

STATEMENT IN RESPONSE OF GUINEA-BISSAU

**(a) Letter from Mr Staker to the Registrar received on 26 November 2004
requesting a postponement of the hearing**

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HE Mr Philippe Gautier
Registrar
Am Internationalen Seegerichtshof 1
22609 Hamburg
Germany

By fax: 00 49 40 356 07 275

Dear Mr Gaultier,

On behalf of the Government of the Republic of Guinea-Bissau, I request a postponement of the hearing in Case No. 13, *The "Juno Trader" Case (Saint Vincent and the Grenadines v. Guinea-Bissau), Prompt Release*.

By an Order dated 19 November 2004, the President of the Tribunal fixed 1 and 2 December 2004 as the dates for the hearing in this case.

However, the Government of Guinea-Bissau is not able to prepare sufficiently for the hearing before the Tribunal in the available time.

In the circumstances, the Government of the Republic of Guinea-Bissau requests that the hearing in this case be postponed by one week, to 8 and 9 December 2004.

The Government of the Republic of Guinea-Bissau requests a corresponding postponement of the time limit for the filing of the statement in response of the Republic of Guinea-Bissau, and supporting documents, pursuant to Article 111, paragraph 4, of the Rules of the Tribunal.

Yours sincerely,



Christopher Staker
Agent for Guinea-Bissau

(b) Letter from Mr Gerdts to the Registrar dated 29 November 2004 in response to the request for postponement (see (a) above), with annexes (annexes not reproduced)

[Translation from French by the Registry]

DÖHLE
ASSEKURANZKONTOR

Hamburg, 29 November 2004

JUNO TRADER CASE

A. Addendum to the application by Saint Vincent and the Grenadines dated 18 November 2004 and communication of additional annexes.

B. Concerning the request by the Agent of Guinea-Bissau for an amendment to the dates scheduled for the hearings before the International Tribunal for the Law of the Sea in the case of the "Juno Trader" (Saint Vincent and the Grenadines v. Guinea-Bissau).

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A. Addendum to the application by Saint Vincent and the Grenadines dated 18 November 2004 and communication of additional annexes

1. We are responding to your faximile of 25 November 2004 and confirm to you that we are listing separately, in accordance with your instructions, the new document and its translation which were addressed to you on 19 November 2004 concerning paragraph 23 of our application with the aim of completing annex 11.
2. We shall do the same for the documents submitted below, which we shall incorporate into our application accompanied by their respective commentaries and listed below:
3. At the beginning of paragraph 43 of our application, we mention an interview with the Master of the JUNO TRADER by Mr Lance FLEISCHER – you will find that document attached hereto, which will be annex 46 of the application.
4. The Regional Court of Bissau, on the application of the shipowners, on 23 November 2004 ordered the immediate stay of the effects of Minute 14/CIFM/04 of the Interministerial Maritime Control Commission dated 19 October 2004 and in particular the stay of all the measures taken against the vessel and its cargo, the return of all the crew's passports and the immediate stay of the payment of the fine imposed on the Master of the vessel and the use of the letter of security which had been posted – you will find that document attached (14 pages) in an astonishing but authentic manuscript presentation, with the exception nevertheless of two documents respectively entitled "mandado" and

International Tribunal for the Law of the Sea
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“liquidação” bearing the heading of the Republic of Guinea-Bissau. You will also find attached the free translation of those two latter documents together with the translation of the structure of the order and its final operative part (the remainder of the translation is under way and will be submitted as soon as possible – that document and its translation will be annex 47.

5. In order to place at the Tribunal’s disposal the full set of elements enabling it to decide on the correct amount of the bond in consideration of the prompt release of the vessel JUNO TRADER and its crew, please find attached a statement of the costs incurred by the company JUNO REEFERS Ltd from the detention of the vessel JUNO TRADER at Bissau from 27 September 2004 to the present – the amount of the direct costs for the company associated with the detention of the vessel JUNO TRADER is estimated at this time at USD212,120, an amount to be made up and augmented by the incidental costs (representation, costs of the lawyer in Bissau etc.) – this two-page document will be annex 48.
6. Annex 41 is composed so far of two photographs showing Guinea-Bissau’s fisheries monitoring fleet; here is a third and clearer one – that photograph will be annex 41-3.
7. Annex 42 is composed so far of two photographs showing bullet impacts; we attach two more bullet impact photographs and another shot showing various cartridge cases found on board the JUNO TRADER after the shooting of 26 September 2004 – photograph taken by Mr Fleischer in the quarters of the Master of the JUNO TRADER in the late afternoon of 25 October 2004 – after the photograph was taken, the cartridges were passed to Mr Huens de Brouwer, who will make them available to the Tribunal at the hearing on 1 and 2 December next – the photograph of the cartridges will be annex 42-3. Lastly are two photographs taken on 17 November 2004 by Mr Fleischer when he went on board the JUNO TRADER with the help of the national Navy’s small grey Zodiac; on the first photograph one can see the JUNO TRADER in the background and the man in civilian clothes on the right wearing a shoulder strap which proves to be a rifle on the second photograph – we would say explicitly however that this is nevertheless one of the servicemen coming to relieve one of his colleagues responsible for “guarding” the JUNO TRADER, an explicit statement which is not superfluous given the soldier’s civilian clothing – the uniforms of some representatives of the State of Guinea-Bissau are manifestly oddments and one will [not] fail to recall in that regard the description of the first people who approached the JUNO TRADER in a Zodiac (see paragraph 95 of the application) – the two new photographs will be annex 42-4.
8. Lastly, we attach, in annex 49, a new provisional statement of the Applicant’s costs.

B. Concerning the request by the Agent of Guinea-Bissau for an amendment to the dates scheduled for the hearings before the International Tribunal for the Law of the Sea in the case of the “Juno Trader” (Saint Vincent and the Grenadines v. Guinea-Bissau).

9. By Order of 19 November 2004, the President of the International Tribunal for the Law of the Sea fixed 1 and 2 December as the dates of the hearings in the “Juno Trader” case (Saint Vincent and the Grenadines v. Guinea-Bissau). That order follows the application for prompt release of the cargo vessel “Juno Trader” and the prompt release of 19 members of its crew made on 18 November 2004 under Article 292 of the United Nations Convention on the Law of the Sea by Saint Vincent and the Grenadines, flag State of the detained vessel.
10. Prompt release proceedings are by their nature urgent proceedings given the major financial losses which the detention of a vessel entails for the shipowner. The urgent nature of the proceedings is duly recognized by several provisions of the Convention, the Statute of the Tribunal and also the Rules of the Tribunal. Characteristically, Article 112, paragraph 1, of the Rules of the Tribunal states that: “The Tribunal shall give priority to applications for release of vessels or crews over all other proceedings before the Tribunal”. The time allotted for fixing the dates of hearings, [and] for the date for adopting the judgment are, similarly, extremely short.
11. The filing of a possible response by the Respondent State is, as is only logical, restricted to a short space of time. According to Article 111, paragraph 4, of the Rules of the Tribunal, “the detaining State [which] *may* submit a statement in response with supporting documents annexed, to be filed *as soon as possible* but *not later than* 96 hours before the hearing referred to in article 112, paragraph 3” (our emphasis).
12. It is clear from this last provision that the “detaining State”, which we will call, more simply, the “Respondent State”, is not at all obliged to respond to the application for prompt release of the vessel and/or its crew. For its part, the Tribunal itself is not at all dependent on the response of the Respondent State. It may order the release of the vessel and/or its crew on the evidence of the documents provided by the flag State and on the basis of the statements and other oral explanations which the Respondent State may wish to make at the oral hearings (naturally, neither is the Respondent State obliged to be represented at those hearings).
13. The *possibility* for the Respondent State to respond must, in any event, be made use of “as soon as possible”, an expression which, of course, is in itself vague while at the same time particularly eloquent. Its vagueness is corrected by the precision of Article 111, paragraph 4, “not later than 96 hours before the hearing”. The expression “as soon as possible” must be weighed on its own merits, with the expression “not later than 96 hours before the hearing” playing the role of an absolute shield against any abuse on the part of the Respondent State. This means that a response coming to the Tribunal even before the 96 hours ought not to be considered *ipso facto* as free of any taint of abuse of right and/or procedure. The

“possibility” for the Respondent State, which we find clearly set forth in the expression “as soon as possible” ought, consequently, to be weighed on the basis of the objective criteria available to the Tribunal and, more particularly, its President.

14. So, according to the documents themselves issued by the authorities of Guinea-Bissau (one questions how their authenticity could be doubted), it appears that the vessel “Juno Trader” was boarded on 26 September 2004 and detained at the latest the following day, 27 September 2004. There is no doubt that it was from that long-ago date (in any event, very long ago for a crew deprived of liberty...) that the competent authorities of the Respondent State ought to have prepared their defence with a prompt release application in view, which was becoming difficult to avoid in due proportion to their own actions and omissions. May we be permitted to believe that the said authorities knew that the State on whose behalf they are acting, was (and still is, moreover) bound by a United Nations Convention on the Law of the Sea of which a certain Article 292 is an integral part. At the very least, they had the “possibility” of which Article 111, paragraph 4, of the Rules of the Tribunal speaks, to prepare the arguments for their defence from 18 October 2004, the date on which Minute No. 14 of the Interministerial Commission of the Ministry of Fisheries was adopted. We do insist, however, on this point: it was not on 18 October 2004, but actually and definitely on 26 or 27 September 2004 that the “Juno Trader” was detained.
15. Even so, and even if our interpretation of the expression “as soon as possible” in Article 111, paragraph 4, of the Rules of the Tribunal, could not be adopted by the Tribunal or its President, it is nevertheless true that on the eve of the expiration of the 96-hour deadline the Respondent State is asking for the hearings to be fixed on 8 and 9 December 2004 instead of as initially scheduled for 1 and 2 December 2004. If we dig a little deeper, we note, however, that, according to the official information forwarded to us by the Registrar of the Tribunal, on the eve of the expiry of the 96-hour deadline (i.e., 26 November 2004), Guinea-Bissau not only requested, through its Agent, a change in the hearing dates, it was on that very day that it decided to appoint an agent! At the – extreme – limit, one might have been able to understand that the Agent of the Respondent State should ask for additional time to improve his case file, but to appoint the Agent the day before the time limit ran out looks extremely like an abuse of procedure.
16. Moreover, this appointment *in extremis* of the Agent ceases simply to resemble an abuse, but to truly become one when one takes into consideration certain more recent elements in the development of the “Juno Trader” case.
17. More particularly, on the application of the owners of the detained vessel, the Regional Court of Bissau on 24 November 2004 ordered the stay of the effects of Minute No. 14 of the Ministry of Fisheries (Interministerial Maritime Inspection Commission). It will be recalled, in any event, that in Romano-Germanic legal systems (of which Guinea-Bissau’s is one), the judge cannot act on an application to stay the effects of an administrative act unless he considers that the said administrative act is, *prima facie*, illegal, the illegality in question being of course understood broadly in the manner in which it encompasses, most often, the

international obligations incumbent on the State. The exceptional nature of that stay is justified by the fact that the Administration is supposed to adopt unilateral administrative acts within a framework of legality. Thus it was the national judge himself who appears (since his weighing of the merits must always be preserved) to have had significant doubts on the subject of the legality of Minute No. 14. Naturally, in a State where the Administration operates under the control of the courts, the Administration must act without delay on the orders of those courts. However, according to the information which we are receiving from the field and which, let us hope, will become more exact in the next few hours, the Administration, more precisely, the Interministerial Maritime Inspection Commission of the Ministry of Fisheries, is still refusing, under several pretexts, to carry out the judicial decision of the Regional Court of Bissau. This attitude once again surpasses our understanding. Such understanding-surpassing events have of course have been encountered all through this case, but it really is difficult to get used to them!

18. The attitude of the Administration in Bissau thus appears to defy the justice system of its own country openly. It is difficult not to establish a parallel with that same Administration's attitude towards the International Tribunal for the Law of the Sea. In the first place, it is refusing to implement a court decision (but what use are judges, then?). In the second place, it appoints an agent to the Tribunal the day before the expiry of the deadline within which it ought to submit its response to the application of the flag State. One notes an undeniable obstructionism in this – and this is another case in which one wonders what good this would serve.
19. To conclude, the Applicant in the present case opposes the request by the Respondent State whereby the Tribunal or its President would postpone the hearings to a week later than initially scheduled while naturally recognizing the total latitude which the Tribunal or its President have to do so if they are not convinced by the arguments above. Alternatively, the Applicant requests the Tribunal or its President to be so good as to fix any new dates for the hearing taking into account the above observations but also the extreme concern of the detained crew. The crew knows that the hearings will take place on 1 and 2 December 2004. For someone who has already been deprived of his liberty for over two months, to learn that he will be deprived of liberty for another week (just before Christmas...) may be disproportionately cruel. And it is no matter to him if the behaviour of the State which is depriving him of his liberty is attributable to gratuitous obstructionism, to a form of contempt for the Tribunal and/or the flag State or to disorder or disorganization in some local administrations in rebellion against the justice system of their own country.

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20. We certify that a copy of the present and of all its cited and annexed documents has been communicated to the flag State.

DÖHLE
ASSEKURANZKONTOR GmbH & Co. KG

(signed)

Werner GERDTS
As Agent of Saint Vincent and the Grenadines

Attachments:

Annex 46 (2 pages)
Annex 47 (18 pages)
Annex 48 (2 pages)
Annex 41-3 (1 page)
Annex 42-3 (1 page)
Annex 42-4 (1 page)
Annex 49 (1 page)

(c) Letter from Mr Staker to the Registrar dated 2 December 2004

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HE Mr Philippe Gautier
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02 December 2004

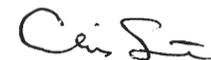
Dear Mr Gautier,

I acknowledge receipt by fax of your letter dated 1 December 2004, transmitting to me the Order of the Tribunal of the same date postponing the continuation of the hearing in the *"Juno Trader" Case (Saint Vincent and the Grenadines v. Guinea-Bissau), Prompt Release*, to 6 December 2004. That Order also extended to 2 December 2004, at 10:00 hours, the time limit for the filing of a statement of Guinea-Bissau.

Guinea-Bissau is not in a position to file a statement in response within the stated time-limit. Under Article 111, paragraph 4, of the Rules of the Tribunal, the filing of a statement in response is not mandatory. Nevertheless, we consider a statement in response to be desirable, including in order to give notice to the Applicant of the nature of the case to be presented by Guinea-Bissau. In the circumstances, Guinea-Bissau requests an extension of the time limit for the filing of its statement in response. I would propose that this matter be discussed at the telephone consultations with the President to be held today.

I also wish to confirm that I will be available for the telephone consultations with the President today at any time that is convenient to the Tribunal. I would, however, be grateful if you could give me advance notice of at least 30 minutes of the time at which the consultations are to be held.

Yours sincerely,



Christopher Staker
Agent for Guinea-Bissau