



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

Press Release

(Issued by the Registry)

**FIRST ROUND OF WRITTEN PLEADINGS FILED IN M/V "SAIGA" (No. 2) CASE
- AFTER EXTENSION OF TIME LIMIT FOR COUNTER-MEMORIAL -**

HAMBURG, 19 October. The first round of written pleadings on the merits (the substance) of the M/V "Saiga" (No. 2) case was completed with the filing of the Counter-Memorial of Guinea with the Registrar of the Tribunal, on Friday evening, 16 October 1998. Saint Vincent and the Grenadines had earlier submitted its Memorial on 19 June 1998 in compliance with the time-limit established by the Tribunal.

On 8 September 1998, Guinea requested an extension of the time-limit for the filing of the Counter-Memorial, which was originally fixed for 18 September 1998. The President of the Tribunal, Thomas A. Mensah, on 16 September 1998, after consulting with the parties, issued an Order extending the time-limit for the filing of the Counter-Memorial by four weeks to 16 October 1998.

The time-limits for the filing of the written pleadings in the case had initially been set by Order of the Tribunal of 23 February 1998. This Order took into account the wishes of the parties and was intended to bring about expeditious proceedings, while allowing adequate time to each Government to present its case.

The extension of the time-limits for the first round of pleadings resulted in the adjustment of the dates set for the filing of the second round of pleadings. The Judges of the Tribunal were present in Hamburg for the Sixth Session of the Tribunal, which enabled the Tribunal as a whole, after consultations with the parties, to revise the dates for the second round of pleadings in an Order of 6 October 1998. The new time-limits grant each party five weeks to prepare its response to the others pleadings. Saint Vincent and the Grenadines is to file its Reply by 20 November and Guinea to file its Rejoinder by 28 December 1998.

Written pleadings

The procedure before the Tribunal normally consists of two phases, a written phase and an oral phase. When a case is submitted by Application, the written pleadings in a case start with a Memorial by the Applicant in which it substantiates its claims. The Respondent then replies to the allegations contained in the Memorial in a Counter-Memorial.

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If the Tribunal so decides, a second round of pleadings will follow in which the Applicant may file a Reply and the Respondent a Rejoinder. In this second round the parties should focus on the issues that still divide them.

The Rules of the Tribunal in general restrict the number of written pleadings to be filed by the parties to a case. For instance, the procedure for the prompt release of a vessel and its crew does not allow for extensive written briefs and in cases before the special chambers of the Tribunal, the written proceedings are limited to a single pleading by each party.

In complex cases or at the request of the parties to a case, the Tribunal may, however, authorize a second round of written pleadings. In the M/V "Saiga" (No. 2) case, the request for a second round of pleadings was part of the agreement submitting the case to the Tribunal. The pleadings must be filed within the time-limits with the Registrar of the Tribunal, who serves as the channel of communication.

Oral pleadings

The date for the opening of the oral proceedings is fixed by the Tribunal upon the closure of the written proceedings. When fixing the opening date, the Tribunal has regard to the urgency of the case and of other cases that may be pending before it.

The hearings on the merits of the case are expected to start in the beginning of March 1999. They will take place in the courtroom at the Tribunal's temporary premises in the centre of Hamburg, Germany. A further Press Release providing information about the further steps in the procedure and the exact date and time of the opening of the oral proceedings will be issued in due course.

Background

The case concerns the arrest of the oil tanker M/V "Saiga" and its crew on 28 October 1997 by the customs authorities of Guinea at a point outside its Exclusive Economic Zone. The vessel, flying the flag of Saint Vincent and the Grenadines, was manned by a crew of Ukrainian and Senegalese nationals and had been involved in re-fuelling (bunkering) fishing vessels at sea within the Exclusive Economic Zone of Guinea. The arrest of the vessel involved shots being fired by the customs authorities of Guinea resulting in injuries to some members of the crew. Following its arrest, the vessel was taken to the port of Conakry in Guinea and its cargo of gas oil was discharged by the arresting authorities.

The Government of Saint Vincent and the Grenadines filed an Application with the Tribunal on 13 November 1997 seeking the release of the vessel and its crew. The Application was disposed of expeditiously by a summary procedure that took three weeks. The Judgement of the Tribunal was complied with and the vessel and its crew were released from detention by the Guinean authorities. The release was upon the posting of a bond for US\$400,000 as prescribed by the Tribunal in its Judgment delivered on 4 December 1997.

The Application was submitted to the Tribunal under the procedure for the prompt release of a vessel and its crew provided for in article 292 of the United Nations Convention on the Law of the Sea. In such a case, the Tribunal may only deal with the question of the release and the determination

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of the bond or other security. The procedure does not include a determination of the merits of the underlying dispute nor does it prejudice the merits of any case before the appropriate domestic court.

In order to obtain a decision on the essence of the dispute (the merits), the parties subsequently by joint agreement submitted the merits of the case to the Tribunal. The proceedings on the merits raise many important issues, including: the freedom of navigation, the enforcement of customs laws, the bunkering of vessels and the right of hot pursuit (See Press Release No. 13). A decision on the merits will also address the question whether the posted bond should be paid out or returned and whether any damages are due to any of the parties.

Overview

- On 28 October 1997, the M/V "Saiga" flying the flag of Saint Vincent and the Grenadines was arrested by Guinean patrol boats off the coast of West Africa. Two members of the crew were seriously injured during the arrest. The vessel had been engaged in supplying gas oil to fishing vessels. Saint Vincent and the Grenadines accused Guinea of piracy. Guinea accused the vessel of being engaged in smuggling activities.
- On 13 November 1997, Saint Vincent and the Grenadines filed an Application for the prompt release of the vessel and its crew with the Registrar of the Tribunal. Eight days later the Tribunal convened to hear the case.
- On 4 December 1997, six days after the closure of the hearings, and only three weeks after the institution of the proceedings, the Tribunal delivered its Judgment in the M/V "Saiga" (prompt release) case. The Tribunal ordered the immediate release of the vessel and its crew on the deposit by Saint Vincent and the Grenadines of a bond for US\$ 400,000 in addition to the security of the cargo of gas oil valued US\$ one million, which had already been discharged from the vessel by the Guinean authorities.
- On 13 January 1998, the Government of Saint Vincent and the Grenadines duly filed a Request for the prescription of provisional measures pending the constitution of an arbitral tribunal with the Registrar of the Tribunal. The Request was for Guinea not to interfere with the freedom of navigation and related rights of Saint Vincent and the Grenadines. It further requested that Guinea immediately comply with the Judgment of the Tribunal of 4 December 1997, in the M/V "Saiga" case.
- On 20 February 1998, the parties agreed to submit the merits of their dispute to the Tribunal instead of an arbitral tribunal. Thereby the Request for the prescription of provisional measures became incidental to the decision on the merits of the case.
- On 4 March 1998, the Tribunal received information that the oil tanker, the M/V "Saiga", its captain and its crew had been released.
- On 11 March 1998, the Tribunal issued an Order on the Request for provisional measures ordering that Guinea refrain from taking any enforcement measures against the M/V "Saiga". It also recommended that parties should prevent the aggravation or extension of the dispute.

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- On 16 September 1998, the President of the Tribunal issued an Order extending the time-limit for the filing of the Counter-Memorial by Guinea by four weeks and reserving the subsequent procedure for further decision.
- On 6 October 1998, the Tribunal issued an Order setting the time-limits for the filing of the second round of pleadings.
- In March 1999 the oral proceedings are expected to begin.

The case has been submitted to the whole Tribunal comprised of 21 Judges. The Members of the Tribunal are President Thomas A. Mensah (Ghana), Vice-President Rüdiger Wolfrum (Germany), Judges Lihai Zhao (China), Hugo Caminos (Argentina), Vicente Marotta Rangel (Brazil), Alexander Yankov (Bulgaria), Soji Yamamoto (Japan), Anatoly Lazarevich Kolodkin (Russian Federation), Choon-Ho Park (Republic of Korea), Paul Bamela Engo (Cameroon), L. Dolliver M. Nelson (Grenada), P. Chandrasekhara Rao (India), Joseph Akl (Lebanon), David Anderson (United Kingdom), Budislav Vukas (Croatia), Joseph Sinde Warioba (United Republic of Tanzania), Edward Arthur Laing (Belize), Tullio Treves (Italy), Mohamed Mouldi Marsit (Tunisia), Gudmundur Eiriksson (Iceland), and Tafsir Malick Ndiaye (Senegal) in order of seniority.

Mr. Gritakumar E. Chitty (Sri Lanka) is the Registrar of the Tribunal. Mr. Philippe H. Gautier (Belgium) is the Deputy Registrar.

Further details concerning the case are contained in Press Releases Nos. 8 to 15 of the Tribunal. Earlier Press Releases and further information can be obtained from the Tribunal's Registry. Please contact Mr. Robert van Dijk, Legal Officer at the Tribunal, at Tel: (49) (40) 35607-228 or Ms. Isabelle Kreiner, Press Assistant, at Tel: (49) (40) 35607-227 or Fax: (49) (40) 35607-245.

The Press Releases of the Tribunal, documents and other information are available on the United Nations website: <http://www.un.org/Depts/los/> and from the Registry of the Tribunal, Wexstrasse 4, 20355 Hamburg, Germany, Tel: (49) (40) 35607-227/228, Fax: (49) (40) 35607-245/275 or United Nations DC-1, suite 1140, New York, NY 10017, Tel: (1) (212) 963-6480, Fax: (1) (212) 963-0908, E-mail: itlos@itlos.hamburg.de

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