

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

THE "GRAND PRINCE" CASE
(BELIZE *v.* FRANCE)
List of cases: No. 8

PROMPT RELEASE

JUDGMENT OF 20 APRIL 2001

2001

TRIBUNAL INTERNATIONAL DU DROIT DE LA MER

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

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(BELIZE *c.* FRANCE)
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PROMPTE MAINLEVÉE

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20 APRIL 2001
JUDGMENT

**THE “GRAND PRINCE” CASE
(BELIZE v. FRANCE)**

PROMPT RELEASE

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(BELIZE c. FRANCE)**

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INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

YEAR 2001

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List of cases:
No. 8

THE “GRAND PRINCE” CASE

(BELIZE *v.* FRANCE)

APPLICATION FOR PROMPT RELEASE

JUDGMENT

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JUDGMENT

Present : *President* CHANDRASEKHARA RAO; *Vice-President* NELSON; *Judges* CAMINOS, MAROTTA RANGEL, YANKOV, YAMAMOTO, KOLODKIN, PARK, BAMELA ENGO, MENSAH, AKL, ANDERSON, VUKAS, WOLFRUM, LAING, TREVES, MARSIT, EIRIKSSON, NDIAYE, JESUS; *Judge ad hoc* COT; *Registrar* CHITTY.

In the “Grand Prince” Case

between

Belize,

represented by

Mr. Alberto Penelas Alvarez, Attorney, Bar of Vigo, Spain,

as Agent;

and

Mrs. Beatriz Goicoechea Fábregas, Attorney, Bar of Vigo, Spain,

as Counsel,

and

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 TRIBUNAL,

composed as above,

after deliberation,

delivers the following Judgment:

Introduction

1. On 16 March 2001, the Registrar of the Tribunal was notified by a letter from the Attorney General of Belize and Minister responsible for the International Merchant Marine Registry of Belize (IMMARBE) dated 15 March 2001, transmitted by facsimile, that Mr. Alberto Penelas Alvarez was authorized to make an application to the Tribunal on behalf of Belize under article 292 of the United Nations Convention on the Law of the Sea (hereinafter “the Convention”), with respect to the fishing vessel *Grand Prince*.

2. On 21 March 2001, an Application under article 292 of the Convention was filed by facsimile in the Registry of the Tribunal on behalf of Belize against France concerning the release of the *Grand Prince*. A copy of the Application was sent on 22 March 2001 by a note verbale of the Registrar to the Minister for Foreign Affairs of France and also in care of the Ambassador of France to Germany.

3. In accordance with article 112, paragraph 3, of the Rules of the Tribunal as amended by the Tribunal on 15 March 2001 (hereinafter “the

Rules”), the President of the Tribunal, by Order dated 21 March 2001, fixed 5 and 6 April 2001 as the dates for the hearing with respect to the Application. Notice of the Order was communicated forthwith to the parties.

4. By note verbale from the Registrar dated 22 March 2001, the Minister for Foreign Affairs of France was informed that the Statement in Response of France, in accordance with article 111, paragraph 4, of the Rules, could be filed in the Registry not later than 96 hours before the hearing.

5. Pursuant to the Agreement on Cooperation and Relationship between the United Nations and the International Tribunal for the Law of the Sea of 18 December 1997, the Secretary-General of the United Nations was notified by the Registrar on 22 March 2001 of the receipt of the Application.

6. The appointment of Mr. Alberto Penelas Alvarez as Agent, for the purpose of the Application for prompt release of the *Grand Prince*, was confirmed by a letter from the Attorney General of Belize dated 26 March 2001, transmitted by facsimile to the Registrar.

7. The Application was entered in the List of cases as Case No. 8 and named: The “Grand Prince” Case.

8. Pursuant to article 72 of the Rules, information regarding experts was submitted by the Agent of Belize to the Tribunal on 27 March 2001.

9. On 28 March 2001, the Government of France filed observations regarding the Application submitted on behalf of Belize for prompt release of the *Grand Prince*, by a letter from the Director of Legal Affairs, Ministry of Foreign Affairs, a copy of which was transmitted forthwith to the Agent of Belize. In its observations, the Government of France requested the Tribunal, by means of an order and without need of holding public hearings for that purpose, to declare that the Application was without object and that it must therefore be rejected.

10. In accordance with article 24, paragraph 3, of the Statute of the Tribunal, States Parties to the Convention were notified of the Application by a note verbale from the Registrar dated 29 March 2001.

11. On 29 March 2001, the Agent of Belize transmitted a reply to the observations of the Government of France with regard to the Application.

12. On 30 March 2001, in order to complete the documentation, the Registrar requested the parties to submit the following documents referred to in the Application:

- procès-verbal of violation no. 4/00 of 26 December 2000;
- procès-verbal no. 09/2001 P.C.G. *Jonquille* of the French Maritime Police.

On the same day, the Government of France submitted the requested documents, copies of which were transmitted to the Agent of Belize.

13. On 2 April 2001, the Agent of Belize transmitted a certificate dated 30 March 2001 issued by IMMARBE, a copy of which was transmitted to the Government of France.

14. In accordance with article 45 of the Rules, on 2 April 2001, the President met the representatives of Belize and France and ascertained their views with regard to questions of procedure.

15. On 3 April 2001, the Tribunal met to discuss questions of procedure in connection with the Application filed on behalf of Belize and the observations of the Government of France on questions of jurisdiction and admissibility. Following the meeting, the Registrar addressed to Belize and France, on the same day, identical letters which read as follows:

I have the honour to inform you that the Tribunal met today to discuss questions of procedure in connection with the Application filed on behalf of Belize on 21 March 2001 and the observations offered by France on 28 March 2001 in relation thereto and authorized me to convey the following to the Applicant and the Government of France.

The Tribunal considers that the issues arising out of the Application and the observations of France on questions of jurisdiction and admissibility require a full examination consistent with principles of administration of justice and the urgent nature of prompt release proceedings in accordance with the United Nations Convention on the Law of the Sea and the Rules of the Tribunal.

The President of the Tribunal, in his Order dated 21 March 2001, has already fixed 5 and 6 April 2001 as the dates for the hearing, in accordance with article 112, paragraph 3, of the Rules of the Tribunal.

This procedure is without prejudice to any decision which the Tribunal will take with regard to its jurisdiction and the admissibility of the Application.

16. On 4 April 2001, the Registrar was notified of the appointment of Mr. François Alabrune, Deputy Director of Legal Affairs of the Ministry of Foreign Affairs of France, as Agent of France.

17. On 4 April 2001, France notified the Tribunal of its intention to choose Mr. Jean-Pierre Cot, Emeritus Professor, University of Paris I

(Panthéon-Sorbonne), France, as judge *ad hoc* pursuant to article 17, paragraph 2, of the Statute of the Tribunal.

18. By a letter of the Registrar dated 4 April 2001, the Agent of Belize was immediately informed of the intention of France to choose Mr. Cot as judge *ad hoc* and was invited to furnish any observations by 4 April 2001, 3:00 p.m. On that date, the Agent of Belize furnished observations in respect of this matter.

19. On 4 April 2001, the Tribunal met to consider the observations made by the Agent of Belize on the intention of the Government of France to choose Mr. Cot as judge *ad hoc*. The Tribunal found no objection to the choice of Mr. Cot as judge *ad hoc*. The parties were informed accordingly by letters of the Registrar dated 4 April 2001. Mr. Cot was admitted to participate in the proceedings after having made the solemn declaration required under article 9 of the Rules in relation to the case at a public sitting of the Tribunal held on 5 April 2001.

20. In accordance with articles 45 and 73 of the Rules, on 5 April 2001, the President held a teleconference with the Agents of the parties and ascertained their views regarding the order and duration of the presentation by each party and the evidence to be produced during the oral proceedings.

21. After the closure of the written proceedings and prior to the opening of the oral proceedings, the Tribunal held initial deliberations on 5 April 2001 in accordance with article 68 of the Rules.

22. Prior to the opening of the oral proceedings, the Agent of Belize and the Agent of France submitted documents required under paragraph 14 of the Guidelines concerning the Preparation and Presentation of Cases before the Tribunal.

23. Pursuant to article 67, paragraph 2, of the Rules, copies of the pleadings and documents annexed thereto were made accessible to the public from the date of opening of the oral proceedings.

24. Oral statements were presented at three public sittings held on 5 and 6 April 2001 by the following:

On behalf of Belize: Mr. Alberto Penelas Alvarez, Agent;

On behalf of France: Mr. François Alabrune, Agent,
Mr. Jean-Pierre Quéneudec, Counsel.

25. At a public sitting held on 6 April 2001, the following experts were called by the Agent of Belize:

Mr. Faustino Carceller Villalta, naval engineer and marine surveyor (examined by Mr. Penelas Alvarez and cross-examined by Mr. Quéneudec);

Mr. Antonio Alonso Pérez, merchant navy captain and marine surveyor (examined by Mr. Penelas Alvarez and cross-examined by Mr. Quéneudec).

Both experts gave evidence in Spanish. The necessary arrangements were made for the statements of the experts to be interpreted into the official languages of the Tribunal.

26. On 5 April 2001, a list of questions which Members of the Tribunal wished to put to the parties was communicated to the Agents.

27. During the public sitting held on 6 April 2001, the Agent of Belize and the Agent of France addressed some of the questions referred to in paragraph 26. On the same day, the Agent of Belize and the Agent of France submitted written responses to the questions referred to in that paragraph.

28. On 6 April 2001, the Agent of France submitted copies of a note verbale dated 4 January 2001, sent by the Ministry of Foreign Affairs of Belize to the French Embassy in El Salvador, and of a letter dated 26 March 2001, sent by IMMARBE to the Honorary Consul of France in Belize City, copies of which were transmitted to the other party.

29. During the course of the hearing held in the afternoon of 6 April 2001, the President asked the Agent of Belize to indicate any objections to the submission of the said documents pursuant to article 71 of the Rules. No objection was raised by the Agent of Belize. However, the Agent of Belize offered comments on these documents.

30. In the Application of Belize and in the observations of the Government of France, the following submissions were presented by the parties:

On behalf of Belize,
in the Application:

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 present application.
2. To declare the present application admissible.

3. To declare that France failed to comply with article 73, paragraph 2, of the Convention, as the guarantee fixed for release of Grand Prince is not reasonable as to its amount, nature or form.
4. To declare that France failed to comply with article 73, paragraph 2, of the Convention by having evaded the requirement of prompt release under this article by not allowing the release of the vessel upon the posting of a reasonable, or any kind of, guarantee alleging that the vessel is confiscated and that the decision of confiscation has been provisionally executed.
5. To decide that France shall promptly release the Grand Prince upon the posting of a bond or other security to be determined by the Tribunal.
6. To determine that the bond or other security shall consist of an amount of two hundred and six thousand one hundred forty nine (206,149) Euros or its equivalent in French Francs.
7. To determine that the monetary equivalent to (a) 18 tonnes of fish on board the Grand Prince held by the French authorities, and valued on 123,848 Euros (b) the fishing gear, valued on 24,393 Euros (c) the fishing materials valued on 5,610 Euros, totalling 153,851 Euros, shall be considered as security to be held or, as the case may be, returned by France to this party.
8. To determine that the bond shall be in the form of a bank guarantee.
9. To determine that the wording of the bank guarantee shall, among other things, state the following:
 - A. In case France returns to the shipowner the concepts referred to under point 7 (of the present submissions):

“The bank guarantee it is issued in consideration of France releasing the Grand Prince, in relation to the incidents dealt with in the Order of 12 January 2001 of the Court of First Instance of Saint-Paul and that the issuer undertakes and guarantees to pay to France such sums, up to 206,149 Euros, as may be determined by

a final and firm judgement or decision of the appropriate domestic forum in France or by agreement of the parties. Payment under the guarantee would be due promptly after receipt by the issuer of a written demand by the competent authority of France accompanied by a certified copy of the final and firm judgement or decision or agreement.”

- B. In case France does not return to the shipowner the concepts referred to under point 7 (of the present submissions):

“The bank guarantee it is issued in consideration of France releasing the Grand Prince, in relation to the incidents dealt with in the Order of 12 January 2001 of the Court of First Instance of Saint-Paul and that the issuer undertakes and guarantees to pay to France such sums, up to 52,298 Euros, as may be determined by a final and firm judgement or decision of the appropriate domestic forum in France or by agreement of the parties. Payment under the guarantee would be due promptly after receipt by the issuer of a written demand by the competent authority of France accompanied by a certified copy of the final and firm judgement or decision or agreement.”

10. To determine that the bank guarantee shall be invoked only if the monetary equivalent of the security held by France is not sufficient to pay the sums as may be determined by a final and firm judgement or decision of the appropriate domestic forum in France.

On behalf of France,
in the observations:

[Translation from French]

The Government of the French Republic requests the International Tribunal for the Law of the Sea, by means of an Order and without need of holding public hearings for that purpose, to note that the Application for release lodged on 21 March 2001 on behalf of Belize is without object [*sans objet*], that it must therefore be rejected, and that there are thus no grounds to institute proceedings.

31. In accordance with article 75, paragraph 2, of the Rules, the following final submissions were presented by the parties at the end of the hearing:

On behalf of Belize:

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 present application.
2. To declare the present application admissible.
3. To declare that France failed to comply with article 73, paragraph 2, of the Convention, as the guarantee fixed for release of Grand Prince is not reasonable as to its amount, nature or form.
4. To declare that France failed to comply with article 73, paragraph 2, of the Convention by having evaded the requirement of prompt release under this article by not allowing the release of the vessel upon the posting of a reasonable, or any kind of, guarantee alleging that the vessel is confiscated and that the decision of confiscation has been provisionally executed.
5. To decide that France shall promptly release the Grand Prince upon the posting of a bond or other security to be determined by the Tribunal.
6. To determine that the bond or other security shall consist of an amount of two hundred and six thousand one hundred forty nine (206,149) Euros or its equivalent in French Francs.
7. To determine that the monetary equivalent to (a) 18 tonnes of fish on board the Grand Prince held by the French authorities, and valued on 123,848 Euros (b) the fishing gear, valued on 24,393 Euros (c) the fishing materials valued on 5,610 Euros, totalling 153,851 Euros, shall be considered as security to be held or, as the case may be, returned by France to this party.
8. To determine that the bond shall be in the form of a bank guarantee.
9. To determine that the wording of the bank guarantee shall, among other things, state the following:

- A. In case France returns to the shipowner the items referred to under point 7 (of the present submissions):

“The bank guarantee it is issued in consideration of France releasing the Grand Prince, in relation to the incidents dealt with in the Order of 12 January 2001 of the Court of First Instance of Saint-Paul and that the issuer undertakes and guarantees to pay to France such sums, up to 206,149 Euros, as may be determined by a final and firm judgement or decision of the appropriate domestic forum in France or by agreement of the parties. Payment under the guarantee would be due promptly after receipt by the issuer of a written demand by the competent authority of France accompanied by a certified copy of the final and firm judgement or decision or agreement.”

- B. In case France does not return to the shipowner the items referred to under point 7 (of the present submissions):

“The bank guarantee it is issued in consideration of France releasing the Grand Prince, in relation to the incidents dealt with in the Order of 12 January 2001 of the Court of First Instance of Saint-Paul and that the issuer undertakes and guarantees to pay to France such sums, up to 52,298 Euros, as may be determined by a final and firm judgement or decision of the appropriate domestic forum in France or by agreement of the parties. Payment under the guarantee would be due promptly after receipt by the issuer of a written demand by the competent authority of France accompanied by a certified copy of the final and firm judgement or decision or agreement.”

10. To determine that the bank guarantee shall be invoked only if the monetary equivalent of the security held by France is not sufficient to pay the sums as may be determined by a final and firm judgement or decision of the appropriate domestic forum in France.

On behalf of France:

[*Translation from French*]

The Government of the French Republic requests the Tribunal, rejecting all submissions to the contrary made on behalf of the State of Belize,

1. First, to note that the Application for prompt release filed on 21 March 2001 on behalf of Belize is not admissible, that, in any case, the Tribunal has no jurisdiction to entertain the Application and that it must, therefore, be rejected.
2. Alternatively, to adjudge and declare that the conditions normally governing the adoption by the Tribunal of a decision concerning prompt release upon the posting of a reasonable bond have not been fulfilled under the circumstances of this case and that, therefore, the Application by the Applicant should be denied.

Factual background

32. The *Grand Prince* is a fishing vessel. At the time of its arrest on 26 December 2000, it was flying the flag of Belize. According to the provisional patent of navigation issued by the International Merchant Marine Registry of Belize on 16 October 2000, the owners of the vessel were the Paik Commercial Corporation of 35A Regent Street, Belize City. According to the bill of sale dated 27 March 2000, the vessel was purchased by the Paik Commercial Corporation from the Reardon Commercial Corporation of the same address in Belize City. According to the vessel's certificate of class dated 23 June 1999, the owners of the vessel were NOYCAN B.L. - MOANA-VIGO, Spain. In response to a question from the Members of the Tribunal as to the beneficial ownership of the vessel, the Agent of the Applicant stated that the owners of the vessel were Paik Commercial Corporation and the Agent of the Respondent stated that France was unaware of the actual owners of the vessel.

33. According to the Applicant, at the time of its detention, the vessel was going to be reflagged and registered in Brazil where the vessel had been allocated a fishing licence.

34. The Master of the *Grand Prince* was Mr. Ramón Francisco Pérez Novo, a national of Spain, and the vessel carried a crew of 37 including the Master, made up of nationals of Spain and Chile. According to the Application and to the Master's testimony to the authorities in Réunion, the vessel had sailed from Durban, South Africa, early in December 2000 in

order to fish for Patagonian toothfish and, on an experimental basis, lobster in the international waters of the Southern Ocean. In this connection, the provisional patent of navigation was endorsed with the following:

VESSEL SHALL NOT ENGAGE IN ILLEGAL FISHING AND SHALL COMPLY WITH ALL FISHING REQUIREMENTS AND REGULATIONS APPLICABLE TO THE SPECIFIC FISHING AREA. FAILURE TO COMPLY WILL RESULT IN A PENALTY UP TO US\$ 50,000.00 DEPENDING ON THE SERIOUSNESS OF THE OFFENCE AND RELAPSING COULD LEAD TO THE EX-OFFICIO CANCELLATION OF STATUS.

35. On 26 December 2000, at 8:53 hours, the *Grand Prince* was boarded by the crew of the French surveillance frigate *Nivose* in the exclusive economic zone of the Kerguelen Islands in the French Southern and Antarctic Territories.

36. A procès-verbal of violation (*procès-verbal d'infraction*) No. 04/00 was drawn up on 26 December 2000 by the Captain of the *Nivose* against the Master of the *Grand Prince* for having:

- (a) fished without authorization in the exclusive economic zone of the Kerguelen Islands under French jurisdiction;
- (b) failed to announce his entry into the exclusive economic zone of the Kerguelen Islands and to declare some twenty tonnes of fish carried aboard.

37. On 26 December 2000, the Commander of the frigate *Nivose* drew up three procès-verbaux of apprehension (*procès-verbaux d'appréhension*) Nos. 05/00, 06/00 and 07/00, recording therein the *apprehension* of the *Grand Prince*, the fishing gear, the electronic and electric fishing gear, the navigation and communication equipment, the ship's papers, and the fish catch.

38. The *Grand Prince* was rerouted and escorted under the supervision of the French frigate to Port-des-Galets, Réunion, where it arrived on 9 January 2001.

39. On 11 January 2001, the Regional and Departmental Director of Maritime Affairs of Réunion drew up four procès-verbaux of seizure (*procès-verbaux de saisie*) Nos. 10/AM/2001, 11/AM/2001, 12/AM/2001, and 13/AM/2001. In support of the charges levelled, the procès-verbaux of seizure relied upon the following:

[Translation from French]

1. The vessel *Grand Prince* was observed fishing within the French economic zone at 47° 49' South by 73° 45' East (95 miles north/north-east of Kerguelen Islands) on 26 December 2000 at 8:58 hours.
2. It was noted that entry into the Kerguelen exclusive economic zone had not been declared.
3. It was observed that there was a longline in the water, cut by the ship's rail [*sectionnée par le bord*] during a helicopter overflight and, 500 metres from the vessel, fishing gear identical to that of the *Grand Prince*.
4. Presence in the factory of 200 baskets of prepared bait attached to hooks on a line.
5. Sixteen fresh toothfish were found near the longline hoisting gear, ten toothfish were being washed in a basin, three fresh toothfish were in another basin.
6. It was found that the factory had very recently been used and had not been cleaned.
7. Fifty-four crates of fish were found, at temperatures ranging from -1 degree to -12 degrees in the freezing tunnels.
8. Approximately 18 tonnes of toothfish were found on board.

40. These procès-verbaux of seizure provided for the seizure of approximately 18 tonnes of toothfish on board the vessel valued at 810,000 FF, the fishing gear valued at 5,610 Euro (36,801.6 FF), 40 tonnes of bait valued at 160,000 FF, and the vessel, its equipment and documents valued at 13,000,000 FF.

41. The procès-verbaux of seizure and the procès-verbaux of apprehension were all signed by the Master of the *Grand Prince*.

42. On 11 January 2001, the Deputy Public Prosecutor of the *tribunal de grande instance* at Saint-Denis summoned the Master of the vessel and informed him of the charges levelled against him by virtue of procès-verbal No. 09/2001 P.C.G. *Jonquille* of the Maritime Police. The Master of the vessel admitted the violations with which he was charged, subject to the qualification that his action of illegal fishing began from 26 December 2000 and not from 24 December 2000 as alleged in the charges. The Master added that, since the logbook was used up by 23 December 2000, they did not have the time to make entries from that date in the new logbook which was locked up in a cupboard. The Master was further informed that he should answer the charges levelled against him at a hearing of a criminal court (*tribunal correctionnel*) of the *tribunal de grande instance* at Saint-Denis to take place on 23 January 2001.

43. On 12 January 2001, the court of first instance (*tribunal d'instance*) at Saint-Paul made an order in which it noted, among other things, that the vessel *Grand Prince* entered the exclusive economic zone of the Kerguelen Islands without prior authorization, and without advising the head of the district of the nearest archipelago of its presence, or declaring the tonnage of fish carried on board (in violation of the provisions of article 2 of Law 66-400 of 18 June 1966, as amended by the Law of 18 November 1997) and that the fact that the vessel was found in the exclusive economic zone of the Kerguelen Islands with approximately 18 tonnes of toothfish on board without having given notice of its presence or declaring the quantity of fish carried raised the “presumption” that the whole of the catch was unlawfully fished in the exclusive economic zone of the Kerguelen Islands.

44. On the amount of the bond to be fixed, the court of first instance at Saint-Paul took the following into account:

- (a) the value of the ship appraised by Mr. Chancerel, marine surveyor, at 13,000,000 FF;
- (b) the fines incurred by the Master of the vessel (on the basis of 18 tonnes of fish caught and the provisions of Law 66-400 of 18 June 1966, as amended) calculated at 9,000,000 FF;
- (c) compensation of less than 400,000 FF which victims are generally granted.

45. Considering the above, the court set the bond as follows:

- (a) to guarantee the representation of the captain of the vessel apprehended: 1,000,000 FF;
- (b) to guarantee the payment of damages caused by the offence registered: 400,000 FF;
- (c) to guarantee the payment of the fines incurred and the confiscation of the vessel: 10,000,000 FF.

The total bond was thus fixed at 11,400,000 FF.

46. The court confirmed the arrest of the *Grand Prince* and declared that its release would be subject to the payment of a bond in the amount of 11,400,000 FF in cash, certified cheque or banker’s draft, to be paid into the Deposits and Consignments Office (*Caisse des Dépôts et Consignations*).

47. In support of its order, the court relied on the following:

- (a) Article 3 of the Law No. 83-582 of 5 July 1983, as amended, concerning the regime of seizure and supplementing the list of agents authorized to establish offences in the matters of sea fishing;

- (b) Articles 2 and 4 of Law No. 66-400 of 18 June 1966, as amended by the Law of 18 November 1997, on sea fishing and the exploitation of marine products in the French Southern and Antarctic Territories;
- (c) Article 142 of the Code of Criminal Procedure.

48. On 23 January 2001, the criminal court gave its judgment in which it found:

- (a) It was uncontroverted that the *Grand Prince* entered the exclusive economic zone of the Kerguelen Islands without giving notice of its entry and without declaring the tonnage of fish on board;
- (b) The *Grand Prince* was engaged in illegal fishing, since at the time of its arrest there were some fifteen longlines in the water and six buoys in the sea 450 metres from the vessel;
- (c) It was uncontroverted that the accused knowingly engaged in illegal fishing;
- (d) The unannounced entry of the vessel into the exclusive economic zone and the act of illegal fishing were sufficient to show that the fish found on board the vessel originated from illegal fishing;
- (e) The fact that the logbook had not been filled in since 23 December 2000, and that fresh toothfish could still be found on board, constituted concordant presumptions.

49. As to the penalty for this type of offence, the criminal court observed that, since its detection required deployment of substantial and costly resources, it was important to avoid repetition of such offences and to prevent offenders from profiting from their illegal acts.

50. In the light of the above, the criminal court ordered the confiscation of the vessel, its equipment and gear as well as the fishing products seized; it further declared its order regarding the confiscation of the vessel and its equipment to be *avec exécution provisoire* (i.e., immediately enforceable notwithstanding the lodging of an appeal), pursuant to article 131-6 (10) of the Penal Code and article 471, final paragraph, of the Code of Penal Procedure. The Master of the vessel was also sentenced to a fine of 200,000 FF. The court also observed that it had limited the amount of the fine, taking into account the sincerity and cooperation of the accused and the shipowners. It further awarded damages to certain civil claimants.

51. On 31 January 2001, the shipowners filed an appeal against the judgment of the criminal court. The Applicant informed the Tribunal that this appeal was listed for hearing by the court of appeal (*cour d'appel*) on 13 September 2001.

52. On 19 February 2001, the shipowners submitted an application to the court of first instance at Saint-Paul for the release of the vessel upon presentation of a bank guarantee guaranteeing the payment of the sum specified by that court (i.e., 11,400,000 FF) in its order of 12 January 2001.

53. By its order of 22 February 2001, the court of first instance at Saint-Paul rejected this application for the following reasons:

[*Translation from French*]

Considering that the criminal court has ordered the confiscation of the vessel in the case, with immediate execution notwithstanding any appeal [*exécution provisoire*]; that consequently the forum judge no longer has jurisdiction to order the return of the vessel to its owner or captain in consideration of a simple bank guarantee.

Arguments of parties

54. The Applicant contends that the *Grand Prince* entered the exclusive economic zone of the Kerguelen Islands on 26 December 2000 and not before; that the Master entered the said zone contrary to the instructions given to him by the owners of the vessel; that the vessel did not catch any fish inside the Kerguelen exclusive economic zone; that the bond fixed by the court of first instance at Saint-Paul was not a "reasonable bond or other security" within the meaning of article 73, paragraph 2, of the Convention in terms of its amount, form or nature; that the rejection on 22 February 2001 by the court of first instance at Saint-Paul of the application for the release of the vessel upon presentation of a bank guarantee of 11,400,000 FF was in violation of the provisions of article 73, paragraph 2, of the Convention; that the judgment of the criminal court to confiscate the vessel only a few days after the court of first instance fixed a bond for release of the vessel, amounted to a "trick" (or which, according to the Applicant, amounted to "fraud of law" as it is understood in laws of most States); and, that if this type of confiscation was permitted, article 73 of the Convention would become a "dead letter"; and that the release of the vessel by virtue of article 73, paragraph 2, of the Convention, read with article 292 of the Convention, was still an available remedy, notwithstanding the judgment of the criminal court ordering the confiscation of the vessel.

55. In support of the argument that the amount of bond fixed by the court of first instance at Saint-Paul is not reasonable, the Applicant argued that the international market price for a ship of the age and characteristics of the

Grand Prince would be in the region of 360,000 Euro (2,361,600 FF). Further, the value of the fish, the fishing gear and the fishing materials, as determined by the French authorities, should have been considered as constituting security.

56. For these reasons, the Applicant requests the Tribunal to determine that France failed to comply with article 73, paragraph 2, of the Convention; that France should promptly release the vessel upon the posting of a bond or other security to be determined by the Tribunal; that the bond or other financial security should consist of an amount of 206,149 Euro (1,352,337.40 FF); and that the monetary equivalent of fish, the fishing gear and the fishing materials seized by the French authorities, should be considered as security to be held or, as the case may be, returned by France to the Applicant.

57. France contends that the Application manifestly did not fall within the ambit of article 292 of the Convention and was on that account inadmissible. It further contends that the Tribunal had no jurisdiction to entertain the Application. In support of its stand, France maintained that since, in the present case, the competent domestic forum mentioned in article 292, paragraph 3, of the Convention had already delivered a judgment on merits ordering confiscation of the vessel, the introduction of a prompt release proceeding under article 292 of the Convention before the Tribunal at this stage was no longer possible, and that, if the Tribunal were to entertain the Application filed on behalf of Belize, it would have the effect of interfering with the judgment of a municipal court given on the merits of the case, contrary to the provisions of article 292, paragraph 3, of the Convention.

58. France further states that the accusation of the Applicant that the order of confiscation made by the criminal court of France only a few days after the setting of a bond by the court of first instance at Saint-Paul was a “trick” was totally unsupported. It points out that in this case the Tribunal was not competent, under article 292 of the Convention, to go into the allegations made by the Applicant of a denial of procedural fairness and due process in relation to judicial proceedings in France. It further points out that in the case before the criminal court the introduction of an investigative proceeding was not necessary and that the judgment ordering confiscation was made in full compliance with the provisions of French law.

59. According to France, the power to confiscate under French law flowed from article 73 of the Convention which empowered the coastal State to define

fishing offences and to establish penalties applicable to those who commit such offences and the only limit placed upon this power was the one stated in article 73, paragraph 3, which excluded penalties of imprisonment and corporal punishment. Confiscation as a penalty was expressly provided for not only in French legislation but also in many other national laws.

60. France further contends that the Application did not deal with the question of prompt release; rather, it had to do with the exercise by France of its sovereign rights and the alleged non-conformity of French law with the Convention in so far as it provided for the confiscation of fishing vessels. With respect to a wide dispute of that nature, the French Government states that, when ratifying the Convention, France declared, in accordance with article 298, paragraph 1(b), of the Convention, that it did not accept any compulsory procedure provided for in section 2 of Part XV of the Convention with respect to disputes concerning law enforcement activities in regard to the exercise of sovereign rights or jurisdiction under article 297, paragraph 2 or paragraph 3, of the Convention.

61. France maintains that the Application was without object, since the vessel for which the Applicant was requesting prompt release had already been confiscated pursuant to a judgment of a competent French court.

Jurisdiction

62. The Tribunal must, at the outset, examine the question whether it has jurisdiction to entertain the Application. The requirements to be satisfied in order to found the jurisdiction of the Tribunal are set out in article 292 of the Convention, which reads as follows:

Article 292

Prompt release of vessels and crews

1. Where the authorities of a State Party have detained a vessel flying the flag of another State Party and it is alleged that the detaining State has not complied with the provisions of this Convention for the prompt release of the vessel or its crew upon the posting of a reasonable bond or other financial security, the question of release

from detention may be submitted to any court or tribunal agreed upon by the parties or, failing such agreement within 10 days from the time of detention, to a court or tribunal accepted by the detaining State under article 287 or to the International Tribunal for the Law of the Sea, unless the parties otherwise agree.

2. The application for release may be made only by or on behalf of the flag State of the vessel.
3. The court or tribunal shall deal without delay with the application for release and shall deal only with the question of release, without prejudice to the merits of any case before the appropriate domestic forum against the vessel, its owner or its crew. The authorities of the detaining State remain competent to release the vessel or its crew at any time.
4. Upon the posting of the bond or other financial security determined by the court or tribunal, the authorities of the detaining State shall comply promptly with the decision of the court or tribunal concerning the release of the vessel or its crew.

63. Belize and France are both States Parties to the Convention. Belize ratified the Convention on 13 August 1983 and the Convention entered into force for Belize on 16 November 1994. France ratified the Convention on 11 April 1996 and the Convention entered into force for France on 11 May 1996.

64. The Applicant alleges that the Respondent has not complied with the provisions of article 73, paragraph 2, of the Convention for the prompt release of a vessel. It further alleges that the bond set by the Respondent was not reasonable, that the parties did not reach agreement within 10 days of the time of detention to submit the matter to another court or tribunal in accordance with article 292, paragraph 1, of the Convention, and that, accordingly, the Tribunal has jurisdiction to hear the Application under article 292 of the Convention.

65. The Respondent submits that the *Grand Prince* was subject to a measure of confiscation, imposed by the competent French court as a penalty, and the Application, for that reason, was without object and inadmissible, that, in any case, the Tribunal had no jurisdiction to entertain the Application and that it must, therefore, be rejected.

66. It is necessary here to examine the question of which entity has the *locus standi* to seek the release of a vessel from detention. In the scheme of article 292 of the Convention, it is the flag State of the vessel that is given the *locus standi* to take up the question of release in an appropriate court or tribunal. Any other entity may make an application only on behalf of the flag State of the vessel. As provided in article 292, paragraph 2, the application for release may be made “only by or on behalf of the flag State of the vessel.”

67. The initial burden of establishing that Belize was the flag State when the Application was made is on the Applicant. In seeking to discharge this burden, the Applicant submitted the following documents:

- (a) Letter dated 15 March 2001 from the Attorney General of Belize;
- (b) Provisional patent of navigation issued by IMMARBE;
- (c) Certification dated 30 March 2001 issued by IMMARBE and headed “TO WHOM IT MAY CONCERN”.

68. The Attorney General’s letter, authorizing Mr. Alberto Penelas Alvarez to make an application on behalf of Belize under article 292 of the Convention, stated that the vessel was “of Belize flag, which holds registration number 07972047 and call letters V3UJ7.”

69. The date of issuance of the provisional patent of navigation was given as 16 October 2000 and the date of its expiration was given as 29 December 2000.

70. The IMMARBE certification of 30 March 2001 stated:

TO WHOM IT MAY CONCERN

The undersigned, Director and Senior Deputy Registrar of the International Merchant Marine Registry of Belize, duly empowered by the Merchant Ships Act, 1989/1996, hereby certifies that the vessel GRAND PRINCE is registered under the flag of Belize, holding registration Number 07972047 and call letters V3UJ7.

It is also certified that there are documents relating to the status of the vessel that are pending to be processed, -including the cancellation of status which execution was suspended-, based on particular

circumstances involving the situation of the vessel and relating to the detention instructed by the French authorities.

It is further certified that, despite the expiration of the Patent of navigation and Ship station license, the vessel is still considered as registered in Belize until final decision of this Administration pending to the result of the court proceeding in which the vessel is engaged at the present time.

71. The Respondent drew the attention of the Tribunal to the following documents:

- (a) Note verbale dated 4 January 2001 sent by the Ministry of Foreign Affairs, Belize, to the Embassy of France in El Salvador;
- (b) Letter dated 26 March 2001 sent by IMMARBE to the Honorary Consul of France in Belize City.

72. In the note verbale of 4 January 2001, the Ministry of Foreign Affairs of Belize stated:

The Ministry of Foreign Affairs of Belize presents its compliments to the Embassy of France in El Salvador and has the honour to refer to the Note of 3 January 2001 with reference to the detention of Belize-flagged vessel “Grand Prince”.

The Ministry of Foreign Affairs wishes to inform that Belize’s shipping registry has confirmed that the vessel was registered with the Belize registry. However, as this is the second reported violation committed by the vessel, the punitive measures being imposed by the Belizean authority is its de-registration effective today 4 January 2001.

The Ministry of Foreign Affairs of Belize avails itself of this opportunity to renew to the Embassy of France the assurances of its highest consideration.

73. The Tribunal also notes that the procès-verbaux of seizure Nos. 10/AM2001, 11/AM/2001, 12/AM/2001 and 13/AM/2001, drawn up by the Regional and Departmental Director of Maritime Affairs of Réunion on 11 January 2001, after recording that the *Grand Prince* flew the Belize flag at the time of the event, stated that Belize “deleted the *Grand Prince* from its registries following this violation” (translation from French). The Tribunal notes that this statement was made after the note verbale of 4 January 2001 from the Ministry of Foreign Affairs of Belize.

74. In the letter dated 26 March 2001, IMMARBE stated:

This is in reply to your request for an update on the latest developments relating to the vessel GRAND PRINCE, which was detained by the French Authorities due to alleged infringement of the fishing regulation in the exclusive economic zone of Kerguelen.

We would like to inform you that while we were in the process of canceling *ex-officio* the vessel's status, the owners requested an opportunity to defend themselves of the accusations by submitting an appeal to the Tribunal for the Law of the Sea.

Under this context and being Belize a member of the Convention on the Law of the Sea we considered fair to allow the affected party to file its petition for which purposes we requested our competent authorities to grant the authorization for them to represent themselves at the mentioned Tribunal.

Depending on the result of this court proceeding we will decide whether or not to enforce our decision to delete the vessel from our records.

75. During the public sitting held on 6 April 2001, the Respondent introduced the note verbale of 4 January 2001 from the Ministry of Foreign Affairs of Belize. The Applicant did not object to the introduction of this document but stated that this document was introduced by France for the purpose of creating confusion regarding the current registration status of the vessel. In this connection, the Applicant drew the attention of the Tribunal to the IMMARBE certification of 30 March 2001.

76. The question arises as to whether the registration of the vessel in Belize continued following the expiry of the provisional patent of navigation or, as the case may be, was revived following the de-registration of the vessel with effect from 4 January 2001. The Tribunal considers that the documents placed before it by the parties disclose on their face contradictions and inconsistencies in matters relating to expiration of the provisional patent of navigation, de-registration of the vessel and suspension of de-registration, all of which give rise to reasonable doubt as to the status of the vessel when the Application was made. This doubt has a bearing on the question of jurisdiction of the Tribunal.

77. According to the settled jurisprudence in international adjudication, a tribunal must at all times be satisfied that it has jurisdiction to entertain the case submitted to it. For this purpose, it has the power to examine *proprio motu* the basis of its jurisdiction.

78. This Tribunal observed in the *M/V "SAIGA" (No. 2) Case* that, even where there is no disagreement between the parties regarding the jurisdiction of the Tribunal, "the Tribunal must satisfy itself that it has jurisdiction to deal with the case as submitted" (Judgment of 1 July 1999, paragraph 40). Likewise, the International Court of Justice has observed:

The Court must however always be satisfied that it has jurisdiction, and must if necessary go into the matter *proprio motu*.

(*Appeal Relating to the Jurisdiction of the ICAO Council, Judgment, I.C.J. Reports 1972, p. 46 at p. 52*).

79. As a consequence, the Tribunal possesses the right to deal with all aspects of the question of jurisdiction, whether or not they have been expressly raised by the parties.

80. The Tribunal must, therefore, satisfy itself that the Application was "made on behalf of the flag State of the vessel", as required by article 292, paragraph 2, of the Convention.

81. As observed by the Tribunal in the *M/V "SAIGA" (No. 2) Case*, the Tribunal considers that "the nationality of a ship is a question of fact to be determined, like other facts in dispute before it, on the basis of evidence adduced by the parties" (Judgment of 1 July 1999, paragraph 66).

82. In this connection, the Tribunal notes that article 91 of the Convention provides:

Article 91
Nationality of ships

1. Every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship.
2. Every State shall issue to ships to which it has granted the right to fly its flag documents to that effect.

83. In Belize, under the Registration of Merchant Ships Act, 1989, the right of a fishing vessel to fly the Belizean flag flows from the act of registration. Accordingly, unless a fishing vessel like the Grand Prince is registered in Belize, Belize would not be the flag State of that vessel. It is necessary that there is sufficient evidence to establish that a vessel is registered and, therefore, has the right to fly the flag of Belize at the relevant time.

84. Of the documents before the Tribunal in the present case, the only document issued to the Grand Prince by Belize under the Registration of Merchant Ships Act, 1989, was the provisional patent of navigation. This document expressly stated that its date of expiration was 29 December 2000. The Applicant has not claimed that the shipowners sought extension of the period of the provisional patent of navigation, or that the provisional patent of navigation was extended or replaced by another statutory certificate. What were placed before the Tribunal were a letter and a certification from IMMARBE dated 26 March 2001 and 30 March 2001, respectively (IMMARBE communications), documents which on their face were intended to serve the purpose of authorizing the shipowners to make an “appeal” to the Tribunal. This is shown in particular by the statements contained in the IMMARBE communication of 26 March 2001 that the shipowners wanted an opportunity “to defend themselves of the accusations by submitting an appeal to the Tribunal for the Law of the Sea” and that IMMARBE “considered fair to allow the affected party to file its petition for which purposes we [IMMARBE] requested our competent authorities to grant the authorization for them to represent themselves at the mentioned Tribunal.”

85. The Tribunal notes that the assertion made in the IMMARBE communication dated 30 March 2001 that “despite the expiration of the Patent of navigation and Ship station license, the vessel is *still* considered as registered in Belize” (emphasis supplied) remained unsubstantiated and has to be understood in the light of what is stated in paragraph 84. In the view of the Tribunal, the assertion that the vessel is “still considered as registered in Belize” contains an element of fiction and does not provide sufficient basis for holding that Belize was the flag State of the vessel for the purposes of making an application under article 292 of the Convention. The IMMARBE communications cannot be treated as “documents” within the meaning of article 91, paragraph 2, of the Convention.

86. The Tribunal considers that the IMMARBE communications are in the nature of administrative letters, unsupported by references to any entries in the merchant marine register of Belize or any other action required by law. It is also noted that these communications were issued after the Application was made in this case.

87. The IMMARBE communications must be read together with the provisional patent of navigation and the note verbale of the Ministry of Foreign Affairs of Belize of 4 January 2001. On its face, the provisional patent of navigation became spent on 29 December 2000. The note verbale was an official communication from Belize to France, setting out the legal position of the Government of Belize with respect to the registration of the vessel. Having first noted that the vessel was registered in Belize, this note verbale declared that “as this is the second reported violation committed by the vessel, the punitive measures being imposed by the Belizean authority is its de-registration effective today 4 January 2001.” If a document states that a measure referred to therein takes effect from the date on which the document is issued, the coming into effect of the measure cannot be said to be conditional upon the occurrence of any future event. When the note verbale spoke in terms of “de-registration effective today”, the act of de-registration must be taken to have commenced with effect from 4 January 2001.

88. The Attorney General’s letter of 15 March 2001 does not offer any more clarity on the question of registration and nationality than the IMMARBE communications.

89. In the *M/V “SAIGA” (No. 2) Case*, the Tribunal considered that the conduct of a flag State, “at all times material to the dispute”, was an important consideration in determining the nationality or registration of a ship (see Judgment of 1 July 1999, paragraph 68). The Tribunal finds that the Applicant did not act “at all times material to the dispute” on the basis that the Grand Prince was a vessel of its nationality. To the contrary, on 4 January 2001, Belize communicated to France, by means of a note verbale from the Ministry of Foreign Affairs, its decision to de-register the Grand Prince with effect from 4 January 2001.

90. In this connection, the Tribunal wishes to note that the Registration of Merchant Ships Act, 1989, was amended in 1996 with a view to strengthening the powers of the Registrar to de-register vessels. Section 25 of the Act, in its amended form, provides:

Where a vessel registered in IMMARBE infringes, violates or engages in an activity in breach of this Act, or any regulations, resolutions or circular notes or letters made or issued thereunder, or any international convention to which Belize is a party, or any United Nations sanctions, the Registrar may revoke the registration of such vessel from IMMARBE or impose a fine not exceeding fifty thousand dollars.

91. The provisional patent of navigation issued in favour of the *Grand Prince* also carried an endorsement in line with section 25. In this connection, the Tribunal notes the efforts of Belize towards fulfilling its international responsibilities with respect to combating illegal fishing.

92. The Tribunal considered the question whether there was any need to seek further clarification in the matter of registration of the *Grand Prince* in Belize. The documents before the Tribunal bearing on registration of the vessel and, as a consequence, on its nationality – the provisional patent of navigation, the note verbale of the Ministry of Foreign Affairs, the IMMARBE communications and other documents – are not in dispute. The issue concerns the legal effects to be attached to these documents for the purposes of the present proceedings. In view of this, the Tribunal decided that it should deal with the question in the light of the material placed before it.

93. In the light of the expiration of the provisional patent of navigation or, as the case may be, in the light of the de-registration of the *Grand Prince*, referred to in the note verbale of 4 January 2001, and on the basis of an overall assessment of the material placed before it, the Tribunal concludes that the documentary evidence submitted by the Applicant fails to establish that Belize was the flag State of the vessel when the Application was made. Accordingly, the Tribunal finds that it has no jurisdiction to hear the Application.

94. In these circumstances, the Tribunal is not called upon to deal with the submissions of the parties on the remaining questions of jurisdiction, admissibility, and merits of the Application.

Operative provisions

95. For these reasons,

THE TRIBUNAL,

By 12 votes to 9,

Finds that the Tribunal has no jurisdiction under article 292 of the Convention to entertain the Application;

IN FAVOUR: *President* CHANDRASEKHARA RAO; *Vice-President* NELSON; Judges KOLODKIN, PARK, BAMELA ENGO, MENSAH, ANDERSON, WOLFRUM, LAING, TREVES, NDIAYE; *Judge ad hoc* COT;

AGAINST: *Judges* CAMINOS, MAROTTA RANGEL, YANKOV, YAMAMOTO, AKL, VUKAS, MARSIT, EIRIKSSON, JESUS.

Done in English and in French, both texts being authoritative, in the Free and Hanseatic City of Hamburg, this twentieth day of April, two thousand and one, in three copies, one of which will be placed in the archives of the Tribunal and the others transmitted to the Government of Belize and the Government of France, respectively.

(Signed) P. CHANDRASEKHARA RAO,
President.

(Signed) Gritakumar E. CHITTY,
Registrar.

Vice-President NELSON, availing himself of the right conferred on him by article 125, paragraph 2, of the Rules of the Tribunal, appends his declaration to the Judgment of the Tribunal.

(Initialled) L.D.M.N.

Judge WOLFRUM, availing himself of the right conferred on him by article 125, paragraph 2, of the Rules of the Tribunal, appends his declaration to the Judgment of the Tribunal.

(Initialled) R.W.

Judge ad hoc COT, availing himself of the right conferred on him by article 125, paragraph 2, of the Rules of the Tribunal, appends his declaration to the Judgment of the Tribunal.

(Initialled) J.-P.C.

Judge ANDERSON, availing himself of the right conferred on him by article 30, paragraph 3, of the Statute of the Tribunal, appends his separate opinion to the Judgment of the Tribunal.

(Initialled) D.H.A.

Judge LAING, availing himself of the right conferred on him by article 30, paragraph 3, of the Statute of the Tribunal, appends his separate opinion to the Judgment of the Tribunal.

(Initialled) E.A.L.

Judge TREVES, availing himself of the right conferred on him by article 30, paragraph 3, of the Statute of the Tribunal, appends his separate opinion to the Judgment of the Tribunal.

(Initialled) T.T.

Judges CAMINOS, MAROTTA RANGEL, YANKOV, YAMAMOTO, AKL, VUKAS, MARSIT, EIRIKSSON and JESUS, availing themselves of the right conferred on them by article 30, paragraph 3, of the Statute of the Tribunal, append their dissenting opinion to the Judgment of the Tribunal.

(Initialled) H.C.

(Initialled) V.M.R.

(Initialled) A.Y.

(Initialled) S.Y.

(Initialled) J.A.

(Initialled) B.V.

(Initialled) M.M.

(Initialled) G.E.

(Initialled) J.-L.J.