REJOINDER SUBMITTED BY GUINEA

RÖHREKE · BOYE · REMÉ · VON WERDER
Rechtsanwälte

INTERNATIONAL TRIBUNAL
FOR THE LAW OF THE SEA

Hamburg, 20.02.1998

In the matter of
St. VINCENT AND THE GRENADINES

APPLICANT

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

against
G U I N E A

RESPONDENT

Represented by its Agent Hartmut von Brevern, Barrister,
Röhreke, Boye, Remé, von Werder, Hamburg, Germany,

in respect of the
MV "SAIGA"

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 addition to our statement in response of 30 January 1998 and in reply to the request of St. Vincent and the Grenadines of 5 January 1998 and in reply to the statement of St. Vincent of 13 February 1998.

1. With respect to the facts giving rise to the dispute St. Vincent and the Grenadines has referred to paras. 2 to 20 of the "arbitration document" of St. Vincent and the Grenadines of 22 December 1997. In the following we refer to those facts which have not been stated or described correctly by St. Vincent and the Grenadines. The true facts will be mentioned in the following instead.

2. We present a sea chart as

   ANNEX 5

   in which the territorial sea and the contiguous zone around the island of Alcatraz is marked as is the position where MV "SAIGA" has supplied gasoil to the 3 fishing vessels at the point 10° 25' 03''N and 15° 42' 062' W.

It can be clearly seen on the chart that the point where MV "SAIGA" supplied the fishing vessels with gasoil is well within the contiguous zone of Guinea.

So the statement of St. Vincent and the Grenadines under number 3 of the writ of 22 December 1997 is not correct, namely that MV "SAIGA" at no time did enter the contiguous zone of Guinea.

The Republic of Guinea by the National Maritime Code which has been published in the Official Journal of the Republic of Guinea 20 April 1997 in Article 13 has declared a contiguous zone under the name of "adjacent zone" which extends for 24 nautical miles from the baselines from which the width of the territorial sea is measured.

We enclose as

ANNEX 6

the respective page of the Official Journal in the French and English version. Article 13 regulates the contiguous zone whereas Article 40 concerns the Exclusive Economic Zone of the Republic of Guinea.

3. As can be seen from the log book of MV "SAIGA" of 28th October 1997

ANNEX 7

the vessel at 4 o'clock in the morning was at the position 09° 02' 7" N, a position that is still within the EEZ of Guinea.

In the procès verbale which has been provided to the International Tribunal in case number 1 under folio 2 the captain of MV "SAIGA" has stated that at 4 o'clock in the morning on the 28th of October he has seen on the radar the vessels of the Government of Guinea and decided immediately to leave the position and he entered the water of Sierra Leone. Therefore it is not correct as has been stated in the claimants writ of 22 December 1997 under number 4 that MV "SAIGA" when waiting to meet further vessels to be bunkered was all of a sudden attacked by two petrol boats of Guinea.

4. As has been stated by Mr. Camara for the Republic of Guinea in the case number 1 in the public hearing of 27th November 1997 on page 50, the pursuit of MV "SAIGA" by the Guinean patrol boats begun when MV "SAIGA" was in the proximity of the 1st buoy of the Citè Minière de Kamsar. That was within the limits of the contiguous zone of Guinea.

5. As has already been stated by Guinea in case number 1 the Security Council of the United Nations on 8th October 1997 has passed a Resolution

ANNEX 8

in which it is expressly decided by the Security Council that all States shall prevent the sale or supply to Sierra Leone, by their nationals or from their territory, or using their flag vessels or air craft, petroleum and petroleum products ... whether or not originating in their territory.

And under number 8 it is stated that ECOWAS, a member of which is the Republic of Guinea, is authorized

> to ensure strict implementation of the provisions of this resolution relating to the supply of petroleum and petroleum products … by halting inward maritime shipping in order to inspect and verify their cargoes and destinations.

6. Contrary to the statement of the claimants the Government of Guinea did not judge the bank guarantee of 10 December 1997 issued by Crédit Suisse as to be "reasonable": This has been explained in the letters of Röhreke, Boye, Remé, von Werder on behalf of the Republic of Guinea to Stephenson Harwood of 11th, 12th (2 letters) and of 15th (2 letters) December 1997 which have already [been] produced as part of Annex 4.

7. Crédit Suisse issued another guarantee dated 28 January 1998

ANNEX 9

After having received the bank guarantee of Crédit Suisse of 28 January 1998 the Minister of Justice of the Republic of Guinea advised St. Vincent and the Grenadines through the agents as per letter Röhreke, Boye, Remé, von Werder to Stephenson Harwood of 17.02.1998

ANNEX 10

that as soon as Crédit Suisse would have paid US $ 400.000, – under the bank guarantee MV "SAIGA" would be released immediately.

This has also been confirmed in the letter of the Minister for Economy and Finance of the Republic of Guinea of 16 February 1998

ANNEX 11

By letter of Röhreke pp to Crédit Suisse of 18 February 1998

ANNEX 12

Crédit Suisse was asked to confirm whether they would be prepared to pay. The answer came in by fax of Crédit Suisse of February 19, 1998

ANNEX 13

8. A payment under the guarantee has not been effected. As has been advised by claimants Crédit Suisse will not pay under the bank guarantee as long as the Tribunal will not have decided.

   This attitude however, is contrary to the wording of the bank guarantee and shows very clearly that the bank guarantee is not a reasonable one.

9. It is not correct that the crew was not released. It was only the captain of MV "SAIGA" who was asked to stay until the final judgement of the Supreme Court. The sentence of the Supreme Court for 6 months imprisonment has been suspended as can be seen from page 31 of Attachment 3 of the writ of claimants of 13 February 1998.

10. The laws of the Republic of Guinea that have been violated by MV "SAIGA" ha[ve] not been quoted sufficiently by claimants. It is the law number 94/007/CTRN in the French version (Attachment 5 B).

    According to Article 4 of that law each owner of a fishing vessel holding a licence for fishing and issued by Guinean authorities who is supplied by gasoil by other means that those legally authorized will be punished by one to three years imprisonment and in addition to a substantial fine. Fishing vessels are not allowed to refuel at sea. They must fuel in port (see also Maître BAO in the verbatim record of 27 November 1997 in the 1st case on pages 53 and 54).

11. As has been stated in case number 1 and as can be read in the judgement of the Supreme Court of Guinea on page 28 of Attachment 3 of claimants writ of 13 February 1998 captain of MV "SAIGA" has fulfilled Article 317 of the Customs Code by importing gas-oil.

12. Finally MV "SAIGA" has violated Article 40 of the Merchants Marine Code of Guinea (Attachment 5 A).

13. All the fishing vessels that have been supplied by MV "SAIGA" on 27 October 1997 have received a licence for fishing in Guinean waters by the Guinean authorities. Part the licence of course was that the fishing vessels should comply with all laws of the Republic of Guinea. This included the obligation not to be supplied with gasoil offshore in Guinean waters, and this extends to the Exclusive Economic Zone of Guinea.

    The legal consequences will be outlined in a separate paper.

Röhreke . Boye . Remé . von Werder
by:

[*Signed*]
Hartmut von Brevern