

# INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



2013

Public sitting

held on Wednesday, 4 September 2013, at 10 a.m.,  
at the International Tribunal for the Law of the Sea, Hamburg,

President Shunji Yanai presiding

**THE M/V “VIRGINIA G” CASE**

*(Panama/Guinea-Bissau)*

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**Verbatim Record**

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|-----------------|----------------------|-----------------------------|
| <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          |
|                 |                      | Helmut Türk                 |
|                 |                      | James L. Kateka             |
|                 |                      | Zhiguo Gao                  |
|                 |                      | Boualem Bouguetaia          |
|                 |                      | Vladimir Golitsyn           |
|                 |                      | Jin-Hyun Paik               |
|                 |                      | Elsa Kelly                  |
|                 |                      | David Attard                |
|                 |                      | Markiyany Kulyk             |
|                 | Judges <i>ad hoc</i> | José Manuel Sérvulo Correia |
|                 |                      | Tullio Treves               |
|                 | Registrar            | Philippe Gautier            |

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*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:** Good morning. The Tribunal will continue the hearing in the case  
2 concerning the vessel *M/V Virginia G.* Today, Guinea-Bissau will begin with its first  
3 round of pleadings.

4  
5 I wish to inform you that Judge Pawlak, for reasons duly explained to me, continues  
6 to be unable to sit on the Bench.

7  
8 Before we proceed to the first statement of Guinea-Bissau, two further interpreters  
9 will have to make their solemn declaration. As did Panama, Guinea-Bissau will call  
10 witnesses and experts to testify before the Tribunal in another language than the  
11 official languages of the Tribunal, this time in Portuguese. These statements will be  
12 interpreted from Portuguese to English by interpreters who are made available to the  
13 Tribunal by Guinea-Bissau. The interpreters, Ms Wendy Graça and Ms Ana David  
14 Diwiz, are present with us today and I would like to welcome them.

15  
16 The Rules of the Tribunal require that interpreters made available by a party must  
17 make a solemn declaration. I therefore ask the Registrar to invite Ms Graça and  
18 Ms Diwiz to make the solemn declaration.

19  
20 **THE REGISTRAR:** Thank you, Mr President.

21  
22 Good morning Mrs Graça and Ms Diwiz. The interpreters provided by one of the  
23 parties are required to make the solemn declaration under article 85 of the Rules of  
24 the Tribunal before entering upon their duties. Ms Graça, you have been provided  
25 with the text of the declaration; may I therefore ask you to make the solemn  
26 declaration?

27  
28 *(The interpreters made the solemn declaration)*

29  
30 **THE REGISTRAR:** Thank you, Ms Diwiz and Ms Graça. You can now both go to the  
31 interpretation booth.

32  
33 Mr President.

34  
35 **THE PRESIDENT:** Thank you, Mr Registrar.

36  
37 I now give the floor to the Agent of Guinea-Bissau, Mr Leitão.

38  
39 **MR MENEZES LEITÃO:** Mr President, distinguished Members of the International  
40 Tribunal for the Law of the Sea, before starting my initial statement in defence of the  
41 Republic of Guinea-Bissau, I must express my personal satisfaction in being present  
42 at this International Tribunal and before the learned Judges that compose it.

43  
44 The case before this International Tribunal is a simple one. Panama claimed that  
45 Guinea-Bissau violated the UNCLOS Convention and wishes to receive damages in  
46 consequence of the alleged violations. Guinea-Bissau affirms that it did not violate  
47 any disposition of the UNCLOS Convention, but only exercised its rights as a coastal  
48 State in its exclusive economic zone.

1 Before the appreciation of the merits of the case, Guinea-Bissau raised objections  
2 about the admissibility of the submissions of Panama. Contrary to what Panama  
3 asserts, Guinea-Bissau submits that is not precluded from raising objections to the  
4 admissibility of the claims of Panama by article 97, paragraph 1, of the Rules. As the  
5 Tribunal decided in the *M/V "SAIGA" (No. 2) Case*:

6  
7 the article applies to an objection 'the decision upon which is requested  
8 before any further proceedings on the merits'. Accordingly, the time-limit in  
9 the article does not apply to objections to jurisdiction or admissibility which  
10 are not requested to be considered before any further proceedings on the  
11 merits.  
12

13 It was also clear that, in the Special Agreement concluded by the exchange of  
14 letters, Guinea-Bissau did not waive any objections as to the admissibility of the  
15 claims, neither was there any reason for any such waiver. Therefore Guinea-Bissau  
16 is entitled to these objections.  
17

18 The first objection concerns the jurisdiction of the Tribunal about the vessel *Iballa G*.  
19 Guinea-Bissau considers that, as this vessel belongs to another company, Penn  
20 World Inc., and was seized in Las Palmas, in the Canaries, due to non-payment of  
21 wages and products acquired, it has nothing to do with these proceedings. It was  
22 therefore not included in the Special Agreement, so the Tribunal has no jurisdiction  
23 about claims related to it.  
24

25 The second objection relates to the nationality of the *Virginia G*. Guinea-Bissau alleges  
26 that Panama's claims are not admissible because of the missing "genuine link" (article  
27 91, para. 1, of the Convention) between the *Virginia G* and Panama. This provision  
28 proceeds in its third sentence: "There must exist a genuine link between the State and  
29 the ship".  
30

31 The requirement of a genuine link between the flag State and the ship qualifies the  
32 right of every State provided in article 91, paragraph 1, first sentence, of the  
33 Convention, to "fix the conditions for the grant of its nationality to ships, for the  
34 registration of ships in its territory, and for the right to fly its flag". In this respect, the  
35 function of the genuine link is to establish an international minimum standard for the  
36 registration of ships, certainly an important function in a time of increasing numbers  
37 of open registers.  
38

39 From the conception of the "genuine link" it follows that a flag State can only then  
40 effectively exercise its jurisdiction and control in administrative, technical and social  
41 matters over ships flying its flag, as required under article 94, paragraph 1, of the  
42 Convention, when it can exercise appropriate jurisdiction and control also over the  
43 owners of the ships.  
44

45 **THE PRESIDENT:** I am sorry to interrupt you but can you slow down a bit for the  
46 benefit of our interpreters? Thank you very much.  
47

48 **MR MENEZES LEITÃO:** In the case of a bareboat charter, *mutatis mutandis*, control  
49 is necessary over the charterer or operator. This results from several provisions of  
50 the Convention: for instance, article 94, paragraph 4(a), obliges the flag State to

1 survey the ships flying its flag. Surveying of the ships by a qualified surveyor in the  
2 flag State and abroad is a necessary but not a sufficient condition for an effective  
3 exercise of the flag State's jurisdiction and control. In order to take action necessary  
4 to remedy the situation if, for example, a ship flying its flag would not conform with its  
5 rules and regulations on manning of ships, labour conditions and training of crews as  
6 provided in article 94, paragraph 3, the flag States must have jurisdiction over the  
7 owner or operator of the ship as well. Otherwise its administrative and/or criminal  
8 sanctions, if necessary, would be practically ineffective.

9  
10 Moreover, the duties of the flag State set forth in article 94 are not the only ones of  
11 interest in this context. The Convention provides in article 217 additional obligations  
12 in environmental matters, to which the flag State can only live up if it is exercising  
13 effective jurisdiction and control over the shipowner or operator as well: the flag  
14 State shall provide for the effective enforcement of rules, standards, laws and  
15 regulations concerning the protection of the marine environment, "irrespective of  
16 where a violation occurs" (article 217, para.1, second sentence). In case of a  
17 violation it shall, where appropriate, institute proceedings (article 217, para. 4)  
18 including penalties (article 217, para. 8), or enable such proceedings upon request of  
19 another State (article 217, para. 6). Again jurisdiction over the master and crew of  
20 the ship, especially if they are foreigners like in the case of the *Virginia G*, appears  
21 by no means sufficient for the exercise of these obligations.

22  
23 Every shipping register has to conform with certain basic conditions of the genuine  
24 link. According to what has been mentioned before with respect to the legal  
25 obligations of the flag State under articles 94 and 217 of the Convention, a basic  
26 condition for the registration of a ship is that also the owner or operator of the ship is  
27 under the jurisdiction of the flag State. Nevertheless, international law no doubt  
28 leaves it to the flag State to determine the basis of this jurisdiction, which can be, for  
29 example, the nationality or residence or domicile of the owner or operator of the ship.  
30 But it is not possible for no link to exist between the ship and the flag State.

31  
32 The necessity of these requirements is confirmed by the 1986 United Nations  
33 Convention on Conditions for Registration of Ships, which was adopted under the  
34 auspices of UNCTAD in order to ensure or strengthen the genuine link and in order  
35 to exercise effective jurisdiction over ships. Although not yet in force, this UN  
36 Convention is an important example for the general view that the flag State must  
37 exercise effective jurisdiction and control not only over the ship, but also over its  
38 owner or operator. Only for this reason, it was referred to in Guinea-Bissau's  
39 Counter-Memorial.

40  
41 Neither of the conditions necessary to establish a genuine link in Panama was met  
42 by the *Virginia G*. In fact this vessel belongs to Penn Lilac. This company, although  
43 incorporated in Panama, has to be considered as a Spanish company, as its head  
44 office and effective place of management is in Seville, Spain, as it is related by the  
45 Instituto Marítimo Español, and in the maritime websites. As said, even Panama, in  
46 its registry certificates, refers that the company is based in Seville, Spain. (See  
47 Annex 2(2) of Panama's Reply.)  
48

1 All that Panama does in relation to the *Virginia G* is to charge an annual fee, as  
2 Panama acknowledges that the ship audits that it says it performs took place in Las  
3 Palmas, Spain, and never in its territory.

4  
5 In fact, in paragraph 115 of its Reply, Panama recognises that contrary to the  
6 provisions of article 94, paragraph 3, of the Convention, instead of taking the  
7 measures necessary to ensure safety at sea, it delegates them to a company,  
8 Panama Shipping Registrar, Inc., which is not an organ of the State of Panama.

9  
10 Legal writers state that the genuine link is not only a formal registration, but also  
11 requires a real and substantial connection between the vessel and the flag State.

12  
13 As Judge Treves writes in his Separate Opinion in *The “Grand Prince” Case*:

14  
15 A “registration” of such an artificial character as that which might have  
16 existed for the Grand Prince, whatever the name it receives, cannot be  
17 considered as “registration” within the meaning of article 91 of the  
18 Convention. And it is only this kind of registration that makes a State a flag  
19 State for the purposes of article 292 of the Convention.

20  
21 Judge Wolfrum also says the same in his Declaration in the same case:

22  
23 (...) Article 91, paragraph 1, third sentence, of the Convention states that  
24 there must be a genuine link between the flag State and the ship. This means  
25 the registration cannot be reduced to a mere fiction (...).

26  
27 Guinea-Bissau has claimed that this situation is a case of a flag of convenience, as  
28 there is not any connection between the ship and Panama, as required by article 91,  
29 paragraph 1, first sentence, of the Convention.

30  
31 Panama has contested based on its presence in the Paris Memorandum of  
32 Understanding on Port State Control list of States which meet the flag criteria for a  
33 low risk, but refers to the situation as of 1 July 2012, after the arrest of the *Virginia G*  
34 (Reply, paragraph 112).

35  
36 The presence of Panama in this white list occurs only after 2011. In fact, as referred  
37 by the UNCTAD Review of Maritime Transport, 2011, between 1999 and 2005 and  
38 also in 2008 and 2009 Panama was on the black list of the Paris MOU, which  
39 represents a high risk of non-fulfillment of the flag criteria. It was therefore the  
40 situation at the time of the arrest of the *Virginia G*.

41  
42 Guinea-Bissau also objects to the invocation by Panama of a right of diplomatic  
43 protection concerning foreigners. In fact, it says that the framework of diplomatic  
44 protection does not give Panama *locus standi* with reference to claims of persons or  
45 entities that are not nationals of Panama.

46  
47 Contrary to what happened in the *M/V “SAIGA” (No. 2) Case*, quoted by Panama,  
48 this is not a case involving vessels where a number of nationalities and interests are  
49 concerned. Neither the owner, Penn Lilac, S.A., nor even a single member of the  
50 crew of the *Virginia G* is of Panamanian nationality. Penn Lilac has its headquarters  
51 in Seville, Spain.

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As Penn Lilac entered into an agency commission agreement with Gebaspe SL, a Seville-based Spanish Company (as Penn Lilac), and Gebaspe SL chartered the ship to Lotus Federation, an Irish company, no Panamanian interest is involved in this situation.

As in this case there is not a single person or entity related to the vessel *Virginia G* that is of Panamanian nationality, Panama is not entitled to present claims for damages in respect of anyone involved in this case.

In fact, no State may claim protection of persons in international law who are not its own nationals. In the case pending on the merits before the Tribunal, Panama asserts protection before the Tribunal for all the members of the crew and for the owners of the ship and the cargo. It is undisputed here that none of these persons are nationals of Panama.

In this case there were other States such as Spain and Cuba that claimed diplomatic protection for the members of the crew who are their nationals and demanded the release of the ship, which is a clear demonstration that Panama has nothing to do with this case. Indeed, even an inspector of Panama was there, but did nothing.

Guinea-Bissau insists that Panama is therefore not entitled to bring this action against Guinea-Bissau within the framework of diplomatic protection.

It is clear that the submissions 4, 10, 14 and 15 presented by Panama in the interest of individuals or private entities are inadmissible, because these individuals or private entities have not exhausted the local remedies available to them in Guinea-Bissau.

Although these claims can be based in international law, they are at the same time subject to the internal law of Guinea-Bissau, which has rules about the responsibility of the State. As the owner of the ship brought an action before the court of Bissau with the same foundation as these proceedings, and the action is still pending, it is clear that the local remedies are not exhausted.

The same happens to the cargo, which does not have the same owner as the *Virginia G*. The administrative order to discharge the gas oil in Bissau was issued under the territorial jurisdiction of Guinea-Bissau and could be impeached there, as it was a previous court order against that discharge.

The decision of the Court was not disregarded based on an "internal" opinion, as it was the opinion of the Public Prosecutor, who is independent of the Government according to Guinea-Bissau's law and who considered the decision to be null and void, owing to the violation of Article 400(2) of the Civil Procedure Code.

Contrary to what Panama asserts, there is no discretion of the Court in applying this rule, as the hearing of the defendant is mandatory by law and in any case the State decided to appeal this decision which has a suspensive effect on the court order.

1 On the contrary, the State has discretion with regard to releasing the ship, if it at any  
2 time considers its presence in the port of Bissau to be dangerous. This does not  
3 affect the possibility of the owners continuing with the proceedings.

4  
5 Panama claims – and I exhibit this document for your Honours – that the owner  
6 made a reservation to use this jurisdiction but this reservation is not credible. You  
7 see the document. It is a document written in Portuguese, where the name has to be  
8 filled in, but it appears miraculously, as a version in English, a language that is not  
9 spoken at all in Guinea-Bissau, in an official document in Portuguese, to say the  
10 owner has received the ship. It is unbelievable that this kind of document can be  
11 issued at Bissau.

12  
13 It is therefore clear that this is a case in which the local remedies rule must be  
14 applied. In fact, Panama has several times demanded that the Tribunal interprets the  
15 General Fisheries Law of Guinea-Bissau as not applicable to bunkering. This is  
16 naturally a question to be put before the courts of Guinea-Bissau, as Panama has  
17 asked the Tribunal to interpret the law of Guinea-Bissau, which is a local question to  
18 the courts of Guinea-Bissau.

19  
20 I now turn to the possibility of the legislation of Guinea-Bissau regulating bunkering  
21 activity in its exclusive economic zone.

22  
23 Bunkering is an economic activity which has numerous environmental costs for the  
24 coastal State, dramatically affecting the marine environment, the quality of the air  
25 and the quality of life of the coastal populations, who are affected by the resulting  
26 pollution.

27  
28 Inasmuch as bunkering may endanger the right of a coastal State over the existing  
29 living resources in its exclusive economic zone, it must be regulated by the State.  
30 The coastal State naturally has the right to adopt measures necessary for the  
31 protection and conservation of its resources, even having an obligation to protect the  
32 environment according to article 56, paragraph 1, and article 192 and following of the  
33 Convention.

34  
35 For this reason, the maritime freedoms benefitting other States in the EEZ may be  
36 restricted as far as necessary to ensure the rights of the coastal State (article 58,  
37 para. 3, of the Convention).

38  
39 But besides this, the practice of bunkering allows much more intensive fishing than  
40 normal. In fact, as David Anderson writes:

41  
42 ...bunkering and supply on the fishing grounds increases the catching  
43 efficiency of fishing vessels. In a typical situation a fishing vessel breaks off  
44 from fishing for a short time, receives bunkers and other supplies and  
45 immediately resumes fishing in the same EEZ. The fishing vessel is relieved  
46 of the need to make a voyage to and from port, e.g. in the coastal State. It  
47 avoids the need for navigation and intensifies its fishing effort. In that sense,  
48 from the perspective of the coastal State, bunkering has a closer connection  
49 with fishing and the overall management of the fishery than with navigation.  
50

1 The regulation of bunkering activity is also included in the right of the coastal State to  
2 regulate the capture of biological resources in its EEZ, according to article 61 of the  
3 Convention.

4  
5 It is therefore normal for the coastal State to demand that bunkering in its exclusive  
6 economic zone implies payment for the appropriate licence, pursuant to article 62 of  
7 the Convention, a practice which is common to the whole of the African sub-region in  
8 which Guinea-Bissau is located, the international practice of States being an  
9 important element in interpreting the Convention.

10  
11 The qualification of the fuelling of fishing vessels as a fishing-related operation is  
12 indeed to be found in article 3(c) of the *Code de la Pêche Maritime* of Guinea-  
13 Conakry, article 5(c) of the *Code de la Pêche Maritime* of Senegal, and article 4(c) of  
14 the *Code des Pêches* of Mauritania.

15  
16 Precisely for this reason, Guinea-Bissau, in article 3, paragraphs 1 and 2 and  
17 paragraph 3(b) and (c), as well as article 23 of Decree-Law No. 6-A/2000,  
18 established the qualification of bunkering as a fishing-related operation, a situation  
19 which is entirely in conformity with the legislative practice of the region.

20  
21 This practice is also fully recognised by scholars of International Law, who expressly  
22 reject that a flag State may dispute this qualification.

23  
24 In fact, as David Anderson writes:

25  
26 ...a support vessel which is fulfilling its purpose of supporting another vessel  
27 is impressed *pro tanto* with the characteristics of the supported vessel's  
28 activity at the material time. In this perspective, a tanker whilst it is bunkering  
29 a fishing vessel engaged in fishing in the EEZ is impressed with the recipient  
30 vessel's piscatorial characteristics.

31  
32 The author adds that:

33  
34 ...in the light of recent trends it appears unlikely, in all the circumstances,  
35 that legislation requiring the prior consent of the coastal State for the  
36 bunkering of fishing vessels engaged in fishing in the EEZ would be found a  
37 *priori* to go beyond the scope of the sovereign rights and jurisdiction of the  
38 coastal State recognized in articles 56, 61, 62 and 73 of the Convention. The  
39 ordinary meaning of the term 'sovereign rights' in its immediate context is  
40 wide. There exists a body of State practice, in the forms of legislation and  
41 the absence of protest against the application of such laws, which supports  
42 the interpretation.

43  
44 As mentioned above, the fuelling of fishing vessels is considered in the whole region  
45 in which Guinea-Bissau is included to be a fishing-related operation, thereby subject  
46 to prior authorization of the authorities, and the national authority of Guinea-Bissau is  
47 the member of Government responsible for fisheries (article 23, paragraph 1 of  
48 Decree-Law No. 6-A/2000, and article 39, paragraph 1, of Decree-Law No. 4/96.

49  
50 This authorization has to be issued in a formal document. You have an example of  
51 the formal document on your screens, which was previously obtained by the

1 *Virginia G* in June 2009 to make the fishing-related operation but she did not have  
2 the same document in August, and this document expired. So the *Virginia G* was  
3 perfectly aware of the authorizations that it should have, so much so that it requested  
4 these authorizations on two occasions and operated under them in May and June of  
5 2009, to the benefit of the vessels of the company *Afripêche*, but did not, however,  
6 obtain the same authorization in August to fuel the *Iballa G*. This is in Annexes 42  
7 and 43 of the Memorial of Panama.

8  
9 Panama claims that it was the practice of the *Virginia G* to only obtain an  
10 authorization by phone. This is totally against this document you have just seen. It  
11 does not make any sense to obtain an authorization by phone, as the *Virginia G*  
12 obtained and conserved the written authorization on two previous occasions.

13  
14 It is because of the lack of authorization that the ship was arrested. The arrest was  
15 conducted in a very proper manner. You can see uniformed inspectors and military  
16 personnel, and no violence was used at any time. You can see this in the photo  
17 which relates to the *Virginia G*. You can see it is uniformed personnel, totally  
18 identified, and they do not look like pirates at all.

19  
20 Panama cannot claim that in an enforcement operation on the high seas the  
21 inspectors should not resort to military personnel armed with AK-47s, insofar as they  
22 perform risky enforcement operations on foreign vessels conducting illegal activities  
23 and, at times, even criminal ones, in the EEZ, which can threaten the physical  
24 integrity of the inspectors. There have been cases in Guinea-Bissau of enforcement  
25 inspectors who boarded a vessel unarmed, and were attacked by the crew and  
26 thrown overboard.

27  
28 The conditions of the journey are disputed by the parties. You can see in the photos  
29 how calm the sea is at this time. Therefore these conditions were considered to be  
30 adequate by the specialised sailing crew who accompanied the enforcement  
31 officials, there never being any danger for them, for their crew and much less for the  
32 environment, as is clearly seen from the statement of the naval pilot Djata Janga,  
33 who will be giving evidence today, and the official notice, signed by the captain,  
34 states that the sea was calm, as you can see, and visibility was good, as you can  
35 also see.

36  
37 After coming to the port of Bissau, the crew was not arrested and they were free to  
38 leave the country whenever they wanted. They could buy food, water, fuel and  
39 whatever was necessary for them in Bissau. If they did not do so, this was due to the  
40 financial problems of the owner of the ship.

41  
42 According to the decision of the Interministerial Maritime Commission, the vessel  
43 and its cargo were seized, and the owner, although notified, chose not to take any  
44 measures against this seizure such as the payment of a bond. In fact, he had no  
45 financial capacity to do so. He only requested and obtained the suspension of the  
46 unloading of the diesel oil ordered by the Secretary of State of Fisheries after the  
47 seizure of the ship.

48  
49 The fact that this unloading was later undertaken was due to a decision by the  
50 Minister of Finance, based on an opinion of the Public Prosecutor of the Republic of

1 Guinea-Bissau. This did not violate the decision of the court of Bissau, insofar as this  
2 decision was appealed by the Public Prosecution Service, an appeal which has the  
3 effect of legally suspending enforcement of the said decision.

4  
5 Panama makes a lot of accusations of corruption against the Guinea-Bissau  
6 authorities, but it has not presented any complaint or provided a single piece of  
7 evidence of the - and I quote from the Memorial of Panama - "African-style solutions"  
8 that it claims were proposed in this case. For instance, Inspector João Nunes Cá will  
9 be presented by us today and can be questioned about it.

10  
11 It is true that Guinea-Bissau decided to release the vessel on 20 September 2010,  
12 which was due to the fact that the authorities found out that the safety conditions of  
13 the vessel were appalling, and that it was at risk of sinking in the port of Bissau,  
14 together with the persistent requests by the Embassy of Spain for its release.

15  
16 The shipwrecking risk of the vessel was naturally due to the terrible conditions in  
17 which the vessel was operating and to the carelessness with which Panama granted  
18 its navigation certificate, probably without having made a single inspection of the  
19 vessel, which always operated between Las Palmas and the West African coast,  
20 having probably never gone to Panama. This is a circular from Panama, Circular  
21 No. 5, which has very low requests for the registration of the ship.

22  
23 No Guinea-Bissau official ever operated the vessel, so that it has no responsibility for  
24 the extremely deficient safety conditions that it was in, this responsibility being totally  
25 up to the maritime authorities of Panama, who did not ensure proper inspection of  
26 the vessel.

27  
28 Panama is very well known for accepting the registration of any ship without  
29 asserting the existence of a link between the ship and the State, as we have already  
30 seen in Merchant Marine Circular No. 5. But now this is a reference on the website to  
31 the Panama Register of Ships, which gives a lot of information, and I quote:

32  
33 The Panama register of ships will also allow ships to operate international  
34 trade without taxation as it's only territorial and will not tax the income of  
35 ships involved in international navigation or trade. The Panama ship register  
36 will not discriminate the citizenship or nationality of anyone willing to register  
37 a vessel under the Panama flag.

38  
39 Once a shipowner uses the Panama register of ships, it will be able to use a  
40 mechanism called dual Panama ship register. This ship register method will  
41 allow a foreign ship that has a previous registration of two years in a foreign  
42 country to register in the Panama ship register at the same time without a  
43 cancellation of the registration of the previous country. This Panama ship  
44 register system is also possible to be applied in the opposite way. This is  
45 only allowed with a certification of consent that originally had the register of  
46 ship or ships.

47  
48 The Panama ship register dual system can be of great advantage for  
49 shipping companies, shipowners and merchant shipping companies who  
50 have no ship register under the open registry.

1 It is important to mention other great advantages of the Panama register:  
2

3 a) there is no minimum tonnage requirement for vessel registration allowing  
4 any type of vessel to use the Panama register of ships;

5 b) the Panama ship register allows the registration under a Panamanian  
6 corporation. This will give protection to the vessel and anonymous  
7 ownership. You will be able to use a bulletproof asset protection structure  
8 (corporation + foundation) to register and ensure that your vessel's income  
9 and ownership will always be safe and anonymously protected;

10 c) Panama register of ships done by the use of a Panamanian corporation  
11 will allow changing ownership with ease and will not pay taxes on the sale!  
12 This will basically be the sale, trespass of the shares and name of the  
13 corporation to a new owner and can be done in a few hours.  
14

15 Therefore the Panama Register of Ships is a typical case of "flag of convenience"  
16 whose practice and dangerous effects to the economy of coastal States,  
17 environment and maritime resources, are very well known and reported by several  
18 international entities, such as FAO, WWF, and ITF.  
19

20 Especially this practice has very pernicious environmental effects, as stated by  
21 Franz Fischler, former European Union Fisheries Commissioner: "The practice of flags  
22 of convenience, where owners register vessels in countries other than their own in  
23 order to avoid binding regulations or controls, is a serious menace to today's maritime  
24 world."  
25

26 As reported by independent sources, 86 per cent of the ships with Panamanian flag  
27 belong to foreign companies.  
28

29 In this case, it was the lack of control of the flag State which caused the condition of  
30 the ship and its risk of sinking in the port of Bissau, so this situation is totally due to  
31 Panama.  
32

33 Guinea-Bissau therefore considers that Panama is not entitled to present claims for  
34 damages in respect of anyone involved in this case, as there is not a single person  
35 or entity related to the vessel *Virginia G* which is of Panamanian nationality. The  
36 *Virginia G* has a flag of convenience and its owner, Penn Lilac Trading, has its  
37 headquarters in Spain, which makes it of Spanish nationality.  
38

39 As previously stated, no State may claim protection of persons in international law  
40 who are not its own nationals. In the case pending on the merits before the Tribunal,  
41 it is undisputed that none of the persons here are nationals of Panama.  
42

43 Besides that, the claims for damages are based on reports which do not deserve any  
44 credibility. How is it possible to affirm that the seizure of a vessel with the value of  
45 €500,000 caused damages of almost €6 million? There was no such damage caused  
46 by the arrest of the vessel, as it could be liberated only with the payment of a bond,  
47 which the owner rejected, due to his financial problems.  
48

49 In fact, it is clear that any losses suffered by the owner are due to his financial  
50 problems, having, therefore, nothing to do with the arrest of the *Virginia G*, which

1 was legally ordered by Guinea-Bissau because she was illegally performing a  
2 fishing-related operation in the EEZ of Guinea-Bissau.

3  
4 Therefore Panama is not entitled to claim damages. On the contrary, it is Guinea-  
5 Bissau that is entitled to them. In fact, by granting a flag of convenience to the  
6 *Virginia G*, without there being the least connection between this vessel and  
7 Panama, Panama facilitated the fact that an unseaworthy vessel could conduct  
8 fishing-related operations in Guinea-Bissau's waters.

9  
10 When Guinea-Bissau decided to arrest the vessel in conformity with its laws it was  
11 obliged to keep the vessel under surveillance in the port of Bissau, which had high  
12 occupation costs, both of the berth and of its official and military personnel, and the  
13 ship was in such a poor condition that the risk of it sinking in the port of Bissau  
14 arose.

15  
16 Guinea-Bissau was therefore prevented from auctioning the ship, as was its right,  
17 due to the poor condition it was in, caused by the inefficient supervision by Panama  
18 of the vessels to which it grants flags of convenience, having been obliged to release  
19 it without obtaining the adequate revenue as payment against the plundering of its  
20 marine resources which the operation of the *Virginia G* led to, its high environmental  
21 costs and loss of fishing resources.

22  
23 That is why Guinea-Bissau presented a counter-claim before this Tribunal in relation  
24 to these damages.

25  
26 Mr President, learned Members of the International Tribunal, thank you very much  
27 for your attention.

28  
29 **THE PRESIDENT:** Thank you very much, Mr Leitão, for your statement. I  
30 understand that you wish to call the witness Mr João Nunes Cá.

31  
32 **MR MENEZES LEITÃO:** Yes.

33  
34 **THE PRESIDENT:** Thank you very much. The Tribunal will then proceed to hear the  
35 witness Mr João Nunes Cá. He may now be brought into the courtroom.

36  
37 I now call upon the Registrar to administer the solemn declaration to be made by the  
38 witness.

39  
40 *(The witness made the solemn declaration)*

41  
42 **THE PRESIDENT:** Good morning, Mr Nunes Cá. I wish to remind you of the  
43 following. The work of the interpreters and the verbatim reporters is a complex task.  
44 This is even more so where, as will be the case now, not only English and French  
45 are used but also a third language such as Portuguese. Therefore, I must urge you  
46 to speak slowly and please leave sufficient time after someone else has spoken to  
47 you before you answer. The statements and questions of someone else before you  
48 will be translated into English and then into French, so you have to wait until the  
49 interpretation into French has been completed. When the interpretation into French

1 has finished I will give you a sign to that effect, by a gesture like *this*, for instance.  
2 Only then will the interpreters be able to follow you.  
3  
4 Mr Leitão, you have the floor, sir.  
5  
6 **MR MENEZES LEITÃO:** Thank you, Mr President.  
7  
8 **Examination by MR MENEZES LEITÃO**  
9  
10 Mr Nunes Cá, could you tell the court what your profession is?  
11  
12 **MR NUNES CÁ** (*Interpretation from Portuguese*): My occupation is a fishing  
13 observer and then a fishing inspector.  
14  
15 **MR MENEZES LEITÃO:** (*In Portuguese*) Did you participate in the *Virginia G*  
16 operation?  
17  
18 **MR NUNES CÁ** (*Interpretation from Portuguese*): Yes, I participated in the  
19 operation.  
20  
21 **MR MENEZES LEITÃO** (*Interpretation from Portuguese*): Did you arrest the ship  
22 before ---  
23  
24 **THE PRESIDENT:** I am sorry, the question was not translated. Could you repeat the  
25 question, please?  
26  
27 **MR MENEZES LEITÃO** (*Interpretation from Portuguese*): Was this the ship that you  
28 used?  
29  
30 **MR NUNES CÁ** (*Interpretation from Portuguese*): Yes, this was the boat.  
31  
32 **MR MENEZES LEITÃO** (*Interpretation from Portuguese*): How did you get onto the  
33 tanker?  
34  
35 **MR NUNES CÁ** (*Interpretation from Portuguese*): We got onto the tanker after the  
36 tanker was seen. I asked the captain to lower the boarding ladder that was on the  
37 tanker and we went up onto the tanker.  
38  
39 **MR MENEZES LEITÃO** (*Interpretation from Portuguese*): Were you wearing  
40 uniforms when you performed this operation?  
41  
42 **MR NUNES CÁ** (*Interpretation from Portuguese*): Yes, we were. The people of the  
43 inspection were wearing their uniforms. "Supervision" was written on it and the  
44 members of the naval force who accompanied the operations were in naval uniform  
45 and even the pilot was also in a uniform.  
46  
47 **THE PRESIDENT:** I am sorry to interrupt you, Mr Nunes Cá. Would you please wait  
48 until the interpretation has been completed before you answer?  
49

1 **MR MENEZES LEITÃO** (*Interpretation from Portuguese*): Did you identify yourself  
2 with a document when you got on the boat?  
3

4 **MR NUNES CÁ** (*Interpretation from Portuguese*): Yes. In addition to the uniforms we  
5 were wearing, we identified ourselves to the captains, and the captains identified  
6 themselves to each other.  
7

8 **MR MENEZES LEITÃO** (*Interpretation from Portuguese*): What conversation did you  
9 have with the captain at that time?  
10

11 **MR NUNES CÁ** (*Interpretation from Portuguese*): When we arrived on the ship I  
12 asked the captain whether he was doing a fishing-related operation by bunkering:  
13 “Do you have authorization?” and he said that he did not.  
14

15 **MR MENEZES LEITÃO** (*Interpretation from Portuguese*): Was there any other  
16 conversation with the captain?  
17

18 **MR NUNES CÁ** (*Interpretation from Portuguese*): Yes, there was. After I asked the  
19 captain if he had authorization to refuel the fishing boat, I decided to tell him “As the  
20 ship does not have authorization issued by a competent authority, then I have to  
21 arrest this ship right now”.  
22

23 **THE PRESIDENT**: Excuse me, Mr Leitão. If you ask your questions in English the  
24 question of time will be resolved.  
25

26 **MR MENEZES LEITÃO**: So I am asking questions in English, sir?  
27

28 **THE PRESIDENT**: Yes.  
29

30 **MR MENEZES LEITÃO**: Okay. Was there during the boarding of the ship any torture  
31 or threat of use of force to the members of the crew?  
32

33 **MR NUNES CÁ** (*Interpretation from Portuguese*): No, there was no threat against  
34 the crew members of the ship, because at the time of the arrest there was good  
35 cooperation from the captain and his crew. There was nothing.  
36

37 **MR MENEZES LEITÃO** (*Interpretation from Portuguese*): When the ship was in the  
38 port of Bissau you visited it with the Cuban Ambassador. Why was that?  
39

40 **MR NUNES CÁ** (*Interpretation from Portuguese*): Yes, when the ship was berthed in  
41 Bissau the Cuban Ambassador was in Bissau at the time and he asked FISCAP to  
42 be allowed to visit the Cubans who were on board the ship. As I was a man  
43 belonging to the operation, I was asked to accompany him when the Ambassador  
44 visited the crew of the ship.  
45

46 **MR MENEZES LEITÃO** (*Interpretation from Portuguese*): The people on board the  
47 ship said that you proposed an African-style solution for the arrest of the ship. What  
48 do you have to say about that?  
49

1 **MR NUNES CÁ** (*Interpretation from Portuguese*): No, that was not the case,  
2 because I have no powers over any kind of African-style solution, and I wonder why I  
3 did not offer this solution when the ship was on the high seas. I had nothing to ask  
4 and I have nothing to say about this so-called African solution.

5  
6 **MR MENEZES LEITÃO** (*Interpretation from Portuguese*): Did you have any  
7 influence or power to release the ship in any way?  
8

9 **MR NUNES CÁ** (*Interpretation from Portuguese*): No, I had not. That is up to the  
10 Interministerial Fishing Commission.

11  
12 **MR MENEZES LEITÃO** (*Interpretation from Portuguese*): Do you know Mr Manuel  
13 Samper?  
14

15 **MR NUNES CÁ**: (*In Portuguese*) I do not know Manuel Samper.  
16

17 **MR MENEZES LEITÃO** (*Interpretation from Portuguese*): Do you remember ---  
18

19 **THE PRESIDENT**: Could you repeat the answer, please?  
20

21 **MR NUNES CÁ** (*Interpretation from Portuguese*): No, I do not know Manuel Samper.  
22

23 **MR MENEZES LEITÃO**: Do you recall giving your telephone number to the captain?  
24

25 **MR NUNES CÁ** (*Interpretation from Portuguese*): I do not remember doing it but I  
26 may have done. The captain who was on the ship at the time said that he was in  
27 contact with FISCAP. As I was the person who took the ship to Bissau, I may have  
28 given him my number so that he could contact me. It is possible.  
29

30 **MR MENEZES LEITÃO** (*Interpretation from Portuguese*): Did you have any meeting  
31 with Mr Domingos de Alvarenga about deliberation of the release of the ship?  
32

33 **MR NUNES CÁ** (*Interpretation from Portuguese*): No, I had no contact with  
34 Alvarenga. The release of the ship is the responsibility of the Interministerial  
35 Commission. I do not belong to it. All I have to do is inspect. I do not have anything  
36 to do with releasing ships and I had no contact with Alvarenga.  
37

38 **MR MENEZES LEITÃO**: No further questions, your Honour.  
39

40 **THE PRESIDENT**: Thank you very much, Mr Leitão.  
41

42 I would like to ask the Agent of Panama whether he wishes to cross-examine the  
43 witness. I then give the floor to the Agent of Panama, Mr García-Gallardo, to cross-  
44 examine the witness.  
45

46 **MR GARCÍA-GALLARDO**: Thank you, Mr President.  
47

48 **Cross-examination by MR GARCÍA-GALLARDO**  
49

1 **MR GARCÍA-GALLARDO:** Mr João Nunes Cáã, you are said to have 13 years'  
2 service as a fishing observer and 12 years' service as an inspector. With so many  
3 years, do you confirm to this Tribunal that you are familiar with the fisheries  
4 legislation applicable in Guinea-Bissau?

5

6 **MR NUNES CÁ** (*Interpretation from Portuguese*): Yes, I confirm that.

7

8 **MR GARCÍA-GALLARDO:** That you were in routine operations on the evening of  
9 21 August?

10

11 **MR NUNES CÁ** (*Interpretation from Portuguese*): Yes.

12

13 **MR GARCÍA-GALLARDO:** How many days did you spend in routine operations in  
14 that mission?

15

16 **MR NUNES CÁ** (*Interpretation from Portuguese*): From the 20<sup>th</sup> to the 21<sup>st</sup> at 18.30 I  
17 was there.

18

19 **MR GARCÍA-GALLARDO:** I have not received the answer in English; it was silent.

20

21 **THE PRESIDENT:** Mr Nunes Cá, would you repeat your answer?

22

23 **MR NUNES CÁ** (*Interpretation from Portuguese*): Yes, I was saying we left on 20<sup>th</sup>  
24 from Bissau to 21<sup>st</sup> at 18.30 hours. We were on the *Virginia G* on operations.

25

26 **MR GARCÍA-GALLARDO:** How many hours did you navigate it from the port of  
27 Bissau until the moment that you boarded the *Virginia*?

28

29 **MR NUNES CÁ** (*Interpretation from Portuguese*): We sailed about eleven hours and  
30 forty minutes.

31

32 **MR GARCÍA-GALLARDO:** How many vedettes or any other type of vessel were in  
33 routine operations with the one you were in?

34

35 **MR NUNES CÁ** (*Interpretation from Portuguese*): There were two vessels, *Baleia II*  
36 and *Baleia V*.

37

38 **MR GARCÍA-GALLARDO:** Please explain why the colleague, if I can use this word,  
39 of the navy, that has been called as a witness, Mr Janga, explained that he was not  
40 on board these two vedettes, that he was on board - I am textually reading his  
41 statement in English:

42

43 I took part in the enforcement mission which ended with the arrest of the  
44 *Virginia G*, in the capacity of pilot, as can be seen from the official fishing  
45 violation notice...which I signed as one of the witnesses. At that time I held  
46 the position of commander of the vessel *LF/01, CACINE*.

47

48 **MR NUNES CÁ** (*Interpretation from Portuguese*): I can explain. The pilot in the navy  
49 is always the job of the inspection. He is always with us, and when any cargo ship or  
50 fishing boat is arrested he is the only one who knows the channel and will always be

1 there with the captain when they enter the port of Bissau, because he is very familiar  
2 with the channel and he enters with the ship.

3

4 **MR GARCÍA-GALLARDO:** You are not answering my question, Mr Cá. You  
5 mentioned there were only two vessels and now I have found out there were three.

6

7 **MR NUNES CÁ** (*Interpretation from Portuguese*): No. He was with me on the *Baleia*  
8 *II*. He was there.

9

10 **MR GARCÍA-GALLARDO:** His statement is misleading because he is mentioning  
11 that he was the commander. I will repeat again. He was there.

12

13 **MR NUNES CÁ** (*In Portuguese*): No.

14

15 **MR GARCÍA-GALLARDO:** In the same paragraph: “At that time I held the position  
16 of commander of the vessel *LF/01 Cacine*.”

17

18 **MR NUNES CÁ** (*Interpretation from Portuguese*): No. At the time that we went the  
19 *Cacine* didn't take part in the mission. He was with me on the *Baleia II* and he was  
20 the one who went with us. He wasn't with us on the *01*; the *01* remained in the port.

21

22 **MR GARCÍA-GALLARDO:** In the statement made by your colleague from the navy,  
23 he does not say so. Just listen to another question, please. In relation to the  
24 conditions of boarding the vessel, the Master of the *Virginia*, Mr Fausto Ocaña  
25 Cisneros, states that they were boarded suddenly and unannounced by a group of  
26 people, some dressed in military uniforms – must be ones of the navy – and others  
27 in civilian clothing. Do you have any particular comment on this point?

28

29 **MR NUNES CÁ** (*Interpretation from Portuguese*): Yes, I have. I have already  
30 explained that we went onto the ship when we asked the captain to lower the ladder,  
31 and we entered the boat quietly. We were all in uniform. There was no threat to the  
32 crew. We went to the bridge and there was no aggression. We spoke to him calmly.  
33 There was no aggression and we were properly identified and wearing our uniforms.

34

35 **MR GARCÍA-GALLARDO:** *This picture – do you recognize the Virginia G?*

36

37 **MR NUNES CÁ** (*Interpretation from Portuguese*): Yes, I do.

38

39 **MR GARCÍA-GALLARDO:** It was completely in ballast, in ballast conditions with no  
40 oil on board. When this vessel is partially full, as was the case at the moment of the  
41 arrest, with the cargo that you later on decided to unload unlawfully and contrary to  
42 the provisions of the order of a judge from Guinea-Bissau, can you let me know –  
43 you are an expert in maritime matters – the *franc-bord* is the line that goes above the  
44 water. The distance that my experts have confirmed is that the distance to come on  
45 board was less than one metre. Do you agree with this or not?

46

47 **MR NUNES CÁ** (*Interpretation from Portuguese*): No. I cannot comment on this  
48 question.

49

1 **MR GARCÍA-GALLARDO:** Do you know that the tropic, the *franc-bord*, in the  
2 summer period is less than 034 centimetres? The master denies that a ladder was  
3 given to you. I cannot understand who was giving this – he was on the deck – who  
4 allowed a ladder to allow your team to come aboard.  
5  
6 **MR NUNES CÁ** (*Interpretation from Portuguese*): No. At the time we arrived at the  
7 *Virginia G* the ladder allowed us to get up onto the ship. It allowed us to go up and  
8 get onto the ship while we were at sea.  
9  
10 **MR GARCÍA-GALLARDO:** Mr Cá, in the proceedings set up by the Guinea-Bissau  
11 fisheries law in relation to the inspections, as stated in article 45(4), it is possible to  
12 use any type of recorder, instruments to record visual – video cameras, electronic  
13 and any other means – to record or to register images, screen or noises. Did you use  
14 any materials to give support to the *Anuncio de Noticia* which will come in later?  
15  
16 **MR NUNES CÁ** (*Interpretation from Portuguese*): When the ship was arrested and  
17 taken to Bissau we inspected the ship to see how it was equipped, what was inside,  
18 what wasn't inside. It is what we usually do in an inspection, and then we write a  
19 report. That report was always accompanied by the inspection. If there was any  
20 problem which was against the law we always photographed, as proof of what was  
21 there.  
22  
23 **MR GARCÍA-GALLARDO:** Is that the *Anuncio de Noticia* that you pushed, you  
24 obliged, the master to sign?  
25  
26 **MR NUNES CÁ** (*Interpretation from Portuguese*): Yes, the report.  
27  
28 **MR GARCÍA-GALLARDO:** Following the provisions of article 49, your own individual  
29 report, meaning the report of the mission of each of the officers that came on board.  
30  
31 **MR NUNES CÁ** (*Interpretation from Portuguese*): No, the person who writes the  
32 report is me; I am the only one.  
33  
34 **MR GARCÍA-GALLARDO:** Do others write reports in accordance with article 49?  
35  
36 **MR NUNES CÁ** (*Interpretation from Portuguese*): No, I would write the report. They  
37 sign as part of the mission. That report – and only the inspector on board is  
38 responsible for that report and then it is signed.  
39  
40 **MR GARCÍA-GALLARDO:** So the agent who has participated in the recovery of  
41 evidence or these inspections and other elements on board of a vessel must write a  
42 report. Can we now move, please, to Annex 18. Can you put up for Mr Cá the  
43 Portuguese version?  
44  
45 This is the *Anuncio de Noticia*. It is Annex 18 of the respondent of Guinea-Bissau.  
46 Would you please let me know what it says in the fifth and sixth lines? Mr Cá, could  
47 you read these two lines, please?  
48  
49 **THE PRESIDENT:** Would you read the document?  
50

1 **MR NUNES CÁ** (*Interpretation from Portuguese*): Ah, yes.  
2  
3 **MR GARCÍA-GALLARDO**: Excuse me, Mr Cá, it is just the two lines in blue colour.  
4  
5 **MR NUNES CÁ** (*Interpretation from Portuguese*): Report of a severe fishing  
6 infraction defined in article 54 of the General Fisheries Law.  
7  
8 **MR GARCÍA-GALLARDO**: Could you please just read the last line?  
9  
10 **MR NUNES CÁ** (*Interpretation from Portuguese*): Which constitutes a severe fishing  
11 infraction under current law.  
12  
13 **MR GARCÍA-GALLARDO**: This is one of the main provisions of the fisheries  
14 legislation of Guinea-Bissau that relate to “*infracções de pesca graves*”, in other  
15 words serious offences, serious shortcomings. So article 52 contains the provisions  
16 on confiscation *ex-officio*, that is, automatic confiscation, in the case of failure to hold  
17 one of the permits or authorizations provided for in articles 13 and 23. The *Anuncio*  
18 *de Noticia* relates not to this provision but to article 54, “*infracções de pesca graves*”.  
19 Would you take your time and tell me which provision applies to the supply of fuel oil  
20 like the alleged supply of fuel oil in contravention of the provisions of Guinea-Bissau  
21 law relied on? If you want, we can move – do you want the paper version?  
22  
23 **MR NUNES CÁ** (*Interpretation from Portuguese*): The law of Guinea, as far as I  
24 know, says that any ship that is in our EEZ must have fishing authorization issued by  
25 a competent authority. If that ship does not have that authorization, which has often  
26 occurred, it must be arrested and taken to the port of Bissau; and if the situation  
27 continues it will be confiscated.  
28  
29 **MR GARCÍA-GALLARDO**: You are a fishing observer and inspector. You have said  
30 before this Tribunal that you were familiar with the meaning of the provisions that an  
31 inspector must apply under your legislation. We have all seen that the form used to  
32 carry out this arrest or apprehension, because they mix the wording from time to  
33 time, relates to article 54; and article 54 relates purely to serious infringements of  
34 purely fishing activities, activities related to catching of fish and not related to  
35 logistics or to supply or to any other related activities under the wording under the  
36 definition of your own law. Do you agree with this or not?  
37  
38 **MR NUNES CÁ** (*Interpretation from Portuguese*): Yes, I agree.  
39  
40 **MR GARCÍA-GALLARDO**: Put up the *Anuncio de Noticia*, the Portuguese version,  
41 please.  
42  
43 Then we can see in the middle and coming down what is stated, that the vessel has  
44 a flag of Panama. Mr Cá, do you read the name of the ship and its nationality, IMO  
45 number and other data related to the ship? Yes or not?  
46  
47 **MR NUNES CÁ** (*Interpretation from Portuguese*): Yes.  
48

1 **MR GARCÍA-GALLARDO:** Do you read now that you were able (*words read in*  
2 *Portuguese*) that you verified the documents of the vessel and in terms of  
3 documentation all was in order. Do you agree with this – yes or no?  
4

5 **MR NUNES CÁ** (*Interpretation from Portuguese*): Yes.  
6

7 **MR GARCÍA-GALLARDO:** Now let us move to the second page, please. You  
8 mentioned that you attach the annex with the evidence supporting this *Anuncio de*  
9 *Noticia*. Will you please let me know where you mentioned the *Relatórios* or any  
10 other type of supporting evidence in conformity with your provisions of the law,  
11 particularly article 45, paragraph 4, in this *Anuncio de Noticia*.  
12

13 **MR NUNES CÁ** (*Interpretation from Portuguese*): Yes.  
14

15 **MR GARCÍA-GALLARDO:** “Si” means “yes” in this case?  
16

17 **MR NUNES CÁ** (*Interpretation from Portuguese*): I am sorry. I do not understand.  
18

19 **MR GARCÍA-GALLARDO:** I am asking you if you attach any *Relatório*, the *Noticia*,  
20 or minutes of your own affidavit in conformity with the law of the officers that came  
21 on board.  
22

23 **MR NUNES CÁ** (*Interpretation from Portuguese*): Yes.  
24

25 **MR GARCÍA-GALLARDO:** Can you see the surname, handwritten, as  
26 “*Testemunhas*” – that must be witness – of the events drafted? The name and the  
27 position, where it is stated. Could you confirm if I am reading well? J Naval – João  
28 Naval probably – and the name of the officer of the navy, Mr Djata Janga.  
29

30 **MR NUNES CÁ** (*Interpretation from Portuguese*): Yes.  
31

32 **MR GARCÍA-GALLARDO:** In conformity with the *agentes de fiscalização* that can  
33 be found in article 40 of the law, do you consider as *agente de fiscalização* – tax or  
34 control officer inspector – that appears in article 40, paragraph 1(c), *os comandantes*  
35 *e oficiais de navios, e aviones, de fiscalização das actividades de pescas* -  
36 commanders or officers of ships or aircraft of fiscal control on fisheries activities.  
37 Does Mr Janga relate to this category?  
38

39 **MR NUNES CÁ** (*Interpretation from Portuguese*): Yes.  
40

41 **MR GARCÍA-GALLARDO:** Just one more question. Excuse me for repeating it but  
42 you mentioned that you were very familiar with the provisions of fisheries, particularly  
43 the ones of Guinea-Bissau.  
44

45 **MR NUNES CÁ** (*Interpretation from Portuguese*): Yes, I am.  
46

47 **MR GARCÍA-GALLARDO:** Will you please now move to article 110 and 111 of  
48 UNCLOS. Those provisions that are found in the chapter on the high seas are also  
49 applicable to the exclusive economic zone in accordance with article 56,  
50 paragraph 2, in so far as they are not incompatible within this part. Would you please

1 read the point number 2? Maybe I will read and the interpreter can translate. That  
2 may be easier.

3

4 In the cases provided [in this paragraph] the warship may proceed to verify  
5 the ship's right to fly its flag. To this end, it may send a boat under the  
6 command of an officer to the suspected ship. If suspicion remains after the  
7 documents have been checked, it may proceed to a further examination on  
8 board the ship, which must be carried out with all possible consideration.

9

10 Do you agree with this, yes or no?

11

12 **MR NUNES CÁ** (*Interpretation from Portuguese*): Yes, I agree.

13

14 **MR GARCÍA-GALLARDO**: I will now read paragraph 5.

15

16 "These provisions also apply to any other duly authorized ships or aircraft  
17 clearly marked and identifiable as being on government service."

18

19 I will end by asking if you agree with article 111 on page 64. I will start reading at the  
20 top.

21

22 As the case may be within the contiguous zone or the exclusive economic  
23 zone...

24

25 The pursuit may only be commenced after a visual or auditory signal to  
26 stop has been given at a distance which enables it to be seen or heard by  
27 the foreign ship.

28

29 Mr Cá, did you or the other vedette you mentioned, the chief officer, Mr Caroso, in  
30 charge of the mission, who has signed the *Anuncio de Noticia*, before boarding the  
31 vessel with armed guards from the Navy, send any radio message, visual message,  
32 or auditory signal to stop the vessel?

33

34 **MR NUNES CÁ** (*Interpretation from Portuguese*): Yes, we sent a message.

35

36 **MR GARCÍA-GALLARDO**: With radio? Which channel? With any other electronic  
37 system?

38

39 **MR NUNES CÁ** (*Interpretation from Portuguese*): VHF. I had my VHF in my hand.

40

41 **MR GARCÍA-GALLARDO**: Not one single witness, of all the ones who have drafted  
42 affidavits from the Guinea-Bissau officers' team that participated in the boarding, has  
43 reflected that they conducted this radio message before coming on board  
44 unexpectedly – excuse me, I will use the words of the master – “suddenly and  
45 unannounced by a group of people, some dressed in military uniforms and others in  
46 civilian clothing.”

47

48 **MR NUNES CÁ** (*Interpretation from Portuguese*): Yes. After we arrived and got on  
49 board the ship, after the conversation, the ship must not be stopped, we have to  
50 make sure that there was no communication between the ship, but after the ship was

1 arrested we went back to allowing communication as before. At the time we cut off  
2 communication, for our own safety in the operation.  
3  
4 **MR GARCÍA-GALLARDO:** That was not the answer I was expecting to my question  
5 but I take note. Thank you very much. I have no further questions.  
6  
7 **THE PRESIDENT:** Thank you very much. We have reached 11.30. I would like to  
8 know if you would like to re-examine, Mr Menezes Leitão.  
9  
10 **MR MENEZES LEITÃO:** Yes, I would like to, but I have only two very short  
11 questions, if it would be possible to do that before the break.  
12  
13 **THE PRESIDENT:** I think we should withdraw at this stage and we will continue the  
14 hearing at noon after a break of 30 minutes. Thank you very much.  
15  
16 *(Break)*  
17  
18 **THE PRESIDENT:** We will now continue the examination of the witness.  
19  
20 I give the floor to the Agent of Guinea-Bissau to re-examine the witness, and I wish  
21 to emphasize that no new issues should be raised during the re-examination.  
22  
23 **Re-examination by MR MENEZES LEITÃO**  
24  
25 **MR MENEZES LEITÃO:** Mr Nunes Cá, I have only two questions for you. The first  
26 one is about your background. Do you have a law degree?  
27  
28 **MR NUNES CÁ** *(Interpretation from Portuguese):* No, I do not.  
29  
30 **MR MENEZES LEITÃO:** The second one is about the infringement notice my  
31 colleague showed you. Could you read the last sentence in the infringement notice  
32 beginning "..."  
33  
34 **MR NUNES CÁ** *(Interpretation from Portuguese):*  
35  
36 This notice is due to the fact that when it was inspected by the inspection  
37 team the ship was not in possession of an authorization from the competent  
38 authorities for bunkering fishing boats with fuel, diesel oil, in the waters of  
39 Guinea-Bissau.  
40  
41 **MR MENEZES LEITÃO:** And the last sentence, please.  
42  
43 **MR NUNES CÁ** *(Interpretation from Portuguese):* "Because it is a severe fishing  
44 offence under current legislation."  
45  
46 **MR MENEZES LEITÃO:** No further questions, Mr President.  
47  
48 **THE PRESIDENT:** Thank you, Mr Menezes Leitão. At this stage Judge Treves has  
49 two questions to ask of the witness.  
50

1 **JUDGE TREVES:** I would like to put two questions. The first is as follows. You have  
2 declared that the operation in which the *Virginia G* was stopped was a routine  
3 operation. My question is as follows. When you started the operation or at any time  
4 during the operation did you have any knowledge of the position of the *Virginia G* for  
5 its bunkering activity?  
6

7 **MR NUNES CÁ** (*Interpretation from Portuguese*): I did not have the position before,  
8 although our observers always inform us of the position of refuelling of the  
9 *Virginia G*. In our mission, as we always know where they are out fishing, we sailed  
10 north and then came back south, and it was in that position that we found the ship  
11 the *Amabal* that was receiving fuel during the inspection, saw the position inside the  
12 EEZ.  
13

14 **JUDGE TREVES:** I have a second question, which refers to point 16 of your written  
15 statement, which appears as Annex 1 to the Counter-Memorial. In this paragraph  
16 you say, "The captain asked us if he should stop the operation, to which we  
17 answered that he could continue until it ended. And that is what he did, supplying the  
18 *Amabal II* with 110 tons of diesel oil." My question is as follows. Is it the current  
19 practice of Guinea-Bissau officials to authorize the continuation of what is qualified  
20 by them as a grave fishing infringement?  
21

22 **MR NUNES CÁ** (*Interpretation from Portuguese*): Yes, it is our common practice.  
23

24 **THE PRESIDENT:** Thank you, Judge Treves, for your questions.  
25

26 At this stage Judge Lucky also would like to ask questions of the witness. Judge  
27 Lucky, you have the floor.  
28

29 **JUDGE LUCKY:** Mr Cá, good afternoon. I have just two questions and I refer  
30 specifically to paragraph 18, where you said the captain was very helpful and  
31 voluntarily signed the official fishing violation notice. My question is, as we saw, this  
32 notice was in Portuguese. Is that correct?  
33

34 **MR NUNES CÁ** (*Interpretation from Portuguese*): Yes.  
35

36 **JUDGE LUCKY:** As an inspector in fishing and with your vast experience, do you  
37 have the powers of a police officer, powers of arrest?  
38

39 **MR NUNES CÁ** (*Interpretation from Portuguese*): I am not allowed to arrest anyone.  
40

41 **JUDGE LUCKY:** My next question is: when the captain voluntarily signed it, as you  
42 say, was the fishing violation notice explained to him? In other words did you explain  
43 to him what in fact he was signing, clause by clause?  
44

45 **MR NUNES CÁ** (*Interpretation from Portuguese*): Yes, I gave the notice to the  
46 captain and he read it. It was all written in Spanish.  
47

48 **JUDGE LUCKY:** Apparently it was written in Spanish. From what we saw, it is in  
49 Portuguese?  
50

1 **MR NUNES CÁ** (*Interpretation from Portuguese*): It is in Portuguese, but when the  
2 captain was reading he used Spanish pronunciation. He read it aloud with a Spanish  
3 accent.

4  
5 **JUDGE LUCKY**: Spanish is very different from Portuguese, is it not? I know a bit of  
6 Spanish but I cannot say a word in Portuguese. Would you agree that there is a  
7 difference in the language?  
8

9 **MR NUNES CÁ** (*Interpretation from Portuguese*): Yes, there is a difference. He read  
10 what we had written and he understood it very well and signed it.

11  
12 **JUDGE LUCKY**: Usually the first mate on a ship is close to the captain. Was the first  
13 mate or any member of the crew present when he voluntarily, as you say, signed the  
14 document?  
15

16 **MR NUNES CÁ** (*Interpretation from Portuguese*): Always on the bridge I was there  
17 with the captain.  
18

19 **JUDGE LUCKY**: Was the first mate present?  
20

21 **MR NUNES CÁ** (*Interpretation from Portuguese*): Yes.  
22

23 **JUDGE LUCKY**: This is my last question. You have looked at photographs 14 to 16.  
24 Did you take any photographs of the crew? I see everybody here dressed in the  
25 same way, but no members of the crew. Did you take any photographs of the crew,  
26 because they are claiming that they were locked up in the ship?  
27

28 **MR NUNES CÁ** (*Interpretation from Portuguese*): No. The photo that I took from the  
29 bridge was proof of the position of the ship, and those photos that I have are the  
30 ones that I took on board, but on board the *Virginia G* no one was locked up.  
31

32 **JUDGE LUCKY**: Thank you very much.  
33

34 **THE PRESIDENT**: I thank Judge Lucky for his questions.  
35

36 Mr Nunes Cá, thank you for your testimony. Your examination is now finished and  
37 you may withdraw.  
38

39 Mr Leitão, are you ready to call the next witness, Mr Carlos Nelson Sanó?  
40

41 **MR MENEZES LEITÃO**: Yes, thank you, Mr President.  
42

43 **THE PRESIDENT**: The Tribunal will hear the witness Mr Carlos Nelson Sanó. He  
44 may now be brought into the room, and I call upon the Registrar to administer the  
45 solemn declaration to be made by the witness.  
46

47 *(The witness made the solemn declaration)*  
48

49 **THE PRESIDENT**: Thank you, Mr Registrar.  
50

1 Good afternoon, Mr Nelson Sanó. I wish to remind you of the following. The work of  
2 the interpreters and the verbatim reporters is a complex task. This is even more so  
3 when, as will be the case now, not only English and French are used but also a third  
4 language such as Portuguese. Therefore, I must urge you to speak slowly and  
5 please leave sufficient time after someone else has spoken to you before you  
6 answer. The statements or questions of someone else before you will be translated  
7 into English and then into French, so you have to wait until the interpretation into  
8 French has been completed. When the interpretation into French has finished I will  
9 give you a sign to that effect by a gesture like *this*. Only then can the interpreters  
10 follow you.

11  
12 Mr Leitão, you have the floor, sir.

13  
14 **MR MENEZES LEITÃO:** Thank you, Mr President.

15  
16 **Examination by MR MENEZES LEITÃO**

17  
18 Mr Carlos Nelson Sanó, could you say what is your profession?

19  
20 **MR NELSON SANÓ** (*Interpretation from Portuguese*): I worked as a maritime fishing  
21 observer for FISCAP for ten years, and I finished 12 years in an administrative  
22 capacity at FISCAP as well.

23  
24 **MR MENEZES LEITÃO:** What was your position at the time of the arrest of the  
25 *Virginia G*?

26  
27 **MR NELSON SANÓ** (*Interpretation from Portuguese*): At the time of the arrest of the  
28 *Virginia G* I was head of the Secretariat-General of FISCAP.

29  
30 **MR MENEZES LEITÃO:** Was it you who returned the passports to the members of  
31 the crew?

32  
33 **MR NELSON SANÓ** (*Interpretation from Portuguese*): Yes, it was I who returned the  
34 passports to the members of the crew.

35  
36 **MR MENEZES LEITÃO:** What was the reason for the authorities of Guinea-Bissau  
37 to guard the passports of the members of the crew?

38  
39 **MR NELSON SANÓ** (*Interpretation from Portuguese*): Usually after the ships are  
40 arrested and are in the Port of Bissau the inspectors who make the arrest and the  
41 fiscalization brought passports to FISCAP, namely to the fiscal services, and then  
42 they are kept for identification and control of the crew.

43  
44 **MR MENEZES LEITÃO:** When are they returned to the crew members?

45  
46 **MR NELSON SANÓ** (*Interpretation from Portuguese*): As soon as they are  
47 requested they are returned. They receive them at once.

48  
49 **MR MENEZES LEITÃO:** When did you first receive the request for the return of the  
50 passports?

1  
2 **MR NELSON SANÓ** (*Interpretation from Portuguese*): In this concrete case of the  
3 *Virginia G* the request was made on a Friday by the end of the working day on the 6<sup>th</sup>  
4 and on the day there was no possibility to deliver the passports, and on the 9<sup>th</sup> two  
5 people came to get the passports and then I returned them.

6  
7 **MR MENEZES LEITÃO**: Are you talking of 6 and 9 November?  
8

9 **MR NELSON SANÓ** (*Interpretation from Portuguese*): Yes, 6 and 9 November. The  
10 6<sup>th</sup> was a Friday, and on Monday the 9<sup>th</sup> I had delivered the passports. It was the first  
11 request of that day that came to me.  
12

13 **MR MENEZES LEITÃO**: Do you remember the date of the request? It was a request  
14 of the Cuban Ambassador.  
15

16 **MR NELSON SANÓ** (*Interpretation from Portuguese*): Yes, I do. The request was  
17 made by the Ambassador of Cuba, a letter addressed to me in my name, but the  
18 correspondence did not come directly to our services. It was handed to the State  
19 Secretary. It entered that day. The State Secretary has despatched the request for  
20 the Ministry of Fisheries Director and it was responded on 5 November, and that  
21 correspondence only entered the services of maritime fiscalization on 6 November,  
22 and then it came to me and I have prepared the deliverance of the passports, but  
23 they were only delivered on Monday 9 November.  
24

25 **MR MENEZES LEITÃO**: Did the request of the Cuban Ambassador make any  
26 reference to previous attempts of getting the passports from anyone?  
27

28 **MR NELSON SANÓ** (*Interpretation from Portuguese*): No, I have no idea, because  
29 usually in previous requests what is usual for passports is that as soon as they are  
30 required they are delivered, and it was not usual what happened. The ship's  
31 representative acknowledges that a crew member wants his passport back, he  
32 requests the passport and then they are returned. That procedure was a little bit not  
33 usual, and even so there was no previous rejected requests that I recall.  
34

35 **MR MENEZES LEITÃO**: Was the owner of the ship present at that time in Bissau?  
36

37 **MR NELSON SANÓ** (*Interpretation from Portuguese*): Usually when the ships are  
38 arrested this is communicated to the ship's representative, so this communication is  
39 not at my level. Our services concern concrete requests, and that correspondence of  
40 the shipowner's representative must be presented as a representative of that vessel.  
41 I do not know whether he was there or not.  
42

43 **MR MENEZES LEITÃO**: Do you remember a second situation when you returned  
44 the passports to the member of the crew?  
45

46 **MR NELSON SANÓ** (*Interpretation from Portuguese*): Yes, there was a second  
47 time, a second request, that came directly from the captain of the vessel who has  
48 requested the return of the passports on 11 December. That request and passports  
49 were given with a notice of their delivery.  
50

1 **MR MENEZES LEITÃO:** It is disputed here if the members of the crew were arrested  
2 at the ship or if they could leave whenever they wanted. What are you saying about  
3 this?  
4

5 **MR NELSON SANÓ** (*Interpretation from Portuguese*): There is no reason to arrest  
6 any member of the crew. Usually when ships are in this situation in the port the crew  
7 are free to leave and to go around. The fact that the passports were handed over, it  
8 states that the crew could go out and freely walk away. The crew is not arrested on  
9 board.  
10

11 **MR MENEZES LEITÃO:** Has any member of the crew of the *Virginia G* requested at  
12 any time the supply of medical treatment, food or potable water or anything else to  
13 the FISCAP authorities?  
14

15 **MR NELSON SANÓ** (*Interpretation from Portuguese*): About this fact, what has  
16 been happening usually is that when ships are arrested at the ports the captain must  
17 assume the treatment of their crew is allowed to supply the ship as he wants, and he  
18 also must come to the help of his representative. Apart from this situation, in case  
19 there is the need of any support from FISCAP, it is provided promptly, but at any  
20 moment I was not aware that the crew was imprisoned or suffering any damage from  
21 this account.  
22

23 **MR MENEZES LEITÃO:** I have no further questions, Mr President.  
24

25 **THE PRESIDENT:** Thank you, Mr Leitão. I ask the Agent of Panama whether he  
26 wishes to cross-examine the witness.  
27

28 Mr García-Gallardo, you have the floor.  
29

30 **MR GARCÍA-GALLARDO:** Thank you, Mr President.  
31

32 **Cross-examination by MR GARCÍA-GALLARDO**  
33

34 **MR GARCÍA-GALLARDO:** Mr Carlos Nelson Sanó, you drafted an affidavit, a  
35 witness statement, on 28 February 2012 where you stated “I just want to tell only the  
36 truth”. Could you please look at my eyes and tell me if you want to tell the truth?  
37

38 **MR NELSON SANÓ** (*Interpretation from Portuguese*): Yes, I do. I will say only the  
39 truth.  
40

41 **MR GARCÍA-GALLARDO:** Can you confirm that any member of the crew, whether  
42 officer or seaman, was accused criminally, civilly or administratively as an individual  
43 by any member of the administration or any local court?  
44

45 **MR NELSON SANÓ** (*Interpretation from Portuguese*): That I am aware of no, it  
46 doesn't come to my knowledge in the case of incrimination or any kind of problem  
47 with the crew of *Virginia G*.  
48

49 **MR GARCÍA-GALLARDO:** Let's go to the witness because we have little time and  
50 we have too many witnesses. Would you please go to 46 evidence of our Memorial,

1 in the Portuguese version? This is a request on 16 September 2009 by the local  
2 agent to coordination of FISCAP where only three weeks after the arrest of the ship,  
3 of any officer or seaman, the local agent requested formally the release or the return  
4 of the passport needed by one officer who wanted to leave to renovate his passport  
5 in Spain – no, his residence permit in Spain. Now I will show you the reply by Mr  
6 Hugo Nosoliny Vieira sent a week after to the local agent of the company, where you  
7 can read that they deny the return of the passport with arguments that they need to  
8 consider this with the *Fiscalização* or with any other authority. I think with the  
9 committee – the *Comissão Interministerial* is the one that takes this type of  
10 decisions. So coming back to the truth and only the truth, do you seriously believe  
11 that an individual working in the same building as you in FISCAP's headquarters in  
12 Bissau can still argue that the first conservative date that FISCAP returned – and  
13 you, because you were the leading person – you said that you were in charge of this  
14 – returned the passport to the first officer of the arrested vessel, it was only – I do not  
15 want to discuss whether one week or two weeks after, but by mid-November or even  
16 later, because, at the end of the day, as you can see, this officer left only just before  
17 Christmas. Do you seriously believe that nobody approached anybody from the  
18 Guinea-Bissau administration and particularly you, as leading officer – 12 years  
19 working in the administration in FISCAP – to release this passport to the officer?  
20

21 **MR NELSON SANÓ** (*Interpretation from Portuguese*): I have already said that  
22 clearly. As you are showing here, the correspondence signed by Hugo – this is not to  
23 my knowledge. No-one has contacted me personally for the passports. The  
24 correspondence arrived gradually and nothing came. I only worked to delivery of  
25 passports when I get the correspondence in my hands and they requested to return  
26 the passports.  
27

28 **THE PRESIDENT:** Thank you, Mr García-Gallardo.  
29

30 I ask the Agent of Guinea-Bissau whether he wishes to re-examine the witness.  
31

32 **MR MENEZES LEITÃO:** No.  
33

34 **THE PRESIDENT:** No. Thank you very much.  
35

36 I thank Mr Sanó. Thank you for your testimony. Your examination is now finished.  
37 You may withdraw. I am sorry, there is one Judge, Judge Kulyk, who would like to  
38 ask questions.  
39

40 **JUDGE KULYK:** Mr Sanó, are you aware of any legislative or administrative rules in  
41 Guinea-Bissau that govern the procedures of withdrawing and returning passports to  
42 members of the crew from detained or arrested vessels?  
43

44 **MR NELSON SANÓ** (*Interpretation from Portuguese*): As I said in a previous  
45 question, I worked there. What has been the practice usually for control purposes – it  
46 can be confirmed by the general director of the Ministry of Fisheries – that no crew  
47 member is arrested on a boat, passports are the only purposes of controlling the  
48 crew and then they are returned, so this is my answer.  
49

1 **JUDGE KULYK:** You probably did not understand my question. I was asking  
2 whether there are any orders, decrees or something which regulates the withdrawal  
3 or returning of the passports.  
4

5 **MR NELSON SANÓ** (*Interpretation from Portuguese*): It is like I said. Usually these  
6 have been the practices as confirmed by the notice of the general director. I have no  
7 legislative report on this. The passports are for controlling of the crew and to help the  
8 crew.  
9

10 **THE PRESIDENT:** I thank Judge Kulyk for the questions.

11  
12 Your examination is finished, Mr Sanó. You may withdraw. Thank you very much.

13  
14 Mr Leitão, how do you wish to continue?  
15

16 **MR MENEZES LEITÃO:** I will now call Mr Augusto Artur António da Silva.  
17

18 **THE PRESIDENT:** Thank you, Mr Leitão.  
19

20 The Tribunal will then proceed to hear the witness Augusto Artur António da Silva.  
21 He may now be brought into the court room.  
22

23 I call upon the Registrar to administer the solemn declaration.  
24

25 *(The witness made the solemn declaration)*  
26

27 **THE PRESIDENT:** Good afternoon, Mr da Silva. I wish to remind you of the  
28 following. The work of the interpreters and the verbatim reporters is a very complex  
29 task. This is even more so when, as it will be the case now, not only English and  
30 French are used, but also a third language such as Portuguese. Therefore, I must  
31 urge you to speak slowly and please leave sufficient time after someone else has  
32 spoken to you before you answer. The statement or question of someone else  
33 before you will be translated into English and then into French, so you have to wait  
34 until the interpretation into French has been completed. When the interpretation into  
35 French has finished, I will give you a sign to this effect, like *this*. Only then the  
36 interpreters can follow you.  
37

38 Mr Leitão you have the floor.  
39

40 **MR MENEZES LEITÃO:** Thank you, Mr President.  
41

42 **Examination by MR MENEZES LEITÃO**  
43

44 Mr da Silva, could you tell this Tribunal what is your profession?  
45

46 **MR DA SILVA** (*Interpretation from Portuguese*): I am a fishing engineer by  
47 profession.  
48

49 **MR MENEZES LEITÃO:** What political positions have you occupied in the  
50 Government of Guinea-Bissau?

1  
2 **MR DA SILVA** (*Interpretation from Portuguese*): I was Minister of Fishery; I was  
3 Minister of Defence; and I was Minister of National Education, Culture, Science,  
4 Youth and Sports. I have worked in cooperation too.  
5  
6 **MR MENEZES LEITÃO**: What was your position at the time of the arrest of the  
7 *Virginia G*?  
8  
9 **MR DA SILVA** (*Interpretation from Portuguese*): I was Minister of Defence.  
10  
11 **MR MENEZES LEITÃO**: Were you also a member of the Interministerial Maritime  
12 Enforcement Commission?  
13  
14 **MR DA SILVA** (*Interpretation from Portuguese*): Yes.  
15  
16 **MR MENEZES LEITÃO**: What was the function of that entity?  
17  
18 **MR DA SILVA** (*Interpretation from Portuguese*): The Commission is responsible  
19 under the law for enforcement of activity of Guinea-Bissau.  
20  
21 **MR MENEZES LEITÃO**: What happened with the fishing boats *Amabal I* and  
22 *Amabal II* from 11 August 2009?  
23  
24 **MR DA SILVA** (*Interpretation from Portuguese*): As a member of the Commission, I  
25 received information in a notification that *Amabal I* and *Amabal II* should have been  
26 arrested, and they were undertaking illegal activities.  
27  
28 **MR MENEZES LEITÃO**: Was there a fine applied to *Amabal I* and *Amabal II*?  
29  
30 **MR DA SILVA** (*Interpretation from Portuguese*): Yes, they had to pay a fine of  
31 \$150,000 each. Then on request the ship was released.  
32  
33 **MR MENEZES LEITÃO**: There was a request of the former Consul of Spain to you.  
34 Could you please tell the Tribunal what you have discussed with the former Consul  
35 of Spain?  
36  
37 **MR DA SILVA** (*Interpretation from Portuguese*): The Honorary Consul of Spain  
38 came to see me as a member of the inspection and explained the situation of the  
39 company. We analysed the situation. We also received a letter requesting the  
40 release of the ship on behalf of the Embassy of Spain in the person of the  
41 Ambassador. We analysed the letters and the Commission decided that it was fair in  
42 view of the complaints that had been lodged. The Commission took this condition  
43 into account and released the vessels.  
44  
45 **MR MENEZES LEITÃO**: So there was an intention that the ships will pay the fine  
46 after getting resources from the fishing activity.  
47  
48 **MR DA SILVA** (*Interpretation from Portuguese*): Yes.  
49

1 **MR MENEZES LEITÃO:** But after that you discovered that the ships were being  
2 fuelled by this vessel, *Virginia G*, without authorization of the vessel *Virginia G* before  
3 such an operation. Can you tell us what happened in that moment?  
4

5 **MR DA SILVA** (*Interpretation from Portuguese*): In fact the two *Amabal* ships were  
6 released and went back to their activity. On the 21<sup>st</sup> again, the inspection services  
7 arrested these vessels because they were being fuelled by the *Virginia G*.  
8

9 **MR MENEZES LEITÃO:** What happened afterwards?  
10

11 **MR DA SILVA** (*Interpretation from Portuguese*): After that, as they had no FISCAP  
12 authorization, they were taken to the port of Bissau.  
13

14 **MR MENEZES LEITÃO:** Did the Interministerial Maritime Commission apply the fine  
15 for this situation? What kind of sanctions were applied?  
16

17 **MR DA SILVA** (*Interpretation from Portuguese*): The *Virginia G* was confiscated but  
18 the *Amabal* ...  
19

20 **MR MENEZES LEITÃO:** What happened to the *Amabal I* and *II*?  
21

22 **MR DA SILVA** (*Interpretation from Portuguese*): As I said before, on the basis of the  
23 official note from the Spanish Ambassador, because of the good relations between  
24 the two countries, we took this request into account and decided to release them  
25 because the crew was Spanish and the captain was also Spanish; so we released  
26 *Amabal I* and *Amabal II*. But regarding the *Virginia G*, there was no representative;  
27 nobody showed up to take responsibility. There was no representative of this ship.  
28

29 **MR MENEZES LEITÃO:** Could it have a pernicious effect on Guinea-Bissau if it did  
30 not accept to release the Spanish boats?  
31

32 **MR DA SILVA** (*Interpretation from Portuguese*): Yes, because our relationship with  
33 Spain is very important and we feel that the fine that was imposed on the two  
34 *Amabal* boats, due to the cooperation between the two countries, we felt that it was  
35 better to let them go and allow them to go along as to continue our commitments  
36 with Spain, especially in the sector of fishery.  
37

38 **MR MENEZES LEITÃO:** Do you consider the infraction committed by *Virginia G* and  
39 the infraction committed by *Amabal I* and *II* to have the same gravity?  
40

41 **MR DA SILVA** (*Interpretation from Portuguese*): No, because the *Virginia G* was  
42 bunkering the other vessels without authorization and that was taken into account  
43 because the other ships were fishing with authorization while the *Virginia G* had no  
44 authorization.  
45

46 **MR MENEZES LEITÃO:** So *Amabal I* and *II* had a valid fishing licence and  
47 *Virginia G* had no licence at all? Do you confirm this?  
48

49 **MR DA SILVA** (*Interpretation from Portuguese*): Yes, I do.  
50

1 **MR MENEZES LEITÃO:** No further questions, Mr President.  
2  
3 **THE PRESIDENT:** Thank you, Mr Menezes Leitão. I ask the Agent of Panama  
4 whether he wishes to cross-examine the witness.  
5  
6 **MR GARCÍA-GALLARDO:** Your Honour, certainly I wish to but I will not do that now.  
7 I need 15 minutes.  
8  
9 **THE PRESIDENT:** Would you like to cross-examine after the break?  
10  
11 **MR GARCÍA-GALLARDO:** If you grant me 20 minutes or 15 minutes, I can do that  
12 now.  
13  
14 **THE PRESIDENT:** Thank you. We have reached almost one o'clock so at this stage  
15 the Tribunal will withdraw for a lunch break and we will resume the examination at  
16 2.55.  
17  
18 **MR GARCÍA-GALLARDO:** May I request that the witness remains in a separate  
19 room during the break?  
20  
21 **THE PRESIDENT:** He will withdraw now and he will wait in a separate room.  
22  
23 **MR MENEZES LEITÃO:** Mr President, may the witness lunch at this time?  
24  
25 **THE PRESIDENT:** You have two hours from now. Thank you very much.  
26  
27 **MR GARCÍA-GALLARDO:** Mr President, perhaps I did not explain myself. I was  
28 asking whether it was possible for the witness to stay alone in a courtroom, as is the  
29 usual practice when you conduct cross-examinations and there is a break.  
30  
31 **THE PRESIDENT:** I am sorry. I did not understand your question.  
32  
33 **MR GARCÍA-GALLARDO:** I will repeat my comment. I would like your Honour to  
34 consider that the witness stay alone in the witness room, without the possibility to  
35 meet with the lawyers, because the cross-examination will be completely different.  
36  
37 **THE PRESIDENT:** He may stay alone but as long as he can have lunch.  
38  
39 **MR GARCÍA-GALLARDO:** Of course.  
40  
41 **MR MENEZES LEITÃO:** Mr President, I think it is not possible for the witness to  
42 lunch in the home of the Tribunal, so the question is, is the witness allowed to go  
43 somewhere to lunch or does he have to stay two hours in the Tribunal without getting  
44 any food or water? I think it would be worse treatment than the treatment that  
45 Panama is saying was provided to the crew of *Virginia G!*  
46  
47 **THE PRESIDENT:** No, I do not mean that. Of course the witness can have lunch.  
48 Perhaps the witness should refrain from having contact with the Agents.  
49  
50 The meeting is adjourned now until 2.55.

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*(The sitting was closed at 12.55 p.m.)*