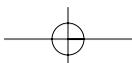
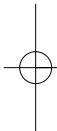
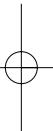


**REQUEST FOR THE PRESCRIPTION OF PROVISIONAL
MEASURES SUBMITTED BY SAINT VINCENT AND
THE GRENADINES**



REQUEST FOR THE PRESCRIPTION OF PROVISIONAL
MEASURES PURSUANT TO ARTICLE 290(5) OF THE 1982
UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

by
SAINT VINCENT AND THE GRENADINES
Against
GUINEA

In respect of the
m/v “SAIGA”

5 JANUARY 1998

1. We have the honour to submit to the International Tribunal for the Law of the Sea (the “Tribunal”) on behalf of the Government of St Vincent and the Grenadines against Guinea this Request for the prescription of provisional measures pursuant to Article 290(5) of the 1982 United Nations Convention on the Law of the Sea (the “Convention”). The Request has as its object the preservation of the rights of St Vincent and the Grenadines and vessels flying its flag to enjoy freedom of navigation and other internationally lawful uses of the exclusive economic zone of Guinea, pending the final decision of the Arbitral Tribunal to be established to resolve the dispute between the two states concerning the interpretation and application of the Convention which arose with the arrest and detention by Guinea of the m/v “SAIGA” on 28 October 1997.
2. On 22 December 1997 St Vincent and the Grenadines notified to the Government of Guinea a document instituting arbitral proceedings pursuant to Articles 286 and 287 of the Convention (the “Arbitration Document”). The Arbitration Document was notified that day by telefax to the Office of the President, the Permanent Representative of Guinea to the United Nations in New York, and to the Guinean Agent in Hamburg, and the following day by courier. In accordance with Article 89(4) of the Rules of the Tribunal a certified copy of the document instituting arbitral proceedings may be found at *Annex 1* to this Request.
3. The facts giving rise to the dispute are fully set out in the Arbitration Document (see paras. 2 to 20). The Notification also sets out the relief sought (see para 24), the legal arguments invoked in support (paras. 21 to 23), a request that the Arbitral Tribunal prescribe provisional measures (para. 32), the basis upon which the Arbitral Tribunal has jurisdiction under the Convention (paras. 28 and 29), and the appointment by St Vincent and [the] Grenadines of an arbitrator (para. 30).

4. Article 290(5) of the Convention provides *inter alia* as follows:

"Pending the constitution of an arbitral tribunal to which a dispute is being submitted under [Section 2 of Part XV of the Convention], any court or tribunal agreed upon by the parties or, failing such agreement within two weeks from the date of the request for provisional measures, the International Tribunal for the Law of the Sea ... may prescribe, modify or revoke provisional measures in accordance with this article if it considers that *prima facie* the tribunal which is to be constituted would have jurisdiction and that the urgency of the situation so requires."

5. The conditions upon which Article 290(5) may be invoked are fully set out in Article 89 of the Rules of the Tribunal. Since this is the first time that the procedure envisaged by Article 290(5) has been invoked it may be useful to summarise the basic conditions governing its use. These conditions are:

- two weeks must have elapsed from the notification to the other party of a request for provisional measures if the parties have not agreed that such measures may be prescribed by another court or tribunal (Rules, Art. 89(2)(b));
- the Request to the Tribunal must specify the measures requested (Rules, Art. 89(3));
- the Request must specify the reasons for which it is being made (Rules, Art. 89(3));
- the Request must specify the possible consequences, if the Request is not granted, for the preservation of the respective rights of the parties (Rules, Art. 89(3));
- the Request must indicate the legal grounds upon which the arbitral tribunal which is to be constituted would have jurisdiction (Rules, Art. 89(4)); and
- the Request must indicate the urgency of the situation (Rules, Art. 89(4)).

In the sections which follow St Vincent and the Grenadines addresses these conditions, each of which it submits have been satisfied.

Two weeks have passed from the Notification of the request for provisional measures

6. As indicated above (para. 2) Guinea was notified of the institution of arbitration proceedings, including the request for provisional measures set out therein, on 22 December 1997. Two weeks have now passed from the notification.

The measures requested

7. In the Arbitration Document St Vincent and the Grenadines requested the Arbitral Tribunal to prescribe the provisional measures it considers

indispensable for preserving its rights under the Convention, including in relation to the “prompt release” Judgement of the International Tribunal for the Law of the Sea of 4 December 1997. These are set out at paragraph 32 of the Arbitration Document.

8. Notwithstanding the Judgement of the International Tribunal for the Law of the Sea of 4 December 1997 and the subsequent posting of a bond as required by the Tribunal on behalf of St Vincent and the Grenadines, the m/v “SAIGA” and her crew continue to be detained in Conakry. Moreover, the judgement of the Conakry Court of 17 December 1997 has not been vacated and Guinea continues to maintain that it was and is entitled to apply and enforce its customs and contraband laws within its exclusive economic zone against the m/v “SAIGA” and against other vessels in the future. It is respectfully submitted that the failure to release the m/v “SAIGA” and her crew, the maintenance of the judgement of 17 December 1997, and the continued assertion of rights over the exclusive economic zone, are plainly inconsistent with the Convention and the underlying rationale of the Tribunal’s Judgement of 4 December 1997. Moreover, as described below, there is every reason to expect that Guinea may engage in acts similar to those prosecuted concerning the m/v “SAIGA” against other vessels, and that the judgement of 17 December 1997 places at particular risk vessels flying the flag of St Vincent and the Grenadines. The Guinean authorities have provided no assurances to the contrary.
9. In these circumstances St Vincent and the Grenadines requests provisional measures as a matter of great urgency. The full reasons are set out below. The provisional measures requested are:

“St Vincent and the Grenadines requests the Tribunal to prescribe the following provisional measures:

- (1) that Guinea forthwith brings into effect the measures necessary to comply with the Judgement of the International Tribunal for the Law of the Sea of 4 December 1997, in particular that Guinea shall immediately:
 - (a) release the m/v ‘SAIGA’ and her crew;
 - (b) suspend the application and effect of the judgement of 17 December 1997 of the Court of Conakry, Guinea;
 - (c) cease and desist from enforcing, directly or indirectly, the judgement of 17 December 1997 of the Court of Conakry against any person or governmental authority; and
 - (d) subject to the limited exception as to enforcement set forth in Article 33(1)(a) of the 1982 Convention on the Law of the Sea, cease and desist from applying, enforcing or otherwise giving effect to its laws on or related to customs and contraband within the exclusive

economic zone of Guinea or at any place beyond that zone, in particular Articles 1 and 8 of Law 94/007/CTRN of 15 March 1994, Article[s] 316 and 317 of the Code des Douanes, and Articles 361 and 363 of the Penal Code, in particular as against vessels flying the flag of St Vincent and the Grenadines.

- (2) that Guinea and its governmental authorities shall cease and desist from interfering with the right of St Vincent and the Grenadines and vessels flying its flag to enjoy freedom of navigation and/or other internationally lawful uses of the sea related to the freedom of navigation as set forth *inter alia* in Articles 56(2) and 58 and related provisions of the 1982 Convention."

The reasons for which the Request is being made

10. St Vincent and the Grenadines makes this request to preserve its rights – as well as those of vessels flying its flag – under the 1982 Convention, including those rights recognised by the Tribunal's Judgement of 4 December 1997. Those rights – in particular the enjoyment of freedom of navigation and/or other internationally lawful uses of the sea related to the freedom of navigation as set forth *inter alia* in Articles 56(2) and 58 of the 1982 Convention (which rights St Vincent and the Grenadines consider to be reflected in customary international law) and compliance by Guinea with the Tribunal's Judgement of 4 December 1997 – are directly violated by the judgement of 17 December 1997 of the Court of Conakry and by the maintenance by Guinea of its right to apply and enforce customs and contraband laws in its exclusive economic zone.

The continuing threat to the freedom of navigation posed by the judgement of the Court of Conakry of 17 December 1997

11. On 10 December 1997 – six days after this Tribunal's Judgement ordering prompt release – the Procureur de la République de Guinée issued a "Cedule de Citation" which formally charged the Master of the m/v "SAIGA" with contraband activities in violation of the customs laws indicated in the Procès-Verbal (see Arbitration Notification, para. 5). The Cedule named as "Civilement – Responsable à Citer" the State of St Vincent and the Grenadines, making it (and possibly also vessels flying its flag) liable for any penalty or fine awarded by the Guinean courts. Criminal hearings opened on 12 December 1997 – without the Master of the vessel being given a chance to meet with his lawyer – before the Tribunal de Première Instance of the Cour d'Appel of Conakry. Saint Vincent and the Grenadines was never notified that it had been civilly joined to the criminal proceedings. The Conakry Court gave oral judgement on 17 December 1997 (as at 5 January 1997 the judgement had not been published in writing). The Judgement generally accepted the request for relief sought by the Guinean authorities (see Arbitration

Notification, para. 19) and *inter alia* imposed a criminal fine of approximately US\$15 million against the master of the vessel and ordered the confiscation of the vessel.

12. Since the State of St Vincent and the Grenadines was cited in the Cedula de Citation as “civilmente responsable” the \$15 million fine imposed by the Court in its Judgement of 17 December 1997 is liable to be enforced against the State itself as well as against vessels flying its flag which are located *inter alia* within the exclusive economic zone of Guinea (or beyond). It is now common knowledge in the shipping industry that the Guinean authorities are actively and repeatedly engaged in what amounts to state sponsored or supported piracy in and around the exclusive economic zone of Guinea such that vessels are advised to and do avoid that area so far as they can. The Judgement of 17 December 1997 causes a particular threat to vessels flying the flag of St Vincent and the Grenadines who are particularly cautioned to avoid areas around the exclusive economic zone of Guinea. Accordingly, one of the principal and urgent reasons for bringing this Request is to remove immediately that threat to freedom of navigation under the 1982 Convention posed by the judgement of 17 December 1997.

The continuing threat to freedom of navigation posed by the actions of the Guinean authorities in and beyond the exclusive economic zone of Guinea

13. A second urgent reason for bringing this Request is to remove the threat to freedom of navigation in the exclusive economic zone of Guinea – and beyond – created by the actions of the Guinean authorities in and beyond those waters.
14. It is important to bear in mind that precise legal justification of the actions taken by the Guinean authorities against the m/v “SAIGA” was only determined some days *after* the vessel had been fired at (injuring several crew members), boarded, detained, and brought into Conakry at gunpoint, and with the benefit of the additional information available on board the vessel to help concoct charges (see for example para. 70 of the Judgement of the Tribunal of 4 December 1997).
15. The authorities in Guinea determined to prosecute the “SAIGA” exclusively in relation to domestic customs and contraband laws, presumably on the basis that they were of the view that this was the best way to seek to justify their actions, including ordering discharge and obligatory purchase of the cargo. In so doing, the Guinean authorities have indisputably purported to apply these domestic laws within (and beyond) the exclusive economic zone of Guinea, a justification which the Tribunal for the Law of the Sea indicated in its Judgement of 4 December 1997 to be *prima facie* unlawful (*Judgement of the Tribunal of 4 December 1997*, para. 72).

16. Subsequently those actions and their basis have been upheld as lawful by the 17 December 1997 Judgement of the Conakry Court. This means, in effect, that vessels flying the flag of St Vincent and the Grenadines, as well as all other vessels, are at continuing risk from seizure and are thereby precluded from enjoying or seeking to enjoy freedom of navigation and/or other internationally lawful uses of the sea related to the freedom of navigation as set forth *inter alia* in Articles 56 (2) and 58 and related provisions of the 1982 Convention.
17. The further implementation by Guinea of its customs and contraband laws¹ in the exclusive economic zone would, by anticipating the judgement of the Arbitral Tribunal, prejudice the rights claimed by St Vincent and the Grenadines and affect the possibility of their full restoration in the event of a judgement in its favour (in this regard see *Fisheries Jurisdiction (United Kingdom v. Iceland)*, *Interim Protection, Order of 17 August 1972*, *I.C.J. Reports*, p. 12, 16).

Further considerations

18. This Request is being made because the actions taken by Guinea against the m/v "SAIGA" – as well as their purported legal justification – are not isolated incidents. They have been preceded by a series of similar actions taken against other vessels enjoying freedom of navigation in the exclusive economic zone of Guinea. No less than eight previous incidents in the past two or three years involving unlawful attacks on tankers of which the Applicants are aware were referred to in the Memorial lodged by St Vincent and the Grenadines in the "prompt release" proceedings, including one ("ALFA 1") where the Guinean authorities left an oil tanker on fire with her crew on board. Guinea has not denied that those incidents occurred. The tankers involved in those incidents are the "AFRICA" (twice), the "NAPETCO" (twice), the "TOURMALET", the "ALFA 1", the "LEONA 1" and the "LEONA 2". In addition it is understood that the Guinean Authorities are known to shoot at fishing vessels (contrary to Article 73(3) of the Convention), the most recent incidents being on the f/v "XIFI AF" and the f/v "POISSIDON" which were attacked and looted in early December of 1997.

¹ Specifically: Articles 1 and 8 of the Law 94/007/CTRN of 15 March 1994 (prohibiting in the Republic of Guinea the import, transport, storage and distribution of fuel by any person not legally authorised, and providing for subsequent penalties); Articles 316 and 317 of the Code des Douanes (providing respectively for the confiscation of objects used in relation to fraudulent activities and the definition of contraband); and Articles 361 and 363 of the Penal Code (concerning respectively the criminal sentences for fraudulent import of money and the legality of the use of force in relation to the prevention of smuggling).

19. There is therefore every reason to expect that further actions will be taken against vessels flying the flag of St Vincent and the Grenadines and of other states, whether to recover moneys pursuant to the judgement of 17 December 1997 or for any other reason. In this regard it is appropriate to recall that the events giving rise to the dispute and the arbitration proceedings caused serious bodily injuries to crew members of the m/v “SAIGA” and continue to result in the vessel and its crew being held in captivity and deprived of their liberty for over three months, including over a month after the Tribunal gave its Judgement of 4 December and more than three weeks after the bond for \$400,000 was posted in circumstances where the daily running costs for the “SAIGA” in Conakry (e.g. crew wages, bunkers, mortgage, insurance etc.) are not significantly less than her daily hire rate of US\$ 4,250. These acts caused irreparable damage to the rights that St Vincent and the Grenadines have in the exclusive economic zone of Guinea. The prescription by the Tribunal of the provisional measures requested would assist in minimising the likely risk of further irreparable damage being caused to St Vincent and the Grenadines or vessels flying its flag. Provisional measures would also limit the possibility that further actions by the Guinean authorities might aggravate or extend this dispute. Granting these provisional measures would assist in rendering settlement of the existing dispute more likely.

The consequences of not granting the Request are potentially very serious

20. The failure to grant the provisional measures requested would have, *inter alia*, two serious and continuing consequences. *First*, St Vincent and the Grenadines and vessels flying its flag would be subject to the risk of actions by the Guinean authorities to recover moneys pursuant to the judgement of 17 December 1997 and the fine of approximately US\$15 million. *Second*, St Vincent and the Grenadines and vessels flying its flag, as well as all other vessels, which were enjoying freedom of navigation and/or other internationally lawful uses of the sea related to the freedom of navigation as set forth *inter alia* in Articles 56(2) and 58 and related provisions of the 1982 Convention within the exclusive economic zone of Guinea, and beyond, would be subject to the risk of unlawful measures by the Guinean authorities, including measures enforcing Guinean customs and contraband laws in those waters.
21. Whether taken individually or together these consequences have had and would continue to have the effect of discouraging – if not preventing altogether – vessels flying the flag of St Vincent and the Grenadines, as well as many other vessels, from entering the exclusive economic zone of Guinea for the purposes of enjoying freedoms under the 1982 Convention. The failure to prescribe the provisional measures requested would deny freedom of navigation rights and, in effect, extend the “rights” of Guinea over its exclusive economic zone pending the decision of the Arbitral Tribunal. This result would be plainly inconsistent with the 1982 Convention.

The arbitral tribunal has jurisdiction

22. St Vincent and the Grenadines and Guinea are both parties to UNCLOS. Guinea ratified UNCLOS on 6 September 1985, and St Vincent ratified on 1 October 1993. Neither party has by means of written declaration at the time of signature or ratification or at any time thereafter chosen one of the means for the settlement of disputes set out in Article 287(1) of the Convention. Accordingly, by application of Article 287(3) of the Convention, both parties are deemed to have accepted arbitration in accordance with Annex VII of the Convention.
23. This is a dispute concerning *inter alia* the contravention by Guinea of the provisions of the Convention in regard to the freedoms and rights of navigation or in regard to other internationally lawful uses of the sea specified in Article 58 of the Convention. Accordingly, by application of Article 297(1)(a) the dispute is one in respect of which Guinea has accepted the jurisdiction of arbitration proceedings under Part XV Section 2 of the Convention.

The situation is urgent

24. The actions taken by the Guinean authorities against the m/v "SAIGA" and the judgement of 17 December 1997 have had an immediate and chilling effect on the freedom of navigation within the exclusive economic zone of Guinea. These waters are used by a very large number of vessels sailing the waters off the west coast of Africa, a number of which are or have been engaged in the same "bunkering" activities as the m/v "SAIGA". As a result of the Guinean actions many vessels are incurring increased financial costs, whether because they are re-routing or because they are employing armed protection. Beyond violating the sovereign rights of St Vincent and the Grenadines the financial consequences arising are very significant.
25. Moreover, the effect of citing St Vincent and the Grenadines in the criminal proceedings and making it civilly liable for the fine imposed upon the Master is to subject all vessels flying the flag of St Vincent and the Grenadines to potential seizure in the waters including the EEZ of Guinea. The threat constitutes an immediate, ongoing and significant interference with the rights of St Vincent and the Grenadines under the 1982 Convention.
26. Arbitral proceedings were instituted on 22 December 1997. They are unlikely to lead to a final and binding judgement in the near future. In the meantime Guinea has given no assurance that it would not seek to take action against vessels flying the flag of St Vincent and the Grenadines within its exclusive economic zone or beyond, or that it would not otherwise seek to enforce the judgement of 17 December 1997. For the reasons indicated above there is a

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real risk that these customs and contraband laws would be so applied and enforced and/or that the judgement of 17 December 1997 might lead to further actions being taken against St Vincent and the Grenadines and/or vessels flying its flag. There therefore exists a situation of urgency, including in the sense that action prejudicial to the rights of St Vincent and the Grenadines is likely to be taken before a final decision of the arbitral tribunal is given: see *Case Concerning Passage through the Great Belt (Finland v. Denmark)*, 1991 I.C.J. Reports 1991, pp. 12, 16.

ACCORDINGLY, THE GOVERNMENT OF ST VINCENT AND THE GRENADINES ASKS THE TRIBUNAL TO PRESCRIBE THE PROVISIONAL MEASURES REQUESTED for the above mentioned reasons or any of them or for any other reason that the Tribunal deems to be relevant.

5 January 1998

[Signed]

Mr. Bozo Dabinovic

Agent for the Government of St Vincent and the Grenadines

Mr. Cenio Lewis

Co-Agent for the Government of St Vincent and the Grenadines