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TRIBUNAL INTERNATIONAL DU DROIT DE LA MER



2001

Public sitting

held on Friday, 6 April 2001, at 1000,
at the International Tribunal for the Law of the Sea, Hamburg,

President P. Chandrasekhara Rao presiding

The “Grand Prince” case
(Application for prompt release)

(Belize v. France)

Verbatim Record

<i>Present:</i>	President	P. Chandrasekhara Rao
	Vice-President	L. Dolliver M. Nelson
	Judges	Hugo Caminos
		Vicente Marotta Rangel
		Alexander Yankov
		Soji Yamamoto
		Anatoli Lazarevich Kolodkin
		Choon-Ho Park
		Thomas A. Mensah
		Paul Bamela Engo
		Joseph Akl
		David Anderson
		Budislav Vukas
		Rüdiger Wolfrum
		Edward Arthur Laing
		Tullio Treves
		Mohamed Mouldi Marsit
		Gudmundur Eiriksson
		Tafsir Malick Ndiaye
		José Luis Jesus
	Judge <i>ad hoc</i>	Jean-Pierre Cot
	Registrar	Gritakumar E. Chitty

Belize represented by:

Mr. Alberto Penelas, *Avocat*, Bar of Vigo, Spain,

as Agent,

and

Mrs. Beatriz Golcochea Fábregas, *Avocat*, Bar of Vigo, Spain,

as Counsel,

France represented by:

Mr. François Alabrune, Deputy Director of Legal Affairs of the Ministry of Foreign Affairs,

as Agent,

and

Mr. Jean-Pierre Quéneudec, Professor of International Law at the University of Paris I, Paris, France,

Mr. Michel Trinquier, Deputy Director for the Law of the Sea, Fisheries and the Antarctic, Office of Legal Affairs of the Ministry of Foreign Affairs,

Mr. Jacques Belot, *Avocat*, Bar of Saint-Denis, Réunion, France,

as Counsel,

THE PRESIDENT: I now invite the agent for the Applicant to make his statement.

MR PENELAS ALVAREZ: Mr President, honourable Judges, I shall today deal with the merits of the present case, starting with a brief introduction of the facts. The *Grand Prince* was carrying out a fishing campaign in the international waters in the so called "Williams Bank" outside the exclusive economic zone of Kerguelen and outside the CAMELAR area. After that campaign, the vessel was going to proceed to Brazil where it was allocated a fishing licence through a joint venture with a company from Brazil.

This is a case where, by an unfortunate decision of its Captain working for the first time on board, the fishing vessel entered the exclusive economic zone of the Kerguelens with, according to the Captain, the intention of fishing. It had no time to fish because it was caught on the same day it entered the zone. The vessel has never before been involved in illegal fishing and the Captain had clear instructions from the shipowner not to fish outside the allowed waters. When it was caught, the vessel had on board 18 tonnes of toothfish and 200 kilos of lobster.

On 26 December 2000 the vessel was detained by a French frigate and was taken to Port des Galets in La Réunion, where it arrived on 9 January 2001. On 12 January 2001 the Court of First Instance of Saint Paul issued an order fixing a bond for release. The bond consisted of a payment by cheque or in cash, which is practically the same, in the amount of 11,400,000 French francs, which exceeds three times the value of the ship and is close to the price of a new modern vessel.

The order was notified to the Captain of the vessel on 15 January 2001. On the following day, myself, together with the shipowner's lawyer in La Réunion, Antoine Alain, had several contacts with the Director of the Direction of Maritime Affairs in La Réunion, Erik de Chavanes, and also with Vicent Esclapez, a person working in his department. We informed them that the shipowner was making all the financial arrangements to try to place a bank warranty in the amount required by the court in order to avoid the unforeseeable loss caused by the detention of the ship.

We also informed them that it was our intention to discuss its reasonableness, independently of placing the bond, before this international Tribunal. The reason for saying that was because we felt that the amount of the bond and also the form was exorbitant compared to the eventual fines which could be imposed on the Captain. In the light of these conversations, the crew of the vessel remained on board pending the release of the ship.

As you will understand, Mr President, a bond in such an amount, 11,400,000 French francs, cannot be obtained within a few days, especially when we are speaking of a small company which owns only the *Grand Prince*. That answers question number 5 posed by the Tribunal to Belize.

On 23 January 2001, only one week after the notification of the order fixing the amount of the bond to the Captain, the Correctional Court of Saint Denis held a hearing and after one hour decided to confiscate the ship and to impose a fine on the Captain in the amount of 200,000 French francs. As we already know, the Court decided to provisionally execute the confiscation. As a consequence, we were

informed that the vessel could not be released, neither by posting the bond required by the First Instance Court nor with any other kind of bond. It was not possible to release the vessel. That was five or six days after the day the bond was fixed.

Yesterday it was mentioned that that decision has been appealed. The date for the appeal is pending. I should clarify that the appeal relates only to the merits of the case. We understand that the sanction of confiscation is absolutely disproportionate to the offence, as is shown by the low amount of the fine imposed upon the Captain. We are confident that the Court of Appeal will revoke the decision of confiscation. Obviously, Mr President, prompt release is not the objective or the subject matter of the appeal. Nothing rests on the decision in this respect. That answers the second question posed by the Tribunal to both parties.

The shipowner's lawyer in La Réunion held a meeting on 24 January 2002 with the Maritime Director, Erik de Chavanes, where we again explained that the vessel could not be detained and that it should be released upon a reasonable warrant. We further explained that the vessel was facing grave and unforeseeable damages including the loss of the fishing licence in Brazil. We also pointed out that if the vessel was not released, we would bring the matter before this Tribunal.

In order to solve matters in a normal way, we tried to convince the authorities in La Réunion of the need for the release of the vessel. We hoped that they would reconsider the position. At their request, we sent them information justifying the consequences of the vessel being detained. As evidence of that context, I enclose document number 14 of our Application, a fax sent by me to Erik Chavanes giving details of the fishing licence in Brazil and especially informing him of the deadline to take the licence. That was on 7 February 2001. We had many other contacts by phone. That answers question number 7 posed by the Tribunal to Belize.

After several contacts and discussions with the authorities in La Réunion it was finally decided not to release the vessel. That is the way in which France impeded the release of the vessel. In order to have some kind of evidence of proof of that situation we filed a request before the Court of First Instance of Saint-Paul asking for the release of the ship against a bank warranty in the amount fixed by the same court. The request was rejected on 22 February on the basis that the Correctional Court had confiscated the vessel and provisionally executed the confiscation. We enclose a copy of the request and the order of the court as documents 15 and 16 of our Application.

Under those circumstances, the shipowner explained the case to Belize and after a careful study of the matter it was decided to bring it before this international court. They are the reasons why we commenced preparation of the case and completed documentation at the beginning of March. We informed this Tribunal on 6 March 2001 of our intention to submit this matter to the Tribunal. That answers question number 6 posed to this party.

Our application is based on two different matters. The first relates to the way in which France avoided the release of *Grand Prince* by posting any kind of guarantee, reasonable or not reasonable. The second matter, which is independent of the first, relates to whether the order fixed by the First Instance Court of Saint-Paul, document

number 13 of the Application, can be considered reasonable as to its form, nature and amount in the light of Article 73 of the Convention and the case law of this Tribunal.

I shall deal with each question separately. As regards the first question, I shall not tire the Tribunal by repeating the arguments I stated yesterday. I shall only remind the Tribunal of two facts, which are not under discussion. On 12 January 2001 the Court of First Instance of Saint-Paul fixed a warrant for release of the vessel and the Captain against a bond in the form of a cheque or cash, which is the same, and in the amount of 11,400,000 French francs. That was notified to the Captain on 15 January 2001.

Only one week after the notification to the Captain, on 23 January 2001, the Correctional Court of Saint Denis decided, within one hour, to confiscate the vessel and provisionally execute the confiscation, stating that there was no possibility of releasing the vessel. Those are the clear facts of the case.

Perhaps I may put some questions to the Tribunal. Is it reasonable that a bond consisting of a payment in cash should be of an amount exceeding three times the value of the ship? Is it reasonable that such a bond can be obtained and posted in La Réunion in a few days or only one week, especially in the case of a small company? Is it not a breach of Article 73.2 to avoid prompt release against the posting of a reasonable bond by carrying out what I called yesterday “a prompt confiscation proceeding”? I think that the response to those questions is clearly “no”.

I have already stated that the dispositions of the Conventions regarding prompt release are independent of and prevail over domestic laws and regulations and that as a consequence, a state cannot allege a domestic precept or law to justify a breach of the requirement for prompt release sanctioned by Article 73.2 of the Convention.

For all those reasons, Mr President, and Members of the Tribunal, the formula used by France to evade prompt release of *Grand Prince* is unacceptable, extremely grave and constitutes a flagrant breach of the Convention.

I shall now refer to the second question: that is, whether or not the bond initially fixed by France was reasonable. As to the form and nature of the bond, I feel that it is unnecessary to go over again the arguments stated in our Application. I shall just mention that the Tribunal has made clear in previous cases that a bond consisting of a bank cheque or payment in cash is not a reasonable bond and that a bank warranty or letter of credit must be allowed.

As to the amount, in the previous cases (*Saiga*, *Camouco* and *Monte Confurco*) the Tribunal specified a number of relevant factors to be taken into account when assessing the reasonableness of the bonds, which include the gravity of the alleged offences, the penalties imposed, or impossible, under the laws of the detaining state – and I repeat imposed, because that is our case – the value of the detained vessel and the cargo seized, and the quantity of fish carried on board.

Belize, as a State party to the Convention, wishes France to have a reasonable and sufficient guarantee to make effective an eventual condemnation in a final and firm judgement in the French courts. This is the aim of Article 73, which is balanced by the request of prompt release.

Mr President, let us contemplate the worst scenario for the shipowner. Let us see what is the value of the *Grand Prince*, a ship of 36 years of age, bought two years ago for a price of 45 million pesetas (271,000 euros), which was originally built as a stern trawler and then converted to a bottom liner, without at the moment any stable fishing possibilities.

With your permission, Mr President, I would like the Tribunal to hear the evidence of our experts, commencing with Faustino Carceller, a prominent naval engineer and marine surveyor with very great experience in the fishing vessels market. The Tribunal of the French delegation may also wish to ask him questions about the vessel. Can I call the witness, Mr President?

THE REGISTRAR: Mr President, before the expert is called upon to make the solemn declaration, I call upon the interpreters provided by Belize to interpret the testimony of the experts from Spanish into the official languages of the Tribunal to make the solemn declaration under Article 85 of the Rules of the Tribunal. I will now call upon Ms Kathryn Smart to make the solemn declaration.

KATHRYN SMART (Interpreter) sworn

THE REGISTRAR: I now call upon Mr Julio Quijano to make the solemn declaration.

JULIO QUIJANO (Interpreter) sworn

THE REGISTRAR: Thank you. The interpreters will now take their positions in the interpretation booths. We shall need to wait until they have taken their places in the booths before we can proceed with the solemn declaration of the first expert called by Belize. An expert is required to make the solemn declaration under Article 79 of the Rules of the Tribunal before making any statement before the Tribunal. (*Pause*) I have just received the signal that the interpreters have taken their place and that we can proceed.

I call upon Mr Antonio Alonso Perez to make the solemn declaration.

MR PENELAS ALVAREZ: Excuse me. This witness is not Antonio Alonso Perez. He is Faustino Carceller.

THE REGISTRAR: In that event, Mr President, I call upon Mr Faustino Carceller Villalta to make the solemn declaration. Perhaps the expert may give his name and then proceed to take the oath.

MR PENELAS ALVAREZ: I will ask him his name. Mr Carceller, could you kindly introduce yourself to the court?

THE REGISTRAR: Let him give his name and make the declaration.

**FAUSTINO CARCELLER VILLALTA, sworn
Examined by MR PENELAS ALVAREZ**

Q Mr Carceller, would you kindly introduce yourself to the court?

A (Interpretation) I am a naval engineer; I have a doctorate; I am also a marine surveyor. My professional experience consists of 22 years as a naval engineer working in the docks, where I worked in construction, the technical department, and for the last 10 years in a management position in the docks. Since 1988 I have run my own business, working on projects and valuations of vessels of all kinds, especially fishing vessels. During my career at the docks I worked on budgets for the construction of new vessels. I checked and reviewed budgets drawn up by others when I was in a management position, and I had the opportunity to compare the different finance plans for vessels built.

I have also worked as an independent consultant, in which I have done valuations for the Spanish Federation of Building Societies, which is a property valuation company in Spain. That company then decided to set up a new company particularly devoted to valuations. I form part of that company and I run and manage the valuation of vessels. During that time we have done hundreds of valuations of vessels, particularly fishing vessels. I belong to the following associations: the Association of Naval Engineers of Spain, the Society of Naval Architects and Engineers of the United States of America, and the Spanish Association of Shipping Arbitration.

Q Mr Carceller, do you ratify the full content and conclusions of your valuation report of *Grand Prince* dated 16 March 2001?

A Yes, of course.

Q Do you have any kind of link with the parties in this case, or any interest in the same?

A No, none at all.

Q Do you have an habilitation to act in front of Spanish courts?

A I have my qualifications as a naval engineer and Doctor of Naval Engineering, and also my qualification as a marine surveyor. These enable me to speak before the Spanish courts at any level to report on matters relating to my technical competence. In fact, I have spoken before the Spanish courts in many cases related to shipping matters and fishing vessels.

Q Have you ever acted as an arbiter in maritime cases?

A Yes. I was a sole arbiter and I was a member of a panel under the Spanish Institute of Marine Arbitration.

Q What is your experience of vessels of the characteristics of *Grand Prince*?

A Since I have had my own business and have been a consultant, I have worked on conversion projects for shipbuilders on a number of different vessels similar to the *Grand Prince*.

Q Do you have experience in the marketing of fishing vessels such as the *Grand Prince*, and, if so, what is your experience?

A My experience is restricted to valuations for a number of shipowners in an advisory capacity. I have not been involved directly in buying and selling as a main party, but as an adviser to those buying and selling.

Q What are the main premises to be taken into account when evaluating the price of a vessel?

A The age of the vessel, the state of maintenance, any modernization or repairs that have been carried out on the vessel, fishing licences (if any) in the case of a fishing vessel, the adaptation for the type of fishing concerned, and, of course, the demand for the type of vessel concerned.

Q Has the age of a vessel a relevant influence on its value?

A Yes. I would say that it is perhaps the most important factor, not just because age itself has an impact on the state of the boat, but because of the possible obsolescence of the vessel and its equipment.

Q What would be your opinion of the market price of *Grand Prince* at the present moment?

A As I said in my valuation, the market price is about 360,000 euros.

Q How do you arrive at that price?

A There are two main procedures of approximation, based on the cost price of a similar vessel newly-built and the price depreciating in time, and comparing that current depreciated value with the market value now for similar vessels. That is how I arrived at the estimated construction price of 2.585 million euros. I arrived at the conclusion that the current value, as I said before, would be 360,000 euros. I would say that it would be difficult to obtain such a price on the market today, because there is more supply than demand, but I think that would still be a reasonable price.

Q In your opinion, what is the natural destiny, in a short term period, of a vessel of the characteristics and age of *Grand Prince*?

A The *Grand Prince* is 35 years-old, so I think that its only value is for scrap.

Q The maritime authorities valued this ship at 13,000,000 French francs, or 1,737,918 euros. Do you find that to be an accurate value?

A It seems completely illogical and unreasonable. It is impossible to achieve this price because a 35 year-old vessel has an old hull. Even though there may have been considerable modernizations and some of the hull might have been repaired, it is still old, and other parts of the boat are old too. Also, the quality of the materials used are not as good as they are today. The engines are old. So I do not think that this price is logical at all. It is not the price of the vessel. I think that it would be impossible to achieve that price in any purchase agreement. For any buyer of a vessel through a shipbuilder, it is unthinkable that there could be any agreement based on that price.

Q The final question is: could you please inform the Tribunal of the approximate cost of a newly built vessel similar to *Grand Prince*?

A My estimate, as I have said in my evaluation, is 2,585,000 euro. Of course that depends on the specification but that is my estimate for a newly built vessel similar to the *Grand Prince*.

MR PENELAS ALVAREZ: Those are my questions.

THE PRESIDENT: France may wish to cross-examine.

Cross-examined by MR QUENEUDEC

MR QUENEUDEC (Interpretation) : I have two questions to put to Mr Carceller, an expert who has been brought to the Tribunal by the opposing party. The first question is: you made a valuation report on 6 March 2001 and would you tell the Tribunal at whose request you proceeded with this valuation?

A The lawyer of the ship owner, Mr Alberto Penelas.

Q In this valuation, which you made on the basis of a file which was submitted to you, could you indicate to the Tribunal the name of the owner of the vessel at the date when you proceeded with your valuation?

A I was not given any report asking me to do the valuation. Mr Penelas asked me to provide a valuation. I know this boat because the shipyard carrying out the conversion of this vessel asked me to do a project on it in connection with the shipyard where I was asked to do it. I do not know the ship owner. I have no knowledge whatsoever of who the ship owner is.

THE PRESIDENT: You can proceed with your next expert.

MR ANTONIO ALONSO PEREZ, sworn
Examined by MR PENELAS ALVAREZ

Q Mr Alonso, would you kindly introduce yourself to the court?

A (Interpretation) My name is Antonio Alonso Perez. I am a captain in the Spanish merchant navy. I am also a marine surveyor. I am an inspector for the certification of vessels for the provision of flags and certification for the vessels of Honduras and Costa Rica. I am also the chief of security of the Port of Vigo in Spain.

Q Do you ratify the full content and conclusions of your evaluation report on *Grand Prince* date 13 March 2001?

A Yes.

Q Do you have any kind of link with the parties in this case or any interest in the same?

A No.

Q Do you have the ability to act before the Spanish courts?

A As a captain of the merchant navy and as a marine surveyor, yes, I am entitled to do so. In fact, I have already acted as expert in a number of cases for the evaluation of vessels, equipment and hulls and in marine surveying matters.

Q Do you have experience in the marketing of fishing vessels like *Grand Prince* and, if so, how have you gained that experience?

A I have taken part in fishing vessel inspections, either trawlers, longliners or bottom liners, and also in buying and selling and insurance for P&I purposes and work carried out to European standards on fishing vessels.

Q What are the main provisos to be taken into account when evaluating a vessel?

A One of the main factors is the age of the vessel; then of course the state of repair and whether there have been major modifications; the design in relation to the type of fishing or purpose of the vessel; and another important factor is whether the vessel has a fishing licence and for what waters – and that might be NAFO or other waters – and the current state of the market for the purchase and sale of such vessels.

Q In your opinion a big influence in the value of a ship is its age?

A Yes, that has a great deal of influence because of the wear and tear that is caused by fishing. There might be damage to the hull; there might be problems with the steering or the engines. There is wear and tear on all these things. Then there is the type of steel, whether it is high in carbon, which is tougher for the purposes of using in very cold waters or in ice.

Q In your opinion, what would the market price for *Grand Prince* be at the present moment?

A According to my calculations, it would be somewhere between 58 million and 62 million pesetas. In francs, that is just over one million.

Q How did you arrive at the description in your report?

A Well, there is a number of ways of carrying out an evaluation. Age and condition are important factors. The evaluation has to be based on the residual value of the boat and that is of course after 36 years of use in this case, but there was a recent sale at 45 million pesetas and that is a factor to be taken into account. There is more modern equipment for steering that has been incorporated into this boat and that is why the figure is a bit higher than that.

Q In your opinion, what is the value in a short-term period based on the characteristics of the *Grand Prince*?

A Given the age of the vessel and the type of converted fishing vessel that it is, I think it is just scrap value only.

Q Finally, I inform you that the maritime authorities in Réunion valued the *Grand Prince* at 3 million French francs. Do you find that an accurate value?

A Could you repeat the amount?

Q 3 million French francs, 1,730 euro?

A That is not correct.

Q 3 million French francs, 1,737,000 euro?

A That is about 300 million pesetas. Well, you could buy a new vessel with that amount. As I said to you, if you took a new vessel of this design that was only to be

used for bottom line fishing, it would be about 400 million pesetas, so I think the estimate given is extremely high, it is exaggerated or they have valued the wrong type of vessel.

MR PENELAS ALVAREZ: Thank you. I have no further questions for you.

JUDGE EIRIKSSON: Could we have some clarification on the exchange rates here? The figures you gave do not accord with what you were saying before?

MR PENELAS ALVAREZ: Yes. The maritime authorities in Réunion valued the vessel at 3 million French francs. Let me check. I am sorry, that is 13 million French francs. That is the correct figure.

THE PRESIDENT: Would you like to put that question to the witness?

MR PENELAS ALVAREZ: I correct the evaluation by the French authorities. The price of this vessel was 13 million French francs? Do you find that an accurate value?

A No. Once again, I quickly calculated in my head into pesetas from the figure in euro, so I knew that it would be in the region of 300 million pesetas.

MR PENELAS ALVAREZ: The figure in euro was correct and he understood the figure.

Cross-examined by MR QUENEUDEC

Q (Interpretation) Captain Alonso, would it be possible to reply to the question which I have already asked of the former expert: when you proceeded with the evaluation, the value of the *Grand Prince*, were you able to know the identity of the current owner of this vessel?

A I am not sure I understood the question correctly.

THE PRESIDENT: Please repeat the question.

MR QUENEUDEC: Captain Alonso, could you tell us if, at the time when you drew up your report on the valuation of the *Grand Prince*, you knew the name of the current owner of this vessel?

A There is a name of a company here. Paik is the name of the company that I have.

Q A commercial corporation?

A Yes, Paik Commercial Corporation. Yes, it is definitely Paik Commercial Corporation.

(The witness withdrew)

THE PRESIDENT: The Agent for Belize may now continue his statement.

MR PENELAS ALVEREZ: Mr President, Members of the Tribunal, you have heard the authorised testimony of two prominent persons in the fishing field. According to

them, the value of *Grand Prince* is in the region of 360,000 euros in the best of cases. They have already evidenced that the price estimated by the French surveyor, Mr Chancerel, on behalf of the maritime authorities in La Réunion is totally unrealistic, reaching a figure which is close to the price of a new, modern vessel of similar characteristics of *Grand Prince* but built originally as a longliner and fitted with the most sophisticated equipment.

I am not aware of the experience of Mr Chancerel with those kind of vessels. I know that there are not many in La Réunion. When making his appraisal, Mr Chancerel did not consider the purchase price of the ship, 45 million pesetas; its fishing possibilities, which is a very important element; the fact that it is an extremely old ship; the matter of its conversion from a trawler into a longliner, and so forth. In my opinion, with respect to Mr Chancerel, he did not make a very extensive study of this particular vessel.

Now we have an accurate idea of the value of *Grand Prince*; that is, 360,000 euros. Other circumstances should also be taken into consideration when assessing the reasonableness of the bond: the small quantity of fish carried on board, 18 tonnes of toothfish; that the Captain had clear instructions from the shipowner not to fish in the said area; that the vessel was about to proceed to Brazil where she had good possibilities of fishing under a Brazil fishing licence; the full co-operation of the Captain, the crew and shipowner of *Grand Prince* with the French authorities, and finally the amount of the fine imposed by the Correctional Court of Saint Denis to the Captain which, although it has been appealed, is in the amount of 200,000 French francs.

Finally, we must recall that, as stated by this Tribunal in paragraph 86 of the judgement pronounced in the *Monte Confurco* case, the value of the fish and the fishing gear seized is also to be taken into account as a relevant factor in the assessment of the reasonableness of the bond. Following the valuation made by the French authorities, the amount of these items is 153,000 euros, which should be considered as part of the warranty.

The result is that even contemplating the worst scenario for the shipowner, the final and firm decision of a domestic court, the Court of Appeal of the Supreme Court in Paris, would be fully guaranteed by a bank warranty in the amount of 206,000 euros.

For all those reasons, Mr President, I reproduce in full the submissions stated in our application. I thank you for your kind and patient attention.

THE PRESIDENT: Have you concluded your statement?

MR PENELAS ALVAREZ: Yes.

THE PRESIDENT: Would France be able to present its statement at 11.30 or 12 o'clock?

MR ALABRUNE (Interpretation): Mr President, if you permit, we should like to do so at the original time; that is, two o'clock this afternoon.

THE PRESIDENT: The hearing is adjourned until two o'clock.

(Adjournment 10.58 a.m.)