

[Translation from French by the Registry]

**WRITTEN RESPONSES BY SAINT VINCENT AND THE GRENADINES
TO THE WRITTEN QUESTIONS ASKED BY THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA (“Juno Trader” case)**

Question 1

It is perfectly possible, within the context of the law of the Republic of Guinea-Bissau, to challenge a decision by the Interministerial Commission. That decision is classified legally as a unilateral administrative act. The legal remedy available to those subject to such an administrative decision is court proceedings to set it aside. Such proceedings may be brought before ordinary courts, civil chamber (“tribunais comuns, Vara cível”) under Law No. 03/2002 of 20 November 2002 (published in the Official Journal, No. 47) and Decree-Law No. 6-A/2000 of 28 August 2000 (published in the Official Journal, No. 34).

Question 2

The Fisheries Administration may appeal the decision handed down by the competent court which ordered the stay of execution (suspension) of the said Administration’s decision. The appeal must be lodged before the Supreme Court of Guinea-Bissau. Lodging an appeal, however, does not entail a stay of the lower court’s decision. Consequently, the lower court’s decision is valid until the judgment of the Supreme Court is given. We would add that, under the law, where there is a decision by the Court which is not put into effect by those addressed by it – the Interministerial Fisheries Commission in the present case – those affected may apply to the Court for the enforcement of the decision, without prejudice, notwithstanding, to the use of any other mechanism which the law puts at their disposal, and including the institution, on filing a complaint on their part, of criminal proceedings for contempt against the author or even authors of that contempt, in accordance with article 239 of the Penal Code.

Question 3

In this case, the remedies at the shipowner’s disposal are, *inter alia*, to bring court proceedings to set aside the legal effects of the administrative decision – in this case, the decision of the Interministerial Fisheries Commission – coupled, where necessary, depending on the urgency of the situation, with an application filed in due time for interim measures or a stay of execution.

(signed)

Question 4

This question was answered orally by Counsel for Saint Vincent and the Grenadines, Mr S. Karagiannis. There are also some additional elements in response in the text handed over to the Tribunal today, 7 December 2004, at 2330 (text entitled "on the statement by the Directorate-General of Fisheries of the Ministry of Fisheries of the Republic of Guinea-Bissau).

(signed)

At Hamburg, 7/12/04
at 2330

Vincent Huens de Brouwer
Co-agent for the State of Saint Vincent and the Grenadines

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STATEMENT OF POSITION OF SAINT VINCENT AND THE GRENADINES

**ON THE STATEMENT BY THE DIRECTORATE-GENERAL OF FISHERIES
OF THE MINISTRY OF FISHERIES OF THE REPUBLIC OF GUINEA-BISSAU**

Saint Vincent and the Grenadines acknowledges receipt of the statement, commented on in the present document, issued at Bissau and dated 7 December 2004. The Director-General of Fisheries, Ing. Ildefonso BARRIOS, states on his honour that there is no prohibition or any restriction on freedom of movement imposed on the members of the vessel "Juno Trader". He affirms, moreover, that there has never been any obstacle ("nunca existiu nenhum obstaculo") to the freedom of movement of the members of the crew.

As Saint Vincent and the Grenadines has already had the occasion to affirm, in writing and orally, that everything depends on what one understands by freedom of movement. In the view of the Applicant State, that freedom is none other than the traditional freedom to come and go; that freedom, though, holds true for foreign nationals when they are duly in possession of their passports. The passports of the crew of the "Juno Trader" were, for a long time, held by the authorities of Guinea-Bissau. One or two at a time and, often, after insistent letters to the Administration of the Ministry of Fisheries, some passports were, undeniably, returned. It is nevertheless true that a number of passports (six at the time of writing on Tuesday, 7 December 2004 at 2030) still continue to be held.

Saint Vincent and the Grenadines does not really understand how the Respondent State can at one and the same time claim that there is no obstacle to the freedom of movement of *all* the members of the crew and also produce a list, dated that same 7 December 2004, Bissau, entitled "tripulantes cujos passaportes retidos na FISCAP" ("crew members whose passports are held by FISCAP": our translation).

In its statement, the Respondent State adds that "mais se declara que mediante solicitação se tem vindo a entregar os passaportes aos respectivos destinatarios" (in the English translation provided by the Respondent: "Furthermore, it is declared that upon request the passports have been delivered to their respective addressees"). How, then, does that "square" with the list, *produced by the Respondent State*, of the crew members whose passports have still not been returned? Let it be said in passing that, in effect, and this has been checked, these are the persons on the Respondent State's list who continue to be deprived of their passports despite the multiple steps taken and approaches made by the representatives of the shipowner so that *all* the members of the crew could have their passports returned and could thus exercise their freedom of movement.

(signed)

To conclude, the facts, together with page 2 (the list of persons which was produced) of the Respondent State's document are in cruel contradiction to page 1 of the document which was handed over to us. With its interest in the facts and, once again seriously concerned by all these contradictions, Saint Vincent and the Grenadines reiterates its desire to obtain, in due form, and in accordance, moreover, with the submissions which it has made, an Order by the Tribunal for the Respondent to grant *all* the members of the crew their freedom of movement by returning their passports to them. Saint Vincent and the Grenadines cannot in any event be satisfied with the issuance to the crew of simple "shore passes" or other documents of that sort.

ON THE DOCUMENT SENT BY THE COMMISSIONER FOR MARITIME AFFAIRS OF SAINT VINCENT AND THE GRENADINES TO THE MINISTRY OF FOREIGN AFFAIRS OF GUINEA-BISSAU

That document, dated 7 December 2004 and issued at Geneva, was read by Mr LOPES (delegation of Guinea-Bissau) during the Respondent's rejoinder on 7 December 2004 in the afternoon. The reading, in its entirety, moreover, of that document before the Tribunal was tantamount to filing a new document whereas such filing has been strictly prohibited, under the Rules of the Tribunal, since 6 December 2004 at 1000. The least that can be said is that the Respondent could have warned the President of the Tribunal (and asked his authorization to file this new document and bring it in good time to the attention of the Applicant and, perhaps, also make himself aware of any objections on the Applicant's part...). None of this was done and the Applicant had to demand explicitly to see the document for it to be made available to him. It is true, moreover, that the public reading of this document, carried out with a great deal of talent by the representative of the Government of Guinea-Bissau, could have created unfavourable impressions of the arguments put forward by the Applicant.

On a close reading of the document, however, one notes that its real content is clearly less disturbing for us than Mr LOPES' talents as an orator managed to make it. All in all, it says that "Saint Vincent and the Grenadines acknowledges receipt of the communiqué informing it that the vessel Juno Trader, official No. 3073, has now become the property of the State of Guinea-Bissau". It is therefore a simple international courtesy letter which is not in any way binding on Saint Vincent and the Grenadines, which continues, naturally, to defend its vessel's case before the International Tribunal for the Law of the Sea.

(signed)

At Hamburg, 7/12/04
2330

Vincent Huens de Brouwer
Co-agent for the State of Saint Vincent and the Grenadines