



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

Press Release

JUDGMENT DELIVERED IN *THE "JUNO TRADER" CASE*

The International Tribunal for the Law of the Sea delivered its Judgment today in *The "Juno Trader" Case (Saint Vincent and the Grenadines v. Guinea-Bissau), Prompt Release*, ordering the prompt release of the reefer vessel *Juno Trader* upon the posting of a bond of EUR 300,000. The Judgment was read by the President of the Tribunal, Judge Dolliver Nelson, at a public sitting held today.

The case was submitted to the Tribunal under article 292 of the United Nations Convention on the Law of the Sea on 18 November 2004 on behalf of the flag State of the vessel, Saint Vincent and the Grenadines, against Guinea-Bissau. The dispute concerns the detention of the vessel *Juno Trader* and its crew by the authorities of Guinea-Bissau for the alleged infringement of national fisheries legislation in its exclusive economic zone.

THE JUDGMENT

At the outset, the Tribunal examines the objection to its jurisdiction raised by the Respondent on the grounds that, according to its national legislation, the ownership of the vessel *Juno Trader* reverted to the State of Guinea-Bissau with effect from 5 November 2004 and that, therefore, Saint Vincent and the Grenadines cannot anymore be considered as the flag State of the vessel. The Tribunal notes that the confiscation of the vessel has been suspended by a decision of the Regional Court of Bissau of 23 November 2004 and then considers that, whatever may be the effect of a definitive change in the ownership of the vessel upon its nationality, there is no legal basis in the particular circumstances of the case for holding that there has been a definitive change in the nationality of the vessel. For these reasons, the Tribunal holds that it has jurisdiction.

With regard to the question of admissibility, the Tribunal notes that two objections raised by the Respondent are similar to the argument raised by the Respondent in the context of jurisdiction and, for the same reasons, rejects these objections. With respect to the further objection to admissibility on the grounds that the Applicant did not seriously allege that the vessel was detained in accordance with article 73, paragraph 1, of the Convention, the Tribunal notes that there is no dispute over the question of whether the vessel was detained for infraction of fisheries laws applicable in the Exclusive Economic Zone of Guinea-Bissau. For these reasons the Tribunal holds that the Application is admissible.

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The Tribunal then examines the question as to whether the allegation that the Respondent has violated the provisions of the Convention for the prompt release of an arrested vessel and its crew upon the posting of a reasonable bond or other financial security is well-founded. The Tribunal observes that a bond for the release of the vessel and its crew was not requested by the detaining State and that the detaining State did not react to the posting of the bond with the competent authorities of Guinea-Bissau in the amount of 50,000 euros, in the name of the shipowner. The Tribunal further notes that the vessel is still detained in the port of Bissau. Regarding the crew of the vessel, the parties to the dispute were in disagreement during the hearing in Hamburg as to whether the crew of the vessel was being detained. The Tribunal notes that in a letter dated 15 December 2004, received during the Tribunal's deliberations, the Respondent informed the Tribunal that passports had been now returned to all the members of the crew without any formal conditions and that they are free to leave Guinea-Bissau, and that the Applicant, while confirming this information, did not withdraw its request for an order from the Tribunal concerning the release of the members of the crew. In this respect, the Tribunal notes that the members of the crew are still in Guinea-Bissau and subject to its jurisdiction, places on record the undertaking given by the Respondent in its letter dated 15 December 2004, and declares that all members of the crew should be free to leave Guinea-Bissau without any conditions. For these reasons, the Tribunal finds that the Application is well-founded and that, consequently, Guinea-Bissau must release promptly the *Juno Trader* upon the posting of a reasonable bond.

The Tribunal proceeds to consider the relevant factors for determining a reasonable bond and refers to the jurisprudence it has developed in this respect in its previous decisions. In applying these factors to the present case, the Tribunal first considers the gravity of the alleged offences and notes that it is by reference to the penalties imposed or imposable under the law of the detaining State that the Tribunal may evaluate the gravity of the alleged offences, taking into account the circumstances of the case and the need to avoid disproportion between the gravity of the alleged offences and the amount of the bond. Regarding the penalties imposed by the detaining State, the Tribunal notes that a fine of EUR 175,398 was imposed on the *Juno Trader*, that the fish on board the vessel was confiscated, and that a fine of EUR 8,770 was imposed on the Master. The Tribunal also observes that the authorities in Guinea-Bissau had not decided to apply to the vessel the fine provided for in case of serious offence. With regard to the value of the vessel, the Tribunal notes that the parties differ on the value of the *Juno Trader* with the Applicant stating that the net book value is US\$ 460,000 and the Respondent arguing that the market value of the vessel is US\$ 800,000. With regard to the value of the cargo, the Tribunal takes into consideration that the cargo is still on board the vessel and that the Applicant alleges that the market value of the fish may have been considerably reduced.

For these reasons, the Tribunal determines that the bond or other financial security shall be in the amount of EUR 300,000 to be posted with Guinea-Bissau in the form of a bank guarantee. It also finds that the amount of EUR 8, 770 previously paid for the fine imposed on the Master and which has been suspended by the decision of a court in Bissau, should be considered as a bond or financial security. The Tribunal further determines that the letter of guarantee posted in the name of the shipowner with the

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competent authorities of Guinea-Bissau in the amount of EUR 50,000 should be returned upon the posting of the bond as determined by the Tribunal. The Tribunal also decides that each party shall bear its own costs.

The operative provisions of the Judgment, which was adopted unanimously, read as follows:

For these reasons,

THE TRIBUNAL,

(1) Unanimously,

Finds that the Tribunal has jurisdiction under article 292 of the Convention to entertain the Application submitted on behalf of Saint Vincent and the Grenadines on 18 November 2004.

(2) Unanimously,

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

(3) Unanimously,

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

(4) Unanimously,

Decides that Guinea-Bissau shall promptly release the *Juno Trader*, together with its cargo, upon the posting of a bond or other security to be determined by the Tribunal, and that the crew shall be free to leave Guinea-Bissau without any conditions.

(5) Unanimously,

Determines that the bond or other security shall be (a) 8,770 euros already paid to Guinea-Bissau and (b) 300,000 euros to be posted with Guinea-Bissau; and that, in consequence, the letter of guarantee referred to in paragraph 51 shall be returned to the Applicant.

(6) Unanimously,

Determines that the bond of 300,000 euros shall be in the form of a bank guarantee from a bank present in Guinea-Bissau or having corresponding arrangements with such a bank or, if agreed by the parties, in any other form.

(7) Unanimously,

Decides that each party shall bear its own costs.

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Judge Kolodkin has appended a declaration to the Judgment. Judges Kolodkin, Anderson and Cot have appended a joint declaration to the Judgment. Judges Park, Chandrasekhara Rao, Treves, Ndiaye and Lucky have appended separate opinions to the Judgment. Judges Mensah and Wolfrum have appended a joint separate opinion to the Judgment. The text of the Judgment and of the declarations and separate opinions appended thereto is available on the website of the Tribunal.

The Press Releases of the Tribunal, documents and other information are available on the Tribunal's websites: <http://www.itlos.org> and <http://www.tidm.org> and from the Registry of the Tribunal. Please contact Ms. Julia Pope at Am Internationalen Seegerichtshof 1, 22609 Hamburg, Germany, Tel. : +49 (40) 35607-227, Fax: +49 (40) 35607-245;
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