

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



2013

Public sitting

held on Monday, 2 September 2013, at 10 a.m.,
at the International Tribunal for the Law of the Sea, Hamburg,

President Shunji Yanai presiding

THE M/V “VIRGINIA G” CASE

(Panama/Guinea-Bissau)

Verbatim Record

<i>Present:</i>	President	Shunji Yanai
	Vice-President	Albert J. Hoffmann
	Judges	Vicente Marotta Rangel
		L. Dolliver M. Nelson
		P. Chandrasekhara Rao
		Joseph Akl
		Rüdiger Wolfrum
		Tafsir Malick Ndiaye
		José Luís Jesus
		Jean-Pierre Cot
		Anthony Amos Lucky
		Stanislaw Pawlak
		Helmut Türk
		James L. Kateka
		Zhiguo Gao
		Boualem Bouguetaia
		Vladimir Golitsyn
		Jin-Hyun Paik
		Elsa Kelly
		David Attard
		Markiyan Kulyk
	Judges <i>ad hoc</i>	José Manuel Sérvulo Correia
		Tullio Treves
	Registrar	Philippe Gautier

Panama is represented by:

Mr Ramón García-Gallardo, SJ Berwin LLP, Brussels, Belgium,
as Agent and Counsel;

Mr Alexander Mizzi, SJ Berwin LLP, Brussels, Belgium,
as Co-Agent and Counsel;

and

Ms Janna Smolkina, Ship Registration Officer, Consulate General of Panama,
Hamburg, Germany,

as Counsel;

Ms Veronica Anzilutti, Administration Department, Consulate General of
Panama, Hamburg, Germany,

as Advisor.

Guinea-Bissau is represented by:

Mr Luís Menezes Leitão, Full Professor, Faculty of Law, University of Lisbon,
Portugal,

as Agent and Counsel;

Mr Fernando Loureiro Bastos, Professor, Faculty of Law, University of Lisbon,
Portugal, and Fellow, Institute for International and Comparative Law in Africa, Faculty
of Law, University of Pretoria, South Africa,

as Co-Agent and Counsel;

and

Mr Rufino Lopes, Lawyer, Assessor to the Government,

as Advisor.

1 **THE PRESIDENT:** The Tribunal meets today pursuant to article 26 of its Statute to
2 hear the parties' arguments on the merits of the case concerning the vessel
3 *M/V Virginia G*.

4
5 On 4 July 2011, proceedings were instituted before the Tribunal in the dispute
6 between Panama and Guinea-Bissau regarding the vessel *Virginia G*, flying the flag
7 of Panama. The case was entered in the List of Cases as Case No. 19.

8
9 Since the Tribunal does not include upon the bench a member of the nationality of
10 the parties, both parties have availed themselves of the possibility, pursuant to
11 article 17, paragraph 3, of the Statute of the Tribunal, to choose a judge *ad hoc*.
12 Panama nominated Professor Tullio Treves and Guinea-Bissau Professor José
13 Manuel Sérvulo Correia. The Judges *ad hoc* made the solemn declaration provided
14 for in the Statute of the Tribunal during a public sitting held on 2 November 2012.

15
16 I now call on the Registrar to summarize the procedure in the case.

17
18 **THE REGISTRAR** (*Interpretation from French*): By Order of 18 August 2011 the
19 President of the Tribunal fixed the time-limits for the filing of the written pleadings in
20 the case, namely 4 January 2012 for the Memorial of Panama and 21 May 2012 for
21 the Counter-Memorial of Guinea-Bissau.

22
23 Further to the parties' requests, those time-limits were extended, by an Order of the
24 President dated 23 December 2011, until 23 January 2012 for the Memorial and until
25 11 June 2012 for the Counter-Memorial. The Memorial and the Counter-Memorial
26 were filed within the prescribed time-limits.

27
28 By Order of 30 September 2011 the Tribunal authorized the submission of a Reply
29 by Panama and a Rejoinder by Guinea-Bissau and fixed 21 August 2012 and
30 21 November 2012 respectively as the time-limits for the filing of those pleadings.

31
32 Those time-limits were subsequently extended until 28 August 2012 and until
33 28 November 2012 by an Order of the President dated 8 August 2012. The Reply
34 and the Rejoinder were filed within the prescribed time-limits.

35
36 By an Order of 2 November 2012 the Tribunal decided that a counter-claim
37 submitted by Guinea-Bissau in its Counter-Memorial was admissible pursuant to
38 article 98, paragraph 1, of the Rules of the Tribunal. The Tribunal also authorized the
39 submission by Panama of an additional pleading relating solely to the counter-claim
40 submitted by Guinea-Bissau and fixed 21 December 2012 as the time-limit for the
41 filing of that pleading. The additional pleading was filed within the prescribed time-
42 limit.

43
44 Mr President, I shall now read the submissions of the parties.

45
46 (*Continued in English*) In paragraph 442 of the Memorial, Panama makes the
47 following submissions:

48
49 Panama respectfully requests the Tribunal to declare, adjudge and order
50 that:

- 1 1. The Tribunal has jurisdiction under the Special Agreement and
2 under the Convention to entertain the full claims made on behalf of
3 Panama;
- 4 2. The claims submitted by Panama are admissible;
- 5 3. The claims submitted by Panama are well founded;
- 6 4. The actions taken by Guinea-Bissau, especially those taken on the
7 21 August 2009, against the VIRGINIA G, violated Panama's right
8 and that of its vessel to enjoy freedom of navigation and other
9 internationally lawful uses of the sea in terms of Article 58(1) of the
10 Convention;
- 11 5. Guinea-Bissau violated Article 56(2) of the Convention;
- 12 6. Guinea-Bissau violated Article 73(1) of the Convention;
- 13 7. Guinea-Bissau violated Article 73(2) of the Convention;
- 14 8. Guinea-Bissau violated Article 73(3) of the Convention;
- 15 9. Guinea-Bissau violated Article 73(4) of the Convention;
- 16 10. Guinea-Bissau used excessive force in boarding and arresting the
17 VIRGINIA G, in violation of the Convention and of international law;
- 18 11. Guinea-Bissau violated the principles of Article 224 and 110 of the
19 Convention;
- 20 12. Guinea-Bissau violated Article 225 of the Convention, as well as the
21 SUA Convention, as well as the fundamental principles of safety of
22 life at sea and collision prevention;
- 23 13. Guinea-Bissau violated Article 300 of the Convention;
- 24 14. Guinea-Bissau is to immediately return the gas oil confiscated on
25 20 November 2009, of equivalent or better quality, or otherwise pay
26 adequate compensation;
- 27 15. Guinea-Bissau is to pay in favour of Panama, the VIRGINIA G, her
28 owners, crew and all persons and entities with an interest in the
29 vessel's operations (including the IBALLA G), compensation for
30 damages and losses caused as a result of the aforementioned
31 violations, in the amount quantified and claimed by Panama, or in
32 an amount deemed appropriate by the Tribunal;
- 33 16. Guinea-Bissau is to pay interest on all amounts held by the Tribunal
34 to be due by Guinea-Bissau;
- 35 17. Guinea-Bissau is to reimburse all costs and expenses incurred by
36 Panama in the preparation of this case, including, without limitation,
37 the costs incurred in this case before the Tribunal, with interest
38 thereon;
- 39 18. Guinea-Bissau is to compensate Panama, the VIRGINIA G, her
40 owners, crew and all persons and entities with an interest in the
41 vessel's operations (including the IBALLA G) in the form of any
42 other compensation or relief that the Tribunal deems fit.

43
44 Further submissions were made by Panama in its Reply and the additional pleading.
45 I will not read them but should indicate that they may be found in paragraph 86 of the
46 Reply and in paragraph 118 of the additional pleading.

47
48 Guinea-Bissau, in its Counter-Memorial and its Rejoinder, asks the Tribunal:

49
50 ... to dismiss the Submissions of Panama in total and to adjudge and
51 declare that:

- 52 1. Panama violated Article 91 of the Convention;
- 53 2. Panama is to pay in favour of Guinea-Bissau compensation for
54 damages and losses caused as a result of the aforementioned

- 1 violation, in the amount quantified and claimed by Guinea-Bissau,
2 or in an amount deemed appropriate by the Tribunal;
3 3. Panama shall pay all legal and other costs the Republic of Guinea-
4 Bissau has incurred with this case.
5

6 **THE PRESIDENT:** Thank you, Mr Registrar.
7

8 By a further Order dated 24 April 2013, I fixed 2 September 2013, that is, today, as
9 the date for the opening of the hearing. Pursuant to the Rules of the Tribunal, copies
10 of the written pleadings are being made accessible to the public as of today. They
11 will be placed on the Tribunal's website. The hearing will also be transmitted live on
12 this website.
13

14 The first round of the hearing will begin today and will close on Thursday,
15 5 September 2013. The second round of the hearing will take place on Friday,
16 6 September 2013.
17

18 I note the presence at the hearing of Agents, Co-Agents, Counsel and Advisors of
19 the parties.
20

21 I call on the Agent of Panama, Mr García-Gallardo, to introduce the delegation of
22 Panama.
23

24 **MR GARCÍA GALLARDO:** Thank you, Mr President. I would like to introduce
25 straight away Ms Janna Smolkina, Consulate General of Panama in Hamburg,
26 Germany, from the Ships Registry Department, acting as Advisor;
27 Ms Veronica Anzilutti, Consulate General of Panama in Hamburg, who will not speak
28 today; and Mr Alex Mizzi, acting as Co-Counsel and Co-Agent. We will also present
29 a number of witnesses and two experts. These are not part of the delegation, of
30 course, but I am merely indicating their presence. We will do our utmost to respect
31 our structure and timing. Mr President, that concludes the introduction of our
32 delegation. Ms Smolkina will briefly address the Tribunal first.
33

34 **THE PRESIDENT:** Thank you, Mr García-Gallardo.
35

36 I now call on the Agent of Guinea-Bissau, Mr Menezes Leitão, to introduce the
37 delegation of Guinea-Bissau.
38

39 **MR MENEZES LEITÃO:** Mr President, distinguished Members of the International
40 Tribunal for the Law of the Sea. First, I must express my personal satisfaction in
41 being present at this International Tribunal and before the learned Judges that
42 compose it. I will first present myself. I am Luis Menezes Leitão, Counsel and Agent
43 of Guinea-Bissau in this case. I am from Portugal and I am an attorney with my office
44 in Lisbon. I also work as a full professor in the Law Faculty of the University of
45 Lisbon. In that capacity I was responsible for the co-operation between this faculty
46 and the Faculty of the Law of Bissau. Because of that, I also co-ordinated the reform
47 of Guinea-Bissau's legislation after its integration in the OHADA, the Organization for
48 the Harmonization in Africa of Business Law. Having worked with Fernando Loureiro
49 Bastos, Counsel and Co-Agent of Guinea-Bissau in this case, he is also a professor
50 in the Law Faculty of Lisbon and Fellow of the Institute for International and

1 Comparative Law in Africa and of the Faculty of Law of the University of Pretoria,
2 South Africa. He has several works published about international law and the law of
3 the sea. We will be assisted by Mr Rufino Lopes, who is a lawyer in Guinea-Bissau,
4 and presently is assisting the Prime Minister of Guinea-Bissau. Thank you very much
5 for your attention.

6
7 **THE PRESIDENT:** Thank you, Mr Menezes Leitão.

8
9 Since both parties have indicated to the Tribunal that they intend to call a number of
10 experts and witnesses, I wish to explain briefly the procedure that is to be followed in
11 this regard.

12
13 Pursuant to article 80 of the Rules of the Tribunal, a witness or expert shall remain
14 out of the courtroom before testifying. Only after a party signals to me that it intends
15 to call a witness or expert will I invite the witness or expert to enter the courtroom.
16 Once the witness or expert has taken his or her place, the Registrar will ask the
17 witness or expert to make the solemn declaration in accordance with article 79 of the
18 Rules of the Tribunal. Different declarations are to be made by witnesses and
19 experts, as set out in subparagraphs (a) and (b) of article 79 respectively. Witness-
20 experts will make the declaration as provided for experts.

21
22 Under the control of the President, witnesses and experts will be examined first by
23 the Agents, Co-Agents or Counsel of the party who has called them. After that, the
24 other party may cross-examine the witness or expert. If a cross-examination takes
25 place, the party calling the witness or expert will, when the cross-examination is
26 concluded, be asked if it wishes to re-examine. I wish to emphasize that a re-
27 examination shall not raise new issues but shall limit itself to the issues dealt with in
28 cross-examination.

29
30 Thereafter, if the Tribunal wishes to put questions to the witness or expert, questions
31 will be posed by the President on behalf of the Tribunal, or by individual Judges.
32 After that, or if the Tribunal does not wish to put questions, the witness or expert will
33 be allowed to withdraw.

34
35 In accordance with article 86, paragraph 5, of the Rules of the Tribunal, witnesses
36 and experts will also have the opportunity to correct the verbatim record of their
37 testimony produced by the Tribunal. However, in no case may such corrections
38 affect the meaning and scope of the testimony given.

39
40 As a further procedural remark, let me highlight that, pursuant to article 71 of the
41 Rules of the Tribunal, after the closure of the written proceedings, no further
42 documents may be submitted to the Tribunal by either party except with the consent
43 of the other party or if authorized by the Tribunal.

44
45 Before we proceed to the first statement of Panama, an administrative issue has to
46 be dealt with. During the hearing, the parties will call witnesses and experts to testify
47 before the Tribunal who will be speaking Spanish or Portuguese.

48
49 In accordance with the Rules of the Tribunal, those statements will be interpreted
50 from Spanish or Portuguese into English, one of the official languages of the

1 Tribunal. For this purpose, interpreters are made available to the Tribunal by the
2 party concerned. The interpreters provided by Panama, Mr Alejandro Caffarini and
3 Mr Roger Wolfe, are present with us today and I would like to welcome them.
4

5 Mr Caffarini and Mr Wolfe will be interpreting the statements made in Spanish into
6 English, and the Tribunal's interpreters will interpret from English into French. The
7 same will apply *vice versa* for questions put to witnesses and experts in English or
8 French. Further interpreters made available by Guinea-Bissau who will translate from
9 Portuguese into English will join us at a later stage of the hearing.
10

11 The Rules of the Tribunal require that interpreters made available by a party must
12 make a solemn declaration. I therefore ask the Registrar to invite Mr Caffarini and
13 Mr Wolfe to make the solemn declaration.
14

15 **THE REGISTRAR:** Thank you, Mr President. Good morning, Mr Caffarini and
16 Mr Wolfe. The interpreters provided by one of the Parties are required to make the
17 solemn declaration under article 85 of the Rules of the Tribunal before entering upon
18 their duties. Mr Caffarini, you have been provided with the text of the declaration.
19 I therefore ask you to make the solemn declaration.
20

21 **INTERPRETER (Mr Caffarini):** I solemnly declare upon my honour and conscience
22 that my interpretation will be faithful and complete.
23

24 **THE REGISTRAR:** Thank you, Mr Caffarini.
25

26 Mr Wolfe, you have also been provided with the text of the declaration. I therefore
27 ask you now also to make the solemn declaration.
28

29 **INTERPRETER (Mr Wolfe):** I solemnly declare upon my honour and conscience that
30 my interpretation will be faithful and complete.
31

32 **THE REGISTRAR:** Thank you, Mr Wolfe and Mr Caffarini. You can now both go to
33 the interpretation booth.
34

35 Mr President.
36

37 **THE PRESIDENT:** Thank you, Mr Registrar.
38

39 The Tribunal has been informed that the first statement of Panama will be made by
40 Ms Janna Smolkina. May I ask the Agent of Panama, Mr García-Gallardo, to confirm
41 this?
42

43 **MR GARCÍA-GALLARDO:** Yes.
44

45 **THE PRESIDENT:** Thank you, Mr García-Gallardo. I give the floor to Ms Janna
46 Smolkina to make her statement.
47

48 **MS SMOLKINA:** Mr President, distinguished Members of the Tribunal, I am here
49 today as a representative of Panama from the Ministry of Foreign Affairs, seconded
50 in the Panamanian General Consulate here in Hamburg, Germany, where I am

1 responsible for the ships registry. It is indeed an honour for me to be representing
2 Panama before this distinguished Tribunal.

3
4 Panama is represented here today in the interest of its flag, its entities, the vessel
5 *Virginia G* and the persons associated with the vessel. The Panamanian flag and her
6 protected entities were subject to circumstances which, it is my hope, will be
7 explained and appreciated during this week's hearings, in the hope of obtaining a
8 just outcome.

9
10 Panama is a maritime nation and is recognized as a world-class registry. Panama
11 takes the law of the sea extremely seriously, and we are determined not only to keep
12 in line with international obligations but also to protect the rights of our subjects,
13 including our flagged vessels and persons or entities associated with it, in line with
14 our entitlements under UNCLOS and international law.

15
16 This is very important for Panama and for her registry – and the *Virginia G* case is
17 being followed with great interest, as it poses some interesting and challenging
18 questions. To this end, I hope that these hearings will be conducive to a more
19 detailed understanding of the case.

20
21 I will now proceed to pass the floor to my members of the Panamanian delegation.
22 I present first Panama's lead Counsel and Agent, Ramón García-Gallardo, an
23 international lawyer who has a wealth of experience in the fisheries and shipping
24 sector and in the international law of the sea, including before this esteemed
25 Tribunal. Mr García-Gallardo will be addressing the Tribunal in detail regarding the
26 factual and legal circumstances of this matter. He is accompanied by Co-Counsel
27 and Co-Agent Alex Mizzi, a Maltese lawyer who also practises in international law of
28 the sea. Together with Mr García-Gallardo, he will be setting out and discussing the
29 points on which the parties are in dispute.

30
31 Your Honours, that concludes my brief introduction. With your permission, I will now
32 leave the floor to Mr García-Gallardo to make his opening statement.

33
34 Mr President, Members of the Tribunal, I thank you very much for your attention.

35
36 **THE PRESIDENT:** Thank you, Ms Smolkina.

37
38 I now give the floor to the Agent of Panama, Mr García-Gallardo, to make his
39 statement.

40
41 **MR GARCÍA-GALLARDO:** Mr President, distinguished Members of the Tribunal,
42 with all respect, in view of the time taken in the introduction of today's hearing,
43 20 minutes, I would respectfully request that this time be added to Panama's time
44 equally for the formal presentation.

45
46 Mr President, distinguished Members of the Tribunal, colleagues, it is indeed an
47 honour for me to have been entrusted again by the Republic of Panama with the task
48 of representing it as Agent in a new case. I also have the privilege to appear in these
49 proceedings as Counsel and Advocate.

1 This is the fourth occasion on which I have appeared as Agent before this
2 distinguished Tribunal. Previously I appeared in the “*Camouco*”, the “*Monte*
3 *Confurco*” and the “*Juno Trader*” cases.

4
5 As a legal practitioner in international law, this time I am acting as claimant against
6 Guinea-Bissau. In the “*Juno Trader*” Case, as you might know, I acted as Counsel
7 and Advocate of Guinea-Bissau.

8
9 Perhaps you will be glad to know that only a few days after this Tribunal rendered
10 the Order in the “*Juno Trader*” Case, following my recommendation, I was mandated
11 by Guinea-Bissau to settle the case amicably with the flag State, Saint Vincent and
12 the Grenadines, and the shipowner of the *Juno Trader*. That was a prompt release
13 case, and this Tribunal and the Parties did not have the material time and necessity
14 to consider it as a full case, like the one we have today, where a claim for damages
15 has been lodged by Panama against Guinea-Bissau.

16
17 I must remark that it is unpleasant for me to have to plead against the Republic of
18 Guinea-Bissau. I am not really happy to plead against the Republic or her people.
19 However, to tell you the truth, it feels more as though I am pleading against certain of
20 her high-ranking officials, politicians and legal advisers who represented Guinea-
21 Bissau at the time of the dispute.

22
23 I decided to accept this instruction from Panama because only weeks after the Order
24 rendered in 2004 by this Tribunal in the “*Juno Trader*” Case I realized that parts of
25 the administration of the Guinea-Bissau Government suffered from an element of
26 malpractice, lack of transparency and lack of governance. I will elaborate further on
27 this during my pleadings.

28
29 There are the similarities between the case of the *Juno Trader* and the *Virginia G*;
30 certainly there are. These relate to the discussion of the definition of the Guinea-
31 Bissau law on fishing-related operations and confiscation issues, but the Prime
32 Minister was the same. The Prime Minister in the “*Juno Trader*” Case was the same
33 as was in position again, some years later, in the case of the *Virginia*. Certainly this
34 is a case of maritime dispute. In the “*Virginia*”, as in the “*Juno Trader*” case, we have
35 a case with a reefer. I will elaborate on this during my statements. This case relates
36 to the supply of gas oil, which is an activity where it is publicly known in Guinea-
37 Bissau that this Prime Minister, the richest person in Guinea-Bissau, has a vital
38 interest in the company Petromar, the company that unloaded the cargo of the
39 vessel. In my view, this case too should have been settled some time ago between
40 the flag State of the vessel on the one hand and Guinea-Bissau on the other.

41
42 Allow me to underline something which I feel is very important. The mere
43 announcement of the decision to initiate international legal proceedings for violations
44 of UNCLOS and other rules of international law have allowed many practitioners and
45 shipowners across the years to settle a lot of disputes involving vessels unlawfully
46 arrested by coastal States in different parts of the world.

47
48 In this case, the vessel *Virginia G* was released 14 months after its arrest, but it was
49 left in poor condition, without its cargo, and plenty of debts that provoked the

1 bankruptcy proceedings of the shipowner and management company, and without
2 the payment of a single euro penalty to Guinea-Bissau.

3
4 The “official” reason for the release of the *Virginia G* was “the danger to the security
5 of maritime navigation for the long presence of the vessel”, also the good
6 relationship with Spain. However, the only reason was that we were empowered by
7 Panama already in June 2010 (three and a half months before the release) to
8 institute international legal proceedings against Guinea-Bissau, and the mere fact of
9 announcing the legal action of provisional measures proceedings was enough to
10 release the vessel.

11
12 Your Honours, the United Nations Convention on the Law of the Sea represented,
13 and continues to represent, a milestone in the development of the international law
14 of the sea, and indeed international law in general. Its power is curative but mostly
15 preventive and is very evidently a constitution of the seas. This time, unfortunately,
16 we must take curative action.

17
18 Your Honours, this dispute arose in August 2009, in the EEZ of Guinea-Bissau. We
19 will most probably listen to my esteemed colleagues again that Guinea-Bissau is a
20 less developed country, that foreign fleets abusively exploit the living resources, that
21 it is an important source of income for the country, that they are fighting against IUU
22 practices. This message, with all due respect, I think is over. In this case, as
23 happens more and more often, there are fewer related cases on fishing licences or
24 fishing permits. It relates to the actions and conduct of the respondent coastal State
25 against the claimant flag State. This brings the matter within UNCLOS and other
26 provisions on international law.

27
28 The events of 21 August 2009 ---

29
30 **THE PRESIDENT:** I am sorry to interrupt you, Mr García-Gallardo. It seems that
31 there is no translation into French. Will you please repeat the remarks that you made
32 a few minutes ago?

33
34 **MR GARCÍA-GALLARDO:** You will be able to read the transcript, but I can repeat it.

35
36 Your Honours, this dispute arose in August 2009 in the EEZ of Guinea-Bissau.
37 Certainly you will most probably listen to my esteemed colleagues that Guinea-
38 Bissau is a less developed country, that foreign fleets continuously abuse the
39 exploitation of living resources, that it is an important source of income for the
40 country, that they are fighting against IUU. I said that this message is over against
41 fishing licences that are legally granted, legally operating, with observers and
42 mechanisms for regulatory regulation that do not allow this type of practice such as
43 in the past. It relates to actions and conduct on the respondent coastal State against
44 the claimant flag State.

45
46 The events of 21 August 2009 and subsequent events have been amply explained in
47 Panama’s Memorial, and supported in detail by witness statements and relevant
48 documentation.

1 I should mention at this point that the captain of the *Virginia G*, Eduardo Blanco
2 Guerrero, unfortunately passed away in 2012, only some months after the release of
3 the vessel after a serious illness, most probably provoked by the difficult living
4 conditions on board the vessel in the Bay of Bissau. He was a professional and
5 wanted to defend his vessel to the end. I would not, of course, like to attribute to
6 Guinea-Bissau sole responsibility for his death, but certainly to spend 14 months on
7 board a ship in Guinea-Bissau, officially arrested and confiscated according to
8 Guinea-Bissau, physical and psychological abuse, undignified living, hygiene and
9 sanitary conditions, lack of food and water, exposure to malaria, constant guard by
10 the military, rough and disgraceful treatment, and so forth, your Honours, would have
11 its consequences. His presence here would, of course, have been very relevant.
12 Fortunately, on this occasion, he might at least be spared having to re-live the
13 experience.

14
15 Your Honours, this is a multi-faceted and detailed case, and one which calls upon
16 several principles and provisions of international law and of overall legal doctrine.
17 Panama has submitted this dispute to the Tribunal in order to seek reparation, in the
18 requested form of financial compensation to Panama and the individuals entitled to
19 protection under its flag. With your permission, your Honours, within the allocated
20 time, we will very shortly proceed to address some of the key areas of this dispute.

21
22 Before that, I would like to highlight an important issue for Panama. Panama has
23 raised certain limited objections to the witness and expert witnesses proposed by
24 Guinea-Bissau. The objections were not raised on account of Guinea-Bissau adding
25 a witness or three expert witnesses; rather, the objection was raised because
26 Panama was not provided with the written statements or reports of the new witness
27 and three experts. Panama, on the other hand, provided its written witness and
28 experts' reports well in advance. Even a couple of days before the hearing, following
29 consultations, Panama agreed to list a new expert witness whose reports have long
30 been submitted.

31
32 We are aware of the provisions of articles 63 and 72 of the Rules of the Tribunal that
33 there would appear to be no specific requirement under article 72 for written
34 statements to be provided in advance.

35
36 In this respect, we agree with the Honourable President's reference to article 63 of
37 the Rules of the Tribunal in the letter of 19 August. However, this would apply in full
38 only if written statements were, in fact, presented.

39
40 It is precisely in the spirit of this article 63 that Panama first presented its detailed
41 written witness and expert statements as part of its submissions. Guinea-Bissau did
42 likewise with its witness statements only in its Counter-Memorial, and of course there
43 is no objection to that.

44
45 The missing element, however, is that it will have no material time to prepare
46 questions to be asked of the new witness and the three experts, because cross-
47 examination of those individuals must be made immediately after their examination
48 by Guinea-Bissau. Panama can only do so "blindly", or on the basis of an evaluation
49 of a few minutes.

50

1 Your Honours, I refer to the Separate Opinion of Judge Lucky in the “*Juno Trader*”
2 Case. He rightly relied on the well-known principle that justice must not only be done
3 but must be seen to be done, and that fairness is paramount in every case. In other
4 words, one party must not be placed at a disadvantage in a matter before the
5 Tribunal.
6

7 Indeed, there has been no written statement by the Respondent’s new witness, who,
8 as you might have determined from the submissions, is an important witness – in
9 fact, a former top officer of the Bissau administration who was arrested for alleged
10 corruption related to this case. Similarly, no full and affirmed report was presented by
11 Guinea-Bissau’s three expert witnesses.
12

13 Judge Chandrasekhara Rao’s Separate Opinion in the “*Juno Trader*” Case set out
14 that it is inherent in the general principles of procedural law that each party must
15 enjoy equal rights for the submission of its case to the Tribunal.
16

17 In any proceedings, it is not equitable to fail to disclose one’s defence – and, I would
18 respectfully add, a part of one’s defence – to the other party. Yet it seems that
19 Guinea-Bissau prefers disclosing its defence and witnesses on an *ad hoc* basis,
20 even as new evidence before or during the hearings.
21

22 In that Separate Opinion Judge Chandrasekhara Rao continued by stating that
23 where a party fails to submit a statement or evidence on which it relies, and where
24 the opposite party does not have sufficient time to respond to that evidence made by
25 the former during the oral proceedings, it may be difficult to maintain that the former
26 has not obtained an unfair advantage over the other. The fact that both parties are
27 given equal speaking time does not necessarily restore the requisite balance and
28 fairness.
29

30 Maybe there is a debate to be had for the record, but I would point, in particular, to
31 the fact that certain international guidelines on the taking of evidence, which provide
32 more detailed rules on the submission of evidence, witnesses and experts, would be
33 very important and practical for the future.
34

35 With the permission of the Tribunal, Mr President, I will now invite my colleague Alex
36 Mizzi to briefly address the Tribunal next.
37

38 **THE PRESIDENT:** Thank you, Mr García-Gallardo.
39

40 I now give the floor to the Co-Agent of Panama, Mr Mizzi, to make his statement.
41

42 **MR MIZZI:** Mr President, distinguished Members of the Tribunal, colleagues, good
43 morning.
44

45 It is a tremendous privilege for me to appear for the Republic of Panama before this
46 distinguished and learned Tribunal.
47

48 I am perhaps particularly fortunate to have this opportunity relatively early in my legal
49 career. I am sincerely in awe of the eminence and scholarship before which I shall
50 now humbly put forward my contribution.

1
2 I propose to spend a short time setting out the factual framework of the key facts and
3 events – the “bare-bones” if you will – in respect of which this dispute arises. I shall,
4 therefore, seek to avoid for the time being any discussion on issues on which there is
5 contention.

6
7 Panama’s arguments will be progressively presented during the hearings in order to
8 develop the particular points around the facts.

9
10 What I set out below is supported by the annexes already presented by Panama in
11 its Memorial and Reply. Where necessary, I will refer the Tribunal to specific
12 annexes.

13
14 Your Honours, the West African coast is a main route for maritime traffic. Scores of
15 merchant ships sail along this route transporting cargo to Africa and to the western
16 side of Europe. It is also the main route northwards towards one of two main access
17 points to the Mediterranean Sea.

18
19 The West African coast is also a recognized fishing area. Several fishing operations
20 take place along these routes, and there are in force a number of bilateral
21 cooperation programmes. These seek to promote commercial cooperation with West
22 African States, within the limits of sustainability, conservation and management.

23
24 Guinea-Bissau and the European Union were parties to a 2007–2011 Fisheries
25 Partnership Agreement (FPA), which is included in tab 2 of the Legal Extracts
26 Bundle. Reference to this FPA will be made later on, but I would point out for now
27 that this genre of agreement ties in with article 62 of the United Nations Convention
28 on the Law of the Sea, whereby States that are not able to harvest their entire
29 allowable catches grant access to the surplus allowable catches.

30
31 Guinea-Bissau also grants fishing licences to fishing vessels flagged in neighbouring
32 countries such as Senegal and Mauritania.

33
34 When fishing in the exclusive economic zone of coastal States, certain measures
35 and other conditions established by that coastal State apply, provided those
36 measures and conditions are in line with the Convention.

37
38 Examples of measures that may be required by coastal States include the placing of
39 observers on board; licensing of fishing vessels; allowable species, and so forth.
40 This is provided for in UNCLOS.

41
42 We now turn to the *Virginia G*. The *Virginia G* is an oil tanker. She is not a fishing
43 vessel and she is not a logistics vessel. Her operations are not connected with
44 fisheries. She does not support fishing activities. She provides marine gas oil to her
45 customers. This point will be developed shortly.

46
47 In August 2009, the *Virginia G* was operating normally along the immense and
48 impressive stretch of coastline. Her typical schedule and route were the same as
49 many other times – she would load her marine gas oil cargo at the ports of the
50 Canary Islands and proceed southwards to supply different merchant vessels sailing

1 along the West African coast. She was also scheduled to provide fuel to fishing
2 vessels operating both in international waters (catching migratory species such as
3 tuna) and also within the exclusive economic zones specifically between Mauritania
4 and Angola.

5
6 The location, or way point, for refuelling is generally agreed a few weeks or days in
7 advance, between the owners/operators of the *Virginia G* and her customers, taking
8 into account the particular routes of the vessels.

9
10 Contractual arrangements are made on-shore, between the supplier, the customer
11 and, where applicable, the charterer of the vessel – or their agents. Instructions and
12 orders are then executed by email, radio, telephone, or other means, between the
13 agents of the vessels and the captains of the vessels, in coordination with onshore
14 staff.

15
16 On a few occasions in 2008 and 2009, the *Virginia G* supplied marine gas oil to
17 fishing vessels in the exclusive economic zone of Guinea-Bissau; hence outside its
18 territorial sea. The owners of fishing vessel always explained that an authorization is
19 required in Guinea-Bissau for refuelling to take place. The owner of the *Virginia G*
20 never understood the reason for this. Indeed, any other vessels in the exclusive
21 economic zone of Guinea-Bissau, including those requiring far larger quantities of
22 fuel, were supplied freely. The discriminating factor, it seems, was the fishing vessel,
23 which the *Virginia G* certainly is not.

24
25 Nevertheless, on the few occasions the *Virginia G* operated in the exclusive
26 economic zone of Guinea-Bissau, the owner of the receiving fishing vessel, through
27 its agent, applied and obtained authorization. The *Virginia G* would then get the
28 green light before proceeding with refuelling, not being aware of the fees.

29
30 The green light – or the communication or confirmation that authorization has been
31 obtained – is done by phone and radio. It would, indeed, defeat the very purpose of
32 offshore bunkering if the tanker were requested to visit port to obtain the original.

33
34 The mandatory Guinea-Bissau-appointed observers on board the fishing vessels did
35 and do observe this. They also report to Guinea-Bissau once or twice a day.

36
37 In this case, a refuelling operation was planned to take place in August 2009 –
38 approximately 60 miles off the Guinea-Bissau coast. The coordinates are not
39 disputed, and we are therefore speaking of the exclusive economic zone of
40 Guinea-Bissau.

41
42 The fishing vessels that needed refuelling belonged to a company called Balmar
43 (which I am abbreviating for the time being) and it was planned for these vessels to
44 be refuelled by the *Virginia G*. The fishing vessels were called the *Amabal I*,
45 *Amabal II*, *Rimbal I* and *Rimbal II*.

46
47 On 11 August two of these vessels – *Amabal I* and *Amabal II* – were arrested by
48 Guinea-Bissau, apparently for the transfer of fuel between themselves. This is set
49 out in Annex 5 of Guinea-Bissau's Counter-Memorial, which is a witness statement,
50 by the then acting Fisheries Minister, Mr Augusto Artur Antonio da Silva. Mr da Silva

1 explains in his statement that the two vessels were owned or represented by the
2 former Consul of Spain, Mr Hamadi Bursarai Emhamed.

3
4 Between 14 and 20 August 2009, correspondence was exchanged between the
5 agent of the fishing vessels and the Guinea-Bissau authorities – in particular
6 Mr Hugo Nosoliny Vieira, Director of FISCAP (the fisheries authority in Guinea-
7 Bissau).

8
9 The correspondence related to an authorization for the refuelling of the fishing
10 vessels I mentioned earlier. I refer here to Annexes 19 and 20 of Panama's
11 Memorial, which I shall refer to in more detail shortly. FISCAP requested information,
12 as a condition to the authorization, in respect of the location, date and time of the
13 refuelling operation, and in respect of the oil tanker that was to provide the service.
14 This information was provided in full.

15
16 However, the question as to how and whether the authorization was granted is
17 contentious, and I shall not focus on that point now but in the next section.

18
19 The day before the scheduled refuelling, the two vessels *Amabal I* and *Amabal II*
20 were released without any formality and based solely on the trust and good
21 relationship between Guinea-Bissau and Spain. Mr da Silva states this quite
22 candidly.

23
24 Although released, the two vessels still required gas oil and that is when the *Virginia*
25 *G* was requested to provide the fuel.

26
27 We now move to the point when the *Virginia G* was in the process of providing fuel to
28 the two *Amabal* vessels.

29
30 In the evening of 21 August 2009, two Zodiac craft approached the *Virginia G* at
31 speed, and unannounced. She was very suddenly boarded by persons armed with
32 AK-47 rifles, and by other persons in plain clothes.

33
34 These events stunned the captain and crew.

35
36 Eventually, the captain asked who they were, and he was told that they were from
37 FISCAP.

38
39 Details of the manner of approach, the boarding, the treatment of the captain, the
40 treatment of the crew, as well as the events on board, are contentious, and I shall
41 limit myself for the time being.

42
43 However, on board, the question arose as to whether the *Virginia G* was in
44 possession of an authorization to provide fuel in the exclusive economic zone of
45 Guinea-Bissau.

46
47 The Guinea-Bissau officials carried out an inspection of the *Virginia G* and her
48 documents. They ordered the captain to cease the operation, and to proceed to the
49 port of Bissau. The crew was kept under guard, and means of communication were

1 not permitted. During a short unguarded moment, a telegraphic communication was
2 sent to the owner, briefly informing of the incident.

3
4 The journey to port was an overnight ordeal for the crew of the *Virginia G*. During the
5 voyage, the captain was, we might say, “requested” to sign a report or document
6 which was written in Portuguese. He was not provided with an interpretation or
7 translation, and his request for a copy was rejected. For reasons we will enter into
8 later, the captain felt he rather had to sign the document.

9
10 The *Virginia G* proceeded to the port of Bissau, with the two Zodiacs in tow (even
11 having supplied one of them with fuel at the request of one of the Guinea-Bissau
12 officials). The *Amabal I* and *Amabal II* were also arrested, and followed the
13 *Virginia G*.

14
15 Once the *Virginia G* arrived at the port of Bissau – at approximately 2 o’clock in the
16 afternoon the next day – documents and passports were confiscated.

17
18 More detailed communications were sent to the owners, who in turn contacted the
19 vessel’s P&I Club in order to start finding out what might have happened.

20
21 We are now at one week after the arrest. On 28 August 2009, FISCAP officials
22 boarded the *Virginia G*. They inspected the vessel, her bridge, equipment, engine
23 room and store room and took photos of the vessel and also soundings of the cargo
24 tanks. This was done in order to determine the quantity of the fuel cargo on board.

25
26 **THE PRESIDENT:** Mr Mizzi, I am sorry to interrupt you. Would you speak a little bit
27 more slowly because our interpreters have some difficulties following you?

28
29 **MR MIZZI:** Around the same time, therefore around 28 August, the *Amabal I* and
30 *Amabal II* were released. I refer again to the witness statement of Mr Augusto Artur
31 Antonio da Silva, where he refers to the second arrest of these two vessels – and I
32 quote:

33
34 After much thought and aware of the fact that the *Amabal I and Amabal II*
35 belonged to the former Consul of Spain and taking into account our good
36 cooperation relations with the Kingdom of Spain, we eventually made a
37 political decision to release them.

38
39 This is set out in the witness statement. We hope to shed further light on this matter
40 later on today.

41
42 Ten days after the arrest – that means on 31 August 2009 – FISCAP (again,
43 Mr Hugo Nosoliny Viera) notified the *Virginia G* of the decision that had been taken
44 by the Interministerial Commission of Maritime Surveillance (No 07/CIFM/09) a few
45 days earlier. I refer here to Annex 38 of the Memorial. This decision was taken a few
46 days earlier.

47
48 The letter stated that it had been decided to confiscate *ex officio* the *Virginia G* with
49 her gear, equipment, and products on board for the repeated practice of fishing-

1 related activities in the form of unauthorized sales of fuel in the exclusive economic
2 zone of Guinea-Bissau.

3
4 I would point out, again, that the *Virginia G* is not a fishing vessel; hence she had no
5 such gear or equipment or products on board.

6
7 The letter cited article 52 of the Guinea-Bissau Decree Law 6-A/2000 (amended in
8 2005). This is Guinea-Bissau's main fisheries resources law – which we will be going
9 into later.

10
11 I would, however, like to highlight that article 52 provides, *inter alia*, that fishing
12 vessels, national or foreign, which carry out fishing activities within the limits of
13 national maritime waters, without having obtained the authorization, will be seized *ex*
14 *officio*, along with gear, equipment and fisheries products in favour of the State.

15
16 This is the article of law that was applied to the *Virginia G* – she was being treated as
17 a fishing vessel. We will be making important specific submissions on this point.

18
19 The owner of the *Virginia G* made all efforts to determine what had happened and to
20 defend the vessel and her crew. Correspondence was sent to the Guinea-Bissau
21 administration. Detailed information in this respect is provided in Panama's Memorial
22 (Annexes 41-46). Since this is also a contentious point, I shall not comment on this
23 for the time being.

24
25 It is not contested that up until this point Guinea-Bissau did not notify Panama, the
26 flag State of the *Virginia G*, of the measures taken against her flag and the vessel.
27 Guinea-Bissau's reasons for not notifying Panama are a point of contention, and I
28 will, therefore, refrain from entering into further detail for now.

29
30 In September 2009 a condition survey of the *Virginia G* was carried out. The
31 *Virginia G* was found to be in a seaworthy condition. This is provided for in the Reply
32 of Panama, point 8 of Annex 4.2.

33
34 I refer now to Annex 47 of the Memorial, which shows a letter dated 23 September
35 2009 – hence 23 days after the notification of Decision 07/CIFM/09 – confiscating
36 the *Virginia G*. The *Virginia G* received this letter from FISCAP on the same day, that
37 is the 23rd.

38
39 It stated that since more than 30 days had passed since the notification of the CIFM
40 decision without any claim from the representative of the *Virginia G*, FISCAP would
41 then proceed to auction the products on board if no reaction is received from the
42 vessel's representative within 72 hours, or three days later.

43
44 Two days later – 25 September – the owners of the *Virginia G* were notified with a
45 letter declaring the confiscation of the cargo on board owing to the stated violation of
46 the fisheries laws, and owing to the lack of reaction by the owner of the vessel
47 (Annex 48). On 5 October, the vessel received a letter from FISCAP which, amongst
48 other things, mentioned that the vessel's oil cargo would be auctioned and that the
49 owners had the right of first refusal, should they wish to purchase the cargo
50 (Annex 50).

1
2 Some days later, the *Virginia G* was boarded, unannounced, by Guinea-Bissau
3 officials who again took soundings of the vessel's cargo tanks. The captain informed
4 the owner that the officials pointed towards the eventual physical confiscation of the
5 cargo.

6
7 The owner's lawyers were immediately instructed to seek a suspension order against
8 the confiscation.

9
10 The order was obtained on 5 November, by virtue of which FISCAP and CIFM were
11 to refrain from confiscating the vessel, the equipment and the cargo, as well as to
12 allow access to the *Virginia G*. This is set out in Annex 54.

13
14 The very next day, that is 6 November, Guinea-Bissau officials boarded, and the
15 captain was ordered to dock at a fuel terminal. The captain quickly informed the
16 owner who in turn instructed the vessel's P&I Club and lawyers to notify or otherwise
17 invoke the injunction obtained the previous day. (That was the judgment on the
18 screen.) The action was thus avoided.

19
20 On 20 November, however, the captain once again informed the owner that the
21 *Virginia G* had been boarded by military personnel, this time in a highly threatening
22 manner, and that the captain was ordered to berth the vessel.

23
24 The key section of the letter in Annex 56 of the Memorial, I think, would need to be
25 kept in mind because the words are particularly poignant.

26
27 The captain was handed a letter, forward-dated by 10 days (i.e. 30 November)
28 authorizing the discharge of the oil tanker. I refer now to Annex 56.

29
30 The key section of the letter that needs to be kept in mind is the second paragraph:

31
32 Notwithstanding the judicial order of suspension of the seizure, and not
33 having the opposition of the Public Prosecutor, the Government Attorney
34 and Supervisor of Legality, we order hereby that the oil tanker *Virginia G*
35 be authorized to discharge its content estimated at 436 tonnes gas oil in
36 your premises.

37
38 It is relevant to note – for reasons that will be explained later – that this letter was
39 presented to the captain on a weekend, and one day after Guinea-Bissau appealed
40 the suspension order previously obtained by the *Virginia G*'s owners.

41
42 We will visit the issue of Guinea-Bissau law and the effect that Guinea-Bissau's
43 appeal might have had on the suspension order, but in any case, the letter in
44 question made no reference to such appeal, but rather to a "no-objection" opinion by
45 the Public Prosecutor.

46
47 I draw your attention to the stamp on the bottom right-hand side of the letter – that
48 stamp says "Petromar" and is dated 20 November 2009. The letter is addressed,
49 although vaguely, to CLC (top left-hand side) (*Compania de Lubricantes y*

1 *Combustibles de Guinea Bissau*) which is an associated company of Petromar, and
2 which has government links. This will be explained later.

3
4 This time round the captain complied with the orders. The circumstances as to why
5 the captain ultimately complied with the orders are, again, the subject of contention
6 and will be dealt with eventually.

7
8 The vessel was detained for a total of 14 months. Living conditions on board
9 degenerated and the crew endured severe hardship. The *Virginia G*'s owner suffered
10 greatly financially. The crew likewise suffered physically, mentally and financially.
11 Details on these matters will also be provided during this hearing but, in summary,
12 the crew's passports were held by the Guinea-Bissau authorities for months. The
13 *Virginia G* was kept under constant military guard on board. The owners could not
14 send wages and provisions on a frequent enough basis, as the company was facing
15 serious financial difficulties. Provisions had to be heavily rationed and there were
16 days when there was no food and potable water on board. Rainwater would be used
17 as the only source of potable water. Rainwater was also used for washing, cleaning
18 and even cooking. It was collected in plastic containers, previously used for waste.
19 There was insufficient fuel for subsistence on board such that the crew was denied
20 the basic amenities on board, including electricity. The lack of electricity meant that
21 the crew could not use the air conditioning systems. Windows were kept open for
22 ventilation or the crew slept outside, and some crew contracted malaria owing to the
23 mosquitoes. The Master also suffered from illness. The idle vessel deteriorated
24 quickly, especially the main engine, auxiliary generator and the vessel's equipment.
25 The company could not adopt a lay-up policy due to the uncertainty as to how long
26 the situation might last.

27
28 On 18 October 2010 the vessel was notified of a decision taken almost a full month
29 earlier to release the vessel without penalty and revoking the decision to seize and
30 confiscate the vessel. This is Annex 58. No mention was made of the cargo. The
31 release was unconditional yet without signature of a settlement. Unfortunately, but
32 understandably, by now the *Virginia G* had deteriorated to such an extent that it was
33 unseaworthy and unfit to sail and operate safely, and Panama would not re-certify
34 the vessel.

35
36 Between 28 and 31 October 2010 another condition survey of the *Virginia G* was
37 commissioned. This is provided in the Reply of Panama in Annex 4.2. The report set
38 out the scope of repairs for re-classification. This was to be done in two phases, at
39 considerable cost and over a number of months. The *Virginia G* returned to service
40 in December 2010 but, as it turns out, it was too late for the owner to recover
41 commercially.

42
43 That, I believe, your Honours, sets out the main factual framework, without entering
44 too much into the merits of the contentious points. With your permission, I would like
45 to spend a few more minutes, Mr President, on the contested authorization.

46
47 I mentioned earlier the correspondence that was exchanged between the agent of
48 the *Amabal* fishing vessels and FISCAP, Mr Hugo Nosoliny Vieira in particular, in
49 relation to the refuelling of the four fishing vessels by the *Virginia G*.

1 At the outset, Panama makes it quite clear that it rejects that there was a need for
2 the *Virginia G* to be covered by any sort of authorization or fees for refuelling vessels
3 in the EEZ of Guinea-Bissau. Panama considers that such a requirement is contrary
4 to the freedoms set out in article 58 of UNCLOS, particularly the freedom of
5 navigation and other internationally lawful uses of the sea related to those freedoms,
6 such as those associated with the operation of ships. Panama submits that
7 Guinea-Bissau did not have due regard to the rights and duties of Panama and did
8 not act in a manner compatible with the Convention. Guinea-Bissau was unjustified
9 in arresting the *Virginia G* and in doing so violated several provisions of the
10 Convention, including articles 56, paragraph 2, 58, 73 and 300, without limitation.

11
12 However, the questions raised on the authorization relating to the refuelling in
13 August 2009 are at the centre of this case. If it were to be held that Guinea-Bissau
14 did have the right within its EEZ to pre-authorize and impose fees for bunkering, as it
15 in fact did, Panama claims that Guinea-Bissau none the less breached its duties
16 under international law and under UNCLOS by acting in bad faith and abusively in
17 direct reference to this authorization. I would therefore need to spend a few more
18 minutes in order to highlight the main aspects of the correspondence relating to the
19 authorization.

20
21 If I may refer the Tribunal to Annex 19 of Panama's Memorial, this sets out the letter
22 in Portuguese and an English translation. This is a letter from FISCAP following a
23 request by the fishing vessels for authorization to refuel. These fishing vessels
24 already operated under a fishing licence by virtue of which they were permitted to
25 fish in the EEZ of Guinea-Bissau. Therefore, we are faced with a particular request,
26 that of refuelling. FISCAP says:

27
28 The content of your letter has been analyzed and in conclusion the FISCAP
29 authorizes the supply of fuel to the respective vessels under the following
30 conditions:

- 31
32 1. To indicate before the operation
33 (a) The co-ordinates of the operation of the supply of fuel
34 (b) Date, time and name of the ship with which the vessels, *Amabal 1*,
35 *Amabal II*, *Rimbal 1* and *Rimbal 2* will perform the operation.

36
37 Without any further issue, our best wishes.

38
39 This was therefore an authorization subject to a list of conditions, specified in
40 advance and set out by FISCAP. There were no other conditions. Those conditions
41 were fulfilled by a subsequent letter from the agent of the fishing vessels on
42 20 August. I refer now to Annex 20, the next annex of Panama's Memorial, wherein
43 the requested information was provided. The *Virginia G* and her expected position
44 and arrival were now known to Guinea-Bissau, indeed, as requested.

- 45
46 1. The co-ordinates of fuel supply operations are 17, 35 and 12,00.
47
48 2. This operation should be realized at 1600 hours on 21 August 2009. Tanker's
49 name is *Virginia G*.

50
51 Thus, the conditions were fulfilled.

1
2 The captain of the *Virginia G* confirms that he received confirmation that authorization
3 was issued, and this is set out in his witness statement in Annex 1 of Panama's
4 Memorial. The same also emerges from the correspondence between the owner of
5 the fishing vessels and the fishing vessels themselves. I refer the Tribunal to the table
6 setting out this correspondence, which is a consolidation of emails set out in Annex 42
7 but I shall consolidate in a table form here. The questions to the fishing vessels were:
8 "Good morning. I need you to answer a few questions. First, did the agency inform you
9 that we had the permission to refuel?"

10
11 The vessels answered: "Yes, we were informed by telephone."

12
13 Next question: "The observers, were they aware that we were on our way to refuel?"

14
15 The fishing vessels answered: "Yes, we informed them when the oil tanker called us
16 by phone and we headed towards the meeting point."

17
18 The third and last question was: "Did the observer communicate the area of refuelling
19 by radio to FISCAP?"

20
21 The replies were: "Yes, by radio."

22
23 The fishing vessels, crucially, also had observers on board who, whilst unable to
24 take enforcement measures, that is true, were there to observe and report the
25 activities of the fishing vessels directly to Guinea-Bissau. Despite all of this, Guinea-
26 Bissau states, and I quote paragraph 136 of Guinea-Bissau's Counter-Memorial: "It
27 is completely false that the oil tanker *Virginia G* ever had any authorization to
28 perform the fishing-related operation that it did." It calls the above mentioned
29 documents, 19 and 20, which I have referred to, "incomplete" and "deceptive".

30
31 Paragraph 138 of the Counter-Memorial of Guinea-Bissau states: "As set out in
32 Panama's Annex 19, this refuelling was authorized but conditional to the co-ordinates
33 and the name of the supply vessel being advised, said vessel naturally requiring a
34 licence to perform this activity."

35
36 I would now refer to Annex 16 and 17 of Guinea-Bissau's Counter-Memorial. Here
37 Guinea-Bissau produces two strange documents, by which Guinea-Bissau suggests
38 that the authorization that was already granted was to be granted again, as though
39 the authorization to refuel excludes the fuel being provided. Comparing Annex 16 of
40 Guinea-Bissau's Counter-Memorial to Annex 20 of Panama's Memorial, we are
41 looking at what appear to be the same document. Indeed, both documents are dated
42 20 August 2009, both have identical signatures at the bottom, both have the identical
43 "received" acknowledgement of FISCAP, signed, stamped and dated 20 August
44 2009, yet strangely, although stamped as received by FISCAP, FISCAP's Annex 16
45 suggests a handwritten note bearing the same date of 20 August 2009. Yet this
46 version of the document and its alleged follow-up, Annex 17, were never seen by the
47 *Virginia G*, and were never presented by the Guinea-Bissau administration in reply to
48 the many communications sent to the shipowners. These documents did not appear
49 in the Guinea-Bissau court proceedings. They never featured in the discussions

1 between Panama and Guinea-Bissau and were never received by the owner. They
2 appeared for the very first time in the Counter-Memorial.

3
4 Your Honours, I propose to stop here for the time being and, with your permission,
5 I would pass the word back to my colleague, Ramón García-Gallardo.

6
7 **THE PRESIDENT:** Thank you, Mr Mizzi.

8
9 I now give the floor again to the Agent of Panama, Mr García-Gallardo, to make a
10 statement.

11
12 **MR GARCÍA-GALLARDO:** Your Honours, normally the coffee break takes place at
13 11.30. I will try to spend, if you agree, ten minutes more, and normally I would not
14 request additional time for the introduction of 20 minutes of this morning.

15
16 **THE PRESIDENT:** How long will it take?

17
18 **MR GARCÍA-GALLARDO:** It will take 20 minutes from now.

19
20 **THE PRESIDENT:** Please go ahead.

21
22 **MR GARCÍA-GALLARDO:** With your permission, I will first need to address the core
23 aspect of Guinea-Bissau's objections to the admissibility of Panama's claims as
24 relates to the genuine link to nationality or diplomatic protection and to the local
25 remedies rule. Your Honours, Guinea-Bissau's objections to the admissibility of
26 Panama's claim aggrieve Panama, and not because it is forced to defend each of
27 the three objections but simply because Guinea-Bissau is not entitled to raise such
28 objections. It is our submission that Guinea-Bissau has acted in bad faith and in any
29 case has not brought the objections within the prescribed time-limit. These last two
30 points need to be addressed before turning to each of the three objections.

31
32 I would like to recall that this dispute was first referred to arbitration under Annex VII
33 of UNCLOS in June 2011. Guinea-Bissau was officially notified, an arbitrator was
34 appointed, and a statement of claim and legal bases were also presented by
35 Panama. Guinea-Bissau was requested to also appoint its own arbitrator in terms of
36 article 3 of Annex VII of UNCLOS. Subsequently Guinea-Bissau accepted Panama's
37 parallel proposal for both parties to submit the arbitration before the Tribunal. This
38 took place in July 2011.

39
40 This is a critical distinction, your Honours. Guinea-Bissau was not unknowingly sued.
41 Guinea-Bissau agreed to transfer the dispute to the Tribunal and I quote, "whose
42 jurisdiction in this case Guinea-Bissau accepts fully", adding "the aforementioned
43 proposal and this letter constitute a special agreement between the two parties for
44 the submission of the case to ITLOS." I therefore find it very difficult to see why
45 Guinea-Bissau is now raising objections that go to the very root of the special
46 agreement, particularly so in respect of the objection that local remedies were not
47 exhausted, as will also be discussed shortly.

1 For the reasons I will develop below, it is Panama's submission that Guinea-Bissau
2 is precluded from raising its objections and that the Tribunal should declare the
3 objections as simply inadmissible.

4
5 Your Honours, Panama has already respectfully submitted in its Reply that there is a
6 time-limit for bringing objections to admissibility, 90 days, and that Guinea-Bissau,
7 despite many opportunities, has failed to respect this time-limit. A logical
8 interpretation in good faith and based on the ordinary meaning to be given to the
9 terms of article 97(1) of the Rules of this Tribunal, in the spirit of article 31(1) of the
10 Vienna Convention on the Law of Treaties, would lead to the conclusion that the text
11 of article 97(1) indicates and contemplates three distinct circumstances for each of
12 which the 90-day limit applies:

13
14 Any objection to the jurisdiction of the Tribunal or to the admissibility of the
15 application, or other objection to the decision which is requested before any
16 proceedings on the merits shall be made in writing within 90 days from the
17 institution of proceedings.

18
19 Guinea-Bissau's objection is in relation to admissibility and an objection to the
20 admissibility "shall be made in writing within 90 days from the institution of
21 proceedings." This reasoning is supported by the originator of article 97(1) of the
22 Rules of the Tribunal, which is article 79(1) and the more recent article 79(2) and
23 79(3) of the Rules of the International Court of Justice. Article 79(1) of the Rules of
24 the International Court of Justice also provides a time-limit for the submission of
25 certain objections which certainly does not allow for such submission at the same
26 time as, and as part of, the Counter-Memorial; indeed, a step further in favour of
27 Guinea-Bissau.

28
29 Article 79(1) of the ICJ Rules states that any such objection shall be made as soon
30 as possible and not later than three months after delivery of the Memorial. Guinea-
31 Bissau therefore even failed to submit its objections within this time-limit that appears
32 to be considered reasonable by the ICJ Rules, in this case by 23 April 2012. The
33 wording of article 79(1) was amended as of 1 February 2001 and therefore after the
34 Judgment in the *M/V "SAIGA" (No. 2) Case*. The text read differently when the
35 International Tribunal considered this point in this case. The text was changed from
36 "within the time-limit fixed for the delivery of the Counter-Memorial" to "as soon as
37 possible and not later than three months after the delivery of the Memorial."

38
39 Your Honours, as I said, this point is set out in detail in Panama's Reply and I have
40 attempted to set out the main points which, on a logical interpretation, would lead to
41 the conclusion that Guinea-Bissau failed to make its objection on admissibility within
42 the time-limit stipulated.

43
44 I would now also like to briefly comment on a second point – estoppel. It is also
45 suggested that Guinea-Bissau's choice of timing for submitting its objections are also
46 clearly in bad faith.

47
48 We have already stated that these proceedings were brought by special agreement
49 between Panama and Guinea-Bissau; they did not come as a surprise to Guinea-
50 Bissau. Guinea-Bissau was fully aware of the claims raised by Panama.

1
2 Specifically, Panama communicated its position and concerns to Guinea-Bissau by
3 diplomatic letters dated 28 July 2010, one year in advance of the formal request for
4 the institution of proceedings, on 15 September 2010, 4 October 2010 and
5 19 October 2010. However, Guinea-Bissau completely ignored Panama's
6 communications.

7
8 By letter dated 15 February 2011, Panama once again communicated its position to
9 Guinea-Bissau and invited Guinea-Bissau to agree to submit the dispute to
10 arbitration under Annex VII of the Convention. Panama informed Guinea-Bissau that,
11 failing this, Panama would have no choice but to unilaterally institute compulsory
12 arbitration proceedings under Annex VII.

13
14 Panama then attached a full statement of claim, nominating an arbitrator and
15 indicating that Guinea-Bissau was to appoint a member of the arbitral tribunal within
16 30 days.

17
18 The full set of documents was sent to the Minister of Foreign Affairs of Guinea-
19 Bissau, and simultaneously to the Office of the Prime Minister of Guinea-Bissau, the
20 Permanent Representation of Guinea-Bissau to the United Nations and the Embassy
21 of Guinea-Bissau in Belgium.

22
23 On 29 June 2011 the Ambassador and Permanent Representative of Guinea-Bissau
24 to the United Nations replied to the Agent of Panama, conveying the agreement to
25 "transfer the case to the International Tribunal for the Law of the Sea, whose
26 jurisdiction in this case Guinea-Bissau accepts fully".

27
28 At no point was there any express or implied objection to the admissibility of
29 Panama's claim or that the special agreement was subject to certain objections by
30 Guinea-Bissau.

31
32 Moreover, the special agreement was for the Parties to "submit the dispute between
33 them concerning the *Virginia G*" to the International Tribunal in order that the
34 International Tribunal may deal "with all aspects of the merits (including damages
35 and costs)".

36
37 Indeed, if the International Tribunal is to give effect to any agreement between the
38 Parties that an objection submitted under paragraph 1 be heard and determined
39 within the framework of the merits (article 97(7) of the Rules), then the International
40 Tribunal should not, in the absence of such agreement, accept too broad an
41 interpretation of the terms of an agreement, such as a special agreement, which
42 does not mention or allow for objections to admissibility.

43
44 During 12 months preceding the initiation of arbitration proceedings, Panama made
45 its views and claims abundantly clear to Guinea-Bissau.

46
47 Likewise, in February 2011, by way of exchange of views, Panama communicated its
48 position and claims unequivocally and encouraged Guinea-Bissau to agree to
49 arbitration proceedings.

1 Panama formally initiated arbitration proceedings. Guinea-Bissau agreed to submit
2 the dispute to ITLOS with no reservation.

3
4 Indeed, Professor Hambro in his Hague Lectures on “The Jurisdiction of the
5 International Court of Justice”, which have already been cited in Panama’s Reply,
6 considers that “[i]t might indeed be considered bad faith and almost contempt of
7 Court if the State waited until the very last moment and permitted the other party or
8 parties to present the Memorial on the merits before it raised its preliminary
9 objections”.

10
11 This view is endorsed by Professor Cançado Trindade in *The Application of the Rule*
12 *of Exhaustion of Local Remedies in International Law* (1982, p. 229) and in *Local*
13 *Remedies in International Law* (2004, p. 381):

14
15 The ILOAT has also held that, where the issue of timeliness had not been
16 raised by the respondent in the internal appeal, **it was acting in bad faith**
17 **to raise the issue before the tribunal and therefore the respondent was**
18 **estopped from contending that the application was inadmissible**
19 because internal remedies had not been exhausted.
20 (*Nielson*, ILOAT Judgment No. 522).

21
22 I will now turn to address the three objections on genuine link. Basically, it is not a
23 very innovative point. It tries to test the clear-cut Judgment in the *M/V “SAIGA” Case*
24 on this particular point – paragraphs 89 to 109. Guinea-Bissau’s first objection is that
25 “Panama’s claims are not admissible because of the missing ‘genuine link’
26 (article 91(1) of the Convention) between the *Virginia G* and Panama.”

27
28 Paragraphs 82 and 83 are clear. In view of the short time that we have available, I
29 will not repeat them but I will say simply that the Tribunal’s conclusion was that the
30 need for a genuine link was not to establish criteria by reference to which the validity
31 of the registration of ships in a flag State may be challenged by other States:

32
33 There is nothing in article 94 to permit a State which discovers evidence
34 indicating the absence of proper jurisdiction and control by a flag State over
35 a ship to refuse to recognize the right of the ship to fly the flag of the flag
36 State.

37
38 The concept of genuine link is complex and can have rather serious repercussions if
39 upheld by this Tribunal. Yet Guinea-Bissau takes, with all due respect, a surprisingly
40 simplistic approach.

41
42 We have here a situation where a sovereign State is questioning the reliability and
43 effectiveness of the entire registry of another State and all 8,000 registered vessels;
44 and yet it can produce no concrete proof for this serious allegation.

45
46 Guinea-Bissau calls the Panamanian flag a flag of convenience. As to the meaning
47 of a flag of convenience, one might seek that in the 1960 consultative opinion of the
48 Court of Justice (attached to the legal bundle) and more recently in the Judgment in
49 the *M/V “SAIGA” Case*. In between, also, the Third Conference and the Special
50 Conference of the United Nations addressed the matter. Not much needs to be
51 added.

1
2 Panama is a member of a wide range of maritime conventions and others in the field
3 of work, fisheries and marine environment, such as the IWO, ICCAT, MARPOL and
4 ISM.

5
6 It is well known that Panama has an active merchant shipping fleet registered under
7 its flag. The fleet is also engaged in bunkering and other lawful activities of the high
8 seas and in the exclusive economic zones of other States.

9
10 Panama's total registered vessels as at 2012 stood at just over 8,000, with a
11 combined dead weight tonnage of just over 310 million tonnes, making her the
12 largest shipping nation with 20 per cent of the world's dead weight tonnage. Panama
13 is proud of its achievements, as these figures cannot be but a certification of the
14 reliability and standing of the flag of Panama.

15
16 The Panama Directorate Merchant Marine Department ensures that Panamanian
17 registered ships and their final beneficiaries comply with national legal provisions
18 and that they are part of the international conventions ratified by the Republic of
19 Panama. The witness evidence to be given this afternoon by Mr Pedro Olives will
20 elaborate further on those points.

21
22 To shorten the debate, let me read paragraph 107 of the [Judgment in the]
23 *M/V "SAIGA" Case*:

24
25 The Tribunal must also call attention to an aspect of the matter which is not
26 without significance in that case. This relates to two basic characteristics of
27 modern maritime transport – the transient and multinational composition of
28 ships' crews and the multiplicity of interests that may involve in the cargo
29 on board of single ship a container vessel carries a larger number of
30 containers and the persons which interest in them may be of many different
31 nationalities. This may also be true in relation to cargo on board a break-
32 bulk carrier. Any of these ships could have a crew comprising persons of
33 several nationalities. If each person sustaining damage were obliged to look
34 for protection from the State of which such a person is a national, undue
35 hardship would ensue.

36
37 Last, but not least, our esteemed colleagues from Guinea-Bissau devoted some pages
38 to a convention that is not in force. I refer to the United Nations Convention on
39 Conditions for Registration of Ships 1986, article 19 of which states: "This convention
40 shall enter into force 12 months after the date on which not less than 40 States, the
41 combined tonnage of which amounts to at least 25 per cent of the world tonnage, have
42 become Contracting Parties."

43
44 As of yesterday there were 15 Parties, only 14 of which had ratified the Convention.
45 In the list of States having ratified the Convention I cannot find countries such as
46 Portugal, Germany, France, Japan, Ukraine, Cap Verde or indeed Guinea-Bissau.

47
48 To finalize this point, Guinea-Bissau wrongly tries to apply the jurisprudence of the
49 "*Grand Prince*" Case. This case has nothing to do with our case. The main problem
50 of inadmissibility was due to the fact that the ship *Grand Prince* was not duly

1 registered in Belize at the time of the application of an article 292 prompt release
2 legal action.

3
4 Furthermore, the reference made to Separate Opinions of Judges in this case –
5 Judge Treves is mentioned on page 19 of the Rejoinder – is not applicable to the
6 facts and circumstances of the present case. The first main difference is that the
7 *Virginia G* is a tanker, not a fishing vessel; the *Grand Prince* was a fishing vessel
8 operating the southern seas of the CCMLAR sub-Antarctic region.

9
10 I will not elaborate further on the Paris MOU statistics, the position of Panama as a
11 living place in the world ETC.

12
13 I turn to the second point – the nationality of the claimant or the so-called “diplomatic
14 protection of foreigners”. The test in the *M/V “SAIGA” Case* is pretty clear and I will
15 not elaborate further on it. I have already read paragraph 109 and it is reflected very
16 well there.

17
18 The International Tribunal in the *M/V “SAIGA” Case* did not accept Guinea’s
19 contention that Saint Vincent and the Grenadines was not entitled to present claims
20 for damages in respect of natural and juridical persons who are not nationals of Saint
21 Vincent and the Grenadines. Likewise, Guinea-Bissau’s identical submissions should
22 be rejected.

23
24 In the case of *Worth v United States*, which is in your legal tabs, the court recorded:
25 “It was a great principle for which our government had contended from its origin – a
26 principle identified with the freedom of the seas, *viz.*, that the flag protected the ship
27 and every person and thing thereon not contraband.”

28
29 In the well known *Rainbow Warrior* case, where damage was done in New Zealand
30 to a vessel not flying her flag and deaths were caused to persons not having her
31 nationality, that State claimed compensation in respect of the vessel and the
32 deceased crew because the acts perpetrated by French agents amounted to a
33 violation of New Zealand’s sovereignty and an affront and insult to her.

34
35 In our submission, there are enough arguments and references to case law and I will
36 not repeat them.

37
38 The third and final point is exhaustion of local remedies. Guinea-Bissau has taken
39 objection to only four of the 18 submissions set out in Panama’s Memorial made to
40 this Tribunal. Guinea-Bissau states that these particular claims are being espoused
41 by Panama in the interests of private individuals or entities who should first have
42 exhausted local remedies in Guinea-Bissau – an interesting interpretation of
43 article 295.

44
45 Panama submits that even if the Tribunal were to find that Guinea-Bissau is able to
46 raise objections to admissibility at this stage, the rule on exhaustion of local
47 remedies would not apply, first because the rule of exhaustion is superseded by the
48 special agreement to which I referred earlier.

1 We have argued that this special agreement of itself precludes Guinea-Bissau from
2 raising objections; and this would be particularly true in relation to the objection
3 based on non-exhaustion of local remedies. Perhaps the most fundamental point to
4 reiterate is that, of itself, the special agreement, intrinsically and by definition, is an
5 agreement between Guinea-Bissau and Panama for this Tribunal to hear and
6 determine the dispute. In his book *The Right to Hot Pursuit in International Law*
7 (1969), Poulantzas seems to have foreseen this scenario when he expressly noted,
8 in the context of article 23(7) of the then 1958 High Seas Convention, that “the rule
9 of exhaustion of local remedies may be excluded by a contrary wish of the parties to
10 an agreement since it is not an obligatory rule of international law”.

11
12 In paragraph 64 of its Counter-Memorial, Guinea-Bissau states: “As the parties to the
13 dispute have not agreed to exclude the local remedies rules in their Special
14 Agreement ...”. It is submitted that this statement is inherently contradictory.

15
16 The second argument concerns a breach against the flag State itself. The breaches
17 or violations of the Convention carried out by Guinea-Bissau relate first and foremost
18 to the flag State. Indeed, the damages caused by Guinea-Bissau and claimed by
19 Panama are a consequence of Guinea-Bissau’s breach of international obligations
20 towards Panama and stem as a direct consequence therefrom.

21
22 In this case the primary right that has been violated is the right of Panama to
23 freedom of navigation. Another is related to lawful rights such as the operation of a
24 ship. That is a right that belongs essentially to Panama – articles 56, 58, 73, and 90;
25 there are so many. The right is exercised by private and other vessels in the name of
26 the State. They exercise a right which, in essence, is the right of the State whose
27 flag they fly.

28
29 It is also Panama’s submission that the local remedies rule does not apply to the
30 violations committed by Guinea-Bissau whilst the *Virginia G* was detained in the Port
31 of Bissau.

32
33 With particular regard to the confiscation of the oil cargo, Panama’s submission is
34 supported by the rule that a person is not bound to exhaust local remedies when he
35 has come to a State as a result of unlawful seizure made by its agents. This rule is
36 stated by Dr Amerasinghe, a local judge, confirming the suspension of the
37 confiscation. With the legal opinion of the prosecutor, they decided to interpret the
38 role differently, and they did not mention that there was a subsequent rejection of the
39 point raised by Guinea-Bissau rejecting the appeal because it was made in the
40 wrong court and out of time. We will elaborate on this.

41
42 The *Virginia G* was taken into port from a point beyond the territorial jurisdiction of
43 Guinea-Bissau by force. The *Virginia G* cannot be deemed to have submitted
44 voluntarily to the jurisdiction of that State.

45
46 This brings us again to the interconnected area of diplomatic protection. The fact that
47 individuals have suffered injuries and that the State claims damages designed in part
48 to provide compensation for them does not mean that the State is merely asserting
49 diplomatic protection rather than accepting a claim in respect of its own injury.
50 Professor Meron states: “Most cases of direct injury contain, in a certain degree, also

1 elements of diplomatic protection. It may well be that at the bottom of almost every
2 international claim there is the motivating factor of interests of individuals which need
3 protection”.

4
5 The third argument is that there is no jurisdictional link.

6
7 Guinea-Bissau's statements in paragraphs 67 to 74 of the Counter-Memorial are,
8 indeed, misguided. Guinea-Bissau has acted in breach of international law in relation
9 to a vessel, a flag, and persons and property beyond its territorial jurisdiction.

10
11 That State cannot demand that the individuals who have suffered damage should
12 exhaust local remedies.

13
14 Such a demand would only reinforce that State's wrongful assertion of jurisdiction;
15 and it would be unjust to compel a person to submit to the jurisdiction of the court of
16 a State where his complaint is that the State has acted without jurisdiction.

17
18 **THE PRESIDENT:** I am sorry, Mr García-Gallardo, we have already reached 11.40.

19
20 **MR GARCÍA-GALLARDO:** Two paragraphs?

21
22 **THE PRESIDENT:** All right.

23
24 **MR GARCÍA-GALLARDO:** Another argument is ineffectiveness of local remedies.
25 There is wide jurisprudence and doctrine stating this interpretation.

26
27 It is firmly established that there is no duty to exhaust local remedies where the local
28 remedy would be ineffective or not in accordance with due process of law. This was
29 repeated by Judges Mensah and Wolfrum in their Separate Opinion in the “*Juno*
30 *Trader*” Case.

31
32 The exhaustion of local remedies is a doctrine of international law. Where the
33 complaint concerns what purport to be “legislative” acts enacted to entrench the
34 situation brought about by the unlawful use of force, it would plainly be contrary to
35 principle, and unfair and inappropriate, to require recourse to institutions that cannot
36 or will not question the legality under international law.

37
38 Equally, it is well established that there is no duty to exhaust local remedies where
39 the local remedies are obviously futile. That is the case wherever the body allegedly
40 able to grant the remedy is in fact limited in its powers and not free to decide upon
41 the question that lies at the heart of the complaint.

42
43 On a final note, Professor Meron states:

44
45 The rule must be applied with caution and only after all of the facts have
46 been adequately considered. Not only is a rigid application of the rule to all
47 cases of diplomatic protection not supported by either the reasons for the
48 rule or by the practice, but it also does not serve the interests of justice.

1 Accordingly, Panama should be found to be entitled to bring proceedings directly
2 against Guinea-Bissau under the Convention for “any loss or damage” caused by
3 Guinea-Bissau’s seizure, including both in respect of its own interests and in respect
4 of the damage to the vessel and her interests. I will further elaborate on day 5. Thank
5 you.

6
7 **THE PRESIDENT:** Thank you, Mr García-Gallardo.

8
9 At this stage the Tribunal will withdraw for a break of thirty minutes and will continue
10 the hearing at 12.15.

11
12 *(Break)*

13
14 **THE PRESIDENT:** We will continue the hearing.

15
16 Mr García-Gallardo, you have the floor. I would like to ask you once again to speak
17 slowly so that our interpreters can follow you.

18
19 **MR GARCÍA-GALLARDO:** I sincerely apologize. I will try my best.

20
21 Your Honours, we must, I feel, focus for a moment on the relevant fisheries laws in
22 Guinea-Bissau to set out the reasons for Panama’s contestations as to how the
23 *Virginia G* ended up being classified as an “industrial or artisan fishing vessel” under
24 article 52 of Guinea-Bissau’s fisheries resources law; how the bunkering services
25 she provided, the provision of gas oil, were classified as fishing-related activities;
26 how the oil cargo on board the *Virginia G* was classified as “fishery products” and
27 how it ended up being confiscated as a “product”.

28
29 We have found a lot of inconsistencies in the different provisions of the law.

30
31 In short, how Guinea-Bissau law was misinterpreted and I would say manipulated –
32 or indeed, purposely drafted – to suit the ends of the Guinea-Bissau authorities out
33 of line with the provisions of the Convention on freedom of navigation, and to the
34 detriment in this case of the Panamanian flag and her interests.

35
36 In accordance with the request of the Tribunal, I will also address the question as to
37 what are the legal remedies available under the legal system of Guinea-Bissau
38 against the confiscation. We will briefly elaborate because I will answer in writing the
39 questions that have been raised by the owners in this respect.

40
41 We first need to look at the law by which Guinea-Bissau sets its maritime
42 delimitations.

43
44 I refer the Tribunal to Annex 8 of the Memorial, specifically Act 3/85.

45
46 Article 3, as translated, states:

47
48 The exclusive economic zone shall extend, within the national maritime
49 frontiers, for a distance of 200 nautical miles measured from the straight
50 baselines established by [Act 2/85 of 17 May 1985].

1
2 The State of Guinea-Bissau shall have the exclusive right to explore and
3 exploit the living and natural resources of the sea and of the continental
4 shelf, slopes and sea-bed within the exclusive economic zone.
5

6 Next, article 4 states: "Fishing within the exclusive economic zone by any foreign
7 vessel or ship not authorized by the Government of the Republic of Guinea-Bissau is
8 expressly prohibited."
9

10 I refer now to the highest form of national law, the Constitution of Guinea-Bissau,
11 particularly articles 10 and 29.
12

13 Article 10 states: "In its exclusive economic zone, as defined by law, the State of
14 Guinea-Bissau exercises exclusive competence in relation to the conservation and
15 exploration of its natural resources, living or non-living."
16

17 Article 29: "The fundamental rights established in the Constitution do not exclude any
18 other rights contained in other laws of the Republic and the applicable rules of
19 international law." I emphasize "the applicable rules of international law".
20

21 Thus far, I would say that we are aligned, both parties.
22

23 The next set of provisions is taken from the Guinea-Bissau fisheries resources law,
24 Decree Law 6-A/2000 (as amended in 2005). Translated extracts are found in
25 Annex 9 of the Memorial.
26

27 The scope of the activities covered by the fisheries resources law is "traditional
28 fishing activities", which require a licence as well as "activities related to fishing",
29 which require an authorization. For traditional fishing activities – a licence; for
30 activities related to fishing – authorization.
31

32 Transshipment, logistical support activities to fishing vessels at sea and the collection
33 of fish from traditional fishermen are also considered fishing-related activities.
34

35 Article 3 of the law states:
36

37 1. Fishing is understood to be the act of catching or harvesting by any
38 means of biological species whose normal or most frequent habitat is water.
39

40 2. Fishing includes the prior activities whose direct purpose is that of fishing,
41 such as detecting, the discharge or collection of devices used to attract fish,
42 and fishing-related operations.
43

44 3. For the purpose of the above point, 'fishing-related operations' means" -
45 it provides the definition: "(a) The transshipment of fish or fishery products in
46 the maritime waters of Guinea-Bissau; (b) The transport of fish or any other
47 aquatic organisms which have been caught in the maritime waters of
48 Guinea-Bissau until the first landing; (c) activities of logistic support to
49 fishing vessels at sea; (d) the collection of fish from fishermen.
50

51 We immediately begin to see differences:

1
2 “Fishing” is one thing; “related fishing activities” is different; and “fishing vessel” is not
3 the same as “logistic vessel”.

4
5 The main differences between a logistic vessel and a tanker, a tanker like the
6 *Virginia*: a tanker is not a reefer cargo vessel; it does not supply fishing gear – nets,
7 hoists and devices; it does not supply crew; it does not supply food, apart from
8 Christmas presents, as I have been informed by the shipowner; it does not supply
9 cartons for storage; it does not supply potable water; it does not take on cargo for
10 cold storage of fish catches; tankers do not have fishing experts on board – they do
11 not carry fishermen and they do not carry observers; tankers have no fishing
12 equipment on board, such as sonar, a vessel monitoring system, VMS, and the like.

13
14 They are not even listed with ICCAT. We are talking about the Atlantic. Certainly we
15 know that Guinea-Bissau is not a member of ICCAT but the ICCAT waters, the
16 waters of the official organization, take into account all that area.

17
18 The ICCAT has definitions of fishing and types of vessels. If you look at the bundles
19 and on the screen, we can read in the recommendation by ICCAT of 2003 that the
20 general provisions define a fishing vessel as

21
22 (a) Any powered vessel used or intended for use for the purposes of the
23 commercial exploitation of bluefin tuna” – and the catch relates to tuna in
24 this case – “including catching vessels, fish-processing vessels, support
25 vessels, towing vessels, vessels engaged in transshipment and transport
26 vessels equipped for the transportation of tuna products and auxiliary
27 vessels, except container vessels.

28
29 We can see a very wide and detailed definition on the type of vessels related to
30 fishing operations. I can read “tankers”, whether small or large tankers. It has all the
31 definitions.

32
33 (b) ‘Catching vessel’ means a vessel used for the purposes of the
34 commercial capture of bluefin tuna resources;
35 (c) ‘Processing vessel’ means a vessel on board of which fisheries products
36 are subject to one or more of the following operations, prior to their
37 packaging: filleting or slicing, freezing and/or processing;
38 (d) ‘Auxiliary vessel’ means any vessel used to transport dead bluefin tuna
39 (not processed) from a cage or a tuna trap to a designated port and/or to a
40 processing vessel.
41 (e) ‘Towing vessel’ means any vessel used for towing cages. ‘Support
42 vessel’ means any other fishing vessel referred to under 2(a).

43
44 “Fishing activity” means for any catching vessel the fact that it catches bluefin tuna
45 during a given fishing season.

46
47 Transfer operations are related to the transfer of fish.

48
49 Trap means fishing gear and such. It does not relate to this case. As you can see,
50 the definition is very detailed, but it does not cover the activity of refuelling a fishing
51 vessel. This was definitely not the case with the *Virginia G*, which is a merchant

1 shipping vessel that provides gas oil to merchant ships crossing from Africa to
2 Europe, and from Europe to Africa. It is very simple, if you look at the chart provided
3 by Guinea-Bissau, to calculate the 200 miles, to compare the traffic with
4 neighbouring countries and to see, even on marinetraffic.com, the number of ships
5 which, on any day, whether they be fishing vessels or merchant shipping, navigate
6 within the EEZ of Guinea-Bissau.

7
8 There are more definitions of fishing and of logistic support. In the “*Juno Trader*”
9 Case the lawyer Ricardo Alves defined, in relation to the *Juno Trader*, but making
10 comparisons where there was a vessel related to fishing operations, the following –
11 page 23, 6 December, verbatim –

12
13 However, the Tribunal must note that the use of this type of vessel, of reefer
14 vessels, as fishing supply and support ships is widespread throughout the
15 West African coast, and Guinea-Bissau’s authorities have arrested
16 numerous such vessels performing illegal fishing and support activities off
17 the country’s coast. These vessels normally lay anchor alongside other
18 fishing vessels, authorized and unauthorized, in order to perform
19 transshipping and refuelling operations. They are also known to carry aboard
20 food stocks in order to supply other fishing vessels. The authorities from
21 Bissau have also noticed that normally Russian-manned fishing vessels,
22 fishing trawlers, unload their catch onto other Russian-manned vessels,
23 receiving from the latter all the necessary provisions. What we have we can
24 perhaps classify as a trade relationship in which the trawlers deposit their
25 catch aboard the reefers; the reefers supply them with refuelling, with food
26 and with all the necessary provisions.

27
28 Certainly this definition confirms that the activity, now well known by this Tribunal, of
29 the tanker supplying gas oil sporadically to fishing vessels, whether in the waters of
30 Guinea-Bissau, Senegal, Mauritania or on the high seas, has never been considered
31 as a related fishing activity, except now, by the authorities of Guinea-Bissau.

32
33 Let us move to some other references in the jurisprudence of the international
34 tribunals. Let us take in the legal bundle the case in 1986, the *La Bretagne*
35 arbitration between Canada and France, which raised the issue of whether Canada
36 could apply and enforce regulations concerning the filleting of fish on board vessels
37 located in the Gulf of Saint Lawrence. The Arbitral Tribunal ruled that the term
38 “fisheries regulations” was limited to

39
40 designating the legislative or regulatory prescriptions...which fix the
41 conditions under which all fish catching activities are subject and are
42 generally designed to maintain order on fishing grounds as well as to
43 protect and preserve resources.

44
45 The term “fisheries regulations” could not be applied to subject the vessels of the
46 other State to unconnected regulations – this is a critical word, “unconnected”. Is the
47 *Virginia G* a connected vessel exclusively to fishing-related activities of supply of fuel
48 oil to exclusively fishing vessels in the area of Guinea-Bissau waters or in other
49 EEZs? No. Does it provide the services that I have mentioned before, a pile of
50 services, products, that can be provided by the so-called definition in Guinea-Bissau
51 law, activities of logistic support to fishing vessels? It is the primary intention of the
52 *Virginia G* to consider the supply to fishing vessels, whether in Guinea-Bissau

1 waters, exclusively to fishing vessels within the EEZ of those countries and related
2 fishing activities, taking into account that it does not provide one other single service
3 or product as to the ones reflected and read by me before.

4
5 I would like to make this reflection. Article 13, issue of formalization of licence.

6
7 The exercise of fishing activity is subject to a prior fishing license that must
8 be issued on a template document by the Government department
9 responsible for fisheries and signed by the persons responsible for
10 fisheries...

11 2. The license will be issued to a vessel in favour of its owner and will
12 be valid in relation to the fishing activities ...

13
14 Article 23 stipulates that an authorization is required for the carrying out of fishing-
15 related operations or activities. Article 23 says "... the authorization mentioned above
16 is subject to payments or compensation ...". What is compensation? Do they need to
17 pay it in kind? What type of services?

18 ...as well as any other conditions as may be established by the department
19 of the Government responsible for fisheries, namely regarding the areas or
20 location for the conduct of the fishing related activities and the mandatory
21 presence of observers or inspectors.

22
23
24 Do the regulations set out by Guinea-Bissau require the presence of an inspector or
25 an official observer on board the tanker as part of the authorization? I do not think
26 this is the case.

27
28 Article 52, mentioned by my colleague this morning: "All industrial or artisan fishing
29 vessels, whether national or foreign, which carry out fishing activities ..." I have
30 already defined fishing activities.

31
32 "... within the limits of national maritime waters ..." What is "national maritime
33 waters"? What is this definition in international law? I would like to know what is the
34 definition of national maritime waters.

35
36 "... without having obtained the authorization in terms of article 13 and 23 of this law,
37 will be seized ex officio, with its gear ..." Does a tanker use gear, fishing gear? We
38 may go to the Encyclopaedia Britannica to look up "gear".

39
40 "... equipment and fishery products ..." Has a tanker the capacity for cold storage like
41 fishing boats?

42
43 "... in favour of the State."

44
45 Article 52 mentions only fishing vessels, not other types of vessels.

46
47 Let us have a look at the Order of 2001 that seems to develop the previous
48 provisions. This is Annex 5 of Guinea-Bissau's Rejoinder. This is an alleged Joint
49 Order, which is the English translation, 2001, which was allegedly in force at the time
50 the dispute arose. I have not seen any particular or single reference in all the letters
51 exchanged with FISCAP this morning about this particular provision. Keeping in mind

1 this, I only need to refer to paragraph 3 and to article 1 of this Order. I hope to
2 illustrate two points. When you read recital 3, the third paragraph, it states:

3
4 Taking into account that the implementation of the said policy requires a
5 reduction in the fees in force for fishing licences and the simplification of
6 the conditions of access to fishing resources by national fishing companies
7 which operate with their own or freighted vessels.
8

9 To approve – article 1(1) – to approve the fishing licence fees and other conditions of
10 access to fishing resources set out in Annex I, II and III to this Order. Therefore
11 Guinea-Bissau law defines the maritime waters of Guinea-Bissau to mean not only
12 the territorial sea of Guinea-Bissau but also its exclusive economic zone. It does not
13 make a distinction between fishing vessels and non-fishing vessels or related to
14 fishing activities. It is interpreted to apply to logistic vessels in such a way as to
15 oblige them to require prior authorization of national vessels only when exercising
16 this freedom in the area. It is totally inconsistent.
17

18 To conclude this point, I think it is particularly relevant, if I am permitted, to quote the
19 entire declaration of Judge Kolodkin in the “*Juno Trader*” Case, four succinct
20 paragraphs which, I think, would apply in their entirety to the *Virginia G.*
21

22 1. Every year, the United Nations General Assembly in its annual
23 resolutions on the oceans and the law of the sea appeals to all States to
24 harmonize their legislation to bring it into compliance with the United
25 Nations Convention on the Law of the Sea.
26

27 2. Unfortunately, not all Member States of the United Nations that are
28 parties to the United Nations Convention on the Law of the Sea have
29 heeded those appeals. In the “*Juno Trader*” Case it has been found that a
30 coastal State, the Respondent, has used the expression “the maritime
31 waters of Guinea-Bissau” to mean not only the territorial sea of Guinea-
32 Bissau, but also its exclusive economic zone.
33

34 3. On 19 October 2004, the Interministerial Maritime Inspection
35 Commission adopted the Minute in which was stated that the *Juno Trader*
36 “... was seized ... within the maritime waters of Guinea-Bissau ...”.
37 However, it is known that the *Juno Trader* was arrested in the exclusive
38 economic zone of Guinea-Bissau and, under the United Nations
39 Convention on the Law of the Sea, exclusive economic zones do not form
40 part of the territorial sea or “maritime waters” of any State.
41

42 4. There is another trend in the application of the United Nations
43 Convention on the Law of the Sea: some coastal States are demanding, in
44 their domestic legislation, prior notification by vessels intending to enter
45 their exclusive economic zones even if only for the purpose of transiting
46 them in application of the freedom of navigation which is guaranteed by
47 article 58, paragraph 1, of the United Nations Convention on the Law of the
48 Sea.
49

50 It is relatively clear that the definition of logistic vessels found in the legislation does
51 not cover the activity of a tanker, either with an annual authorization or with regular
52 authorizations across the year to supply fuel to different shipowners in the area who
53 hold fishing licences issued by the Government of Guinea-Bissau.

1
2 Thank you very much. We turn now to the witnesses, so I would like to start with our
3 first witness.

4
5 **THE PRESIDENT:** Thank you, Mr García-Gallardo.

6
7 The Tribunal will now proceed to hear the witness Mr Ocaña Cisneros. He may now
8 be brought into the courtroom.

9
10 I call upon the Registrar to administer the solemn declaration to be made by the
11 witness.

12
13 *(The witness made the solemn declaration)*

14
15 **THE PRESIDENT:** Thank you, Mr Ocaña Cisneros.

16
17 Before I give the floor again to Mr García-Gallardo to start the examination of the
18 witness, I wish to remind the representatives of the parties and you, Mr Ocaña
19 Cisneros, of the following. The work of interpreters and verbatim reporters is a
20 complex task. This is even more so when, as will be the case now, not only English
21 and French are used but also a third language such as Spanish. Everything that you
22 state in Spanish, Mr Ocaña Cisneros, will be interpreted first into English and then
23 into French. Therefore, I must urge you to speak slowly, and please leave sufficient
24 time after someone else has spoken to you before you answer. As I stated, the
25 statement or question of someone else before you will be translated into English and
26 then into French, so you have to wait until the interpretation into French has been
27 completed. When the interpretation into French has been finished, I will give you a
28 sign to this effect by a gesture like this. Only then will it be possible for the
29 interpreters to follow.

30
31 Mr García-Gallardo, you have the floor.

32
33 **Examination by MR GARCÍA-GALLARDO**

34
35 **MR GARCÍA-GALLARDO:** Could you please introduce yourself.

36
37 **MR OCAÑA CISNEROS** *(Interpretation from Spanish):* Yes. I am Fausto Leono
38 Ocaña Cisneros, Chief Mate, Merchant Marine. I had 26 years' experience when the
39 events occurred.

40
41 **MR GARCÍA-GALLARDO:** What was your rank on board the *Virginia G* around the
42 time of the incident in question?

43
44 **MR OCAÑA CISNEROS** *(Interpretation from Spanish):* I was First Mate on the deck
45 and First Mate on the bridge.

46
47 **MR GARCÍA-GALLARDO:** Were you in charge of the bunkering operations?

48
49 **MR OCAÑA CISNEROS** *(Interpretation from Spanish):* Yes, I was. It was one of my
50 jobs as Chief Mate on the bridge. It is one of my responsibilities in such a job.

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MR GARCÍA-GALLARDO: What type of oil did you, the *Virginia G*, supply to merchant and fishing vessels?

MR OCAÑA CISNEROS (*Interpretation from Spanish*): Gas oil.

MR GARCÍA-GALLARDO: Did you ever supply any other product or service to merchant shipping vessels or fishing vessels?

MR OCAÑA CISNEROS (*Interpretation from Spanish*): No I did not, only gas oil. The vessel is not prepared to carry or to maintain or to supply other types of products, only gas oil.

MR GARCÍA-GALLARDO: In which geographic area was the *Virginia G* operating during the time you were on board?

MR OCAÑA CISNEROS (*Interpretation from Spanish*): The vessel was 60 miles approximately from the coast of Guinea-Bissau's territory. It was outside the territorial waters. It was outside the adjoining waters. It was in the exclusive economic zone of the Guinea-Bissau territory.

MR GARCÍA-GALLARDO: Did you bunker vessels and what type of vessels did you bunker, if any?

MR OCAÑA CISNEROS (*Interpretation from Spanish*): In general it was merchant vessels that did the voyage, that sailed in these waters outside territorial and adjoining waters. Mainly these were merchant vessels, as I say, coming from southern Africa or from South America, towards Europe, yes.

MR GARCÍA-GALLARDO: In all your experience on board the *Virginia G*, did you ever experience an issue with the Guinea-Bissau authorities in relation bunkering activities?

MR OCAÑA CISNEROS (*Interpretation from Spanish*): No.

MR GARCÍA-GALLARDO: The two *Amabal* vessels, the two fishing vessels, how close were they to the *Virginia G* when refuelling was taking place?

MR OCAÑA CISNEROS (*Interpretation from Spanish*): I cannot remember now whether we were supplying number I or number II but they were about 100 metres from the bows of the vessels and the other one was standing by at two or three miles from the *Virginia G*'s position.

MR GARCÍA-GALLARDO: Do you know whether the fishing vessel had observers on board?

MR OCAÑA CISNEROS (*Interpretation from Spanish*): Fishing vessels always have observers on board.

MR GARCÍA-GALLARDO: Did you see them?

1
2 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): No, I did not. It is impossible
3 to see them.
4
5 **MR GARCÍA-GALLARDO**: Did you ascertain that there were observers on board?
6
7 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): On the radio, yes, when we
8 communicated with the captains of those fishing vessels we always asked them
9 whether there are observers on board and whether those observers are authorized
10 to be there, being an authorization for fishing and bunkering activities.
11
12 **MR GARCÍA-GALLARDO**: I would now like to move to the events on and
13 surrounding 21 August 2009. Were you outside the Guinea-Bissau territorial waters
14 and outside its contiguous zone?
15
16 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): Yes, at 60 miles from the
17 coast of the Guinea-Bissau territory.
18
19 **MR GARCÍA-GALLARDO**: Did you ever approach or enter the territorial waters or
20 contiguous zone of Guinea-Bissau on this particular mission?
21
22 **THE PRESIDENT**: Mr Gallardo, I am sorry to interrupt you but would you please wait
23 until the interpretation into French has finished? I will give you a sign.
24
25 **MR GARCÍA-GALLARDO**: Did you ever approach or enter the territorial waters or
26 the contiguous zone of Guinea-Bissau in this particular mission?
27
28 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): No.
29
30 **MR GARCÍA-GALLARDO**: Were you near Captain Blanco Guerrero on the evening
31 of 21 August 2009, on deck?
32
33 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): I was on deck supervising
34 the bunkering operations.
35
36 **MR GARCÍA-GALLARDO**: What happened on board the *Virginia G*?
37
38 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): The *Virginia G* was boarded
39 around dusk by personnel that we did not recognize. They had not identified
40 themselves previously either. Some of them were armed and wearing military
41 fatigues.
42
43 **MR GARCÍA-GALLARDO**: Did you have any warning before they came on board?
44
45 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): No. We only realized when
46 they were already in the process of boarding the vessel. We only realized when they
47 were just a few metres away from the edge of the boat.
48
49 **MR GARCÍA-GALLARDO**: Did they make any prior radio contact?
50

1 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): No, they did not.
2
3 **MR GARCÍA-GALLARDO**: What did they look like?
4
5 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): They looked as if they were
6 pirates.
7
8 **MR GARCÍA-GALLARDO**: What was their external appearance?
9
10 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): I repeat, they seemed to be
11 pirates because some of them were wearing military uniform and they were armed,
12 while others were wearing plain clothes but with no identification at all.
13
14 **MR GARCÍA-GALLARDO**: What sort of weapons did they have?
15
16 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): AKM combat rifles.
17
18 **MR GARCÍA-GALLARDO**: What was Captain Guerrero's reaction?
19
20 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): When I managed to get to
21 the bridge I found the captain, who was being threatened with a gun by one of the
22 armed military people. He was under stress and he looked powerless.
23
24 **MR GARCÍA-GALLARDO**: What was your opinion on the order given by the
25 Guinea-Bissau officials?
26
27 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): My opinion is that it was
28 madness. It was madness because we did not have the means to be able to sail
29 away from the point we were at to the Port of Guinea-Bissau, because of the very
30 characteristics of the voyage that we would have to undertake in that area.
31
32 **MR GARCÍA-GALLARDO**: Were you allowed to communicate with the shipowner?
33
34 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): No. It was impossible to
35 undertake any type of communication because it was forbidden by the military.
36
37 **MR GARCÍA-GALLARDO**: Would you please describe the journey to the Port of
38 Bissau?
39
40 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): The voyage began, as I said,
41 at dusk, at about 1900 or 2000 hours. From the geographical position we were at to
42 the entrance of the channel, the Canal of Geba, sailing took about four hours. The
43 strength of the wind increased and therefore the waves became stronger and
44 stronger. When we were already inside the Canal of Geba close to the island of
45 Kijoo[?], in *this* position first of all, in the lower area of the entrance to the channel
46 there were a lot of fishing vessels, dug-outs or other boats, and it was difficult to see
47 them, let alone be able to contact them. At that point a strong shower started falling
48 on us, so it was impossible to even see the bows of the vessel, the fore of the
49 vessel; you could not practically see it. It was impossible to see a distance of 30 to
50 50 metres ahead of the bows of the vessel. It was night-time.

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MR GARCÍA-GALLARDO: Did you have a chart on board or a navigation system to come into the Port of Bissau?

MR OCAÑA CISNEROS (*Interpretation from Spanish*): Yes, we did have a chart of the port to be able to sail into the port, but unfortunately the chart was not updated, so we had to use all our resources in order to be able to reach the port; and also the captain's experience was very important because the chart that the military brought, they eventually identified themselves as coming from the FISCAP Agency from Bissau, so the chart they brought with them was not really a chart but rather little bits of a chart, little bits and pieces of a chart put together with Scotch tape or some put together with Fed, so the latitudes or the longitudes did not really coincide, and with that chart it was impossible to reach our destination.

MR GARCÍA-GALLARDO: Do you think there was any risk of marine pollution?

MR OCAÑA CISNEROS (*Interpretation from Spanish*): I am sure there was. A large percentage of the load, the large percentage of a cargo was still on board, and this vessel does not have a double hull, because it was constructed many years ago, and the piping system is full of little stones, and then the current was very strong. These were areas that were really dangerous. There were practically no beacons along the channel, or, if there were, there were very few of them, so a collision or grounding could have taken place easily.

MR GARCÍA-GALLARDO: What happened over the next days and weeks in the -

THE PRESIDENT: Mr García-Gallardo, I am sorry to interrupt you but we have reached 1 p.m., so the Tribunal will withdraw at this stage for a lunch break and we will continue the hearing at 3 o'clock.

(The sitting is closed at 1 p.m.)