INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
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2000

Public sitting

held on Thursday, 27 January 2000, at 15.00 hours

at the International Tribunal for the Law of the Sea, Hamburg,

President P. Chandrasekhara Rao presiding

The “Camouco” case

(Application for prompt release)

(Panama v. France)

Verbatim Record

Uncorrected
Non-corrigé

Present:	President	P. Chandrasekhara Rao
	Vice-President	L. Dolliver M. Nelson
	Judges	Lihai Zhao
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		Vicente Marotta Rangel
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		Anatoli Lazarevich Kolodkin
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as Agent;

and

Mr. Jean-Jacques Morel, Advocate, Saint-Denis, Réunion,
Mr. Bruno Jean-Etienne, Advocate, [ ],

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France represented by:

Mr. Jean-François Dobelle, Deputy Director of Legal Affairs of the Ministry of Foreign Affairs of France,

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and

Mr. Jean-Pierre Queneudec, Professor of International Law at the University of Paris I, Paris, France,
Mr. Francis Hurtut, Assistant Director for the Law of the Sea, Fisheries and the Antarctic, Office of Legal Affairs of the Ministry of Foreign Affairs of France,
Mr. Bernard Botte, Drafting Officer, Sub-Directorate for the Law of the Sea, Fisheries and the Antarctic, Office of Legal Affairs of the Ministry of Foreign Affairs of France,
Mr. Vincent Esclapez, Deputy Regional Director for Maritime Affairs, Réunion,
Mr. Jacques Belot, Advocate, Saint-Denis, Réunion,

as Counsel.

MR DOBELLE (*Interpretation*): Mr President, Members of the Tribunal, it is a great honour for me to represent the French Government before the International Tribunal for the Law of the Sea, all the more so as it is the first time that France has had occasion to present a case before your high jurisdiction. This case raises important legal questions and serious issues for the future of the region and the planet.

After presenting the facts we will describe the context in which the case in point is situated before analysing the legal questions raised by the present application. Then, if permitted, I shall hand over to Professor Queneudec for about 20 minutes.

We shall list a number of facts which we consider to be important in trying to establish the truth. However, before we do so, perhaps I may say that this morning the applicant raised doubts on the validity and objectivity of certain evidence produced by the French party. I emphasise emphatically that It is inadmissible to doubt the word of French officers who were on board the *Floréal.* I remind the Tribunal that the officers have taken oaths and that the Floréal is a warship within the meaning of article 20 of the Convention on the Law of the Sea. That means that this vessel is placed under the command of a naval officer in the service of his state and his crew is subject to the rules of military discipline.

It is also inadmissible to insinuate that a French magistrate would behave like some sort of blackmailer by exercising pressure on the Captain of the *Camouco*. It is unacceptable also to doubt the good faith of the translators who proceeded to translate the protocol of the hearings of the Captain of the *Camouco.* Having established these facts, I should like to return to the chronology and mention the most important facts.

On 28 September 1999 at 13 h 28, the commander of the helicopter carried on board the national navy surveillance frigate, *Floréal*, located a longline ship involved in laying its fishing line at a position situated inside the exclusive economic zone of the Crozet Islands, 160 nautical miles from its northern limit. The ship failed to answer VHF radio calls and took flight. The identification marks, name, registration and radio call sign were concealed by grease and paint. This behaviour in itself is important and would indicate a ship engaged in illegal fishing.

Again on 28 September 1999 at 13 h 30, after having cut its fishing line, the fleeing ship jettisoned documents and 48 green and white bags. It was possible to recover one of the bags which was found to contain 34 kilos of fresh toothfish. It was particularly shocking to have heard this morning that such toothfish came from the fridge of the *Floréal.* I remind the Tribunal that the fish had been topped, tailed and gutted and these were also recovered.

Still on 28 September, at 14 h 31, the vessel stopped -- one hour after they received the order to stop. Two minutes later at 14 h 33 three lines were released into the sea after the vessel and two minutes later the rear of the longline hoisting gear was hosed down. A quarter of an hour later, at 14 h 50, two members of the crew jettisoned documents into the sea.

Again, all these facts are indicative. At 15 h 29 the *Floréal* inspection team approached and boarded the ship and identified it as being the *Camouco,* flying the

Panamanian flag captained by Mr Hombre Sombrido. I remind the Tribunal that most of the crew, including the Captain, were on board the *Camouco* when, flying the French flag, it had been called *St Jean* and had necessarily been informed of the fishing areas as well as the applicable fishing rules in the Crozet EEZ as it had fished there legally between September 1998 and 30 June 1999. Moreover, the Captain had served as second-in-command on the ship, *Mar de Sur II* when it had been cited for similar acts in February 1998.

It should also be noted that before being called *St Jean* in 1997 the *Camouco* had been called *Merced* and, flying the Panamanian flag, had already committed several infringements in the same Crozet economic zone.

I am going to illustrate this by giving you further details, stating that in the 18 months flying under the French flag previously, the *Merced* was identified at least 12 times taking part in illegal fishing in the French economic zone. It has also been given several warnings.

Giving the *Merced* a licence under its new name, *Saint-Jean*, shows that France did not really draw any lesson from its previous experiences. The authorities thought that they had taken sufficient initiatives to try to make the ship-owners to improve their behaviour. The French authorities are the first to regret that this message was not taken on board. The case before of you proves this. The imperative of the hunt for profit prevailed over reason.

Let me recount in chronological order the most important facts. During the inspection of the ship, 6 tonnes of frozen toothfish were found in the holds. Also new fish hooks and bleeding waste matter were also found, as were toothfish fin and three fillets. The fish was fresh, bleeding, odourless and unfrozen. Pieces of sardine used as bait were also found.

Furthermore, the helicopter also recovered the transmission log. Interrogation of the second in command was to show that he had thrown the radio-electric service book into the sea, knowing that it showed the daily positions of the ship.

We are now at 28 September at 20 h 28. A logbook and a ring binder containing maps of the shallows in the zone were discovered hidden in a container in the galley. This is a strange place to file a logbook.

On 28 September at 21 h 40 a buoy was recovered.

On 29 September at 13 h 13 a protocol of violation drawn up by the *Floréal* inspection team noted that the *Camouco* was committing an offence for the following reasons:

first of all, for having fished without authorisation in the Crozet Islands EEZ under French jurisdiction

secondly, for not having declared, on entering the EEZ of the Crozet Islands that it had 6 tonnes of toothfish aboard

third, for having concealed the ship's identification characteristics by flying a foreign flag

fourth, for having attempted to avoid verification by the *Floréal* inspection team by taking flight

The apprehension of the ship and the material which was seized shows that the ship was engaged in illegal activities.

On 1 October 1999, two days after having drawn up the protocol of violation, the Prefect of La Réunion informed the Consult General of Panama in Paris that the Captain of the vessel had been the subject of a protocol for infringing the fishing regulations of the Crozet Islands economic zone and that the ship was being diverted to Port-des-Galets in La Réunion, so that its captain should be tried before the Saint-Denis High Court.

We are now at 5 October and the *Camouco* docked at the Port-des-Galets at la Réunion.

During the preliminary investigation, the Captain admitted that the *Camouco* radio log had been jettisoned into the see but gave no reason for his act. He said that he did not know why it had not been properly kept after 26 September and did not convincingly explain either why he had not, for more than an hour, responded to the summons by the *Floréal* and its helicopter to identify and to stop a ship. The Captain merely said that he was bed-ridden, that he was suffering from toothache and mouth-ache. This is rather strange.

The Captain admitted, upon a second interrogation, that he was in breach in hiding the identification marks of this ship. He claimed that these marks were to be re-painted during the days following the summons by the *Floréal*.

On 6 October at the second hearing the Captain admitted that he had this time, in breach of the regulations, failed to signal his presence and declaring that he was carrying 6 tonnes of toothfish aboard inside the *Camouco* E E Z, despite his knowledge of French legislation.

At another hearing on the same day the Captain made a declaration in which he contradicted himself by claiming not to have fished inside the Crozet EEZ and at the same time not knowing where he had fished, because he had not kept his ship's logbook up-to-date. If he did not know where he was fishing, how can he know that he was not fishing within the Crozet EEZ?

On 7 October 1999 the Public Prosecutor applied for the opening of a preliminary investigation into Captain Hombre Sobrido on the following counts:

first, for failure to declare entry into the Crozet Islands economic zone and the tonnage of fish he was carrying aboard

secondly, for fishing without authorisation in the Crozet Islands EEZ

third, for concealing the ship's identification marks

fourth, for refusing to submit to verification by the agents charged with policing fishing.

All of these offences are covered by articles of French law. I would refer you to the written submissions on this count.

On 7 October during a hearing it was indicated to Mr Hombre Sobrido that all the members of the *Camouco* crew had recognised that the toothfish in a bag had been recovered from the sea by a helicopter, and they recognised that as belonging to their ship. This was denied by the Captain.

On the same day, 7 October, the Regional and Departmental Director of Maritime Affairs of la Réunion notified the Captain of the *Camouco* of the seizure of his ship and its catch.

The next day, 8 October, the Magistrate of the District Court of Saint-Paul confirmed the seizure of the ship, ordering the lifting of the seizure and that this be subject to the payment of 20 million French francs in the terms of a bond.

On 13 October the crew was repatriated on the initiative of the ship owner.

On 14 December, following the summary writ brought by the ship owner as defence, the Chief Magistrate of the District Court of Saint-Paul confirmed his decision of 8 October and ordered Mr Sobrido to pay damages to the French state in the amount of 10,000 French francs.

On 27 December 1999, the Appeal Court at Saint-Denis notified the Regional and Departmental Director of Maritime Affairs of the appeal lodged by the ship owners against this decision.

The date of the judgement on the merits of the case by Saint-Denis criminal court has not yet been set. This will follow on from the investigation procedure currently under way, which is coming to an end.

President and Members of the Tribunal, what shall we conclude from this recollection of the facts? At least that the charges against the Master of the *Camouco* are serious, precise and concordant.

The declarations made by Mr Hombre Sobrido were often not quite correct. The fact that, for example, these elements of interest to the investigation were thrown overboard shows that he wished to escape from his responsibility. Contrary to what may be said, the line which the *Camouco* was throwing when it was over-flown by the surveillance helicopter of the *Floréal*, shows that they intended to fishing the French zone along Crozet, and that they had this intention from the very outset. It is not a question of passing through the zone.

Having recalled the facts, I would now like to recall the general context of this matter.

What is the general context of this case? We are talking here about illegal, non-regulated and non-declared fishing in the EEZ, especially along the islands of Crozet.

I would like to recall the following. Illegal, non-regulated and non-declared fishing has in fact been very preoccupying for sometime. Illegal fishing on a great scale in this southern seas is a recent phenomenon which has disastrous consequences for the French economic zones.

The first serious indications of illegal fishing go back to the 1993-94 season and, above all, the Atlantic sector of the southern oceans at the time. In Southern Georgia poaching began with Chilean fishermen whose vessels and longliners were at times caught committing offences. I would like to refer to the CCAMLR report.

The United Kingdom has taken dissuasive measures against offending fishermen, whose numbers and flags were increasing considerably. I would like to mention: Argentina, Belize, Chile, Korea, Russia and Uruguay, with the problem moving, quite naturally, from the Atlantic sector to the Indian sector of the ocean. Only the French zone along the Kerguelen islands had normal or regular fishing of toothfish since 1984-85 but there were other zones that were potentially interesting and not exploited. Here I refer to the South African economic zone of the Marion Islands and Prince Edward Islands, the French area, and Australian area, that is the Crozet Island and the Heard and McDonald Islands in Australia and the Ob et Lena and Kar-Dag banks which are in the international zone.

Of course it was the economic zone of the Marion/Prince Edward Islands which is the closest to southern Africa, which was the zone which was first hit, as it were, at the beginning of the 1996-97 fishery season or with longliners with new flags; southern Africa, Panama, Portugal, Vanuatu. Since then, unfortunately, the scenario could be foreseen as being confirmed. Now all these fleets are moving from the west to the east of the Indian Ocean. This has gradually eaten away at all the potential fishery zones; that is, moving from one to another having depleted the stocks there.

The organisation of this process which is eating away at the waters is really poaching. It has been orchestrated by the shipping owners with flags of convenience and continual rotations between the ports of discharge and mixed crews, et cetera.

The ports of discharge since 1996 have been: Cape Town, Walvis Bay (Namibia) and then Port Louis as a result of *Floréal's* access facilities and the fact that the local authorities are not so severe.

There is a regional international organisation which has a role to play; that is the CCAMLR, the Commission for the Conservation of Antarctic Marine Living Resources. This was set up by the Canberra Convention of 20 May 1980. By the way, France is a member of that.

In the seasons 1996-97, the Scientific Committee of the CCAMLR recorded a high quantity of non-declared toothfish catches, especially in the Indian Ocean. Indeed, the total of declared catches outside and inside the zone covered by the CCAMLR was 32, 392 tonnes in 1996/97, 5,400 tonnes, of which were for Crozet and Kerguelen. Non-declared catches from discharges to South Africa and Mauritius was between 74,000 and 82,000 tonnes. The overall catch therefore was between 107,000 and 115,000.

These facts are significant in themselves and hardly need comment. These have been corroborated by the fact that 130,000 tonnes amounted to an overall wholesale value of US$ 0.5 billion available in the world market, mostly for consumption by the Japanese.

Then it was considered on the basis of discharges and the identification of vessels in our economic zones that illegal fishing for the year 1997/98 was more or less at the same level as the previous year, 1986/87, unfortunately.

Finally, the Scientific Committee was worried about maintaining the thresholds for this fish. Having recorded levels of six times almost that of authorised catches, they realised that all this action was endangering the renewal of the species and the continuation of the economic activity of French ship owners in our EEZ.

Some of us were vehemently denounced by certain countries: New Zealand, Australia and South Africa. With a certain degree of constant vigour, as it were, by the EU, this poaching activity was regarded as compromising the conservation policy of the CCAMLR and in fact was also regarded as threatening its very credibility. CCAMLR's action, just as that of France as the coastal state, nevertheless has been held in check by factors which are essentially of an economic nature. Indeed, by the way, the price of toothfish was US$ 5 to 7 per kilo in 1998 on the Japanese market. At the moment the discharge price is about $12 due to the rise in the yen, which makes it one of the most expensive fish world-wide. In the United States the price of the headed and gutted product has virtually tripled since July 1998.

There is also a market which has been prospering in China for some time. This is a very attractive situation, which leads to over-fishing well beyond the quotas fixed by CCAMLR.

This phenomenon which we have seen is due to the depletion of the stocks of toothfish, which were initially situated along the coasts of Chile and Argentina, and which have been over-exploited up to the beginning of the 1990s by the same ship-owning fleets as those which are fishing along the southern countries and it has led to a drastic reduction in French activity in our own economic zone, where only four shipping owners are a yield which is 50 per cent lower than that in previous years.

It is not a question of the ecological effects of this which have been disastrous but also the economic results of this poaching.

Taking all the zones, for 1997 it has been estimated that this poaching activity carried out by more than 80 longliners for all the region had an overall volume of

more than 80,000 tonnes for the Indian sector of the southern seas alone. Here again I would like to refer to the CCAMLR Report and information stemming from Australia, Japan and South Africa.

Concerning the Crozet economic zone, for the period 1996-97 it is clear that a lot of the illegal catches came from fishing in the French zones and in particular in Crozet. In fact, a few weeks after the observation of illegal fishing around the Prince Edward and Marion Islands by the South Africans, the first violation protocols were drawn up in the economic zone of Crozet in November 1996. The longliners largely involved multiple offenders from South America. Sometimes their action was dangerous and they have profited from the fact that France for some time was not in a position to respect its national sovereignty around its islands. In fact, the *Albatross*, a patroller, was absent for one year and for technical reasons the intervention of other vessels (*Centaure, Ventose*) could not be carried out before the end of March 1997. This means that this poaching was very great. Sometimes more than 15 longliners were simultaneously fishing in the Crozet area, which has been forbidden to commercial fishing.

Due to this over-fishing the yields have dropped more than 2 tonnes per longliner in December 1996 to less than 1 tonne in April 1997. This is by more than a half in four months.

I would now like to give you some examples for the 1996-97 EEZ of Crozet, looking at the following important facts:

30 protocols of the fishing inspector on board the *Anyo-Maru N22*
12 protocols of the Master of the *Marion-Dufresne*
10 protocols of the adopted Crozet district, noting offences at the station of Port Alfred or in the territorial waters themselves
36 different longliners formally identified, without counting those which were impossible to identify because they also masked their identification marks or they escaped the arrest of two longliners caught I the act of illegal fishing by the National Navy
the reconduction or injunction to leave the E E Z against four longliners.

The consequences were the following:

a loss of more than 19,000 tonnes of marine resources in five months; that is nearly 45 per cent of the exploitable biomass
a net loss in minimum economic value of about 375 million francs
reconversion of the French fishing to Crozet, which had been intended to relieve the Kerguelen economic zone, has remained compromised and it is impossible to envisage intergovernmental agreements, which would mean fees for the territory

It is impossible to constitute the stock in the medium term.

For the period 1997-98 this zone of Crozet was fished by fishermen by illegal methods. For 1997-98 I will mention some of the important factors:

Pursuit of illegal fishing in the winter, despite the intervention of the navy in the autumn, that is March-April 1997
observation of the same offenders
subsequent reduction in violations, but this is due to a reduction in resources and the fall in yield
an economic loss of between 10 and 30 million francs
an illegal catch of between 500 and 1500 tonnes

In February 1998 the French Navy had the opportunity to intervene on board the *Merced* to assist two wounded Spanish sailors and they noted once again on this occasion that the *Merced* had entered into the French exclusive economic zone without having announced that intention or declared their catch.

We therefore have evidence that there is a reduction to zero of the effect of the programme for administering the resources and that you can annihilate the economic resources in the medium term. We must not expect the situation to improve, because we will need many years for the stock to recover in view of the late maturity of this species and its longevity. Therefore, a balanced annual catch of 1200 tones was foreseeable after the results of the campaign of assessment.

For the current season, we have information on shipping in the ports of the region and we have seen that about 15 fishing vessels are engaged in illegal fishing only in the Crozet zone. On the basis of an assessment of average catches of 150 tonnes per ship per season, one can estimate at $120 million the turnover resulting from this illegal activity, that is by a ship of the capacity of the Camouco, i.e. $8 million per season.

These illegally fished toothfish, often fished by vessels flying flags of convenience, are always sent to their destination via third countries of the CCAMLR, such as Namibia, Mauritius or Mozambique, in considerable quantities. In the last three years this illegal fishing amounted to 90,000 tonnes in the zone covered by the Convention, that is twice that of normal catches. This phenomenon, which can no longer be supported by the ecosystem, has led to drastic reductions in the stocks of toothfish in certain sectors of the zone of the Convention.

I would add that we must also mention the death of seabirds, especially albatross and petrel, which very often are caught in the lines which are used to catch the toothfish. This is very much of concern. The consequence is a reduction in the population of these species. At the last meeting of the CCAMLR in October/November 1999, the Scientific Committee underlined the fact that illegal fishing would have serious consequences for the long term yield and that the total of the catch of certain sectors would in the short term very seriously compromise the status of reproducible stock.

We are not talking about the extinction of the species, but this dramatic situation is being followed with growing attention by ecological associations, politicians and the media. In March/April 1999, a vessel chartered by the Greenpeace organisation chased the *Salvora*, flying the flag of Belize, suspected of having illegally fished toothfish in the French economic zone of the Kerguelen Islands, and the marks

identifying the vessel had been disguised. Mauritius refused the *Salvora* permission to unload its catch in its territory.

During the last meeting of the CCAMLR, which was a subject of particular interest because of the adoption of a system of documentation of toothfish catches, the host state of Australia ,where the CCAMLR is based, for the first time expressed a wish to hold a ministerial meeting. This meeting could not take place for technical reasons, but the idea that such a meeting was called marks a political awareness, which is very important. This conference was also covered widely by the international press, which has become more and more aware of questions linked to illegal fishing.

More recently, on 2nd December 1999, the Counsel of the Commission of the Indian Ocean (COI) also adopted a resolution which has to do with combating illegal fishing. The French administration intends to use all the legal means at its disposal to counter this threat of illegal fishing.

We must also add that the threats to the environment and to the resources are not perhaps the most serious or tragic consequence of this type of activity. This form of fishing, often a “pirate” form of fishing, also goes hand in hand in many instances with physical and economic exploitation of the crew, which is approaching a system of slavery. On several occasions over the past three years, the French Navy has intervened to help vessels in need, vessels which were being badly maintained and badly manned by unqualified crews which were often ill, under-fed and living in hygienic conditions which were in some cases indescribable. This form of human exploitation is all the more shocking because it is a source of considerable profit, and this will in itself justify the means used by France to combat this situation within the areas under its jurisdiction. I am not saying that the *Camouco* was in the same situation, but this aspect of the reality, which is very often forgotten, cannot simply be ignored without bearing in mind the risk of leaving the Tribunal in ignorance of one of the most serious consequences of these activities with which the Camouco has been associated on several occasions and using the same vessel when it was called the *Merced*.

Mr President, Members of the Court, I have finished the first two parts of my oral comments. If I may, I would now like to have a short break before continuing with the examination of the legal questions. May I ask to stop for a moment and to come back after a few minutes.

THE PRESIDENT: How much time would you like?

MR DOBELLE: Mr President, I am in your hands, but would it be possible to have a break of 10 or 15 minutes, after which I will continue with the legal aspects? This will take about 45 minutes, after which, if you wish, I will give the floor to Professor Queneudec for about 20 minutes.

THE PRESIDENT: We will grant you a short break of 10 or 15 minutes.

MR DOBELLE: Thank you very much.

(Short adjournment)

MR DOBELLE: I should now like to examine legal matters linked to the Panamanian application. The International Tribunal for the Law of the Sea has been asked to rule on a number of applications from Panama. In the opinion of France, these are not within the jurisdiction of the Tribunal, or inadmissible or unfounded.

I should like to refer to the arguments outlined in our written submission and present them in a slightly different way. First, I refer to the jurisdiction of the Tribunal on the basis of article 292 of the Convention; in other words the inadmissibility of the Panamanian application. I shall then turn to the amount of bond posted by the French authorities.

I turn to article 292. France is not calling into question the jurisdiction of the court with respect to article 292 insofar as the conditions set out in the first paragraph of this article are observed. It is established that France and Panama are state parties to the Convention and they have not agreed to bring this matter before another international court. However, the jurisdiction of the Tribunal in the context of article 292 is limited by virtue of the object and purpose of this article.

These provisions were adopted in order to avoid injustices which might result from the seizure of a foreign vessel by a coastal state if no domestic judicial proceedings have been instituted in that state after the seizure or if the domestic legal system of the state having seized or detained the vessel did not provide for its release by the posting of a bond.

That is why, in the context of this specific fail-safe procedure laid down by the Convention, the Tribunal finds itself in a jurisdiction which is narrowly circumscribed. It is limited to the single question of release as stipulated by article 292(3) of the Convention and article 113 (1) of the Rules of Procedure.

Therefore, in this case the Tribunal is only competent to determine whether or not the allegation of Panama that France did not respect the provision of the Convention relating to the *Camouco*'s release from detention is founded.

These are the only elements that the Tribunal may have to consider in order to reach a decision on the question of the release. Therefore, the jurisdiction of the Tribunal cannot be extended to the other grounds of Panama's claim. In particular it has no jurisdiction to rule on various allegations in the application relating to alleged violations of other substantive provisions of the Convention by the French authorities.

The Tribunal's lack of jurisdiction is manifest, first, with respect to evaluation of the claimed incompatibility between French legislation on the one hand and the Convention of Montego Bay on the other. The Tribunal cannot consider and must therefore set aside the ground relied on by Panama of an alleged violation of the international law of freedom of navigation in the EEZ. That is under article 58 of the Convention.

The question of whether the laws and regulations of a coastal state and the application made thereof do or do not correspond to what is laid down or permitted

by the Convention is completely extraneous to the question of the release of a vessel from detention. Therefore, it cannot be envisaged or even invoked in the context of the procedure under article 292 of the Convention.

Nevertheless, the applicant incorrectly states that there are provisions in French legislation which in fact do not exist. For example, they say that the law of 5 July 1983 lays down a irrefutable presumption, which is by no means the case. This is a simple presumption. It is a so-called "*juris tantum*" presumption and not a "*juris et de jure*" presumption. Its only effect is to change the onus of proof and turn it around.

One should not instigate investigations into a person if one presumes that such a person has committed an offence and that the investigation would be to consider the substantiveness of the facts. In other words, let us not confuse instructions and rulings. This may seem basic, but on the basis of what was said this morning, I felt that that should be repeated.

Moreover, another point is erroneous. I refer to the interpretation by the applicant of the law of 5 July 1983 under article 2. This provision states that the maritime authority with jurisdiction may not seize nets, gear, etc unless they are prohibited at all times and in all places. In this case the maritime authority has the possibility of seizing the fishing gear, equipment and nets if there have been violations of legislative or regulatory provisions. It is paradoxical that the applicant has raised this point and, at the same time, said that the French authorities are not severe enough on this point.

The Tribunal does not have jurisdiction under article 292 of the Convention to rule on the alleged violation of the requirement of prompt notification of the arrest to the flag state. That is stipulated in article 73(4) (page 26 of the application). The Tribunal does not have jurisdiction for that. Indeed, this requirement of prompt notification to the flag state in 73(4) of the Convention only concerns measures taken at the level of a vessel; that is, the question of form does not in itself refer to the release of the detention of the vessel whereby this is only to be ruled upon by the Tribunal on the basis of article 22. The Tribunal should refuse to rule on the third conclusion of Panama in which it is asked:

> to declare that the French Government has violated article 73 by failing promptly to notify the Republic of Panama of the arrest of the *Camouco.*

Further, it should be emphasised that not only is this not admissible in law but that it is totally absent in fact. As we said in our written submission, as early as 1 October 1999 France advised Panama of what happened. That was done by the appropriate channels; that is, in the form of a letter from the *Préfet de la Réunion* to the *Consul général du Panama* in Paris which is the responsible authority because it is a maritime case, contrary to what was said this morning. Therefore, the measures were advised promptly to the flag state even before the vessel was detained at Réunion. I should add that the Panamanian authorities could clearly not ignore or not be aware of the existence of this since the French Embassy in Panama informed the Ministry of Foreign Affairs of Panama of the boarding and detention of the vessel by an oral memo dated 11 November 1999 and the Ministry of Foreign

Affairs in Panama noted on 26th November 1999 that they had received this and stipulated that the information in the said memo and note from the French Embassy had been notified and sent on to the General Directorate for Marine Affairs of the maritime authority in Panama. I should like to ask for authorisation to produce those two documents.

Moreover, the Tribunal does not have the jurisdiction to consider in these proceedings the argument derived from an alleged violation of article 73(3) on the non-imposition of penalties of imprisonment in cases of fishing offences in the EEZ. Indeed, if the Tribunal examined this argument, it would have to rule on a matter which is completely extraneous to the provisions of article 292(3) which stipulate that it can:

> deal only with the question of release without prejudice to the merits of the case before the appropriate domestic forum against the vessel, its owner or crew.

Therefore, it should not be overlooked that the procedure of article 292 is a specific case, a special procedure which runs the risk of being "bogged down" on the issue of jurisdiction of national legal authorities and must be used with great caution, especially as it has clearly defined limits.

The argument put forward by Panama is based on a false appraisal of the legal situation of the Master of the *Camouco* with respect to French law. Judicial supervision, "*contrôle judiciaire*" is not the same as detention. This is by no means a deprivation of liberty. The term "judicial supervision" does not mean provisional detention. It is not a measure depriving a person of liberty and it is therefore inaccurate to talk about release when it is terminated. It is a measure which compels the person under examination to submit to one or more legally-defined obligations chosen by the court undertaking the preliminary investigations in accordance with the requirements of legal or judicial investigations.

The decision to place someone being investigated under judicial review is taken by an investigating magistrate through an order against which there is no appeal. However, I emphasise that the person concerned can immediately file a request for the lifting of judicial supervision on the basis of which the judge in charge of the investigation must rule within a period of five days with a possibility of an appeal before the indictment chamber which must rule within a period of 20 days.

Therefore, in this case neither the Master of the *Camouco* nor his counsel have filed a request for the lifting of judicial supervision, *contrôle judiciaire,* since the start of the investigation on 7 October 1999 whereby this could have been done under French law if there were any doubts concerning the legality of the procedure followed under internal French law.

That being the case it is clear that any request for the release of the Master is devoid of purpose and that the Tribunal cannot rule on Panama's 5th, 6th and 7th submissions in which it is asked to find that the French Republic has failed to comply with the provisions of the Convention concerning the prompt release of the masters of arrested vessels, and to order the French Republic to promptly release

Captain Hombre Sobrido without any bond and lastly to find that the French Republic has failed to comply with the provisions of article 73(3) in applying to the Master criminal measures which *de facto* constitute an unlawful detention.

That brings me to the end of my submissions on the questions regarding the jurisdiction of the Tribunal. I should now like to look into questions concerning the admissibility of the application. First, the admissibility of the application, at least in part, might first be invoked on the grounds that it is similar to an abuse of legal process. I stress abuse of legal process and not an abuse of right as was alleged this morning.

France is, of course, not aware that the preliminary proceedings laid down in article 294 of the Convention are not applicable in principle. Moreover, they would be difficult to apply in practice in the context of their case relating to a question of prompt release as covered by article 292. However, the notion of the abuse of process to which the procedures laid down in article 294 are intended to serve as a response is not entirely alien to the present case.

In alleging that France has violated the provisions of article 58 of the Convention, the Panamanian application purely and simply alleged that the coastal state has acted in contravention of the provisions of the Convention with respect to the freedoms and rights of navigation as laid down in article 297(1)(a). However, even though it has been shown that this allegation does not fall within the jurisdiction of the Tribunal in the proceedings forming the object of the present case, the fact nevertheless remains that Panama appears to be submitting an application in respect of a dispute referred to in article 297 according to the terms of article 294. This would entitle France to regard the application making such a request as an abuse of process. I shall limit myself to raising this question as it is up to the Tribunal to judge.

There is a second question I should like to raise on the subject of admissibility of the application. It concerns the exhaustion of local remedies. The rule concerning this is laid down in article 295 of the Convention. In general it is not considered a necessary pre-requisite of the institutional proceedings under article 292. That is true but nevertheless it must be pointed out that domestic legal proceedings are currently pending before the Court of Appeal of *Saint-Denis de la Réunion* whose purpose is to achieve precisely the same result as that sought by the present proceedings. Indeed, the order of 8 October 1999 by which the Court of First Instance of Saint-Paul confirmed the seizure of the *Camouco* the previous day by the Administration of Maritime Affairs formed the object on the part of the captain of the *Camouco* and the owner, Me Garcia Gallardo of an application for revocation which was rejected by an order of the same court dated 14 December last.

An appeal was made against this second order by the applicants on 23 December 1999, in other words less than a month before the present proceedings were instituted.

Among the various arguments advanced in support of its claim in the present case, Panama relies on the absence of grounds given which allegedly characterises the order by the Court of Saint-Paul, now subject to appeal before a higher domestic forum. Panama also refers to an error of judgment which appears to have been

made in the first order. In other words, Panama seems to consider that the procedure laid down in article 292 of the Convention can be used as a second remedy against a decision of a national court, which these proceedings cannot be. The application of Panama clearly points to a situation of *lis pendens* which casts doubt on the admissibility of this application. This doubt is increased by scrutiny of the conditions for filing of the application. This is the third point that I would like to raise on the subject of admissibility.

I would remind you that, whereas the appeal before the court of Saint Denis was made on 23 December 1999, five days later on 28 December Mr Garcia Gallardo obtained a warrant from the Panamanian Ministry of Foreign Affairs authorising him to represent Panama before the Tribunal. By a letter dated 7 January 2000, he informed the French Ministry of Foreign Affairs of his intention to institute proceedings on behalf of Panama, pursuant to article 191 of the Convention. The application dated 17 January 2000 makes, however, a curious application of the provisions of that article 292 when it states: "Following expiration of the 10-day time limit laid down by article 292, there has been no reply to the above-mentioned letter."

Let me remind you that the time limit of 10 days mentioned in the article 292 begins from the time of detention and not from the date of a letter which is sent indicating the intention to institute proceedings for release before the Tribunal. The detention of the *Camouco* took place on 7 October 1999. The time limit of 10 days laid down in article 292 therefore ended on 17 October 1999. It is with effect from this date, 17 October, that a request for prompt release could be submitted to the Tribunal, if appropriate. However, it must be noted that three months have elapsed before the Tribunal was formally seized of such a request.

During this period of three months when priority would seem to have been given to domestic remedies, there has been complete inactivity on the part of Panama as a flag state. In view of Panama's silence, and bearing in mind the characteristics of despatch and urgency which are inherent to the notion of prompt release, France wonders that if, by its conduct, Panama has created a situation of estoppel and that France is entitled to hold that the application is thus inadmissible. The Tribunal must therefore be reminded of the fact that in the Saiga case the application was received within a shorter time limit and therefore we can doubt the admissibility of the submission by Panama, the application.

There is a fourth reason, and this is absolutely fundamental, which alone would lead the Tribunal to decide on the non-admissibility of this application. Why is that? For the very simple reason that this does not meet the essential condition laid down in article 292 of the Convention.

Let me remind you that under this article any claim submitted on the basis of this provision is only admissible "if the detaining state has not complied with the provisions of this Convention for the prompt release of the vessel".

As regards the seizure of the *Camouco* following its boarding in the French economic zone for violating the laws and regulations application to it, the Convention provision relevant in this case is that in article 72, paragraph 2: "When a bond or

other sufficient security has been posted, the ship will be promptly released, including its crew", or words to that effect.

The English text, which much more clearly indicates the need for posting a bond as security reads: "Arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security."

The actual posting of a bond is thus considered by this article to be a necessary condition prior to release from arrest.

The prior nature of the posting of the bond is expressly stated in the Spanish text of article 73, paragraph 2: "Los buques apresados y sus tripulaciones seran liberados con prontitud, previa constitucion de una fianza razonable u otra garantia."

I underline that the Spanish adjective "previa" means prior.

This interpretation is confirmed by the terms used in article 292, paragraph 4, both in the French version, "des le dépôt de la caution" and in the English version "upon the posting of the bond" or, in the Spanish version "una vez constituada la fianza"; that is, "once the bond has been posted", with the emphasis on "once".

The Tribunal itself in the first case involving prompt release submitted to it sought to emphasise that the posting of a bond was a condition laid down by the provisions of the convention, violation of which would make the procedure laid down in article 292 applicable: "The posting of the bond or security is a requirement of the provisions of the Convention whose infringement makes the procedure of article 292 applicable", according to the authentic English text in the Saiga case. This refers to your judgement of 4 December 1997, paragraph 76.

In paragraph 145 of the application, the applicant expressly acknowledges that the bond is the "sine qua non" of the prompt release of the vessel from detention. Since the owner of the *Camouco* , the Merce-Pesca company, or the flag state Panama failed to post the bond laid down both by article 73, paragraph 2 of the Convention of Montego Bay and by French legislation, the allegation that France did not respect the obligation to promptly release the vessel is unfounded in the present case. Hence, Panama's application is inadmissible and the eight submissions must be regarded as null and void.

The same applies *a fortiori* to Panama's ninth submission, which calls for the prompt release of the *Camouco* without any bond, bearing in mind "the losses and costs already sustained by the operator. Such a request in any event could not be satisfied as it contravenes the explicit provisions of article 292 paragraph 4 and runs counter to the Tribunal's case law in the field concerned. In its judgement of 4 December 1997 the Tribunal stressed the need for the posting of a bond. I refer to paragraph 81 of the judgement on the Saiga: "The posting of a bond or security seems to the Tribunal necessary in view of the nature of the prompt release proceedings."

Now I would like to come to the third and final part of the examination of legal questions raised by the Panamanian request and to look at the appropriateness of the bond determined by the French authorities.

If, however, by some extraordinary chance, the Tribunal declared Panama's application admissible and decided to take a decision concerning the amount, the nature and the form of the bond, it would have to exercise caution. For, while it has already recognised that "domestic courts in considering the merits of the case are not bound by any findings of fact or law that the Tribunal may have made in order to reach its conclusions on the question of prompt release" – and I refer you here to paragraph 49 of the judgement of 4 December 1997,, "the Tribunal should nevertheless take great care not to interfere with the functions of the French courts seized of the same question.

Account should also be taken of the fact that the fixing of the bond required for the release of the *Camouco* and a sum of 20 million francs cannot in any case be regarded as unreasonable or exorbitant, for the two reasons that I have just given. The first reason is that, in applying article 142 of the Code of Criminal Procedure in France, the essential purpose of the bond required is to guarantee payment to *Floréal* of the fines incurred.

In accordance with the French legislation applicable to this case, the Captain of the *Camouco* is liable to several fines in respect of the four offences of which he stands accused: fishing without authorisation; failure to give notice of his entering the exclusive economic zone; concealing the vessel's identification markings; and tempting to evade controls.

The grand total of the maximum fines incurred by the Captain for these four offences is 5,500,000 French francs. Moreover, and this is an essential point, the company that owns the vessel is also criminally liable for the offences committed by the Captain. The principle is set forth in article 121-2 of the French Penal Code. I will quote an extract: "Legal persons…. shall be criminally liable for the offences committed on their behalf by their organs or representatives." The same article specifies in its third paragraph: "The criminal liability of the legal persons does not exclude that of natural persons who are the perpetrators or accomplices to the same acts."

However, concerning the penalties applicable to legal persons, article 131-38 and 131 of the Penal Code provide that for ordinary offences and minor offences alike: "the maximum level of the fine applicable to legal persons shall be five times that provided for in the case of natural persons by the law or the regulation prosecuting and punishing the offence."

This means that in the present case the total fines incurred by the Merce-Pesca Company amount to more than 25 million francs. In the case in point, and on the basis of the evidence that has been presented this morning enabling us to identify the true owner of the *Camouco*, I would submit that these are fictitious companies in French law. They do not have any real activity. The maximum total amount of the fines to which the Captain of the *Camouco* and the owners of the Merce-Pesca Company could be sentenced amounts to much more than 30 million francs. This

figure of 30 million francs alone suffices to show the reasonableness of the amount of the bond required by the French authorities.

I would add that the object of the bond is not simply to ensure the payment of fines. There is another objective, namely to ensure legal representation and the payment of any damage and interest.

The second reason why this amount is not exorbitant can be seen from the comparison that one can make with other cases of a similar nature which have been fixed by the same French court in amounts of 10 million, 65 million and 45 million francs respectively. This amount is fully comparable to the amount imposed in certain cases by other coastal states of the southern hemisphere. Thus, for instance, in 1983 Australia required a bond of 5.5 million Australian dollars, or 22 million French francs, following the seizure of a Japanese fishing vessel. In New Zealand, the law applicable to this matter provides that the bond "cannot be less than the aggregate of the value of the craft, the costs that the Crown may recover under section 24 and the maximum fine to which the defendant will be liable". I refer to article 25(2) of the Territorial Sea and Exclusive Economic Zone Act 1997, 028.

I would like to emphasise another aspect which is unrelated to this legal reasoning, but it does have a link to the jurisdiction practice in this area. I would like to note that in most cases where vessels have been fined, whether or not there was an arrest, these fines have never been paid by the owner. Moreover, the practice has also shown on several occasions that the requirement of bonds would not discourage the owners from once more sending the same ships to the same zones a few weeks or even a few days later.

One can also note that one vessel, the *Kinshu Maru*, already observed to violate the legislation in Crozet in February 1997, unloaded 307 tonnes at Walvis Bay in Namibia and in the following month was caught at Kerguelen with 72 tonnes on board just before unloading the catch. The legal sanctions inflicted in Réunion did not prevent them from resuming their illegal fishing activities immediately after unloading 275 tonnes in Namibia.

It is obvious that a bond of 1 million French francs or several million French francs would have no discouraging effect when the longliner can recover this amount several times, given the going rate for toothfish on the Japanese market.

For example, the offending longliner, the *Mar del Sur II*, having been re-routed on 29th January 1998 from Kerguelen to Réunion, seized and then released from 19th February 1998 after the payment of a bond of 2 million francs, left once more with a new master and was found less than a month later close to the fishing zones of Kerguelen.

To decide on the discouraging effect of this means set up by France in their struggle against the theft of their resources, I would like to come back to some of the figures mentioned in my pleadings in order to underline the difficulty that my country faces in adapting on a permanent basis its laws to the constant changes in the economic sector in this field. Looking at the price of toothfish in certain markets, the increase can be as much as 60 per cent per year in comparison to the previous year, and

France cannot adapt in real time the level of sanctions to maintain a dissuasive nature, in view of the development of exchange rates or commercial rates. In this context, it can only appeal to its judges to use to maximum effect the room for manoeuvre that they have at their disposal, displaying, when it is justified, the greatest strictness possible. In this context, I would also like to note that in the case submitted to you the bond was not fixed at the maximum possible level, according to the text which I have cited, but at an appropriate level reflecting the gravity of the violations and the sanctions. Bearing in mind the economic and ecological context, it would be irresponsible not to take this into account.

I would also like to emphasise that the reduction in violations which have been noted in the French economic zone over the past two years, which is relative, as we can see from this present case, has only been obtained thanks to the concerted efforts of the National Navy patrolling the area and the legal authorities which have always kept a watchful eye on these occurrences. The firmness of French justice has undeniably participated, though unfortunately not to a sufficient degree, in dissuading foreign vessels from robbing the fish resources and the maritime areas around the French southern territories.

Mr President, Members of the Tribunal, I am sure that your decision in the present case will have a great echo in this field. I hope that I have convinced you that the people, whether natural or juridical, who engage in such activities and such behaviour deserve neither indulgence nor pity.

Ensuring the proper management of fish resources in the areas under their jurisdiction is not only a right of but more an obligation on the coastal states. I would like to refer here to article 192 of the Convention of Montego Bay, which says that states have an obligation to protect and preserve the marine environment, and also to article 61 of the Convention of Montego Bay, according to which “the coastal state, taking into account the best scientific evidence available to it, 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”. This article adds, “Such measures shall also be designed to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield as qualified by relevant environmental and economic factors”.

There is here – and I think this was almost a premonition – an excellent illustration of what today we refer to as the principle of precaution. It is a principle which, if respected, will help to guarantee the durable development confirmed by the Conference in Rio of 1992 and to harmonize the requirements for economic development and those for the protection of the environment, to harmonize the needs of current generations and those of future generations. In other terms, beyond the national interests of France, they are those of the international community as a whole – I would go so far as to say those of humanity - that are called into question by the practice of such vessels as the *Camouco*.

I would also like to add that states which allow vessels flying their flags to commit such acts with impunity are not only disregarding the principles of international law but also the laws of the environment, such as were reaffirmed by the International Court of Justice in its decision of 25th September 1997 relative to the dispute

between Hungary and Slovakia on the dam of Gabcikovo-Nagymaros on the Danube. It underlines the obligation which the states have to make sure that the activities undertaken in areas under their control or within their jurisdiction respect the environment of other states, and also in zones over which they have no national jurisdiction. This is also the case of the obligation for vigilance and prevention in terms of protecting the environment from damage which is often irreversible. I am sure that you will not fail to have these considerations in mind when you are judging the case in point.

Mr President, Members of the Tribunal, I thank you for your attention. If you will permit it, I will now hand over to Professor Queneudec for 20 minutes. He will complete my intervention, mentioning some of the legal aspects in relation to the Application.

PROFESSOR QUENEUDEC: Mr President, Members of the Tribunal, for a professor of international law, it is always an honour to appear before an International Tribunal. This is even a greater honour, since it is a question of defending ones own country, especially when this case is a just case and well founded in law. This honour, Mr President, is a particular honour and it is combined with the pleasure that I have today to speak before the International Tribunal on the Law of the Sea. This brings back to mind the particular form of long term navigation which was the Third Conference of the UN on the Law of the Sea.

On the basis of these memories, I would like to draw the Tribunal's attention very briefly to a term which lies at the heart of today's case. I refer to the term "promptness" - in French "promptitude". In your first ruling of 4th December 1997 your Tribunal stated, "The requirement of promptness has a value in itself". This is what you stated in paragraph 77 of this ruling.

This term is the essential concept within the special procedure laid down in article 292 of the Convention. This is because this article concerns "the prompt release of the detention of the vessel and the prompt release of its crew"; that is in English. It is a little more precise than in the French term, because this article is called "Prompt release of vessels and crews". The term "promptness" is the key concept of any case introduced on the basis of article 292, because the recourse to this article is only possible when it is alleged that the state which has detained the vessel has not complied with the provisions of this Convention for the prompt release of this vessel".

There are at least two other provisions of the 1992 Convention which expressly refer to this question of prompt release. Clearly these are 73 and 226. Whereas the English text of these provisions always uses the same adverb, namely "promptly", the French text uses the expression "*sans délai*" in paragraphs 2 and 4 of article 73 and in paragraph 1(a) of article 226. However, the French text uses the expression "*sans retard*" in article 226(1)(b). In Spanish, these expressions are translated as "*con prontitud*" in article 73 and "*sim dilación*" in article 226.

This recall of the differences between the various language versions of the Convention are clearly not intended to return to the debates on the harmonization of the use of the terms which took place in the Drafting Committee of the Conference on the Law of the Sea. I have recalled this in no way to criticize the concordance or

otherwise of the various official texts of the Convention; no, Mr President. All I want to do is attempt to show, by means of these few examples, that the variety of terms used helps us to elucidate the term "promptness". If we do not manage to elucidate the concept, we at least hope that a comparison of these terms will be able to shed some light on the matter. Trying to shed some light on this matter is probably enough to define and delineate the concept and term under which we are operating today. Therefore, something called "prompt", is something that is to take place or occur without delay; to be duly carried out in a short period of time as quickly as possible.

To require an action to take place or a measure to be adopted promptly, therefore, has a meaning which has a value in itself. This is how I feel we must interpret article 290(6) concerning provisional measures. The parties to the dispute shall comply with any provisional measures by virtue of this article. In French the term used is "*sans retard*". In Spanish the term is "*sim demora*"; without delay.

The idea of immediacy which is behind this idea, the notion of promptness, should not be confused with instantaneous, even in day-to-day language. If we say that something must be done without delay we normally mean that it should be done at once. However, we also have to take account of the particular nature of article 292 of the Convention which is clearly distinguished from article 290, which I have just quoted, and which concerns provisional measures.

Whereas the latter refers to an incident or procedure which is of a classical nature, article 292 is a procedure which is original and innovative and is sufficient in itself. Indeed, one could say that it is a self-sufficient procedure. Therefore, we must be very cautious in drawing comparisons. We cannot, for example, put on the same level references to the idea of promptness, that is in article 290(6), provisional measures, on the one hand, and article 292(4), prompt release, on the other. The reason is that in the context of article 295 of the Convention, the idea of promptness, regardless of its value in itself, only comes into play on a relative basis. Prompt release pre-supposes a relationship between the action and behaviour of two players, ie the flag state of the detained vessel and the coastal state of the arresting vessel.

In paragraph 4 we read:

> Upon the posting of the bond determined by the Tribunal, the authorities of the detaining state shall comply with the decision of the court or tribunal concerning the release of the vessel or its crew.

I draw to your attention the fact that in the English version of the Convention we find in paragraph 292(4) "shall comply promptly", and in the Spanish version "*compliram sim demora*". On the other hand, the French version does not include the adjective "prompt" or even the adverb "promptly" (*prompt* and *promptement*). The reason for that is that in French it begins "*des que*"; that is upon or as soon as the posting takes place. That apparently seems to be the same as "as soon as" or "as soon as it happens".

The term implies the idea of promptness but it shows that the promptness involved is closely linked and in some way dependent upon the posting of a bond. It clearly shows that the release order by the Tribunal is conditioned by a posting of a bond which, to a certain extent, determines the diligence which has to be shown by the coastal state for release. That is a matter which the Tribunal stressed in its first hearing on the *Saiga* case.

The same meaning can be found in article 73(2) of the Convention which reads:

> Arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security.

In other words, here again release must take place as soon as the bond has been posted. The bond and the release are intimately linked; one conditions the other. The link is established by means of the requirement of promptness and immediacy.

I need not emphasise this point any further. It has already been dealt with in our written submission in reply to the application. In particular, paragraph 11 has also been recalled by the Agent of the French Government.

The idea of prompt release, however, gives rise to a further comment which does not refer to the significance or value of the term but to its procedural scope. I should like to stress the reasons why promptness implies an effect on the procedure envisaged in article 292 and the reasons why this term here is of major importance.

Article 292 has an essential characteristic, which is a unique procedure. There is no equivalent for any other international jurisdiction. The characteristic lies in the setting of extremely short deadlines which can be found at three different and successive levels. First, for the application for prompt release, article 292(1) stipulates that the application may be introduced within 10 days from the time of detention. Secondly, there is another short deadline in the management of the case. The Tribunal fixes the date for the hearing at the latest 10 days from the date of receipt of the application. That is under article 112(3) of the rules of procedure which also use the term “as soon as possible”. Thirdly, the ruling must take place at the latest 10 days after the closure of the debate in accordance with article 112(4) of the rules of procedure which state that the ruling should be adopted as soon as possible.

The text governing the procedure of prompt release therefore shows that there are three successive deadlines of 10 days which give us a total of 30 days. We must admit and emphasise that this is noteworthy within the context of an international tribunal. As regards the previous question relating to the release, your Tribunal stated and showed that strict observance of deadlines was inherent to the procedure of article 292. Guinea had asked for a delay of one month for the oral hearing and, given the circumstances, the Tribunal granted a delay of only one week.

In this case these strict deadlines shall be respected by the Tribunal as from the point of detention. There really is a problem here. Panama and its representatives have not given any attention to the starting point of the first deadline. Let us recall the first deadline:

Upon the detention of the vessel.

That is the case as of 7 October 1999.

The explanations advanced this morning by the Panamanian agents for saying that the 10 days in article 292 were merely a minimum deadline seemed to us not only unconvincing but that they wish to completely set aside the idea of promptness which is a key factor within this procedure.

Can we speak of "prompt release" in terms of article 292 when this action is brought before the International Tribunal for the Law of the Sea three months and 10 days after the date of detention of the vessel? Where is the urgency? These questions are all the more relevant since on 17 January last the Tribunal received an extremely detailed application with 28 annexes, giving, therefore, a complete file.

The file is so complete that there are certain documents therein which normally would have been covered by secrecy, at least in France. One asks how it was possible for the applicants to procure and produce, for example, the hearing protocols which, according to French procedural rules, generally cannot be publicly disclosed until the legal proceedings are closed. Be that as it may, the preparation of the file clearly took a certain amount of time. The Tribunal had this matter referred to it more than three months after the detention of the *Camouco.*

The other side preferred to go the way of internal appeals. However, that is their business. The flag state waited a long time before bringing this question of prompt release before the Tribunal. That fact is strange and surprising, to say the least. As I have said, this matter could have been referred to the Tribunal as of 17 October 1999. Therefore, and in addition, when the applicant refers to the late setting of the bond (paragraph 137 and following) one is tempted to say that if there was a delay it was above all due to them. We feel that the Tribunal could apply the following rule:

"*Nemo auditur propriam turpitudinem allegans*".

Those few comments I wished to submit both in view of the context of this case and the pleas from the other side may seem to be of a general nature. I am aware that the Tribunal will do all it can to specify and develop its case law on the matter of prompt release. I hope that these few comments have not been absolutely useless from that point of view and that they may have been of some assistance to you in your deliberations.

Finally, Mr President, Members of the Tribunal, I thank you for your attention. That brings me to the end of the French plea in the first phase.

(***Adjourned until 1000 hrs, Friday 28 January 2000***)