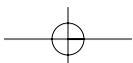
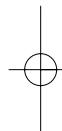
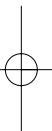
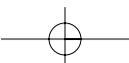
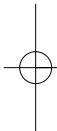
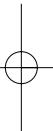


STATEMENT IN RESPONSE SUBMITTED BY GUINEA





STATEMENT IN RESPONSE

TO THE

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

– APPLICANT

Represented by its Agent Mr. Bozo Dabinovic;
Commissioner for Maritime Affairs St. Vincent
and the Grenadines, Monaco,

against
GUINEA

– RESPONDENT

Represented by its Agent Hartmut von Brevern, Barrister,
Röhr[e]ke, Boye, Remé, von Werder, Hamburg, Germany
in respect of the
M/v “SAIGA”
of 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 the Republic of Guinea this Statement in Response to the request of 5 January 1998 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”).
2. The Government of Guinea asks the Tribunal to reject the request of St. Vincent and the Grenadines for the prescription of provisional measures as some of the conditions laid down in Article 290 para. 5 of the Convention have not been satisfied.
3. The Government of Guinea is of the opinion that neither an Arbitral Tribunal nor the International Tribunal for the Law of the Sea have jurisdiction to decide the dispute as presented to the Arbitral Tribunal by request of St. Vincent and the Grenadines of 22 December 1997. Furthermore the Government of Guinea is of the opinion that the urgency of the situation does not require the prescription of provisional measures.

4. The legal grounds given by the Applicant in number 23 of their request of 5 January 1998 upon which the Arbitral Tribunal which is to be constituted would have jurisdiction do not justify a consideration of the Tribunal that prima facie the Arbitral Tribunal would have jurisdiction. To explain the legal grounds the Applicant refers to Article 58 and to Article 297 para. 1 lit. a) of the Convention.

The reference to Article 297 para. 1 lit. a) of the Convention however is not correct. The request of the Applicant concerns a dispute which is regulated in Article 297 para. 3 lit. a) of the Convention concerning the interpretation or application of the provisions of the Convention with regard to fisheries. This has been so decided by the Tribunal in its judgement of December 4, 1997, inter alia number 73.

The Tribunal in its judgement in case number 1 of 4 December 1997 has qualified the dispute in question as one which concerns the interpretation or application of the provisions of the Convention with regard to fisheries. The Tribunal has decided that the action of Guinea against MV "SAIGA" can be seen within the frame work of Article 73 of the Convention. The captain of MV "SAIGA" has violated various Guinean laws, namely

1. Maritime Code of Guinea – Article 40
2. Code of Maritime Fishing (Guinean law 95/13/CTRM of 15 May 1995)
3. Guinean law 94/007/CTRM of 25 March 1994
4. General Regulation for the Implementation of the Maritime Fisheries Code of Guinea (order number 039 PRG/85 of 23 February 1985).

As the Tribunal has explained in its judgement of 4 December 1997 Guinea through the laws mentioned before has defined its rights in the EEZ along the lines of Article 56 of the Convention. The Guinean laws constitute sovereign rights for the purpose of exploring and exploiting, conserving and managing the national resources of its EEZ which is identical to sovereign rights of Guinea with respect to the living resources in the EEZ.

5. It is however the very purpose of Article 297 para. 3 to strengthen the position of the coastal State as far as its sovereign rights with respect to the living resources in the EEZ are concerned by leaving it to the coastal State's discretion whether to accept compulsory procedures entailing binding decisions according section 2 of part XV of the Convention.

The Government of Guinea however, in the present case does not accept any other settlement procedure than the Guinean Courts. Therefore the Tribunal cannot consider that prima facie the arbitral tribunal to which the request of St. Vincent and The Grenadines of 22 December 1997 is addressed, would have jurisdiction.

6. Also another condition to be fulfilled before Article 290 para. 5 of the Convention could be applied is not met, i.e. there is no urgent need for provisional measures. The Applicant in its writ of 5 January 1998 under numbers 24, 25 and 26 gives 3 reasons all of which are in no way convincing and cannot be accepted.
7. The Applicant states that

“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” (no. 24 of writ of 5 January 1997).

It is not understandable why vessels should re-route or whether they should employ armed protection. There is no prohibition of Guinea for foreign vessels to take the route through the EEZ of Guinea. There is no danger to foreign vessels to be attacked by Guinean vessels. If the Applicant however has tankers in mind that would like to supply gasoil offshore to fishing vessels in the EEZ of Guinea the provisional measures requested would not be justified, as the question whether such activity would be in conformity with the Convention is not subject to a regulation by provisional measures but has to be the subject of the final decision of the arbitral tribunal.

Furthermore it is not correct as Applicants state under no. 25 of the writ of 5 January 1997 that all vessels flying the flag of St. Vincent and the Grenadines are subject to potential seizure in the waters including the EEZ of Guinea. This does neither follow from the citing St. Vincent and the Grenadines in the criminal proceedings nor does it follow from the judgement of the first instance Tribunal of Conakry.

The judgement of 17 December 1997 of the first instance Tribunal in Conakry makes it very clear that only captain of MV “SAIGA” is condemned to a fine and that only the vessel “SAIGA” and its cargo are confiscated as a security for the payment of the fine.

In this connection it is to be stated, that the captain of MV “SAIGA” has appealed the judgement of 17 December 1997 before the Appellate Court of Conakry.

- 9.* Furthermore the Applicants do not give any reasons for their statement, that the arbitral proceedings “are unlikely to lead to a final and binding judgement in the near future” (no. 26 of the writ of 5 January 1997).

* As in original.

10. Furthermore there is absolutely no reason for Guinea to give an "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". Why should Guinea give to all vessels flying the flag of St. Vincent and the Grenadines such "carte blanche", the more so, as it is difficult to understand what the Applicants mean by referring to an "action".
11. Finally it would be more than unusual to expect a declaration from a Government that it would not "otherwise" seek to enforce a first instance judgement.
12. *So it has to be stated that the situation does neither require nor justify the prescription of provisional measures.*
13. Alternatively in case the Tribunal does not share the view as expressed before, we shall deal in short with the provisional measures itself requested by the Applicant.

The Applicant requests that MV "SAIGA" and her crew be released. The Tribunal in its judgement of 4 December 1997 has decided that the release of MV "SAIGA" and its crew from detention shall be upon the posting of a reasonable security. However, the bank guarantee of Crédit Suisse of 10 December 1997 offered to the Respondents was not "reasonable" for various reasons, most of which are referred to in a letter of Röhreke Boye Remé von Werder of 12 December 1997 to Stephenson Harwood

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14. All the other measures requested are neither provisional ones nor has the Tribunal any competence to issue orders to the requested effect.

ACCORDINGLY, THE GOVERNMENT OF GUINEA ASKS THE TRIBUNAL TO REJECT THE REQUEST OF St.VINCENT AND THE GRENADINES OF 5. JANUARY 1998 for the above mentioned reasons or any of them or for any other reason that the Tribunal deems to be relevant.

[Signed]

Hartmut von Brevern

Barrister

Röhreke . Boye . Remé . von Werder

Agent for the Government of Guinea