STATEMENT IN RESPONSE OF THE RUSSIAN FEDERATION

INTERNATIONAL TRUBUNAL FOR THE LAW OF THE SEA

THE *TOMIMARU* CASE

JAPAN v. RUSSIAN FEDERATION
(Applicant) (Respondent)

STATEMENT IN RESPONSE OF THE RUSSIAN FEDERATION

17 July 2007

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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 *53rd Tomimaru*.

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. *53rd Tomimaru* ("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.

II Fishing license

6. According to the License issued by the Federal Service for Veterinary and Phytosanitary Supervision No. RYa-06-1 (m) Series R#01468 trawler *53rd Tomimaru* was permitted to fish in the Respondent's exclusive economic zone (EEZ) for the period from 1 October 2006 to 31 December 2006. Quota allowance was fixed as follows: pollack – 1,163 tons; herring – 18 tons.

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

7. On 1 November 2006 four vessels (*5th Youkeimaru, Gyokuryumaru, 5th Dairinmaru* and *53rd Tomimaru*) that were fishing simultaneously in the Respondent's EEZ were checked by inspectors of the State Sea Inspection of the Northeast Border Coast Guard Directorate of the Federal Security Service of the Russian Federation. In order to conduct a more thorough examination of the vessels and actual amount of catch they were convoyed to the *Avachinskiy* Bay.

8. On 8 November 2006 the examination of the amount of catch was completed in the course of which the following violations were revealed (as indicated in the Note Verbale No. 018-3 2006 dated 9 November 2006 of the Representative Office of the Ministry of

Foreign Affairs of the Russian Federation in Petropavlovsk-Kamchatsk): approximately 20 tons of gutted walleye pollack and certain amount of fish species that are not allowed for catching, including 19,5 tons of halibut, 3,2 tons of ray, 4,9 tons of cod and 3 tons of other bottom fish. This catch was neither permitted by any document issued by the competent authorities nor indicated in the logbook. This constitutes a grave breach of the national legislation of the Respondent as well as a serious damage to the environmental balance and security of the biological resources of the Respondent's EEZ.

IV Administrative and criminal proceedings and the setting of the bond

9. In respect of the Master of the vessel criminal proceedings were instituted on 8 November 2006 concerning the alleged crime stipulated by Article 253 of the Criminal Code of the Russian Federation (exploitation without due permission of the natural resources in the Russian EEZ). The vessel was declared material evidence in accordance with the Article 82 of the Code of Criminal Procedure of the Russian Federation. On 23 November 2006 the Master of the vessel was accused of violation of part 2 of Article 253 of the Criminal Code of the Russian Federation. On the same day he was asked to sign a written undertaking not to leave the city of Petropavlovsk-Kamchatsk and to behave properly. By the verdict of the Petropavlovsk-Kamchatskii Court of 15 May 2007 the Master of the vessel was found guilty for having committed crimes under paragraph 2 Article 253 and paragraph 2 Article 201 of the Criminal Code of the Russian Federation. He paid the fine in the amount of 500 000 roubles, imposed by the verdict, but not damages awarded and was allowed to leave Petrorpavlovsk-Kamchatsk for Japan on 30 May 2007.

10. As for the other members of the crew, no legal proceedings were instituted against them and following the questioning as witnesses in November as part of the investigation they were allowed to leave the Russian Federation for Japan.

11. In respect of the owner of the vessel on 14 November 2006 the administrative proceedings were instituted based on the alleged violation part 2 of Article 8.17 of the Code of Administrative Offences of the Russian Federation (Violation of rules (standards,

norms) regulating activities in internal sea waters, territorial sea, continental shelf and (or) exclusive economic zone of the Russian Federation and of the license conditions).

12. On 1 December 2006 the Inter-District Prosecutor's Office for Nature Protection in Kamchatka informed the Consulate-General of Japan in Vladivostok that it was waiting for the due request for setting of a bond. A special emphasis was made on the question of release of the vessel; Applicant was assured that decision to release the seized vessel would be made upon the payment of bond.

13. On 8 December 2006 the owner of the vessel asked the Inter-District Prosecutor's Office for the Nature Protection in Kamchatka and the Northeast Border Coast Guard Directorate of the Federal Security Service of the Russian Federation to determine the bond in respect of the vessel.

14. In response to the above inquiry of the owner of the vessel, the Northeast Border Coast Guard Directorate of the Federal Security Service of the Russian Federation on 14 December 2006 confirmed to the Consulate-General of Japan in Vladivostok that the proper body to determine the bond in the case of *53rd Tomimaru* was in this case the Inter-District Prosecutor's Office for the Nature Protection in Kamchatka.

15. On 12 December 2006 the Inter-District Prosecutor's Office for the Nature Protection in Kamchatka duly set a reasonable bond. It specified in its letter to the owner of the vessel that the Prosecutor's Office would allow free operation of the vessel upon the payment of the bond. The details of the deposit account were provided. The amount of the bond was set at the level of the overall damages to the marine living resources in the Russian EEZ equivalent to 8,800,000 roubles. The bond established on 12 December 2006 for the release of the arrested vessel, the *53rd Tomimaru*, has never been paid or contested by the owner of the vessel.

16. Despite the fact that on 12 December 2006 a reasonable bond for the release of the vessel was set by the Inter-District Prosecutor's Office for Nature Protection in Kamchatka on 18 December 2006 the owner requested the Petropavlovsk-Kamchatskii City Court to set a reasonable bond for the release of the vessel.

17. By the ruling of 19 December 2006 Judge I.V.Bazdnikin of the Petropavlovsk-Kamchatskii City Court rejected the petition of the owner of the *53rd Tomimaru* to set a reasonable bond on the ground that "the provisions of the Code of Administrative Offences of the Russian Federation do not provide the possibility of releasing a property after posting the amount of bond by the accused on the case of administrative offences".

18. This ruling has never been contested by the attorneys of the owner of the vessel, though from a legal point of view such an opportunity existed.

19. On 28 December 2006 the Petropavlovsk-Kamchatskii City Court decided that the vessel should be confiscated and the fine of 2,865,149.5 roubles should be paid by the owner.

20. The judgement stated that an appeal with regard to it could be submitted to the Kamchatka District Court within 10 days.

21. During the proceedings of the Court that led to the above judgment the attorney representing the owner (i) pleaded guilty, (ii) asked the Court to impose the fine equal to double damages **without confiscation of the vessel because the offence was committed by the owner for the first time** and the company is ready to pay all fines and to cover the cost of the current Court's proceedings.

22. On 6 January 2007 the owner of the vessel submitted an appeal against the aforementioned judgement to the Kamchatka District Court. The latter upheld the decision of the Petropavlovsk-Kamchatskii City Court on 24 January 2007. The owner then lodged an objection in accordance with the supervisory review procedure regarding this decision of the Kamchatka District Court and the matter is currently before the Supreme Court of the Russian Federation, which has not yet taken any decision on it.

23. With reference to the above proceedings the Respondent would like to bring to the attention of the Tribunal the following. By a letter of the Supreme Court of the Russian Federation, dated 20 August 2003 (No.1536-7/общ), providing clarification with regard to entry into force of decisions and judgments concerning administrative offence in the case of the appeal: if a matter has been considered by magistrate judge or the judge of an equal

standing, its decision or judgement could be appealed in accordance with Articles 30.2-30.8 of the Code of Administrative Offences of the Russian Federation, in other words, in the District Court or in another court of an equal standing (paragraph 1 of Article 30.1 of the Code of Administrative Offences of the Russian Federation). According to this letter of the Supreme Court of the Russian Federation Article 30.9 of the Code of Administrative Offences of the Russian Federation provides that the decision of the District Court can not be appealed and enter immediately into force upon the pronouncement of the decision by the district court (paragraph 3 of Article 31.1 of the Code of Administrative Offences of the Russian Federation).

24. In the *53rd Tomimaru* case the decision of the Petropavlovsk-Kamchatskii City Court, delivered on 28 December 2006, was appealed to the Kamchatka District Court, which upheld it in its decision of 24 January 2007 without any changes.

25. In the light of the clarifications provided in the letter of the Supreme Court of Russian Federation, dated 20 August 2003, the decision of the Kamchatka District Court entered into force immediately upon its delivery, e.g., on 24 January 2007. The decision was subject to enforcement from that date.

26. Following the completion of the above procedures and entry into force of the decision of the Petropavlovsk-Kamchatskii City Court, the Federal Agency responsible for the management of federal property in the Kamchatskii District by implementing act No.158-p of 9 April 2007 included the fishing vessel *53rd Tomimaru* confiscated in accordance with the decision of the court into the Federal Property Register as property of the Russian Federation.

V Context of the case

27. 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.

28. Unfortunately, the Applicant does not fully comply with these obligations and, therefore, with its duties of a flag State under the international law.

29. As the Applicant rightly states itself in paragraph 46 of its Application, the arrest of the *53rd Tomimaru* 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 *53rd Tomimaru* (2006) – 9,328,600 roubles;
- for the *88th Hoshinmaru* (2007) – 7,927,500 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.

30. 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

31. 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 paragraph 2 of Article 73 of the Convention in the case of detention of the arrested vessel, the *53rd Tomimaru.*

32. 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 paragraph 2 of Article 73 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

33. In the view of the Respondent, the Application of Japan is inadmissible on the following **three grounds.**

A

The Application is inadmissible because a reasonable bond was set

34. The application is moot because on 12 December 2006 the Inter-District Prosecutor's Office for the Nature Protection in Kamchatka duly set a reasonable bond in the amount of 8,800,000 roubles and specified in its letter to the owner of the company that the Prosecutor's Office would allow free operation of the vessel upon the payment of the bond.

II

35. One of the main grounds invoked by the Applicant for the institution of proceedings under article 292 of the Convention is contained in paragraphs 22 and 55 of the Application. It is alleged in these paragraphs that after the *53rd Tomimaru* was detained and arrested by the authorities of the Respondent, the owner of the vessel made it clear to the relevant Russian authorities that it was willing to post bond or other security necessary for the release of the vessel but no bond or other security had been set by the Russian authorities and consequently no bond or security had been paid by the owner to enable the vessel to leave Petropavlovsk-Kamchatsk.

36. In response to these allegations, the Respondent would like to state unequivocally that these allegations of the Applicant are based on misrepresentation of facts and developments that took place in this case and therefore are not justified. Contrary to what is alleged by the Applicant, as demonstrated in Chapter II of the present Statement of Response, the competent Russian authorities did set the bond in this case. They promptly informed the owner of the arrested vessel about setting of the bond and forwarded to it detailed instructions regarding the bank account to which the payment should be made. Furthermore, as required by the Convention, they informed the owner about their readiness to release the vessel upon posting of the bond by it.

37. The owner of the arrested vessel, as pointed out in paragraph 15 of the present Statement in Response, however, did not pay the bond. It follows from the above that the Respondent has fully complied with the requirements of paragraph 2 of Article 73 of the Convention and consequently duly met its obligations under the relevant provisions of the Convention.

38. As the reasonable bond has 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 *53rd Tomimaru* is inadmissible.

B

The Application is inadmissible because the vessel was confiscated

39. A similar ground for inadmissibility was brought before the Tribunal in two cases. In the *Grand Prince case* the Tribunal did not have the opportunity to pronounce itself on this matter because it had found that it lacked jurisdiction, as there was not enough evidence that Belize was the flag State. Nevertheless, the arguments of France in that case are very pertinent.

40. The Respondent would like to make in this Section some general observations with regard to the nature of the prompt release proceedings as defined in Article 292 of the Convention.

41. It is worth reminding that this issue was raised by the French Government in connection with the application for prompt release submitted on behalf of Belize to the Tribunal concerning the vessel Grand Prince.

42. In a communication forwarded to the Registrar of the Tribunal on 28 March 2001, the Director of Legal Affairs of the Ministry of Foreign Affairs of France in Part 1 related to the very nature of the prompt release proceeding states the following:

> " Thus, when the internal judicial proceedings have reached their conclusion and, in particular, when they have led to the pronouncement of a sentence of confiscation of the vessel, any possible resort to Article 292 procedure loses its reason for being. In such a case, the application for prompt release is moot. As from the time when a national court has pronounced confiscation of the vessel as the applicable sanction, the introduction of a prompt release proceeding before the International Tribunal for the Law of the Sea is not only no longer possible but indeed is not even conceivable. As part of a proceeding of this kind, the Tribunal decides as to the reasonableness of the bond required to order the release of the vessel. This presupposes, firstly, that simple provisional measures of an interlocutory kind have been taken with respect to the vessel, and, secondly, that those measures can be revoked or stayed in

exchange for a guarantee of enforcement of possible debts to the State by the owner of the vessel. But a confiscation declared by a national court as a principal or secondary penalty has as its effect authoritatively and definitively to transfer to the State the property confiscated. The owner of the vessel loses his title by virtue of the judicial decision and, if he seeks to recover his rights in the property, the remedies open to him can no longer be pursued within a proceeding for prompt release, since he can no longer be considered as the holder of the title to the vessel.

Moreover, we should not lose sight of the fact that, by reason of the particular function assigned to it, the procedure under Article 292 cannot interfere with judicial proceedings initiated by the coastal State concerned with a view to enforcement action against violations of its laws and regulations committed by the detained vessel.

This flows from paragraph 3 of Article 292, which provides that "The ... Tribunal shall deal ...with the application for release and shall deal only with the question of release, **without prejudice to the merits of the any case before the appropriate domestic forum** against the vessel, its owner or its crew. ... In any penal proceeding instituted against the captain of a foreign fishing vessel for violation of the laws and regulations of the coastal State, the determination of the applicable penalty and the imposition of that penalty are an integral part of what one calls 'the merits', i.e. the very **substance** of the case submitted to a national court ...

The International Tribunal for the Law of the Sea cannot, through the means of a prompt release proceeding, interfere in the conduct or result of an internal judicial proceeding (emphasis added)."

43. The Respondent considers that the French Government has addressed a very important issue regarding the nature of the prompt release proceeding under Article 292 of the Convention. The position taken by the French Government corresponds to what is

stated in the present Response, namely that once the proceedings before the national court have been instituted and the judgment, which includes the confiscation of the arrested vessel, has been delivered by the national court, application for the prompt release proceeding under Article 292 of the Convention would be equivalent to the interference by the Tribunal in the conduct and result of internal judicial proceedings of the coastal State concerned. As pointed by the French Government, following the issuance of judgment by the national court of the coastal State, remedies can only be pursued by the owner of the vessel in accordance with the applicable national laws and regulations of the coastal State and cannot be pursued within a proceeding for prompt release under Article 292 of the Convention. Consequently this constitutes another reason for which the Tribunal should find the present case inadmissible in the view of the Respondent.

44. In the *Juno Trader* the Tribunal did consider the matter of effects that a national decision on confiscation might have on the issues of jurisdiction and admissibility in the prompt-release proceedings. However, it rejected the argumentation of the Respondent because of the particular circumstances of the case, in which the decision on confiscation was suspended. Therefore, the Tribunal stated:

> "In any case, whatever may be the effect of a definitive change in the ownership of a vessel upon its nationality, the Tribunal considers that there is no legal basis **in the particular circumstances of this case** for holding that there has been a definitive change in the nationality of the *Juno Trader* (emphasis added)."

45. In contrast to the *Juno Trader* case, the confiscation of the *53rd Tomimaru* was imposed not by an administrative decision but by a court judgment. This judicial decision was further upheld by an upper court strictly in accordance with the Russian procedural law and principles of due process. The owner of the arrested vessel exercised its right to designate an attorney to represent its interests before the court. The decision has not been suspended, and has already entered into legal force. As a result, the *53rd Tomimaru* was included into the Federal Property Register as property of the Russian Federation (see paragraph 26).

C

Submission in sub-paragraph 1 (c) of Section A of the Application is vague and general

46. In the view of the Respondent the submission in sub-paragraph 1 (c) of Section A of the Application is too vague and general.

47. 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 *53rd Tomimaru*, **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.

48. 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.

49. 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).

50. 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.

51. 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.

52. 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).

53. 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.

54. 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).

55. 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).

56. 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.

57. For the reasons referred to above, the Respondent requests the Tribunal to declare the Application inadmissible.

III Comments with regard to issue of responsibility

58. In paragraph 62 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".

59. Noting that the present procedures before the Tribunal relates solely to the prompt release of the *53rd Tomimaru*, 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 PARAGRAPH 2 OF ARTICLE 73 OF THE CONVENTION

1 Obligations under prompt-release procedure

60. According to paragraph 1 of Article 73 of the Convention the coastal State may, in exercise of its sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone, to take such measures, including boarding, inspection, arrest and judicial proceedings, **as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with the Convention**. It follows from this paragraph that in exercise of its sovereign rights within the exclusive economic zone the coastal State has full authority to take all the necessary measures, including the institution of judicial proceedings, to ensure full compliance with its conservation and management measures.

61. Paragraphs 2, 3 and 4 of Article 73 contain certain conditions that should be observed by the coastal State in situation where foreign vessels and their crews are detained or arrested by the coastal State for violation of its fisheries laws and regulations in the exclusive economic zone, as well as obligations of owners and crews of such vessels.

62. These conditions include: prompt notification of the flag State, through appropriate channels, of the action taken and of any penalties subsequently imposed (paragraph 4); prohibition of imprisonment, in the absence of agreements to the contrary by the States concerned, or any other form of corporal punishment in penalties for violations of fisheries laws and regulations in the exclusive economic zone that may be imposed by the coastal State (paragraph 3); and finally requirement of the prompt release of arrested vessels and their crews upon the posting of reasonable bond or other security.

63. The Respondent considers that it has fully complied in this case with the provisions of paragraph 4 of Article 73, as confirmed *inter alia* by the Application, by keeping the Respondent constantly informed about the developments in this case.

64. Implementation of paragraph 3 of Article 73 is not an issue in the present case. With reference to paragraph 2 of Article 73 it should be observed that pursuant to its provisions the coastal State is obliged to take two actions: to set reasonable bond or other security for arrested vessels and their crews; and promptly release them upon the posting of such bonds or securities.

65. In the Respondent's view, however, the obligations under prompt-release procedure rest not only on the detaining State, but also on the owner of the detained vessel. In their Joint separate opinion to the Judgment of 18 December 2004 in the *Juno Trader* case judges Thomas Mensah and Rüdiger Wolfrum stated, *inter alia*:

> "In this regard, we consider it appropriate to emphasize that there is also a duty on flag States and shipowners to act promptly. In our view, the prompt-release procedure under article 292 of the Convention is designed as an expeditious procedure whose sole objective is to ensure that an arrested vessel is not tied up in port for a long period while awaiting the finalization of the national administrative or criminal procedures. This objective can only be achieved if the shipowner and the flag State take speedy action either to exhaust the possibilities provided under the national judicial system of the detaining State or to initiate the prompt-release procedure under article 292 of the Convention sufficiently in time before the criminal or administrative procedures against the vessel in the domestic forum are completed. The procedure under article 292 of the Convention cannot be used either as an appellate procedure against decisions of the competent domestic fora or as a remedy against a procedural default in domestic judicial procedures on the merits of the case against the ship, its owner or crew. Where a shipowner of the flag State waits until the completion of the domestic procedures, the Tribunal will have neither the competence nor the possibility to apply the prompt-release procedure of article 292 of the Convention" (para.14 of the Joint separate opinion)."

66. The Respondent shares this opinion.

67. It is worth reminding that paragraph 2 of Article 73 addresses the situation with vessels and crews, which are arrested for violations

of laws and regulations established by the coastal State for the purposes of conservation and management of living resources of its economic zone. Posting of the required bond or security is an obligation for the owners of the arrested vessels and its crew under prompt-release procedure and only **prompt** compliance with this obligation triggers prompt release of the arrested vessels and their crews.

68. Moreover, Article 73 should be read in its entirety because its paragraphs are closely linked and interrelated to each other. Paragraph 2, 3 and 4 should be read in conjunction with what is stated in paragraph 1 of this Article concerning the exercise by the coastal State of its sovereign rights in the exclusive economic zone. It is obvious in this regard that if the obligation regarding the posting of the bond is not met by the owner, the coastal State retains full authority to proceed with all the necessary measures that may be required to ensure compliance with its laws and regulations, including the institution of the appropriate judicial proceedings.

II The bond set on 12 December 2006 by the Inter-District Prosecutor's Office for Nature Protection in Kamchatka is the bond as defined in paragraph 2 of Article 73 of the Convention

A

The required steps were undertaken

69. Pursuant to the obligations under paragraph 2 of Article 73 of the Convention the Respondent (i) identified the proper authority for the setting of the bond; (ii) set the bond, (iii) provided the owner with the precise and clear information with regard to the amount of bond and the account details, and (iv) assured the owner that the arrested vessel would be released upon the payment of the bond. These steps of the Respondent are described in paragraphs 14, 15, 34-36 of the present Statement in Response.

21

B

Reasonable bond to release the vessel was set

70. The bond to be paid by the owner of *53rd Tomimaru* as indicated in the preceding paragraphs of the present Statement in Response, was set on 12 December 2006 by the Inter-District Prosecutor Office for Nature Protection in Kamchatka. The exact amount of the bond was counted on the basis of the overall damages to the marine living resources. The owner of the arrested vessel was provided with detailed information regarding the payment of the bond. The owner was also informed that the vessel will be released upon the payment of the bond. The owner has not made the payment.

71. The argument of the Applicant based on the 7 March 2007 Note Verbale of the Consulate-General of Japan in Vladivostok No.A-28.07 (para.8 of the Applicant's Memorial) that the bond set in the discussed letter is not a bond for the purposes of Article 73 (2) of the 1982 Convention should be rejected. The fragmentation of the notion of bond as suggested by the Applicant is not in conformity with the purposes and nature of the bond and does not coincide with the actual criminal and administrative proceedings carried out by the Respondent.

72. Respondent emphasizes that the bond set in the letter of 12 December 2006 of the Inter-District Prosecutor's Office for Nature Protection in Kamchatka is the bond for the purposes of release of the vessel.

CHAPTER IV SUMMARY OF ARGUMENTS

73. Factual information presented by the Respondent as well as legal analyses of the provisions of Article 73 of the Convention unequivocally confirm that contrary to what is alleged by the Applicant, the Respondent has fully complied with its obligations under the Convention, and that as a result the case should be declared by the Tribunal inadmissible.

74. This conclusion is supported by the following:

(i) In pursuance of its responsibilities under paragraph 4 of Article 73 of the Convention, the competent authorities of the Respondent have promptly notified the Applicant, through appropriate channels, of actions taken and of penalties imposed in connection with detention and arrest of the *53rd Tomimaru* and its crew;

(ii) In pursuance of its responsibilities under paragraph 2 of Article 73 of the Convention, the competent authorities of the Respondent, namely the Inter-District Prosecutor for Nature Protection of Kamchatka, set bond, provided the owner with the necessary details regarding the payment of the bond and informed that owner that they would release the vessel upon posting of the bond;

(iii) The owner of the *53rd Tomimaru*, who has never contested the amount of the bond, has not promptly paid the bond. Moreover the owner and the attorneys representing it in the judicial proceedings have never raised objections to the ruling of Judge I.V. Bazdnikin of 19 December 2006 rejecting petition of the owner of the arrested vessel to set a reasonable bond on the ground that "the provisions of the Code of Administrative Offences of the Russian Federation do not provide the possibility of releasing a property after posting the amount of bond by the accused on the case of administrative offences."

(iv) The owner of the *53rd Tomimaru* exercised its right to be represented before the court by its attorney. Following the issuance of the judgment, it has exercised its right to submit an appeal in accordance with the applicable regulations.

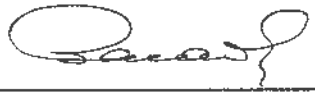
(v) Following the issuance of judgment by the competent national court which provides for the confiscation of the arrested vessel, remedies can only be pursued by the owner of the vessel in accordance with the applicable national laws and regulations of the coastal State and cannot be pursued within a proceeding for prompt release under Article 292 of the Convention, in particular, if the decision on confiscation is not suspended and has already entered into force.

(vi) The submission under sub-paragraph 1 (c) of Section A of the Application is formulated in such general and vague terms and is so unspecified, that it goes beyond the scope of the procedure of envisaged in Article 292 of the Convention and actually requests the Tribunal to exercise functions which are not normally attributed to it by Article 292 of the Convention.

(vii) Article 73 of the Convention should be read in its entirety because its paragraphs are closely linked and interrelated to each other and therefore, paragraphs 2, 3 and 4 should be read in conjunctions with what is stated in paragraph 1 of this Article concerning the exercise by the coastal State of its sovereign rights in the exclusive economic zone.

(viii) It follows, *inter alia,* from close interrelation of various provisions of Article 73, that if the obligation regarding the posting of bond is not met by the owner, the coastal State retains full authority to proceed with all the necessary measures that may be required to ensure compliance with its laws and regulations, including the institution of the appropriate judicial proceedings.

Dated 17 July 2007



Evgeny Zagaynov

Agent for the Russian Federation

PART II ANNEXES

1. Letter dated 5 November 2006 from the Northeast Border Coast Guard Directorate to the Kamchatka Inter-district Prosecutor's Office for Nature Protection (No. 21/705/1/1/8574).

2. Letter dated 30 November 2006 of the vessel's owner to the Northeast Border Coast Guard Directorate of the Federal Security Service of the Russian Federation.

3. Letter dated 1 December 2006 from the Kamchatka Inter-district Prosecutor's Office for Nature Protection to the General Consulate of Japan in Vladivostok (No. 1-640571-06).

4. Letter dated 12 December 2006 from the Kamchatka Inter-district Prosecutor's Office for Nature Protection to the Head of Kanai Gyogyo Co. the General Consulate of Japan in Vladivostok (No. 1-640571-06).

5. Letter dated 9 March 2007 from the President of the Kamchatka District Court to the Defence Counsel of the Kanai Gyogyo Co.

6. Ruling dated 28 December 2006 of the judge of the Petropavlovsk-Kamchatskiy City Court.

7. Decision on the petition dated 12 December 2006 of Major Investigator of the Kamchatka Inter-district Prosecutor's Office for Nature Protection.

8. Adjudgement dated 24 January 2007 of the Kamchatka District Court.

9. Short information on violations by Japanese fishing vessels of fishery regulations in the Exclusive Economic Zone of Russia (composed by the First Department of Asia of the Ministry for Foreign Affairs of Russia in 2000).

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10. Extract from the Code of Administrative Offences of the Russian Federation (Article 8.17).