



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

Press Release

(Issued by the Registry)

**TRIBUNAL AWARDS US \$2,123,357 AS COMPENSATION
FOR ARREST AND DETENTION OF VESSEL AND CREW IN VIOLATION OF
UNITED NATIONS CONVENTION ON THE LAW OF THE SEA**

Hamburg, 1 July. The International Tribunal for the Law of the Sea, today, by eighteen votes to two declared that Guinea violated the rights of Saint Vincent and the Grenadines in arresting the M/V "Saiga" and awarded Saint Vincent and the Grenadines US\$ 2,123,357 with interest as compensation. In doing so it allotted compensation for the detention of the Captain and the crew, for the gunshot injuries to the Second Officer and another, the confiscated cargo and the damage to the vessel. The Tribunal also decided that Guinea had used excessive force when arresting the vessel.

The Tribunal rejected the claim by Saint Vincent and the Grenadines that Guinea violated its rights by naming Saint Vincent and the Grenadines as civilly responsible in the schedule of summons against the Master of the Saiga. The Tribunal also rejected Saint Vincent's claim that Guinea violated its rights by failing to promptly release the Saiga and its crew. In previous proceedings, the Tribunal ordered its release on the deposit of a security.

The sitting for the delivery of the Judgment was announced by the Registrar of the Tribunal, Mr. Gritakumar E. Chitty. The President of the Tribunal, Thomas A. Mensah, read the judgment of the Tribunal.

Judgment available at United Nations website: <http://www.un.org/Depts/los/>

The Judgment will be made available by the Division of Ocean Affairs and the Law of the Sea of the United Nations on the United Nations Website shortly after its issuance

The case was submitted to the 21 member Tribunal: *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

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(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 Sindi Warioba (United Republic of Tanzania), Edward Arthur Laing (Belize), Tullio Treves (Italy), Mohamed Mouldi Marsit (Tunisia), Gudmundur Eiriksson (Iceland), Tafsir Malick Ndiaye (Senegal); and *Registrar* Gritakumar E. Chitty (Sri Lanka).

The Judgment as a whole was adopted by a vote in which all Judges participated except for Judge Yamamoto, who was unable to participate.

Judges Caminos, Yankov, Akl, Anderson, Vukas, Treves, and Eiriksson have appended a joint declaration. *President* Mensah; *Vice-President* Wolfrum; and *Judges* Zhao, Nelson, Chandrasekhara Rao, Anderson, Vukas and Laing have appended separate opinions to the judgment. *Judges* Warioba and Ndiaye have appended dissenting opinions.

Background

Saint Vincent and the Grenadines and Guinea by Agreement submitted a request to the Tribunal to deal with all aspects of the merits of their dispute, including damages and costs, and the objection as to jurisdiction raised by Guinea in the dispute between them concerning the arrest off the coast of West Africa by Guinea of the oil tanker Saiga flying the flag of Saint Vincent and the Grenadines.

The proceedings on the merits raised many important issues under the United Nations Convention on the Law of the Sea (Convention), including: the freedom of navigation and other internationally lawful uses of the seas, the enforcement of customs laws, re-fuelling (bunkering) vessels at sea, and the right of hot pursuit (See Press Release No. 13).

The international dimension of the case was well illustrated. The Governments concerned are both from developing countries from different geographical regions. At the time of the arrest, the vessel was a Cypriot owned oil tanker; under a Swiss charterer; managed by a Scottish company; of Saint Vincent and the Grenadines' registry; with a crew from Ukraine and Senegal. The vessel was pursued and arrested by customs patrol boats of Guinea; and the arrest took place in Sierra Leonean waters. The Agents, Counsel and Advocates representing the parties came from Germany, Guinea, Saint Vincent and the Grenadines, Senegal, and the United Kingdom.

Reasoning

The Tribunal begins by noting that there is no disagreement between the parties regarding the jurisdiction of the Tribunal. It then continues to deal with the challenges to admissibility of the case raised by Guinea after it dismissing Saint Vincent's objections to the right of Guinea to challenge admissibility.

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The admissibility is challenged by Guinea on four grounds: (1) non-valid registration of the Saiga, (2) lack of a genuine link between Saint Vincent and the Grenadines and the Saiga, (3) failure to exhaust remedies available under Guinean law, and (4) that the nationality of the claims is not that of Saint Vincent and the Grenadines. The Tribunal rejects the challenges to admissibility, thereby opening the way to consideration of the merits (the substance) of the case.

On the merits, the parties request the Tribunal to deal with numerous important law of the sea issues. The Tribunal first considers whether the arrest was lawful. It finds that, by applying its customs laws to a customs radius, which includes parts of the exclusive economic zone, Guinea acted in a manner contrary to the Convention and that, consequently, the arrest and detention of the Saiga, the prosecution and conviction of its Master, the confiscation of the cargo and the seizure of the ship were unlawful.

With respect to the right of hot pursuit claimed by Guinea, the Tribunal finds that several conditions were not fulfilled; finding *inter alia* that the alleged pursuit was interrupted and that no laws or regulations of Guinea applicable in accordance with the Convention were violated by the Saiga. The Tribunal concludes that it follows that there was no legal basis for the exercise of the right of hot pursuit by Guinean officials in this case.

The Tribunal, in considering the force used by Guinea in the arrest of the Saiga, finds that Guinea's officials used excessive force and endangered human life before and after boarding the Saiga. The Tribunal notes that there is no excuse for the fact that the officers fired at the ship itself with live ammunition causing considerable damage to the ship and to vital equipment in the engine and radio rooms and, more seriously, to two of the persons on board.

Saint Vincent and the Grenadines requested the Tribunal to find that Guinea violated its rights under international law by citing Saint Vincent and the Grenadines as "civilly liable" in the schedule of summons issued in connection with the criminal proceedings against the Master of the Saiga before the Tribunal of First Instance of Conakry. The Tribunal, while considering the naming of Saint Vincent inappropriate, does not find it a violation of its rights.

After examination of the factors that contributed to the delay in releasing the ship, the Tribunal finds that not all of them can be said to be due to the fault of Guinea. Therefore, the Tribunal does not find that Guinea failed to comply promptly with the Judgment of 4 December 1997.

The Tribunal then examines the damage and interest payable to Saint Vincent, further to the well-established rule of international law that a State which suffers damage as a result of an internationally wrongful act by another State is entitled to obtain reparation for the damage suffered from the State which committed the wrongful act. The Tribunal awards compensation in the total amount of US\$ 2,123,357. The compensation is largely in respect of the damage and loss suffered by the ship owner, charterer, cargo owner, Master and crew.

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The Tribunal observes that with regard to the claims of Saint Vincent and the Grenadines for compensation for violation of its rights in respect of ships flying its flag, the declaration that Guinea acted wrongfully and violated the rights of Saint Vincent and the Grenadines constitutes adequate reparation. In addition, the Tribunal orders that the bank guarantee is to be treated as no longer effective and should be returned by Guinea forthwith to Saint Vincent and the Grenadines.

Both parties requested the Tribunal to award legal and other costs. The Tribunal sees no need to depart from the general rule that each party bears its own costs. Accordingly, with respect to both phases of the present proceedings, it decides that each party shall bear its own costs.

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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