



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

Press Release

**TRIBUNAL DELIVERS JUDGMENT IN *THE M/V "LOUISA" CASE*
(*SAINT VINCENT AND THE GRENADINES V. KINGDOM OF SPAIN*)**

**TRIBUNAL FINDS THAT IT HAS NO JURISDICTION TO ENTERTAIN THE
APPLICATION**

Hamburg, 28 May 2013. At a public sitting held today, the International Tribunal for the Law of the Sea delivered its Judgment in *The M/V "Louisa" Case (Saint Vincent and the Grenadines v. Kingdom of Spain)*, in which it finds by 19 votes to 2 that it has no jurisdiction to entertain the Application filed by Saint Vincent and the Grenadines.

Proceedings in the case were instituted before the Tribunal on 24 November 2010. On 23 December 2010, the Tribunal delivered an Order on the Request for the prescription for provisional measures submitted by Saint Vincent and the Grenadines under article 290, paragraph 1, of the United Nations Convention on the Law of the Sea (see Press Release ITLOS/Press 158). Further to the filing of written pleadings by the Parties, the hearing on the merits took place from 4 to 12 October 2012.

The dispute concerns the M/V "Louisa", a vessel flying the flag of Saint Vincent and the Grenadines, which was boarded, searched and detained by Spanish authorities on 1 February 2006. While Saint Vincent and the Grenadines maintained that the M/V "Louisa" was engaged in conducting surveys of the sea floor with a view to locating oil and gas deposits, according to the Spanish authorities, the vessel was seized in connection with criminal proceedings instituted in respect of the commission of "the crime of possession and depositing weapons of war [...] together with the continued crime of damaging Spanish historical patrimony". Four persons were arrested and detained in Spain for different periods in connection with these criminal proceedings. On the day the M/V "Louisa" was boarded and detained, the Spanish authorities detained a second vessel, the "Gemini III", which, according to Saint Vincent and the Grenadines, served as a tender for the M/V "Louisa".

In its Judgment, the Tribunal first considers the scope of the declarations made by each Party under article 287 of the Convention. The Parties disagree on the scope of the jurisdiction conferred on the Tribunal by their respective declarations made under article 287. The Tribunal decides that the narrow interpretation of the

declaration of Saint Vincent and the Grenadines advanced by Spain is not tenable, and considers that the declaration of Saint Vincent and the Grenadines covers the arrest or detention of its vessels and all matters connected therewith.

The Tribunal examines the question relating to the meaning of the expression “its vessels” in the declaration of Saint Vincent and the Grenadines and notes that the M/V “Louisa” was registered in Saint Vincent and the Grenadines and is to be regarded as one of “its vessels”. As regards the “Gemini III”, the Tribunal observes that it was not flying the flag of Saint Vincent and the Grenadines and states that the “Gemini III” enjoys an identity of its own and it is not covered by the declaration of Saint Vincent and the Grenadines. It concludes that in respect of the “Gemini III” it lacks jurisdiction.

The Tribunal goes on to look at the question of the link between *prima facie* jurisdiction and jurisdiction on the merits. It states that the question of jurisdiction to deal with the merits of the case can be decided only after consideration of the written and oral proceedings and not on the basis of the decision it took on *prima facie* jurisdiction in connection with the Request for the prescription of provisional measures.

The Tribunal then considers the subject and existence of the dispute. Although the Parties agree that the origin of the case lies in the detention of the M/V “Louisa” and its crew, they disagree on the question whether a dispute concerning the interpretation or application of the Convention exists. The Tribunal notes that the case before it has two aspects: one involving the detention of the vessel and the persons connected therewith and the other concerning the treatment of these persons. The first aspect relates to the claim originally submitted by Saint Vincent and the Grenadines on the basis of articles 73 (Enforcement of laws and regulations of the coastal State), 87 (Freedom of the high seas), 226 (Investigation of foreign vessels), 227 (Non-discrimination with respect to foreign vessels) and 303 (Archaeological and historical objects found at sea) of the Convention. Spain argues that the provisions of the Convention invoked by Saint Vincent and the Grenadines are plainly not applicable to the facts of the case and cannot serve as a legal basis for the claims of Saint Vincent and the Grenadines. The second aspect was introduced by Saint Vincent and the Grenadines on the basis of article 300 of the Convention only after the closure of the written proceedings. It was discussed during the oral proceedings and included in the final submissions of Saint Vincent and the Grenadines.

With regard to article 73 of the Convention, the Tribunal notes that the M/V “Louisa” was not detained for the reason that the laws and regulations of Spain concerning the living resources in the exclusive economic zone had been violated. The detention was made in the context of criminal proceedings relating to alleged violations of Spanish laws on “the protection of the underwater cultural heritage and the possession and handling of weapons of war in Spanish territory.” Accordingly, in the view of the Tribunal, article 73 of the Convention cannot serve as a basis for the claims submitted by Saint Vincent and the Grenadines in respect of the detention of the M/V “Louisa” and its crew.

The Tribunal observes that article 87 of the Convention deals with the freedom of the high seas, in particular the freedom of navigation, which applies to the high seas and, under article 58 of the Convention, to the exclusive economic zone. It is not disputed that the M/V “Louisa” was detained when it was docked in a Spanish port. The Tribunal is of the view that article 87 cannot be interpreted in such a way as to grant the M/V “Louisa” a right to leave the port and gain access to the high seas notwithstanding its detention in the context of legal proceedings against it, and concludes that the arguments advanced by Saint Vincent and the Grenadines do not establish that article 87 of the Convention could constitute a basis for the claims submitted by Saint Vincent and the Grenadines in respect of the detention of the M/V “Louisa”.

In its Judgment, the Tribunal recalls that the M/V “Louisa” was detained in the context of criminal proceedings relating to the alleged violations of Spanish laws on “the protection of the underwater cultural heritage and the possession and handling of weapons of war in Spanish territory.” Therefore, articles 226 and 227 of the Convention cannot serve as a basis for the claims submitted by Saint Vincent and the Grenadines in respect of the detention of the M/V “Louisa”.

The Tribunal notes that Saint Vincent and the Grenadines invoked article 245 of the Convention as a basis for its claims in its written pleadings although it did not include this provision in its final submissions. The Tribunal finds that the question of violation of the research permit does not arise as the M/V “Louisa” was detained in the context of criminal proceedings for alleged violations of Spanish laws on “the protection of the underwater cultural heritage and the possession and handling of weapons of war in Spanish territory.” Accordingly, article 245 of the Convention cannot serve as a basis for the claim submitted by Saint Vincent and the Grenadines that the detention of the M/V “Louisa” violated its right to conduct marine scientific research.

With respect to the applicability of article 300 of the Convention, the Tribunal observes that, after the closure of the written proceedings, Saint Vincent and the Grenadines presented its claim as one substantively based on article 300 and the alleged violations of human rights by Spain. The Tribunal considers that this reliance on article 300 of the Convention generated a new claim in comparison to the claims presented in the Application. The Tribunal further observes that it is a legal requirement that any new claim to be admitted must arise directly out of the application or be implicit in it. The Tribunal considers that it cannot allow a dispute brought before it by an application to be transformed in the course of proceedings into another dispute which is different in character, and is of the view that article 300 of the Convention cannot serve as a basis for the claims submitted by Saint Vincent and the Grenadines.

For the foregoing reasons, the Tribunal concludes that no dispute concerning the interpretation or application of the Convention existed between the Parties at the time of the filing of the Application and that, therefore, it has no jurisdiction *ratione materiae* to entertain the case before it. Since it has no jurisdiction to entertain the Application, the Tribunal is of the view that it is not required to consider any of the

other objections raised to its jurisdiction or against the admissibility of the claims of Saint Vincent and the Grenadines.

The Tribunal nevertheless takes note in its Judgment of the issues of human rights as described in paragraphs 59, 60, 61 and 62 of the Judgment, and holds the view that States are required to fulfil their obligations under international law, in particular human rights law, and that considerations of due process of law must be applied in all circumstances.

The Tribunal therefore finds, for the above reasons, by 19 votes to 2, that it has no jurisdiction to entertain the Application filed by Saint Vincent and the Grenadines.

The Tribunal further decides, unanimously, that the Parties shall bear their own costs.

Judge Paik appends a declaration to the Judgment of the Tribunal, Judges Ndiaye, Cot, Kateka and Bouguetaia append separate opinions to the Judgment of the Tribunal and Judges Jesus and Lucky append dissenting opinions to the Judgment of the Tribunal.

The text of the [Judgment](#) and the recorded [webcast](#) of the public sitting may be found on the website of the Tribunal.

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