

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

**THE M/V “LOUISA” CASE
(SAINT VINCENT AND THE GRENADINES V. SPAIN)
List of cases: No. 18**

PROVISIONAL MEASURES

ORDER OF 23 DECEMBER 2010

2010

TRIBUNAL INTERNATIONAL DU DROIT DE LA MER

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

**AFFAIRE DU NAVIRE « LOUISA »
(SAINT-VINCENT-ET-LES GRENADINES C. ESPAGNE)
Rôle des affaires : No. 18**

MESURES CONSERVATOIRES

ORDONNANCE DU 23 DÉCEMBRE 2010

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23 DECEMBER 2010
ORDER

**THE M/V “LOUISA” CASE
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PROVISIONAL MEASURES

**AFFAIRE DU NAVIRE « LOUISA »
(SAINT-VINCENT-ET-LES GRENADINES C. ESPAGNE)**

MESURES CONSERVATOIRES

30 DÉCEMBRE 2010
ORDONNANCE

TRIBUNAL INTERNATIONAL DU DROIT DE LA MER



ANNÉE 2010

Le 23 décembre 2010

Rôle des affaires :
No. 18

AFFAIRE DU NAVIRE « LOUISA »

(SAINT-VINCENT-ET-LES GRENADINES C. ESPAGNE)

Demande en prescription de mesures conservatoires

ORDONNANCE

Présents : M.JESUS, *Président*; M.TÜRK, *Vice-Président*; MM.CAMINOS, MAROTTA RANGEL, YANKOV, NELSON, CHANDRA-SEKHARA RAO, AKL, WOLFRUM, TREVES, NDIAYE, COT, LUCKY, PAWLAK, YANAI, KATEKA, HOFFMANN, GAO, BOUGUETAIA, GOLITSYN, PAIK, *juges*; M. GAUTIER, *Greffier*.

LE TRIBUNAL,

ainsi composé,

après délibéré en chambre du conseil,

Vu l'article 287, paragraphe 4, et l'article 290, paragraphe 1, de la Convention des Nations Unies sur le droit de la mer (dénommée ci-après « la Convention ») et les articles 21 et 25 du Statut du Tribunal (dénommé ci-après « le Statut »),

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



YEAR 2010

23 December 2010

List of cases:
No. 18

THE M/V “LOUISA” CASE

(SAINT VINCENT AND THE GRENADINES V. SPAIN)

Request for provisional measures

ORDER

Present: President JESUS; Vice-President TÜRK; Judges CAMINOS, MAROTTA RANGEL, YANKOV, NELSON, CHANDRA-SEKHARA RAO, AKL, WOLFRUM, TREVES, NDIAYE, COT, LUCKY, PAWLAK, YANAI, KATEKA, HOFFMANN, GAO, BOUGUETAIA, GOLITSYN, PAIK; Registrar GAUTIER.

THE TRIBUNAL,

composed as above,

after deliberation,

Having regard to articles 287, paragraph 4, and 290, paragraph 1, 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 Application submitted to the Tribunal by Saint Vincent and the Grenadines on 24 November 2010, instituting proceedings against the Kingdom of Spain (hereinafter “Spain”), concerning the M/V “Louisa”,

Having regard to the Request submitted by Saint Vincent and the Grenadines to the Tribunal on the same date for the prescription of provisional measures by the Tribunal pursuant to articles 287, paragraph 1 (a), and 290, paragraph 1, of the Convention,

Makes the following Order:

1. *Whereas* Saint Vincent and the Grenadines and Spain are States Parties to the Convention;

2. *Whereas*, by letter dated 15 October 2010, addressed to the Registrar of the Tribunal, the Attorney-General of Saint Vincent and the Grenadines notified the Registrar of the appointment of Mr G. Grahame Bollers as Agent, and Mr S. Cass Weiland, and Ms Rochelle Forde as Co-Agents for Saint Vincent and the Grenadines;

3. *Whereas*, by letter dated 23 November 2010, received electronically by the Registry of the Tribunal on 24 November 2010, Saint Vincent and the Grenadines, through its Agent, Mr G. Grahame Bollers, filed an Application instituting proceedings against Spain in a dispute concerning the detention of the M/V “Louisa”, the original of which was received by the Registry on 9 December 2010;

4. *Whereas*, by the same letter, a Request from Saint Vincent and the Grenadines for the prescription of provisional measures under article 290, paragraph 1, of the Convention was filed, the original of which was received by the Registry on 9 December 2010;

5. *Whereas*, on 24 November 2010, certified copies of the Application and the Request were sent by the Registrar to the Minister of Foreign Affairs and Cooperation of Spain, and also in care of the Ambassador of Spain to Germany;

6. *Whereas*, by letter dated 25 November 2010, the Minister of Foreign Affairs and Cooperation of Spain notified the Registrar of the appointment of Ms Concepción Escobar Hernández, Legal Adviser of the Ministry of Foreign

Affairs and Cooperation, as Agent for Spain;

7. *Whereas*, in its Application submitted on 24 November 2010, Saint Vincent and the Grenadines proposed that the Application and the Request for provisional measures should be referred to the Chamber of Summary Procedure of the Tribunal, pursuant to article 15, paragraph 3, of the Statute;

8. *Whereas*, by Note Verbale dated 24 November 2010, the Registrar invited the Government of Spain to communicate its position whether it accepted the said proposal at its earliest convenience, but not later than 26 November 2010;

9. *Whereas*, by communication dated 26 November 2010, the Agent of Spain informed the Tribunal that Spain did not agree with the request of Saint Vincent and the Grenadines for the case to be heard by the Chamber of Summary Procedure and, instead, requested that the Tribunal hear and determine the case pursuant to article 13, paragraph 3, of the Statute;

10. *Whereas*, pursuant to article 90, paragraph 2, of the Rules, the President of the Tribunal (hereinafter “the President”), by Order dated 30 November 2010, fixed 10 December 2010 as the date for the opening of the hearing, the notice of which was communicated forthwith to the parties;

11. *Whereas*, by note dated 24 November 2010 from the Registrar, States Parties to the Convention were notified of the Application and the Request, in accordance with article 24, paragraph 3, of the Statute, and whereas, pursuant to the Agreement on Cooperation and Relationship between the United Nations and the International Tribunal for the Law of the Sea of 18 December 1997, the Secretary-General of the United Nations was similarly notified on 26 November 2010;

12. *Whereas*, on 29 November 2010, in accordance with article 73 of the Rules, the President, by teleconference with the Agents of the parties, ascertained the views of the parties regarding the procedure for the hearing;

13. *Whereas*, on 6 December 2010, the Registrar sent a letter to the Agent of Saint Vincent and the Grenadines requesting the completion of documentation and whereas Saint Vincent and the Grenadines submitted the requested documents on 9 and 16 December 2010;

14. *Whereas*, on 7 December 2010, pursuant to article 72 of the Rules, Saint Vincent and the Grenadines submitted information regarding an expert whom it intended to call before the Tribunal;

15. *Whereas*, on 8 December 2010, by electronic mail, Spain filed with the Registry its Response, a certified copy of which was transmitted to the Agent of Saint Vincent and the Grenadines on the same date, the original of which was filed with the Registry on 11 December 2010;

16. *Whereas*, on 9 December 2010, the Registrar sent to the Agent of Spain a letter requesting additional documents, which were submitted on 11 December 2010;

17. *Whereas*, on 9 December 2010, the parties submitted documents pursuant to paragraph 14 of the Guidelines concerning the Preparation and Presentation of Cases before the Tribunal;

18. *Whereas*, on 9 December 2010, Saint Vincent and the Grenadines submitted a Supplemental Memorandum in support of its Request for the prescription of provisional measures and a revised set of Annexes thereto;

19. *Whereas*, the Supplemental Memorandum and the revised set of Annexes were transmitted to the Agent of Spain on the same date;

20. *Whereas*, on 9 December 2010, by electronic mail addressed to the Registrar, the Agent of the Applicant informed the Tribunal that he had to appear in court in Saint Vincent and the Grenadines “on an extremely urgent matter” and was unable to attend the hearing at the Tribunal;

21. *Whereas*, in accordance with article 68 of the Rules, the Tribunal held initial deliberations on 9 December 2010 concerning the written pleadings and the conduct of the case and decided, pursuant to article 76, paragraph 1, of the Rules, to raise several questions which the Tribunal wished the parties to address;

22. *Whereas*, on 9 December 2010, in accordance with article 45 of the Rules, the President held consultations with the Co-Agent of the Applicant and the Agent of the Respondent, with regard to questions of procedure, and transmitted to them copies of the list of questions which the Tribunal wished the parties to address;

23. *Whereas*, pursuant to article 67, paragraph 2, of the Rules, copies of the Request and the Response and the documents annexed thereto were made accessible to the public on the date of the opening of the oral proceedings;

24. *Whereas* oral statements were made at four public sittings, held on 10 and 11 December 2010, by the following:

On behalf of Saint Vincent and the Grenadines:

Mr S. Cass Weiland, Esq., Advocate,
as Co-Agent;

On behalf of Spain:

Ms Concepción Escobar Hernández, Professor, Legal Adviser
of the Ministry of Foreign Affairs and Cooperation,
as Agent, Counsel and Advocate,

Mr Mariano J. Aznar Gómez, Professor, International Law
Department, University “Jaume I” (Castellón), Spain,
as Counsel and Advocate;

25. *Whereas*, in the course of the oral proceedings, a number of exhibits, including maps, photographs, and extracts from documents, were displayed by the parties on video monitors;

26. *Whereas*, on 10 December 2010, Mr Javier Moscoso del Prado Muñoz was called as an expert by Saint Vincent and the Grenadines, and, having made the solemn declaration under article 79, subparagraph (b), of the Rules, was examined by the Co-Agent of Saint Vincent and the Grenadines and cross-examined by the Agent of Spain;

27. *Whereas*, on 11 December 2010, pursuant to article 76, paragraph 1, of the Rules, the Tribunal decided to raise a further question which it wished the parties to address;

28. *Whereas*, on 11 December 2010, during the oral proceedings, Saint Vincent and the Grenadines submitted to the Tribunal the following documents, copies of which were forwarded to Spain by the Registrar on the same date: “expert opinion” dated 10 December 2010, of the *Ingenieurbüro Weselmann*, Hamburg; “report” dated 17 October 2007 of the *Museo Nacional de Arqueología Marítima de Cartagena*; and “pleading” dated 22 February 2008, submitted to the *Juzgado de Instrucción No. 4* of Cadiz;

29. *Whereas*, on 11 December 2010, the Agent of Spain submitted to the Tribunal a copy of an indictment issued by the *Juzgado de Instrucción No. 4* of Cadiz dated 27 October 2010, according to which charges have been brought against several alleged perpetrators (“*presuntos autores*”) concerning a continuing crime of damage to the Spanish historical patrimony (“*delito continuado de daños en el patrimonio histórico español*”) and a related crime

of possession or storing of arms (“*delito conexo al anterior de tenencia o depósito de armas*”);

30. *Whereas* a copy of the indictment was forwarded to Saint Vincent and the Grenadines by the Registrar on the same date;

31. *Whereas*, in the Application submitted on 24 November 2010, Saint Vincent and the Grenadines requested the Tribunal to adjudge and declare:

1. Respondent has violated Articles 73, 87, 226, 245 and 303 of the Convention;
2. Applicant is entitled to damages as proven in the case on the merits, but not less than \$10,000,000 (USD); and
3. Applicant is entitled to all attorneys’ fees, costs, and incidental expenses incurred;

32. *Whereas* the provisional measures requested by Saint Vincent and the Grenadines in the Request to the Tribunal filed on 24 November 2010 are as follows:

- (a) declare that the Request is admissible;
- (b) declare that the Respondent has violated Articles 73, 87, 226, 245 and 303 of the Convention;
- (c) order the Respondent to release the M.V. Louisa and Gemini III and return property seized;
- (d) declare that the detention of any crew member was unlawful; and
- (e) award reasonable attorneys’ fees and costs associated with this request as established before the Tribunal;

33. *Whereas*, at the public sitting held on 11 December 2010, the Co-Agent of Saint Vincent and the Grenadines made the following final submissions:

The Applicant requests the Tribunal, by means of provisional relief, to:

- (a) declare that the Tribunal has jurisdiction under Articles 287 and 290 of the Convention to hear the Request for Provisional Measures concerning the detention of the vessel, the *M.V. Louisa*;

- (b) declare that the Request is admissible, that the allegations of the Applicant are well-founded, and that the Respondent has breached its obligations under the Convention;
- (c) order the Respondent to release the vessel *Louisa* and its tender, the *Gemini III*, upon such terms and conditions as the Tribunal shall consider reasonable, but without bond or other further economic hardship;
- (d) order the return of scientific research, information, and property held since 2006;
- (e) prescribe such other provisional measures as may be appropriate such as issuing an order requiring the Spanish Agent to meet with the Applicant’s Agent or representatives to resolve the matter, or other important measures; and
- (f) order the Respondent pay the costs incurred by the Applicant in connection with this Request, including but not limited to Agents’ fees, attorneys’ fees, experts’ fees, transportation, lodging, and subsistence;

34. *Whereas*, in its Response, Spain requests the Tribunal:

- (1) to reject the prescription of provisional measures requested by Saint Vincent and the Grenadines; and
- (2) to order the Applicant to pay the costs incurred by the Respondent in connection with this request, including but not limited to Agents’ fees, attorneys’ fees, experts’ fees, transportation, lodging, and subsistence;

35. *Whereas* the final submissions made by the Agent of Spain at the public sitting held on 11 December 2010 are as follows:

Spain requests the Tribunal:

- (a) To reject the request for the prescription of provisional measures submitted by Saint Vincent and the Grenadines;
- (b) To reject the prescription of all the provisional measures requested by the Applicant; and

- (c) To order Saint Vincent and the Grenadines to pay the fees of the Agent and the rest of the Spanish delegation within reasonable limits and the costs arising from this application, as fixed by the Tribunal;

36. *Considering* that, on 24 November 2010, in accordance with article 287 of the Convention, Saint Vincent and the Grenadines instituted proceedings against Spain in a dispute concerning the M/V “Louisa”;

37. *Considering* that, on the same date, Saint Vincent and the Grenadines submitted to the Tribunal a Request for provisional measures, pursuant to article 290, paragraph 1, of the Convention;

38. *Considering* that article 290, paragraph 1, of the Convention provides that:

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;

39. *Considering* that, before prescribing provisional measures under article 290, paragraph 1, of the Convention, the Tribunal must satisfy itself that *prima facie* it has jurisdiction over the dispute concerning the M/V “Louisa”, submitted to it on 24 November 2010;

40. *Considering* that, in a depositary notification, dated 7 August 2002, the Secretary-General of the United Nations communicated the information that, on 19 July 2002, Spain had submitted a Declaration choosing the Tribunal and the International Court of Justice “as a means for the settlement of disputes concerning the interpretation or application of the Convention”;

41. *Considering* that, in a depositary notification dated 22 November 2010, the Secretary-General of the United Nations communicated the information that, on 22 November 2010, Saint Vincent and the Grenadines had submitted a Declaration choosing the Tribunal “as the means for the settlement of disputes concerning the arrest or detention of its vessels”;

42. *Considering* that the status of Saint Vincent and the Grenadines as the flag State of the M/V “Louisa” is not in dispute between the parties;

43. *Considering* that both parties indicated that the “Gemini III” was not flying the flag of Saint Vincent and the Grenadines at the time of the arrest;

44. *Considering* that, in its Request, the Applicant refers to the “Gemini III” as a tender of the M/V “Louisa”;

45. *Considering* that, in the view of the Tribunal, the issue of the status of the “Gemini III” should be examined at a future stage of the proceedings;

46. *Considering* that, in its Application, Saint Vincent and the Grenadines contends that “[t]he Tribunal has jurisdiction to consider this Application, pursuant to Articles 73, 87, 226, 245, 290, 292 and 303” of the Convention;

47. *Considering* that, in its Request for the prescription of provisional measures, Saint Vincent and the Grenadines requests the Tribunal to “declare that the Tribunal has jurisdiction under Articles 287 and 290 of the Convention to hear the Request for Provisional Measures concerning the detention of the vessel, the *M.V. Louisa* (...), in breach of the Respondent’s obligations under various articles of the Convention, including 73 (notification of arrest), 87 (freedom of the high seas), 226 (investigations), 245 (scientific research), and 303 (archaeological objects)”;

48. *Considering* that, during the hearing, Saint Vincent and the Grenadines maintained that *prima facie* jurisdiction could be established “on several grounds”, including articles 87, 245 and 303 of the Convention;

49. *Considering* that, in its final submissions on 11 December 2010, Saint Vincent and the Grenadines requested the Tribunal to “declare that the Tribunal has jurisdiction under Articles 287 and 290 of the Convention to hear the Request for Provisional Measures concerning the detention of the vessel, the *M.V. Louisa*”;

50. *Considering* that Spain stated in its Response that, “although there may be a *prima facie* jurisdiction of the Tribunal, there are no reasons compelling it to prescribe the requested provisional measures”;

51. *Considering* that, during the hearing, Spain maintained that the arguments which it had presented “point [to] the inexistence of *prima facie* jurisdiction of this Tribunal for the prescription of provisional measures”;

52. *Considering* that, in its final submissions on 11 December 2010, Spain requested the Tribunal, *inter alia*, “to reject the request for the prescription of provisional measures submitted by Saint Vincent and the Grenadines”;

53. *Considering* that Spain stated during the hearing that the M/V “Louisa” had not been detained for any offences relating to articles 73 and 226 of the Convention, that the facts of the case did not reveal any violation of articles 87, 245, and 303 of the Convention, and that the vessel had been detained by Spain in the exercise of its criminal jurisdiction, for its participation, as an instrument, in the commission of crimes in the internal waters and possibly also in the territorial sea of Spain;

54. *Considering* that Spain contends that the requirements of article 283 of the Convention have not been satisfied since, in its view, there has been no exchange of views regarding the settlement of the dispute by negotiation or other peaceful means;

55. *Considering* that article 283, paragraph 1, of the Convention reads as follows:

When a dispute arises between States Parties concerning the interpretation or application of this Convention, the parties to the dispute shall proceed expeditiously to an exchange of views regarding its settlement by negotiation or other peaceful means;

56. *Considering* that article 283 of the Convention applies “when a dispute arises” and that in the circumstances of this case, it appears *prima facie* that a dispute as to the interpretation and application of provisions of the Convention existed between the parties on the date on which the Application was filed;

57. *Considering* that article 283 of the Convention only requires the parties to “proceed expeditiously to an exchange of views” regarding the settlement of the dispute “by negotiation or other peaceful means”;

58. *Considering* that the obligation to “proceed expeditiously to an exchange of views” applies equally to both parties to the dispute (*Land Reclamation in and around the Straits of Johor (Malaysia v. Singapore), Provisional Measures, Order of 8 October 2003, ITLOS Reports 2003*, p. 10, at p. 19, paragraph 38);

59. *Considering* that Saint Vincent and the Grenadines stated that, on several occasions prior to the institution of these proceedings, its maritime administration had requested from the port authorities of Spain further information about the detention of the M/V “Louisa” but had not received such information;

60. *Considering* that, by Note Verbale dated 26 October 2010, sent to the Permanent Mission of Spain to the United Nations in New York, by the Permanent Mission of Saint Vincent and the Grenadines to the United Nations in New York, the Applicant informed Spain that it “objects to the Kingdom

of Spain’s continued detention of the ships the *M.V. Louisa* and its tender, the *Gemini III*,” and that Spain failed “to notify the flag country of the arrest as required by Spanish and international law” and that in the said Note Verbale, Saint Vincent and Grenadines also informed Spain of its “plans to pursue an action before the International Tribunal for the Law of the Sea to rectify the matter absent immediate release of the ships and settlement of damages incurred as a result of this improper detention”;

61. *Considering* that Spain did not react to the Note Verbale referred to in the preceding paragraph;

62. *Considering* that Saint Vincent and the Grenadines concluded that it had fulfilled the requirements of article 283 of the Convention;

63. *Considering* that the Tribunal has held that “a State Party is not obliged to pursue procedures under Part XV, section 1, of the Convention when it concludes that the possibilities of settlement have been exhausted” (*Southern Bluefin Tuna (New Zealand v. Japan; Australia v. Japan)*, *Provisional Measures, Order of 27 August 1999, ITLOS Reports 1999*, p. 280 at p. 295, paragraph 60), and that “a State Party is not obliged to continue with an exchange of views when it concludes that the possibilities of reaching agreement have been exhausted” (*MOX Plant (Ireland v. United Kingdom)*, *Provisional Measures, Order of 3 December 2001, ITLOS Reports 2001*, p. 95, at p. 107, paragraph 60);

64. *Considering* that, as the International Court of Justice has stated, “[n] either in the Charter [of the United Nations] nor otherwise in international law is any general rule to be found to the effect that the exhaustion of diplomatic negotiations constitutes a precondition for a matter to be referred to the Court” (*Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*, *Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 275, at p. 303, paragraph 56);

65. *Considering* that, in the view of the Tribunal, the requirements of article 283 of the Convention are to be regarded, in the circumstances of the present case, as having been satisfied;

66. *Considering* that Spain contends that the Request does not fulfil the procedures required by article 295 of the Convention and that the condition of exhaustion of local remedies has not been fulfilled by the owner of the vessel;

67. *Considering* that Saint Vincent and the Grenadines maintains that the evidence shows that the owners “have tried every manoeuvre and legal mechanism possible in order to secure the ship’s release”;

68. *Considering* that, in the view of the Tribunal, the issue of exhaustion of local remedies should be examined at a future stage of the proceedings;

69. *Considering* that, at this stage of the proceedings, the Tribunal does not need to establish definitively the existence of the rights claimed by Saint Vincent and the Grenadines, and that, in its Order of 11 March 1998 on provisional measures in the *M/V “SAIGA” (No. 2) Case*, the Tribunal stated 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” (*M/V “SAIGA” (No. 2) (Saint Vincent and the Grenadines v. Guinea), Provisional Measures, Order of 11 March 1998, ITLOS Reports 1998*, p. 24, at p. 37, paragraph 29);

70. *Considering* that, for the above reasons, the Tribunal finds that it has *prima facie* jurisdiction over the dispute;

71. *Considering* that, in accordance with article 290, paragraph 1, of the Convention, the Tribunal may prescribe measures to preserve the respective rights of the parties to the dispute or to prevent serious harm to the marine environment;

72. *Considering* that, in the circumstances of this case, the Tribunal does not find that there is a real and imminent risk that irreparable prejudice may be caused to the rights of the parties in dispute before the Tribunal so as to warrant the prescription of the provisional measures requested by Saint Vincent and the Grenadines;

73. *Considering* that the Applicant contends that “there is a definite threat to the environment by leaving this ship docked in El Puerto de Santa María for any significant additional time”;

74. *Considering* that Spain, in its Response, stated that “there is no imminent threat or harm to the marine environment due to the presence of the Louisa in the commercial dock of El Puerto de Santa María” and that “the Port authorities are continuously monitoring the situation, paying special attention to the fuel still loaded in the vessel and the oil spread in the different conducts and pipes on board”;

75. *Considering* that Spain, during the hearing, further stated that “[t]he *Capitanía Marítima* of Cadiz has an updated protocol for reacting against threats of any kind of environmental accident within the port of El Puerto de Santa María and the Bay of Cadiz”;

76. *Considering* that article 192 of the Convention imposes an obligation on States to protect and preserve the marine environment;

77. *Considering* that, in the view of the Tribunal, the parties should in the circumstances act with prudence and caution to prevent serious harm to the marine environment (*Southern Bluefin Tuna (New Zealand v. Japan; Australia v. Japan)*, *Provisional Measures, Order of 27 August 1999*, *ITLOS Reports 1999*, p. 280 at p. 296, paragraph 77);

78. *Considering* that the Tribunal places on record the assurances given by Spain as specified in paragraphs 74 and 75;

79. *Considering* that any action or abstention by either party in order 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 (*M/V “SAIGA” (No. 2) (Saint Vincent and the Grenadines v. Guinea)*, *Provisional Measures, Order of 11 March 1998*, *ITLOS Reports 1998*, p. 24, at p. 39, paragraph 44);

80. *Considering* that the present Order in no way prejudices the question of the jurisdiction of the Tribunal to deal with the merits of the case or any questions relating to the admissibility of the Application, or relating to the merits themselves, and leaves unaffected the rights of Saint Vincent and the Grenadines and Spain to submit arguments in respect of those questions (see *ICJ Case concerning questions relating to the obligation to prosecute or extradite (Belgium v. Senegal)*, *Provisional Measures, Order of 28 May 2009*, paragraph. 74);

81. *Considering* that the Applicant requests the Tribunal to order the Respondent to pay the costs incurred by the Applicant in connection with the Request;

82. *Considering* that the Respondent requests the Tribunal to order the Applicant to pay the costs incurred by the Respondent in connection with the Request;

83. *For these reasons,*

THE TRIBUNAL,

1. By 17 votes to 4,

Finds that the circumstances, as they now present themselves to the Tribunal, are not such as to require the exercise of its powers to prescribe provisional measures under article 290, paragraph 1, of the Convention;

IN FAVOUR: *President* JESUS; *Vice-President* TÜRK; *Judges* CAMINOS, MAROTTA RANGEL, YANKOV, NELSON, CHANDRA-SEKHARA RAO, AKL, NDIAYE, LUCKY, PAWLAK, YANAI, KATEKA, HOFFMANN, GAO, BOUGUETAIA, PAIK;

AGAINST: *Judges* WOLFRUM, TREVES, COT, GOLITSYN.

2. By 17 votes to 4,

Reserves for consideration in its final decision the submissions made by both parties for costs in the present proceedings;

IN FAVOUR: *President* JESUS; *Vice-President* TÜRK; *Judges* CAMINOS, MAROTTA RANGEL, YANKOV, NELSON, CHANDRA-SEKHARA RAO, AKL, NDIAYE, LUCKY, PAWLAK, YANAI, KATEKA, HOFFMANN, GAO, BOUGUETAIA, PAIK;

AGAINST: *Judges* WOLFRUM, TREVES, COT, GOLITSYN.

Done in English and French, both texts being authoritative, in the Free and Hanseatic City of Hamburg, this twenty-third day of December, two thousand and ten, 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 Spain, respectively.

(signed) José Luís JESUS
President

(signed) Philippe GAUTIER
Registrar

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

Judges WOLFRUM, TREVES, COT and GOLITSYN append dissenting opinions to the Order of the Tribunal.