INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

REQUEST FOR THE PROMPT RELEASE OF VESSEL CARGO AND CREW
PURSUANT TO ARTICLE 292
OF THE 1982 UNITED NATIONS CONVENTION ON THE
LAW OF THE SEA

by

THE REPUBLIC OF PANAMA

Against

THE REPUBLIC OF YEMEN

In respect of the
M/V "CHAIIRI REEFER 2"

02 July 2001
"CHAI SIRI REEFER 2"

- 2 -

AUTHORIZATION

1. In accordance with Article 110 par. 3 and par. 2 lit. b) of the Rules of the Tribunal notice is hereby given to the Tribunal that

a) the Government of the Republic of Panama with letter of the Minister for Foreign Affairs of the Republic of Panama Mr. José Miguel Aleman of 22nd June 2001, addressed to the Registrar of the Law of the Sea Tribunal

\[ - \text{ ANNEX I } - \]

has authorized Rechtsanwalt Hartmut von Brevern, partner of the Hamburg law firm Röhreke Boye Remé von Werder, to make this application under article 292 of the Convention on its behalf.

b) Mr. von Brevern therefore is authorized to act as Agent and as Counsel. His address for service is as follows:

Hartmut von Brevern  
Rechtsanwalt  
Röhreke Boye Remé von Werder  
Ballindamm 26  
20095 Hamburg  
Telephone: 0049-40-32 17 83  
Fax: 0049-40-32 17 78  
e.mail: h.brevern@roeheke.de

c) the authorized Mr. von Brevern is the person that submits this Application.

\[ - \text{ ANNEX II } - \]

CERTIFICATION

2. In accordance with Article 110 par. 3 of the Rules of the Tribunal it is herewith certified that a copy of the Application and all supporting documentation has been delivered to the Republic of Panama as flag state.

STATEMENT OF FACTS

3. After having left the port of Salalah/Oman on 29th April 2001 at 7.30 hours a.m. and after having arrived Mukalla port in Yemen on April 30th 2001 MV "CHAI SIRI REEFER 2" from 30 April 2001 on loaded in the port of Mukalla in the Republic of Yemen 185,740 metric tons of frozen cuttlefish as can be seen from the Bill of Lading of S. Overseas Marine Corp.Lines number CRS 2/04 dated 2nd May 2001 and of the manifest enclosed
APPLICATION – PANAMA

- 3 -

ANNEX III

after the vessel had already taken on board before 400 metric tons of frozen mixed fishes on 7th of April at Singapore from another vessel, outside the port limits, as can be seen from the Bill of Lading no. CR 2/02 of S. Overseas Marine Corp.Lines dated 7 April 2001 and the enclosed manifest

ANNEX IV

and 180 metric tons of frozen mixed fishes in Salalah/Oman on the 27th of April 2001 as can be seen from the Bill of Lading of S. Overseas Marine Corp.Lines, no. CR 2/03 dated 27 April 2001 and the enclosed manifest

ANNEX V

All cargo with a total value of USD 950,332 (in words: ninehundredfiftythousandandthirtytwo) as can be seen from the invoice of Yemen Beach Est for USD 334,332,90, of the invoice of Ocean Harvest of 25.05.2001 for USD 400,000,- and of the invoice of Alhadrami General Trading of 27.04.01 for USD 216,000,-

ANNEX VI

was to be carried to and to be discharged in Thailand.

4. On 3rd May 2001 in the morning after MV "CHAISIRI REEFER 2" had received the port clearance she left the port of Mukalla at 08.15 a.m. as is confirmed in the latter of the Yemen ports authority, port of Mukalla, dated 8th May 2001

ANNEX VII

5. However, at 08.50 a.m. of the same day, while the vessel was moving out from Mukalla port starting the journey to Thailand which should be the next port of call, MV "CHAISIRI REEFER 2" was intercepted by small grey coloured boats running on 2x 200 HP engines occupied with 10 fully armed people, later known as Coast Guards of the Republic of Yemen

6. The captain of MV "CHAISIRI REFER 2" was forced to take the vessel at high speed, just 4 miles away from the coast to an unknown place (later known as Sharmah) and put anchor at Longitude 50° 00E and Latitude 14° 49 N. about one mile from the coast at 3.20 p.m. of 3rd May 2001 (behind a mountain).

7. Also on 03 May 2001 at 03.20 p.m. the Coast Guard forced the captain of the vessel by gun to put stamp and sign in 2 plain papers and an unknown form in local language and finally he was forced to hand over bills of lading, cargo manifest of the cargo and the port clearance and the log book of the vessel.
Annex 1 Authorization of Mr. von Brevern from the Minister for Foreign Affairs of Panama dated 22 June 2001

On May 5, 2001, at 01:00 p.m., the ship was ordered to sail back to Mukalla where she dropped anchor at 07:00 p.m. after getting clearance from the Mukalla port.

From 6 May to 10 May, the vessel was at the anchorage position in Mukalla. The questions of the agent and owners representative to the Coast Guard for a written explanation for the detention of MV "CHASIRI REEFER 2" have not been answered at all.

On 11 May, at 11:00 a.m., a group of people came on board of the vessel without any notification to the captain, owner, or agent. These people were members of the Ministry of Fisheries of the Republic of Yemen which came later to the knowledge of the captain.

After the ship had been ordered by the Governor of Hadhramout on 17th May 2001, the first time to come alongside the port to hand over to the port police, however the Coast Guard ignored the order and sent the vessel back to the anchorage area. The vessel on 22nd May 2001 again was ordered to go alongside the port of Mukalla for investigation about the cargo on board. Also the Minister for Fisheries of the Republic of Yemen visited the vessel. The crew was urged to show the authorities of Yemen three frozen blocks of fish previously loaded in Singapore and two other samples loaded in Mukalla port.

On 24 May, Panama Maritime Authority wrote to the Port Authority of Yemen and to the Governor of Hadhramout asking for an explanation regarding the case against MV "CHASIRI REEFER 2". Again there was no response to their queries from the Authorities.

On 26 May 2001, the Customs Authority and the Coast Guard of Yemen came at night with containers, trucks, and workers with the intention to unload the cargo. The captain objected and asked for the Court order for removal of the cargo.

On the 27th May 2001, the Attorney of Hadhramout forced the captain of the vessel to open the hatches and to start unloading. Upon captains denial they themselves forcefully opened the hatches, resulting in damaging the two doors of the cargo hold number 2 and number 3. A group of armed persons then unloaded the fish on board of the vessel by using carriers into refrigerated and non-refrigerated containers. The unloading operation lasted until 6th of June 2001. As part of the cargo has been unloaded in non-refrigerated trucks the quality of that part of the cargo will certainly be damaged.

All the 765.74 metric tons of fish have been unloaded. The location and the condition of the cargo is unknown to crew and owners.

Applicants have managed to get a copy of the letter of 8th May 2001 sent by the Coast Guards to the General Manager, Office of the Fish Wealth, Governorate of Hadhramout stating the following:

- The vessel loaded 400 mt of fish at sea...
- The fish has been loaded from unlicensed fishing boat
- No authority has any information of the entry of MV "CHAIISRI REEFER 2" into the waters of the Republic of Yemen to carry fish from the ships that fish without license being issued by the concerned Ministry.
- The addressee was asked to form a committee to investigate the case.

**ANNEX VIII**

17. On the 16th of June 2001 the Yemen Court of the Public Assets in its Civil Case No. 4, for the year 1422 H delivered a judgment in favour of Mr. Zaki Abdoh Al-Hadhrami on behalf of the shipowner against the Public Assets Prosecution Department, Governorate of Hadhramout and ordered

"FIRST: To accept the grievance submitted by Zaki Abdoh Al-Hadhrami
SECOND: To Obliging Mr. Zaki Al-Hadhrami to present to the Court the assured commercial guarantee for what the Prosecution implementations resulted into, and what they use it for, and for the rulings issued by the Court in relation to the Public Rights.
THIRD: To release the vessel Chaisiri Reefer 2, her crew, and the cargo, immediately. Should anyone have any objection or grievance, he/she may come forth with it to the court and present it in due order according to the law."

**ANNEX IX**

18. Mr. Zaki Abdoh Al-Hadhrami has handed over the demanded Commercial Guarantee under the date of June 16th 2001 to the Yemen Court of the Public Assets with the following words:

**COMMERCIAL GUARANTEE**

I. Zaki Abdoh Ahmed Al-Hadhrami, a merchant, Holder of Commercial registration No. 960600018, hereby undertake to abide by and guarantee all that may be decided Sharia-wise and legal-wise by the Court of Public Assets, Governorate of Hadhramaut, Shabwa, and Al-Mahrah, which tried the grievance submitted by the marine agent of m/v The Chaisiri Reefer 2 and all the decisions that may be reached by the Court when the (PAPD) Public Assets Prosecution Department raises the case tried by it which is the case of the Thai vessel; Chaisiri Reefer 2, in case of proving any violation. I also undertake to pay any amounts and all that maybe decided by this Court. I, therefore, sign here below in the presence of the Chamber of Commerce and Industry, Hadhramout.

**ANNEX X**

19. The Yemen Court of the Public Assets sent the judgment of 16 June 2001 with order of the Court of 18 June 2001 to The Manager, Hadhramout Coast Guard Security Department.
and another order with the same language to The General Manager, Customs Department, Gov. of Hadhramout


has asked the Governorate Security Department of Hadhramout for the Execution of the decision of the Court of Public Assets

21. The Court orders have not been followed by the addressees. Vessel and crew continue to be held hostage at Mukalla. The life of the 16 crew members is in danger. The ship is still hold by fully-armed Coast Guard. No proper legal proceedings have been instituted. No legal accusation or claims have been given to captain or shipowner or agent.

VESSEL PARTICULARS

23. Relevant informations concerning the vessel as per Ships Certificate of the Republic of Panama valid until December 11th, 2002 are as follows:

<table>
<thead>
<tr>
<th>The vessel:</th>
<th>CHAISIRI REEFER 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
<td>CHAISIRI REEFER 2</td>
</tr>
<tr>
<td>Flag</td>
<td>Panama</td>
</tr>
<tr>
<td>Port of Registry</td>
<td>Panama</td>
</tr>
<tr>
<td>GRT</td>
<td>1263,00</td>
</tr>
<tr>
<td>NRT</td>
<td>514,00</td>
</tr>
<tr>
<td>Type of vessel</td>
<td>Reefer vessel</td>
</tr>
<tr>
<td>Insured Value</td>
<td>US $ 5 million</td>
</tr>
<tr>
<td>Cargo originally on board</td>
<td>785.74 metric tons frozen fish</td>
</tr>
<tr>
<td>Value of the cargo originally on board</td>
<td>approximately US$ .950,332</td>
</tr>
<tr>
<td>Cargo remaining on board</td>
<td>nil</td>
</tr>
</tbody>
</table>

24. Name and Address of Owner:

S. Overseas Marine Corp. Panama
d/o Shirley & Associados
P.O.Box 5216
Panama 5
Republic of Panama

Operator
S.W. Fisheries Co.Ltd.
1101/7 Wichien Chodok Rd.
T. Mahachai, A. Muang,
Samutsakorn 74000/Thailand

Crew

<table>
<thead>
<tr>
<th>No.</th>
<th>Name</th>
<th>D.O.B.</th>
<th>Nationality</th>
<th>Position</th>
<th>Expire</th>
</tr>
</thead>
<tbody>
<tr>
<td>01</td>
<td>MR. MYO LWIN</td>
<td>06 Jun 57</td>
<td>MYANMAR</td>
<td>Master</td>
<td>2 SEP 2001</td>
</tr>
<tr>
<td>02</td>
<td>MR. SOMSAK</td>
<td>06 Jan 59</td>
<td>THAI</td>
<td>C/O</td>
<td>25 SEP 2003</td>
</tr>
<tr>
<td>03</td>
<td>MR. PHAIRA</td>
<td>21 Apr 61</td>
<td>THAI</td>
<td>2/E</td>
<td>3530-09867  27</td>
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<tr>
<td>04</td>
<td>MR. LUIA SOMRUB</td>
<td>24 Feb 71</td>
<td>THAI</td>
<td>Bosun</td>
<td>4233-0047</td>
</tr>
<tr>
<td>05</td>
<td>MR. CHONLAPHAT</td>
<td>11 Aug 68</td>
<td>THAI</td>
<td>AB</td>
<td>4293-13885</td>
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<tr>
<td>06</td>
<td>MR. CHARIN</td>
<td>13 Mar 68</td>
<td>THAI</td>
<td>AB</td>
<td>4130-00316</td>
</tr>
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<td>07</td>
<td>MR. BOONSAK</td>
<td>05 Nov 69</td>
<td>THAI</td>
<td>AB</td>
<td>4165-00993</td>
</tr>
<tr>
<td>08</td>
<td>MR. ANUCHIT</td>
<td>09 Jun 63</td>
<td>THAI</td>
<td>2/E</td>
<td>4190-03074</td>
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<tr>
<td>09</td>
<td>MR. PREECHA</td>
<td>1955</td>
<td>THAI</td>
<td>3/E</td>
<td>4190-02177</td>
</tr>
<tr>
<td>10</td>
<td>MR. WICAI</td>
<td>05 Feb 66</td>
<td>THAI</td>
<td>3/E</td>
<td>4190-03165</td>
</tr>
<tr>
<td>11</td>
<td>MR. CHAIWAT</td>
<td>02 Jul 73</td>
<td>THAI</td>
<td>4/E</td>
<td>4230-00596</td>
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<td>12</td>
<td>MR. SOMBUN</td>
<td>01 Jan 67</td>
<td>THAI</td>
<td>C/E</td>
<td>4230-00369</td>
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<tr>
<td>13</td>
<td>MR. PRASONG</td>
<td>22 Jan 59</td>
<td>THAI</td>
<td>Oiler</td>
<td>4390-13014</td>
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<tr>
<td>14</td>
<td>MR. SRAWOOTTIPPAYOM</td>
<td>21 Jan 79</td>
<td>THAI</td>
<td>Oiler</td>
<td>4330-01137</td>
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<td>15</td>
<td>MR. PRASOPCHOK</td>
<td>11 May 71</td>
<td>THAI</td>
<td>Oiler</td>
<td>4380-11954</td>
</tr>
<tr>
<td></td>
<td>MR. TAPSANG</td>
<td>18 Oct 52</td>
<td>THAI</td>
<td>Cook</td>
<td>4230-01011</td>
</tr>
</tbody>
</table>

Summary of Facts

Time and place of detention
The "CHAI SIRI REEFER 2" was detained by authorities of the Republic of Yemen on 3rd May 2001 just outside the Yemen port of Mukalla.

Present location of vessel and crew.
The present location of vessel and crew is the port of Mukalla/Yemen.

Present location of cargo
The present location of the cargo which has been discharged from "CHAI SIRI REEFER 2" after the detention of the vessel by the authority of Yemen is unknown.

JURISDICTION

26. The U.N. Law of the Sea Tribunal has jurisdiction to deal with this Application for the following reasons:

- The "CHAI SIRI REEFER 2", crew and cargo has been detained by the Republic of Yemen since more than 6 weeks and has not been released since contrary to many applications of the shipowner and of the flag state for a release of vessel, crew and cargo,
- it is alleged by the shipowner and the flag state that the Republic of Yemen thereby has not complied with the provisions of the Convention for the Prompt Release of vessel, crew and cargo upon the posting of a reasonable bond or other financial security,
- the Republic of Yemen as well as the Republic of Panama each are members of the U.N. Law of the Sea Convention.

STATEMENT OF LAW

27. The Republic of Yemen has not complied with its obligation under Article 73 par. 2 of the Convention for the following reasons:

- The arrest of "CHAI SIRI REEFER 2" and her crew was based on the alleged violation of fishery laws of Yemen and have therefore been taken in the exercise of Yemen's Sovereign Rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone,
- the measure of arrest of vessel and crew and discharge of cargo were not necessary to ensure compliance with the laws and regulations adopted by Yemen in conformity with this Convention,
- vessel and crew and cargo have not been promptly released upon the posting of a reasonable security for and on behalf of the shipowner of "CHAI SIRI REEFER 2" in the form of a commercial guarantee.
28. The Republic of Yemen furthermore has not complied with the obligation under Article 73 par. 4 of the Convention because

- the Republic of Yemen after having arrested vessel and crew has not notified the Republic of Panama as flag state of "CHAISIRI REEFER2".

29. It is denied that vesselowners or crew members have violated any national law of the Republic of Yemen or any international law. It is denied that vesselowners or crew have ever been involved in smuggling.

30. All letters which have been addressed by shipowners to the Governor of Hadhramout on the 15th of May 2001, to the President of the Government of the Republic of Yemen on May 18, 2001 and on the 27th May 2001, to the Attorney General of Yemen on 23 May 2001 and finally to the custom Authority in Mukalla, Governorate of Hadhramout of 27 May 2001, of 29 May 2001 and of June 4, 2001 have not received any single reply.

SUBMISSION

31. IN VIEW OF THE FOREGOING the Applicant submits that the U.N. Law of the Sea Tribunal should determine that the vessel, her cargo and crew be released immediately without requiring that any further bond be provided.

ANNEXES

DOCUMENTS IN SUPPORT

I. Authorisation by the Republic of Panama for Rechtsanwalt Hartmut von Brevern, dated 22nd June 2001
II. Documents stating that the authorized Mr. von Brevern has signed the Application
III. Bill of Lading No. CR 2/04 of S. Overseas Marine Corp. Lines of 6nd May 2001 and enclosed manifest
IV. Bill of Lading no. CR 2/02 of S. Overseas Marine Corp. Lines, dated 7th April 2001 and enclosed manifest
V. Bill of Lading no. CR 2/03 of S. Overseas Marine Corp. Lines of 27th April 2001 and enclosed manifest
VI. Commercial invoice of Ocean Harvest of 25.05.2001 for USD 400,000,-- and invoice of Alhadrami General Trading of 27.04.01 for USD 216,000,-- and commercial invoice of Yemen Beach Est of 16.04.2001 for USD 334,332.00
VII. Letter of the Harbour captain to the Ministry of Transportation of Yemen of May 8, 2001
VIII. Letter of Coast Guards to the General Manager Office of the Fish Wealth, Governorate of Hadhramout of May 8, 2001
IX. Order of the Court of the Public Assets of 16 June 2001
X. Commercial Guarantee of Mr. Zaki Abdoh Al-Hadhrami of June 16, 2001
XI. Letter of the Court of the Public Assets to the manager Hadhramout Coast Guard Security Department of June 18, 2001
XII. Letter of the Court of the Public Assets to the General Manager Customs Department Govern. Gov. of Hadhramout of June 18, 2001
XIII. Letter of Brigadier General
XIV. Ship’s certificate
XV. Crew list of “CHAI’SIRI REEFER 2”

In my capacity as Agent I certify that the translation of the supporting documentation the originals of which are written in the Arab language is accurate.

(Hartmut von Brevern, Rechtsanwalt)