



INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
TRIBUNAL INTERNATIONAL DU DROIT DE LA MER

Press Release

TRIBUNAL DELIVERS JUDGMENT IN
CASE NO 14

TRIBUNAL ORDERS RELEASE OF THE *HOSHINMARU* UPON THE POSTING OF A BOND OF 10,000,000 ROUBLES

Hamburg, 6 August 2007. The International Tribunal for the Law of the Sea delivered its Judgment today in *The "Hoshinmaru" Case (Japan v. Russian Federation), Prompt Release*, ordering the prompt release of the fishing vessel upon the posting of a bond of 10 million roubles (approximately US\$ 392,000). The Judgment was read by the President of the Tribunal, Judge Rüdiger Wolfrum, at a public sitting held at the Tribunal.

The Application for the release of the *Hoshinmaru* was submitted to the Tribunal under article 292 of the United Nations Convention on the Law of the Sea on 6 July 2007 by Japan, the flag State of the vessel, against the Russian Federation. The dispute concerns the detention of the fishing vessel *Hoshinmaru* by the authorities of the Russian Federation for the alleged infringement of national fisheries legislation in its exclusive economic zone.

JUDGMENT

The Tribunal first observes that the requirements which found its jurisdiction are fulfilled in the case. It then examines the objection to the admissibility of the application raised by the Respondent. In this respect, it may be noted that, while no bond was set by the detaining State at the time of the filing of the application, on 6 July 2007, a bond of 25,000,000 roubles (approximately US\$ 980,000) was later set by the Respondent on 13 July 2007. The bond was subsequently reduced to 22,000,000 roubles during the hearing in the case. On that basis, the Respondent claims that the Application is inadmissible on the grounds that a bond had been set. The Applicant for its part claims that the amount of the bond set is unreasonable and that the bond does not meet the requirements of article 292 of the Convention. The Tribunal considers that the setting of the bond does not render the Application without object, that the nature of the dispute has not changed as a result but that the scope of the dispute has narrowed to the question of the reasonableness of the bond. For these reasons, the Tribunal finds that the Application is admissible.

The Tribunal then examines Japan's claim that the Russian Federation did not comply with the provisions of the Convention concerning the prompt release of the vessel and its crew upon the posting of a reasonable bond. The Tribunal first observes that a bond for the release of the vessel and its crew was not set until seven days after the filing of the Application and more than five weeks after the arrest of the vessel, despite requests from the Applicant to do so. The Tribunal notes that the parties disagree as to whether the crew and Master are being detained along with the vessel in the port of Petropavlosk-Kamchatskii. The Respondent's statement that restrictions on the free movement of the Master were lifted on 16 July 2007 is acknowledged by the Tribunal, as is the fact that both the Master and crew still remain in the Russian Federation.

With respect to the bond set on 13 July 2007, the Applicant's allegation that the bond was not set promptly is denied by the Respondent. Both parties do however agree in principle that a bond should be set within a reasonable time, taking into account the complexity of the given case. The Tribunal notes that the Convention does not set a precise time-limit for setting a bond and that, given the object and purpose of article 292 of the Convention, the time required for setting a bond should be reasonable.

The Tribunal turns to the reasonableness of the bond set by the Respondent and considers the relevant factors for determining a reasonable bond, reaffirming the jurisprudence developed in its previous judgments.

The Tribunal notes that the Respondent justifies the bond of 22,000,000 roubles as having been calculated on the basis of the potential fines imposable upon the Master and the owner of the vessel, a penalty calculated on the basis of the amount of sockeye salmon allegedly taken illegally, the value of the vessel and administrative expenses incurred by the Russian authorities for carrying out the investigation. The Respondent argues that such criteria were set down and agreed with Japan within the framework of the Russian-Japanese Commission on Fisheries.

The Tribunal is of the view that, especially between States that have long standing relations as regards fisheries, an agreed procedure for setting bonds in the event of the detention of fishing vessels may contribute to mutual confidence, help resolve misunderstandings and prevent disputes.

While the Tribunal recognises that the Protocol or minutes of a joint commission such as the Russian-Japanese Commission on Fisheries may well be the source of rights and obligations between Parties, in the present case it does not consider that the information submitted to it is sufficient to establish that the Japanese representatives had acquiesced in the procedure concerning the calculation of the bond.

Although the Tribunal is of the view that a violation of the rules on reporting may be sanctioned by the detaining State, it does not consider it reasonable that a bond should be set on the basis of the maximum penalties applicable to the owner and the Master, nor does it consider it reasonable that the bond should be calculated on the

basis of the confiscation of the vessel, given the circumstances of this case. The Tribunal therefore considers that the amount of the bond as fixed by the Russian Federation is not reasonable.

In setting a reasonable bond for the release of the vessel the Tribunal observes that the amount of the bond should be proportionate to the gravity of the alleged offences.

The Tribunal notes that the Respondent considers the offence committed by the Master of the *Hoshinmaru* to be a grave one, and the declaration of 20 tons of raw sockeye salmon as the cheaper chum salmon to be a classic manifestation of illegal, unreported and unregulated fishing. The Tribunal observes that, unlike in previous prompt release cases before it, the present case does not entail fishing without a licence. It is nonetheless of the view that the offence committed by the Master of the *Hoshinmaru* should not be considered as a minor offence or as an offence of a purely technical nature. The Tribunal states that the accurate monitoring of catches is one of the most essential means of managing marine living resources. It observes that not only is it the right of the Russian Federation to apply and implement measures relating to the management of marine living resources but that the relevant provisions of the Convention should also be taken into consideration to ensure that the living resources in the exclusive economic zone are not endangered by over-exploitation.

For these reasons, the Tribunal is of the view that the bond should be 10,000,000 roubles.

The operative provisions of the Judgment read as follows:

THE TRIBUNAL,

(1) Unanimously,

Finds that the Tribunal has jurisdiction under article 292 of the Convention to entertain the Application made by Japan.

(2) Unanimously,

Finds that the Application with respect to the allegation of non-compliance with article 73, paragraph 2, of the Convention is admissible.

(3) Unanimously,

Finds that the allegation made by the Applicant that the Respondent has not complied with the provisions of article 73, paragraph 2, of the Convention for the prompt release of the *Hoshinmaru* and its crew upon the posting of a reasonable bond or other financial security is well-founded.

(4) Unanimously,

Decides that the Russian Federation shall promptly release the *Hoshinmaru*, including its catch on board, upon the posting of a bond or other security as determined by the Tribunal, and that the Master and the crew shall be free to leave without any conditions.

(5) Unanimously,

Determines that the bond shall amount to 10,000,000 roubles.

(6) Unanimously,

Determines that the bond of 10,000,000 roubles shall be in the form either of a payment into the bank account indicated by the Respondent, or, if the Applicant so prefers, of a bank guarantee from a bank present in the Russian Federation or having corresponding arrangements with a Russian bank.

Judges Kolodkin, Treves, Lucky and Türk have appended a declaration to the Judgment. Judge Yanai has appended a separate opinion to the Judgment.

The text of the Judgment and of the declarations and separate opinions appended thereto are available on the website of the Tribunal.

The press releases of the Tribunal, documents and other information are available on the Tribunal's websites: <http://www.itlos.org> and <http://www.tidm.org> and from the Registry of the Tribunal. Please contact Ms Julia Ritter: Am Internationalen Seegerichtshof 1, 22609 Hamburg, (Germany). Telephone: +49 (040) 35607-227, fax: +49 (040) 35607-245/275, e-mail: press@itlos.org

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