

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



2013

Public sitting

held on Monday, 2 September 2013, at 3 p.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 will now continue the hearing in the case
2 concerning the vessel *M/V Virginia G.*

3
4 Mr García-Gallardo, you may now continue the examination of the witness,
5 Mr Ocaña Cisneros.

6
7 **Examination by MR GARCÍA-GALLARDO (continued)**

8
9 **MR GARCÍA-GALLARDO:** Thank you, Mr President. Members of the Tribunal, I will
10 continue with the examination of the witness, Mr Ocaña Cisneros.

11
12 We were discussing the conditions. What happened over the next days following the
13 detention in Bissau?

14
15 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): In the days after the
16 detention of the vessel when the vessel reached the port at Bissau our material
17 conditions really decreased – drinking water, supplies, medicines. This is a rainy
18 season of the year, so there are many more insects. Two crew members even
19 contracted malaria. We felt as if we were in prison, and even worse than that,
20 because we reached a moment when drinking water became exhausted and we had
21 to look for ways of finding supplies, especially finding them on the ground, trying to
22 find them by ourselves; and this, of course, largely affected the mindset, the
23 behaviour I would say, of the crew, just to speak symbolically.

24
25 **MR GARCÍA-GALLARDO:** You had a particular need to reclaim your passport. Can
26 you explain why?

27
28 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): I am Cuban, but I have a
29 residence permit in Spain and my residence permit was on the verge of expiring.
30 Therefore, in order to get back to Spain I had to have my passport together with the
31 vessel documents, but those documents were at the prosecutor's office. In the two-
32 month period that I tried to get my passport back in order to be able to get my ticket
33 and fly back to Spain I could not persuade the authorities to give me my passport
34 back. They refused; they acted in bad faith. They did not want to give me my
35 passport back.

36
37 **MR GARCÍA-GALLARDO:** Were you accused of any crime or any fault? What was
38 the reason to retain your passport?

39
40 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): No, no, no. I repeat that
41 when the captors of the vessel disembarked on the 22nd they withdrew the vessel's
42 documents and took away all our crew passports. They sent me from pillar to post.
43 They told me, "Well, your passport is at FISCAP but then you have to ask for an
44 appointment with the authorities", but they were never available, they were always in
45 meetings with the Prime Minister or the Deputy Prime Minister or in some other
46 government office. For example, they said "the official you need to meet with is in the
47 Fisheries Ministry", but I never managed to speak to the FISCAP commissioner, who
48 was the one who had to give me authorization to be able to get my passport back.

1 **MR GARCÍA-GALLARDO:** Would you please explain the conditions surrounding the
2 unloading of the cargo?
3

4 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): The military – I want to
5 underscore this – on several occasions asked us or ordered us to moor the vessel in
6 order to take the fuel out of the vessel. The first time this happened the captain had
7 to make an effort to prevent them from doing this, and of course we had to do these
8 manoeuvres by ourselves because a pilot was never available. They threatened –
9 and this time we thought that they would make the threat good – to abuse the
10 captain and the other crew members. On that day, the second time, they said that
11 the fuel had to be taken off the boat willy-nilly, come what may. Commander Mita
12 used the following words: “Captain, you either give us the fuel today or somebody is
13 going to suffer today. This is Bissau, this is Africa, and we are military, so the fuel is
14 going to leave the boat today come what may”. The captain could not do anything
15 else but acquiesce, because of course he had to try to avoid the worst
16 consequences, so he had to authorize the disembarkment of the fuel without the
17 military or the port authorities taking any of the usual, normal measures to avoid
18 spills or accidents et cetera.
19

20 **MR GARCÍA-GALLARDO:** May I show you some pictures, please? Those pictures
21 have been provided by the representatives of Guinea-Bissau. Do you have any
22 particular comment on the first photo, please?
23

24 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): Yes, indeed. This
25 photograph, as the caption reads, was taken after the arrest. This photo does not
26 correspond to what the caption says, because the weather conditions in the sea
27 were not those at that time, the distance we were at from the coast, it was not at that
28 time, because the arrest happened at dusk, at between 1900 and 2000 hours, and
29 the light that you see in this photo, that brightness, does not correspond to that time.
30

31 **MR GARCÍA-GALLARDO:** I will show you a second one and please let me know if
32 you have any particular comment.
33

34 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): This photo reveals that the –
35 so the personnel that came on board the boat – those people are not in this photo –
36 well, the military person, yes, but the FISCAP people, when they identified
37 themselves, were not wearing those clothes. They were wearing plain clothes with a
38 kind of coat with the FISCAP logo on their backs. The military were armed and they
39 didn't have life vests.
40

41 **MR GARCIO-GALLARDO:** I have just a couple of questions. How did the
42 circumstances of the arrest that you have explained today in this room affect the
43 captain?
44

45 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): The captain, in spite of being
46 a highly experienced and seasoned person – well, all of this affected him very
47 negatively. In fact, on some occasion he told me that he couldn't forget, he couldn't
48 erase from his mind all of these events. He really lost a little bit of his mind. All of this
49 affected his state of mind and he rejected his food even. Nothing – he didn't like
50 anything – he couldn't sleep well at night. The captain unfortunately died recently,

1 not because of this incident but we, the crew members, believe that these events
2 affected him very deeply, and the events might have had something to do with his
3 death.

4
5 **MR GARCÍA-GALLARDO:** A final question: why did you decide to go back to the
6 boat when awaiting your renewed passport or your residence permit in Spain?

7
8 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): I made this decision because
9 I have sea legs. I am a person of the sea. I just took a few months' holiday but I
10 didn't have any other job. I knew the shipowner; I had worked for him before, and I
11 felt I was part, or I still feel I am part of that vessel, and I wanted to live, experience –
12 especially I wanted to be there when the boat was released. I wanted to be there and
13 take the boat to its next posting.

14
15 **THE PRESIDENT:** Thank you very much, Mr García-Gallardo. Pursuant to article 80
16 of the Rules of the Tribunal a witness called by one party may also be examined by
17 the other party. Therefore, I ask the Agent of Guinea-Bissau whether he wishes to
18 cross-examine the witness.

19
20 **Cross-examination by MR MENEZES LEITÃO**

21
22 **MR MENEZES LEITÃO:** Thank you. Could I please ask my colleagues to put that
23 photo again on the monitor – if you do not mind – the first one with the vessel.

24
25 I should point out that you mention in your deposition that you understand this photo
26 was taken after the arrest of the *Virginia G*, but what is in the legend is that the photo
27 was taken before the arrest of the *Virginia G*. So before six o'clock normally the
28 weather could be like this way – isn't it so?

29
30 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): At the distance we were from
31 the coast, that condition of the sea is not possible.

32
33 **MR MENEZES LEITÃO:** So at the moment of the arrest of the *Virginia G* it is
34 possible quite frankly that the boat came to the *Virginia G* and before the arrest this
35 photo has been taken – or not? This photo was taken before the arrest is what we
36 say, just before.

37
38 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): Yes, it could have been
39 before the arrest or it could have been two months before the arrest, or two days, but
40 those were not the conditions that day because the sea---

41
42 **MR MENEZES LEITÃO:** This---

43
44 **THE PRESIDENT:** I am sorry to interrupt you, Mr Leitão. Would you please await the
45 translation into French?

46
47 **MR MENEZES LEITÃO:** I am sorry.

48
49 **THE PRESIDENT:** Please proceed.

1 **MR MENEZES LEITÃO:** You also testified that, as I understand, it was a boat like
2 this that came to the *Virginia G*. Do you confirm this, because it was this kind of
3 vessel?
4

5 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): Yes, I can confirm it.
6

7 **MR MENEZES LEITÃO:** Because it was in your statement that you were boarded by
8 this boat. How was it possible from a boat like this to board a vessel like the *Virginia*
9 *G* or an oil tanker? How did they manage to board the boat?
10

11 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): *Virginia G* is 55 metres long
12 and the boat was full, and so at that point I think we had 90% of our cargo on board,
13 and when ---
14

15 **MR MENEZES LEITÃO:** I was asking how it is possible to enter the boat, for
16 instance without the consent of the *Virginia G*? It is your testimony that they
17 launched ropes against the boat and climbed through the ropes?
18

19 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): Well, I was trying to answer
20 your question – when the boat is loaded the height is 1.5 metres from the water to
21 the deck and you can jump on board; you don't need any type of ropes or anything.
22 You can jump easily.
23

24 **MR MENEZES LEITÃO:** What you say.
25

26 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): Yes, they jumped. They
27 clambered onto the boat.
28

29 **MR MENEZES LEITÃO:** Do you confirm *these* were uniforms of the people that
30 entered your boat?
31

32 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): Yes, yes, the soldiers. The
33 others I can't recall, but the soldiers, yes.
34

35 **MR MENEZES LEITÃO:** If you see people in these kinds of clothes, do you think
36 they are pirates, as you say?
37

38 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): The way they acted and the
39 way they were dressed, yes – soldiers, armed soldiers, two or three civilians. That is
40 my idea.
41

42 **MR MENEZES LEITÃO:** You find these kinds of persons were pirates. It was your
43 testimony that there was violence in the entering of *Virginia G*. Do you confirm that?
44

45 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): Yes, I do. They came on
46 board. They acted violently.
47

48 **MR MENEZES LEITÃO:** Was anyone hit?
49

50 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): Not exactly.

1
2 **MR MENEZES LEITÃO:** Was there anyone injured?
3
4 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): No.
5
6 **MR MENEZES LEITÃO:** It would be a short violence. Let me see something that you
7 are saying, because you have a written statement annexed to the Memorial. First of
8 all, where were you when the boarding took place?
9
10 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): I was on the deck
11 supervising the operations of bunkering and refuelling.
12
13 **MR MENEZES LEITÃO:** Your statement that ---
14
15 **THE PRESIDENT:** It seems that the interpreters cannot hear your statement. You
16 may continue.
17
18 **MR MENEZES LEITÃO:** Immediately you also said: “I was on deck and took the
19 opportunity to go to the bridge.” How was it possible, if anyone was ordered to stay
20 in the places they were, that you took the opportunity to go to the bridge? How?
21
22 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): I was on the deck and the
23 deck starts at the bow and goes to the stern and I was at the stern and saw the
24 people come on board. I was on the left on the port side so I went to starboard and I
25 went up to the bridge. When I got to the bridge the captain was being threatened
26 with a gun by soldiers.
27
28 **MR MENEZES LEITÃO:** To move, as I understand it, it was possible to do that.
29
30 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): I moved because they didn’t
31 see me and I got away quickly but if I had not done that they would have pointed the
32 gun at me too.
33
34 **MR MENEZES LEITÃO:** So no communications at all with the owner of the ship
35 because they were forbidden – do you confirm that?
36
37 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): Yes, I do.
38
39 **MR MENEZES LEITÃO:** The statement presented as the next one of the Memorial
40 of Panama is that of the captain Eduardo Blanco Guerrero – and he says he
41 managed to do a communication with the owner of the ship some hours after the
42 boarding. What would you say about this?
43
44 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): After I went to the bridge I
45 did not go down again until the ship arrived in Bissau. All the sailing was done by the
46 captain and myself until we reached Bissau. I don’t know what moment that
47 communication could have taken place or whether somebody might have got away
48 and had a chance to make a phone call or communicate with ...
49

1 **MR MENEZES LEITÃO:** But let us say about another thing: the danger of the
2 voyage. You stated that the weather was bad and the visibility was also not good. Do
3 you confirm that?
4

5 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): Yes, I do.
6

7 **MR MENEZES LEITÃO:** Because the captain signed an infringement notice stating
8 that the weather was fine and the visibility was also good. Why did the captain
9 accept to sign something like that if it was not true?
10

11 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): I doubt that the captain
12 signed that if he was in full possession of his senses. Maybe stress, fear, led him to
13 sign his death certificate or sentence had he been stressed or – but I don't think he
14 would have accepted that.
15

16 **MR MENEZES LEITÃO:** But the testimony is that no one hit anybody or committed
17 any kind of violence.
18

19 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): That is an example. That is
20 an example.
21

22 **MR MENEZES LEITÃO:** You said that the military pilot obtained a chart of Bissau
23 but it was not up to date. You said that with this chart it was impossible to get to the
24 destination. It was your words. Do you confirm that?
25

26 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): Yes, I do.
27

28 **MR MENEZES LEITÃO:** They managed to get to the destination without any
29 problem. I think it is a concept difference from anything impossible. It was
30 impossible?
31

32 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): I can explain why it was
33 possible, if I may.
34

35 **MR MENEZES LEITÃO:** I think we should say that it was possible. There is just one
36 doubt. Do you still belong to the crew of the *Virginia G*?
37

38 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): At this time, no, not at this
39 time.
40

41 **MR MENEZES LEITÃO:** Because we have information that *Virginia G* is now sailing
42 frequently to the port of Bissau. You stated that the characteristics of the ship did not
43 permit such a trip. Do you confirm that?
44

45 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): I do not understand the
46 question.
47

48 **MR MENEZES LEITÃO:** You said that the characteristics of the tanker *Virginia G*
49 make it not adequate to do a trip to the port of Bissau. It was from your statement.

1 But we know that this ship is now making a lot of trips to the port of Bissau to
2 transport fuel.
3
4 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): Well, maybe I was referring
5 to the fact that it was impossible or it was not very likely that the ship would arrive at
6 Bissau the day that it was arrested.
7
8 **MR MENEZES LEITÃO**: What is the question of the chart? Do the islands, the
9 rocks, the waters, change with time in the sea? Why do you have to update a
10 nautical chart of the sea so often?
11
12 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): The water and rocks change
13 over time, not in months or years but the charts have to be updated constantly
14 because a lighthouse might suddenly stop functioning or there might be a ship that
15 sinks, or the conditions might have changed. That is why they are updated, the
16 charts.
17
18 **MR MENEZES LEITÃO**: I will just put to you a question about the conditions in the
19 port of Bissau. It was also your statement that you intended to leave Bissau and
20 informed the captain and the company that you had to renew your residence permit.
21 Is that so?
22
23 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): Yes, that is so.
24
25 **MR MENEZES LEITÃO**: But what you stated, and it is a written statement, is:
26 "I informed the captain and the company that my intentions were to return to the
27 ship. I was told that the vessel would hopefully be released within a few days and
28 that there were not ticket funds allocated for travelling for the time being." So it was
29 the company that did not have funds to permit you to do the journey.
30
31 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): The shipowner at that time
32 did not have resources, but I did. I was the person who wanted to travel and I got the
33 money and the FISCAP agency did not want – I don't know why they were violating
34 the rules and regulations – they did not want to give me my passport.
35
36 **THE PRESIDENT**: Excuse me, would you please wait until the translation is finished.
37
38 **MR MENEZES LEITÃO**: You said that you asked FISCAP for the passports. How
39 did you ask for them? Did you make a written request or only talk to the inspectors at
40 FISCAP verbally?
41
42 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): Initially it was verbally. Then
43 I had to write two or three letters of request. Yes, several letters. I do not know where
44 they put them.
45
46 **MR MENEZES LEITÃO**: To FISCAP?
47
48 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): Yes, I did.
49

1 **MR MENEZES LEITÃO:** What we have in Bissau is a letter of the Ambassador of
2 Cuba, in Guinea-Bissau, from 4 November 2009. It was the first letter and it makes
3 no reference to previous requests for the passports. This letter was object of an
4 official opinion, an affirmative opinion, and on the next day, the 5th, which is the
5 Thursday, and the next Monday, the 9th, you signed the statement that you received
6 your passport, so they have not retained the passport for as long as you say.
7

8 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): For two months I was trying
9 to get my passport back. I do not know where the letter was sent. I can tell you that I
10 wrote them and I sent them in. I gave them in to the personnel of FISCAP.
11

12 **MR MENEZES LEITÃO:** You say that but it was not confirmed on our registers but
13 let us see. You said that in the port of Bissau there was no potable water, no
14 provisions of any kind, and you felt arrested, but could you not go out to the shops to
15 buy provisions?
16

17 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): The first few days, no, we
18 were not. It was forbidden. The soldiers, the military, FISCAP, did not let us. When
19 you are in prison you have water and you have electricity. We ran out of water,
20 drinking water. We would shower with rainwater but there was no drinking water.
21

22 **MR MENEZES LEITÃO:** The provisions. I understand that you could go off the ship.
23 It was not possible because there were no funds allocated by the owner of the ship,
24 as there was not for the plane tickets.
25

26 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): I repeat, at that time the ship
27 was arrested, the shipowner was in a very bad situation. We, in general, do not have
28 much money, much cash, on the ship. You go there to work and make money; you
29 do not carry loads of money. That is not so.
30

31 **MR MENEZES LEITÃO:** I have no further questions, your Honours. Thank you very
32 much.
33

34 **THE PRESIDENT:** Mr Menezes Leitão, thank you very much.
35

36 A witness who is cross-examined by the other party may be re-examined by the
37 party who called the witness. Therefore I ask the Agent of Panama whether he
38 wishes to re-examine the witness.
39

40 **MR GARCÍA-GALLARDO:** I have no further questions.
41

42 **THE PRESIDENT:** Thank you.
43

44 At this stage Judge Lucky would like to ask a question of Mr Ocaña Cisneros.
45

46 **JUDGE LUCKY:** Good afternoon, Mr Ocaña Cisneros. My questions are very
47 simple, so yes or no answers. You did say that the members of the crew were sick.
48 Some had malaria. When you got into the port did any of you ask for medical help?
49

50 **MR OCAÑA CISNEROS** (*Interpretation from Spanish*): Yes.

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JUDGE LUCKY: Was medical help provided? Did they see a doctor?

MR OCAÑA CISNEROS (*Interpretation from Spanish*): Yes.

JUDGE LUCKY: Do you know whether the doctor or doctors provided medical reports?

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

JUDGE LUCKY: So apart from what you are saying, that they had malaria, there is no documentary evidence from a medical person to support that?

MR OCAÑA CISNEROS (*Interpretation from Spanish*): Can I explain?

JUDGE LUCKY: Yes, certainly.

MR OCAÑA CISNEROS (*Interpretation from Spanish*): In Guinea-Bissau there is a commission or a delegation of Cuban doctors, physicians, who do humanitarian work. It was through them that we were able to get the medicines to treat the cases of malaria, and these crew members who had malaria were treated by these physicians where they are. These physicians are in the hospitals, the general hospital of Guinea-Bissau.

JUDGE LUCKY: The Guinea-Bissau authorities permitted that? Put another way, you would not have had it if they were objecting.

MR OCAÑA CISNEROS (*Interpretation from Spanish*): It is possible that they would not have allowed these people to go to the physicians, to the Cuban doctors.

JUDGE LUCKY: Thank you very much.

THE PRESIDENT: Thank you. Mr Ocaña Cisneros, thank you for your testimony. Your examination is now finished. You may withdraw.

MR OCAÑA CISNEROS (*Interpretation from Spanish*): Thank you very much for listening to my statement.

(The witness withdrew)

THE PRESIDENT: Mr García-Gallardo, how do you wish to continue?

MR GARCÍA-GALLARDO: Mr President, I would like to call the next witness, whose name is José Antonio Gamez Sanfiel, the shipowner of the tanker *Virginia G*.

THE PRESIDENT: Thank you. The Tribunal will then proceed to hear the witness, Mr Gamez Sanfiel. He may now be brought to the courtroom. I now call upon the Registrar to administer the solemn declaration to be made by the witness.

(The witness made the solemn declaration)

1
2 **THE PRESIDENT:** Mr Gamez Sanfiel, I wish to remind you of the following: the work
3 of interpreters and verbatim reporters is a complex task. This is even more so when,
4 as will be the case now, not only English and French are used but also a third
5 language such as Spanish. Everything that you state in Spanish, Mr Gamez Sanfiel,
6 will be interpreted first into English and then into French. Therefore, I must urge you
7 to speak slowly, and please leave sufficient time after someone else has spoken to
8 you before you answer. As I stated, the statement or question of someone else
9 before you will be translated into English and then into French, so you have to wait
10 until the interpretation into French has been completed. When the interpretation into
11 French has been finished, I will give you a sign to this effect by a gesture like this.
12 Only then it will be possible that the interpreters can follow.

13
14 Mr García-Gallardo, you have the floor.

15
16 **Examination by MR GARCÍA-GALLARDO**

17
18 **MR GARCÍA-GALLARDO:** Mr Gamez, would you please introduce yourself.

19
20 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): My name is José Antonio
21 Gamez and I am the shipowner of the *Virginia G*. I am a nautical engineer. That is
22 my profession. I have been in this profession since 1964 and I am devoted to fuel
23 since 1981.

24
25 **MR GARCÍA-GALLARDO:** Mr Gamez, why has the port of Las Palmas always been
26 considered strategic for the supply of gas oil activities in the West African region?

27
28 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): The port of Las Palmas is the
29 port in the area that guarantees quality in accordance with the current regulations
30 that cannot be found in Dakar. Maybe sometimes they do meet those quality
31 requirements but they do not meet them constantly like we do in Las Palmas, where
32 the European rules and regulations are always complied with.

33
34 **MR GARCÍA-GALLARDO** (*Translated from the French interpretation*): What kind of
35 customers did your company have?

36
37 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): Our customers were basically
38 ships, merchant ships, that were going to ports in Europe and America, and
39 occasionally we supplied other types of ship. Why? These ships required adequate
40 certificates of quality and they could not be issued at ports other than the ports in the
41 Canary Islands. My company supplied gas oil fuels, fuels we could not supply with
42 *Virginia G* because that is something we had to do through a double-hull ship, which
43 was the *Iballa*. At the time of the events we were operating *Virginia G* and *Iballa G*.

44
45 **MR GARCÍA-GALLARDO:** Did you provide any other services or products to your
46 clients?

47
48 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): No, none at all. Only fuels.

49
50 **MR GARCÍA-GALLARDO:** Do you consider your tankers to be reefer vessels?

1
2 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): No, absolutely not. It is a ship
3 for transporting fuel.
4
5 **MR GARCÍA-GALLARDO**: Do you consider your tankers to be logistic vessels?
6
7 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): Absolutely not. The ships are
8 designed to carry fuel and that is our service. Our only service is to supply ships with
9 fuel. Our ships are not logistic operation ships which can also supply other things
10 apart from fuel.
11
12 **MR GARCÍA-GALLARDO**: What other types of activity?
13
14 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): Things like supplying food,
15 water, supplying or carrying cargo, carrying fish. Our ships are not designed for
16 those purposes and that is not what we did at all.
17
18 **MR GARCÍA-GALLARDO**: Do you often travel to West African countries?
19
20 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): Yes, quite frequently.
21
22 **MR GARCÍA-GALLARDO**: To Guinea-Bissau?
23
24 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): Yes. I live in Guinea-Bissau
25 right now. I have my residence there. After what happened, after the ship was
26 released, I tried to solve a very important problem which Guinea-Bissau has, which
27 is the supply of fuel.
28
29 **MR GARCÍA-GALLARDO** (*Translated from the French interpretation*): What work do
30 you do in Guinea-Bissau?
31
32 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): My work is I advise them. I
33 advise the advisor of the current President in terms of energy matters to try to get
34 fuel at a reasonable price, to market it and to transport it.
35
36 **MR GARCÍA-GALLARDO**: Do you normally use the *Virginia G* tanker to conduct
37 these services?
38
39 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): Yes, I do.
40
41 **MR GARCÍA-GALLARDO**: Can you elaborate more about these services?
42
43 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): Yes. I repeat, I give my
44 knowledge, offer my knowledge in the field of fuels, because that is what I have done
45 since 1981. I am an expert at that, and my maritime knowledge, because I have
46 been in the business all these years, and in a country where their fuel needs are very
47 high, and they are suffering tremendously in Guinea-Bissau because of the lack of
48 fuel, I tried to share my knowledge with them, give them my knowledge so that they
49 can have access to fuels at reasonable market prices, and so that, with the serious
50 problem of supply they have, they can move ahead and solve it. The population

1 suffers a lot as a result of this. They go for long periods of time with no waste, no
2 electricity, and I try to do what I can, and start up my business again, and at the
3 same time serve some purpose to their country.

4
5 **MR GARCÍA-GALLARDO:** Does *Virginia G* need any particular authorization to
6 carry out these activities?

7
8 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): No, not at all. We work from
9 port to port. We load at one port and we unload at Bissau, so we need what any ship
10 needs to operate: a load, a cargo. We have an agent who deals with all the
11 documents, the licences, certificates, etc., and then at Bissau we have an agent who
12 takes care of the customs requirements and relations with the authorities, like any
13 other ship anywhere else in the world.

14
15 **MR GARCÍA-GALLARDO:** Coming back to the conditions of the arrest of the
16 *Virginia G* in 2009, in your long experience in the supply of gas oil in the EEZ of
17 different West African countries, have you ever had a similar experience to the one
18 that occurred in Guinea-Bissau with this arrest?

19
20 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): Not exactly, no. I have had two
21 events. One was in Senegal in about 2001 when we supplied a ship 40 miles off the
22 coastline out of the territorial waters and the contiguous zone or area. We were
23 intercepted by a patrol boat from Senegal. They took us to the port of Dakar. We
24 were there for two days. Our lawyers did what they had to do and we were released
25 with no charges and were given compensation of \$15,000 for the two days of arrest.
26 Another case happened in Guinea-Conakry. If I am not mistaken, I am talking about
27 2004/2005. At that time the area was becoming very dangerous and we had stopped
28 operating in Bissau and Guinea-Conakry. We were arrested by pirates. Well, we
29 were seized by pirates. The captain called us and said that they were shooting into
30 the air. We were stripped of our clothes, fully naked, and put on the deck, made to sit
31 down on deck. The deck was at 40/45 degrees, the temperature on the deck, and in
32 those conditions we got in touch with the P&I and the P&I recommended that the
33 best thing to do would be to negotiate with the pirates. It was not necessary for the
34 ship to go anywhere. First, they wanted €300,000 to release the ship, and then at the
35 end the P&I paid a group of people in Guinea-Conakry \$30,000 and we were
36 immediately released. We are talking about a dramatic situation but it was solved in
37 about 24 hours.

38
39 **MR GARCÍA-GALLARDO:** Mr Gamez Sanfiel, were you informed by the shipowners
40 of the vessels *Amabal I* and *Amabal II* of the reasons for the detention of those two
41 vessels?

42
43 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): Yes. Once they arrested the
44 ship in Guinea-Bissau I went from Seville to Las Palmas in the Canary Islands. We
45 had talks with the agent of the ship and Mr Hamadi, who had been an honorary
46 consul of Spain in Guinea-Bissau. The shipowner said, "Look, we have to solve this
47 and pay in order to free the ship, to get the ship released". He put me in touch with a
48 civil servant at the Ministry for Agriculture and the Sea in Spain. I spoke to that civil
49 servant, who said to me "Look, the best thing you can do to solve this quickly is to
50 pay up and get out, because if not it is going to be worse". The right person to

1 manage all this situation is Mr Hamadi, who is a close friend of Cadogo. Cadogo is
2 the name they give to the former Prime Minister of Guinea-Bissau who today is in
3 exile in Portugal. I said to him, “No, we are not going to negotiate anything. We
4 believe that we have done nothing wrong. Therefore, we are not going to negotiate
5 with anybody because there is nothing to negotiate”.

6
7 **MR GARCÍA-GALLARDO** (*Translated from the French interpretation*): So you’re
8 saying that someone from the Ministry of Finance in Guinea-Bissau was put forward
9 to find a solution?

10
11 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): No, no. We had to deposit an
12 amount of €600,000 in an account in Lisbon.

13
14 **MR GARCÍA-GALLARDO**: Do you have any evidence of this?

15
16 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): No. The only evidence I have is
17 my conversation with the shipowner of the *Amabal* ships and Eduardo Blanco
18 Guerrero, the former captain, who has since died, who came under tremendous
19 pressure in Guinea-Bissau. There was a man – I do not know who, but he gave me
20 his phone number even – whose name was Gomez Gau* or something like that, who
21 would be very pleased if he could speak to me. I said, “he is not going to talk to me.
22 We have our representatives in Bissau. Mr Alvarenga was our representative, the
23 P&I’s agent in Bissau, and Mr Alvarenga went to talk not just to this Mr Gomez Gau
24 but to somebody called Nosoliny Vieira. They made him wait for a long time before
25 he could talk to them, and finally he was told that it was in the hands of the
26 Interministerial Fisheries Commission and that they had nothing to talk to him about.

27
28 **MR GARCÍA-GALLARDO**: Do you consider this type of authorization for the supply
29 of fuel oil in conformity with the international law of the sea? I mean the authorization
30 to provide this service.

31
32 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): When we send supplies within
33 24 miles, we have an agent on the ground who deals with all the paperwork to be
34 able to supply the goods or the fuel with the permissions we need. If we are further
35 away than 24 miles, the person who gets the permissions and certificates is the
36 shipowner, through the agent for the ship that we have to supply. So, in accordance
37 with that, when we supply fuel at a distance of more than 24 miles the only thing we
38 do is to make sure, by using observers, captains of the ships that we supply, that
39 they have all their documents and everything, all the permissions that they require,
40 and this is usually not done directly but through an agent. We know from statements
41 made by the people in charge of the ships we were supplying that the agents and
42 everybody else involved gave their authorization for us to go to the meeting point
43 and that they had spoken to everybody that they had to speak to.

44
45 **MR GARCÍA-GALLARDO**: Mr Gamez, did you initiate any legal proceedings before
46 the courts of Guinea-Bissau – I am talking about interim relief measures or any other
47 type of main proceeding – to challenge the decision to confiscate the ship, the
48 equipment and the cargo?

* This and a number of other proper names are unverified and unverifiable.

1
2 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): Yes, indeed. We did all in our
3 power before the prosecutor. We even asked for a prompt release in exchange for
4 the payment of a reasonable bail, so that our ship and our crew did not have to be
5 there any longer. In addition, since things did not get any better, we hired a lawyer
6 from Lisbon, from the Miranda law firm, and they started different proceedings and
7 even obtained a cautionary statement from the corresponding judge, which
8 prohibited the seizure of the vessel and the cargo. On 24 September there was a
9 letter from the Under-Secretary of the Treasury, which bore the date 30 September,
10 so a date six days later, which says that regardless of what the judge may say, the
11 government would seize both the vessel and the cargo. So they got the vessel to
12 moor at the port and at gunpoint forced the captain to berth the vessel, and they
13 confiscated the cargo. Once the vessel had been confiscated and the cargo had
14 been offloaded, we just dropped anchor.

15
16 **MR GARCÍA-GALLARDO**: Can you please explain how your business was affected
17 by the arrest and confiscation of the *Virginia G*?

18
19 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): We live in a time of
20 communications, so when the *Virginia G* was arrested on 21 August, an incredible
21 hoo-ha was formed by radio and television and I was placed under enormous
22 pressure, which resulted in the confiscation of our other vessel and the withdrawal of
23 a launch by the oil companies, so in a two-week period I found myself without my
24 two vessels and with a reputation that was horrible. I was being accused of being a
25 pirate, and it is not just me saying this. I have a press clipping from a Bissau
26 newspaper that said Mr Missilini says that a Panamanian ship has been arrested that
27 was devoted to piracy on the shores of Guinea-Bissau. As you can imagine, this
28 caused great harm to my reputation and I just had to roll up my sleeves and face up
29 to the situation. Given that I am a very resilient person, I have managed to keep my
30 head above water, but since 2009 until the present time my life has not been a bed
31 of roses, as you can imagine, but this has made me stronger as a person.

32
33 **MR GARCÍA-GALLARDO**: Did you want to say that you were unable to finance to
34 the crew on board the vessel *Virginia G* during the 14 months that it was arrested in
35 the Port of Bissau? Can you please explain better these circumstances? Why you
36 were not even able to pay a retainer or any cost to cover the minimum living
37 conditions?

38
39 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): As soon as I could, I did foot
40 the bill. Of course, the situation was not the most wonderful of situations. Part of the
41 crew started leaving and the other part decided to stay, in spite of all the odds, until
42 they collected their salaries. This situation was difficult, and it was also difficult for
43 me to face up to this situation because I even had problems to keep the pot boiling
44 myself.

45
46 **MR GARCÍA-GALLARDO**: Did you receive any support from the flag State of the
47 vessel, from Panama?

48

1 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): The only support I was entitled
2 to was just to come to this court. When I decided to come before this court they
3 supported me, and here I am.

4
5 **MR GARCÍA-GALLARDO**: Thank you.

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

8
9 Pursuant to article 80 of the Rules of the Tribunal, a witness called by one party may
10 also be examined by the other party. Therefore, I ask the Agent of Guinea-Bissau
11 whether he wishes to cross-examine the witness.

12
13 **MR MENEZES LEITÃO**: Yes.

14
15 **THE PRESIDENT**: I then give the floor to the Agent of Guinea-Bissau to cross-
16 examine the witness. You have the floor, sir.

17
18 **MR MENEZES LEITÃO**: Thank you, Mr President.

19
20 **Cross-examination by MR MENEZES LEITÃO**

21
22 **MR MENEZES LEITÃO**: Mr Gamez, I would like you first to give me some
23 information regarding the written statement that you have provided to this Tribunal.
24 Your statement was that in January 1998 the company Penn Lilac Trading was
25 created for the operation of the *Virginia G* and that you were appointed as their
26 representative. Is that so?

27
28 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): Indeed, yes.

29
30 **MR MENEZES LEITÃO**: Then in September 2001 the company Penn World S.A.
31 was created and you were appointed to operate its vessel *Iballa G*. Is that correct?

32
33 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): Yes.

34
35 **MR MENEZES LEITÃO**: So it is my understanding that the ships belonged to two
36 different companies. The owner of the *Virginia G* has nothing to do with the owner of
37 the *Iballa G*. Is that so?

38
39 **MR GAMEZ SANFIEL**: Common practice says that in the world of vessels each
40 vessel sets up its own company, and this does not mean that companies are not
41 related to each other.

42
43 **MR MENEZES LEITÃO**: Do you think that the *Iballa G* belonged to Penn Lilac?

44
45 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): No.

46
47 **MR MENEZES LEITÃO**: Let me ask about another matter that was referred to in
48 your deposition. You have reported that the *Virginia G* has had several problems on
49 the shores of this region of Africa. The *Virginia G* was arrested in Senegal and paid

1 some compensation to the State, and you also said that she had paid compensation
2 in Guinea-Conakry. Is that so?

3
4 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): No, what I said is that the State
5 of Senegal compensated us US\$ 15,000 and what I am saying is that in Guinea-
6 Conakry, through the P&I Club, we had to pay an organization devoted to piracy.

7
8 **MR MENEZES LEITÃO**: You mean to say, an organization with an open office with
9 objectives of piracy?

10
11 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): No, no, that is not what I am
12 saying. What I am saying is that the P&I Club got in touch with a series of people in
13 Guinea-Conakry. I am not talking about any office that is open to the public or
14 anything but if you know this area you know that these things do happen.

15
16 **MR MENEZES LEITÃO**: But you do not report this kind of infraction to the
17 authorities of Guinea-Conakry?

18
19 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): No.

20
21 **MR MENEZES LEITÃO**: In your written statement you also said that you decided not
22 to use the mechanism of prompt release in Guinea-Bissau under article 292 of
23 UNCLOS because you had been led to believe that a solution to the matter was
24 possible; so are you trying to get another solution such as when you talk about in
25 Guinea-Conakry in Guinea-Bissau?

26
27 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): What I am saying is, in Guinea-
28 Bissau – and this is in writing – we asked the authorities for the possibility to give bail
29 for the vessel's prompt release.

30
31 **MR MENEZES LEITÃO** (*Interpretation from Spanish*): To pay what?

32
33 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): No, they didn't allow me to pay
34 the bond. They didn't even reply. This is a letter in writing, a letter that was sent to
35 the prosecutor where we say that, you know, we want the amount to be paid to be
36 established; but the prosecutor didn't even mention an amount. I received a
37 communication from a local lawyer. I was invited to come to an agreement
38 recognizing the offence committed, and paying €100,000 as a bill for that lawyer; and
39 if the fine to be paid was less than €600,000, 10% of that should also be given to the
40 lawyers – and this has nothing to do with the bond.

41
42 **MR MENEZES LEITÃO**: You had some conversations about an attempt of
43 corruption, but you were only to report a declaration of third parties, as I understand.
44 You did not talk to anyone that can be corrupted or anything at all.

45
46 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): Well, not only did I speak about
47 this – well, I didn't speak to anybody. I didn't speak to anybody.

48

1 **MR MENEZES LEITÃO:** You did speak to the captain about the possibility of getting,
2 as I think you said, an African solution to the problem? Is that so? It is the only
3 evidence you have.

4
5 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): If you allow me, Sir, I am going
6 to answer your question. What I am saying is that I not only tried to look for a
7 solution, look for a legal settlement to this issue, but there is also written evidence
8 that this solution was sought. It is only that they were not interested in reaching a
9 solution because they thought that everything would be settled, that it was settled
10 historically, because it is not only us that were intercepted in Bissau and forced into
11 the port – no, no, no. The Portuguese Government made a statement a few months
12 before saying that if the Government of Guinea-Bissau persisted in systematically
13 arresting Portuguese vessels they would provide a response, not only a political one,
14 but other types of responses. This was Portugal.

15
16 **MR MENEZES LEITÃO:** If the Government of Guinea-Bissau and if the State of
17 Guinea-Bissau is as bad as you say, why do you presently reside in Guinea-Bissau?

18
19 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): Very well – because the rogue
20 “Government” of Guinea-Bissau has been overthrown and so that Government is not
21 in office any more. Now there is a new Government that is trying to do things
22 differently. It is a Government that has called a general election for 23 November
23 and so I can see a possibility that this country, which is subjected to terrible
24 hardships – no drinking water, no light, etc. – I have the hope that this country may
25 solve its economic situation happily.

26
27 **MR MENEZES LEITÃO:** It was your statement that due to the arrest of the *Virginia*
28 *G* the other company Gebaspe lost the *Iballa G*. Do you confirm this statement?

29
30 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): I am sorry, I didn’t explain
31 things properly, or perhaps you didn’t understand what I said. What I said, Sir, is that
32 the company and the way Penn Lilac managed its things, and the owner of *Iballa*
33 were two different companies.

34
35 **MR MENEZES LEITÃO:** Yes, yes ---

36
37 **THE PRESIDENT:** Excuse me to interrupt you, Mr Leitão, would you wait for the
38 completion of the interpretation into French? Thank you. You may continue.

39
40 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): As I was saying, these are two
41 companies with the same management. Sorry, if you allow me I will finish my
42 explanation. This is not just something that happened with these companies. In
43 general large companies had the same situation because this is the way in which the
44 market works; each vessel has its own company, as an owner, and the management
45 may be a single management for more than one vessel. I would like to remind you
46 that in my statement I also speak about Penn Lilac and I also speak about Penn
47 World and I also speak about another company called Gebaspe, which is the
48 company that was managing these two companies. So it was the company that was
49 in charge of the commercial activities of the company.

50

1 **MR MENEZES LEITÃO:** Do you agree that it is a Spanish company?
2
3 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): Very well, I agree; it is a
4 Spanish company.
5
6 **MR MENEZES LEITÃO:** Can you confirm that the *Iballa G* was affected due to the
7 arrest of *Virginia G*? I have information that *Iballa G* was not paying the wages to its
8 crew since April 2009. Can you confirm anything like that?
9
10 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): Neither *Iballa G* or *Virginia G*
11 were paying these wages. In 2010 when it went back into service we made a
12 proposal.
13
14 **MR MENEZES LEITÃO:** The wages that were not being paid since April 2009 to the
15 sailors of *Iballa G*.
16
17 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): If you allow me ---
18
19 **MR MENEZES LEITÃO:** (*In Spanish*) Please answer the question.
20
21 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): I am not going to answer with
22 “yes” and “no” unless Mr President forces me to do so.
23
24 **MR MENEZES LEITÃO:** A second question: on 24 August 2009, just three days
25 after the arrest of *Virginia G*, *Iballa G* entered the port of Las Palmas. 21 August is
26 Friday and 24 August is Monday. So it is your testimony that the fact that *Iballa G*
27 was sent away to the port of Las Palmas is because of the arrest of the *Virginia G*
28 and because of the declarations of Mr Hugo Nosoliny Vieira, which happened only in
29 September 2009.
30
31 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): Well, I think I said this before
32 but I will repeat it. Practically 15 days later, well, *Iballa G* went back to port.
33
34 **MR MENEZES LEITÃO:** On 24 August, to the port of Las Palmas. The ship workers
35 were not getting paid, and I also have information that the ship owed a lot of money
36 to CEPSA due to the invoice that was not paid. This has also anything to do with the
37 arrest of *Virginia G*, the fact that the ship did not pay CEPSA for its invoice?
38
39 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): Well, I will repeat. It is difficult
40 to understand that the vessel had legal problems with CEPSA when CEPSA was
41 fuelling, was providing fuel to the ship.
42
43 **MR MENEZES LEITÃO:** (*In Spanish*) Could you answer the question?
44
45 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): I am saying that the vessel
46 went to the port of Las Palmas because it had completed its bunkering activities and
47 went back to get fuel again, and it had no problem getting fuel at all. The only
48 problem was that given the rumours that spread like wildfire – and you are speaking
49 about the 24th but normally the end of the month is the 30th and not the 24th – and so
50 if what happened with the *Virginia G* had not happened and if these rumours had not

1 spread so widely, that we were pirates, then business would have continued as
2 usual.

3

4 **THE PRESIDENT:** I am sorry to interrupt you again but our interpreters have
5 difficulties in following your statement or questions, so please wait until the
6 completion of interpretation into French before you ask the next question; otherwise
7 nobody understands the hearing.

8

9 **MR MENEZES LEITÃO:** Thank you so much.

10

11 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): As I was saying, given the
12 rumours that spread over the television, the radio, the written press, about the
13 situation, and then the different statements by the Guinea-Bissau administration that
14 the boat was involved in piracy activities, then the alarm was raised and the vessel
15 was paralysed, because for just €20,000, which is a small amount, a first embargo
16 was imposed and this led to a cascade of other embargoes or other attachments of
17 assets, amongst them that of CEPESA. This made it difficult to continue; but if things
18 had continued normally nothing of this would have happened. In fact CEPESA was the
19 company that was providing fuel to us, so you can't really talk about a confrontation
20 with CEPESA or debts with CEPESA when really there was a collaboration agreement
21 between us and CEPESA.

22

23 **MR MENEZES LEITÃO:** But *Iballa G* – there was not also news that the
24 international organization Stella Maris was taking care of the case of the workers
25 without wages being paid? Is that kind of news much more damaging than a local
26 reference in a newspaper in Bissau?

27

28 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): Well, I am going to say
29 something. When the *Virginia G* started operating, four crew members from the
30 *Iballa* went over to the *Virginia G* to work on her.

31

32 **MR MENEZES LEITÃO:** I phrased a very concrete question. Was the news about
33 the intervention of Stella Maris due to the wages of the crew that were not being paid
34 not more important than a local newspaper of Bissau?

35

36 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): You are asking a question that
37 has a very subjective component.

38

39 **MR MENEZES LEITÃO:** It was about the cost of the *Virginia G* when she was
40 bought by Penn Lilac?

41

42 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): Would you repeat your
43 question, please?

44

45 **MR MENEZES LEITÃO:** What was the price of *Virginia G* when she was bought by
46 Penn Lilac?

47

48 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): *Virginia G* was bought in an
49 auction in Malaga. I can't remember exactly the price paid, but it was around
50 €600,000. I can't remember the exact figure.

1
2 **MR MENEZES LEITÃO:** It was sold in Malaga?

3
4 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): I know that it was attached and
5 it was bought in a public auction.

6
7 **MR MENEZES LEITÃO:** At a low price for an oil tanker, or not?

8
9 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): Well, in a public auction, it was
10 a third round of auctions, and so it depends really on what the bidder offers.

11
12 **MR MENEZES LEITÃO:** The ship should not be very good if it cost only €600,000.

13
14 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): The condition of the vessel –
15 well, you shouldn't look at it at the time you buy it because of course, yes, it may
16 have not been very good, but then we repaired it. We obtained all the certificates and
17 then we had to do all that was necessary so that it was seaworthy because, as you
18 must remember, this vessel was sailing in the European Union; it was not sailing in
19 some dubious place – no, no, no. It was sailing in EU waters. So in a public tender
20 and in the third round of bids the vessel's price is what the bidder offers.

21
22 **MR MENEZES LEITÃO** (*Translated from the French interpretation*): At the end of
23 that public tender, in the third round, it was ultimately the best bid that was accepted.
24 That's what it was about.

25
26 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): Frankly, I am not really thinking
27 of selling it.

28
29 **MR MENEZES LEITÃO:** The value would be €500,000? Is this correct, this figure?

30
31 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): It could be, yes. There are no
32 other elements that need to be considered.

33
34 **THE PRESIDENT:** We have reached almost four thirty. Mr García-Gallardo, would
35 you wish to re-examine the witness? If you do, I think we have to withdraw for a
36 break of thirty minutes so we will continue at five o'clock.

37
38 **MR GARDIA-GALLARDO:** Thank you, Mr President. It will be just one question on
39 an Annex of our Memorial.

40
41 **Re-examination by MR GARCÍA-GALLARDO**

42
43 **MR GARCÍA-GALLARDO:** Would you please show Annex 41, the English
44 translation of a letter sent by the owner of the vessel, Penn Lilac Trading, to the
45 fisheries authority on 4 September 2009, where at the bottom – this is the Spanish
46 version. Mr Gamez, this is the letter of authority that you mentioned before about the
47 offer or the request for information on the potential settlement proposing the deposit
48 of warranty. Would you please read this paragraph with me?

1 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*):

2
3 So they should say something about this and they should inform us what is
4 the way of settling this difficult and unpleasant situation as soon as possible,
5 or for the procedures established in the law to be complied with,
6 establishing the necessary bonds to release the vessel, the crew and the
7 cargo.
8

9 **THE PRESIDENT:** Judge Bouguetaia would like to ask questions but perhaps he can
10 do that after the break.
11

12 The Tribunal will withdraw for a break of thirty minutes and we will continue the
13 hearing at five o'clock.
14

15 (*Break*)
16

17 **THE PRESIDENT:** We will continue the hearing and, as I announced before the
18 break, Judge Bouguetaia has questions to ask of Mr Gamez Sanfiel.
19

20 **JUDGE BOUGUETAIA** (*Interpretation from French*): Thank you, Mr President. With
21 your permission, I will ask the witness two questions.
22

23 Mr Gamez, you said that in 2001 your vessel was boarded offshore of Senegal,
24 about 40 nautical miles from the coast, in other words outside territorial waters but
25 within the EEZ. This is a situation which seems comparable to what you experienced
26 in Guinea-Bissau. Could you tell us precisely why this was, or at least the reasons
27 invoked by the Senegalese authorities for boarding your vessel? On the basis of
28 what legal decision were you able to get your vessel released and, above all, how
29 did you receive compensation of 15,000 dollars or 15,000 euros? Could you say
30 whether the reason you were boarded was because you were performing a
31 bunkering operation or was it in the absence of authorization, as was required by the
32 Guinean authorities for the *Virginia G*?
33

34 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): What the Senegal authorities
35 claimed was that we were conducting bunkering operations without authorization,
36 and when they made sure that we were 42 miles from the coast, I think, they
37 released the vessel without further ado, for us and for the fishing vessel that was
38 receiving the fuel.
39

40 **JUDGE BOUGUETAIA** (*Interpretation from French*): Thank you. Second question, if
41 I may. Mr Gamez, you referred to Mr Cadogo, the former Prime Minister of Guinea-
42 Bissau. This was a diminutive; in fact his real name is Carlos Gomes Júnior. You
43 were in the process of negotiating to achieve some sort of solution, whether
44 administrative, judicial, or African-style, as it has been called here. Could you tell us
45 precisely what Mr Cadogo's role was in this kind of transaction? He was, of course,
46 the head of the executive at that time.
47

48 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): I have been in Africa for quite a
49 bit and I am quite upset when people mention the expression "African solution" for a
50 very simple reason. Africans are no different from us. Africans also have reasonable

1 solutions themselves, and so this expression “African solution” is inappropriate, in
2 my view, because Africa is a continent that deserves maximum respect. It is a
3 continent that is undergoing an economic expansion. Not everybody in Africa resorts
4 to that type of solution but what I can say is that Guinea-Bissau, in a repetitive way,
5 we had even withdrawn from that area because the pirates acting in the area – and
6 this is something that is common knowledge – of Guinea-Conakry, or who used to
7 act or used to operate in that area, used to invade the waters of Guinea-Bissau to
8 seize vessels and take them to Guinea-Conakry, so the situation in Guinea-Bissau
9 was that every week seven, eight or ten vessels were arrested. So the situation is
10 the following. A fishing vessel, if you are stranded for one day, loses €10,000, two
11 days €20,000, so if a vessel is at a standstill for ten days, it loses about €50,000, so
12 shipowners of fishing vessels prefer to pay €10,000 or €20,000 backhanders,
13 because the longer a vessel remains in detention, the more money they lose, and
14 this is not something unusual; this is something that is quite common in Africa.

15
16 This is a situation that happened at a certain point but I have maximum respect for
17 Africans and for the situation in Africa in general. Of course, if you know Guinea-
18 Bissau, the richest person in the country and the person that pays the least taxes
19 was Mr Cadogo, and this is something that is common knowledge; everybody knows
20 this in Guinea-Bissau, and that situation happened and it is undeniable, and I am
21 very satisfied that I managed to put an end to a very important problem, because in
22 the past if you spoke to owners of fishing vessels, they said, “Oh, Guinea-Bissau.
23 No, I don’t want to know anything about Guinea-Bissau because it’s very
24 dangerous,” but now things have changed because this situation has changed
25 completely.

26
27 In Guinea-Bissau, of course, you can develop the country without having to resort to
28 those shady tactics, so these things did happen, but I do not think that what
29 happened in the past should affect the view you have of the country in the present.
30 We need to be very careful. I would never, ever share this idea of calling things in
31 Africa “an African situation” because they do not deserve this. Africa is a wonderful
32 continent, and I am not trying to censure your Honour for this reason. Please do not
33 take offence at what I am saying, but I find that way of expressing yourself is not
34 really acceptable. I want to pay tribute to Africa. Africa is not what happened in
35 Bissau. What happened in Bissau was a one-off thing. It used to happen in the past
36 and now, fortunately, it does not happen any more. I am very happy about this.
37 Nowadays I live in Guinea-Bissau and even if I am rather long in the tooth, I would
38 still like to devote the rest of my life to helping this country to get out of the current
39 trough it is in.

40
41 **JUDGE BOUGUETAIA** (*Interpretation from French*): That was not my question,
42 Mr Gamez. I clearly asked if there was a direct connection between the transactions
43 in which you were involved and the head of the executive at the time. If I may,
44 Mr President, to get to the point and to be direct, was there a direct connection
45 between the 600,000 euros paid into an account in Portugal and the name of Mr
46 Cadogo or, rather, the name of the Prime Minister, the head of the executive?

47
48 **MR GAMEZ SANFIEL** (*Interpretation from Spanish*): Really, I never saw the name
49 of the account holder. I am just speaking on the basis of the information I got from
50 the owner of *Amabal I* and *Amabal II*. He spoke of a very atypical situation, because

1 the captain of the vessel phoned me, and I hope God keeps him in his glory. He said
2 the two fishing vessels had already left. "They have paid €100,000, €50,000 each
3 and they have left." So I phoned the shipowner, Mr Valdo and I said, "Pepe, your two
4 vessels have left. How did you settle this?" "Well," he said, "I paid €100,000 into an
5 account in Portugal." This is what the shipowner said, and I said, "Fine. You paid the
6 money into an account in Portugal," and I said, "What about my ship?" and he said,
7 "Well, that's your problem. I am going to give you a contact for the person in the
8 Ministry. You speak to him and he might give you a solution." So I spoke to that
9 person in the Ministry and that person said, "Look, here the solution is very simple. In
10 the same way as Pepe paid, you should also pay, and you can leave, and then this
11 will be the end of it." I said, "No, I am not going to pay". That is the situation that
12 occurred.

13

14 So immediately I phoned the Spanish Consul in Bissau. Why did I not phone the
15 Panamanian Consul? Because there is no Panamanian Consulate and, since I was
16 Spanish, I phoned the Spanish Consul and I said to the Consul, "Look, this is what
17 happened. The two fishing vessels have left and they paid €100,000 into a
18 Portuguese account." "What are you talking about?" they said. "I was just speaking
19 to the Fishing Minister, Carlos Mussa Balde, and he said that he released the two
20 vessels of his own accord as a gesture of goodwill." I said, "Look, that's not true," so
21 twenty minutes later my phone rang and the shipowner was on the phone and he
22 said, "Look, you really overstepped the mark. What did you do? Don't get me into
23 your own problems. You are going to cause my downfall." I asked him, "But how did
24 you learn about this conversation I just had with the Spanish Consul?" He said,
25 "That's my problem. I'm not going to tell you what my sources are but please do not
26 get me into your problems."

27

28 So I phoned the Consul again and I said, "Look, Pablo. Look at what happened. The
29 shipowner has just called me, so the person you phoned just got the ball back into
30 my court," and he said, "Look, I spoke to Hamadi." That is what he said. That is what
31 the Consul said: "I spoke to Hamadi and Hamadi spoke to the Minister and between
32 them they had a conversation, and then one of the two phoned the shipowner and
33 that is why he called you, and that is how things happened."

34

35 It is my word but I feel that I should speak about these things. I feel the need to talk
36 about these things. I am not saying that this is customary, but this is what happened
37 and I have witnesses. Do I have witnesses? God is my witness. Perhaps that is not
38 good enough for the court but this is what happened. I have to express my own
39 experience because I think that is helpful. I think that enough documents have been
40 submitted to show that we have tried to comply with the rules. We have obtained the
41 permit, we have received unfair treatment, so I think that we have managed to
42 resolve a problem in a country which needed solutions.

43

44 That is the only thing I can say. As I think I should express it, I do express it. Now I
45 have a different relationship with Bissau and those of you who know Bissau will also
46 know things that used to happen in that country. There was a person that was the
47 richest person in Bissau who paid very little taxes, a person who had taken hostage
48 the whole sector of fuel through Petromar, a person who had many interests in the
49 banking sector through the BAO Bank, a person who had a lot of interest also in the
50 primary sector and a person who, as a result of all that happened, also had

1 something to do with this, and it was not only him. There were three people, and
2 those three people went to jail immediately, but then they were released on bail, they
3 were remanded on bail while waiting for the court case to begin. I am also waiting for
4 the court case to begin but nobody gave me any solutions in Bissau, and this was
5 not because I did not ask for a solution, because my intention from day one was
6 either to get convicted or to get acquitted, and that is it.

7
8 **JUDGE BOUGUETAIA** (*Interpretation from French*): Thank you, President.

9
10 **THE PRESIDENT**: Mr Gamez Sanfiel, thank you for your testimony. Your
11 examination is now finished. You may withdraw. Thank you.

12
13 (*The witness withdrew*)

14
15 **THE PRESIDENT**: Mr García-Gallardo, how do you wish to continue? Are you ready
16 to call another witness?

17
18 **MR GARCÍA-GALLARDO**: Yes, Mr President. It is 25 past five so we will try to
19 conduct an examination of another witness, Mr Manuel Samper Pérez, the chief of
20 operations of the company in 2009.

21
22 **THE PRESIDENT**: Mr Samper Pérez may now be brought into the courtroom.

23
24 (*The witness made the solemn declaration*)

25
26 **THE PRESIDENT**: Mr Samper, I wish to remind you of the following. The work of the
27 interpreters and verbatim reporters is a complex task. This is even more so, as is
28 now the case, when not only English and French are used but also a third language
29 such as Spanish. Therefore, I must urge you to speak slowly and please leave
30 sufficient time after someone else has spoken to you before you answer. The
31 questions will be translated into English and then into French, so you have to wait
32 until the interpretation into French has been completed. When the interpretation into
33 French has finished I will give you a sign, and only then will it be possible for the
34 interpreters to follow.

35
36 Mr García-Gallardo, you have the floor.

37
38 **MR GARCÍA-GALLARDO**: Thank you, Mr President. I will start with another witness,
39 Mr Manuel Samper.

40
41 **Examination by MR GARCÍA-GALLARDO**

42
43 Mr Samper, good afternoon. Could you introduce yourself to the Tribunal, please?

44
45 **MR SAMPER PÉREZ** (*Interpretation from Spanish*): As you know, my name is
46 Manuel Samper. I have been a captain of the merchant marine since 1983. I started
47 my professional career from 1983. In 1985 I was an officer of the merchant marine
48 and afterwards I was a captain of the merchant marine. I worked on different sorts of
49 vessel – passenger, oil tankers, hospital vessels and Ro-Ro vessels. In 1995 I joined
50 a shipping company where I was a captain. I joined as superintendent. At that

1 company, apart from the task of superintendent, given that I was knowledgeable in
2 all that was related to West Africa, I was put in charge of all the traffic between the
3 Canaries and West Africa, and I stayed in that position in that company until 2003. I
4 then joined the technical team of the Gebaspe company Hidrocasa, which was
5 related to the Penn Lilac group, until 2009, when, for reasons that I shall mention
6 later, I left the company because basically the company went bankrupt.

7
8 **MR GARCÍA-GALLARDO:** Mr Samper, could you please explain the structure of the
9 companies? The shipowner mentioned that they were operating two vessels, the
10 *Iballa G* and the *Virginia G*. There was a third company in Spain called Gebaspe. I
11 think that is a management company?

12
13 **MR SAMPER PÉREZ** (*Interpretation from Spanish*): When I joined Gebaspe I
14 entered the technical department of the company, which was made up of two
15 captains. I was one of them, and then there was an engineer as well. Nowadays
16 SOLAS requires that a company should identify an area where the management
17 should be conducted, so the company decided that the management should be
18 conducted from Seville, so the whole of the security management was conducted
19 from Seville. Afterwards, when the ISPS Code came into force, the whole of the
20 security business was managed from the Gebaspe office itself.

21
22 **MR GARCÍA-GALLARDO:** What were your responsibilities as being the person in
23 charge of the administrative, technical and social conditions of the ships?

24
25 **MR SAMPER PÉREZ** (*Interpretation from Spanish*): There were three people in the
26 technical department. My colleague was an engineer and he was in charge of the
27 technical and operational area – the devices, the equipment. My other colleague was
28 in charge of the ship operations. My own job was to oversee compliance of the
29 vessels with international norms. I also had to advise the owner in terms of insurance
30 and other things, and when the vessel entered a port in the European Union or in
31 other countries in West Africa I was also in charge of contact with local agents to
32 make sure that all the regulations were complied with, because, of course, when you
33 enter territorial waters you need to comply with a certain set of regulations, so I had
34 to be very attentive to complying with any requirements that were imposed on us.
35 For example, in the case of the *Iballa G* I had to send the different countries different
36 civil liability certificates in terms of the cargo, and in terms of pollution as well there
37 was another specific certificate that used to be requested by the different authorities.
38 There was also another certificate to do with waste. All this had to be done 72 hours
39 before you entered the territorial waters of a certain country and my job was to
40 prepare all these documents and give advice to my company so that everything was
41 in order. I also had to help the company when, for example, taking out an insurance
42 policy etc.

43
44 **MR GARCÍA-GALLARDO:** Did you have any expertise in relation to bunkering
45 operations, responsible in the companies for the technical aspects related to these
46 activities?

47
48 **MR SAMPER PÉREZ** (*Interpretation from Spanish*): My bunkering experience goes
49 back to 1986, when I was chief mate on an oil tanker where we performed bunkering
50 operations in the area of the Gulf of Guinea, that is from the professional point of

1 view, sailing on board an oil tanker; and then I had an opportunity to learn about the
2 different manoeuvres, what the physical operations are for bunkering, and this
3 helped me very much when I went to work in an office as a white-collar worker
4 because all that experience helped me to provide solutions. Also, when I was on
5 land I furthered my theoretical knowledge in terms of MARPOL standards, in terms
6 of single-hull vessels, double-hull vessels. So all my experience is really based on
7 my experience as a chief mate in an oil tanker and then as a superintendent, of
8 course, when I studied the MARPOL standards.

9
10 **MR GARCÍA-GALLARDO:** Is that experience useful in a company, and particularly
11 in relation to the exploitation of the bunker *Virginia G*?

12
13 **MR SAMPER PÉREZ** (*Interpretation from Spanish*): Yes. Of course, you need to
14 take into account what ports we visited – European ports, for example, where we
15 obtained our fuel, such as Las Palmas or Tenerife. A single-hull vessel such as the
16 *Virginia G* can only carry gas oil. This is what the regulations stipulate. The *Virginia*
17 *G* was not a double-hull vessel, so the vessel could only carry gas oil, and that is
18 why the *Virginia G* was affected only by the MARPOL regulations, whereas the *Iballa*
19 *G* was different because it was a double-hull vessel that carried different types of
20 products, different types of fuel – 60, 30, 380 – and it also carried gas oil.

21
22 **MR GARCÍA-GALLARDO:** In relation to the potential risk to the marine environment
23 by the activities of bunkering, I will answer the questions in writing but I would like
24 the benefit of Mr Samper as a witness to give us some highlights in relation to the
25 first question that the Tribunal raised a few days ago. Mr Samper, could you please
26 throw some more light, if possible, on examples of relevant practice or specific cases
27 of the risks posed to the marine environment by bunkering?

28
29 **MR SAMPER PÉREZ** (*Interpretation from Spanish*): Before we speak about the
30 bunkering operations, because of course one thing relates to another, the protection
31 of the marine environment begins from the steam room of the oil tanker, because, for
32 discharges to the sea, the oil tanker has an oil/water separator device which does
33 not allow any discharge above 15 parts per million, any discharge of that kind to be
34 discharged to the sea. Now if we talk about oil tankers, an oil tanker that carries out
35 its duties has a special monitoring device that controls any discharge that goes from
36 the slop tanks to the sea, so no discharge should contain more than 30 parts per
37 million, which is what the MARPOL regulation establishes.

38
39 In terms of bunkering, the possibility for an oil spill is really minimal because in the
40 specific case of our vessel we had a situation where we sometimes performed the
41 operations from the back of the boat, and in those situations there was a large
42 separation, but of course the hoses were standard hoses and in the internal
43 procedures we had hydraulic tests for our piping and our hoses. The hoses are
44 standard hoses that have been accredited by the European Union and where we
45 gave the hose to the fishing vessel or where we received the fishing vessel and we
46 received the hose back, no discharges could take place because there were special
47 nozzles that prevented this. If any discharge occurred, the vessel, the oil tanker, had
48 specific devices to prevent this problem – for example, emergency stoppage
49 devices – and then the deck of the oil tanker is prepared because if there is any spill

1 on the deck, it should [not] go to the sea because there are specific closing systems
2 as well.

3
4 Also, all tankers, as SOLAS establishes, have other ways of avoiding over-pressure
5 in the cargo deposits, and there are also other fallback devices to prevent over-
6 pressure in the deposits. In addition, according to the SOLAS and MARPOL
7 regulations, every man conducted different drills. We had oil spill drills. Every month
8 we conducted these drills to try to rehearse what should be done if there was a
9 spillage, so the crew was very carefully trained in this respect, and if a spill did occur
10 the vessel had its own ways of preventing it, such as absorbing barriers, dispersing
11 barriers.

12
13 To conclude this section of my statement, the vessel also has a procedure manual,
14 based on the MARPOL standard, which is called SOPEP, which establishes a series
15 of emergency procedures when a spillage occurs; and there is also an annex of
16 SOPEP, which is Annex 3, which includes lists of the authorities and contact persons
17 in different countries, and that annex is updated every three months. We obtain the
18 information from the website of the IMO. With all of this, in its safety manual the ship-
19 owning company also contemplates what should be done if an emergency occurs. I
20 also have to say that in the years that I worked for Gebaspe we never had a case of
21 an oil spill.

22
23 **MR GARCÍA-GALLARDO:** For Gebaspe as the management company of the
24 *Virginia G*?

25
26 **MR SAMPER PÉREZ** (*Interpretation from Spanish*): Yes.

27
28 **MR GARCÍA-GALLARDO:** I have a further question in relation to the spill and
29 pollution risk. In relation to those risks to the marine environment, is there any
30 particular difference between supply to a fishing vessel and supply to a merchant
31 ship? Is the level of risk higher when supplying to a fishing vessel than to a merchant
32 ship?

33
34 **MR SAMPER PÉREZ** (*Interpretation from Spanish*): No, because in the bunkering
35 operation, the personnel of any vessel, a merchant vessel, a fishing vessel, a towing
36 vessel, these are frequent operations which have been carefully studied and
37 designed, and before anything happens, before any operation is conducted on the
38 high seas or in a port, a series of procedures has to be complied with. There is a
39 checklist of procedures. Before you start, a series of checks has to be conducted,
40 and if those checks are not conducted and if any anomaly is detected, the operation
41 is just not carried out. In addition, these people are very well trained in these
42 endeavours, so there is no difference between the types of ships involved.

43
44 **MR GARCÍA-GALLARDO:** You have been familiar with the legislation of Guinea-
45 Bissau in recent months and recent years. In relation to the definition of logistic
46 support vessels, considering that by legislation those vessels made related fishing
47 operations, do you have any particular comment on this?

48
49 **MR SAMPER PÉREZ** (*Interpretation from Spanish*): As you said, I do not know the
50 legislation of Guinea; but, yes, I do know the legislation of Guinea-Bissau as a result

1 of the arrest of the *Virginia G*, so I have become familiar with this legislation. As we
2 started receiving information from the prosecutor about the reasons, through our
3 agent I managed to get all the norms of Guinea-Bissau – the constitution of the
4 country, its fishing laws etc. – and I was quite struck really that in an amendment that
5 they made to the law in 2005 they defined transshipping of fish, transport of fish, to
6 the ground, and I was quite struck by the mention of logistic support.

7
8 But what do they understand by logistic support? According to the international
9 legislation logistic support should be just referred to fishing activities. There are
10 shipping companies that have their own support vessels to their fleets, so when a
11 fishing vessel finishes a fishing campaign this other fish (sic) gets all the fish and so
12 the vessel can go on a new campaign; and in exchange the fishing vessel receives
13 supplies, fresh water, etc., etc. So in my view Guinea-Bissau really overstepped the
14 mark when they included logistics. I think it is excessive to include logistic operations
15 in this respect because, for example, I operated Spanish hospital vessels in this
16 area, where we assisted all sorts of vessels, especially Spanish fishing vessels in the
17 area of the Sahara, but we also assisted merchant vessels of other nationalities too.
18 So my question is, healthcare is also a logistic support? I don't think it is. So the
19 question of bunkering – is bunkering logistic support? No, I don't think so. So the
20 logistic support in the Guinea-Bissau law should only be construed as support to
21 fishing activities only; but when they define associated fishing they, I think,
22 contemplate three points that are related to fishing; but my opinion is, if there is
23 anything else, well they just included logistic support, which would be a kind of
24 cover-all category. So I think that this logistic support is not really in line with spirit of
25 the international law of the sea. This is at least my opinion.

26
27 **MR GARCÍA-GALLARDO:** In your experience in West African countries, have you
28 found similar provisions applicable in other hostile states in West Africa?

29
30 **MR SAMPER PÉREZ** (*Interpretation from Spanish*): No. I have only read the
31 jurisprudence of the International Court about cases related to bunkering, and I know
32 that this is used by some countries as a way of collecting money and bullying
33 shipowners, but that's all.

34
35 **MR GARCÍA-GALLARDO:** Let's turn to the conditions of the *Virginia* before and
36 after the arrest. I will show you some pictures of the ship's condition before the arrest
37 and later the condition of the vessel after 14 months of detention in the hot waters of
38 the Bay of Bissau. Will you please assist us and comment on those pictures, please,
39 to let us know when the pictures took place and by whom [they were taken]?

40
41 **MR SAMPER PÉREZ** (*Interpretation from Spanish*): This photo was taken by me in
42 the port of Las Palmas in the course of a bunkering operation. They were getting us
43 all to take to the high seas, so there you can see the condition of the state of repair
44 of the vessel. You have to take into account that Spain is part of the MOU countries
45 where inspections are really exhaustive. They are really snap inspections; you don't
46 know when they are going to be taking place. You can see the mint condition of this
47 ship. As I say there were three of us, three professionals who were really in charge
48 of keeping them in good condition, and then a lot of the money of the company was
49 invested in keeping the vessel in mint shape. *This* is another view towards the back
50 of the ship, and if you show the previous one I will be able to tell you something

1 because, look, there in *this* picture you can see how, when the SOLAS regulation
2 came into force, vessels, in addition to being identified by their flag in the back of the
3 ship and starboard and port, also had to be identified by an IMO number. *There* you
4 can see at the front of the bridge the IMO number of the vessel. Then in the steam
5 room there was also an inscription with the IMO code of the vessel. *This* is the
6 bridge; you can see the lifesaving boat; and this is another snapshot at a different
7 time of the boat coming from the high seas. When the boat arrives into port after
8 having performed bunkering operations – and this is a low freeboard vessel, so
9 typically when a boat of this nature, when an oil tanker of this nature, arrives into port
10 after navigation, you can see on the deck the ravages caused by the sea. So this is a
11 time when we can maintain, when we can perform maintenance operation. This is
12 the vessel in ballast position and you can see the ravages caused by the sea, and so
13 if these vessels are not exhaustively maintained, then the boat will go to rack and
14 ruin very quickly and the expense involved in getting them back into service would
15 be enormous.

16
17 **MR GARCÍA-GALLARDO:** In relation to the conditions after 14 months of
18 detention?

19
20 **MR SAMPER PÉREZ** (*Interpretation from Spanish*): Before we look at these pictures
21 I would like to specify something. As a result of the arrest of the vessel, normally
22 when a vessel is paralyzed, in their procedure manuals companies have, you know,
23 a maintenance programme. It is called a layout, which is prepared for the short, the
24 medium and the long term. In the case of the arrest of the *Virginia G*, we could not
25 institute this programme because of course we weren't sure about how long this
26 detention would last and so we could not schedule this maintenance operation. So
27 what we did in the first few stages was to use our own resources on board the
28 vessel – paint, spare parts, etc. Once those were exhausted the vessel started
29 deteriorating. Of course you have got to consider the structural elements. Those are
30 the pipes, the vents for the cargo tanks – and that is one of the resources whereby
31 the vessel prevents spillages. This is an operation whereby different piping systems
32 were exchanged. What I wanted to say is that this deterioration occurred in two
33 areas of the ship, first of all the structural elements, because the structural elements
34 are not protected by paint and by maintenance operations, and so rust starts setting
35 in. Corrosion, rust – and rust is not something that happens all at once; it sets in
36 gradually and exponentially so; so everything becomes very, very rusty and very
37 quickly. *These* are the different workers taking different remedies, replacing different
38 elements, and the crew was also giving a hand. This is as regards the structural
39 elements. In terms of the equipment, since the gas oil was exhausted and there was
40 no money to activate the different equipment – well, the equipment of the machines
41 and of the bridge started deteriorating. One of the engines, for example, its circuit – it
42 was an electronic circuit and it couldn't be maintained. The radar is also electronic.
43 The equipment on the bridge was not maintained either, and so this led to this
44 appalling situation that the vessel was in.

45
46 **MR GARCÍA-GALLARDO:** Two further questions and I will complete the
47 examination. In relation to the exchange with the shipowner of the two fishing
48 vessels that were arrested before or just after the arrest of the *Virginia G* on
49 21 August, did you participate in the communications with the shipowner of those

1 two vessels, the company Balmar? Do you have something to add in addition to
2 what you have already drafted in your affidavit?
3

4 **MR SAMPER PÉREZ** (*Interpretation from Spanish*): Well, I would like to add a few
5 brushstrokes to my written statement because I got in touch with these people. I
6 didn't know them before, just I had heard about them. The sales rep spoke about
7 Balmar but that is all. So I got in touch with them when the incidents of the *Virginia G*
8 arose to inform them about the situation. I asked about the permits from them. At the
9 beginning they did cooperate. They gave us all the necessary permits. Well, first of
10 all they gave us the telephone number of their representative in Guinea-Bissau,
11 Mr Hamadi, who was in Spain at that time, and then this gentleman gave me the
12 phone numbers of his employees in Guinea-Bissau, Mr Fifan and Mr Tino – and then
13 I sent those telephone numbers to our P&I person in Guinea-Bissau and he got in
14 touch with them, and then after a long wait, because these people, since it was a
15 weekend, were not in Bissau, after that we managed to obtain the authorization for
16 those permits to be issued. Afterwards in the daily communications I held with the
17 late captain, Mr Guerrero, one of the days he called me to tell me that the two fishing
18 vessels plus one other vessel that had been detained at the same time had been
19 released. I was very surprised because in my communications with the Balmar
20 shipowner – well, I had spoken to Mr Baldes to whom I had given some information
21 so I was very surprised because Mr Baldes had not told me that he was negotiating
22 for his fishing vessels to be released. When I asked him what had happened I was
23 astonished because he didn't include us in the same bag so to speak, so he said:
24 "Well, my problem is my problem; your problem is your problem". I am normally a
25 very, you know, polite person, but given the situation we were in, in the family
26 company and the crew members who were detained in Guinea-Bissau, I did
27 exchange a few strong words with this person, and then he told me that the release
28 of his vessels cost him €100,000 that he had to pay into an account in a Portuguese
29 bank. He also said that at the time of the release the military stole or took ten tonnes
30 of fish because he said they also wanted a booty. I was really shocked because I
31 was unused to these types of things; and so since we exchanged these strong words
32 I really hung up on him. This conversation was in the presence of the shipowner. We
33 were using the hands-free telephone. And then he asked me at the end of the
34 conversation: "Are you recording the conversation?" I said: "No". We are very serious
35 people and we considered ourselves, you know, not to be back-stabbers, but we
36 really exchanged very strong words with the owner of the fishing vessels.
37

38 **MR GARCÍA-GALLARDO**: A new question. Mr Samper, when did you leave the
39 companies?
40

41 **MR SAMPER PÉREZ** (*Interpretation from Spanish*): Well, when the *Virginia G* was
42 arrested the companies started lacking funds to be able to pay the wages of the
43 companies' staff. They did not have money to pay the crews, to pay maintenance
44 operations, etc. So, confronted with this situation, in the end Mr Gamez and myself
45 were the only people who stayed in the company. At the beginning I had my savings,
46 and so I still stayed because I was still hopeful. I had read the laws of Guinea-
47 Bissau, the Constitution of Guinea-Bissau, and then I also read the law of the sea, so
48 I was quite confident that we would be able to solve the problem. Also we obtained a
49 favourable ruling in Guinea-Bissau, a cautionary suspension; so I thought we were
50 on the right track so I started using my savings to, you know, make ends meet, to

1 pay my mortgage etc. But then in December 2009, November or December 2009,
2 things really got very tight and so I had to leave the company. I asked the Spanish
3 Government for an employment benefit and I started looking for a new job which was
4 in line with my qualifications. In the meantime I advised the shipowner and the
5 different people who were working to defend this case, trying to share with them my
6 knowledge and my expertise because I was the one that was there at the beginning
7 of this incident. So from that moment onward I started looking for a job, and finally I
8 did find a job. It was not easy to find a new job and I had to go and live in another
9 part of Spain. So my expenses really rose because I had to move to another place,
10 etc.

11
12 **MR GARCÍA-GALLARDO:** Mr Samper, certainly the way to examine and cross-
13 examine in this Tribunal due to the time constraints makes things difficult because
14 normally, at least upon my modest experience in arbitration cases and in
15 international cases, we take the cross-examination immediately after a witness or,
16 like I said this morning, upon the condition to submit a proper written statement by
17 either a witness or an expert. But I realize that we have other issues to take into
18 account and if my colleague from Guinea-Bissau has any questions, or if they have
19 to be raised tomorrow, I do not know if, which I said in the presence of Mr Samper
20 today, he will stay tomorrow for your information and I am open for cross-
21 examination either today or tomorrow morning.

22
23 **THE PRESIDENT:** Thank you, Mr García-Gallardo.

24
25 I would like to know if, Mr Leitão, you wish to cross-examine, but we have reached
26 already six o'clock, so can you do that tomorrow morning?

27
28 **MR MENEZES LEITÃO:** I have no problem in cross-examining this witness
29 tomorrow morning but I have a problem, and I must say so, with the exhibition of
30 these pictures that were just made from my colleague from Panama, because
31 according to article 71 of the Rules, no document can be submitted to this Tribunal
32 after the closing of the written proceedings without hearing of the other party, and
33 without, in this case, authorization, and if the Tribunal does so decide.

34
35 In this case Panama presented Annex 60 of its Memorial, pictures about the situation
36 of the *Virginia G* that are completely different from the picture that was just presented
37 before this Tribunal. So I must express now my objection to this situation and I would
38 like also my colleague to explain where these pictures were obtained, why they were
39 not presented with the written proceedings, and what the consequences of this
40 situation are for the proceedings of this Tribunal. Besides that, I can cross-examine
41 this witness tomorrow. Thank you very much.

42
43 **THE PRESIDENT:** Thank you very much. This brings us to the end of today's
44 hearing. The examination of the witness will have to be continued tomorrow morning.
45 The hearing will be resumed at 10 a.m. The sitting is now closed.

46
47 *(The sitting is closed at 6 p.m.)*