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

2001

Public sitting

held on Thursday, 5 April 2001, at 1500,

at the International Tribunal for the Law of the Sea, Hamburg,

President P. Chandrasekhara Rao presiding

The “Grand Prince” case

(Application for prompt release)

(Belize v. France)

Verbatim Record

Uncorrected
Non-corrigé

Present:	President	P. Chandrasekhara Rao
	Vice-President	L. Dolliver M. Nelson
	Judges	Hugo Caminos
		Vicente Marotta Rangel
		Alexander Yankov
		Soji Yamamoto
		Anatoli Lazarevich Kolodkin
		Choon-Ho Park
		Thomas A. Mensah
		Paul Bamela Engo
		Joseph Akl
		David Anderson
		Budislav Vukas
		Rüdiger Wolfrum
		Edward Arthur Laing
		Tullio Treves
		Mohamed Mouldi Marsit
		Gudmundur Eiriksson
		Tafsir Malick Ndiaye
		José Luis Jesus
	Judge *ad hoc*	Jean-Pierre Cot
	Registrar	Gritakumar E. Chitty

Belize represented by:

Mr. Alberto Penelas, *Avocat*, Bar of Vigo, Spain,

as Agent;

and

Mrs. Beatriz Golcoechea Fábregas, *Avocat*, Bar of Vigo, Spain,

as Counsel,

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 CLERK OF THE TRIBUNAL: The International Tribunal for the Law of the Sea is now in session.

THE REGISTRAR: On 21 March 2001 an Application was filed on behalf of Belize against France for the prompt release for the fishing vessel *Grand Prince*.

The Application was made under Article 292 of the United Convention on the Law of the Sea.

The case has been named the "*Grand Prince*" Case (Belize versus France) and entered in the List of cases as case no. 8. Today the Tribunal will take up the hearing in this case.

Agents and Counsel for both Belize and France are present.

THE PRESIDENT: This public meeting is held pursuant to Article 26 of the Statute of the Tribunal to hear the parties present their evidence and arguments in the *Grand Prince* case.

I call on the Registrar to read out the submissions of Belize as contained in its Application.

THE REGISTRAR: The Applicant requests the Tribunal:

1. To declare that the Tribunal has jurisdiction under Article 292 of the Untied 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(2) of the Convention, as the guarantee fixed for the 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(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 and 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 at 123,848 Euros, (b) the fishing gear, valued at 24,393 Euros, (c) the fishing materials

valued at 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 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 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."

THE PRESIDENT: On 22 March 2001, a copy of the Application was transmitted to the Government of France together with the Order of 21 March 2001, in which the President of the Tribunal fixed 5 and 6 April 2001 as the dates for the hearing of the case.

On 28 March 2001, the Government of France filed observations regarding the Application filed on behalf of Belize.

I now call on the Registrar to read out the submission of the Government of France in its observations.

THE REGISTRAR: The Respondent requests the Tribunal:

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 moot (*sans objet*), that it must therefore be rejected, and that there are thus no grounds to institute proceedings.

THE PRESIDENT: Copies of the Application and the Observations of the Government of France have been made available to the public.

The Tribunal notes the presence in court of Mr Alberto Penelas Alvarez, Agent of Belize, and Mr Francois Alabrune, Agent of France.

I now call on the Agent of the Applicant to note the representation of Belize.

MR ALBERTO PENELAS ALVAREZ: Mr President, distinguished Members of the Tribunal, distinguished representatives of France, this is the first time that I and those on my team have acted before this international and relevant Tribunal, and I wish to say that this is a big honour for us. We also wish to thank very much the Registrar of the Tribunal for his helpful and kind assistance, which I hope has allowed us to make the application from a formal point of view in the most correct way.

As advanced to the Tribunal, the State of Belize has authorized me to act as an Agent, and Ms Beatriz Goicoechea to act as legal counsellor.

THE PRESIDENT: May I interrupt the Agent of the Applicant? I have called on you to introduce your delegation, the representatives of Belize. Will you please do that?

MR PENELAS ALVAREZ: Yes, Mr President. Beatriz Goicoechea will act as legal counsellor. She is a Spanish lawyer who specializes in International Maritime Law. Carlos Perez is also a lawyer and he will assist us in general matters. I will make the full representations. They will just assist me.

THE PRESIDENT: Thank you. I now call on the Agent of the Respondent to note the representation of France.

MR FRANCOIS ALABRUNE (Interpretation)**:** Mr President, please allow me to introduce to you and Members of the Tribunal the members of the delegation representing the French Republic. I would like to introduce Professor Jean-Pierre Queneudec, Counsel; Mr Michel Trinquier, Deputy Director for the Law of the Sea, Fisheries and Antarctic, in the Ministry of Foreign Affairs; and Mr Jacques Belot, advocate and counsel.

THE PRESIDENT: Today both parties will address the Tribunal on admissibility and jurisdiction. Tomorrow the parties will address the Tribunal on the other issues.

I now give the floor to the Agent of Belize.

MR PENELAS ALVAREZ: Mr President, Members of the Tribunal, distinguished representatives of France, as agreed, I will refer this afternoon only to the concrete question of jurisdiction introduced by France in its letter of comments to the Application. However, in order to address this matter in a correct way, I will need to make some general reference to the facts of the case.

In our opinion, France is trying to avoid or obstaculize the present proceeding, arguing two different questions.

The first is that our Application is not admissible under Article 292 of the Convention, in that the domestic Court in La Réunion and the Correctionnel Court of Saint-Denis have decided to confiscate the vessel *Grand Prince* and to execute provisionally the decision whilst the remedies of appeal are in course and obviously pendent of a final and firm decision.

In support of this allegation, France argues that this Tribunal can only deal with the matter of the reasonableness of the bond of guarantee and with nothing else. The Tribunal, according to France, will not have jurisdiction or competence to deal with a case where a coastal state, by application of a domestic precept, impedes prompt release of a vessel.

Secondly, France is arguing that the objective of the application is not whether France complied or not with the request for prompt release, as stated under Article 73.2 of the Convention, but the question of the legality of French domestic laws, which France has pointed out in its letter of comment provides for confiscation of ships and imprisonment of crews. On this basis, France understands that the procedure we have chosen, Article 292, is not suitable. Literally what France is arguing – and I read page 3 of its letter is that: "the unique limit given for the exercise of sanctioning powers of a coastal State is indicated in paragraph 3 of Article 71 of the Convention, which excludes sanctions of imprisonment and corporal punishments."

This is what France is saying, that the measures that a coastal state can take to prevent fishing have these limits only.

I think that without doubt it is very clear in our application that the unique subject matter of the present case is whether France has respected or contravened Article 73.2 of the Convention. In other words, if in this case France provided the opportunity to release *Grand Prince* and, if so, if the eventual bond is a reasonable one. That is the only subject matter of this case. Clearly, we are not questioning the merits of the case. That has been done in La Réunion where there will be an appeal and we are awaiting a date for that appeal.

We are not discussing the eventual legality of the sanctions that French law contemplates for these cases. We have pointed out in our application that among these sanctions is imprisonment of the crew. It is clear that is not in conformity with the Convention. Mr President, we are not dealing with or discussing that matter here.

France has forgotten, in its letter of comment, that the dispositions of the Convention relating to prompt release of vessels and crews prevail over any domestic precepts. As a consequence, a state cannot invoke a domestic law to justify a breach of this important article of the Convention.

Let me recall the jurisprudence of the case law of this Tribunal. In the judgement in the *Comouco* case, in paragraph 57 the Tribunal stated:

> "Article 292 of the Convention is designated to free a ship and its crew from prolonged detention on account of the imposition of unreasonable bonds in municipal jurisdictions, or the failure of local law to provide for release on posting a reasonable bond, inflicting thereby avoidable loss on a ship owner or other persons affected by such detention."

This paragraph is self-explanatory.

Point 59 of the judgement in the *Saiga* case reads as follows:

> "For the purpose of the admissibility of the application for prompt release of the *Saiga* it is sufficient to note that non-compliance with Article 73 paragraph 2 has been alleged and to conclude that the allegation is arguable or sufficiently plausible."

Point 71 of the same judgement states:

> "In light of the independent character of the proceedings for prompt release of vessels and crews, when adopting its classification of the laws of the detaining state, the Tribunal is not bound by the classification given by such state."

The precepts of the Convention and the case law of the Tribunal is also in line with other relevant international conventions. Let me refer to the Vienna Convention for the Law of Treaties and Conventions in which Article 27 states that "a state cannot invoke the dispositions of its domestic law as justification of the breach of treaties".

In our case, what is very clear is that France is alleging, in support of its non-compliance with the prompt release of a vessel, several articles of its Criminal Code, copies of which were annexed to France's letter of comment.

I feel that France should also inform this Tribunal about the content of Article 55 of its Constitution, which consecrates all these principles, and the universal principle of the superiority of international treaties over domestic laws or regulations. The article reads as follows:

> "The treaties or agreements regularly ratified or approved have, since their publication, a superior authority to internal laws."

Mr President and distinguished members of the Tribunal, the unique subject matter of these proceedings is to determine whether France acted in conformity with Article

73.2 of the Convention, and consequently the Tribunal has very clear jurisdiction and competence to deal with the case by virtue of Article 292.

THE PRESIDENT: Thank you. There will now be a 15-minute break and then France will advance its arguments when we reassemble.

(Short recess)

THE PRESIDENT: I now invite the Agent of France to make his statement.

MR ALABRUNE (Interpretation)**:** Members of the Tribunal, it is a great honour for me to take on the task which the Government of the French Republic have confided in me to represent as an agent before your Tribunal.

France feels that the sole question which arises in this case is one which must be put at the very beginning; that is, to know whether your Tribunal can accept the application which has been presented on behalf of Belize. This is an extremely important question. In fact, there is no precedent for this question. Your Tribunal will have to take a decision in principle in this matter. Your decision will confirm the limits that the United Nations Convention on the Law of the Sea has fixed for invoking Article 292.

That decision will therefore determine the extent of the application which your Tribunal gives to the procedure of prompt release which is foreseen in this article in conformity with the Convention. The difference between the application which has been presented on behalf of Belize and the cases which concerned France and in which your Tribunal has already taken a decision – that is the case of *Camouco* and the case of *Monte Confurco* – is an important one. In the two preceding cases, your Tribunal was called upon to take a decision on requests for prompt release which had been presented at a point in time when the proceedings before the national courts were still underway. Those proceedings had not yet led to a judgement on the merits. That was the case for *Camouco* in which, I am sure you will all recall, the judicial proceedings which had been commenced against the Captain were still ongoing when you took your decision. That was also the case with *Monte Confurco*; a case in which the hearings on the merits before the national judge were only to take place after the hearings on the prompt release had taken place before your Tribunal.

However, in contrast, in the present case, for the first time, your Tribunal has before it a request for prompt release, whereas judicial proceedings before national courts have already been concluded and have led to a judgement on the merits as well as sentencing. That sentencing consists, above all, of a measure of confiscation of the immobilised vessel. That is the major difference between this case and the two preceding ones.

In this context, a prompt release is no longer possible and not even conceivable. The reasons for that have been laid out in summary fashion in the written submissions which were presented to the Tribunal by the Government of the French Republic. Those reasons and grounds will be extended by Professor Jean-Pierre Queneudec. Perhaps you would be kind enough to hand the floor to him.

MR QUENEUDEC (Interpretation)**:** Mr President, Judges, it certainly is an honour for me again to be able to address the International Tribunal for the Law of the Sea on behalf of France. That honour is doubled because I find myself here in surroundings which are familiar to me. However, perhaps I may say that if this happens too frequently, that pleasure will probably become less.

It is incumbent upon me to speak to your high jurisdiction of an essential problem which is raised in view of the request which has been presented on behalf of Belize in accordance with Article 292 of the United Nations Convention on the Law of the Sea concerning the situation of the fishing vessel *Grand Prince*. That request raises a question in advance, which has been stated already by the representative of France. We should first examine whether the Tribunal can accept the application which has been presented to us.

According to us, this request was submitted to the Tribunal on 21 March. The request was for proceedings for the prompt release of *Grand Prince*. This does not enter into the provisions of Article 292 of the Convention and therefore should not be accepted by your Tribunal. It is that which I shall try to demonstrate. At the end of this demonstration, I shall not enter into the examination of the merits of the application by Belize because this hearing will restrict itself to the problems of jurisdiction and admissibility.

The request which has been submitted to your Tribunal raises a question which is of a completely preliminary nature, or even a pre-preliminary nature, to which your deliberations of necessity will have to be first directed. Therefore, I shall restrict myself to explaining the reasons why the request of Belize should be regarded as not being relevant to Article 292. The members of the Tribunal know better than anyone else that in the case of the very special proceedings which are laid down in Article 292 there exists strict limits, not only as regards what might be requested by the party submitting the application, but also as far as what might be decided by the Tribunal.

Let us simply recall that this procedure hinges entirely on only two elements. On the one hand there is the weighing-up of whether the allegation of the flag state is well-founded, according to which the coastal state had not respected a specific provision of the Convention for the prompt release of a vessel as soon as a sufficient bond has been deposed. On the other hand, a second element is the weighing-up of the reasonable nature of the bond if the preceding allegation is well-founded; the determination of the size of the bond and how it will be deposited. That should lead to the coastal state promptly releasing the vessel without any further delay.

Furthermore, as is laid down in paragraph 3 of Article 292, when this special procedure is implemented, the Tribunal can only deal with the question of prompt release without prejudice to the merits of any case before the appropriate domestic forum against the vessel, its owner or crew.

That means that the merits of the case in which the vessel or its captain is implicated before the national jurisdiction are outside the area covered by Article 292. As a result, the admissibility of a request for prompt release and the jurisdiction of the

Tribunal to hear this case face an important limitation, *ratione materiae.* Of course, one does not need to harp on that point. The Tribunal has already had several occasions upon which it has pronounced its views in the past. This is, however, not the only type of limit which can be given in the case of prompt release. It seems as if there is at least one other limit which occurs if an event takes place between the date of immobilisation of the vessel and the moment when an application is submitted for prompt release if and when that event is of a nature that it will make any request based on Article 292 moot or in vain.

It is therefore not a limit, in terms of time and its nature, which will result from the passing of time or because of a preclusion period. On the other hand, in the *Camouco* case the Tribunal laid down that Article 292 did not impose any limit or condition *ratione temporis* and the Tribunal declared in paragraph 54 of the decision that the article does not require the flag state to submit a request at a particular moment after the immoblisation of arrest of the vessel.

Therefore, it is not the case of a limit in time. The limitation to which I refer appears to be a limit which you might qualify as *ratione eventus.* Perhaps you will excuse the new language. Such a limit, *ratione eventus,* is certainly not one which is laid down as such in the text, but it is one which is implied due to the sanction which is involved in prompt release proceedings.

In the three preceding prompt release cases which have been submitted to it in the past, the Tribunal did not have to deal with that type of question because the problem did not arise. For the first time the Tribunal must face this state of affairs today and must take a decision on this point. We have no doubt that that will be a decision in principle which will create jurisprudence.

It is precisely because of this limit, *ratione eventus*, which is the foremost obstacle to the Application presented on behalf of Belize, that this Application appears completely non-admissible. This is the first point that I will go into in my exposé.

This Application, on the other hand, encounters a second obstacle, which is that the Tribunal does not have the necessary jurisdiction in order to accept the Application as it was presented, and I will cover this aspect in the second point of my presentation.

There is then a third aspect, which flows from the preceding considerations and which the French Government reiterated in its written observations sent to the Tribunal dated 28 March. The proceedings requested in the Application by Belize have no justification and do not exist. My pleadings will end with this third point.

I would now like to go into the fact that the request is not admissible and the fact that the Tribunal has no jurisdiction to accept it, and then I will speak about the inexistence of proceedings according to Article 292.

I will deal first with the inadmissibility of the Application. The Application by Belize must be regarded as inadmissible because it was submitted to the Tribunal on 21 March, whereas in the meantime, two months beforehand, on 23 January judgement and sentencing had taken place following the action to which the captain of the

vessel *Grand Prince* had submitted himself in front of the appropriate French court. The institution of prompt release proceedings, according to Article 292, appears to be linked to the existence of judicial proceedings to come in the future or which are ongoing before the national courts of the coastal state, although they are completely separate from it.

The procedure in Article 292 presupposes that proceedings in the national or local courts have either not yet been formally opened, as in the case of *Saiga* and *Camouco*, or that the proceedings are pending, as in the case of *Monte Confurco*; that is to say, that the procedure, according to Article 292, presupposes that the local court has not yet come to a decision on the merits. When a flag state of a fishing vessel is led to invoke proceedings, according to Article 292, its particular aim in doing so is to allow the owner to obtain the return of the vessel without having to wait for the end of judicial proceedings which have been commenced by the coastal state.

You can also say that when the judicial proceedings have come to an end, that is, when the local proceedings are no longer pending before the national tribunal, recourse to proceedings, according to Article 292, will not only be without any interest but will also lose justification. This is implied in the very text of Article 292. Paragraph 3 of Article 292 uses the expression, “Sans prèjudice de la suite qui sera donnée à toute action” – without prejudice to the merits of the case. The use of the future in French indicates quite clearly that this is the perspective of a judgement which will be given later by the competent national court.

In the same way, the wording “without prejudice” can only be understood in the sense of “without prejudging”, as is demonstrated much more clearly by the English text, “without prejudice to the merits of any case”, which means that it would not be a question of deciding in advance to have a premature judgement or to foresee on the basis of conjecture. This is laid out clearly in Article 114 of the Rules of the Tribunal, which deal with a bond to be deposited with the Tribunal. Paragraph 2 reads: “The Registrar shall endorse or transmit the bond or other financial security to the detaining state, to the extent that it is required to satisfy the final judgement, award or decision of the competent authority of the detaining state”.

Looking at the text, therefore, it becomes quite clear that the submission of an application to the Tribunal, according to Article 292, has been conceived as happening before local proceedings against the vessel or its captain have led to a decision on the merits. It is difficult to see how an application to the Tribunal on the basis of this article could take place after a decision on the merits had been taken by an appropriate local court.

Reading the applicable texts is, on the other hand, confirmed by the interpretation which has been given and the application which the Tribunal itself has given to these texts in the prompt release cases with which it has dealt to date. In the case of the *Saiga* decision on 14 December 1997, we read, concerning the link between proceedings according to Article 292 and national proceedings – and I quote from 49 of the decision - that if parties to proceedings before the Tribunal are bound by the decision taken by the Tribunal concerning the prompt release and the bond or other

guarantee, national jurisdictions are not bound by statements of fact or law which the Tribunal has made in order to arrive at its conclusions.

In their examination of the question concerning the merits, they are not bound by statements of fact and law which the Tribunal has taken in order to arrive at its conclusions. Therefore, how can one affirm that national courts are not bound by statements made by your Tribunal if one did not depart from the logical presumption that decisions of national courts are taken after a decision by your Tribunal concerning prompt release?

This was also recalled, in a different form, in the decision in the *Monte Confurco* case, in which the Tribunal, taking up the terms of Article 292, said that the proceedings foreseen in this article can only cover the question of prompt release and freeing of the vessel without prejudice to further actions concerning the vessel, its owner or crew before national courts. That is echoed in the decision of the Tribunal in the *Camouco* case, where, in paragraph 58, it was said that Article 292 authorises submitting a request for prompt release after a short period which starts from the moment of arrest of the vessel, and in practice internal or local remedies can usually not be exhausted within such a short period of time

These were formulated concerning the non-applicability of the rule of exhaustion of local remedies in the framework of Article 292. This observation, made by your Tribunal in the *Camouco* case, shows the conviction that an action under the terms of Article 292 will of necessity take place pending the termination of judicial proceedings in local courts.

Therefore, we can affirm that an application which is presented by virtue of Article 292 is no longer admissible as soon as a local court has ruled and taken a decision on the merits of actions brought against the captain of a vessel. A request for prompt release that is submitted to the Tribunal in such a case would then be admissible, and this would therefore be an obstacle to the opening of any proceedings which are covered by Article 292. Otherwise, one would have to admit that the Tribunal, in taking a decision on a request for prompt release, would have the right to transform a prompt release action which changes a national judgement, which the Tribunal cannot do. That was clearly stated in its last judgement - the *Monte Confurco* case on 18 December, Article 72 - which states that, according to the terms of Article 292, the Tribunal is not an appeal court for any decisions which are taken by national courts.

The arguments thus advanced by France in support of its contention of the non-admissibility of the Application must not be regarded as an attempt to give priority to a decision by a national court over an international obligation arising from a convention which is in force, in contrast to the apparent intention of the Applicant in their “reply” to the written observations by the French Government. In reality, our argument follows the letter and the spirit of the provision in the Convention relating to prompt release, such as it has been interpreted in the jurisprudence of the Tribunal. Furthermore, in the framework of a prompt release procedure, when the Tribunal is evaluating the reasonable amount of a bond, it bases its considerations on a series of elements and, above all, is mindful of penalties which might be decided, such as

the possible amount of fines and the possible confiscation of a vessel and fishing equipment.

The keeping in mind of possible penalties in order to determine the size of a bond is a mere translation of the fact that a bond itself also is aimed at giving the coastal state a guarantee which will enable it, if necessary, to ensure the effective implementation of fines, if these are decided. How, therefore, could one conceive of requesting proceedings before the Tribunal to fix a bond providing such a guarantee, when the penalties have already been announced and, above all, when the confiscation of the vessel constitutes ones of these penalties? For all these reasons, we consider that the Application of Belize is not admissible. I therefore call upon the Tribunal to declare that it is not admissible.

This application not only poses the problem of admissibility but it also encounters another obstacle, which is that the Tribunal does not have the jurisdiction to accept this application.

Presenting the argument of the lack of jurisdiction of the very Tribunal before which one is pleading is not always an agreeable exercise, either for the person pleading or for the judges who give the honour of listening. Fortunately, however, even if this task is not agreeable, in this particular case it is not difficult to accomplish because the non-jurisdiction of the Tribunal is so manifest that it is almost self-evident and will therefore not require a lengthy explanation.

In the eyes of the French Government in fact, the Tribunal will only be able to find a basis for accepting the application of Belize such as it has been presented in Article 292 of the Convention and if under extraordinary circumstance it decided to re-qualify the said application there would still be no other basis for jurisdiction upon which the Tribunal could found itself. Therefore, we need to elucidate jurisdiction of the Tribunal on the one hand within the framework of Article 292 and on the other hand outside the framework of this article.

Within the context of Article 292 of the Convention, in the three previous cases dealing with requests for prompt release, the Tribunal of course took care to verify that it had jurisdiction to hear the application and that that was well established, particularly the part appertaining the status of parties to the Convention of the United Nations on the Law of the Sea.

In the present case, Belize and France are parties to the Convention and are therefore subject to the jurisdiction of the Tribunal under Article 292 of this Convention. Nevertheless, when it is called upon to do so under this article, the Tribunal must also check that the matter which has been submitted to the Tribunal does indeed have the particular characteristics required by the jurisdiction which has been invoked.

From a procedural point of view, the application to the Tribunal is apparently under Article 292. The application, however, covers a dispute which is much wider in scope than a simple request for prompt release. The question is about the issue of whether the application of French law by the French legal authorities corresponds to what is permitted by the Convention of the Law of the Sea. In particular, the

applicant is trying to get the Tribunal to declare and decide that French law that provides for the confiscation of fishing vessels guilty of offences and the application of this law by a criminal court of Saint-Denis de la Réunion is not in conformity with the Convention. On the other hand, the applicant seems to be requesting the Tribunal to judge on the course of the French legal proceedings, which concluded in the sentencing of the Master of the *Grand Prince a*nd the confiscation of this vessel. An example has also been given in the alleged reply when, in a rather surprising way, the applicant took it upon himself to comment on the reply of the French Government. This is in flagrant contradiction to the provisions of Article 111 paragraph 6 of the rules. The applicant is trying to put himself within the framework of the procedure of a prompt release case set up by the provision of the rules. This so-called reply consists of the claim that France has been guilty of a serous and flagrant violation of the Convention, resulting in a hasty and summary trial.

We can now see that this is no longer a simple allegation by which the French authorities have not adhered to the provisions of the Convention providing for the prompt release of the vessel upon the filing of a reasonable bond. The application of Belize in fact, based on Article 292, is trying to bring before the Tribunal a question, which in the Anglo-Saxon legal system could be called denial of procedural fairness and due process in relation to judicial proceedings.

Within the context of Article 292, the Tribunal certainly does not have jurisdiction to rule on such applications which do not fall within the provisions of this article. The terms used in the application are the best illustration of what could happen. The applicant has in fact confirmed that the French legal authorities were applying an artifice and subterfuge and their actions seemed to amount to legal fraud. These statements themselves are very telling. It is no longer simply a question of prompt release and therefore the Tribunal, and I repeat, does not have jurisdiction under Article 292 to consider the elements which are based on the application of Belize.

If the Tribunal decided to maintain the request, then it would run the risk of permitting a misuse of power and exceeding its authority. Nevertheless, there is another reason for the lack of jurisdiction of the Tribunal to deal with this case. This other reason has nothing to do with Article 292 and I think I can sum it up in a few words.

Since the elements on which the application of Belize are based does not come within the context of Article 292 on prompt release and since the Tribunal does not have jurisdiction to examine this application under this article, it is necessary to raise the question of finding the other basis of jurisdiction which could be put forward.

This application also questions the conditions of the exercise by France as a coastal state of its sovereign rights and its jurisdiction within its own exclusive economic zone. In other words, the appearance of an innocuous request for prompt release is disguising a dispute of a more general nature. The Tribunal has absolutely no jurisdiction to deal with such a dispute. It is not contested in fact that the coastal state, France, has sovereign power to pass rules on fishing within its exclusive economic zone under the terms of what could be called its jurisdiction to prescribe. It is also incontestable that France is right to pursue its legal enforcement of these rules by legal decisions by virtue of its jurisdiction to adjudicate. It is not contested either that in the present case what has been done by the French authorities is a

legal act of enforcement in the exercise of its sovereign rights, and that is up to the coastal state, over its exclusive economic zone

At the time of ratification of the Convention of the United Nations on the Law of the Sea, the French Government filed a declaration in accordance with Article 298, paragraph 1(b) of this Convention declaring that it would not accept any of the provisions of part XV, section 2, of the Convention on the subject of disputes concerning law enforcement activities in regard to the exercise of sovereign rights excluded from the jurisdiction of a court or tribunal under Article 297, paragraphs 2 or 3. As a result, in any case, the Tribunal does not have jurisdiction to deal with any dispute relative to an act of law enforcement activity on the part of France.

Mr President, we will now look at the third and last aspect raised by the application of Belize. I will use this to illustrate that there is not and cannot be a case for prompt release *per se*.

I need five or ten minutes to deal with this point. Perhaps you will allow me to continue until the break?

THE PRESIDENT: Yes.

MR QUENEUDEC (Interpretation): Let us come back to the third and final point on the non-existence of the proceedings under Article 292.

One could hardly imagine the existence of such a case and therefore the prompt release of a vessel because the application presented by Belize is in fact moot.

The application of Belize is moot in considering the circumstances that the vessel for which they are requesting prompt release was subject to a measure of confiscation decided by the competent court as a penalty and in view of the fact that a penalty was subject to immediate execution.

The arrest of the vessel for which prompt release is requested is not in fact a provisional measure similar to the process of the provisional arrest, which is relatively frequent in maritime law where we are more concerned with procedures. According to the old adage, remedies precede rights. An arrest or attachment, depending upon the case, enable the vessel to be held as a means of security pending the ruling on a case. Taken with the authorization of a judge, this provisional measure can also be raised on the authority of the competent legal authority when a bond or reasonable guarantee have been supplied and, to come back to the wording of Article 5 of the Convention of Brussels of 1952 on the provision of arrest of vessels, these terms have influenced the wording of Article 292 of the Convention of the Law of the Sea.

The arrest we are talking about concerns the vessel *Grand Prince* and this is something completely different. This results from the legal decision which pronounced the confiscation of the relevant vessel and an applicable penalty in conformity with the provisions of national law which provide for the suppression of crime, such as illegal fishing offences in the waters under French jurisdiction.

Now, in contrast to what the applicant is saying – the fact that the vessel, which was flying a foreign flag, was so confiscated is nothing but a violation of the United Nations Convention of the Law of the Sea – this leads to the state defining the contravention of its laws and rules concerning fishing and the determination of penalties, which may be applied to those who commit those offences.

The Tribunal is aware that courts do not hesitate to apply this type of penalty, as provided for by the national legislation of numerous coastal states, of confiscation of the vessel, which is a particularly serious penalty because it concerns the suppression of fishing offences of a serious nature. You only have to look at the volume of the Law of the Sea, published by the Bureau of the Secretariat of the United Nations Division of Maritime Affairs dealing with national legislation on the exclusive economic zone on this matter.

The *Grand Prince* was confiscated with immediate effect as part of a criminal or penal sanction. It is in fact arrested but this arrest cannot be compared to an arrest authorized by a judge within civil or criminal proceedings against the owner or the master of the vessel. The only effect of a provisional arrest is to prevent the vessel from leaving the port and that has no bearing on the rights of ownership. The confiscation pronounced as a result of a legal decision is similar to a so-called attachment of goods. This confiscation based on a legal decision involves the transfer to the state of the rights of ownership of the vessel. This is inspired by the Anglo-Saxon system under the head of forfeiture. This is generally defined as loss of property as a penalty for some illegal act. In a similar case the owner of the title of the vessel is no longer the person, whether natural or legal, who was the actual owner until the confiscation measure intervened.

Under these circumstances, if the vessel had been confiscated by a legal decision and the former owner wished to recover his title to the vessel and to freely dispose of the vessel he could do this by contesting the irregularity of the legal decision which ordered that confiscation. The normal procedure therefore for him would be to apply to a superior court of appeal, in this case the *Cour d'Appel* of Saint-Denis de la Réunion. The former owner cannot submit this question to the International Tribunal for the Law of the Sea on the basis of Article 292 of the Convention because it is an issue which concerns the merits of the case and as such, as we have seen, it is excluded from the scope of the application of Article 292.

This question cannot be deferred to an international body with jurisdiction to deal with such cases until the local remedies have been exhausted. On the other hand, when the former owner, instead of bringing the case to the French courts to contest the regularity or the justification for the confiscation, tries to recover his title of ownership of the vessel on the basis of the prompt release before the Tribunal, he is confronted with another impossibility because Article 292 of the Tribunal says that the Tribunal can only decide on questions of prompt release. That would mean a decision of the Tribunal that would normally allow the owner to recover the use of his vessel.

Subsequent to the confiscation, the title of ownership is now within the hands of the French State. By ordering prompt release, the Tribunal would then be led to order the authorities in France to return the vessel to its owner.

Given that there would be a possible legal decision to the contrary, the owner of the vessel being the French state, this means that the decision of the Tribunal would have no meaning. If, on the other hand, the Tribunal ordered France to proceed to prompt release in favour of the former owner of the vessel, then the Tribunal would be confronted with the problems of the consequences which could result from the judgement of the Tribunal.

It is not contested that the Tribunal could take a decision to order France to return the *Grand Prince* vessel to its former owner and that this decision would be devoid of any practical effect. As an international court, the Tribunal cannot afford to try to deal with a question which, at the end of the day, has no meaning and which could, to apply the English or the American term, be called a moot question. According to the definition of Sir Gerald Fitzmaurice in a separate opinion in the judgement of the International Court of Justice in *Cameroun Septentrional*, a question may or may not become moot when it seems to be pointless or without object. In the judgement of 2 December 1963, it is stated that the judgement of the court must have practical consequences to the effect that it must affect the rights or legal obligations of the parties, thus dispelling any uncertainties in their legal relations.

Mr President, you see that, no matter how you address the issue, you would always come to a dead end and the reason for that is simple: the application is moot and the Tribunal therefore should not accept it. As any legal body trying to safeguard the integrity of its legal function, the Tribunal therefore has the possibility to use its inherent power to conclude that, in the circumstances of this case it cannot take any decision concerning the application which has been submitted to it on behalf of the state of Belize and, as a consequence, it should declare the termination of these proceedings.

Mr President, these are the various reasons which lead us to ask you to announce that the application of Belize should be set aside.

I terminate my remarks by thanking you for your attention.

THE PRESIDENT: Those are your remarks on jurisdiction and admissibility?

MR QUENEUDEC: Yes.

THE PRESIDENT: Thank you.

Mr Alvarez, are you ready to give your reply or would you like a 15-minute break as agreed earlier?

MR PENELAS ALVAREZ: I would appreciate a short break to prepare my reply.

THE PRESIDENT: Yes. We will meet again at 5 o'clock.

(Short adjournment)

THE PRESIDENT: I now invite the Agent of Belize to make his statement.

MR PENELES ALVAREZ: It is curious to see that the allegations made by the French representatives are purely directed to justifying invoking certain domestic regulations, obviously not its constitution, and also domestic proceedings to justify a breach of Article 73.2 of the Convention. I insist that that is not admissible.

I thought that today we were dealing only with the matters of jurisdiction and admissibility. However, I know that the representatives of France went through the merits of the case. Therefore, I wish briefly to mention the facts of *Grand Prince*.

The vessel was detained on 26 December 2000. On 12 January 2001, 17 days after the detention, the Court of First Instance of Saint-Paul in La Réunion fixed a warranty for release of the vessel and the Captain which allowed only the form of a cheque or a payment in cash in the amount of FF11,400,000. A bank warranty was not allowed.

On 23 January 2001, which is only one week after the notification of the order to the Captain, neither the shipowner nor Belize was notified until France received the present application. The shipowner was trying to make arrangements to try to place the bond and to avoid the disaster of paralysing the ship. The Correctional Court of Saint Denis, as France has recognised, decided effectively to confiscate the ship and to impose a fine on the Captain in the amount of FF200,000. The court also decided to execute provisionally the confiscation. The said decision has been appealed, as you can see in the file, before the Court of Appeal of Saint Denis, pending a date for hearing.

On that basis, France effectively impeded the release of the ship, neither with a reasonable bond nor with what was in our opinion the unreasonable bond fixed by the First Instance Court. As a result, the reality of all that is that the vessel remains detained in La Réunion. Those are the simple facts of our case.

Paragraph 1 of Article 73 states that the coastal state can arrest and carry out judicial proceedings to ensure compliance with the laws and regulations adopted by it, but always in conformity with the Convention. Paragraph 2 of the same article establishes an important limit with regard to the power given to the coastal states under paragraph 1 of the same article, that the crews and vessels must in every case be released without delay against a reasonable bond. The Convention gives the same treatment to the crews and the vessels. They must not be detained while the judicial proceedings are pending.

Although I am conscious that the Tribunal has a clear and superior criterion of the aim and meaning of “prompt release” under Article 73 of the Convention, I wish to recall a paragraph of the judgement pronounced in the *Monte Confurco* case, where the Tribunal magisterially expressed the meaning of the said relevant precept:

“Article 73 identifies two interests, the interest of the Coastal State to take appropriate measures as may be necessary to ensure compliance with the laws and regulations adopted by it on the one hand, and the interest of the Flag State in securing prompt release of his vessels and crews from detention on the other. It strikes a fair balance between two interests. It provides for release of the vessel and

its crew upon the posting of a reasonable bond or other security, thus protecting the interests of the flag state and other persons affected by the detention of the vessel and its crew. Their release from detention can be subject only to a reasonable bond."

That was held by the Tribunal in the *Monte Confurco* case and is absolutely clear.

I wonder where, in our case, is the said balance of interests between the two states. Where is the protection of the shipowner, the flag state, the creditors of the ship, the workers, the ship agents or other people with an interest in the ship? Where is that protection?

If we follow the theory of France, every state could perfectly avoid the requirement of prompt release of vessels and crews. That is easy: you modify your domestic law, like France, to contemplate confiscation of ships, vessels, imprisonment of crews, provisional execution and a speedy proceeding. The proceedings can take place even after arrival of the ship at port. That is very easy. You can have a decision very quickly and then argue that as long as the decision is provisionally executed, you do not have to release the ship.

It does not matter if, after an appeal based on law, it is decided that the decision was not correct. The crew can be taken out of prison and the vessel, if it still exists, can be returned to the shipowner. That is simple. That way one can avoid the requirements of prompt release under Article 73.2 of the Convention.

France is trying to introduce a new concept in international law; a new concept in the Convention. I shall call it prompt confiscation and prompt imprisonment. That concept would prevail over prompt release. If the Tribunal accepted such a position, Article 73.2 would become in practice "dead letters". It would be an open door for all kinds of subterfuge and strategies to evade compliance with the Convention.

Therefore, it is clear – I reproduce here the arguments of the application – that the Tribunal has a clear jurisdiction in this case and that the application is admissible. Thank you, Mr President, and Honourable Judges, for your kind attention.

THE PRESIDENT: I presume that you have concluded your arguments on jurisdiction?

MR PENELAS ALVAREZ: That is correct, Mr President.

THE PRESIDENT: Thank you. Would the Agent of France like to make a further statement?

MR ALABRUNE (Interpretation)**:** Mr President, Judges, we are coming to the end of the hearing that your Tribunal had planned to spend on the question which France raised concerning admissibility and the jurisdiction of the Tribunal concerning the application submitted by Belize.

In the course of this hearing, France has laid out its arguments on this question. In contrary to what has been affirmed by the other party, it remains within the confines

of the question of admissibility and jurisdiction and did not go beyond those two questions. At the end of this discussion, during which the two parties have had an opportunity to express their views as regards the prior questions of admissibility and jurisdiction, I should like to read the conclusions of the Government of France.

The Government of the French Republic request the Tribunal, rejecting any contrary conclusion presented on behalf of the state of Belize, to state that the request and the application for prompt release presented on 21 March 2001 on behalf of Belize is not admissible; that in any case the Tribunal does not have the jurisdiction to accept this request and that it must thus be refused.

I will submit to the Registrar the conclusions of the French Government on this question of admissibility and jurisdiction. I should like to stress that these questions and these conclusions pertain only to admissibility and jurisdiction and that we will continue our discussion on the merits in our final submission tomorrow. Thank you, Mr President.

THE PRESIDENT: The meeting is now adjourned. We will meet again at 10.00 a.m. tomorrow.

(Adjournment 5.17 p.m.)