

# INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



**YEAR 1998**

11 March 1998

List of cases:  
No. 2

## **THE M/V "SAIGA" (No. 2) CASE**

(SAINT VINCENT AND THE GRENADINES *v.* GUINEA)

Request for provisional measures

### **ORDER**

*Present:* *President* MENSAH; *Vice-President* WOLFRUM; *Judges* ZHAO, CAMINOS, MAROTTA RANGEL, YANKOV, YAMAMOTO, KOLODKIN, PARK, BAMELA ENGO, NELSON, CHANDRASEKHARA RAO, AKL, ANDERSON, VUKAS, WARIOBA, LAING, TREVES, MARSIT, EIRIKSSON, NDIAYE; *Registrar* CHITTY.

THE TRIBUNAL,

Composed as above,

After deliberation,

Having regard to article 287, paragraph 4, and article 290 of the United Nations Convention on the Law of the Sea (hereinafter "the Convention") and articles 21 and 25 of the Statute of the Tribunal (hereinafter "the Statute"),

Having regard to articles 89 and 90 of the Rules of the Tribunal (hereinafter "the Rules"),

Having regard to the Notification submitted by Saint Vincent and the Grenadines to Guinea on 22 December 1997 instituting proceedings in accordance with Annex VII to the Convention in respect of a dispute concerning the M/V Saiga,

Having regard to the Request submitted by Saint Vincent and the Grenadines to the Tribunal on 13 January 1998 for the prescription of provisional measures by the Tribunal in accordance with article 290, paragraph 5, of the Convention,

Having regard to the Exchange of Letters dated 20 February 1998 constituting an agreement between Guinea and Saint Vincent and the Grenadines to submit the dispute between Saint Vincent and the Grenadines and Guinea relating to the M/V Saiga to the International Tribunal for the Law of the Sea,

Having regard to the Order of the Tribunal of 20 February 1998 by which the Request for the prescription of provisional measures is considered as having been duly submitted to the Tribunal under article 290, paragraph 1, of the Convention,

*Makes the following Order:*

1. *Whereas* Saint Vincent and the Grenadines and Guinea are both States Parties to the Convention;
2. *Whereas*, following an Application by Saint Vincent and the Grenadines for the prompt release of the M/V Saiga and its crew under article 292 of the Convention, the Tribunal delivered a judgment on 4 December 1997;
3. *Whereas*, on 13 January 1998, Saint Vincent and the Grenadines filed with the Registry of the Tribunal a Request for the prescription of provisional measures in respect of a dispute between the Government of Saint Vincent and the Grenadines and the Government of Guinea in connection with the arrest by the Guinean authorities of a vessel, the M/V Saiga, flying the flag of Saint Vincent and the Grenadines;
4. *Whereas* Saint Vincent and the Grenadines, in its Request, invoked article 290, paragraph 5, of the Convention as the basis for the jurisdiction of the Tribunal;

5. *Whereas* a certified copy of the Request was sent the same day by the Registrar of the Tribunal to the Minister for Foreign Affairs of Guinea, Conakry, and also in care of the Ambassador of Guinea to Germany;

6. *Whereas* the Registrar was informed of the appointment of Mr. Bozo Dabinovic, Commissioner for Maritime Affairs of Saint Vincent and the Grenadines, as Agent of Saint Vincent and the Grenadines, and the appointment of Mr. Hartmut von Brevern, Barrister, Hamburg, as Agent of Guinea;

7. *Whereas*, after having ascertained the views of the parties, the President of the Tribunal, by Order of 20 January 1998, fixed 23 February 1998 as the date for the opening of the hearing with respect to the Request, notice of which was communicated to the parties;

8. *Whereas* Guinea filed with the Registry of the Tribunal a Statement in response on 30 January 1998, Saint Vincent and the Grenadines submitted a Reply on 13 February 1998 and Guinea submitted a Rejoinder on 20 February 1998, and copies of those documents were forthwith transmitted by the Registrar to the other party;

9. *Whereas* the Tribunal held its initial deliberations on 18 and 19 February 1998, in accordance with article 68 of the Rules, and noted the points and issues it wished the parties specially to address;

10. *Whereas*, in accordance with article 24, paragraph 3, of the Statute, States Parties to the Convention were notified of the Application by a note verbale from the Registrar dated 20 February 1998, *inter alia*, through their Permanent Representatives to the United Nations in New York;

11. *Whereas*, at a meeting with the representatives of the parties on 20 February 1998, the President of the Tribunal ascertained the views of the parties regarding the procedure for the hearing and, in accordance with article 76 of the Rules, informed them of the points and issues which the Tribunal wished the parties specially to address;

12. *Whereas* the President of the Tribunal was informed on 20 February 1998 in writing by the Agent of Guinea that the Government of Guinea and the Government of Saint Vincent and the Grenadines had agreed to transfer to the International Tribunal for the Law of the Sea the arbitration proceedings instituted by Saint Vincent and the Grenadines by its Notification of 22 December 1997;

13. *Whereas*, on the same day, by letter to the Registrar, the Agent of Guinea notified the Tribunal of the Exchange of Letters constituting the Agreement;

14. *Whereas* this Agreement reads as follows:

“Mr. Bozo Dabinovic  
Agent and Maritime Commissioner of  
St. Vincent and the Grenadines

...

Hamburg, 20.02.1998

...

Upon the instruction of the Government of the Republic of Guinea I am writing to inform you that the Government has agreed to submit to the jurisdiction of the International Tribunal for the Law of the Sea in Hamburg the dispute between the two States relating to the MV 'SAIGA'. The Government therefore agrees to the transfer to the International Tribunal for the Law of the Sea of the arbitration proceedings instituted by St. Vincent and the Grenadines by Notification of 22 December 1997. You will find attached hereto written instructions from the Minister of Justice to that effect.

Further to the recent exchange of views between the two Governments, including through the good offices of the President of the International Tribunal for the Law of the Sea, the Government of Guinea agrees that submission of the dispute to the International Tribunal for the Law of the Sea shall include the following conditions:

1. The dispute shall be deemed to have been submitted to the International Tribunal for the Law of the Sea on the 22 December 1997, the date of the Notification by St. Vincent and the Grenadines;
2. 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 in the Government of Guinea's Statement of Response dated 30 January 1998;
3. The written and oral proceedings shall follow the timetable set out in the Annex hereto;
4. The International Tribunal for the Law of the Sea shall address all claims for damages and costs referred to in paragraph 24 of the Notification of 22 December 1997 and shall be entitled to make an award on the legal and other costs incurred by the successful party in the proceedings before the International Tribunal;
5. The Request for the Prescription of Provisional Measures submitted to the International Tribunal for the Law of the Sea by St. Vincent and the Grenadines on 13 January 1998, the Statement of Response of the Government of Guinea dated 30 January 1998, and all subsequent documentation submitted by the parties in connection with the Request shall be considered by the Tribunal as having been submitted under Article 290, paragraph 1, of the Convention on the Law of the Sea and Article 89, paragraph 1, of the Rules of the Tribunal.

The agreement of the Government of St. Vincent and the Grenadines to the submission of the dispute to the International Tribunal on these conditions may be indicated by your written response to this letter. The two letters shall constitute a legally binding Agreement ('Agreement by Exchange of Letters') between the two States to submit the dispute to the International Tribunal for the Law of the Sea, and shall become effective immediately. The Republic of Guinea shall submit the Agreement by Exchange of Letters to the President of the International Tribunal for the Law of the Sea immediately after its conclusion. Upon confirmation by the President that he has received the Agreement and that the International Tribunal is prepared to hear the dispute the arbitration proceedings instituted by the Notification

dated 22 December 1997 shall be considered to have been transferred to the jurisdiction of the International Tribunal for the Law of the Sea.

I look forward to receiving your early response.  
Yours sincerely,

*(Signed)*  
Hartmut von Brevern  
Agent of the Republic of Guinea  
...”

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“Mr. Hartmut von Brevern,  
...  
Hamburg,

...  
20<sup>th</sup> February 1998

...  
I am in receipt of your letter of 20<sup>th</sup> February 1998 addressed to Mr. Bozo Dabinovic, Agent and Maritime Commissioner of St. Vincent and the Grenadines, in relation to the Arbitration proceedings concerning the M/V ‘SAIGA’ as well as the request for provisional measures.

On behalf of the Government of St. Vincent and the Grenadines I have the honour to confirm that my Government agrees to the submission of the dispute to the International Tribunal for the Law of the Sea subject to the conditions set out in your letter of 20<sup>th</sup> February 1998. A copy of this letter is attached hereto.

I remain Sir,

Yours sincerely,

*(Signed)*  
Carl L. Joseph  
Attorney General.  
...”

15. *Whereas* the Order of the Tribunal of 20 February 1998 states, *inter alia*, that:

“the Tribunal is satisfied that Saint Vincent and the Grenadines and Guinea have agreed to submit the dispute to it,

... the Notification submitted by Saint Vincent and the Grenadines on 22 December 1997 instituting proceedings against Guinea in respect of the M/V ‘Saiga’ shall be deemed to have been duly submitted to the Tribunal on that date;

... the Request for the prescription of provisional measures, the Response, Reply, Rejoinder, all communications and all other documentation relating to the Request for the prescription of provisional measures be considered as having been duly submitted to the Tribunal under article 290, paragraph 1, of the Convention and article 89, paragraph 1, of the Rules of the Tribunal ...;

...

the case be recorded in the List of cases as the M/V 'SAIGA' (No. 2) case";

16. *Whereas* notice of the Order was communicated to the parties and a copy thereof was subsequently transmitted by the Registrar to them;

17. *Whereas*, pursuant to article 67, paragraph 2, of the Rules, copies of the Request, the Statement in response, the Reply, the Rejoinder and the documents annexed thereto were made accessible to the public on the date of the opening of the oral proceedings;

18. *Whereas* oral statements were presented at three public sittings held on 23 and 24 February 1998 by the following:

On behalf of Saint Vincent and the Grenadines	:	Mr. Carl Joseph, Attorney General and Minister of Justice of Saint Vincent and the Grenadines, Mr. Nicholas Howe, Mr. Philippe Sands, Mr. Yérim Thiam, Counsel and Advocates;
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On behalf of Guinea	:	Mr. Hartmut von Brevern, Agent;
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19. *Whereas*, at two public sittings held on 23 February 1998, the parties also addressed the points and issues raised with the Agents of the parties by the President of the Tribunal at the meeting referred to in paragraph 11;

20. *Whereas*, in the Notification of 22 December 1997, Saint Vincent and the Grenadines recounted a sequence of events, beginning on 28 October 1997 and involving the arrest and continued detention of the M/V Saiga and its crew by Guinean authorities; and whereas, on the basis of the facts and reasons there alleged, the Tribunal is requested to adjudge and declare that:

“(1) the actions of Guinea (*inter alia* the attack on the m/v 'SAIGA' and her crew in the exclusive economic zone of Sierra Leone, its subsequent arrest, its detention and the removal of the cargo of gasoil, its filing of charges against St Vincent & the Grenadines and its subsequently issuing of a judgment against them) violate 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 Convention;

(2) subject to the limited exceptions as to enforcement provided by Article 33 (1)(a) of the Convention, the customs and contraband laws of Guinea, namely *inter alia* Articles 1 and 8 of Law 94/007/CTRN of 15 March 1994, Articles 316 and

317 of the Code des Douanes, and Articles 361 and 363 of the Penal Code, may in no circumstances be applied or enforced in the exclusive economic zone of Guinea;

- (3) Guinea did not lawfully exercise the right of hot pursuit under Article 111 in respect of the m/v 'SAIGA' and is liable to compensate the m/v 'SAIGA' pursuant to Article 111(8) of the Convention;
- (4) Guinea has violated Articles 292(4) and 296 of the Convention in not releasing the m/v 'SAIGA' and her crew immediately upon the posting of the guarantee of US\$400,000 on 10 December 1997 or the subsequent clarification from Credit Suisse on 11 December;
- (5) the citing of St Vincent and the Grenadines as the flag state of the m/v 'SAIGA' in the criminal courts and proceedings instituted by Guinea violates the rights of St Vincent and the Grenadines under the 1982 Convention;
- (6) Guinea immediately release the m/v 'SAIGA' and her master and crew;
- (7) Guinea immediately return the equivalent in United States Dollars of the discharged gasoil and return the Bank Guarantee;
- (8) Guinea is liable for damages as a result of the aforesaid violations with interest thereon; and
- (9) Guinea shall pay the costs of the Arbitral proceedings and the costs incurred by St Vincent and the Grenadines”;

21. *Whereas* the provisional measures requested by Saint Vincent and the Grenadines in the Request dated 13 January 1998, as subsequently revised in paragraph 52 of its Reply dated 13 February 1998, are as follows:

- “(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 Tribunal de Premiere Instance of Conakry and/or the judgement of 3 February 1998 of the Cour d'Appel of Conakry;
  - (c) cease and desist from enforcing, directly or indirectly, the judgement of 17 December 1997 and/or the judgement of 3 February 1998 against any person or governmental authority;
  - (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 (including in particular Articles 1 and 8 of law 94/007/CTRN of 15 March 1994, Articles 316 and 317 of the Codes des Douanes, and Articles 361 and 363 of the Penal Code) against vessels registered in St Vincent and the Grenadines and engaged in bunkering activities in the waters around Guinea outside its 12-mile territorial waters;

- (2) that Guinea and its governmental authorities shall cease and desist from interfering with the rights of vessels registered in St Vincent and the Grenadines, including those engaged in bunkering activities, to enjoy freedom of navigation and/or other internationally lawful uses of the sea related to freedom of navigation as set forth inter alia in Articles 56(2) and 58 and related provisions of the 1982 Convention;
- (3) that Guinea and its governmental authorities shall cease and desist from undertaking hot pursuit of vessels registered in St Vincent and the Grenadines, including those engaged in bunkering activities, except in accordance with the conditions set forth in Article 111 of the 1982 Convention, including in particular the requirement that 'such pursuit must be commenced when the foreign ship or one of its boats is within the internal waters, the archipelagic waters, the territorial sea or the contiguous zone of the pursuing State, and may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted'';

22. *Whereas* submissions and arguments presented by Guinea in its Statement in response of 30 January 1998 include the following:

“... ”

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.

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.

... ”

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. ... 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.



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.

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 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' ... .

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 ... 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.

...

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'...

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'.

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.

...

Alternatively in case the Tribunal does not share the view as expressed before ...

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' ...

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

23. *Whereas*, in the final submissions presented by the representative of Saint Vincent and the Grenadines at the public sitting held on 24 February 1998 and filed with the Registry, Saint Vincent and the Grenadines requested the prescription by the Tribunal of the following provisional measures:

“That Guinea ...

- (1) release the m/v Saiga and her crew;
- (2) suspend the application and effect of the judgement of 17 December 1997 of the Tribunal de Première Instance of Conakry and/or the judgement of 3 February 1998 of the Cour d'Appel of Conakry;
- (3) cease and desist from enforcing, directly or indirectly, the judgement of 17 December 1997 and/or 3 February 1998 against any person or governmental authority;
- (4) 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 (including in particular Articles 1 and 8 of law 94/007/CTRN of 15 March 1994, Articles 316 and 317 of the Codes des Douanes, and Articles 361 and 363 of the Penal Code) against vessels registered in St. Vincent and the Grenadines and engaged in bunkering activities in the waters around Guinea outside its 12-mile territorial waters;
- (5) cease and desist from interfering with the rights of vessels registered in St. Vincent and the Grenadines, including those engaged in bunkering activities, to enjoy freedom of navigation and/or other internationally lawful uses of the sea related to freedom of navigation as set forth inter alia in Articles 56(2) and 58 and related provisions of the 1982 Convention;
- (6) cease and desist from undertaking hot pursuit of vessels registered in St. Vincent and the Grenadines, including those engaged in bunkering activities, except in accordance with the conditions set forth in Article 111 of the 1982 Convention, including in particular the requirement that '[s]uch pursuit must be commenced when the foreign ship or one of its boats is within the internal waters, the archipelagic waters, the territorial sea or the contiguous zone of the pursuing

State, and may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted”;

24. *Whereas*, in the final submissions presented by the Agent of Guinea at the public sitting held on 24 February 1998 and filed with the Registry, Guinea presented the following submissions:

“1. The request of Saint Vincent and the Grenadines for the prescription of provisional measures as per number 52 of the reply of Saint Vincent and the Grenadines of 13 February 1998 or in a possible later revised draft should be rejected in total.

2. Furthermore the International Tribunal is asked to adjudge and declare that Saint Vincent and the Grenadines shall pay the costs for the proceedings which have been held consequently the request of Saint Vincent and the Grenadines for the prescription of provisional measures”;

25. *Considering* that article 290, paragraph 1, of the Convention reads as follows:

“If a dispute has been duly submitted to a court or tribunal which considers that *prima facie* it has jurisdiction under this Part or Part XI, section 5, the court or tribunal may prescribe any provisional measures which it 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, pending the final decision”;

26. *Considering* that the Tribunal, in its Order of 20 February 1998, decided that the dispute had been duly submitted to it;

27. *Considering* that the parties disagree as to whether the Tribunal has jurisdiction since, according to the Applicant, the Tribunal has jurisdiction under article 297, paragraph 1, of the Convention, and, according to the Respondent, the Request of the Applicant concerns a dispute covered by article 297, paragraph 3(a), of the Convention and is not subject to the jurisdiction of the Tribunal;

28. *Considering* that, in the Exchange of Letters of 20 February 1998, the parties agreed to submit the dispute to the Tribunal and also agreed that the written and oral proceedings before the Tribunal "shall comprise a single phase dealing with all aspects of the merits (including damages and costs) and the objection to jurisdiction raised in the Government of Guinea's Statement in response dated 30 January 1998";

29. *Considering* that before prescribing provisional measures the Tribunal need not finally satisfy itself that it has jurisdiction on the merits of the case and yet it may not prescribe such measures unless the provisions invoked by the Applicant appear *prima facie* to afford a basis on which the jurisdiction of the Tribunal might be founded;

30. *Considering* that in the present case article 297, paragraph 1, of the Convention, invoked by the Applicant, appears *prima facie* to afford a basis for the jurisdiction of the Tribunal;

31. *Considering* that, according to article 75, paragraph 2, of the Rules, each party shall at the conclusion of its last statement read its final submissions;
32. *Considering* that the Applicant modified its submissions at the public sitting on 24 February 1998 and that the Respondent objected to the modification;
33. *Considering* that a modification of the submissions of a party is permissible provided that it does not prejudice the right of the other party to respond;
34. *Considering* that in the present case the right of Guinea to respond has not been prejudiced because it had been given sufficient notice of the modification;
35. *Considering* that the Applicant in its final submissions requested the Tribunal to prescribe as a provisional measure the release of the M/V Saiga and its crew;
36. *Considering* that, after the Tribunal began its deliberations on the present Order, it was informed by letter dated 4 March 1998 sent on behalf of the Agent of the Applicant that "the M/V Saiga has been released from detention in Conakry and safely berthed in Dakar ... this morning";
37. *Considering* that the Registrar, upon instructions of the Tribunal, informed the parties on 5 March 1998 that, in accordance with article 77, paragraph 1, of the Rules, the Tribunal was ready to receive, not later than 9 March 1998, observations which they might wish to provide regarding this release;
38. *Considering* that the information received from the parties confirmed that the M/V Saiga, its Master and crew had been released in execution of the Tribunal's Judgment of 4 December 1997;
39. *Considering* that it is appropriate to take note of the information provided by the parties;
40. *Considering* that, following the release of the vessel and its crew, the prescription of a provisional measure for their release would serve no purpose;
41. *Considering* that the rights of the Applicant would not be fully preserved if, pending the final decision, the vessel, its Master and the other members of the crew, its owners or operators were to be subjected to any judicial or administrative measures in connection with the incidents leading to the arrest and detention of the vessel and to the subsequent prosecution and conviction of the Master;
42. *Considering* that, in determining their conduct and attitude regarding activities pending the final decision, both parties should make every effort to avoid incidents similar to those which led to the arrest and detention of the M/V Saiga and its crew and which might aggravate or extend the dispute;
43. *Considering* that, in order to prevent aggravation or extension of the dispute, the parties should endeavour to find an arrangement to be applied pending the final decision, without prejudice to their contentions on jurisdiction or merits;

44. *Considering* that any action or abstention by either party to avoid aggravation or extension of the dispute should not in any way be construed as a waiver of any of its claims or an admission of the claims of the other party to the dispute;

45. *Considering* that the timetable which has been set by the Tribunal, upon the proposal of the parties, for a single phase of written and oral proceedings on jurisdiction and merits reduces to the minimum the period pending the final decision;

46. *Considering* that the present Order in no way prejudices any questions relating to the jurisdiction of the Tribunal or to the merits of the case, and leaves unaffected the right of both parties to submit arguments in respect of such questions;

47. *Considering* that, in accordance with article 89, paragraph 5, of the Rules, the Tribunal may prescribe measures different in whole or in part from those requested;

48. *Considering* the binding force of the measures prescribed and the requirement under article 290, paragraph 6, of the Convention that compliance with such measures be prompt;

49. *Considering* that, pursuant to article 95, paragraph 1, of the Rules, each party is required to submit to the Tribunal a report and information on compliance with any provisional measures prescribed;

50. *Considering* that it may be necessary for the Tribunal to request further information from the parties on the implementation of provisional measures and that it is appropriate that the President be authorized to request such information in accordance with article 95, paragraph 2, of the Rules;

51. *Considering* that it is appropriate to deal with the request of the Respondent concerning costs in the present proceedings in its final decision;

52. For these reasons,

THE TRIBUNAL,

1. Unanimously,

*Prescribes* the following provisional measure under article 290, paragraph 1, of the Convention:

Guinea shall refrain from taking or enforcing any judicial or administrative measure against the M/V Saiga, its Master and the other members of the crew, its owners or operators, in connection with the incidents leading to the arrest and detention of the vessel on 28 October 1997 and to the subsequent prosecution and conviction of the Master.

2. Unanimously,

*Recommends* that Saint Vincent and the Grenadines and Guinea endeavour to find an arrangement to be applied pending the final decision, and to this end the two States should ensure that no action is taken by their respective authorities or vessels flying their flag which might aggravate or extend the dispute submitted to the Tribunal.

3. Unanimously,

*Decides* that Saint Vincent and the Grenadines and Guinea shall each submit the initial report referred to in article 95, paragraph 1, of the Rules as soon as possible and not later than 30 April 1998, and authorizes the President to request such further reports and information as he may consider appropriate after that date.

4. Unanimously,

*Reserves* for consideration in its final decision the submission made by Guinea for costs in the present proceedings.

Done in English and in French, the English text being authoritative, in the Free and Hanseatic City of Hamburg, this eleventh day of March, one thousand nine hundred and ninety-eight, in three copies, one of which will be placed in the archives of the Tribunal and the others transmitted to the Government of Saint Vincent and the Grenadines and the Government of Guinea, respectively.

(Signed) Thomas A. MENSAH,  
President.

(Signed) Gritakumar E. CHITTY,  
Registrar.

Judges VUKAS and WARIOBA append declarations to the Order of the Tribunal.

Judge LAING appends a separate opinion to the Order of the Tribunal.

(Initialled) T.A.M.  
(Initialled) G.E.C.