



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

Press Release

(Issued by the Registrar)

**JUDGMENT TO BE DELIVERED IN THE "MONTE CONFURCO" CASE
ON 18 DECEMBER AT 3 P.M.**

(SEYCHELLES V. FRANCE)

HAMBURG, 15 December. The Judgment in the "Monte Confurco" case is scheduled to be delivered by the President of the Tribunal, Judge P. Chandrasekhara Rao, at 3 p.m. on 18 December 2000 in the courtroom of the new headquarters building of the International Tribunal for the Law of the Sea.

The oral proceedings in the "Monte Confurco" case were held on 7 and 8 December 2000. The dispute concerns the arrest of the fishing vessel "Monte Confurco", flying the flag of the Seychelles, which was apprehended by the French surveillance frigate "Floréal" in the exclusive economic zone of the Kerguelen Islands on 8 November 2000 for alleged illegal fishing and failure to announce its presence in the exclusive economic zone of the Kerguelen Islands. According to the pleadings, the events took place as follows:

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| 8 November | the French surveillance frigate "Floréal" intercepted the "Monte Confurco". |
| 19 November | the French naval authorities arrived in Réunion, with the "Monte Confurco" under escort. |
| 21 November | the Master of the vessel was placed under judicial supervision. |
| 22 November | the district court of Saint-Denis ordered that the vessel could be released upon the posting of a bond of 56,400,000 French Francs. |

The Agent of the Seychelles, Mr. Ramón García Gallardo, was the first to address the Tribunal. During his presentation, he displayed computer-generated exhibits showing photographs of the vessel and nautical charts indicating the route of the "Monte Confurco".

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The Agent of the Seychelles stated that the Master of the ship, José Pérez Argibay, entered the exclusive economic zone of the Kerguelen Islands on 7 November 2000, heading in the direction of the Williams Bank. The Master was unable to notify the French authorities of his presence in the zone as his fax machine was not functioning. The Agent disputed the allegation that the "Monte Confurco" was engaged in illegal fishing. He maintained that the fish on board the vessel had been fished in international waters.

The Agent of the Seychelles requested the immediate release of the Master, who is being kept in Réunion and whose passport has been confiscated, and the release of the vessel on the deposit of a reasonable bond. He argued that the bond set by the French Authorities was not reasonable. The Applicant presented an expert who testified as to the value of the vessel.

The Agent of France, Mr. Michel Trinquier, stated that the "Monte Confurco" was discovered in the exclusive economic zone without having notified its presence and the catch on board, even though the vessel was equipped with a radio-telephone and an INMARSAT station, that the vessel did not stop when ordered to do so, that the crew were observed jettisoning bait, that the vessel had insufficient long lines on board for its mission, that buoys and long lines were found in the area, that the factory of the vessel had recently been cleaned before the vessel was boarded and that there was fresh blood and fresh waste in it. He also observed that the Master had thrown away documents.

The Agent described the rise in illegal fishing in the area and the means used by vessels in order to avoid detention or punishment. He emphasised the environmental danger to the stock of toothfish in the waters of the Southern Indian Ocean. France called on Professor Duhamel, an Ichthyologist, to testify as to the fish stock in the area. Professor Duhamel described the toothfish as being able to reach 2.15 metres in length and 80 kilos in weight, with a life span of 30 to 40 years. He said that over-exploitation of the species could have serious consequences for the stock, especially as it reaches maturity late. He also testified as to the areas in which the "Monte Confurco" was said to have fished. He expressed the opinion that it was not possible for the "Monte Confurco" to fish there due to the great depth of the Southern Seas in these areas. Professor Duhamel was cross-examined by the Agent of the Seychelles, who asserted that Spanish fishermen had developed techniques that allow fishing in waters up to a depth of 2,500 metres.

On the second day of the hearings, each party was given two hours to reply to the arguments presented by the other party. At the close of their last oral statement, each party read out its final submissions, which gave their final position.

Final submissions of the Parties:

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On behalf of the Seychelles:

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 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. With regard to the vessel, to order its release upon the posting of a guarantee in the maximum amount of 2,200,000 FF, based upon:
 - 200,000 FF for failure to notify presence;
 - 2,000,000 FF for a presence of 24 hours in the EEZ without giving notice, and up to four tonnes 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 gas oil constitute part of the guarantee; according to our calculations, the value of the foregoing being 9,800,000 FF;
8. That the Tribunal choose between the financial instrument (*constitution financière*) issued by a European bank or a guarantee comprised of the value of an equivalent number of tons or other items according to our calculations;

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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, of the same content as the guarantee already posted with the French Republic in the *Camouco* case in consideration of the release of the vessel.

On behalf of France:

The Government of the French Republic requests the Tribunal, rejecting the second submission made on behalf of the Republic of Seychelles, to declare and adjudge:

1. That the bond set by the competent French court for the release of the *Monte Confurco* is reasonable in the circumstance of the case, in the light of all the relevant factors;
2. That the Application submitted to the Tribunal on 27 November 2000 on behalf of the Republic of Seychelles is therefore not admissible.

The Seychelles were represented by Mr. Ramón García Gallardo as Agent, Mr. Jean-Jacques Morel as Deputy Agent, and Mrs. Dolores Domínguez Pérez and Mr. Bruno Jean-Etienne as Counsel. France was represented by Mr. Michel Trinquier as Agent and Mr. Jean-Pierre Quéneudec and Mr. Jacques Belot as Counsel.

At the close of the hearings the Judges withdrew to commence their deliberations. Further information about the case is contained in Press Release 40 and Press Notice 15. The Verbatim Records of the oral proceedings can be consulted on the website of the United Nations at www.un.org/Depts/los/.

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 Am Internationalen Seegerichtshof 1, 22609 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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