



INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
TRIBUNAL INTERNATIONAL DU DROIT DE LA MER

Press Release

(Issued by the Registry)

TRIBUNAL SEIZED OF MERITS IN CASE OF "BUNKERING" OF VESSELS AT SEA - TAKES UP REQUEST FOR PROVISIONAL MEASURES -

HAMBURG, 28 February. Following an agreement between the Parties arrived at on 20 February 1998, Saint Vincent and the Grenadines and Guinea have submitted the merits (the substance) of their dispute to the International Tribunal for the Law of the Sea. The dispute concerns the interpretation and application of the United Nations Convention on the Law of the Sea. The Parties have raised important questions covering a wide range of issues relating to activities in the 200 nautical miles exclusive economic zone, which coastal States may adopt. The issues raised include:

- ***Bunkering of vessels at sea*** - The case arises from the arrest and continued detention of an oil tanker, which had been engaged in providing fishing vessels with gasoil (bunkering) off the coast of Guinea. Guinea has prosecuted the Master of the tanker, the M/V "SAIGA", for carrying out these activities, which it alleges are offences under its custom laws. Saint Vincent and the Grenadines, however, claims that the bunkering of the vessels is within the exercise of the freedom of navigation in the exclusive economic zone. The question therefore arises as to the extent to which a coastal State may regulate or control bunkering in its exclusive economic zone.
- ***Freedom of navigation*** - Saint Vincent and the Grenadines requests that Guinea respects its freedom of navigation, while Guinea responds that this right does not apply to the bunkering of fishing vessels. In contention is therefore whether the supply of gasoil to fishing vessels in the exclusive economic zone of a coastal State is part of the freedom of navigation available to foreign vessels.
- ***Enforcement of customs legislation*** - Saint Vincent and the Grenadines claims that the M/V "SAIGA" when engaged in bunkering fishing vessels never entered Guinean territorial waters. The dispute in this respect centres around whether a coastal State has a right to enforce its customs legislation in the exclusive economic zone.
- ***Contiguous zone*** - In the contiguous zone, a coastal State may exercise the control necessary to punish infringement of its customs, fiscal, immigration or sanitary laws and regulations committed within its territory or territorial sea. A State may adopt a contiguous zone up to

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24 nautical miles. Guinea claims that the bunkering took place in its contiguous zone. Saint Vincent and the Grenadines claims that there is no evidence that Guinea has ever declared a contiguous zone. Guinea claims it has created a contiguous zone by Article 13 of its Maritime Code.

- **Right of hot pursuit** - The arrest of the M/V "SAIGA", took place at a point outside Guinea's exclusive economic zone. Guinea claimed that the arrest followed a chase in which it exercised its right of "hot pursuit". Saint Vincent and the Grenadines asserts that there was no chase and the arguments put forward in order to support the existence of the requirements of "hot pursuit" and, consequently, for justifying the arrest, are not tenable, even *prima facie*. The question therefore arises whether the requirements of hot pursuit under article 111 of the Convention have been met.

Other issues raised by the Parties include:

- **Security Council resolution 1132** - Guinea claims that Security Council resolution 1132 of 8 October 1997 gave it the right and the obligation to bring back the M/V "SAIGA" from Sierra Leone's waters into Guinean waters. The resolution calls upon all States to prevent the sale or supply to Sierra Leone of petroleum and petroleum products.
- **Piracy** - Saint Vincent and the Grenadines maintains that the action taken by Guinea against the M/V "SAIGA" and similar acts against other vessels show a pattern and may be described as acts of piracy. Guinea denies this and claims to have legitimately exercised its rights under the Convention.
- **Damages and costs** - In the proceedings on the merits, Saint Vincent and the Grenadines asks for damages and the costs of the proceedings, with interest. The claim for damages is based on the alleged violations of its rights under the Convention. Saint Vincent and the Grenadines also asks for the immediate return of the equivalent in United States Dollars of the value of the gasoil discharged by Guinea (approx. US\$ one million) and return of the Bank Guarantee (US\$ 400,000). The Bank Guarantee had been presented to Guinea to achieve the immediate release of the vessel ordered by the Tribunal in its Judgment of 4 December 1997. In the Agreement to bring the case on the merits to the Tribunal, the Parties ask the Tribunal to decide on damages and costs.
- **Jurisdiction** - States Parties to the United Nations Convention on the Law of the Sea are obliged to have recourse to compulsory dispute settlement procedures entailing binding decisions. However, certain kinds of fishery disputes are exempt from such compulsory dispute settlement under the Convention and Guinea argues that the dispute falls into this category.

Agreement to submit the dispute to the Tribunal

On 20 February 1998, the Tribunal received the Agreement between Guinea and Saint Vincent and the Grenadines requesting that the Tribunal, in addition to dealing with the Request for the Prescription of Provisional Measures (a kind of interim injunction) also deal with the merits of their dispute concerning the M/V "SAIGA".

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Originally the dispute on the merits was to be submitted to an arbitral tribunal because there was no agreement between the Parties to submit it to another procedure. Pending the constitution of an arbitral tribunal the International Tribunal for the Law of the Sea, which has special competence to deal with such matters, was asked by Saint Vincent and the Grenadines to prescribe provisional measures in the case (See Press Release of the Tribunal No. 11). The Tribunal will now be dealing with both the merits and the Request for the Prescription of Provisional Measures.

The Agreement between the Parties was transmitted to the Tribunal on 20 February 1998 and provides that the written and oral proceedings before the International Tribunal for the Law of the Sea shall comprise a single phase dealing with all aspects of the merits, including damages and costs, and the objection as to jurisdiction raised by Guinea.

By Order of the Tribunal of 20 February 1998, the Tribunal accepted the case. The case was entered into the List of cases as the M/V "SAIGA" (No. 2) case. At the request of the Parties, the Tribunal agreed to treat the case as having been submitted to it on 22 December 1998, the date of the notification by Saint Vincent and the Grenadines instituting the arbitral proceedings.

The Tribunal also accepted the timetable for the filing of the written pleadings on the merits proposed by the Parties. By Order of 23 February 1998, the Tribunal fixed the time-limits for the written pleadings, while reserving the subsequent procedure for further decision. The Order records that the memorial of Saint Vincent and the Grenadines is due on 19 June 1998, the counter-memorial of Guinea on 18 September 1998, the reply by Saint Vincent and the Grenadines on 30 October 1998, and the rejoinder by Guinea on 11 December 1998.

History of the dispute

The case concerns the arrest off the coast of West Africa by Guinea of the oil tanker M/V "SAIGA" flying the flag of Saint Vincent and the Grenadines. During the arrest two members of the crew were seriously injured. Guinea claims that the M/V "SAIGA" was engaged in smuggling activities off its coast when arrested. Saint Vincent and the Grenadines accuses Guinea of piracy. The vessel and its crew have been arrested and continued to be held by Guinea since 28 October 1997.

Initially a case concerning the M/V "SAIGA" was brought by Saint Vincent and the Grenadines to the Tribunal only for the limited purpose of securing the release of the vessel and crew upon the posting of a bond or other financial security. In this case, the Tribunal, in a Judgment rendered on 4 December 1997, ordered the immediate release of the vessel on the deposit by Saint Vincent and the Grenadines of US\$ 400,000 as a security in addition to the cargo of gasoil valued US\$ one million that had been discharged from the vessel by the Guinean authorities.

The case now before the Tribunal concerns the merits of the case. It also deals with the developments after the decision of the Tribunal on the release of the vessel, which include the posting by Saint Vincent and the Grenadines of a US\$ 400,000 Bank Guarantee, of which Guinea did not accept the terms. Also, Guinea in the meantime proceeded to file criminal charges against

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the Master of the M/V "SAIGA" resulting in a Guinean court imposing a fine of approximately US\$ fifteen million. Upon the time of the hearings on the Request for the Prescription of Provisional Measures, the vessel and the crew had not yet been released.

Provisional measures

On 23 and 24 February 1998 the Tribunal conducted hearings concerning the Request for the Prescription of Provisional Measures by Saint Vincent and the Grenadines. Provisional measures are a kind of interim injunction; an order prohibiting certain behaviour pending final decision on the merits of a case. Provisional measures may be prescribed when the Tribunal "considers appropriate under the circumstances to preserve the respective rights of the parties to the dispute or to prevent serious harm to the marine environment".

Hearings

On 23 February 1998, the Tribunal took up the Request by Saint Vincent and the Grenadines for the Prescription of Provisional Measures. The oral proceedings lasted two days. His Excellency Mr. Carl Joseph, Minister of Justice of Saint Vincent and the Grenadines, opened the presentation by Saint Vincent and the Grenadines. The Minister of Justice indicated the importance that Saint Vincent and the Grenadines attaches to the proceedings before the Tribunal. The Minister stressed the economic importance of the case to his country, which is one of the seventeen largest shipping nations.

Mr. Hartmut von Brevern, Agent for Guinea, in his oral presentations stressed that the law of Guinea to forbid supplying fishing vessels offshore with gasoil is very important for the income of Guinea. The presentations of the Parties at the first day of the hearings concentrated on the issues that still kept the Parties divided. At the second day of hearings, the Agents of the Parties had a chance to reply to each others earlier submissions and to present the final submissions of their Government.

The Request of Saint Vincent and the Grenadines

Saint Vincent and the Grenadines requests the Tribunal to prescribe that Guinea should not interfere with the freedom of navigation and related rights of Saint Vincent and the Grenadines. It further requests that Guinea release the M/V "SAIGA" and its crew; suspend the application and effect of the judgements concerning the M/V "SAIGA" of the Guinean Courts; desist from enforcing these judgements; and desist from enforcing its customs laws within the exclusive economic zone. Saint Vincent and the Grenadines also submitted that Guinea should refrain from undertaking hot pursuit of vessels otherwise than authorized under the United Nations Convention on the Law of the Sea.

The reply by Guinea

Guinea asked the Tribunal to reject the request by Saint Vincent and the Grenadines and order that Saint Vincent and the Grenadines shall pay the costs of the proceedings.

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The decision on the Request

The Judges having completed their deliberations on the Request for the Prescription of Provisional Measures, have set up a Drafting Committee in accordance with the Internal Judicial Practice of the Tribunal. The Committee is composed of five Judges holding the majority opinion. The draft Order produced by this Committee will go through two readings after which a final vote will be taken to adopt the Order. The decision of the Tribunal is scheduled to be read at a public sitting of the Tribunal on 11 March 1998 at the Chamber of Commerce in Hamburg.

Further details concerning the case are contained in Press Releases Nos. 8, 9, 10, 11 and 12 of the Tribunal.

The Rules of the Tribunal, the Resolution on the Internal Judicial Practice, the Guidelines concerning the Preparation and Presentation of Cases, and previous Press Releases, setting out the background and the composition of the Tribunal are available on the United Nations website: <http://www.un.org/Depts/los/> and from the Registrar of the Tribunal. Requests may be addressed by telephone, facsimile or E-mail: Tel: (49) (40) 35607-227/228, Fax: (49) (40) 35607-245/275, E-mail: itlos@itlos.hamburg.de

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