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## ***Analysis of the Prompt Release of the Detained Violator Vessels Based on the Current Judicial Procedure and Domestic and International Law***

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### **Abstract**

After dividing the sea as areas under the sovereignty and sovereign rights of the coastal states and High seas in the 1982 Convention on the Law of the Sea, and as a result of the possibility of detaining some foreign vessels violating the rules governing these areas, this convention also has rules regarding the prompt release of these vessels and how its implementation has been stated in the judicial proceedings of the Coastal Government. In this regard, cases have been introduced in the International Tribunal of Law of the Sea, whose analysis can be considered as a judicial procedure and a secondary source of the law of the sea in development. In this article, in addition to the analysis and review of the judicial procedure and the 1982 Convention on the Law of the Sea, Iran's internal rules have also been reviewed in this regard. This research seeks to answer the question, in addition to clarifying the various aspects of immediate release, what are the criteria for prompt release, and what are appropriate and reasonable bonds? The research method is descriptive and analytical, and materials have been prepared based on library and documentary studies.

**Keywords:** Prompt release, appropriate bonds, violating vessels;

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## **Introduction**

The 1982 Convention on the Law of the Sea defines the various maritime territories in detail and sets out the rights and obligations of coastal states and third parties in each territory. Or violates internationally, provides guarantees and responsibility for itself. In this regard, if the offending ship is commercial, the coastal government will have the right to detain it. In return, the merchant ship flag government will have the right to request its prompt release. In this case, the coastal government may request other bond or financial guarantees for the release of the offending ship and its crew.

In this paper, an attempt has been made to determine the legal implications of prompt release and related matters through International Law and the rules issued by the International Tribunal of the Law of the Sea (ITLOS) and domestic law of Iran. Those who are involved in this field can also have a better understanding of the rights and the responsibilities of our country in the relations of the Islamic Republic of Iran with other countries in the maritime fields in order to prevent the violation of the rights of the Iranian nation or the creation of international responsibility in these fields.

### **1. Definition of Prompt Release in the 1982 Convention on the Law of the Sea**

The 1982 Convention on the Law of the Sea does not provide a specific definition of prompt release, but its cases and instances are taken into account in various articles. Examining the various articles of the Convention, it can be evident that there might be the abundance of cases in which a coastal state may detain the vessels of other countries in violation of its domestic and international laws and regulations in its maritime or offshore territories. This Convention authorizes the detaining of a foreign vessel in the following cases:



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- (A) The prevention of the violation of the regulations of the coastal state to explore, exploit, protect and manage living resources in the exclusive economic zone (Article 73 (1)).
- (B) The prevention of violations of regulations and dealing with piracy in the high sea (Article 105).
- (C) The prevention of the violation of regulations and dealing with the unauthorized broadcasting of radio waves in the high sea (Article 109 (3,4)).
- (D) The prevention of the violation of the regulations and the treatment of the slave trade (Article 110 (1))
- (E) The prevention of the violation of regulations and dealing with stateless vessels (the vessel should be checked initially and in case of proving its statelessness, it has to be detained) ( Article 110 (1) )
- (F) The prevention of the violation of regulations and dealing with violators of coastal state laws in its maritime territories after immediate prosecution (Article 111 (1,7) )
- (G) The prevention of the violation of the regulations and dealing with violators of the rules related to the prevention, reduction, and containment of pollution caused by vessels in the territorial sea (Article 220 (2))
- (H) The prevention of the violation of the regulations and dealing with violators of the rules regarding the disposal of waste in the territorial sea and the exclusive economic zone, (in such a way that it causes severe damage to the coastline or results in the risk of such damage) (Article 220 (6))

In any case, in accordance with International Law, the detaining of a vessel must be notified to the authority of the flag state (Article 73 (4), 231). The detaining of foreign vessels under the 1982 Convention, as well as other International Laws such as diplomatic law, does not apply to war vessels and non-commercial state vessels (Article 32,95,96,236). Such vessels enjoy complete immunity based on the equality of states and the

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principle of incompetence of domestic courts to try states and their representatives. Detaining will therefore be limited to violating merchant vessels. What is important in this regard for the states that own the flag of the detained vessels is the freedom of the vessel and its crew during the consideration until the issuance of the final verdict in the internal authorities of the coastal state. Now, to what extent can such a request have a legal basis or not?

By examining several articles from the 1982 Convention on the Law of the Sea, the issue of prompt release is evident. This article is attributed to the prompt release of a detained merchant vessel and its crew in various cases as follows:

(A) Detained vessels and their crews shall be released as soon as sufficient security or bond has been lodged. (Vessels violating the rights of the coastal state in the exclusive economic zone) (Article 73 (2) )

(B) Concerning paragraph 6 (Article 220) - (Disposal of waste in the territorial sea and the exclusive economic zone) - the coastal state will allow the vessel to leave the port if it is required to provide bond or other appropriate financial bonds. (Article 220 (7))

(C) If the inspection of a [commercial vessel] shows that there has been a breach of applicable rules and regulations, the vessel will be released promptly upon deposit of other bond or financial bonds in accordance with normal procedures. (Article 226 (1-b))

(D) Upon the deposit of bond or other financial bonds to be determined by the court [agreed upon by the parties and not by the domestic court of the detaining state], or the Supreme Court, the authorities of the detaining state shall promptly comply with the decision of the court or the Supreme Court on the release of the vessel or its crew. (Article 292 (4))

In general, the 1982 Montego Bay Convention recognizes the prompt release of violating merchant vessels, unless the detaining of merchant



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vessels is due to their deterioration and severe pollution and damage to the coastal state marine environment. In this case, the coastal state detains the merchant vessel or directs it to the nearest repair shop. However, the right to request the prompt release of the vessel shall not be waived by the flag state. (Article 226 (1-c), 219)

According to Article 292, paragraph 1, which states: “Whenever the authorities of a contracting state detain a vessel whose flag is attributed to another contracting state ...”, the Convention for the prompt release of commercial ships does not distinguish between the type of violation - and in other words, the reasons for detaining - and generally includes any type of detaining that goes through its proceedings in the internal courts of the coastal state..

Another question is whether “prompt release” is the right of the violating merchant vessel and the flag-owning state, or the authority of the coastal state?

If this is a violation of the merchant vessel's right, the coastal state shall, after detaining, be obliged to release the vessel, otherwise it is free to do so. Paragraph 7 of Article 220 permits the departure of a vessel and its release, subject to the conditions of bond, only if the coastal state undertakes the agreement with the flag state or by appropriate arrangements by the competent international organization. However, the scope of the commitments of the states to the 1982 Convention in paragraph 2 of Article 73 requires the prompt release of the merchant vessel and its crew (as soon as sufficient security or bond is accomplished) . Under Article 226 (1) (b), the prompt release of the vessel is as mandatory as in the above article. The spirit and content of paragraphs 1 and 4 of Article 292 also consider the prompt release of vessels and crews after the release of bond as the right of the flag-owning state and vessel, but the final statements of paragraph 3 of the same article states that: “The authorities of the detaining state will continue to be competent for the release of the vessel and its crew at any time.” Such a phrase gives the coastal state the prompt release of the vessel and does not regard it as a right for detained foreign merchant vessels.

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It appears that the Convention and the Supreme Court's general view is that the prompt release of the detained vessel is at the discretion of the coastal (detaining) state until bond is granted, but the request for prompt release is attributed to the flag state (Article 292). (1-2) and the coastal state will be required to release the detained vessel after receiving the bond (Article 292 (1-3) & The M / V Saiga (NO.2) Case. Par.97 (d)).

In the case of Cammouco, the French State, as the detaining state, pointed out that it was necessary under Article 73 of the 1982 Convention to provide bond or other financial bonds as a prerequisite for the prompt release of a vessel and its crew. However, the Panamanian State, as the state holding the flag of the detained vessel, responded that the bond was not a prerequisite for a prompt release petition. In order to clarify the matter, the Supreme Court also held that the issuance of a bond or other bonds was not necessarily a prerequisite for filing a prompt release regarding Saiga case<sup>2</sup> (The Cammouco Case. Par. 61-62-63). In this way, it endorses Panama. But, it seems that the confusion of the subject has led to such a conclusion to some extent. Because the Supreme Court's decision is not in conflict with the French as it sees bond as a prerequisite for the prompt release of vessels and crews, not as a prerequisite for a prompt release. This means that only the flag state has the right to file a petition for the prompt release of a vessel to the International Court of Justice, and other relevant states, as those of the crew or the of the vessel renters, etc., do not. Prompt release shall be deemed to be the right of the flag state when bond or other financial bonds are accomplished. What should be taken into account in the discretion of the detaining state in the prompt release of the bond and the request of the flag state is that at the time of detention, if any damage occurs as a result of deprivation of liberty and

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<sup>2</sup> - The Saiga was a fuel tanker registered in Saint Vincent and the Grenadines and was arrested in 1997 for illegally selling fuel to a fishing vessel in Guinea's exclusive economic zone. The vessel and crew were also detained as the bond of execution. The State of Saint Vincent and the Grenadines filed a petition for the prompt release of the vessel and crew on appropriate bond, as the State of Guinea had requested unreasonable bond. Without taking the case deeply, the Supreme Court also ruled in favor of the prompt release of vessels and crews under Article 292 of the 1982 Convention on \$ 400,000 bond plus oil and gas discharged by Guinea ( The M / V Saiga Case (NO. 2 )).



detention of the vessel and its crew, the state bears international responsibility and damages must be compensated under the International law of the state responsibility. The stages of the right or responsibility of the detaining and flag states in prompt release can be depicted as follows;

1. The power of the detaining state regarding prompt release prior to bond determination;
2. The right of the vessel owner and renter of the vessel or their attorneys to file a petition for prompt release to the domestic court;
3. The right of the detaining state for the appropriate bond for the release;
4. The right to file a petition of the prompt release by the flag state to the Supreme Court in case of objection to the assigned bond;
5. The Supreme Court's consideration of the reasonableness of the bond and then the determination of the logical bond;
6. Assigning the parties to implement the approved verdicts;
7. Granting the bond to the detaining state as a responsibility of the flag state;
8. Prompt release of the vessel after receiving the bond as a duty of the coastal state.

## **2. The Necessity and Inclusion of Prompt Release (Vessel-Crew)**

### **2.1. Inclusion of prompt release**

During the detention of the violating vessel, its crew will also be detained because, as a rule, during the investigation of the violation, it is the vessel's crew and officials who must be accountable to the internal authorities of the detaining state. In this regard, does prompt release apply only to the vessel or to the vessel's crew and commander? Paragraph 2 of Article 73 and Paragraph 4 of Article 292 of the 1982 Montego Bay Convention explicitly demand the prompt release of the vessel's crew, as well as the release of the vessel itself, on bond or other financial bonds. This issue has been confirmed and repeated in all the rulings of the Supreme Court<sup>3</sup>. The inclusion of prompt release in the 1982 Montego Bay Convention even

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<sup>3</sup> - In seven cases concerning prompt release, the Court has considered the release of the vessel and its crew after the bond as a requirement for the detaining states. It should be noted that two of the seven cases were related only to the Saiga, and in the Grand Prince case they did not consider themselves competent to consider the case. In addition, in the Chaisiri Reefer 2 Case, it has been removed from the list of pending cases. The M / V Saiga (NO.1) Case (1997) & The M / V Saiga (NO.2) Case (1 July 1999) & The Cammouco Case (7 Feb. 2000) & The Monte Confurco Case (18 Dec. 2000) & The Grand Prince Case (20 Apr. 2001) & The Chaisiri Reefer 2 Case (13 July 2001) & The Volga Case (23 Dec. 2002).

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involves when violations of the rules and regulations of the detaining state result from intentional crimes of the crew and are subject to imprisonment or other corporal punishment under the domestic law of that state. The interest in the freedom of the vessel is inseparable from the interest in the prompt release of its crew. This is because although the crew may not be allocated to the flag state, their inactivity on the vessel deprives it of the proceeds of the crew during the crew's detention. On the other hand, the Convention does not consider the condition for submitting a petition for the release of crews to be their citizen vessel to the flag state, but only the title of the crew in general, and the possession of the same title is sufficient for diplomatic support by the flag state. In other words, since the vessel is a legal person and under the citizen vessel of the flag state, the Convention stipulates that the flag state is also responsible for protecting the vessel's crew "as a constituent body of the legal entity"<sup>4</sup>. The condition for prompt release is the provision of reasonable bond (Article 73 (3), 230 (2), 292 (4)).

At the time of drafting the Convention on the Law of the Sea and examining the release of the ship and the crew, the economic perspective

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<sup>4</sup> - Article 19 The first copy of the text of the draft Diplomatic Protection Submitted by International Law Commission on 28 May 2004 to the Secretary-General of the United Nations has been approved, and its interpretation shall state several reasons:

(A) Although this type of protection is not considered as political protection in the absence of a citizenship relationship between the flag State and the vessel's crew, there is a close relationship between the two types of protection.

B) The practice of states, judicial opinions and the works of publishers and experts confirm this issue.

C) This practice originally originated in the United States of America. Under US law, foreign seafarers will traditionally be entitled to US protection as long as they serve on US vessels.

(D) The judgments of international arbitral tribunals are more inclined to the existence of such a right than against it. Like the judgment of the arbitral tribunal in the case " I am alone in case of Canada vs. United States.

(F) The procedure of the International Court of the Law of the Sea in the case of Saiga (2) has been to acknowledge the support of the State of St. Vincent and the Grenadines for the Ukrainian crew of the Saiga.

J) In practice, it would be much easier and more effective for a state to support a vessel and its crew so that several countries involved, one state would support the vessel, and several other states would each support their nationals.

Report of international law commission fifty – sixth session (3May-4June and 5 July-6August 2004), UN. New York, 2004 and P.90-93.



was dominant on the issues, hence the main focus in the convention was on the release of the ship rather than the crew, but gradually, with the emphasis on human rights issues, the prompt release of the crew was prioritized. (Mohammed Mahdi Moradi, 2021, 444).

In the *Saiga* case, the International Tribunal of Law of the Sea clearly stated that humanitarian considerations should be applied in the law of the sea as in other areas of international law. Human considerations are reflected in the International Convention on Maritime Search and Rescue (1979) and in the Convention on the Law of the Sea, Article 18, Article 24, Articles 44 and 98 (Tanaka, 2016; 52)

## **2.2. The need for prompt release**

In reviewing the cases of the Supreme Court, a point can be mentioned in this section, because it can also be cited in later discussions. In the *Monte Confurco* Case, the importance of balancing the interests of the (detaining) coastal state is highlighted with the interests of the flag state (The *Monte Confurco* Case, par72). What will be the rational interests of the flag state after the detaining of the vessel and crew? What comes to mind in the first step is the freedom of the vessel and its crew, of course, provided that it also serves the interests of the detaining state. These terms include release on bond or other financial bonds. Now that a bond or other financial bonds is to be offered in exchange for the freedom of the vessel, approximately equal to its price, what is the need to do so? According to the Supreme Court in the case of *Camoco*, Article 292 of the Convention is designed to protect the vessel and its crew from prolonged detention resulting from the imposition of unreasonable bond in the domestic sphere, or the failure of domestic law to grant liberty on reasonable bond. It is a detention imposed on the vessel owner or other persons as a result of avoidable damage (The *Cammouco* Case. Par. 57). It is noteworthy that the owner incurs approximately \$ 10,000 to \$ 20,000 per day for each day of vessel wreck, which includes fixed costs (such as crew pay) as well as disruption of the vessel's future plans and missed opportunities (Zavareh Tabatabai, Faezeh, prompt release of the vessel and crew in the 1982 Convention on the Law of the Sea, 1999, p. 10 ). In other words, it should be noted that the vessel

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itself is a means of business and a source of income. Detaining a business vehicle and source of income is as valuable as its price to the detaining state, but its value to the flag state over the years is greater than its value over the years. In other words, by detaining the vessel until the issuance and execution of the sentence, the vessel owner, in addition to incurring fines, must also give up his/her business and relinquish its income, while by adding these two amounts, it is possible to consider the fines and the loss of income by the vessel owner as more than a violation, which is not compatible with justice and the general principles of law. The prompt release of the crew is similarly justified. "In cases where the crew is detained for crimes at sea or in port, the crew is guilty and subject to punishment, but in most cases the crew is detained as a result of the vessel's detention. Here the deprivation of the crew is done only to put double pressure on the vessel owner. Article 3 of the Universal Declaration of Human Rights states; "Everyone has the right for life, liberty and security of person." Article 9 of this Declaration also states; "No one may be arbitrarily detained, imprisoned or deported." Article 20 of the Islamic Declaration of Human Rights also "does not allow the detention, restraint or punishment of individuals without a legal requirement." Article 9 of the International Covenant on Civil and Political Rights, adopted by the UN General Assembly on 16 December 1966, also addresses these issues. Detention of the crew resulting from the confiscation of the vessel causes their deprivation of liberty, distance from the family and creates emotional and financial pressure on the crew and their family, as well as living in difficult and unfavorable conditions (1982 Convention on the Law of the Sea, 1378, p.9). The crew members themselves are the economic producers, and in the event of a detaining, the economic production of their families will suffer, so the enforcement of the sentence can be secured through financial bonds. In the case of Saiga 2, the Supreme Court referred to some cases of the need for prompt release and stated these matters under the heading of damages resulting from the detention and lack of freedom of the vessel and crew, which justifies the need for prompt release. These include: "Damages and losses to the vessel and all persons involved or injured in the detaining operation, including injuries to persons, unlawful



detention, detaining or other forms of ill-treatment, damage to property and confiscation, and other losses of economic benefits such as the loss of interests and profits.” The Supreme Court in these cases obliges the detaining state to compensate for the vessel and all its crew (The M / V Saiga (NO.2) Case. Par. 172, 173, 175).

Therefore, the prompt release of vessels and crews as the interests of the flag state in such cases seems necessary, although the issuance and implementation of such a verdict first requires consideration of the interests of the detaining state.

### **3. The Need for the Bond**

Although the prompt release is necessary, it is not essential for the detaining state to do so before an appropriate bond is granted. Therefore, the 1982 Convention, in the final part of paragraph 2 of Article 73, made the prompt release of vessels and crews subject to the provision of a bond or other reasonable bonds. The reason for the obligation to set a bond is to protect the interests of the coastal state against the flag state in the prompt release of vessels and crews. In this regard, the Supreme Court in the case of Monte Confucius in paragraph 70 states that; “The interests of the coastal state in such cases under Article 73 shall be the necessary and appropriate measures to enforce its domestic maritime laws and regulations.” And in Paragraph 71, the topic and objective of the Convention 292 is to compensate the interests of the flag state in promptly release with the coastal state in ensuring the presence of the vessel’s commander in the court and paying the relevant fines on their behalf. In other words, by receiving the bond, the coastal state aims to ensure that, after a prompt release, the possibility of the vessel’s commander appearing in the court for a trial and payment of possible fines is not eliminated. Therefore, in addition to the need for the prompt release, a specification of the bond is also required.

### **4. Proportionality of the Bond**

What is important now is that the prescribed bond should be reasonable so that the interests of the flag state are not actually jeopardized in the prompt

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release of the vessel and crew, and the interests of the coastal state are also protected. It is unreasonable to actually cause the vessel and crew not to be released promptly. Accordingly, the court in the Cammouco Case states:

“Article 292 of the Convention is designed to release a vessel from prolonged detention resulting from the imposition of unreasonable bond by domestic authorities, or the failure of domestic law to provide liberty on reasonable bond, a detention under which it is inevitably imposed on the vessel owner or other persons” ( The Cammouco Case. Par.57). It should be noted, however, that if the detaining state has acted rationally in setting the bond or other bonds, the Supreme Court will enforce that state's rights and the decisions of its domestic courts, and in this regard, the Supreme Court does not consider itself to be an appeal authority for domestic courts (The Monte Confurco Case, par 72). However, if the detaining state has not acted on the request for prompt release and has not provided bond, or if it has not taken reasonable steps in determining the bond and in fact has provided the reasons for the lack of prompt release of the vessel and crew, the Supreme Court will concentrate on the submitted petition regardless of taking into account substantive issues.

In this regard, setting a standard for rationality is very important. In the Monte Confurco Case, the Supreme Court considers the establishment of a balance between the interests of the coastal state and the flag state to be a reasonable criterion for determining a logical bond. However, the Australian consul (representative of the detaining state) in the Volga Case states: “Nowhere in Article 292 of the 1982 Convention is there a balance of interests” (Verbatim Record 12. Dec.2002,3 pm17) Reasonableness in the Law of the Sea: The Prompt Release of the Volga: Chester Brown. Leiden Journal of International Law, 16 (2003) pp.629-630).

It is true that such a statement does not exist explicitly, but according to other articles of the Convention, the coastal state must respect the rights of other states in exercising its rights, and on the contrary, these states must also pay attention to the rights of the coastal state in exercising their rights (Article56 (2), 58 (3)). Needless to say, according to the general principles



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of law, every crime entails a punishment, a punishment that should be commensurate with that crime. This proportionality indicates the existence of attention to the balance between the interests of the accused and the interests of the trial state. Judge Delberuck also confirms this view and points out; principles such as rationality and proportionality are derived from the general principles of law (Delberuck, Proportionality, in R. Bernadet (ed). Encyclopedia of Public International Law (1997) III, 140-1).

Judge Ndiaye has declared in the Cammouco Case that since there are no specific standards for determining reasonable security in the 1982 Convention, in reality the rules and regulations of the coastal state for determining reasonable security must be specified and enforced (The Cammouco Case, Declaration of Judge Ndiaye). Judge Treves, on the other hand, believes that the standard of reasonable bond determined by the Supreme Court should be an international standard based on the 1982 Convention, and that it does not necessarily conform to what is considered reasonable by domestic authorities. The beginning of a reasonable bond should be, first, a review of the performance of the bond for the detaining state and, second, a review of the performance of the bond for the flag state and the interests of the private individuals acting on its behalf (The Cammouco Case, Dissenting Opinion of Judge Treves). In response to the opinion of Judge Ndiaye, it should be stated that in determining a bond, it is very important to pay attention to the rules and regulations of the coastal state, but paying attention to it may impose a bond that in practice results in the lack of prompt release. Therefore, it seems that Judge Treves' view is closer to reality, because paying attention to the Convention can lead to a balance of interests, but paying attention to it merely may not help to apply these rules among countries that have not acceded to the Convention. "Determining a reasonable bond and the release of the accused during the trial until the final verdict" is also present in the law of most civilized nations and is considered as a part of the general principles of law and for this reason it is addressed in the Convention. The Supreme Court believes "The decision on a reasonable bond must be based on the Convention and other rules of international law" (The Monte Confurco Case, par. 75). To this end, in order to better examine the criteria for the rationality of bond,

the Supreme Court, includes it in three separate sections; 1- The amount of the bond; 2- The nature of the bond; and 3- The form of the bond; and states that a comprehensive balance between the amount, nature and form of the bond or financial bonds must be reasonably established (The M / V Saiga (NO .1) Case, 4 Dec.1997. Par.82 ) . All three sections are taken into account separately as follows:

#### **4.1. The amount of the bond**

In the Volga Case, by re-establishing the balance of interests of the coastal and flag states as a criterion for determining the amount of reasonable bond, the Russian State requested the Supreme Court's narrow interpretation of the Convention in this regard ( Memorial of Russian Federation at13 , The Volga Case ( Russian Federation V. Australia ): Prompt Release and the Right and Interests of Flag and Coastal States. Donald R. Rothwell and Tim Stephens ( University of Sydney ) page; 11 )

The Australian state, on the other hand, has stated that the purpose of a bond is to ensure that in the worst case, the detaining state will not be in a worse position than before with the release of the vessel and does not pay attention to the situation of each case (Australian Statement in Response, The Volga Case (Russian Federation V. Australia): Prompt Release and the Right and Interests of Flag and Coastal States. Donald R. Rothwell and Tim Stephens (University of Sydney) page; 11)

According to the author, paying attention to the interests of the coastal state to protect the interests of the parties of the dispute and establish a balance between them is not possible except by paying attention to the circumstances, but the narrow or broad interpretation of the Convention depends on its explicit or implicit content. Judge Anderson believes that the Convention does not set out any provisions as to the reasonableness of the amount of bond to be determined by the domestic court. In the case of Saiga (1997), the Supreme Court in this regard has nothing more than the principles of the rationality of the form and nature of the bond. There is also no single standard for reasonable bond for all individuals and



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companies responsible for fishing violations applicable in all circumstances. It is enough to pay attention to the amount of possible crime committed by simple fishermen with hooks on the one hand to industrial fishing companies on the other. Hence, the phrase of rationality must be decided on a case-by-case basis according to its particular circumstances (The Cammouco Case, Dissenting Opinion of Judge Anderson). Judge Nelson agrees, stating that the bond should be logical in terms of fairness and justice, and that what is reasonable and fair in any case depends on the specific circumstances of that case (The Cammouco Case, Opinion of Judge Nelson). In response to Judge Anderson's point of view, it should be stated that Paragraph 67 of the Cammouco Case considers the difference between the degree of violation of ordinary fishermen and that of the industrial fishermen by the Supreme Court. It has solved this issue by considering the seriousness of the crime and the amount of possible crime imposed by the detaining state to determine the reasonable amount of bond. In this paragraph, the Supreme Court enumerates some of the factors that make the bond reasonable: "The severity of the crimes committed, the severity of the punishment imposed or enforceable under the laws of the detaining state, the value of the detained vessel, the detained cargo and the amount and form of bond considered by the detaining state" (The Cammouco Case, Par. 67). Judge Jesus considered the amount of reasonable bond to be something between the value of the vessel and the total value of the property detained by the coastal state (The Monte Confurco Case, Dissenting Opinion of Judge Jessus). But Judge Walfrum states; Clause 2, Paragraph 2 of Article 111 of the Court Act, which requires the applicant to provide information on the "value of the vessel" and the "bond requested by the detaining state", considers both amounts to be a reasonable bond, but the value of the vessel is not considered as the only and paramount (The Cammouco Case, Dissenting Opinion of Judge Walfrum) . Therefore, in the Monte Confurco Case, the Supreme Court did not finalize the list of factors that make the bond reasonable in the Cammouco Case, stating that: The Supreme Court intends to set inflexible rules as the precision measure that should not be attached to any case. The bond should also not be excessive and unrelated to the severity of the alleged crime (The Monte Confurco Case, para 76.73).

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It implicitly appears that the Supreme Court considers “the severity of the crime” to be the most important criterion for the reasonableness of the amount of the bond, because it has reconciled the excess of bond with this factor. In other words, it has been pointed out in the general principles of law that bond should be approximately equal to the probable punishment and this punishment should be commensurate with the severity of the crime. On the other hand, according to Article 111 of the Court Act mentioned above, the value of the vessel merely cannot be considered as the only factor in determining the reasonable amount of bond. Some may argue in these cases that in order to determine the amount of the bond, it is necessary to consider the extent to which the detaining state has no interest in guaranteeing the enforcement of judgments of its domestic courts in the absence of release. The amount of value of the vessel in the detaining or receipt of the bond for its release has benefits for the state. In response, it should be explicitly noted that the detaining state effectively hinders business and its revenue by preventing the release of the vessel, and therefore has a leverage and, in a way, considers the value of the vessel from the point of view of the flag state, and not only as the price of the vessel itself as an item. Because in comparison with the cargo of a vessel that is considered only as a commodity, except for the price of the cargo itself, its revenue generation is inconceivable except its added value in the port of destination. “Also, what is common in the legal system as a whole is that the amount claimed is estimated and in any case this amount should not be less than the amount of damages plus the related costs” ( Zavareh Tabatabai, Faezeh, accelerating the freedom of vessel and crew in 1982 Convention on the Law of the Sea, 1999, p. 79 ). Therefore, the bond requested by the detaining state will also be important. Conversely, an additional bond will be disregarded by the flag state at the request of the detaining state. Therefore, in order to determine a reasonable bond, it is necessary to pay attention to all the factors mentioned by the Supreme Court in the cases of Cammouco and Monte Confurco, Volga, etc., based on the specific circumstances of each case and creating a balance between all the above-mentioned elements and creating a balance between the interests of the state. The flag shall be determined on the release of the



vessel and its crew and the interests of the detaining state in guaranteeing the presence of the accused in its domestic court and in having a certain amount as the bond to guarantee the execution of court judgments. Since the Convention does not state a very clear standard for determining the amount of bond and merely considers the interests of the two flag and coastal states in general, the Convention can be interpreted broadly, depending on the circumstances of each case in determining the amount of bond based on the interests of both countries.

#### **4.2. The nature of the bond**

In the case of *Volga, Australia*, as the state holding the Russian vessel in the *Volga*, in addition to setting a bond for the release of the vessel and its crew, provided another bond as a Good Behavior Bond as one million Australian dollars for the installation of a Vessel Monitoring System<sup>5</sup> (VMS) requested for recurrence of illegal fishing in the future (*The Volga Case*.par.71.72).

This raised the issue of accepting or not accepting non-financial terms as a reasonable bond. Judge Shearer considers that since the entry into force of the 1982 Convention on the Law of the Sea has resulted in unfortunate reductions in the stocks of many fish, the terms and bonds set out in Article 292 and paragraph 2 of Article 73 should be freely and purposefully interpreted, enabling the Supreme Court to consider the measures - including those made possible by new technologies<sup>6</sup> - which require the consideration of many coastal states through judicial and administrative judgments to prevent the looting of living resources . (*The Volga Case*.

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<sup>5</sup> - Vessel Monitoring System (VMS); It is a kind of satellite control system by which the position of the vessel can be determined at any time.

<sup>6</sup> - In the 1980's, modern fishing nets were invented, which were about 60 km long and were made of synthetic fibers and unlike hemp fibers did not absorb water, and countries such as Japan and Spain and several other countries use these nets to catch They used the open sea. This could pose a threat to our generation. Therefore, many countries have objected to this issue, following which the UN General Assembly passed Resolution 425/225 in 1989 (1989) and banned this type of fishing, followed by countries such as Japan and Spain from continuing this The process was abandoned. This type of fishing has had such a devastating effect on fish populations that even the US state, which opposes the binding nature of UN General Assembly resolutions, considers it necessary to comply (Ranjbarian, Amir Hossein, *Conservation and Management of Living Resources*, 1974).

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Dissenting Opinion of Judge ad hoc Shearer). In support of Judge Shearer, Judge Anderson also believes that a simple, ordinary reading of Article 73 2 2, given its subject matter and purpose, does not imply any explicit restriction on the imposition of non-financial conditions on the vessel. The bond should also be considered in accordance with the meaning of the following phrase, which is explicit in the Convention draft; It is legally and precise that the release of the accused person in respect of a legal bond that may (and often is) subject to non-financial conditions. He believes that both non-financial conditions and bond are not excluded from the provision of bond based on the Article 73 Paragraph 2, and therefore must remain [the Volga Case] to determine whether they are reasonable or not (The Volga Case. Dissenting Opinion of Judge Anderson). In his article, Mr. Chester Brown, in addition to considering the interests of the parties of the dispute, considers it important to have a full understanding of the disputed issue that the circumstances seek to determine the nature of the bond (Reasonableness in the Law of the Sea: The Prompt Release of the Volga: Chester Brown Leiden Journal of International Law, 16 (2003) pp.628). He considers the decision of the Australian State appropriate in this regard. But Judge Jesus in the Monte Confurco Case states that, according to the Convention, fines in any case must be of an economic and financial nature (The Monte Confurco Case, Dissenting Opinion of Judge Jessus). Therefore, the bond of such a fine can also be considered financially. In the Volga Case, the Supreme Court considers that in the light of the subject matter and purpose of Article 73 (2), the term bond or security should be considered financial in nature, and the majority of the Supreme Court considers that the general purpose of Article 73 (2) when combined with Article 292 enables the flag state to release its vessel and crew from detention by imposing a bond or the bond of a financial nature. With regard to the Good Behavior Bond requested by Australia, the Supreme Court stated that such a bond is not provided for in Article 73 (2) because the bond or other related bonds are obtained in exchange for the release of detained vessels that are claimed to have committed a crime and infringement. And, Article 73 (2) does not include a bond to prevent illegal activity in the future (The Volga Case.par.41,42,43).



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According to the author, to solve this dispute, one should first get help from the convention itself, then solve the issue using the law. Paragraph 2 of Article 73 of the Convention does not explicitly state the financial nature of the bond, but the Convention explicitly states bond or other bonds in its other articles, including paragraph 7 of Article 220, paragraph (b-1) of Article 226, paragraph 4 of Article 292. Article 292 is a kind of general rule of the Convention concerning prompt release and related bonds, and also involves Article 73. Therefore, the narrow interpretation of paragraph 2 of Article 292 and other mentioned articles are better than its broad interpretation and are closer to the legal method and style. Extensive interpretation can be considered when there is no explicit rule on the subject, but when there is a specific rule in it, broad interpretation has no legal basis and can take on a political status. In this case, the narrow interpretation and acceptance of the Supreme Court's opinion is fully approved. On the other hand, even without considering the provisions of the Convention, the issue can be addressed according to the purpose of the bond in the law. The purpose of receiving bond is to have an executive guarantee for the presence of the accused in the court during the internal trial, and in addition, after the internal investigation of the crime and violation and determining its punishment, the domestic court can issue its sentence at least from the bond, and in a way guarantees the execution of the sentence issued is the current violation. In this case, according to the general principles of law to which civilized nations adhere, criminals and offenders will be free after serving their sentences and fines, and will be subject to the laws of the flag state, international law and regional laws and regulations for shipping and fishing. While it is unjustifiable to establish a non-financial bond of good behavior in the future, such as the installation of a vessel control system ( VMS ) to control vessel behavior by a third country. Domestic courts will only have the right to punish the offender to the extent prescribed by law, and this right does not include assigning a task and dominating the vessel's future behavior. Presumably, even if a non-financial bond was accepted, such bond should be for the vessel's unlawful conduct and not for controlling its future conduct and possible future misconduct. Criticizing the Supreme Court's decision, Mr Chester Brown stated in his paper that the Supreme Court in the case of the Olga,

pursuant to Article 73 2 2 of the Convention, had non-financial conditions, even if it included material elements (like a million dollar good behavior bond for VMS installation) (The Prompt Release of the Volga: Chester Brown. *Leiden Journal of International Law*, 16 (2003) pp.628). In addition, such bond is intended to control the future conduct of the vessel, and not to guarantee the defendant's presence in the court or to enforce the judgment of the domestic court of the detaining state. In this case, the bond does not fulfill its objectives, because the bond must be released upon the issuance of a court verdict and the payment of a fine by the offender, but in such cases the bond itself will not be a definitive sentence. Acceptance of bonds that control the vessel's behavior in the future eliminates the difference between the bond and the definitive punishment resulting from the judgment issued by the domestic court. In other words, the accused have been punished before issuing the final sentence.

#### **4.3. The form of the bond**

One of the less discussed cases in the case of prompt release is the issue of the form of bond, which can indicate the acceptance of the Court's opinion in this regard. The Supreme Court considers it unreasonable to accept the bond only in the form of cash or a verified check (The Monte Confurco Case, par. 93). The opposite meaning of this phrase is that the court considers bond as a form of cash and certified check as one of the forms of rational bond. In other words, in the first place, what comes to mind from the bond is the cash bond. But in the Camucco Case, the Supreme Court also accepted bond as a bank guarantee (The Cammouco Case, par. 74). In this regard, the Supreme Court in the Monte Confurco Case states: "A bank bond may be claimed only if the monetary equivalent of this bond is not taken into account for the payment of all penalties which may be taken into account by the competent domestic court.", (The Monte Confurco Case, par 94) . According to the author, due to the financial nature of the bond, any form of bond that is financial will be accepted. But its precedence and latency must be taken into account. Certainly, cash bond is better for securing and enforcing the judgment of a domestic court, but according to



the Court, only cash bond cannot be considered as a financial guarantee and other financial bonds such as a bank bond, a check and an approved check, other bonds, etc. can be accepted.

### **5. Fishing and Its Incomes**

The question that arises in this regard is whether fishing (caught fish) can be considered as one of the detainable items in order to receive bond or on the other hand can it be considered as bond or not?

In this respect the Supreme Court dealt with one of the most contentious issues concerning prompt release. The majority of the Court in the *Monte Confurco Case* believed that the value of the catch detained by France should be deducted from the total bond. But the majority in the *Volga Case* has acted differently from the previous one, believing that although the proceeds from the sale of the catch provide a bond to the Australian State, they have nothing to do with the bond imposed on the vessel and its crew (*The Volga Case*). par.86 & *The Volga Case (Russian Federation V. Australia): Prompt Release and the Right and Interests of Flag and Coastal States*. Donald R. Rothwell and Tim Stephens (University of Sydney) page; 11).

Judge Jesus believes that if the domestic legislature confiscated the catch, the decision of the majority of the Court in the *Monte Confurco Case* to accept the value of the detained catch as part of the bond would be unwise. An important aspect of the legal penalties normally imposed by the legislature is the confiscation of illegal fishing (*The Monte Confurco Case, Dissenting Opinion of Judge Jessus*).

From the author's point of view, this issue is debatable from several considerations. First, is the detained catch the result of illegal fishing. Second, can the catch be detained as the bond? Third, should the catch be released as a cargo vessel and receive the bond instead?

If the catch is the result of illegal fishing in one of the coastal areas of the coastal state, then the vessel and the flag state will have no right to it except for the violation they have committed. In this case, the coastal state,

as the only country that can exclusively benefit from the living and inanimate resources of its maritime territories, owns it and takes the fishing not as the cargo or property of the flag state but as its own property. In such a case, such catch may not be regarded as the bond for the property of the vessel and the flag state or be imposed on the bond.

However, if a significant part of the catch is not due to illegal fishing, only that part can be considered as property and cargo of the vessel, but it does not make sense to consider a bond for the prompt release of such cargo. Because the purpose of release, as mentioned earlier, is to prevent unnecessary losses resulting from detention and to generate revenue after release and release of detention. Here, if such vessels are released, nothing more than the price of the cargo itself will go to the flag state, and this makes it unreasonable to impose a bond equal to the price and value of the catch. However, this catch can be considered as the bond of the total amount of the bond according to its value. With these interpretations, two different approaches of the Court in the *Monte Confurco* and *Volga* cases can be examined better. In the end, in general, the value of legal fishing can be considered as part of the bond, but the value of illegal fishing cannot be considered for this purpose because it is not part of the vessel's property and its owner vessel goes back to the coastal state and should be confiscated.

#### **6. The limited jurisdiction of ITLOS in prompt release procedures**

Article 292(3) states that the court or tribunal competent to deal with the prompt release of a vessel 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.

This separation between the release of the vessel and crew and the merits of a case poses a series of challenges for the tribunal seized with the application while the case is pending before the national authorities.



Moreover, in establishing criteria to assess the reasonableness of the bond, the ITLOS has heavily relied on the applicable national law (Seline Trevisanut, 2017, 303).

## **7. The Concept of Prompt Release in Iranian Domestic Law**

### **7.1. Defining and expressing the issue of prompt release in Iranian domestic law**

Release of a vessel is understood when that vessel is in some way in the custody of the coastal state and is in the process of being prosecuted. In this case, the release of the vessel is raised against the receipt of the bond. According to various laws and developments in Iranian domestic law, Iran has the right to detain foreign vessels and to prosecute in many cases. These include:

1. Fishing without obtaining a valid license in the waters under its jurisdiction of I.R. Iran (Article 6 of the Law on Protection and Exploitation of Aquatic Resources of the Islamic Republic of Iran, approved in September 1995)
2. Undertaking industrial fishing in coastal waters of I.R. Iran (Article 10 of the Law on Protection and Exploitation of Aquatic Resources of the Islamic Republic of Iran, approved in September 1995)
3. Carrying out and using unauthorized fishing tools and equipment (Article 12 of the Law on Protection and Exploitation of Aquatic Resources of the Islamic Republic of Iran, approved in September 1995)
4. Fishing by foreign fishing vessels without the permission and consent of I.R. Iran (Article 13 of the Law on Protection and Exploitation of Aquatic Resources of the Islamic Republic of Iran, approved in September 1995)
5. Non-observance of Iran's maritime law approved in 1343 and disputes arising from it, including vessel registration or non-observance of privileged rights

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6. Committing a crime in harmless vessels passing through the Iranian territorial sea if the effects of the crime influence Iran or disturb the order and tranquility of the territorial sea, or in case of transporting drugs and psychotropic drugs or at the request of the vessel's commander, diplomatic representative or consulate of the flag state (Article 10 of the Law of the Maritime Regions of the Islamic Republic of Iran, approved in 1993)

7. To enforce the security agreement or execute the sentence in relation to harmless passing vessels (Article 11 of the Law of the Maritime Regions of the Islamic Republic of Iran, approved in 1993)

8. To prevent violations of financial, customs, health, immigration, environmental and security laws in the Iranian supervisory zone (Article 13 of the Law of the Maritime Regions of the Islamic Republic of Iran, approved in 1993)

9. To exercise criminal and civil jurisdiction over violators of the regulations of the monopoly economic zone and the continental plateau of Iran (Article 20 of the Law of the Maritime Regions of the Islamic Republic of Iran, approved in 1993)

10. Taking measures to contaminate the waters of the Caspian Sea, the Persian Gulf and the Sea of Oman with non-oil materials, causing the death of aquatic animals or endangering their environment. (Paragraph D of Article 13 of the Law on Hunting and Fishing approved in 1346). In this regard, the verdict of the third branch of the Tehran General Court on 12/5/79 is noteworthy, which is summarized as follows; "A Russian vessel carrying a number of containers of chemicals originating in Portugal was bound for Saudi Arabia in the southern waters of the island of Lavan, where it sank when a container exploded and caused a fire at sea. As the chemicals changed the natural ecology of the water and poisoned the aquatic animals and destroyed a large number of fishery resources in the region, the matter was complained to the Ports and Maritime Organization of the Islamic Republic of Iran and the Environmental Protection Organization and the Ministry of Jihad on behalf of the Shipping Company



of Russia. It was followed up in court, and after examining the documents, the court sentenced the defendant to pay damages” (Poor Nouri, Mansour, Maritime Law in the Maritime Court, 2004, p. 185).

As to the points mentioned above, it is necessary to pay attention to the issue of whether in Iranian domestic law, as in the 1982 Convention, there is a sense of prompt release for offending vessels in detention? Paragraph 1 of Article 79 of the Maritime Law of Iran, approved in 1964, states:

"... When a vessel or any other vessel or property belonging to the owner has been detained in the territory of Iran and the owner has given another bond to avoid the detaining, the court or any other competent authority may lift the detaining of the vessel or the property to issue the necessary verdict ..."

But is such release the right of confiscated vessels or not? As previously stated in international laws, the release of a vessel after the issuance of an appropriate bond, as well as the filing of a petition for the prompt release of a bond is devoted to the right of the detained vessel and the flag state. But the tone of Article 132 of the Code of Criminal Procedure I.R. Iran is such that, even without a lawsuit, it would appear that a prompt release on bond would be mandatory for the coastal state. This article states: "In order to access the accused and his timely presence in necessary cases and to prevent him from escaping or hiding or colluding with another, the judge is obliged to issue one of the following criminal security verdicts after informing him of the charge." ; ... ». The context of this legal article is such that it somehow considers the necessity and justification of the bond and lays the principle on the release of the accused before proving the crime.

## **7.2. Bond and its proportionality criteria**

Article 132 of the Code of Criminal Procedure I.R. Iran considers the need for the bond to be accessible to the accused and his timely presence, as well as to prevent him from escaping or hiding or colluding with another. However, it seems that in addition to the above-mentioned cases, the guarantee of execution of the sentence from bond is one of the most important reasons for receiving it. Because in cases where the criteria for

the amount of security or bond are raised, the importance of the crime and the severity of the punishment (Article 134 of the Penal Code) and the amount of the plaintiff (Article 136 of the Penal Code) are also used as criteria for determining the bond. More precisely in the domestic laws of Iran, as in paragraph 82 of the Saiga Case, the general criteria for the bond can be found in three sections: the amount, form and nature of the bond.

### **7.2.1. The amount of the bond**

Paragraph 1 of Article 79 of the Maritime Law of Iran, approved in 1964, makes the lifting of the detaining of a vessel or property conditional on the provision of a bond or security equivalent to the full amount of liability of the vessel owner in such a way as to satisfy the plaintiff's rights. This issue has been raised in the Code of Criminal Procedure in a different style and context. Article 134 of this Law mentions the factors affecting the amount of bond, the importance of the crime, the severity of the punishment, the reasons for the charge, the possibility of losing the effects of the crime, the accused's background and mood, and the accused's age and status, and Article 136 of the same Law states that in any case, it should not be less than the damages claimed by the private plaintiff. Adding all the above, it can be concluded that Iran's domestic law, contrary to the viewpoints of some states and experts, and in accordance with the Court's procedure, does not consider the amount of bond as the price of the vessel, but sometimes it may be considered less than the vessel's price and sometimes more. As explained earlier, the vessel should not be considered as a mere commodity and its price should be used as a basis for the bond. A vessel is a means of income that, over the years, far outweighs its value to the owner. In this regard, a verdict has been issued in the Iranian courts regarding the Galactica vessel. The bond for this vessel detained in Bandar Abbas was twice the value of the vessel itself (Zavareh Tabatabai, Faezeh, Accelerating the Freedom of Vessel and Crew in the 1982 Convention on the Law of the Sea, 1999, p. 80). For this reason, the best criterion for determining the amount of the bond is the amount requested by the



plaintiff, as well as the severity of the crime and the amount of possible punishment.

### **7.2.2. The form of the bond**

Paragraph 4 of Article 132 of the Code of Criminal Procedure explicitly defines bond in this regard as a cash or a bank guarantee or movable or a property that can or cannot be transferred. Of course, guaranteed and verified checks are also accepted as the bond because they have the same cash performance as bank or property bonds. However, some countries, particularly the developed ones, have turned to the Club Guarantee instead of attending to bank guarantees that have special banking costs (banking fees), but the developing countries will only accept it if the detaining authorities have given their direct consent (Zavareh Tabatabai, Faezeh, Accelerating the Freedom of Vessel and Crew in the 1982 Convention on the Law of the Sea, 1999, p. 79). Despite the fact that paragraph 4 of Article 132 of the Criminal Code explicitly imposes a bank bond, the acceptance of the club guarantee in Iran is questionable. For example, in the trial dated 1/12/79, which was issued by the Third Branch of the Tehran General Court, the Ports and Maritime Organization of Iran received a bank bond of one hundred and forty million Rials in exchange for the release of a company vessel to guarantee the payment of port tolls” (Pour Nouri, Mansour, Maritime Law in the Maritime Court, 2004, p. 27). In another case, North Caspian Sea, a Russian company that pledged to deliver two vessels to Iran under a contract, did not commit the agreement. Following this issue, the Ports and Maritime Organization of Iran detained one of the vessels of the Russian company in the Persian Gulf in December 2001 with a court verdict dated 11/9/79, and then released the Russian vessel after receiving a guarantee check. Receipt of a guarantee check to guarantee the delivery of two vessels was made by a Russian company (Archive of the Ports Authority of the Islamic Republic of Iran).

### **7.2.3. The nature of the bond**

Article 132 of the Criminal Code, without mentioning the nature of the bond, directly, by providing examples of bond in cash, bank guarantee or

taking a property can or cannot be transferred, considers the financial nature of the bond and does not accept non-financial bond. The final part of paragraph 1 of Article 79 of the Maritime Law of Iran, approved in 1343, also accepts the bond in a condition that is practically applicable. The phrase “practically usable” leads us to the bond of effective and practical execution, which seems to be the same as a financial bond. What Iranian judicial practice has shown so far, and examples of which have already been cited, has been the application of financial bond.

### **Conclusion**

Prompt release is one of the principles developed in the 1982 Convention for the protection of the rights of sailors and the crew, and for the prevention of unavoidable damage, as one of the interests of the flag state and of vessel owners. On the other hand, bond or financial bonds are provided to protect the interests of the coastal or detaining state to guarantee the presence of the accused before the domestic court or to enforce the domestic court for execution based on the bond. The concepts of prompt release and bond are not something that states are only committed to do under the 1982 Convention. These concepts are among the principles that exist in the law of most civilized nations. Therefore, according to the general principles of law, which are sources of International Law - (derived from Article 38 of the Statute of the International Court of Justice) - the prompt release of the accused from receiving bond during the proceedings is part of the rights and obligations of all states in international relations.

The relevant bond in each case is determined according to the circumstances. The bond imposed by the domestic court of the detaining state or the Supreme Court must be reasonable in nature, form, and amount. Given that the nature of the bond in the 1982 Convention explicitly states that it is financial, there is no need to interpret it broadly, and it makes sense for the bond to be determined financially. The financial nature of the bond also determines the form of the bond. Cash bond, guaranteed or verified checks, and the provision of property and bank bonds are



reasonable forms of bond that the domestic court and Supreme Court may consider in determining the bond. However, since the Convention does not specify a clear criterion for the amount of the bond, it is necessary to interpret it broadly (the Convention) and pay attention to the circumstances of each case. The bond is intended to secure the interests of the coastal or detaining State, but the exercise of the rights of that state shall not prejudice the rights and interests of the flag state. For this reason, the Supreme Court has provided a list of factors and criteria for determining the amount of the bond, which are not considered as the only lists of factors, and according to the circumstances of each case, the Court can consider other factors or the one that is more important. These factors can include the severity of the committed crime, the severity of the punishment imposed or enforceable under the laws of the detaining state, the value of the vessel and its confiscated cargo, and so on.

Illegal fishing can be completely confiscated by the detaining state and there is no need to deduct the value of such fishing from the total amount of bond as this cargo is part of the vessel's property and was in fact part of the coastal state property that was illegally detained. But, that part of the catch that has been obtained legally can be allocated to the coastal state as part of the vessel's cargo, and as part of the bond.

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