paragraph 2 of Article 73 of the Convention.

In that regard, it should be observed that a lack of understanding of these procedures, which is evident from what is stated on this issue in the Application, could not serve as a justification for this kind of statement. If it has any doubts or

questions regarding the application of these procedures, Japan should either seek better advice on these procedures or consult more with the competent Russian authorities.

As was explained by the previous speaker, the Russian Federation has clearly defined procedures that allow it to meet all the requirements of paragraph 2 of Article 73 of the Convention, and that has been confirmed by the effective application of these procedures over the years without any complaint.

Thirdly, yesterday it was claimed by the Applicant that the speedy reaction of the Russian authorities in establishing the bond is contrary to the usual practices of the Russian competent authorities in similar cases and is provoked by the filing by the Applicant of its Application before this Tribunal. This statement again is incorrect, because it is pure coincidence that the bond was established shortly after Japan filed its Application to the Tribunal.

The procedures that led to the establishment of the bond were in the final stages, which were in no way related to the submission of the Application, and the Japanese side was pretty well aware of that. We believe that the Japanese side rushed the submission of its Application to create the impression that the setting of the bond by the Russian side was motivated by the filing of the Application.

I come now to my concluding remarks.

I believe that the distinguished judges are well aware that in the two cases currently before the Tribunal, the Respondent has found itself in an extremely difficult situation. Within a very short period of time, which was slightly more than a week, the Respondent has been requested to prepare responses and written statements for oral proceedings before the Tribunal in two distinct cases in a comprehensive manner. If the Respondent had been given reasonable and sufficient time to prepare its observations, it would have allowed the Respondent to cover the issues arising out of these cases more extensively. We therefore seek the indulgence and understanding of the Tribunal in this regard.

Thank you for your kind attention.

THE PRESIDENT: Thank you very much indeed, Mr Golitsyn. That brings us to the end of this sitting. As agreed, the sitting will be resumed at 3 o'clock this afternoon, when the representatives of the parties will present their second round of submissions.

The Tribunal sitting is now closed.

(**Luncheon adjournment**)