

[Translation]

Reply by Senegal to the questions put on 12 February 1990
by Judge Oda

First Question

Under what internal law or acts of Senegal did the Senegalese Navy board the fishing vessel *Hoyo Maru No. 8* and take it to the port of Dakar on 9 October 1989, and was the Captain of the vessel subjected to judicial proceedings as a result of which he was ordered to pay a fine of 15 million CFA francs? Under what internal law or acts did the Senegalese Navy board another fishing vessel, *Yan Yu 625*, and take it to the port of Dakar on 9 November 1989, and was the Captain subjected to similar judicial proceedings as in the case of the first fishing vessel *Hoyo Maru No. 8*.

Reply

The Senegalese Navy intercepted the fishing vessels *Hoyo Maru No. 8* and *Yan Yu 625* by virtue of the provisions of Law no. 87-27 of 18 August 1987 containing the Sea Fishing Code, and in particular its Title IV, Article 25, entitled Boarding Procedure. (Official Gazette of the Senegalese Republic, No. 5189 of 22 August 1987, annexed hereto.) The representative of the Minister in Charge of Sea Fisheries, who, under Article 38 of the above-mentioned law, is responsible for bringing actions and initiating prosecutions before the competent courts, has, in this case, under Article 41 of the same law, which authorizes him to enter into compromises on behalf of the Senegalese State, settled for the payment of 90 million CFA Francs for the *Hoyo Maru No. 8* and 50 million CFA Francs for the *Yan Yu 625*.

Second Question

Four Senegalese vessels *Helène*, *Marie-Josephe*, *Betty* and *Connie* were boarded on 1 January 1990 by the authority of Guinea-Bissau. What kind of licence or permission was granted, and under what internal law or act was such a licence or permission granted by the Government of Senegal to those vessels? Under what internal law or act did Guinea-Bissau's Navy board these vessels? What is the state of the judicial proceedings?

Reply

The four Senegalese vessels, the *Helène*, the *Marie-Josephe*, the *Betty* and the *Connie*, which were boarded on 1 January 1990 by authorities of Guinea-Bissau, were covered by a "coastal demersal fishing licence" for the year 1990, issued by the Deputy Minister in Charge of Animal Resources by virtue of the provisions of Law 87-27 of 8 August 1987 containing the Sea Fishing Code and the Decree for its application, no. 87-1042 of 18 August 1987 (annexed hereto).

*Reply by Senegal to the question put on 12 February 1990
by Judge Schwebel*

Question

Article 11 of the Arbitration Agreement which gave rise to the Arbitration, specifies in paragraph 1: "No activity of the parties during the course of the proceedings may be deemed to prejudge their sovereignty over the area the subject of the Arbitration Agreement". Counsel for Guinea-Bissau stated this morning that Guinea-Bissau had abstained from any such activity. I should like to ask the representatives of Guinea-Bissau whether, in the view of Guinea-Bissau, Senegal abstained from such activity during the pendency of the arbitral

proceedings, and in particular activities comparable to those at issue this morning. I also wish to ask the representatives of Senegal to indicate in due course whether, in the view of Senegal, either party engaged in such activities during the pendency of the arbitral proceedings, comparable to those at issue in these proceedings for the indication of interim measures.

Reply

The agent of the Government of Senegal replied to the question put in the course of the statement he made on 12 February 1990 in the following terms:

"It should be recalled that Senegal has always carried on such activities, both prior to and during the arbitral procedure, as well as at the present time. It is therefore surprising that Guinea-Bissau should only now wake up to the situation and request the discontinuance of activities that have always been carried out and of which it has never complained before."

*Reply by Senegal to the question put on 12 February 1990
by Judge Guillaume*

Question

According to the papers before the Court, two vessels were stopped by the Senegalese authorities in November and December last in the area in dispute; four vessels were stopped in January 1990 by the authorities of Guinea-Bissau in the same area.

I should like to know whether, under Senegalese law, on the one hand, and under the law of Guinea-Bissau, on the other, these vessels were stopped in the territorial sea, the contiguous zone or beyond it?

Reply

The vessels in question were stopped by the Senegalese authorities by virtue of Law no. 87-27 of 18 August 1987 containing the Sea Fishing Code. Article 2 of this law provides as follows:

"The right to fish in the waters appertaining to Senegal belongs to the State. This right is exercised within the territorial sea and within an exclusive economic zone extending to a width of 200 nautical miles from the base lines that have served to measure the width of the territorial sea ..."

*Reply by Senegal to the question put on 12 February 1990
by the President of the Court*

Question

If you read the operative part of the Award of the Arbitral Tribunal, you will see there the following:

"For the reasons stated above, the Tribunal *decides* by two votes to one:

To reply as follows to the first question formulated in Article 2 of the Arbitration Agreement: the Agreement concluded by an exchange of letters on 26 April 1960, and relating to the maritime frontier, has the force of law in the relations between the Republic of Guinea-Bissau and the Republic of Senegal with regard solely to the areas mentioned in that Agreement, namely the territorial sea, the contiguous zone and the continental shelf. The 'straight line drawn at 240°' is a loxodromic line."

Now, in your argument and the map that we have before us, you have a line here of 200 miles beyond what used to be, at the time of the agreement of 1960, the extent of the territorial sea and the contiguous zone. How is it that you extend this line to 200 miles under the Award?

Reply

The illustrative map was presented by Senegal to shed light on statements made during the debates. It is not, needless to say, a map annexed to the Arbitral Award.

As regards the length of the line, the agreement of 1960 did not specify any end-point. Neither did the Arbitral Award. For this reason, Senegal allowed itself to be guided by the general practice of States and considered that the length of the frontier could justifiably be regarded as being governed by the rules of international law relating to the extent of the continental shelf. Thus, just as the outer limit of the continental shelf would, as a result of the progress of technology, extend further out to sea by application of the "exploitability" test laid down in Article 1 of the Geneva Convention of 1958, in the same way it would automatically extend to 200 miles by virtue of the "distance principle" being recognized as a rule of customary law. And for this purpose Senegal would not be required to make an express application or declaration, its rights being ipso jure.

With regard to the use of this same line, up to 200 miles, in the context of a dispute concerning fisheries jurisdiction (that is, the context of the illustration), Senegal wishes merely to observe that the two Parties have at all times taken as point of departure that, whenever the frontier may be located, there would be a single maritime frontier, valid for all the maritime zones, including the superjacent waters.

20 February 1990

(Signed) Mr. Doudou THIAM
Agent of the Government of Senegal

Attachments
