



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

Press Release

(Issued by the Registrar)

**TRIBUNAL DELIVERS JUDGMENT IN THE “CAMOUCO” CASE
(Panama vs. France)**

**VESSEL AND MASTER TO BE RELEASED ON DEPOSIT OF FF 8 MILLION
TRIBUNAL SETS STANDARDS FOR REASONABLENESS OF BOND**

HAMBURG, 7 February. The Tribunal today delivered its Judgment in the “*Camouco*” case (Application for Prompt Release), Panama vs. France, ordering the prompt release of the vessel and its Master on the deposit of a financial security of French Francs (FF) 8 million, approximately US\$ 1.2 million. After deciding on jurisdiction and admissibility, the Tribunal elaborated on the factors important in determining the amount of the financial security and gave directions as to the form in which it should be deposited. The President of the Tribunal, P. Chandrasekhara Rao, read the Judgment.

The case concerned the vessel *Camouco* registered in Panama and licensed by it to catch Patagonian toothfish. The vessel was spotted by the surveillance helicopter of the French Frigate *Floréal*, which arrested the vessel for illegal fishery in the exclusive economic zone of the Crozet Islands (French Southern and Antarctic Territories), and escorted to Réunion.

Judgment available at United Nations website: <http://www.un.org/Depts/los/>

The Judgment will be made available by the Division of Ocean Affairs and the Law of the Sea of the United Nations on the United Nations Website shortly after its issuance

The Tribunal was unanimous on the question of its jurisdiction, but divided 19 to 2 on the admissibility of the Application. It ordered that France shall promptly release the vessel and its Master by 19 votes to 2. It determined the amount of the bond or security by 15 votes to 6 and the form of the bond or security by 19 votes to 2.

The sitting was announced by the Registrar of the Tribunal, Mr. Gritakumar E. Chitty, and the Judgment was delivered in the presence of the representatives of the parties and the general public.

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For information media - not an official record - also available at <http://www.un.org/Depts/los/>

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The case was considered and decided by the 21-member Tribunal: *President* P. Chandrasekhara Rao (India); *Vice-President* L. Dolliver M. Nelson (Grenada); *Judges* Lihai Zhao (China), Hugo Caminos (Argentina), Vicente Marotta Rangel (Brazil), Alexander Yankov (Bulgaria), Soji Yamamoto (Japan), Anatoly Lazarevich Kolodkin (Russian Federation), Choon-Ho Park (Republic of Korea), Paul Bamela Engo (Cameroon), Thomas A. Mensah (Ghana), Joseph Akl (Lebanon), David Anderson (United Kingdom), Budislav Vukas (Croatia), Rüdiger Wolfrum (Germany), Edward Arthur Laing (Belize), Tullio Treves (Italy), Mohamed Mouldi Marsit (Tunisia), Gudmundur Eiriksson (Iceland), Tafsir Malick Ndiaye (Senegal), Luis Jesus (Cape Verde).

Judges Mensah, Laing, and Ndiaye have appended declarations to the Judgment. Vice-President Nelson has appended a separate opinion. Judges Anderson, Vukas, Wolfrum and Treves have appended dissenting opinions.

Jurisdiction and Admissibility

The Tribunal, after examining the requirements for its jurisdiction and also noting that France did not contest this point, finds that it has jurisdiction to entertain the Application. The Tribunal finds no merit in the argument of France that by failing to act promptly, Panama had lost its rights under article 292 of the United Nations Convention on the Law of the Sea to request the prompt release of the *Camouco* and its Master. It notes that the Convention does not require the flag State to file an application at any particular time after the detention of vessel.

The other objection to admissibility concerned the cases before the domestic court, the Court of Appeal of Saint-Denis. The Tribunal observes that it is not logical to read the requirement of exhaustion of local remedies or any analogous rule into article 292 of the Convention. The Tribunal notes that article 292 provides for a quick independent remedy during which local remedies could normally not be exhausted.

Reasonableness of the bond

The Tribunal, in a previous judgment in the 1997 M/V "*Saiga*" (Prompt Release) case, had determined that: "the criterion of reasonableness encompasses the amount, the nature and the form of the bond or financial security" and that the "overall balance of the amount, form and nature of the bond or financial security must be reasonable".

The Tribunal, in today's Judgment, reiterated that conclusion and elaborated on a number of factors that are relevant in an assessment of the reasonableness of the bond or financial security. The Tribunal considers the following to be of relevance:

- 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; and
- The amount of the bond imposed by the detaining State and its form.

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Criteria for the form of the bond

On the basis of the consideration of the relevant factors the Tribunal decided that the security should be FF 8 million and that, unless the parties otherwise agree, it should be in the form of a bank guarantee. The Tribunal also elaborated on the format of the bank guarantee. It prescribes that the bank guarantee should include the following provisions:

- That it is issued in consideration of France releasing the vessel and its Master;
- That it is issued in relation to the incidents that occurred in the exclusive economic zone of the Crozet Islands;
- That the issuer undertakes and guarantees to pay to France such sums, up to FF 8 million, as may be determined by final judgment, decision of the appropriate domestic forum or by agreement of the parties.

General Background

The case concerns the fishing vessel *Camouco*, which flies the Panamanian flag. The *Camouco* was arrested in September 1999 by a French frigate allegedly for unlawful fishing in the exclusive economic zone of the Crozet Islands (French Southern and Antarctic Territories). The vessel with its Spanish Master and crew were subsequently escorted to Réunion by the French authorities.

The Tribunal was requested on behalf of Panama to order the prompt release of the *Camouco* and its Master -- the crew had left earlier except for a few members who stayed behind to maintain the vessel. France requested the Tribunal to reject the submissions of Panama and declare the Application inadmissible. As a subsidiary submission, France requested that in case the Tribunal would decide that the *Camouco* were to be released upon the deposit of a bond, that the bond be no less than FF 20 million. (See Press Release No. 34)

Chronology

Factual background

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| <ul style="list-style-type: none"> • 16 September 1999 • 28 September 1999 • 29 September 1999 • 5 October 1999 • 7 October 1999 | <p>The <i>Camouco</i> left the port of Walvis Bay, Namibia, to fish in the Southern seas</p> <p>French Authorities boarded the <i>Camouco</i> in the exclusive economic zone of the Crozet Islands</p> <p>The <i>Camouco</i> was escorted to Réunion</p> <p>Arrival of the <i>Camouco</i> in Réunion</p> <p>The Master of the <i>Camouco</i> was charged and placed under court supervision</p> |
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- **8 October 1999** The court of first instance at Saint-Paul, confirmed the arrest and ordered that the release of the vessel would be subject to payment of a bond of FF 20 million
- **22 October 1999** The Owner and Master of the vessel commenced urgent proceedings before the court of first instance
- **14 December 1999** Order of the court of first instance rejecting the request of the Owner and Master of the vessel

Procedure before the Tribunal - 21 days from Application to Judgment

- **17 January 2000** The Application is filed on behalf of Panama in the Registry of the Tribunal for the prompt release of the *Camouco* and its Master.
- **25 January 2000** France submitted its Statement in Response
- **27 and 28 January 2000** Two rounds of oral proceedings before the Tribunal
- **7 February 2000** Delivery of the Judgment in the “*Camouco*” case

Purpose of the prompt release procedure

The prompt release procedure under 292 of the Convention provides for a quick remedy, which under the Rules of the Tribunal will normally not take longer than 22 days from the filing of the application to the delivery of the Judgment. It provides for the quick release of a vessel and its crew out of humanitarian considerations for the crew and to avoid unnecessary loss for the ship owner or others affected by the detention.

The procedure is for the release on deposit of a financial security. The procedure before the Tribunal does not include a determination of the merits (substance) of the underlying dispute nor does it prejudice the merits of any case before the appropriate domestic court of the arresting State.

The Press Releases of the Tribunal, documents and other information are available on the United Nations website: <http://www.un.org/Depts/los/> and from the Registry of the Tribunal. Please contact Mr. Robert van Dijk at Wexstrasse 4, 20355 Hamburg, Germany, Tel.: (49) (40) 35607-227/228, Fax: (49) (40) 35607-245/275; or United Nations DC-1, suite 1140, New York, NY 10017, Tel.: (1) (212) 963-6480, Fax: (1) (212) 963-0908, E-mail: press@itlos.hamburg.de

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