

COUNTER-MEMORIAL SUBMITTED BY GUINEA

Subject: APPLICATION FOR THE RELEASE OF THE SHIP AND ITS CREW LODGED BY THE GOVERNMENT OF SAINT-VINCENT & THE GRENADINES AGAINST THE GOVERNMENT OF THE REPUBLIC OF GUINEA - CONAKRY

THE GUINEAN GOVERNMENT, RESPONDENT

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VERSUS:

THE GOVERNMENT OF SAINT-VINCENT- & THE GRENADINES, APPLICANT

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I. AUTHORISATION

We hereby notify the Tribunal of the following:

The State judicial Agent to the Presidency of the Republic of Guinea, as the official authority having jurisdiction to authorise persons to reply to an application lodged against the Government of the Republic of Guinea, through the Minister of Justice, Keeper of the Seals, has authorized Mr. "BAO" BARRY Alpha Oumar Esquire, Barrister, to reply to the action made against the State of Guinea.

The contact details of Mr. BARRY Alpha Oumar Esquire for the reception of any communication are indicated above.

II. INTRODUCTORY STATEMENT

The Republic of Guinea, a West African coastal State, has been for several years the victim of smuggling of counterfeited goods and, above all, oil products.

The upsurge of smuggling activities is due on the one hand to the proximity of the Sierra Leonian and Liberian coast now very pervious and, on the other hand, to the lack of customs patrol boats.

In spite of all efforts made, only 10% of ships involved in smuggling are arrested and, more often than not, these ships do not hesitate to scupper our patrol boats.

Thus, smugglers are rather encouraged to try to undertake such a criminal enterprise, which seriously jeopardizes the economic development of Guinea, not to mention the fact that some of these smugglers destabilize the whole West African region by selling weapons to the coastal population in general and to rebel groups in particular.

Economic implications of the arrest of ships:

Concerning the supply of fishing boats at the wharf, the consumption rose from 1.083.935 litres during the period 1 - 31 October 1997 to 1.234.898 litres during the period 1 - 24 November 1997, an increase of 150.963 litres.

Moreover, as a result of the arrest of ships made by customs units between 13 (the AFRICA) and 28 (SAIGA) October 1997, the quantities of fuel sold at petrol stations amounted to 5.529.557,26 litres in October (31 days) and to 4.925.500,51 litres during the 22 first days of the month of November, a clear indication that by 30 November these quantities will be far higher than those sold in October.

Besides, customs taxes in a 10 days period that used to hardly reach 2 billion during the last months of August and September rose to 3 billion each 10 days since the arrest.

The suppression of smuggling of oil products has resulted in a rise of the consumption through official channels as well as public revenues from customs taxes such as the specific tax on oil products.

III. STATEMENT OF FACTS

The tanker Saiga crossed the northern maritime frontier of Guinea on 27 October 1997 at 1.20 GMT (legal time in Guinea).

The same day, at the point 10° 25' 3N and 15° 42' 6W, the Saiga sold gasoil to three fishing boats, the Guiseppe Primo, the Kritti and the Eleni G.

After supplying the three boats the ship was instructed by its boss to head to the point 9° 00,0N and 15° 00'0W; then about 2 p.m. (legal time) it weighed anchor and headed to the point 9°50' 0N and 16° 15' 0W; but at 4 p.m. (legal time) this meeting point was cancelled by the boss who instructed Mr. Orlof Mikhail Alexandrovich to go back to the point 9°00 0N and 15°00W to supply other boats, including the "SALVATOR".

On 28 October 1997, at about 4 GMT (legal time in Guinea), customs and navy officers in accordance with the requirements of the United Nations Convention on the Law of the Sea, gave the Saiga the order to stop but to no avail.

On board of two patrol boats of the Guinean Navy, that could be identified by their military colour, their immatriculation number and their flag, the Guinean officers used light and sound signals which did but prompt the Saiga to flee.

Thus, the Guinean patrol boats started their pursuit at the point 9° 22N and 13° 56,3W and the Saiga was brought under control only at the point 8° 58N and 14°50W.

All the circumstances surrounding the arrest of the ship can be verified from the navigational map, the log book, the message book [?], the Saiga radio recordings and the detailed confession of the ship's Master.

The study of the navigational map shows that the supply of the three boats identified above took place in the exclusive economic zone of Guinea. There was on it a handwritten recommendation to stay at least 100 nautical miles away from the Guinean coast due to the fact that there was a crack down on smuggling in Guinea.

The log book states on page 11 that on 27 October 1997, at the point 10° 25 8N and 15° 44 4W, the Saiga supplied successively the Guiseppe Primo at 4.20 a.m., the Kritti at 7 a.m. and the Eleni G. at 11.20 a.m.

It also states on page 12 that on 28 October 1997, the Saiga, at the point 9°00, 7 N and 15° 02, 7 W, switched its engines off to await fishing boats.

The message book shows that the Saiga received a message requesting it to supply the Guiseppe Primo at 4 a.m. The same message recommended caution and the use of the radar to avoid fast craft.

Finally, radio communications that have been picked up show that the Saiga entered Guinean waters and had contacts with fishing boats.

IV REJECTION OF APPLICANT'S ARGUMENTS

1 - The Applicant claims that the ship was drifting in Sierra Leonian waters.

An examination of the confiscated documents on board the ship, which are binding for the applicant, shows clearly that the ship was in Guinean waters.

Moreover, though it is claimed that the ship was drifting, it is not said that an SOS was put out.

2 - The applicant alleges that 25 crew members were detained in Guinea.

This allegation is false. The Guinean authorities have indeed detained only the Master of the Saiga, Orlof Mikhail ALEXANDROVICH. 11 crew members are out of Guinea and the remaining 13 stayed on board the ship on their own volition for maintenance purposes.

3. The applicant accuses the Guinean Government of not complying with article 73 of the Convention.

Article 73 1. The coastal State may, in the exercise of its sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone, take such measures, including boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with this Convention.

2. Arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security.

3. Coastal State penalties for violations of fisheries laws and regulations in the exclusive economic zone may not include imprisonment, in the absence of agreements to the contrary by the States concerned, or any other form of corporal punishment.

4. In cases of arrest or detention of foreign vessels the coastal State shall promptly notify the flag State, through appropriate channels, of the action taken and of any penalties subsequently imposed.

This text has not in the least been violated by Guinea, for paragraph 2 of the article states "[Arrested vessels and their crews shall be promptly released] upon the posting of reasonable bond or other security". It is clear that it is not Guinea that has to post a bond to obtain the release of the ship that it arrested in its territorial waters; it is up to those [responsible for the ship] to offer a security, then to request the release of the ship.

Moreover, there has been no notification because the ship hid its identity by refusing to fly its flag; this has been recognized by the ship's Master in Statement no. 29 of 31 October 1997 made to the Guinean customs.

4. The applicant asserts that Guinean officials have unlawfully forced the Master to commence discharge of the cargo into shore tanks.

In conformity with article 316 of the Customs Code, goods of whatever description and means of transportation involved in smuggling are confiscated for the benefit of the State.

Thus there has been no unlawful duress against the Master but a mere enforcement of the law.

5. The applicant asserts on the basis of an incomplete enquiry that the Guinean Authorities had no reason whatsoever to detain the Saiga, and awaits further information to clear up any doubt.

5 - a) The respondent does not dispute the fact that the Saiga was detained in Sierra Leonian waters, but recalls that the detention took place after the supply in Guinean waters of several fishing boats and the exercise by the Guinean Government of the right of hot pursuit in accordance with article 111, paragraph 1, of the Convention.

This version of the facts is confirmed by the Master's statement transmitted to the Attorney General, which speaks of a smuggling offence.

5 - b) The applicant states that the Guinean authorities contravened article 5 of Decree No. 336 of 30 July 1980.

An analysis of this text would show that it is not applicable to a smuggling offence. Indeed, this decree deals with the limitation of territorial waters of Guinea and the suppression of unlawful fishing, water pollution, etc...

5 - c) The applicant claims that customs officers have no jurisdiction to detain a ship involved in smuggling.

The competence of customs officials concerning the boarding of ships originates in missions assigned to the customs.

5 - d) The applicant speaks of illegal conduct perpetrated by Guinean officials against tankers within the exclusive economic zone of Guinea.

Guinea exercises its sovereignty in Guinean waters by combating illegal supply of oil. In this framework, the tanker "Africa" was indeed arrested for trafficking in oil products on 13 October 1997.

6 - Conclusion

Guinea committed no illegal act and no violation of the procedure; it sought and is still seeking to protect its rights. This is why it is requesting that it may please the Tribunal to dismiss the applicant's action.

Documents attached:

1. Navigational book (?)
2. Charter
3. Audio-cassette
4. Log book
5. Technical documentation of the ship
6. Law 94/007/CTRN of 15 March 1994
7. Statement No. 29 of 30 October 1997 (made to customs)
8. UN Resolution on the embargo concerning Sierra Leone
9. Customs Code
10. Maritime Code

Mr. B.A.O. – Barry Alpha Oumar
Barrister
[signed]