



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

Press Release

**TRIBUNAL DELIVERS JUDGMENT IN
CASE NO 15**

**TRIBUNAL FINDS THAT THE APPLICATION IN *THE TOMIMARU CASE*
IS WITHOUT OBJECT**

Hamburg, 6 August 2007. The International Tribunal for the Law of the Sea delivered its Judgment today in *The "Tomimaru" Case (Japan v. Russian Federation)*, *Prompt Release*. In its Judgment, the Tribunal finds that the Application for the release of the vessel *Tomimaru* is without object. The Judgment was read by the President of the Tribunal, Judge Rüdiger Wolfrum, at a public sitting.

The Application for the release of the *Tomimaru* was submitted to the Tribunal under article 292 of the United Nations Convention on the Law of the Sea on 6 July 2007 by Japan, the flag State of the vessel, against the Russian Federation. The dispute concerns the detention of the fishing vessel *Tomimaru* by the authorities of the Russian Federation for the alleged infringement of national fisheries legislation in its exclusive economic zone.

JUDGMENT

With regard to the question of jurisdiction, the Tribunal notes that Japan and the Russian Federation are both States Parties to the Convention, that Japan is the flag State of the vessel, that the *Tomimaru* was detained in Avachinskiy Bay, and that the Applicant alleges that the Respondent has not complied with article 73, paragraph 2, of the Convention regarding the prompt release of the vessel upon the posting of a reasonable bond or other financial security. The Tribunal states that the Application for the prompt release of the vessel was made by the Government of Japan in accordance with articles 110 and 111 of the Rules.

The Tribunal addresses the Respondent's objections to the admissibility of the Application on the grounds that the Applicant's submission that the Tribunal order the release of the vessel and the crew "upon such terms and conditions as the Tribunal shall consider reasonable" is too vague and general. In response to this argument, the Tribunal simply notes that the Applicant asks the Tribunal to exercise its power under article 292, paragraph 3, of the Convention, to order the release of the vessel and the crew upon the posting of a reasonable bond or other financial security.

The Tribunal proceeds to examine the effects of the confiscation of the vessel and the question as to whether the confiscation renders the Application without object.

The *Tomimaru* had been confiscated by decision of the Petropavlovsk-Kamchatskii City Court of 28 December 2006. The decision of the City Court was upheld by the Kamchatka District Court on 6 January 2007. On 26 July 2007, after the closure of the hearing, the Respondent informed the Tribunal that the Supreme Court of the Russian Federation had dismissed the complaint concerning the confiscation of the *Tomimaru*.

The Respondent maintains that the judgment of the Kamchatka District Court confirming the confiscation of the *Tomimaru* renders the Application without object. The Respondent argues that, according to article 292, paragraph 3, of the Convention, when examining applications for release, the Tribunal should 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 Respondent states that the case has been considered before the appropriate domestic forum on the merits; that the decision rendered by that forum has already entered into force and been executed. As a consequence, the Respondent maintains that the Tribunal has no competence to examine an application for prompt release.

The Tribunal emphasizes that two questions arise that must be distinguished: (i) whether confiscation may have an impact on the nationality of a vessel; and (ii) whether confiscation renders an application for the prompt release of a vessel without object.

The Tribunal states that the confiscation of a vessel does not result per se in an automatic change of the flag or in its loss. In view of the important functions of the flag State as referred to in article 94 of the Convention and the pivotal role played by the flag State in the initiation of the procedure for the prompt release of a ship under article 292 of the Convention, it cannot be assumed that a change in ownership automatically leads to the change or loss of its flag. The Tribunal notes that the Respondent has not claimed to have initiated procedures leading to a change or loss of the flag of the *Tomimaru*.

With regard to the matter of confiscation, the Tribunal notes that article 73 of the Convention makes no reference to the confiscation of vessels. The Tribunal is aware that many States have provided for measures of confiscation of fishing vessels in their legislation with respect to the management and conservation of marine living resources. It is the view of the Tribunal that confiscation of a fishing vessel must not be used in such a way as to upset the balance of the interests of the flag State and of the coastal State established in the Convention.

Concerning the question as to whether confiscation renders an application without object, the Tribunal is of the view that a decision to confiscate eliminates the provisional character of the detention of the vessel rendering the procedure for its prompt release without object. The Tribunal observes that such a decision should not be

taken in such a way as to prevent the shipowner from having recourse to available domestic judicial remedies, or as to prevent the flag State from resorting to the prompt release procedure set forth in the Convention; nor should it be taken through proceedings inconsistent with international standards of due process of law. The Tribunal considers that a confiscation decided in unjustified haste would jeopardize the operation of article 292 of the Convention.

The Tribunal emphasizes that it is incumbent upon the flag State to act promptly, stating that this objective can only be achieved if the shipowner and the flag State take speedy action either to exhaust the possibilities provided under the national judicial system of the detaining State or to initiate the prompt release procedure under article 292 of the Convention.

The Tribunal underscores that a decision to confiscate a vessel does not prevent the Tribunal from considering an application for prompt release while proceedings are still before the domestic courts of the detaining State. Note is taken of the fact that the decision of the Supreme Court of the Russian Federation brings to an end the procedures before the domestic courts. The Tribunal therefore considers that a decision under article 292 of the Convention to release the vessel would contradict the decision which concluded the proceedings before the appropriate domestic fora and encroach upon national competences, thus contravening article 292, paragraph 3, of the Convention. The Tribunal decides that the Application is without object and does not consider it necessary to pronounce expressly upon the submissions of the parties.

The operative provision of the Judgment, which was adopted unanimously, reads as follows:

THE TRIBUNAL,

Unanimously,

Finds that the Application of Japan no longer has any object and that the Tribunal is therefore not called upon to give a decision thereon.

Judges Nelson and Yanai have appended a declaration to the Judgment. Judges Jesus and Lucky have appended separate opinions to the Judgment.

The text of the Judgment and of the declarations and separate opinions appended thereto are 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 Ritter: Am Internationalen Seegerichtshof 1, 22609 Hamburg, (Germany). Telephone: +49 (040) 35607-227, fax: +49 (040) 35607-245/275, e-mail: press@itlos.org

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