TRANSLATION 04.12.00

Republic of Seychelles *v.* French Republic

The MFV *Monte Confurco*

Application based upon article 292 (1) of the United Nations Convention on the Law of the Sea

Part I: Memorial submitted by the Republic of Seychelles
represented by Ramón García Gallardo of the firm SJ Berwin & Co.,
Agent

Brussels, for Hamburg, 24 November 2000

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Application based upon article 292 (1) of the United Nations Convention on the Law of the Sea

I. Introduction

1. I, the undersigned, Ramón García Gallardo, attorney before the courts of Madrid and Brussels, of the firm of SJ BERWIN & Co. (London, Brussels, Frankfurt, Berlin, Madrid, Munich), appearing herein as Agent of the Republic of Seychelles in accordance with the power of attorney issued at Victoria-Mahé by the Minister of Agriculture and Marine Resources on 20 November 2000 and with the Hague Apostille (**Annex 1**), pursuant to article 292 (1) of the United Nations Convention on the Law of the Sea, hereby file an application seeking the prompt cessation by the French Republic of the patent violation of various provisions of said Convention, in particular article 73 and related articles.

2. The Republic of Seychelles gives the following as its address for service in Germany for all procedural documents pertaining to this case: Mr. Ramón García Gallardo, SJ Berwin & Co. - Knopf Tulloch & Partners - Kurfurstendamm 63, Berlin, D-10707 (Tel.: 49.30.8871710), Fax: 49.30.88717177).

3. The Applicant draws to the attention of the Tribunal that it wishes also to receive a copy of all procedural documents at the following address: Messrs. Ramón García Gallardo (SJ Berwin & Co., Square de Meeûs, 19/3 B-1050 Brussels; Tel.: 32.2.5115340; Fax: 32.2.5115917; E-mail: ramon.garcia-gallardo@sjberwin.com).

4. The Applicant declares, in accordance with article 64 of the Rules of the Tribunal (hereinafter the Tribunal) that he chooses French as the language of the proceedings and, for any document submitted in a language other than French or English, the Applicant undertakes to provide a certified translation in French. In the course of the submissions that are to follow, reference will occasionally be made to words or phrases in a language other than French.

5. The French Republic, by means of a fax (**Annex 1 bis**) of 13 November 2000 sent to the Ambassador of the Seychelles in Paris, reported that the MFV MONTE "CONFURCO", flying the Seychelles flag, had been arrested on 18 November off the EEZ of Kerguelen.

6. The undersigned, as Agent of the Republic of Seychelles, dispatched a letter by fax and registered mail on 22 November 2000 to the French Ministry of Foreign Affairs (**Annex 2**) to give notice that the Applicant had received

> *"Authorization from the Government of the Republic of Seychelles to initiate proceedings against the French Republic before the International Tribunal for the Law of the Sea with a view to obtaining the prompt release of the vessel and its crew"*

and that

> *"Although the Ambassador of Seychelles in Paris has received information concerning the arrest of the long-liner MFV "MONTE CONFURCO" dated 9 November 2000, we expected promptly to receive additional and detailed information concerning events following upon the diversion."*

and inviting it

> *"In light of the exorbitant bond adopted today by a French court, we therefore hereby invite you immediately to grant the release of the vessel and its crew in accordance with the international conventions to which the French Republic is party".*

7. No answer was received to this fax and no agreement was reached between the parties to take the matter of the release of the vessel and crew before a court or tribunal.

8. Consequently, the Applicant submits the present case to the International Tribunal for the Law of the Sea.

II. Summary of facts pursuant to the terms of article 111 of the Rules of the Tribunal

9. It will be noted that, in light of the brevity of the application and given the fact that the procès-verbal of violation (*procès-verbal d'infraction*) and the procès-verbal of detention (*procès-verbal d'appréhension*), more than 15 days after the arrest, have not yet been communicated to the master and the lawyers, the information provided hereunder has been gathered from conversations with the captain and crew and by consultation of the documents pertaining to the criminal charges which took place at the Palais de Justice of Saint Denis, Réunion.

10. Further, the Tribunal, in paragraph 51 of its *Saiga* judgment, provided that:

> *"The possibility that the merits of the case may be submitted to an international court or tribunal, and the accelerated nature of the prompt release proceedings, considered above, are not without consequence as regards the standard of appreciation by the Tribunal of the allegations of the parties.*
>
> *The Tribunal in this regard considers appropriate* ***an approach based on assessing whether the allegations made are arguable or are of a sufficiently plausible character*** *in the sense that the Tribunal may rely upon them for the present purposes"*

11. The Republic of Seychelles shall therefore endeavour to present arguable allegations having a sufficiently plausible character.

12. The facts set forth below will be supplemented by the oral presentations of the advocates during the hearing.

II.1 Preliminary information

13. The firm MONTECO SHIPPING CORPORATION, a company under Seychelles law, is the owner of the freezing longlinger fishing vessel called MFV "MONTE CONFURCO", flying the Seychelles flag, registered under number 50054 and answering to the international call sign S7LI. The technical characteristics of the vessel, which appear on the extract of the Republic of Seychelles registration certificate presented in **Annex 3**, are as follows:

--Year built: 1985
--Length between pp: 45.67 metres
--Length over all: 50.50 metres
--Moulded breadth: 9.3 metres
--Moulded depth: 6.30 metres
--Engine power: 1200 BH
--Hold capacity: 300 tons
--Net tonnage: 266 tons
--Tonnage: 888.18 gross registered tonnage
--Registration: Republic of Seychelles - Victoria-Mahé

14. The vessel was purchased in December 1999, in good running condition, by the firm MONTECO SHIPPING CORPORATION. Said company obtained its first Seychelles fishing license as well as various navigation certificates:

--Sanitary certificate (cf. **Annex 4**).
--Certificate of compliance with the *International Convention for the Safety of Fishing Vessels* of 1977 (cf. **Annex 4**).
--Certificate of compliance with the *International Convention for the Prevention of Pollution from Ships* of 1973 (cf. **Annex 4**).

15. The crew of the MFV "MONTE CONFURCO" consists of 40 seamen, mostly of Spanish, Chilean, Peruvian and Namibian nationality. Its master at the time of the arrest was Mr. José Argibay Pérez (born 23.12.1967 in Santiago de Compostela, Spain, of Spanish nationality, passport number 52455604), who has the necessary credentials to command a vessel of this kind.

16. The MFV "MONTE CONFURCO" currently holds Seychelles fishing license, number 710 (dated 18.07.2000) to fish in international waters (**Annex 5**), without any limitation as to fishing areas, excluding of course EEZs.

17. As is borne out by the discharge certificates presented in **Annex 6**, the MFV "MONTE CONFURCO" regularly brings ashore at Mauritius the product of its fishing in international waters on the Southern Seas. Discharge operations are always conducted in the presence of Mauritius authorities and a Seychelles observer (cf. the double stamps on the discharge certificates presented in the annexes).

18. The presence of a Seychelles observer is only one of the indicators clearly demonstrating that the Republic of Seychelles pursues and seeks to strengthen its maritime policy as a policy fully respectful of international conventions:

--International conventions in force and ratified by it;
--International conventions under which the Republic of Seychelles enjoys the status of an observer; and even
--In applying certain principles of regional conventions to which the Republic of Seychelles is not a party.

19. The *Fisheries Act* of 1991 lays down a system under which any vessel flying the Seychelles flag can obtain an international fishing license subject to the important condition that discharge operations be carried out in the presence of observers of the *Seychelles Fishing Authorities* (SFA).

It should also be noted that few licenses are granted, that the discharge documents (**Annex 6**) are similar to the discharge forms of the CCAMLR (the *Dissostichus Catch Document*, or discharge document for toothfish), which were used as a model by the Republic of Seychelles in preparing its own discharge certificates.

Moreover, a draft reform of the law in force is currently in the process of being adopted and should enter into force early in 2001. It provides, in particular, that each vessel flying the Seychelles flag must be equipped with a *Vessel Monitoring System* beacon, a system which makes it possible to locate vessels at all times in order to monitor their movements in fishing areas.

II. Circumstances of the arrest

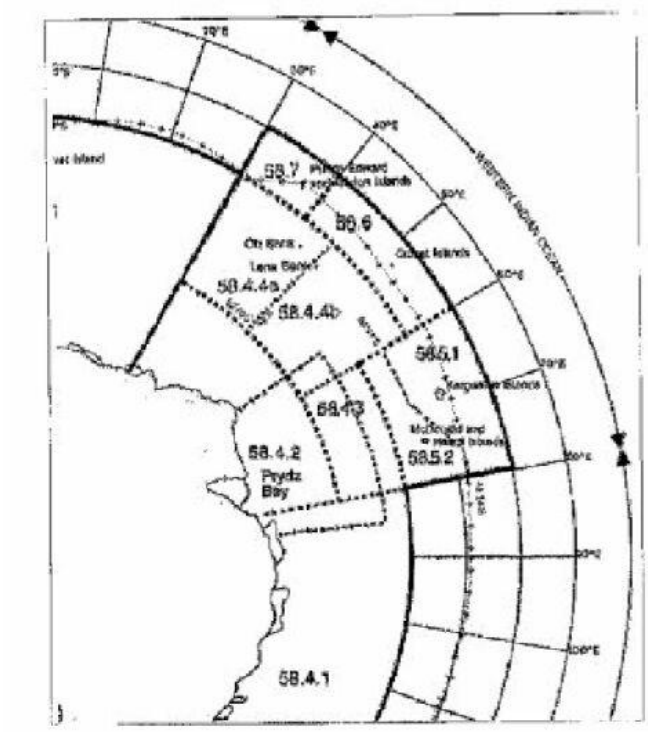
20. The MFV "MONTE CONFURCO" sailed from Port Louis (Mauritius) on 21 August 2000 for a long-line fishing expedition in international waters of the South Seas which was to last through December 2000.

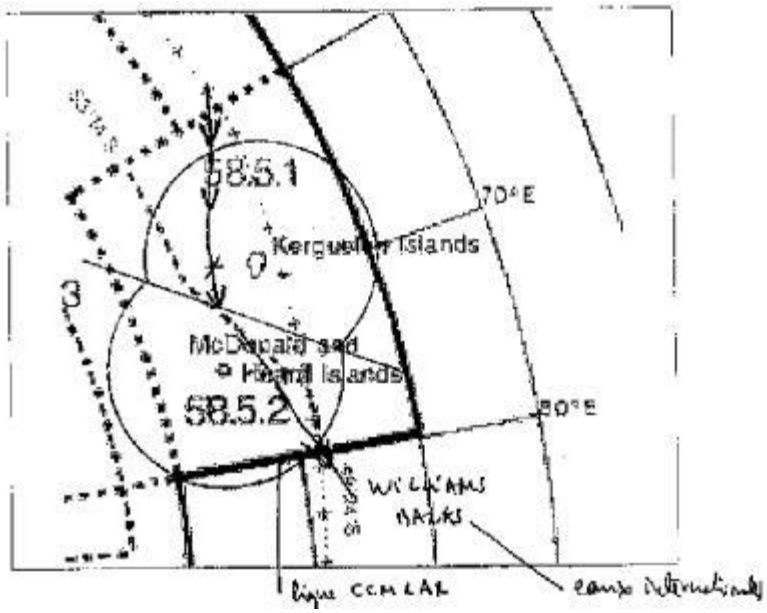
The vessel was under the command of Captain José Argibay Pérez, who had signed a contract of employment on 1 November 2000 under which, in paragraph 1, he expressly assumed the following undertaking:

> *"As the officer responsible for the vessel, he hereby undertakes to fish exclusively in international waters authorized by the international fishing license possessed by the vessel and annexed to the present document, expressly undertaking not to pursue any manner of fishing activity in the Exclusive Economic Zone of any country". (**Annex 7**)*

21. On 7 November 2000, at 10:00 hours (universal time), the MFV "MONTE CONFURCO" was outside French waters at the approximate position 47˚ 40" South by 63˚ 30" East, where it was about to finish fishing in international waters.

22. According to the statements of the captain, he had the intention of spending the final weeks of the fishing expedition on the Williams Bank, located to the south-east of the Kerguelen EEZ, in international waters and outside the CCAMLR area, in order to lay down lines one last time since the vessel had already been at sea for two and one half months.





CCAMLR Lines Intenational Waters

23. The refrigerated holds of the ship were already 1/2 full, with roughly 158 tons of frozen toothfish.

In order to take the shortest route and avoid crossing the zones, the captain decided to traverse the Kerguelen EEZ on a south-east bearing in order to reach *Williams Bank* as soon as possible.

24. It was technically impossible for the captain to announce his entry into the EEZ and the tonnage of frozen fish he carried aboard because his fax had broken down. This breakdown was duly mentioned in the logbook, which logbook is currently being held by the French authorities. Moreover, when the French authorities conducted their on-board inspection of the MFV "MONTE CONFURCO", they noted that the fax could only receive.

The ship was intercepted by the French surveillance frigate FLOREAL, on 8 November 2000 at 1025 hours (D) in the Kerguelen Exclusive Economic Zone (EEZ), 80-90 miles west of Kerguelen.

25. Aboard the MFV "MONTE CONFURCO", the officers of the FLOREAL found:

- a clean but humid factory (because of the climatic conditions that approximated to -2° / -3° Celsius),
- empty and inoperative freezing tunnels,
- no trace of fresh fish in the holds save two units of frozen toothfish (that is to say at -1.6° / -2.4° Celsius according to the procès-verbaux of seizure (*procès-verbaux de saisie*) reports appended hereto) instead of -21°. These two toothfish were surely being kept cold for use in the on-board galley.
- No trace of preparation for fishing (as for example baited fishhooks) on the various decks of the ship.
- 158 tons of toothfish frozen to a very low temperature.
- No mention of electronic registration in the memories of the on-board electronic devices that could indicate that the MFV "MONTE CONFURCO" was in the process of fishing (no position beacons showing on screen or in the memories relating to the Kerguelen EEZ area).
- The names, indicating the ship and flag of the Republic of Seychelles were not camouflaged and were therefore visible from every side of the ship (**Annex 2 bis**)

26. All these elements show that, contrary to the allegations by the French authorities, the MFV **"MONTE CONFURCO" was neither in the process of fishing nor preparing to fish**.
The ship then arrived at Réunion on the morning of Sunday 19 November 2000.

It will also be noted that the shipowner, the firm MONTE CONFURCO SHIPPING, has sent the services of the Seychelles Fishing Authorities a letter dated 9 November 2000 (**Annex 20**) informing them of the boarding and inspection of the MFV "MONTE CONFURCO" and indicating that they had never given any order to Captain JOSE ARGIBAY PEREZ to head for the Kerguelen EEZ, especially as clause 1 of his contract stipulates that he is forbidden to enter any EEZ with the MFV "MONTE CONFURCO".

27. As for **the crew**, the situation is as follows :

- To date, only the master is still being held on Réunion against his will as judicial supervision (*contrôle judiciaire*) has been imposed on him in an order handed down by the Saint Denis Criminal Court on 21 November 2000[1].
- The rest of the crew has left Réunion . Moreover, only a four-man crew has been left on board to maintain and supervise the ship.

28. Contrary to the provisions of article 73 (3) of the United Nations Convention on the Law of the Sea (hereinafter called the Convention), the magistrate delegated to place legal restrictions on Captain José ARGIBAY PEREZ pending trial withdrew the Captain's passport, thereby limiting his freedom of movement. The Captain furthermore indicated during his hearing that :

> *« As a European and citizen of the European Community, I should prefer my passport not to be confiscated as I promise to return and to be present on the date of the hearing ».*

The court answered that it was necessary to impose judicial supervision (*contrôle judiciaire*) because the penalties incurred by the Captain included that of imprisonment and that, even though the French Republic had ratified the United Nations Convention on the Law of the Sea, the Supreme Court of Appeal « *had not yet taken a stand on the matter* ».

29. It will be noted that this attitude is both offhand and in total contradiction to paragraph 68 of the statement of the agent of the French Republic, in the *Camouco* case, which stipulates that « *pursuant to article 73, paragraph 3, of the Convention, the Captain of the Camouco is not liable to a term of imprisonment* ».

The Applicant would draw the attention of the Tribunal to the fact that all of the items mentioned above were held by the French authorities (Maritime Police and the Administrator of Maritime Affairs as well as the State Prosecutor of the Republic and the civil and investigating magistrates) for a fortnight, thereby making it impossible for the master and his legal advisor as well as for the shipowner's lawyers to take cognisance of their content.

30. The lawyer representing Captain JOSE ARGIBAY PEREZ was in frequent contact with the Maritime Authorities of Réunion but he was advised to take up the matter in writing, which he did on 16 November 2000 (cf. **Annex 8**), asking in particular that he be granted access to the procès-verbal of violation and the procès-verbal of diversion (*procès-verbal de déroutement*).

II.3 The French position

31. On 9 November 2000, the French authorities notified the master, 24 hours after intercepting him, that the ship, the fishing tackle, the catch, the communication equipment and the fishing documentation were to be impounded (*Procès-verbal d'appréhension* N° 02/00).

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[1] Cf. Annex 10

The ship was then escorted, for more than 10 days, under the supervision of the French Navy, to Port des Galets on Réunion , where it did not arrive until 19 November 2000 at 1215 hours (D).

32. According to procès-verbal of violation N° 1/00, merely mentioned in the procès-verbal of seizure but not to this day provided, the **French Administrative Authorities** would appear to be reproaching the ship with 4 distinct infringements. However, it is to be noted that the judicial authorities that issued the legal restrictions on the captain pending trial, referred to but **two of the four grounds**:

- Commission of a fishing violation;
- Failure to announce the entry of the MFV "MONTE CONFURCO" into the Kerguelen EEZ.

33. Neither the delegated judge nor the Public Prosecutor charged the captain with the offences of flight or voluntary destruction, charges which were duly mentioned in procès-verbal of violation N° 1/00 and, more than 15 days after the inspection, and still remain a total mystery because they have not been made available to any party.

34. On 20 November 2000, the Regional and Departmental Directorate of Maritime Affairs (DMA) drew up 3 procès-verbaux of seizure (**Annex 19**) relating to:

- the 158 tons of toothfish (PV 058/AM/00) valued by the DMA at 9 million French francs (equivalent to US$ 1,163,354[2]), on the basis of one kilogram of toothfish at 56 French francs, which is not contested by the Republic of the Seychelles.

- the ship MFV "MONTE CONFURCO" (PV 060/AM/00) with all its communication equipment, the value of the ship being estimated, according to the French authorities at 15,000,000 French francs (equivalent to US$ 1,938,923).

- certain fishing tackle (PV 059/AM/00) of an estimated value of 300,000 French francs (equivalent to US$ 38,778.50), which is not contested by the Republic of the Seychelles.

35. On 21 November 2000, Captain ARGIBAY PEREZ was questioned and placed under legal restrictions (*contrôle judiciaire*) by the Public Prosecutor's office of the Saint-Denis High Court (**Annex 9**) for:

"- *Failing to announce entry into the Kerguelen EEZ;*

- *Fishing in the Kerguelen Island EEZ without authorization"*

[2] Average FF/US$ exchange rate taken as US$ 1 = FF 7.8224

It will be noted that the captain's passport was taken away in connection with the legal restrictions placed on him, thus de facto limiting his freedom of movement to the territory of Réunion alone.

36. On 22 November 2000, the Saint-Paul District Court handed down an order (cf. **Annex 10)** by which it confirmed the seizure of the MFV "MONTE CONFURCO" and ordered that that it be granted release subject to the payment of a bond of 56,400,000 French francs (equivalent to US$ 7,254,375).

Here, and before developing any arguments, it should be stressed that two distinct procedures concerning our case are currently pending before the French courts:

- one is a civil suit to set the amount of the security bond.

- the other is a criminal case, before an investigating magistrate in which Captain ARGIBAY PEREZ is being investigated for various breaches of the law relating to the French Southern and Antarctic Territories.

37. The fact that there are two parallel procedures is very prejudicial because French Law makes no distinction between a bond due by the owner of the ship and one due for securing the appearance of the Captain (of Spanish nationality). The Order of 22 November 2000, in stating its reasons, makes a distinction between the appearance guarantee for the Captain and that due - but inoperable - by the shipowner.

This difference does not appear in the *ratio decidendi* of the Order requiring the payment because **the guarantee can be paid only in a single sum and not in part, 1,000,000 for the Captain, etc….**

II.4 Value of the ship, the cargo, fuel and bait, etc.

38. In appraising the ship, the French authorities took as a basis a survey by a marine surveyor from Réunion (Mr. CHANCERELLE) and he set the value of the MFV "MONTE CONFURCO" at 15,000,000 French francs (equivalent to US$ 1,938,923).
No report corroborating this assessment was provided at the hearing or in annex to the Order. This evaluation is too high when one considers, on the one hand, the fishing conditions in the South Seas zones and, on the other, the fact that longline fishing ships have not been making stopovers at Réunion for some years.
39. Conversely, the Republic of the Seychelles considers that evaluations given by maritime experts with a tradition of longline fishing are more relevant to evaluating the value of the ship (such as Spain, Iceland, Norway),
Hence the Republic of Seychelles, in **Annexes 11 and 12**, provides two expert reports:

- A report by Mr. Albino MORAN & Partners Shipbrokers (Madrid–Spain) who assessed the ship at a sum of US$ 400,000 – 450,000;
- A report by Mr. Prassant Kirmar of BP SHIPPING (Reykjavik - Iceland) who assessed the ship at a sum of US$ 500,000.

Justifications will be provided during the oral proceedings.

40. As for the value of the fishing tackle and the 158 tons of toothfish, the Republic of Seychelles does not contest the evaluations by the French Department of Maritime Affairs which, unlike the evaluation of the ship MFV MONTE CONFURCO, are commercially realistic. The value of the cargos is therefore 9,000,000 French francs and that of the fishing tackle 300,000 French francs, making a total of 9,300,000 French francs (equivalent to US$ 1,189,844).

41. The value of the bait carried on board can be calculated as follows : 62,643 kilograms of frozen bait had been bought in Mauritius in August 2000 (cf. **Annex 13**); about 30 tons had been consumed by 8 November 2000; 32 tons remained on board, therefore the approximate value was 243,000 French francs (equivalent to US$ 31,321).

42. For the value of the fuel remaining on board it is necessary to take as a basis the SHELL invoice (cf. **Annex 14**) that mentions a total price for 212 tons of US$ 56,247 (equivalent to 410,185 French francs). However, 98 tons remain on board making about US$ 26,000 (or 203,382 French francs).

II.4 Factual elements showing the weakness of the arguments of the French Republic.

43. Even though the object of the present case is not to establish the reality of any infringements possibly committed by the MFV "MONTE CONFURCO" in the Kerguelen EEZ, the Republic of Seychelles wishes, while respecting the full jurisdiction of the Courts of the French Republic in the matters of substance, to draw the attention of the Tribunal to a number of elements which, according to this party, will serve to guide the deliberations of the Tribunal.

The Republic of Seychelles would furthermore stress that certain facts and elements can cast doubt on the sincerity of the action taken by the French Authorities (military, maritime affairs and judicial) both with respect to the EEZ and Réunion .

A. An incomplete notification of the boarding and inspection in violation of the requirement promptly to notify the flag State of the inspection pursuant to article 73 (4) of the United Nations Convention on the Law of the Sea.

44. As this party has already had the opportunity to point out, the ship MFV “MONTE CONFURCO” was inspected on 8 November 2000. On that date, the Captain was merely notified of the apprehension of the ship and not of the procès-verbal of violation and the procès-verbal of diversion.

Pursuant to article 73 (4) of the United Nations Convention on the Law of the Sea which provides that:

*"In cases of arrest or detention of foreign vessels the coastal State shall **promptly** notify the flag State, through appropriate channels, of the action taken and of any penalties subsequently imposed."*

45. The French Republic, on 13 November 2000 notified the Embassy of the Seychelles in Paris by simple fax (cf. **Annex 1 bis**).
In this fax, Mr. Jacques WITKOWSKI, of the Prefecture of Réunion indicated:

« (*…has the honour of informing the Seychelles) of the current diversion of the longline fishing boat MFV "MONTE CONFURCO" flying the Seychelles flag, whose Captain (…) was caught **illegally fishing** on Wednesday 8 November, at a position situated at a distance of 80 miles to the West of Kerguelen Island.*
This ship, which discharged 225 tons of toothfish in Mauritius on 21 August 2000, should arrive around 15 November 2000 next with a cargo of toothfish estimated at 158 tons.
I shall not fail to keep you informed of the legal consequences and the amount of the security bond that will be ordered by the court »

This notification raises several questions:
Although no-one can contest its expeditious character, it is nevertheless incomplete: indeed article 73 (4) stipulates that the notification must include "the action taken and any penalties subsequently imposed."

46. However, by adopting an elliptical sentence (« *keep … informed of the legal consequences and the amount of the security bond that will be ordered by the court* »), the French Republic does mot meet its obligation to give the reasons for the notification by :

- Not clearly indicating the facts that gave rise to the apprehension on 8 November 2000;
- Creating an amalgam between the events that occurred on 8 November 2000 and the unloading, according to the French Republic, of 225 tons of toothfish in Mauritius. This amalgam is all the more untrue as the Republic of Seychelles, in **Annex 6**, furnishes the official discharge certificates covering the unloading of the 225 tons of toothfish in Mauritius, which certificates were issued by the Seychelles authorities, confirmed by the Mauritius authorities and countersigned by the Seychelles Fishing Authority.
- Not mentioning the possible penalties (envisaged in the aforementioned French laws) that the captain could incur at the end of the procedure.

As indicated by the plural used in article 73 (4), every time important new measures are adopted, the flag State must be promptly notified, especially when the freedom of the ship (for the procès-verbal of diversion) and the infringements of which the Captain is accused (for the procès-verbal of violation) are concerned.
However, just as the Captain never received the said procès-verbaux during the diversion, so too the flag State was not informed.

The Republic of Seychelles, moreover, stresses that the discharging of cargo in Mauritius is completely independent of the events of 8 November last and that this accusation was groundless.

Furthermore, the link made, in the letter from the Prefecture of La Réunion, between the events of 8 November last and the legal discharging conducted in August 2000, that is to say more than 3 months earlier, demonstrates the obvious manner in which the MFV "MONTE CONFURCO" was being closely surveyed by all French authorities in the zone (the FLOREAL, French observers on boats dropping anchor and unloading in Mauritius and the Maritime Affairs Department of Réunion).

It is certainly laudable to want to have its legislation respected within the EEZ under its sovereignty but again it is also necessary to guarantee that any parties in breach of that legislation have their rights under fully applicable international conventions respected.

B. No procès-verbal of violation 01/00 has yet been communicated to any of the parties involved.

47. This procès-verbal of violation, which should have been communicated to the commander within 24 hours following the inspection, has still not reached him more than 15 days later.
Nor has it been placed on the file in the criminal case that nevertheless includes the evidence gathered by the officers of the FLOREAL when they visited the ship.
Finally, it has not been transmitted to the authorities of the Republic of Seychelles pursuant to the provisions of article 73 (4) of the United Nations Convention on the Law of the Sea.
This « omission » of procès-verbal 01/00 is all the more shocking as it is this same procès-verbal that serves as the legal basis for the three procès-verbaux of seizure of the MFV "MONTE CONFURCO", its fishing tackle and its cargo (cf. **Annex 19**) and for the order handed down by the Saint Paul Court setting the guarantee at 56,400,000 French francs for lifting the seizure order on the ship.
Rare indeed are the legal systems where a document that serves to incriminate a possible offender is not communicated before determining acts that seriously alter the situation of the said offender.
Such legal systems are those legal systems wherein the fundamental right of defence is not guaranteed at all.
It will also be noted that this is not an isolated case and that it stigmatizes a constant violation of the rights of the defendant in cases involving some infringement of French Southern and Antarctic Territories fishing legislation.

C. The flagrant weakness of the evidence invoked by the French authorities to characterize the illegal fishing infringement.

48. Firstly, the French authorities claim that there was a flagrant offence but, conversely, doubt must be cast on that allegation given that French legislation contemplates that the denials or explanations of the accused alone are not sufficient to invalidate the allegations of the reporting officers. Legal presumption must cede before any evidence to the contrary that can be brought in writing or by witnesses (pursuant to article 431 of the Code of Criminal Procedure).

The Republic of Seychelles would insist on the fact that, on the day the application was filed, many of the factual circumstances of the application remain unclear:

Firstly, the non-communication of procès-verbal 01/00 drawn up on 9 November by the FLOREAL officers is disturbing because, if the situation were all that flagrant, the French authorities would not have delayed in notifying the captain and flag State to that effect.

The only factual allegations that are known are those mentioned in the preambles to the procès-verbaux of seizure:

C.1 "*The observation of the presence in the water of longlines identical to those of the MFV "MONTE CONFURCO" whose numbers formed a logical sequence, whereas no other fishing ship was in the area*".

49. This observation is very questionable as no member of the crew had seen or known of the existence of these longline buoys before arrival at Réunion, 13 days after the boarding and inspection.

Only photos taken in unclear conditions and placed on the criminal case file (and which could be consulted by the captain's lawyer) show some buoys that are certainly similar to but of a different colour from those on the MFV "MONTE CONFURCO". Besides, as mentioned in the certificate from Mr. Francisco PEREZ, of Messrs. A. POUTADA, this type of buoy is commonly sold to and utilized by many longliners fishing in the area (cf. **Annex 15**)

Furthermore, according to the French authorities, it was the FLOREAL that is purported to have recovered the said buoys between 7 and 15 miles from the point of boarding for inspection. However, because of the bad atmospheric conditions (fog), the FLOREAL did not leave the MFV "MONTE CONFURCO" from the moment of the inspection until its arrival at Réunion .

Even if, by sheer fluke, the FLOREAL had recovered the said buoys before proceeding to the inspection of the ship, it would have been logical to proceed, with the Captain of the MFV "MONTE CONFURCO", to conduct a reconnaissance of the buoys so that the French authorities could note in the procès-verbal whether or not the Captain recognized them as belonging to the MFV MONTE CONFURCO.

The criminal case file, lodged with the Saint-Denis Court in Réunion does not include any proof establishing that the FLOREAL officers and the captain of the MFV MONTE CONFURCO recovered the buoys from the sea jointly.

C.2 "*Observation of defrosted bait jettisoned into the sea", "of a recent cleaning of the factory" and "the presence of small unfrozen fish and hooks on the rear of the amidships deck*".

50. This second observation is also fairly open to contest because, even after having stopped fishing on 7 November 2000 and having proceeded to the usual cleaning of the working areas (factory, lower and upper decks), it is normal that fish waste or fresh or frozen hooks remain in the said areas because of the hard climatic conditions in these zones.

C.3 "*Observation of topped and cleaned toothfish at temperatures of between -1.6° and -2.4° Celsius*".

51. This presence took the form of only two frozen toothfish. These two toothfish were surely being kept chilled for use in the ship's galley and were hence the product of the cleaning of the factory a few hours earlier.

Besides, assuming that there had been a large number of toothfish, there is no doubt but that the French authorities would have placed far more significance on this specific fact.

The French authorities do not claim to have found many kilograms or tons of fresh or barely frozen fish.

Although the Republic of Seychelles does understand the concern of the French authorities with deterring illegal fishing in the French Southern and Antarctic Territories, they must in exercising this necessary law-enforcement respect firstly all the national and also international legal standards that bind the French authorities and whose purpose is to guarantee the essential rights of all operators to exercise fishing activities according to the principles of the United Nations Convention on the Law of the Sea and the principles of public international law.

Given that many ships have been boarded and inspected of recent years in this zone, the Republic of Seychelles can understand the practical difficulties of dealing with a large number of similar cases, but that should not exclude a minimum of individual analysis of each case, not only by the French military and administrative authorities, but also by the French courts.

While still respecting the full jurisdiction of the French courts to handle the cases before them, the Applicant does nevertheless consider that in the present case, there exist factual arguments which can establish that this is a case that would have been deserving of a more **objective** and **reasonable** analysis.

III. <u>Applicable law</u>

III.1 National law (Annex 16)

III.1.a Law applicable to the seizure of items constituting the violation

52. Law no. 83-582 of 5 July 1983 concerning the regime governing seizure and supplementing the list of officials empowered to issue citations for violations in the sphere of maritime fisheries provides, in article 2:

> *"**The competent maritime authority shall carry out the seizure of nets, tackle and instruments for fishing which are prohibited** at all times and in all places; the search for the same may be conducted in the locations where they are sold or made; the court shall order their destruction.*
>
> *When they have been used to fish in violation of legislative or regulatory provisions, the nets, tackle, materials and equipment used for diving and underwater fishing, all instruments generally used for fishing purposes which are not referred to in the foregoing*

paragraph of this article may be seized by the competent maritime authority; the court may order their confiscation and order that they be sold, handed over to institutions devoted to maritime instruction, or decide that they be returned".

Article 3 provides:

*"**The competent maritime authority may seize a vessel or craft which has been used to fish in violation** of legislative or regulatory provisions.*

The maritime authority shall take the vessel or cause it to be taken to such port as it may designate; it shall draw up a procès-verbal of seizure and the vessel or craft shall be placed in the custody of the maritime affairs service.

Within a period that shall not exceed seventy-two hours from the time of the seizure, the maritime authority shall address to the court of first instance of the place of the seizure an application accompanied by the procès-verbal of seizure in order that it may, within a period not to exceed seventy-two hours, confirm the seizure of the vessel or craft or decide that it be released.

The order shall at all events issue within a period that shall not exceed six days counted from the detention referred to in article 7 or from the seizure.

The release of the vessel or craft shall be decided by the court of first instance of the place of the seizure upon the provision of a bond whose amount and manner of payment it shall determine in accordance with the terms set forth in article 142 of the Code of Penal Procedure."

Article 4 provides as follows:

***"The product of fishing carried out in violation of legislative or regulatory provisions shall be seized by the competent maritime authority, which shall decide as to its disposal.** Said disposal may be by sale either at public auction or by offer and acceptance at the best market price, or by assignment to a scientific, industrial or charitable institution, by destruction, or in the case of living catch by its being returned to the sea. Assignment to an industrial establishment shall be in return for payment.*

Regardless of the manner of disposal, the offender or his principal shall bear the costs arising from the corresponding operation and may be required, under the supervision of the competent maritime authority, to carry out the transaction even if it is a sale or an assignment by way of gift or in return for payment. In the case of a sale at public auction, the competent maritime authority may appoint the manager of the auction house who shall carry out the sale. The court may confirm the disposal of the products and order their confiscation or their return, or the confiscation or return of the value thereof.

When the products of fishing are sold without having been subject to seizure, the competent maritime authority may seize the sums produced by the sale; the court may order them to be confiscated or returned."

53. It will be noted that article 3 contemplates the seizure of the vessel as one possibility (use of the verb "may" in the present tense) and makes the release of the vessel contingent upon strict application of article 142 of the Code of Penal Procedure, which provides that a bond may be required only in order to guarantee:

"1. The appearance of the person cited, charged or accused in all proceedings and for the execution of the judgment, as well as the execution of such acts as may be required of him;

2. The payment, in the following order, of:
a) compensation for damage caused by the violation (...)
b) fines.

III.1.b Law applicable to offenses committed by the master

54. The law applying to the events and making fishing violations punishable in the EEZ of the French Southern and Antarctic Territories came about by a legislative amendment of the original Law of 1 August 1888 and by the Law of 18 June 1966 (cf. supra **Annex 16**).

It provides, in article 1, that :

"The practice of maritime fishing and hunting of marine animals and the exploitation of products of the sea in the French Southern and Antarctic Territories are governed by the provisions of this Law.

These provisions shall apply throughout the territory and, at sea, along the coasts throughout the whole area of French jurisdiction, with respect to the practice of fishing."

Article 2 provides:

"No one may practise fishing and hunting of marine animals, nor engage in exploitation of the products of the sea, whether on land or aboard vessels, without having obtained authorization. (...) All vessels entering the EEZ of the French Southern and Antarctic Territories shall give notice of their presence and declare the tonnage carried on board (...)".

Article 4 lays down the penalties incurred for any violation of the prohibited acts indicated above:

"Up to 1,000,000 French francs (i.e. approximately US$150,000) and 6 months of imprisonment for anyone who practises fishing (...) or engages in exploitation of the products of the sea (...) without having received the authorization required under article

2 or who has failed to make known his entry into the economic zone or to declare the tonnage of fish carried on board."

However, the legal maximum provided for under article 4 (1) shall be increased by 500,000 French francs per ton caught above 2 tons without having obtained the authorization provided for under article 2 (...)[3].

Moreover, article 10 provides:

"A vessel and its appurtenant craft, as well as any equipment used by the offenders, may be seized by the issuing officer; the court may order that they be confiscated and placed on sale. The court shall also order the destruction of tackle that does not comply with regulations".

III.1.c Penalties provided under French law

55. The penalties and maxima provided for under the aforementioned French law are as follows with regard to illegally caught fish: a fine of up to 1,000,000 French francs plus 500,000 French francs per ton over and above 2 tons of fish.

III.2 International law ratified by the French Republic

56. In the context of the present Application, the legal provision to be considered is Decree 96774 ratifying the **United Nations Convention on the Law of the Sea, signed on 10 December 1992 at Montego Bay**. This convention of international law takes precedence over French law[4] as of the time of its ratification on 30 August 1996 and its publication in the *Journal Officiel* of 7 September 1996.

In light of what has been said above, the provisions of the Convention that appear essential in the context of this Application should now be examined.

1. The obligation promptly to give notice of arrests and detentions of foreign vessels is laid down in article 73 (4), entitled "Enforcement of laws and regulations of the coastal State," which provides:

*"In cases of arrest or detention of foreign vessels the coastal State shall **promptly** notify the flag State, through appropriate channels, of **the action taken and of any penalties subsequently imposed."***

[3]In this regard, see the point concerning admissibility (preliminary questions) as regards the presumption applied by French judges clearly in excess of the scope of this article 4.

[4] Article 55 of the French Constitution of the Fifth Republic provides that "Treaties or agreements regularly ratified or approved shall have, as of their publication, authority above that of laws, subject to application of each such agreement or treaty by the other party".

It will be noted that the plural is used here; contrary to the practice of the French authorities, this demonstrates that the competent authorities of the flag State must be kept regularly informed of measures taken against the vessel of the flag State.

2. Article 73 (3) provides as follows:

> *"3. Coastal State penalties for **violations** of fisheries laws and regulations in the exclusive economic zone **may not include imprisonment**, in the absence of agreements to the contrary by the States concerned, or any other form of corporal punishment."*

57. 4. The obligation of prompt release of vessels and ships is set out in article 73 (2), which provides:

> *"2. Arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security."*

This obligation is supported by the **procedure established under article 292 (1)** of the United Nations Convention on the Law of the Sea, which provides:

> *"1. Where the authorities of a State Party have detained a vessel flying the flag of another State Party and it is alleged that the detaining State has not complied with the provisions of this Convention for the prompt release of the vessel or its crew upon the posting of a **reasonable bond** or other financial security, the question of release from detention may be submitted to any court or tribunal agreed upon by the parties or, failing such agreement within 10 days from the time of detention, to a court or tribunal accepted by the detaining State under article 287 or to the International Tribunal for the Law of the Sea, unless the parties otherwise agree.*
> *2. The application for release may be made only by or on behalf of the flag State of the vessel.*
> *3. The court or tribunal shall deal without delay with the application for release and shall deal only with the question of release, without prejudice to the merits of any case before the appropriate domestic forum against the vessel, its owner or its crew. The authorities of the detaining State remain competent to release the vessel or its crew at any time.*
> *4. Upon the posting of the bond or other financial security determined by the court or tribunal, the authorities of the detaining State shall comply promptly with the decision of the court or tribunal concerning the release of the vessel or its crew."*

IV. Jurisdiction of the International Tribunal for the Law of the Sea

The Tribunal has jurisdiction to hear the application concerning the violation of article 292 of the Convention.

58. The Seychelles and France are both States Parties to the Convention: The Republic of Seychelles ratified on 16 September 1991 and France ratified the Convention on 11 April 1996; the Convention entered into force for France on 11 May 1996.

The MFV "MONTE CONFURCO" was flying the flag of the Republic of Seychelles at the time of the events of 8 November 2000.

Article 292 of the Convention likewise provides that, absent agreement to submit the question of release of the vessel and crew to another court or tribunal within 10 days counted from the time of the arrest of the vessel or crew, an application can be made to the Tribunal.

The arrest of the MFV "MONTE CONFURCO" took place on 8 November 2000. The captain, as of that date, lost control of his ship and had to obey the instructions of the officers of the FLOREAL.

On 22 November 2000, a letter was sent by facsimile to the French Minister of Foreign Affairs by Mr. Ramón García Gallardo of the law firm of SJ Berwin & Co., Agent of the Republic of Seychelles.

In that letter, the Agent indicated that he "had received authorization from the Government of the Republic of Seychelles to initiate proceedings against the French Republic before the International Tribunal for the Law of the Sea with a view to obtaining the prompt release of the vessel MFV 'MONTE CONFURCO' and its crew" and called for "the immediate granting of release of the vessel and its crew...".

No answer was made to the aforementioned letter and no agreement has been reached between the parties to submit the question of release to a court or tribunal within the term of 10 days following the arrest.

Moreover, this Tribunal, in the Camouco case, has already affirmed:

> *"[Article 292] does not require the flag State to file an application at any particular time after the detention of a vessel or its crew. The 10-day period referred to in article 292, paragraph 1, of the Convention is to enable the parties to submit the question of release from detention to an agreed court or tribunal. It does not suggest that an application not made to a court or tribunal within the 10-day period or to the Tribunal immediately after the 10-day period will not be treated as an application for "prompt release" within the meaning of article 292."*

Moreover, in keeping with article 110 of the Rules of the Tribunal, an application for release of a vessel or crew may be made by the flag State or on its behalf. In that regard, the Agent has

authorization granted by the Government of the Republic of Seychelles, bearing an apostille, in conformity with the Hague Convention of 5 October 1961, of 20 November 2000.

V. Admissibility: the application is well-founded

V.1 Preliminary questions.

59. As a preliminary matter, and although it cannot be the subject of consideration by the Tribunal in the framework of a prompt release proceeding under article 292 of the Convention, we believe that we must underscore the fact that the national legislation of France in question here jeopardizes the right of freedom of navigation provided for under the Convention.

Articles 55 to 58 of the Convention lay down a legal regime applicable to the Exclusive Economic Zone of all countries.

That regime is characterized by the fact that, in said zone, States enjoy extensive freedoms, among them, the *"…the **freedoms** […] **of navigation** and overflight and of the laying of submarine cables and pipelines".* This is only an application, to an area where the rights of States are undoubtedly more protected, of the fundamental freedoms of the law of the sea, in particular that of innocent navigation (navigation innocente), laid down in articles 17 to 32 of the same Convention, with regard to the territorial sea of any State.

The French provision is disproportionate because a **mere minor violation of failure to notify entry** resulting from an initial failure to notify as required by French law most certainly does not justify penalties such as those adopted by the court.

Finally, it is solely on the basis of this simple presumption that it was possible to carry out the measure of arrest which underlies the present dispute before the Tribunal. The application for the prompt release of the "MONTE CONFURCO" and its master would be pointless if the French authorities had not thus committed an **abuse of right**.

That abuse of right, moreover, highlights a clear-cut violation of article 58 of the United Nations Convention, which secures the right to freedom of peaceful navigation (for peaceful purposes and without exploitation of fishing resources) for all vessels flying a foreign flag. This party cannot accept that the French authorities should seek to apply their regime of surveillance of the obligations of foreign vessels in its EEZ without the least respect for essential principles of international law, among them the right to a **presumption of innocence** and the **principle of proportionality**.

<u>The "MONTE CONFURCO" did not plan to fish in the area; its master did not consider it necessary to request such an authorization.</u>

The "MONTE CONFURCO" was crossing the EEZ of Kerguelen for the sole purpose, firstly, of shortening the journey necessary to reach its destination outside of that EEZ and, secondly, to avoid CCAMLR fishing areas. It therefore merely exercised its right to freedom of navigation.

It is unacceptable that the French authorities should base their decision to arrest the vessel on mere presumptions based only on the fact that buoys were found in the sea and 2 units of fresh toothfish were found in the holds.

60. **In conclusion, the judicial practice of French courts of allowing the presumption that any fish found aboard a vessel that has not given notice of its entry into the Kerguelen EEZ should be considered as having been illegally caught within said zone constitutes a violation of respect for the international principle of freedom of transit passage, inasmuch as the obligations imposed by the French Republic as the coastal State far exceed what could be considered as a normal measure of protection of activities in the EEZ.**

The proper approach should be to presume the number of days that the vessel has remained within the EEZ. In the instant case, this is less than 24 hours before being found in the EEZ.

V.2 Independence of proceedings

61. The order of the Tribunal d'instance of Saint-Paul of 22 November 2000 setting the bond will be appealed before the appropriate French jurisdiction.

This fact should not be an obstacle to the submission of the present Application to the International Tribunal for the Law of the Sea, given that article 292 provides for an independent procedure but not an appeal against a decision rendered by a domestic jurisdiction.

As the Tribunal has already noted:

> *"No limitation should be read into article 292 that would have the effect of defeating its very object and purpose. Indeed, article 292 permits the making of an application within a short period from the date of detention and it is not normally the case that local remedies could be exhausted in such a short period"*[5].

V.3 Violation of article 73 (3) on non-imposition of penalties of imprisonment in cases of violations of fisheries laws in the EEZ.

62. The master of the MFV "MONTE CONFURCO" is the focus of a penal proceeding which may lead to the pronouncement of a sentence of imprisonment, and in which his personal position constitutes an abusive de facto detention contrary to the provisions of article 73 (3).

The master of the MFV "MONTE CONFURCO" was placed under judicial supervision ("*sous contrôle judiciaire*") on 21 November 2000. He is prohibited from leaving Réunion and his Spanish passport has been taken away. This constitutes a grave violation of his personal rights since, even if no sentence of imprisonment has been formally pronounced against him, he is being held against his will on Réunion on the ground that his presence is ostensibly necessary for in inquiry that has not yet been completed.

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[5] See *Camouco* judgment, recital 58.

The Republic of Seychelles therefore requests the Tribunal to consider that this situation, as a whole, is not consistent with the obligation of article 73 (3) of the Convention, which provides:

> *"Coastal State penalties for violations of fisheries laws and regulations in the exclusive economic zone may not include imprisonment, in the absence of agreements to the contrary by the States concerned, or any other form of corporal punishment."*

63. In this case, even if, formally, the master of the MFV "MONTE CONFURCO" is not *strictu sensu* "imprisoned", the fact that he is deprived of his passport and therefore of his freedom of movement is clearly a violation of the spirit of the Convention, which is to permit fishing activities not to be overly disrupted by the forced detention of fishing vessels and their crews.

The facts are as follows:

a) Pursuant to the law in force at the time of the events, which provides for penalties against fishing violations in the EEZ of the French Southern and Antarctic Territories (cf. **Annex 9**), Captain Argibay Pérez risks at most a fine of 1,000,000 French francs and a term of imprisonment of 6 months.

b) The captain was kept under preventive detention (*garde à vue*) by the police (*Gendarmerie*) from 19 to 20 November 2000.

c) On 21 November 2000, Captain Argibay Pérez was placed under investigation (*mis en examen*) and placed under judicial supervision (*mis sous contrôle judiciaire*) by the office of the public prosecutor (*Parquet*) of the Tribunal de Grande Instance of Saint-Denis (Annex 9) for:

--*Failure to declare entry into the EEZ of Kerguelen;*
--*Unauthorized fishing in the EEZ of the Kerguelen Islands.*

64. The Republic of Seychelles wishes to stress the fact that the situation is even more serious for the following reasons:

--French legislation does not provide for different bonds to cover the liability of the master and that of the vessel (or the shipowner). It will be noted that the Order of the Tribunal d'instance de Saint-Paul of 22 November 2000 does set a bond of 1,000,000 French francs, but this is encompassed within the overall bond of 56,400,000 French francs.

--If international law does not provide for penalties of imprisonment in cases of fishing offences, the municipal judge may not use measures specifically introduced in proceedings that can culminate in the pronouncement of a sentence of imprisonment (such as judicial supervision, *contrôle judiciaire*) to punish fishing violations which, pursuant to international law, cannot be punished by measures involving deprivation of liberty.

--Under French law measures of judicial supervision (*contrôle judiciaire*) cannot even be applied under domestic law because international law (article 73 (3)) lays down a prohibition against imposing penalties of imprisonment in fishing violations. This position was confirmed by the Agent of France in the *Camouco* case as cited by the Tribunal in paragraph 68 of the *Camouco* Judgment.

V.4 Violation of article 73 (2): obligation to set reasonable bond

65. In the instant case, The French Republic in proceeding to arrest the vessel did not observe the provisions of the Convention providing for release of vessel and crew upon the posting of a reasonable bond or other financial security.

The obligation of prompt release of vessels and crews is laid down in article 73 (2), which provides:

> *"2. Arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security."*

This obligation is supported by article 292 (1) of the Convention, which provides:

> *"1. Where the authorities of a State Party have detained a vessel flying the flag of another State Party and it is alleged that the detaining State has not complied with the provisions of this Convention for the prompt release of the vessel or its crew upon the posting of a reasonable bond or other financial security, the question of release from detention may be submitted to any court or tribunal agreed upon by the parties or, failing such agreement within 10 days from the time of detention, to a court or tribunal accepted by the detaining State under article 287 or to the International Tribunal for the Law of the Sea, unless the parties otherwise agree." (...)*

Furthermore, paragraph 4 of said article provides:

> *"4. Upon the posting of the bond or other financial security determined by the court or tribunal, the authorities of the detaining State shall comply promptly with the decision of the court or tribunal concerning the release of the vessel or its crew."*

And article 226 of the same Convention provides:

> *"1. (a) States shall not delay a foreign vessel longer than is essential for purposes of the investigations provided for in articles 216, 218 and 220. (...)*
> *(b) If the investigation indicates a violation of applicable laws and regulations or international rules and standards for the protection and preservation of the marine environment, release shall be made promptly* ***subject to reasonable procedures*** *such as bonding or other appropriate financial security. (...)"*

Indeed, the bond required for release of a fishing vessel should represent a reasonable guarantee for the coastal State on the one hand, and for the owner of the vessel and the crew on the other hand:

--For the coastal State, **it is a guarantee that its authority to impose penalties upon violators will be fully applied**;

--For the shipowner and the crew, **it is a guarantee that the arrest can be brought to an end within as short a time as possible under reasonable terms of release**.

In the present case, the French Republic engaged in a thoroughly abusive application of its legitimate right to require a bond or financial security for the release of the arrested vessel.

By requesting a bond of 56,400,000 French francs, the competent authorities are imposing a disproportionate condition, bearing in mind the value of the vessel itself and the value of the cargo on board at the time of the arrest.

This party considers it necessary to proceed to an in-depth analysis of the concept of "reasonableness" as a central element in the context of the requirement for a bond or financial security as a precondition for the release of an arrested vessel.

V.4.1 The concept of reasonableness applied by the national French court.

66. The order of the Tribunal d'instance of Saint-Paul of 22 November 2000 confirms the arrest of the vessel MONTE CONFURCO on 20 November and provides as follows:

> *"The release of the vessel shall be subject to payment to the Caisse des Depôts et Consignations of a bond in a total amount of FIFTY SIX MILLION FOUR HUNDRED THOUSAND FRANCS (56,400,000 FF), i.e. EIGHT MILLION FIVE HUNDRED NINETY EIGHT THOUSAND ONE HUNDRED TWENTY FOUR AND ONE HALF EUROS (8,598,124.50 EUR) in cash or in the form of a certified cheque or banker's draft."*

The municipal court asserted that it took into consideration the precedents of the court in evaluating the reasonableness of the bond. The criterion of reasonableness should be understood as striking an overall balance between the amount, form and nature of the bond.

The court took the view that its assessment of reasonableness stemmed from the seriousness of the violations ascribed to the captain of the arrested vessel, the sanctions that could be imposed under the laws of the coastal State, the value of the arrested vessel and the value of the cargo. The court took into account that the bond must guarantee both of the following:

--the appearance of the captain against whom the procès-verbal of violation was issued;

--the payment, on the one hand, of damages or restitutions arising from the violation, and, on the other hand, of fines incurred.

Further, the order provides:

> *"Considering that the fishing vessel in question has been appraised by a marine surveyor at a value of 15,000,000 French francs; that the fines incurred by the captain of the vessel should be assessed, based on 158 tons o fish illegally caught, at 79,000,000 French francs; and finally that the victims generally are granted compensation of less than 100,000 French francs."*

The court set the bond in regard to the above items as follows:

--To secure the appearance of the captain of the arrested vessel: 1,000,000 French francs.
--To secure payment of damage caused by the violations cited: 400,000 French francs.
--To secure payment of fines incurred and the confiscation of the vessel: 55,000,000 French francs.

V.4.2 The concept of reasonableness in the case-law of the International Tribunal for the Law of the Sea.

67. The applicants wish to underscore the fact that the Tribunal itself has already ruled as to the importance of taking into account the concept of "reasonableness" in the setting of any bond necessary for the prompt release of vessels arrested by national authorities.

In paragraphs 77 and 82 of the Tribunal's judgment of 4 December 1997 in *The MV Saiga* case the Tribunal declares that:

> *"77. There may be* ***an infringement of article 73, paragraph 2****, of the Convention even when no bond has been posted. The requirement of promptness has a value in itself and may prevail when the posting of the bond has not been possible, has been rejected or is not provided for in the coastal State's laws* ***or when it is alleged that the required bond is unreasonable.***
> *(...)*
> *82. According to article 113, paragraph 2, of the Rules of the Tribunal, the Tribunal "shall determine the amount, nature and form of the bond or financial security to be posted".* ***The most important guidance in this determination is the indication contained in article 292, paragraph 1, of the Convention that the bond or other financial security must be "reasonable". In the view of the Tribunal, the criterion of reasonableness encompasses the amount, the nature and the form of the bond or financial security. The overall balance of the amount, form and nature of the bond or financial security must be reasonable.****"*

The Tribunal therefore places great importance on the balanced and non-exorbitant character of the bond to be required as a precondition for the release of a vessel.

In that same case, Judges Park, Nelson, Chandrasekhara Rao, Vukas and Ndiaye stressed in their dissenting opinion the importance of reasonableness of the bond in the context of application of article 292 of the Convention:

> *"If the Tribunal concludes that the allegation of the Applicant is well-founded, it is competent to order the release of the vessel or its crew upon the posting of a reasonable bond or other financial security, as provided for in article 292.*[6]"

68. During the *Camouco* case, the Tribunal had to address the reasonableness of the bond set by the French authorities in the arrest of a vessel on the basis of the same legislation applied in the present case. In paragraph 67 of the *Camouco* judgment, the Tribunal took the view that:

> *"67. (…) a number of factors are relevant in an assessment of the reasonableness of bonds or other financial security. They include the gravity of the alleged offences, the penalties imposed or imposable under the laws of the detaining State, the value of the detained vessel and of the cargo seized, the amount of the bond imposed by the detaining State and its form".*

With regard to the seriousness of the violations, the Tribunal limited itself to "taking note" without going more deeply into the matter.

With regard to the value of the vessel, the Tribunal held in paragraph 69:

> *69. (…) However, the value of the vessel alone may not be the controlling factor in the determination of the amount of the bond or other financial security.*

Finally, the Tribunal arrived at the conclusion that the bond of 20,000,000 French francs required by the French authorities was not reasonable on the basis of the value of the cargo, the value of the vessel, and the seriousness of the violations.

[6] Dissenting opinion of Judges Park, Nelson, Chandrasekhara Rao, Vukas and Ndiaye, paragraph 7.

In the table below, we note that the Tribunal placed different weights upon its evaluation of the different factors:

	SAIGA	**CAMOUCO**
Value of vessel	1,500,000 US$	3,700,000 (value communicated by the shipowner) 20,000,000 (value communicated by the French authorities)
Value of cargo	1,000,000 US$	380,000 French francs
Bond set by national authorities		20,000,000 French francs
Seriousness of violations alleged	15,000,000 US$	captain: 5,000,000 French francs
Bond set by the Tribunal	1,400,000 US$	8,000,000 French francs This sum represents: 160% of the liability of the captain 40% of the bond required by the French authorities

In the *Saiga* case, the bond set by the Tribunal represented only 9% of the maximum fine that could be levied.

Nevertheless, in the *Camouco* case, the bond represented 160% of the maximum fine that could be imposed upon the captain.

If we take into account the final judgment in the *Camouco* case (cf. **Annex 17**), in which the maximum fine imposed upon the captain was 3,000,000 French francs, i.e. the bond set in principle by the French authorities (20,000,000 French francs) represented only 15% and 37.5% of the bond set by the Tribunal.

V.4.3 The concept of reasonableness in international law.

69. In this case, the Tribunal should focus its attention on the issue of the reasonableness of the bond set by the French authorities.

The concept of "reasonable bond" to be determined by the Tribunal can only be an international concept, anchored in the Convention. It need not necessarily coincide with what may be considered reasonable from a national perspective.

The Tribunal may examine, firstly, the function that the bond performs for the State which has arrested the vessel, and then the function that the bond performs for the flag State and for private interests acting on its behalf before the Tribunal.

For France, the coastal State which has arrested the vessel, the function of the bond is to guarantee the appearance in court of the captain and the payment of fines.

For Seychelles, the flag State, and for the private interests acting on its behalf, the function of the bond is of course to ensure that the vessel and its captain can go to sea again and go about their business.

The concept of reasonableness in article 73 must reconcile, on the one hand, the requirement of the flag State for a guarantee to bring about the release of the ship and the captain, and, on the other hand, the coastal State's requirement for a guarantee of its rights through the bond.

70. These two requirements must be balanced, given the fact that both States are given legitimacy under the Convention.

On the one hand, the provision of a bond that serves to facilitate the sound administration of justice and the effectiveness of judicial decisions buttresses the power of arrest and institution of judicial proceedings which the coastal State enjoys under article 73 (1) to ensure respect for its fisheries laws and regulations in its exclusive economic zone.

On the other hand, the possibility of ensuring that vessels and crews will be enabled promptly to resume their economic activity, despite an arrest and the institution of judicial proceedings, is a requirement which the Third United Nations Conference on the Law of the Sea considered so important that it introduced into the Convention the procedure set out in article 292.

71. Therefore, in addressing the task of determining reasonableness in a prompt release proceeding, the most appropriate approach is to select an autonomous concept of international law determined as appropriate by the Tribunal itself.

This approach implies a distinction as against concepts of national law. The Tribunal should never attempt to apply national laws.

For these reasons, there is no obligation to preserve or to balance the respective rights of the parties (as in the case of provisional measures) or to determine whether a request constitutes an abuse of procedure or is prima facie not well founded (as in the case of preliminary questions).

In our view, the Tribunal should consider the concept of "reasonableness" as a concept under international law.

72. The concept of "reasonableness" has often been examined in doctrinal writings in the context of application of public and private law. We wish to indicate below doctrinal comments from in-depth studies of this question.

N. Mac Cormick, in a study devoted to concepts having variable content in law, has written that:

> *"Reasonableness is indeed, we might admit, a good ting in itself, even if, like moderation, good only within reason and in moderation."*[7]

Marcel Fontaine, in an article entitled "Best efforts, reasonable care, due diligence and rules of the art in international contracts," writes:

> *"What is the meaning of reasonable? One must no doubt distinguish between 'reasonable' and 'rational'. 'Reasonable', in the present context, does not mean 'logical' consistent with 'reason in the philosophical sense', but* ***consistent with 'practical reason', with common sense, with generally accepted value judgments****. And this 'practical reason' comes into play in situations where the conduct to be adopted depends on* ***taking into account and assigning weights to various factors, different circumstances liable to influence the decision to be taken (...)****."*

He adds:

> *"Reference is often made to* ***the conduct usually followed in the same circumstances****, with 'reasonableness' being* ***closely linked to ideas that enjoy acceptance in the social setting****. One can also make the requirement stronger by referring to* ***the conduct of an 'experienced' or 'prudent' person having regard to the interests of all parties. (...)****"*
>
> *'Reasonableness' ... refers to* ***what it is generally considered should be done in such circumstances****."*[8]

V.4.4 The "unreasonable" character of the bond set at the national level.

A. With regard to the amount of the bond set by the national court.

73. The municipal court asserts that it took into account the factors set forth by the International Tribunal for the Law of the Sea, in particular the value of the vessel and the fines incurred by the captain of the vessel.

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[7] See N. Mac Cormick, "On Reasonableness", *Les Notions à contenu variable en droit*, Brussels, 1984, p. 131.

[8] See M. Fontaine, "Best efforts, reasonable care, due diligence and rules of the art in international contracts", *Revue de Droit des Affaires Internationales*, Paris, No. 8-88, p. 1011 et seq.

However, as we shall show, we are of the view that the bond cannot be justified by indulging in an exaggerated assessment of the value of the vessel, as has been done by the French jurisdictions of Réunion, or by placing excessive reliance upon the possibility of determining maximum fines provided for under national law against the captain.

a. Value of the vessel.

74. The municipal court asserts that it based itself on the appraisal made by a marine surveyor, Mr. Chancerel, who evaluated the vessel at 15,000,000 French francs.

However, this party has already shown that this value was exaggerated, as indicated in the two reports submitted by two independent marine surveyors, who place the value of the vessel at an average of US$ 450,000.

b. Value of the cargo.

75. The court order setting the bond says nothing about the value of the cargo, which has already been impounded by the French authorities.

Indeed, in the procès-verbal of seizure, *Procès-verbal de saisie* no. 58/AM/00, the authorities proceeded to impound the entirety of the catch, estimated at 158 tons of toothfish. The value calculated by the authorities, which we do not dispute because it is the actual value on the international market, is 9,000,000 French francs, i.e. 1,373,000 Euros.

The French authorities have decided to proceed to a sale by means of a restricted invitation to tender. The proceeds of the sale will be consigned to the Public Treasury pending disposition thereof by the court.

However, the court did not take into account the value of the cargo, which should be considered as one factor included under the concept of reasonableness.

We can refer to paragraph 84 of the Judgment in the *Saiga* case, where the Tribunal took the view that the value of the cargo discharged should be considered as part of the bond:

> *"84. Taking into consideration the commercial value of the gasoil discharged and the difficulties that might be incurred in restoring the gasoil to the holds of the M/V Saiga, it is reasonable, in the view of the Tribunal, that the discharged gasoil, in the quantity mentioned above, shall be considered as a security to be held and, as the case may be, returned by Guinea, in kind or in its equivalent in United States dollars at the time of judgment."*

Consequently, the 9 million francs should be considered as part of the bond.

c. Value of the fishing tackle.

76. In addition, the French authorities proceeded to impound the fishing tackle, as per procès-verbal of seizure (*procès verbal de saisie* no. 59/AM/00), evaluating it at 300,000 francs.

We are of the view that the value of the fishing tackle should have been considered as constituting part of the bond.

c. Value of bait and gasoil.

77. In addition, despite the fact that the bait and the gasoil were not formally seized by the French authorities, we are of the view that their value should constitute part of the bond, in view of the fact that they are no longer available to the shipowner.

The bait has a value of 243,000 French francs and the gasoil has a value of 203,382 French francs.

These sums, which were not taken into account by the municipal court in setting the bond, should be an integral part of the calculation of the amount of a reasonable bond.

e. Seriousness of violations alleged.

78. The court considered that the facts which gave rise to the arrest and detention of the vessel are to be treated as misdemeanors, in particular:

1. Entry into the EEZ of the French Southern and Antarctic Territories without prior authorization and without giving notice of presence or declaring the tonnage of fish on board to the head of the district of the nearest archipelago;

2. Illegal fishing, since, given the fact that 158 tons of toothfish were found on board and the fact that the vessel was detected in the EEZ without having notified its presence or declared the quantity of fish carried, it is presumed that all of the catch was illegally taken in the exclusive economic zone.

Pursuant to the legislation in force, the maximum fine that could be levied against the captain would be 79,000,000 French francs.

The aforementioned French provisions in the order provide for an administrative requirement of notification whose violation is sanctioned by **(A) a fine**, and **(B) an irrebuttable presumption**.

(**A**) The **fine** due for failure to notify entry into the EEZ appears to be normal and proportionate and may, in our view, be included among the penalties which a coastal State may adopt to control entry into its EEZ under international law.

(**B**) On the other hand, the **irrebuttable presumption** according to which all fish found on board a vessel which has failed to give notice of its passage through the EEZ is presumed to have been

caught in the EEZ is excessive and cannot, in our view, be reconciled with the principles of penal law.

79. The French court bases itself on a presumption, an inference. But we must perforce observe that this legal presumption does not exist. Nowhere in the law is it written that, on the pretext that the vessel did not give notice of its presence, all the fish carried on board must necessarily and imperatively be considered as having been caught in the French exclusive economic zone. That presumption is not to be found.

French law defines a presumption as a inference which the law may draw from a known fact to an unknown fact. It is a procedure which, so to speak, enables the party invoking it to be dispensed from the requirement of proving that which is unknown. We depart from a thing which is certain and, by deduction, arrive at a fact which is uncertain.

Presumptions are provided for in French law in a number of provisions, but in civil law. Here, in the instant case in the context of penal law, dealing in penalties, the presumption of guilt which the French State seeks to introduce cannot exist. To the contrary, it is the presumption of innocence which applies in all legal systems, and a person is *a priori* presumed innocent.

80. This fact is of vital importance, because we may be dealing with a situation similar to that of the Saiga case, where the Tribunal held in paragraph 51 of its Judgment that:

> *"51. The Tribunal in this regard considers appropriate* ***an approach based on assessing whether the allegations made are arguable or are of a sufficiently plausible character*** *in the sense that the Tribunal may rely upon them for the present purposes. By applying such a standard the Tribunal does not foreclose that if a case were presented to it requiring full examination of the merits it would reach a different conclusion. The standard indicated seems particularly appropriate in view of the fact that, in the proceedings under article 292, the Tribunal has to evaluate "allegations" by the applicant that given provisions of the Convention are involved and objections by the detaining State based upon its own characterization of the rules of law on the basis of which it has acted.* ***It is clear to the Tribunal that it cannot base itself solely in this connection on the characterizations given by the parties****".*

Particular attention is drawn to recital 71 of the same case, where the Tribunal clearly states:

> *"In light of the independent character of the proceedings for the prompt release of vessels and crews, when adopting its classification of the laws of the detaining State, the* ***Tribunal is not bound by the classification given by such State****. (...)"*

And the Tribunal concludes in paragraph 72 that:

> *"It is the opinion of the Tribunal that given the choice between a legal classification that implies a violation of international law and one that avoids such implication it must opt for the latter".*

Consequently, we must recall that the two States before the Tribunal are in a position of equality and neither enjoys a presumption of legality, as an administration of a State would enjoy before a jurisdiction of that State.

81. If the Tribunal accepts the characterization of the facts given by one party, i.e. France, there is a violation of the principle of the equality of the parties as from the moment when the Tribunal endorses the arguments of one party and accepts them as a *fait accompli*.

This approach does not, however, constitute a violation of article 73 (1) of the Convention, which leaves to the national legislator the definition of violations of fisheries laws and the maximum level of fines that may be levied, given the fact that the Tribunal has recognized in paragraph 49 of its *Saiga* judgment that:

> *"49. Consequently, this provision means that, while the States which are parties to the proceedings before the Tribunal are bound by the judgment adopted by it as far as the release of the vessel and the bond or other security are concerned, their 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".*

Consequently, the independence of national courts is guaranteed.

82. Applying this to the present case, the Tribunal should bring under scrutiny the facts and circumstances of the case, including:

--The tardy and incomplete notification, where the authorities seem to make a connection with past events that are entirely legal (such as the discharge of over 200 tons at Mauritius in August 2000);

--The violation of the rights of the defendant (the accused did not have access to the documents which form the basis of the entire charge)

--The weakness of the evidence produced by the French authorities;

The Tribunal should, therefore, *determine whether the allegations made are "arguable" or sufficiently plausible*, in justifying the characterization made by the French court.

We believe that the interpretation placed by the French court on the applicable legislation leads to the setting of an exorbitant bond.

French law provides for a fine of 1,000,000 French francs for failure to give notice. This fine covers also the fact that there were at least two tons in the holds (for which there is a presumption of illegal fishing).

However, the law prescribes that as of the third ton, the fine is 500,000 French francs for each additional ton, tons for which this presumption does not enter in, because <u>this is a separate and distinct offense</u> from failure to give notice of entry into the EEZ.

In the present case, we can see that the court engaged in an automatic computation. For a vessel which did not notify its entry and had 158 tons in its holds, the fines which can be levied are as follows:

--fine for failure to notify:	1,000,000 French francs (which covers also the first 2 tons)
--fine for illegal fishing:	78,000,000 French francs (156 tons x 500,000)
TOTAL	**79,000,000 French francs**

83. However, it was shown that the MFV "MONTE CONFURCO" did not enter the Kerguelen EEZ until 24 hours before its arrest, i.e. that its presence in the EEZ did not **<u>exceed one day</u>**, for which, despite the weakness of the evidence and the violation of the principle of the presumption of innocence, and in light of the spirit of the French law, one may take the view that the catch that could be taken during those 24 hours was taken within the EEZ. Consistent with the technical characteristics of the vessel, we can determine that the MFV "MONTE CONFURCO", during those 24 hours, could not have caught more than 4 tons.

Thus, the presumption should not apply with regard to the total catch carried in the holds, but with regard to the maximum tonnage that could have been caught during the ship's presence in the EEZ, i.e. 24 hours.

Consequently, we are of the view that, as the vessel could have caught 4 tons, it may be subject to a fine for illegal fishing of 1,000,000 French francs, given the fact that the first 2 tons are covered by the fine for failure to give notice. In other words, the fines which may be imposed upon a vessel with 4 tons are as follows:

--fine for failure to notify:	1,000,000 French francs (which covers also the first 2 tons)
--fine for illegal fishing:	1,000,000 French francs (2 tons x 500,000)
TOTAL	**2,000,000 French francs**

84. Moreover, that approach is not unfamiliar to French courts.

The arrest in the EEZ of the vessel MAGALLANES 1 (**Annex 18**), which was detained after having been arrested with 176,513 Kg. of catch in its holds. In this case, the French authorities set the bond upon the seizure of the vessel at 85,000,000 French francs.

However, that bond was not confirmed by the court, which reduced it to 3,000,000 French francs.

The French authorities presume that the 176 tons in the holds had been caught in the waters of the EEZ, and the fine that could be levied was 88,500,000 French francs.

In his reasoning, the judge took into account the facts and limited the catch that was presumed to have been taken in EEZ waters to 4,512 Kg (four and one half tons), stressing:

> *"[considering] That, in the instant case, examination of a document discovered in the cabin of the captain of the Magallanes 1 has made it possible to reconstruct the quantities stored at 176,513 Kg of toothfish, [and] that the quantity entered opposite the date 4 December was 4,512 Kg.*
>
> *Considering, however, that in light of the information in this case it is appropriate to limit the amount of the bond to be posted for release of the vessel to 3,000,000 French francs in guarantee of payment".*

85. These four and one half tons represent the quantities that could have been caught by the vessel MAGALLANES, in keeping with the (x) day(s) spent in the EEZ. For that quantity, the maximum fine would be 3,500,000, of which 1,000,000 French francs would be for failure to notify and for the first two tons caught, and 2,500,000 French francs (for the additional two and one half tons).

Consequently, we are of the view that it would be appropriate for the Tribunal to adopt an approach similar to that adopted by the court in confirming the arrest of the vessel *Magallanes 1*.

B. With regard to the nature of the bond.

86. Secondly, the court set a bond that is exclusively financial, forgetting the de facto bond constituted by the authorities by the seizure and possible sale of the cargo, the vessel, the fishing tackle, and bait and the gasoil.

It is the Convention itself which provides for that possibility, in light of the fact that article 292 (1) provides for the posting of a "reasonable bond or other financial security".

In this connection, we may recall the *Saiga* case, in which the Tribunal took into consideration the fact that the gasoil in the holds of the vessel had been discharged, and for that reason considered it as a guarantee to be held by the coastal State. In light of the circumstances, the Tribunal concluded that it was reasonable to add to this security a financial guarantee in the amount of US$400,000.

C. With regard to the form of the bond.

87. Finally, the court determined that the bond should be in "cash, certified cheque or banker's draft".

The court disregarded the possibility that the bond should be constituted in the form of a bank guarantee, as was recognized in the *Camouco* case.

Accordingly, the table below sets out all of the factors which should be taken into account in the setting of a reasonable bond.

	Minimum valuation	Maximum valuation
Vessel	3,890,000 FF	15,000,000 FF
Cargo seized	9,000,000 FF	9,000,000 FF
Fishing tackle seized	300,000 FF	300,000 FF
Bait	243,000 FF	243,000 FF
Gasoil	203,382 FF	203,382 FF
Fines which may be levied	2,000,000 --1,000,000 for non-notification --1,000,000 FF for Illegal fishing (calculating for one day's catch)	79,000,000 --1,000,000 for non-notification --78,000,000 FF for illegal (calculating for 156 tons)

88. It is on the basis of these elements or parameters that the Tribunal should adopt a reasonable bond.

As a final observation, we would point to the great importance of the considerations set out below, which derive from final judicial decisions and have not been the subject of appeal:

1. The case MFV *Vieirasa XII*, with 200,000 French francs for failure to notify of entry into the EEZ, rather than 1,000,000 FF.

2. The Camouco case, with a final decision regarding illegal fishing with a fine of 3,000,000 French francs **WITHOUT** confiscation either of the vessel or the cargo, despite conviction on the charge of illegal fishing.

3. The case *Magallanes 1*, where the bond was set at 3,000,000 French francs for one day of fishing even though it had nearly 180 tons in its holds.

VI. SUBMISSIONS

In consequence of the foregoing, and pursuant to:

article 292 of the Convention;
article 34 of Annex VI of the Convention;
and articles 113 and 125 of the Rules of the Tribunal,

the Applicant

REQUESTS THE TRIBUNAL

1. To declare that the Tribunal has jurisdiction under article 292 of the United Nations Convention on the Law of the Sea to hear the application submitted today;

2. To declare the present application admissible;

3. To declare that the French Republic has contravened article 73 (4) by not properly giving notice of the arrest of the vessel "MONTE CONFURCO" to the Republic of Seychelles;

4. To declare that the guarantee set by the French Republic is not reasonable as to its amount, nature or form;

5. With respect to the master of the vessel "MONTE CONFURCO", Mr. José Pérez Argibay,

--To ask, as an interlocutory measure for reasons of due process, that the French Republic allow the Captain to attend the hearing which is shortly to take place in Hamburg;

--To find that the French Republic has failed to observe the provisions of the Convention concerning prompt release of masters of arrested vessels;

--To require the French Republic promptly to release the master, without bond, in light of the presence of the ship, cargo, etc. as a reasonable guarantee, given the impossibility of imposing penalties of imprisonment against him and the fact that he is a European citizen;

--To find that the failure of the French Republic to comply with the provisions of article 73 (3) in applying to the master measures of a penal character constitutes a de facto unlawful detention.

6. To set a bond in the maximum amount of 2,200,000 French francs, based upon:

--200,000 French francs for failure to notify presence;

--2,000,000 French francs for a presence of 24 hours in the EEZ without giving notice and up to 4 tons of catch theoretically taken in the worst of cases, as the sole admissible evidence of presumption.

7. With regard to the nature of the bond, that the Tribunal consider that the value of the cargo seized, the fishing tackle seized, the bait and the gasoil constitute part of the guarantee; according to our calculations, the value of the foregoing being 9,476,382 French francs;

8. That the Tribunal choose between the financial instrument (*constitution financiere*) issued by a European bank or a guarantee comprised of the value of an equivalent number of tons to be immediately discharged.

9. With regard to the form of the financial bond, as a subsidiary measure, in the event that the Tribunal chooses to set a symbolic financial bond, the Applicant requests that the Tribunal note its desire for a bank guarantee by a leading European bank, rather than payment in cash, to be deposited with the French Republic unless the parties decide that it be deposited with the Tribunal, in exchange for the release of the vessel.

(Signed)

Ramón García Gallardo

Agent of the Republic of Seychelles

Agent designated by the Republic of Seychelles pursuant to the power of attorney dated 20 November 2000 (this signature is certified in accordance with the requirements of article 110 (3) of the Rules of the Tribunal).

[Hand-written notation:] Seen for certification of the signature of Mr. José Ramón García Gallardo (Spanish passport no. 8901122). Done in Brussels on 24-11-2000.

(Seal of the Consulate of the Republic of Seychelles in Brussels)

(Signed)
Philippe de Baets
Honorary Consul
of the Republic of Seychelles in Brussels

(PHOSTAT OF PASSPORT)

[Hand-written notation:] Certified copy of original. Done in Brussels on 24-11-2000.

(Seal of the Consulate of the Republic of Seychelles in Brussels)

(Signed)
Philippe de Baets
Honorary Consul
of the Republic of Seychelles in Brussels

I certify that a copy of the application and all supporting documents has been provided to the flag State in accordance with article 110 (3) of the Rules.

Brussels, Friday 24 November 2000

(Signed)

Ramón García Gallardo.

Agent

LIST OF ANNEXES

1	Authorization from the Government of the Republic of Seychelles, pursuant to article 292 (1) of the United Nations Convention on the Law of the Sea, with the Hague Apostille
1 bis	Fax of notification from the Préfecture de LA Réunion concerning the arrest of the long-liner MFV "MONTE CONFURCO", sent on 9 November 2000
2	Fax of the agent of the Republic of Seychelles to the French Republic
2 bis	Photos of the identification signs of ship
3	Registration certificate of the Republic of Seychelles
4	Certificate of compliance with the *International Convention for the Safety of Fishing Vessels* of 1977
5	Fishing licence, number 710, dated 18.07.2000
6	Discharge documents for toothfish, dated 21.08.2000.
7	Contract of employment of the Captain
8	Fax adressed by Mr. Ramón García Gallardo to the Maritime Authorities on 16 November 2000.
9	Procès-verbal of Captain ARGIBAY PEREZ's being questioned and placed under legal restrictions (*contrôle judiciaire*) by the Public Prosecutor's office of the Saint-Denis High Court
10	Order from 22 November 2000 of the Saint-Paul District Court
11	Report by Mr. Albino MORAN & Partners Shipbrokers
12	Report by BP SHIPPING
13	Invoice from Seaborne (bait)
14	Invoice from SHELL, Mauritius (fuel)
15	Certificate from Messrs. A. POUTADA concerning type of buoy utilized
16	National laws applying to our case
17	Final judgment in the *Camouco* case
18	Order dated 19.12.1997 regarding the José Sampedro Monteagudo Case (vessel MAGALLANES)
19	3 procès-verbaux of seizure dated 21.11.2000
20	Letter dated 9 November 2000 from the Monteco Shipping Corporation to the Seychelles Fishing Authorities