

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
TRIBUNAL INTERNATIONAL DU DROIT DE LA MER



2004

Public sitting

held on Tuesday, 7 December 2004, at 3 p.m.,
at the International Tribunal for the Law of the Sea, Hamburg,

President L. Dolliver M. Nelson presiding

The “Juno Trader” Case
(Application for prompt release)

(Saint Vincent and the Grenadines v. Guinea-Bissau)

Verbatim Record

Uncorrected
Non-corrigé

Present:

President	L. Dolliver M. Nelson
Vice-President	Budislav Vukas
Judges	Hugo Caminos
	Vicente Marotta Rangel
	Alexander Yankov
	Soji Yamamoto
	Anatoli Lazarevich Kolodkin
	Choon-Ho Park
	Paul Bamela Engo
	Thomas A. Mensah
	P. Chandrasekhara Rao
	Joseph Akl
	David Anderson
	Rüdiger Wolfrum
	Tullio Treves
	Mohamed Mouldi Marsit
	Tafsir Malick Ndiaye
	José Luis Jesus
	Guangjian Xu
	Jean-Pierre Cot
	Anthony Amos Lucky
Registrar	Philippe Gautier

Saint Vincent and the Grenadines is represented by:

Mr Werner Gerds, Döhle Assekuranzkontor GmbH & Co KG, Hamburg, Germany,

as Agent;

Mr Vincent Huens de Brouwer, Lawyer, Eltvedt & O'Sullivan, Marseilles, France,

as Deputy Agent;

and

Mr Syméon Karagiannis, Professor, Faculty of Law, Université Robert Schuman, Strasbourg, France,

as Counsel;

Mr Lance Fleischer, Manager, Juno Management Services, Monaco,
Mr Fernando Domingos Tavares, Director, TCI Bissau/Transmar Services Limited, Bissau, Guinea-Bissau,

as Advisers.

Guinea-Bissau is represented by:

Mr Christopher Staker, Barrister, Bar of England and Wales, London, United Kingdom,

as Agent, Counsel and Advocate;

Mr Octávio Lopes, *Chef de Cabinet*, Ministry of Fisheries,

as Co-Agent;

and

Mr Ricardo Alves Silva, Miranda, Correia, Amendoeira & Associados, Lisbon, Portugal,

Mr Ramón García-Gallardo, Partner, S.J. Berwin, Brussels, Belgium,

as Counsel and Advocates;

Ms Dolores Dominguez Perez, Assistant, S.J. Berwin, Brussels, Belgium,

as Counsel;

Mr Malal Sané, Coordinator, National Service of Surveillance and Control of Fishing Activities,

as Adviser.

1 THE PRESIDENT: This afternoon we will continue hearing the Applicant. I give the
2 floor to Mr Lance Fleischer.

3

4 MR FLEISCHER: Good afternoon, Mr President, distinguished members of this
5 Tribunal. Thank you for the opportunity you have given me to address the Tribunal.

6

7 My name is Lance Fleischer and I work at Juno Management Services SAM, a
8 company registered in Monaco. This company is a wholly-owned subsidiary of the
9 South African seafoods company Irvin and Johnston Ltd., based in Cape Town.

10

11 Given that I am not a legal practitioner in the same way as Mr Tavares, but rather
12 a manager of more straightforward activities, such as operating reefer vessels and
13 pelagic factory freezer trawlers, please allow for my lack of legal terminology. I have
14 been involved in the pelagic fishing business for the past 10 years but this is the first
15 time I find myself in a hearing of this nature.

16

17 I will address three issues: the value of the cargo; the value of the vessel; the value
18 of the whole package, and thus, should this distinguished Tribunal so decide, the
19 value of the bond.

20

21 Your Honours, I would like to speak from the heart. The *Juno Trader* is a lovingly
22 maintained lady of 35 years old, and she is stuck. Will she ever be freed, and in
23 what condition? Alone I was not able to resolve this conundrum during my visit to
24 the wonderful country of Guinea-Bissau last month, but perhaps the Tribunal can do
25 that. I met fantastic people. Guinea-Bissau is a wonderful and interesting place but
26 I could not resolve this problem.

27

28 The value of the cargo: the cargo on *Juno Trader* was sold for a value of
29 US\$459,938.65 cents on terms C&F basis in Tema, Ghana. A copy of the invoice is
30 available if the Tribunal wishes to see it. This includes fishmeal valued at \$63,280.

31

32 The Guinea-Bissau technical fish inspection commission, CIPA, found the cargo in
33 good condition when they inspected it in early October, with temperatures at -20°C.

34 We were informed that the fish authorities, FISCAP, had placed the frozen fish cargo

1 on auction around 26/27 October, and our agents were subsequently informed on
2 several occasions that the cargo would be discharged at any moment. However, we
3 were, surprisingly, informed yesterday that the cargo has not yet been sold in public
4 auction, and it is now more than a month later. Let me remind you that the frozen
5 fish cargo is still inside the *Juno Trader* with the compressors and the freezer
6 equipment still running.

7

8 I would like to suggest that, given the frozen fish cargo remains unsold at this late
9 stage, there is a good chance that its market value has been considerably reduced,
10 perhaps even to zero. In addition, we understood initially that the fishmeal was not
11 confiscated and for sale, as it appears that the fishmeal did not interest the CIPA and
12 its origin, Mauritanian or Guinean, was not an issue, but during my stay in
13 Guinea-Bissau I can assure you that nobody had the slightest interest in the
14 fishmeal. We would respectfully suggest that the value of the fishmeal be deducted
15 from any agreed valuation of the cargo.

16

17 The value of the vessel: the net book value of *Juno Trader* on our account is
18 US\$460,000. As you have heard from the Guinea-Bissau delegation, and I would
19 like to thank them for this, the vessel is in good condition for a ship of this age. As
20 with all the ships that we manage, they are all maintained in top-class condition with
21 all class and statutory documents up to date. How else could we trade legally in all
22 the ports at which we call, such as Tema, Matadi, Maputo, Nouadhibou and
23 Walvis Bay? These are all African ports where this business is conducted. The
24 *Juno Trader* as a reefer is able to store and hold frozen cargo at the required
25 temperature of -18°C, which is the requirement on most charter parties and also
26 required to be mentioned on bills of lading in the reefer trade.

27

28 As for the market value of the vessel, I would suggest that the market value of the
29 vessel "as is, where is" could be the subject of considerable debate, and indeed
30 affected by the potential doubts over flagging and ownership as suggested by
31 Mr Staker in his speech yesterday. Let us say that the vessel at anchorage off Port
32 of Bissau is very difficult to value and I would probably have to look at other vessels
33 in similar places. Again, I speak from the heart: I can assure you that the value of
34 the vessel would be zero if, unhappily, it ended up in the same way as the

1 *Josephine*, which I saw at anchor off the Port of Bissau and which is currently listing
2 seriously and will probably sink soon. I gather this was reported on Guinea-Bissau
3 radio last week. This is something which I report because I have seen those
4 vessels.

5

6 The value of bunkers: we have left on board about 210 tons of gasoil. The price of
7 gasoil in Guinea-Bissau is 350XOF or francs CFA per litre. However, the bunkers
8 are needed to keep the engines running, so perhaps the value of the bunkers is also
9 very difficult to ascertain as, if the compressors stop running, then the cargo will be
10 spoiled and the bunkers will have a negative value if you take them out of the vessel.

11

12 The value of the discharge costs: I do not know how to value a discharge cost either
13 as normally we would not be involved in discharge. These costs are not for the
14 vessel owner in a C&F delivery; they are for the charterer or the receiver.

15

16 I would like to suggest also that we consider the value of goodwill. Notwithstanding
17 questions of ownership of the vessel, cargo and crew, the undisputed fact is that the
18 *Juno Trader* has acted as a floating cold storage off Guinea-Bissau since
19 27 September. The running costs out of pocket have been about \$3,600 per day, as
20 per the submission. But, more importantly, the vessel has been preserved, the
21 cargo has been preserved, and the crew and military guards on board have been
22 well looked after. I would request that this element of valuation is extremely valuable
23 to the owners, whoever they may be, and this fact probably outweighs all the rest.

24

25 I would respectfully request your Honours that it is very difficult to consider the value
26 of any of the above items separately: the cargo, vessel, bunkers and crew form one
27 indivisible whole with intrinsic value off port of Guinea-Bissau only if they are kept
28 operating.

29

30 If this Tribunal should decide it has jurisdiction in this case, that the case is
31 admissible and well grounded, and that an order for prompt release can be issued,
32 then I respectfully submit that the value of the bond should take all the above factors
33 into consideration.

1

2 Thank you again, Mr President, for the opportunity to address the Tribunal.

3

4 THE PRESIDENT: Thank you very much, Mr Fleisher. I now give the floor to
5 Mr Vincent Huens de Brouwer.

6

7 MR DE BROUWER (Interpretation): Mr President, your Honours, first of all I would
8 like to refer to a document that was transmitted to us by the other party's counsel,
9 a statement whereby all members of the crew would be freed.

10

11 We maintain our statement of the morning session whereby six passports held by
12 the authorities be overturned. We do not accept that document and we ask the
13 tribunal not to accept it either.

14

15 I have the opportunity to address the form of the bond as set out in Article 292 of the
16 United Nations Convention of the Law of the Sea. Commercial use of vessels,
17 including fisheries, calls for a coverage for civil liability in the maritime sector but ship
18 owners are covered accordingly by their P&I club, the protection and indemnity club.
19 P&I clubs in actuality are ship owners associations with high capabilities that have
20 the contributions of members to use; in other words, contributions of ship owners.
21 The reserve of funds available in the P&I coffers exceeds £100 million (sterling),
22 which is the case for the international group of P&I clubs, including about ten of the
23 most well-known P&I clubs, including the ship owners; in other words, the P&I club of
24 the *Juno Trader* vessel which, on 18 November 2004, deposited its bond for a
25 maximum of €50,000 before the courts of Bissau. The financial reserve of the P&I
26 clubs irrefutably places them among the financial institutions that are recognised and
27 appreciated for their serious performance all around the world. We recall
28 Anne-Katrin Escher's article already referred to in paragraph 34 of the application in
29 this respect.

30

31 The International Maritime Association to which the fisheries companies and
32 specialised administrations are party therefore recognises the seriousness of
33 institutions such as the P&I clubs and in particular the foundation of their
34 commitment contained and reflected through the bonds as posted.

1

2 Guinea-Bissau is not familiar with the P&I clubs, it seems, and this is surprising; that
3 includes the P&I club of the *Juno Trader* because it is publicly known that ship
4 owners are a P&I club well known in civil liability coverage for trawlers.

5

6 The Guinea-Bissau trawlers may perhaps not be covered by that P&I Club or any
7 other. However, FISCAP, with its routine inspections, necessarily has encountered
8 foreign trawlers covered by P&I Clubs. Guinea-Bissau's counsel minimises this
9 essential factor in maritime activity, ie the P&I Club institution, qualifying it merely as
10 private companies issuing a letter – page 23 in the French language minutes,
11 paragraph 16. Our correspondent in the P&I Club in Marseilles has for many years
12 been representing in Europe the Africa TCI network and in turn P&I correspondents
13 based in many African ports. These minutes say that P&I Club letters for security
14 are recognized and required for many African maritime circles, whether
15 administration or private-sector based, and in particular the port authorities of these
16 African states because they know fully well that the P&I Club letters are security for
17 later action.

18

19 The P&I Club guarantee or security letters are equivalent to bank bonds. These are
20 a commitment on the part of the institution with large financial capital for counterpart
21 in the case of a release of a vessel to pay to a given party, the potential creditor, a
22 sum of money limited to a maximum amount either on the basis of an amicable
23 agreement between the parties or a relevant court decision.

24

25 Here, we propose that there be a simple comparison between the content of the
26 bond of the *Monte Confurco* at Annex 15, and that issued on 10 November 2004 by
27 the ship owner, P&I Club, deposited on 18 November 2004 before the relevant court
28 in Guinea-Bissau for comparability of terms.

29

30 Should the Tribunal decide on prompt release of the *Juno Trader* and release of its
31 crew with a bond, that could take the form of a letter similar to the Ship Owners' P&I
32 Club for a total amount that we would want kept as low as possible as earlier
33 recalled by Professor Karagiannis and Mr Fleischer.

34

1 Thank you, Mr President, for offering me an opportunity to make known to the
2 Guinea-Bissau counsel the actual situation in maritime activities.

3

4 I should like to conclude my statement regarding the precise points of our
5 application. St Vincent and the Grenadines request the Tribunal to make the
6 following orders and declarations: a declaration that the International Tribunal for the
7 Law of the Sea has jurisdiction pursuant to Article 292 of the United Nations
8 Convention on the Law of the Sea 1982, hereinafter called the Convention, to hear
9 the Application; a declaration that the Applicant is admissible; a declaration that the
10 Respondent has violated Article 73, paragraph 2 of the Convention in that the
11 conditions set by the Respondent for the release from detention of the vessel,
12 *Juno Trader* and the release of all members of its crew are not authorised pursuant
13 to Article 73, paragraph 2 and are not reasonable in terms of Article 73, paragraph 2;
14 an order requesting the Respondent to release the *Juno Trader* from detention and
15 to release all members of its crew without posting a bond or any other financial
16 security and in that event requesting the Respondent to return the bond already
17 posted; alternatively an order requesting the Respondent to release the *Juno Trader*
18 from detention and to release its crew as soon as the owner of the vessel posts a
19 bond and/or other financial security in an amount determined to be reasonable by
20 the Tribunal in view of the particular circumstances of this case; an order, in that last
21 event prescribing the form of the aforementioned bond or other security; an order
22 requesting the Respondent to rescind the confiscation of the cargo of fish found on
23 board the vessel *Juno Trader* and finally an order requesting the Respondent to pay
24 the Applicant's procedural costs.

25

26 THE PRESIDENT: Thank you, Mr de Brouwer. I thank the Agent of St Vincent and
27 the Grenadines. We shall now have a 35 minute break. The oral proceedings will
28 resume at five past four.

29 (Short adjournment)

30

31 THE PRESIDENT: Before beginning the hearing, I shall give the floor to the
32 Registrar to repeat certain questions which have been posed to the parties by the
33 Tribunal.

34

1 THE REGISTRAR: Further to your request, the questions which were transmitted
2 yesterday to the parties are as follows:

3

- 4 1. Under the Guinea-Bissau legal system can the decision of the Interministerial
5 Commission be subject to judicial review by the domestic court system?
- 6 2. In case the fisheries administration does not agree with the decision rendered
7 by a competent domestic judicial court suspending the effects of the decision
8 taken by the Interministerial Commission, what legal remedy under the legal
9 system of Guinea-Bissau can the fisheries administration resort to in order to
10 challenge the court's decision?
- 11 3. What remedies are available to the ship owner whose ship has been forfeited
12 to the state as a result of an administrative decision?
- 13 4. Are all members of the crew free to leave Bissau?

14

15 THE PRESIDENT: Would any of the parties like to respond as to how they propose
16 to deal with these questions? I give the floor to Mr Staker.

17

18 MR STAKER: Mr President, it would be the wish of our delegation to answer each of
19 these four questions as best we can during the course of the oral hearings today.
20 Should it prove necessary to submit anything further in writing, we are of course
21 available to do that. There is one matter I should raise at this stage. My delegation
22 has provided to the Registry a document that comes from the Government of
23 Guinea-Bissau, which is not intended to be our answer to question 4, but is
24 submitted in support of our answer to question 4. It is intended that my co-agent,
25 Mr Octávio Lopes, will provide an oral answer to question 4 and that this document
26 will then be used in support.

27

28 I understand that the rules of the Tribunal relate to the late submission of documents.
29 However, in our submission this is not a new document which our delegation of its
30 own motion has decided it now wishes to bring before the court. Rather, the court
31 has asked the parties a very factual question to which a very factual answer has to
32 be given. Normally, when a party makes a statement of fact it submits evidence in
33 support. In our submission, providing this document is in reality no different to the
34 court expressly asking for the logbook of the ship and that document being provided

1 at the court's request. I leave it to my colleagues appearing for St Vincent and the
2 Grenadines to indicate whether they have any opposition to that position. If they do,
3 I submit that there is a question of interpretation of the rules, which is a question of
4 procedural law of general importance and that therefore the Tribunal as a whole may
5 wish to render a legal opinion on that question of procedure.

6

7 MR KARAGIANNIS (Interpretation): With respect to the four questions that were
8 submitted last night, as I think we agreed during a meeting this morning, we will as
9 soon as possible, perhaps even this evening, give you written answers to those four
10 questions. Perhaps I could take a few minutes to give a purely oral answer to
11 question 4.

12

13 At five past four, just a few minutes ago, we contacted both the crew members who
14 are aboard the *Juno Trader* and maritime agent of that vessel, the local
15 representative, and no one could tell us whether the six remaining passports have
16 been returned to the crew members. So, this is a factual issue. As far as we know,
17 to date those passports have not been returned. What else can we say?

18

19 THE PRESIDENT: Professor Karagiannis, there is a question raised by the
20 Respondent viz á viz a document called, in the English translation, a declaration.
21 What are your views on the production of this document?

22

23 MR KARAGIANNIS (Interpretation): Perhaps I may have a moment to read this.
24 (After a pause) I shall take a stand right away with regard to this document,
25 especially with respect to the translation into English: "I declare on my honour for
26 any effect considered convenient, that on the members of the crew of the
27 *Juno Trader*, there is no prohibition or restriction to their freedom of movement; as
28 a matter of fact, there has never been an obstacle to the freedom of movement of
29 these people".

30

31 Earlier, I explained that apparently there is a difference of interpretation between the
32 two parties with respect to the words "freedom of movement", freedom to come and
33 go. For us this liberty still does not exist for the six remaining sailors. So, to the best
34 of our knowledge at this point in time the passports have still not been returned to

1 them. I shall carry on reading the declaration: “It is declared that upon request the
2 passports have been delivered to their respective addresses.”

3

4 I do not know what to say with respect to this statement. Obviously, the most
5 distinguished person, Mr Ildefonso Barros states “I declare upon my honour”. Of
6 course, I respect that person, whom I do not know personally. But our seamen and
7 the maritime agent have certified to us just 25 minutes ago that the six remaining
8 passports have not been returned. That is why earlier on we insisted on the Tribunal
9 ordering once again the total release of the last members of the crew. Liberation
10 means, to us, “Seamen – here, you have your passports.” So, we should like to
11 insist on the fact that the Tribunal take a stand on this issue. Of course I cannot
12 exclude the fact that perhaps in the 14 days in which you have time to decide, the
13 passports may not be returned. That is a matter of fact, but for the time being
14 I regret to say that the passports have not been returned.

15

16 My colleague, or co-agent, rather, of St Vincent and the Grenadines requests the
17 floor just for a few moments.

18

19 THE PRESIDENT: On this issue.

20

21 MR DE BROUWER: (*Interpretation*) Mr President, Members of the Tribunal, earlier
22 we stated on behalf of St Vincent and the Grenadines that we do not accept this
23 document, but now we see that we need to have a closer look at it. Reading the
24 document, in particular the attachment to this statement, without prejudging or
25 anticipating what the other side will say, they seem to indicate here that we have not
26 requested the return of all the passports, since the annexed document, which has
27 not been translated, seems to indicate that six members of the crew still have their
28 passports in the hands of FISCAP. It states, “*TRIPULANTES CUJOS*
29 *PASSAPORTES RETIDOS NA FISCAP*”.

30

31 As Guinea-Bissau would like to do, we would initially orally like to recall the terms of
32 a letter dated 12 November 2004, which is Annexe 52 of our Application, from Mr
33 Tavares, the representative of the vessel. I will read the French translation. The
34 original is in Portuguese. It is addressed to FISCAP and it states:

1

2 “Gentlemen,

3 Following the contact that we have had with you concerning the *Juno Trader*, we
4 would like to now ask you to return the six passports that you still have, passports of
5 the crew members of the said vessel”.

6

7 The second document that I would like to mention to you now is another annexe
8 presented with our Application, Annexe 50, which was also sent by Mr Tavares to
9 Transmar with attention to the Ministry of Fisheries, of 25 November, that is, two
10 days after the judgment and the decision of the Regional Court of Bissau. It orders
11 the immediate return of all the passports following this decision. Mr Fernando
12 Tavares once again addresses himself to the Ministry of Fisheries. I will read it out
13 in English this time. It states:

14

15 “Yesterday we were informed by the attorney responsible for the case of the above-
16 mentioned ship that the Regional Court of Bissau, among other dispositions, ordered
17 the return of the passports of the crew of that vessel being held by FISCAP. We
18 would be grateful your returning the passports today because several of the crew
19 members, including the ship’s captain, will leave Guinea-Bissau this weekend.”

20

21 For the time being, that is all we have to say.

22

23 THE PRESIDENT: I would like to narrow the issue. Are you objecting to the
24 production of this document?

25

26 MR DE BROUWER: (*Interpretation*) If the Tribunal would be willing to accept this
27 document, as requested by Mr Staker, to support Answer No. 4, we will produce it in
28 support of our answer to Question 4, and we will then provide documents, which you
29 have already seen in our annexes. Our position is as follows: we reject this
30 document, but if the Tribunal has been requested to decide whether or not this
31 document could be used to support the answer to Question No. 4, then we would
32 also like to be able to produce documents and to recall what documents we have
33 annexed.

34

1 THE PRESIDENT: There is no conflict here. Therefore, as President, I accept your
2 answer with the conditions. Thank you. I return to our hearing and I now give the
3 floor to Mr Staker.

4
5 MR STAKER: Mr President, Members of the Tribunal, I must apologize if I begin on
6 a note of raising a slightly difficult point. We have had a procedural point as to
7 whether a document should be admitted, which has been side-tracked by the
8 argument in connection with the answer to Question No. 4. I hope that that will not
9 count against our time.

10
11 I begin by expressing my understanding of the fact that my colleague was required to
12 burn the midnight oil to prepare his response, but it is true to say that our delegation
13 has also spent many hours late into the night in the preparation of this case.
14 Professor Karagiannis suggests that this problem of having to work unsociable hours
15 might be avoided in the future by an amendment to the rules. With the utmost
16 respect to Professor Karagiannis, I would also propose that this problem might be
17 avoided in the future by the parties adhering to the terms of the Convention, the
18 statute and the rules that we already have.

19
20 As I submitted yesterday, provisional release proceedings under Article 292 are a
21 special type of proceedings in which the Tribunal is required to look at certain very
22 narrow and very circumscribed issues only. I made the point yesterday that, quite
23 apart from anything else, it would be impossible for an international tribunal to deal
24 with an interstate dispute in the very short time frame provided under the statute and
25 rules for prompt release proceedings, and that if issues other than those relevant to
26 prompt release proceedings were introduced, it would simply make this time frame
27 impossible. I suspect that the fact that the delegation members have been working
28 such long hours is as a result of that fact.

29
30 I submitted yesterday that many issues that are not relevant to prompt release
31 proceedings have been argued at length by the delegation for St Vincent and the
32 Grenadines. Yesterday I submitted that the only relevant issues in prompt release
33 cases are whether there is jurisdiction, whether the application is admissible,

1 whether the application is well founded and, if so, whether to order prompt release,
2 and the level of the bond.

3

4 In prompt release proceedings, the Tribunal is not concerned with whether or not the
5 detained ship has broken any law or whether or not any national authorities have
6 broken any law, whether it is their own national law or international law, other than
7 provisions of the Convention dealing with prompt release. I made the submission
8 yesterday that the majority of Professor Karagiannis's arguments were directed to
9 show that the *Juno Trader* had broken no law and that the proceedings against it at
10 national level in Guinea-Bissau are unfounded and unreasonable, and that Guinea-
11 Bissau is violating international law rules on freedom of navigation, all of these being
12 matters that the Tribunal cannot determine in prompt release proceedings.

13

14 Although these are all matters that are irrelevant to prompt release proceedings,
15 Guinea-Bissau has found itself in a position where serious allegations have been
16 made against it, and where it is felt that although these allegations are irrelevant, it
17 has been obliged to provide an answer to them – hence, in part, the long hours that
18 have been worked by our delegation. It came to me as something of a surprise to
19 discover that Professor Karagiannis's arguments this morning were once again
20 directed principally to the question of whether or not the *Juno Trader* had done
21 anything wrong and whether there was any merit to the actions taken by the
22 authorities of Guinea-Bissau. These same matters are irrelevant simply because
23 they are beyond the scope of the jurisdiction of the Tribunal in prompt release
24 proceedings.

25

26 Again in oral argument this morning, Professor Karagiannis suggested that Guinea-
27 Bissau had violated provisions of the Convention on freedom of navigation in the
28 exclusive economic zone and had breached provisions of Article 73, paragraph 3 or
29 4, by not notifying the flag state of the detention – again matters which, in my
30 submission, are not relevant to these proceedings.

31

32 In this intervention, I do not wish to go over again all the same ground that I went
33 over yesterday. I am sure that it is still very fresh in the minds of the Tribunal, and
34 I will confine myself to dealing with a few points arising out of what Counsel for the

1 Applicant have said today. I will not deal with every single point. If any of their
2 arguments have already been answered by our arguments yesterday, there is no
3 more than needs to be said. In particular, I will not address all the arguments made
4 with respect to the merits of the underlying affair in relation to the *Juno Trader*. For
5 instance, Professor Karagiannis spoke of the effect that this case might have on the
6 reputation of certain companies connected with the *Juno Trader*. In my submission,
7 the reputation of the companies could only be affected by a decision relating to the
8 merits of the case, not by a prompt release proceeding, but again that is a matter
9 that is irrelevant to Article 292.

10

11 The other members of the delegation of Guinea-Bissau will proceed in the same
12 order as they did in our first round of oral arguments, and they will proceed on the
13 same basis as me, namely, that they will address a few specific points arising out of
14 matters that were stated in oral argument this morning, which may require further
15 comment, but will not go over the entire ground again.

16

17 My few points are these. First, I do not want to engage in any unpleasant exchange
18 with Counsel for the Applicant, but he appeared this morning to complain that
19 Guinea-Bissau has accused the Applicant of classifying Guinea-Bissau as a pirate
20 state. I do not recall saying that. I merely referred to a passage in the Applicant's
21 Memorial. I indicated how that passage might be understood by somebody reading
22 it and invited his explanation. I note that he did qualify his comment today in his oral
23 argument. He said that in his view the problem was not Guinea-Bissau as a state or
24 the people or Guinea-Bissau or even the legislature of Guinea-Bissau, but certain
25 government officials. That was what he alleged in his argument.

26

27 Nonetheless, in his arguments this morning he confirmed that his basic argument is
28 still the same. He argues that the Tribunal should decide that the *Juno Trader* has
29 done nothing wrong. In other words, he is asking the Tribunal to decide the merits of
30 this case, which in my submission is contrary to paragraph 3 of Article 292. He is
31 asking the Tribunal to deal with the merits of the case presently before a national
32 forum. On the basis of a finding that the proceedings at national level have no merit,
33 he says that, in determining the bond, the Tribunal should determine that the gravity
34 of the offence is zero, because there was no offence, and that therefore it should be

1 released without any bond being paid. I referred yesterday to the case law of the
2 Tribunal to the effect that a bond cannot be zero. I made lengthy submissions on the
3 fact that the underlying dispute cannot be looked at. In my submission, that
4 argument must be rejected.

5

6 So far as the gravity of the offence is concerned as a factor relevant to setting the
7 bond, in my submission, this does not mean the gravity of the conduct of the
8 particular ship in the particular case, because to look at that would be to decide the
9 merits of the dispute, which the Tribunal cannot do. What it means is the gravity of
10 the offence as it is classified under national law and the maximum penalty that could
11 be imposed under national law in respect of that offence.

12

13 We say that the Tribunal has no jurisdiction, that the case is not admissible, that it is
14 not well founded, and we base those submissions primarily on a change in title to the
15 vessel that occurred by operation of law on 5 November 2004. Professor
16 Karagiannis spoke of certain events after 5 November 2004 and sought to draw
17 certain conclusions from that. To the extent that events on subsequent dates need
18 to be addressed, these will be addressed by my colleague, Mr Silva, but a basic
19 response is that if ownership changes by the mere operation of law, then ownership
20 has changed as a matter of law, regardless of the conduct of the parties
21 subsequently, and our arguments on jurisdiction, admissibility and the lack of well
22 foundedness of the application remain.

23

24 Professor Karagiannis suggests that if Guinea-Bissau's argument were accepted,
25 the Tribunal could simply close shop in prompt release cases because any state by
26 a quick confiscation of a ship could avoid the prompt release procedure. In my
27 submission, it is not the case that the Tribunal would simply close shop in those
28 circumstances.

29

30 The purpose of prompt release proceedings, I would argue, is to avoid a situation
31 where a ship is kept for a lengthy period in a legal limbo, where no judicial decision is
32 taken on whether crimes are being committed – no administrative decision – where
33 no action is being taken under national law to determine whether any offence is
34 being committed or whether any fines should be imposed, whether any confiscation

1 should occur, when the matter is simply not being dealt with at all under national law
2 and the ship is just sitting there indefinitely in detention waiting for something to
3 happen. That is the situation that prompt release proceedings are intended to deal
4 with.

5
6 Once there has been a final disposition of the matter under the national law of the
7 detaining state, then of course the vessel is no longer in legal limbo. Whatever the
8 result is in the national proceedings, that result can be given effect to and that then
9 becomes the future status of the ship. If the flag state or if the ship owner considers
10 that there has been any violation of national or international law that arose out of the
11 way that the ship was confiscated, or whatever occurred, then that is a matter that
12 may be pursued in the appropriate forum, perhaps a national forum, perhaps an
13 international forum. My submission is that at that point prompt release proceedings
14 under Article 292 are simply no longer the appropriate mechanism.

15
16 The same is true of the scenario that Professor Karagiannis raised at the end of his
17 argument this morning. He said, "What would happen if a detaining state simply
18 burnt or sank the ship? I would submit that if a ship was sunk or burnt, of course
19 Article 292 would no longer be the appropriate mechanism to do anything about the
20 matter, but that is not to say that if there has been a violation of national or
21 international law there is no remedy in respect of an illegal burning or sinking of
22 a ship. It is only to say that the appropriate legal mechanism for seeking some
23 remedy in respect of that situation would not be proceedings under Article 292 of the
24 Convention.

25
26 Quite simply, every law has its appropriate forum for resolution. Article 292 makes
27 this Tribunal a forum for the resolution of certain types of matters; it is not the forum
28 for resolving the particular matters that the Applicant is seeking to raise in this case.

29
30 Mr President, that concludes my comments in response on the aspects of the case
31 with which I dealt. I would now invite you to call upon my co-Agent,
32 Mr Octávio Lopes, speaking as co-Agent of Guinea-Bissau to make some additional
33 comments.

34

1 THE PRESIDENT: Thank you, Mr Staker. I now give the floor to Mr Octávio Lopes

2

3 MR LOPES: Mr President, distinguished members of the Tribunal, we have to say
4 that in fact we do not realise what St Vincent pretends on this particular issue of the
5 crew member. As we all remember, the Master of *Juno Trader* told us in this
6 Tribunal that the crew needed to stay on board to maintain the ship and the frozen
7 cargo.

8

9 As we said, on the declaration that our colleague read in French, the state of
10 Guinea-Bissau, mainly the Fisheries Ministry, did not detain any crew member of
11 *Juno Trader* and gave passports on request. We find that letter was from
12 Mr Ildefonso Barros, the General Director of Fisheries in Guinea-Bissau. I can do
13 the same: we deliver passports on request.

14

15 Before asking you to hear Mr Ricardo Silva, I would like to read a document in
16 French. It comes from St Vincent and the Grenadines, the Marine Administration
17 dated 7 December 2004.

18

19 (Interpretation) The Commissioner for Marine Affairs for St Vincent and the
20 Grenadines presents its compliments to the Ministry for Foreign Affairs and
21 International Co-Operation of the Republic of Guinea-Bissau and acknowledges
22 receipt of the communiqué informing that the *Juno Trader* vessel 3073 hereinafter
23 has been reverted to the state of Guinea-Bissau because of failure to pay the fine.
24 The Commissioner of Maritime Affairs of St Vincent and the Grenadines seizes this
25 opportunity to extend to the Ministry for Foreign Affairs and International
26 Co--Operation of the Republic of Guinea-Bissau its highest consideration.”

27

28 That is signed by Commissioner, Mr Najla Dabinovic.

29

30 THE PRESIDENT: Thank you, Mr Lopes. I now give the floor to Mr Ricardo Alves
31 Silva.

32

33 MR SILVA: Mr President, distinguished members of the International Tribunal for the
34 Law of the Sea, I would like to begin today by saying that this morning I was accused

1 of saying certain things up here on this stand that in fact I did not say yesterday.
2 I believe that the transcript of my statement in the English language, which was the
3 language that I used to address this Tribunal, underlies this fact.

4

5 I would also like to say, before answering the questions that have been placed by the
6 Tribunal, that never did I refer to the regional court of Bissau with any contempt and
7 never did I before this Tribunal or anywhere else state that I did not agree with the
8 court's decision and that I believed that the court in Bissau does not understand
9 Guinea-Bissau law.

10

11 The first question we must address, and it is related to the representations made
12 against my person this morning, is related to the text of the judgment of the regional
13 court of Bissau. It was stated this morning that the text of such a judgment stated
14 that, and had decided I believe in a final way, the act of the Interministerial
15 Commission was illegal. We must clarify here before the Tribunal that the decisions
16 set forth in the injunction *Suspensao de Eficacia* proceedings are only provisional
17 measures, which do not constitute *res iudicata* in respect of the merits of the case.
18 Due to the urgency of the matter with which the regional court of Bissau was faced,
19 the court had to decide in 48 hours; it did so. Given this fact, the court of Bissau did
20 not hear the opposing party, the Ministry of Fisheries; it did not hear the opinion of
21 the Public Prosecutor's office, which must be heard in all these cases as the
22 government entity responsible for maintaining law in Guinea-Bissau. This court's
23 decision decided solely on the facts that were presented to it by the Applicant, the
24 exact same facts that were presented to this Tribunal by the St Vincent and the
25 Grenadines Government. So there was no counter-proof. The only arguments that
26 the court could base its judgment on were the arguments, the facts, that were
27 provided by the Applicant.

28

29 This is why the judgment includes exactly those facts that were stated here. This
30 judgment is not final, nor is it binding on other courts and it is very important that we
31 state here it is not binding on the courts that will judge the merits of the case
32 respecting the minutes that established the fine.

33

1 More proof that judicial proceedings are working Bissau is that we were informed this
2 morning that the regional court of Bissau, upon request of the shipping agent, is
3 going to carry out an inspection of the vessel in order to acquire the necessary proof
4 to rule a judgment on the merits of the case. In Bissau things are moving. The case
5 is not stopped. The courts will decide accordingly.

6

7 Mr President, Guinea-Bissau, as I said yesterday, is a state governed by its law and
8 its constitution. The first law passed by Guinea-Bissau's parliament after
9 independence was Law No. 1 of 73. It was passed on 24 September 1973, the
10 exact date of the official proclamation of independence of Guinea-Bissau and on the
11 day that the movement that was seeking independence declared its independence
12 from Portugal this law was passed. This law has one article only.

13

14 I will proceed as I did yesterday and read in Portuguese and then the English
15 translation:

16

17 "A legislação portuguesa em vigor à data da Proclamação do Estado soberano da
18 Guiné-Bissau mantém a sua vigência em tudo o que não for contrario a soberania
19 nacional, a Constituição da Republica, as suas leis ordinaries"

20

21 This article states that all Portuguese legislation in force as of the date of
22 proclamation of the sovereign state of Guinea-Bissau remains in force insofar as it is
23 not contrary to the national sovereignty, the constitution of the republic and its
24 statutory law.

25

26 Thus, when answering the three questions that remain I shall refer to that law that
27 was in force as at 24 September 1973 and present case law regarding these
28 aspects. Some of this case law is subsequent to independence but it was passed
29 under the same statute. Some is prior to independence and as such has been
30 accepted by the courts in Bissau as valid case law in order to interpret the articles of
31 such laws.

32

33 Question 1 : Under the Guinea-Bissau legal system, can a decision of the
34 Interministerial Commission be subject to judicial review by the domestic court

1 system? The answer is “Yes”. The law of Guinea-Bissau sets forth that any final
2 and enforceable administrative decision – in the original, *acto definitivo e executório*
3 – may be subject to review as long as the appeal is filed in the legal term and the
4 other legal requirements are met; namely, if the party has standing. Article 62.1 of
5 the Fisheries Law sets forth that the Interministerial Commission is the competent
6 authority for determining and applying the fines for offences to said law. Given this,
7 the decision of the Commission can be subject to review and is currently subject to
8 review.

9
10 Question 2: In case the fisheries administration does not agree with a decision
11 rendered by a competent domestic judicial court suspending the effects of a decision
12 taken by the Interministerial Commission, what legal remedy under the legal system
13 of Guinea-Bissau can the fisheries administration resort to in order to challenge the
14 court’s decision? The answer is that if the administration does not agree with said
15 decision, it may appeal to the Supreme Court of Justice, which at present occupies
16 the position of the Administrative Supreme Court that existed before independence.

17
18 I believe that the Tribunal will also be interested to know that this appeal under
19 Guinea-Bissau’s law does not suspend the execution of the decision rendered by the
20 first instance court. So, there is no suspension of the suspension. The suspension
21 of the decision is valid until we reach a final decision respecting the injunction.

22
23 I may on this matter refer to a decision by the Administrative Supreme Court of
24 Portugal rendered on 3 July 1996 under a legal regime with exactly the same rules
25 as the one in Bissau which stated (passage in Portuguese – no interpretation).
26 A rough translation is that in case the authorities or any other party appeal a decision
27 which ordered the suspension of enforcement of an act which is being appealed in
28 a main case, that appeal does not suspend the enforcement of that judgment.

29
30 Question 3: What remedies are available to the ship owner whose ship has been
31 forfeited to the State as a result of an administrative decision? I should like to give
32 two answers to this question, one based on a confiscation by an administrative act
33 which is what I believe the Tribunal had in view, and one based on a situation of the
34 forfeit or the reversion to the state of a vessel by direct effect of the law.

1

2 In the first case a ship owner whose ship has been confiscated or forfeited as a
3 result of an administrative act as a direct result of a resolution of an administrative
4 body may resort to exactly the same remedies that we explained in answer to
5 question 1. It can resort to the courts and obtain a judgment on the question of
6 confiscation. In relation to the second possibility of forfeiture or reversion to the state
7 by means of operation of a statute, the answer must be different. In this situation it is
8 our opinion that the forfeiture cannot be challenged directly before the courts.
9 However, this does not leave the ship owner without protection because if in the
10 original law suit that had the scope or the aim of annulling or declaring null and void
11 the application of the fine, the act for which the fine was levied is annulled or
12 considered null and void, then it will be possible to claim compensation for the
13 immobilization of the vessel as set forth in Article 67 of the fisheries law. This article
14 specifies clearly that in case it is judged by a court ruling that the Government did not
15 have reason when it arrested the vessel, then there is compensation. Even if the
16 fisheries law did not exist that compensation would always be claimable pursuant to
17 the legal regime set forth in Decree Law 48 051 on 21 November 1967.

18

19 On another note, if the act for which the fine is levied is declared null and void, all
20 successive acts are considered null and void. Among these acts we must include
21 the operation of reversion to the state automatically due to a legal statute. What I
22 have just said is in no way contrary to what I stated yesterday. I have given you my
23 honest, legal opinion as to the law in Guinea-Bissau in general terms, which is what
24 I believed the court needed to hear today. What I referred to yesterday, the
25 implications of this case and what I believe to be the law applicable to the case of the
26 *Juno Trader*, especially when we take into account that the term for resorting to the
27 courts, the term for filing an appeal, was not met by the owner of the *Juno Trader*.

28

29 MR GARCIA-GALLIARDO: I should like to make just a few points. On the basis of
30 the statements made by the agent of St Vincent and the Grenadines, we consider
31 that some points need to be clarified.

32

33 First, as regards the characterisation of the *Juno Trader*, nobody in this room has
34 discussed whether *Juno Trader* is a reefer trader. Contrary to the statements of the

1 agent of St Vincent and the Grenadines, the vessel is considered under Guinean
2 law, Article 3, of the Fisheries Act as a fishing vessel. That is not because of its
3 cargo but because of the activities it carried out. The activities related to fishing
4 activities are, for example, transshipment of cargo or bunkering regardless of the
5 cargo it carries. As to logistics, activities and classes of fish, there are sufficient
6 clear definitions in the provision of Article 3.

7

8 Secondly, as regards the certificate of origin –

9

10 THE PRESIDENT: Mr Gallardo, could you speak more slowly?

11

12 MR GARCIA-GALLARDO: Secondly, as regards the certificate of origin, this
13 morning we heard that St Vincent and the Grenadines understand that these
14 documents are private, issued by the vessels that have caught the fish and even that
15 they are kept on board the vessel that has caught the fish. However, this statement
16 is not accurate, since certificates of origin are exclusively issued by authorities of the
17 waters where the fish is caught. In this case we have not seen the certificates of
18 origin issued by the Mauritanian authority, if it is Mauritania where the fish were
19 caught. Again, there is a lack of evidence.

20

21 Thirdly, as regards the entry into the exclusive economic zone of Guinea-Bissau, this
22 morning we heard that the requirement to notify to the coastal state the entry into
23 and exit from the exclusive economic zone does not make any sense and that this
24 principle would apply only to the territorial waters. If St Vincent and the Grenadines
25 wish to challenge the legislation of Guinea-Bissau for breach of the Montego Bay
26 Convention, they can do it but unfortunately not in the framework of the prompt
27 release proceeding.

28

29 Secondly, this obligation to notify is not rare. Professor Karagiannis will know that it
30 is the case in the Republic of France. In proceedings such as *Camouco* or *Monte*
31 *Confurco*, this point was raised and this Tribunal did not enter into the question.
32 Under Guinean law there is an obligation to notify when entering the exclusive
33 economic zone for industrial fishing vessels authorized to operate. We have seen the
34 broad definition of industrial fishing vessels and activities based on Article 3.

1
2 The *Juno Trader* has been expressly fined, among others, for carrying out activities
3 for which an authorisation should have been sought. Therefore, the *Juno Trader*
4 was obliged to notify to the Guinea-Bissau authorities. The Master of the *Juno*
5 *Trader* recognized yesterday that when the vessel entered the exclusive economic
6 zone to carry out unauthorized operations, it did not notify the coastal authorities.
7 As the Tribunal will know, transshipment of fishing cargo causes real problems to
8 coastal states since they are used for laundering of catches. In this regard, in the
9 last session of ICCAT, the international regional association for tuna in the Atlantic,
10 held in New Orleans last month that association agreed to forbid transshipment of
11 fishing cargo since this practice is related to illegal, unreported and unauthorised
12 fishing. That was explained yesterday by Mr Ocatávio Lopes, based on the FAO
13 document.

14
15 Let us be clear. It is very unusual for a Master with 26 years' experience, who
16 recognizes that he has had at least 12 years' experience steering reefers in West
17 Africa, to traverse only twice the exclusive economic zone of Guinea-Bissau. If we
18 look at Annex 16, the maritime chart, it appears that if on previous occasions the
19 Master was familiar with the exclusive economic zone and has steered his vessels
20 from the north to the south of Africa, that is in exclusively international waters.

21
22 Finally, in respect of the reasonableness of the amount of the bond, we consider that
23 a bank guarantee in the form and nature described this morning should be as follows
24 based on the arguments raised by the Applicant this afternoon.

25
26 The cargo has been evaluated on the basis of what was expressly stated by the
27 Applicant at paragraph 28 of his own Application. This is the value of the sale which
28 the Guinean authorities considered should be obtained from the sale as a starting
29 price. I would like to clarify that both the frozen fish and the fish flour were
30 confiscated by the administrative decision. Furthermore, due to the failure of
31 payment of the fine, the property of all the cargo reverted – that is a legal word; we
32 were referring to confiscation but reverted should be the appropriate word – to the
33 Guinea-Bissau state as part of the vessel.

34

1 The Applicant bases the evaluation of the vessel on net book value of US\$ 460,000.

2

3 We agree that it is one of the parameters to evaluate vessels. However, there are
4 other elements to take into consideration and, as the Applicant recognizes, the
5 vessel is in good condition and in good classification, made by an appropriate
6 classification certificate. In our opinion, the comparison of recent sales of similar
7 vessels in the market as the one we presented as Annexe 14 of the documents
8 submitted yesterday is also an important element, bearing in mind that we have
9 already deducted 50 per cent, given the difference in age between the two vessels.
10 For this reason, we consider that our evaluation of €615,000 is accurate and
11 proportional, representing a fair market value as it is and where it is. No more
12 evidence has been provided by the Applicant.

13

14 With respect of the bunkering, we have also said that we do not have information.
15 Our estimates given this morning were too conservative. We gave an evaluation of
16 €60,000. On the basis of the data provided by the Applicant this afternoon, there are
17 210 tonnes on board, and on the indicated price per unit, 350 CFA -- and I must say
18 that €1 is equal to a fixed rate of 655,957 CFA -- this represents a minimum price of
19 the bunkering of €112,214.

20

21 Since the property over the vessel, the cargo and the fuel have reverted to the State
22 of Guinea-Bissau as from 5 November 2004, due again exclusively to a failure to pay
23 the fine within the legal period, the bank guarantee should cover the value of these
24 three items, which would be up to €1,227,214. That corresponds to the following:
25 €500,000 for the cargo; €112,214 for the oil and bunkering; and €615,000 for the
26 vessel. That is very important. This amount takes into account the fact that St
27 Vincent and the Grenadines have already stated that they wish that the vessel is
28 released together with the cargo. In my estimations this morning, I did not take into
29 consideration the value of the cargo. However, if St Vincent and the Grenadines
30 wishes that the vessel is released without the cargo, the bond would be of €750,214,
31 which relates to the valuation of the vessel at €615,000, €112,214 for the oil and
32 bunkering, and €30,000 for the cost of unloading operations.

33

1 The fines -- we talked this morning about €175,000 -- to be consistent, are not
2 included because of a failure to pay the ship owner. The vessel was confiscated, so
3 if the confiscation has taken place, it was because the payment of the fine was not
4 made. We are not referring twice to this element.

5

6 Finally, the form and the nature of the bond. We insist that this bond should be in
7 the form that the Tribunal has accepted in the four cases where prompt release was
8 ordered – bank warranty. The Applicant has discussed that the letter offered by the
9 P&I has the value of a bank warranty. We respectfully submit that we do not agree
10 that this letter has all the elements, for example, of the bank guarantee issued as a
11 result of the *Monte Confurco* case, attached as Annexe 14 of our documents. That
12 included all the requirements mentioned by this Tribunal, in particular the place of
13 execution.

14

15 The P&I letters, as the one mentioned by the Applicant, are letters normally accepted
16 between private operators. There is no discussion on that. They usually cover civil
17 responsibilities, credits ---- under the Brussels Convention of 1961 of arrest of ships,
18 but not usually by states. It must be possible to execute the bond that is offered in
19 Guinea-Bissau. We understand that the P&I are normally subject to English law, in
20 particular the letter of the P&I Club of Luxembourg is based in London. Therefore,
21 the letter should need, in case of difficulties, to be executed in the United Kingdom.
22 As you can imagine, the costs of executing such a letter are absolutely prohibitive for
23 a state such as Guinea-Bissau, and in practice it would never be executed. For this
24 reason, the bank warranty should be issued by a bank in Guinea-Bissau.

25

26 One word in relation to the letter that we received by fax from the Ministry Pescas of
27 Guinea-Bissau one hour ago. It is a letter that was read by Mr Octavio Lopes, Agent
28 of Guinea-Bissau. It is clear that they have been informed about the confiscation,
29 about the notice sent by the Guinea-Bissau authorities to the St Vincent and the
30 Grenadines competent authorities, and they did not raise any comment, bearing in
31 mind the issue of the power of attorney to come to this Tribunal, bearing in mind the
32 critical issues of confiscation that have been discussed during previous days, so it is
33 absolutely clear that they take note and they accused receipt(*sic*) that the
34 confiscation for them did not raise any particular problem. Thank you very much.

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THE PRESIDENT: Thank you, Mr Garcia-Gallardo. I now give the floor to Mr Staker.

MR STAKER: Mr President, distinguished Members of the Tribunal, before concluding this second round or oral argument, there is one final issue that needs to be addressed, which is the application made by St Vincent and the Grenadines that Guinea-Bissau pay the costs incurred by it in connection with these proceedings. In making that request, the Applicant invokes Article 34 of the Tribunal statute, which states that unless otherwise decided by the Tribunal, each party shall bear its own costs. As the Applicant freely acknowledges in its Memorial, that provision of the Tribunal statute lays down what is a general rule, namely, that in proceedings before the Tribunal each party does pay its own costs. The Applicant further concedes, in paragraph 141 of its Memorial, that this general rule that each party pays its own costs is in fact based on “a laudable notion” of allowing each party to have access to international justice without the Damocles sword of additional costs hanging over them.

In this connection, I would also point out that Article 34 of the Tribunal statute is in terms that are materially identical to Article 64 of the statute of the International Court of Justice, the ICJ. I would refer here to the bundle of authorities that was placed before the Members of the Tribunal yesterday. I do not know whether it is still to hand. On page 17 of that bundle of authorities for the French version and page 26 for the English version, there is a quotation from the case, “Request for interpretation of the judgment of 11 June 1998 in the case concerning the land and maritime boundary between Cameroon and Nigeria”, Preliminary Objections of 25 March 1999, Decision of the International Court of Justice at paragraph 18, which states:

“This provision in the statute of the International Court of Justice confirms the basic principle regarding the question of costs in contentious proceedings before international tribunals to the effect that each party shall bear its own costs”.

I note simply that the International Court of Justice in this passage does not say that this is a general principle in proceedings before the International Court of Justice. It

1 says that this is a general principle in contentious proceedings before international
2 tribunals.

3

4 I therefore submit that the general rule contained in Article 34 of this Tribunal's
5 statute is not a general rule that has been created by that provision of the statute.
6 Rather, it is a general principle of international law that is merely reflected in Article
7 34 of the Tribunal statute, just in the same way that it is reflected in Article 64 of the
8 statute of the International Court of Justice, and it is my submission that the principle
9 should, in principle, be applied consistently by both this Tribunal, the International
10 Court of Justice and other courts of a similar nature.

11

12 The Applicant cites no case before this Tribunal or the ICJ in which an exception has
13 ever been made to this general rule, and Guinea-Bissau is certainly not aware of any
14 such case. Furthermore, the Applicant concedes in paragraph 142 of its Memorial
15 that if any exception were made to this rule, it could not be arbitrary. There would
16 have to be sound reasons why a particular case was different and why there is a
17 reason for departing from the general rule.

18

19 The only justification given by the Applicant in this case is given in paragraph 142 of
20 its Memorial. Essentially, in my submission, the argument is that this case is
21 different because the *Juno Trader* has done nothing wrong and therefore the
22 conduct of Guinea-Bissau – I quote their Memorial – “is not far from evidencing an
23 abuse of rights”. Of course, that submission is based on the very thing that we have
24 submitted the Tribunal has no jurisdiction to decide in this case, so it is simply not a
25 factor that the Tribunal could have regard to in determining whether a departure from
26 the general costs rule should be made.

27

28 I would even go further and add that even if the allegations made by the Applicant in
29 this case were relevant to proceedings before the Tribunal, and even if every single
30 one of those allegations could be proved, the Applicant has not shown why the
31 circumstances of this case are still so unique and different from any other conduct
32 that has ever been adjudicated on before the International Court of Justice, where
33 the International Court of Justice has never made an exception to the general rule.

1 On that basis, we submit that there can be no possibility of an order for costs being
2 made against Guinea-Bissau.

3

4 Indeed, I would go a little bit further. I would say that if there were ever
5 circumstances in which the Tribunal would make an exception to the general rule, it
6 may be in this case to the extent that the Tribunal should make an order that St
7 Vincent and the Grenadines be ordered to pay the costs of Guinea-Bissau in these
8 proceedings. As has been said, Guinea-Bissau is one of the poorest countries in the
9 world. The costs of defending proceedings before this Tribunal are considerable.
10 Where there is a genuine dispute between states, it must, of course, be accepted
11 that there are litigation costs involved if the dispute is to be settled by an international
12 court.

13

14 However, this is a case in which Guinea-Bissau has had to incur expenses to defend
15 these proceedings in a case where the Tribunal, in our submission, has no
16 jurisdiction and the case is not admissible; but, more than that, it is a case that has
17 been brought where a large part of the case has been brought in direct contradiction
18 of paragraph 3 of Article 292, in that a large part of the Applicant's case has been
19 based on its allegation that the *Juno Trader* has done nothing wrong and, contrary to
20 Article 292 paragraph 3, the proceedings have been brought to seek to litigate the
21 merits of the case at national level – a matter that is clearly outside the scope of
22 Article 292 proceedings. The question is why should a country that is very poor be
23 required to incur the expenses of coming to this international tribunal to defend
24 allegations that are wholly irrelevant?

25

26 Article 292, as I have said, provides a mechanism that serves a very important
27 purpose for dealing very promptly with very specific matters, and states that bring
28 proceedings under Article 292 must be expected to focus solely on those very
29 specific matters. Article 292, in our submission, is not intended to be used as a
30 vehicle for a state to find a very quick and convenient way of bringing other types of
31 disputes before an international tribunal.

32

33 Guinea-Bissau wishes to inform the Tribunal that it has made an application to the
34 International Tribunal for the Law of the Sea Trust Fund for financial assistance for

1 expenses that it is incurring in connection with this case. No decision has yet been
2 taken on that application, and Guinea-Bissau does not yet know whether any of its
3 expenses will be met from that trust fund. Guinea-Bissau submits that in the
4 circumstances the appropriate order should be that the Applicant is to pay the costs
5 incurred by Guinea-Bissau in connection with these proceedings, less any amount of
6 financial assistance that may be provided to Guinea-Bissau by the Law of the Sea
7 Trust Fund in connection with the case. As an alternative submission, I would
8 submit that at least a substantial part of Guinea-Bissau's costs should be paid by the
9 Applicant, reflecting that part of this case that involved irrelevant allegations and that
10 part of the costs that were incurred by Guinea-Bissau in responding to them.

11

12 Mr President, that concludes my arguments and the arguments of my delegation in
13 connection with this case before the Tribunal. Now, in accordance with the statute
14 and the rules, I propose to read the final submissions of Guinea-Bissau:

15

16 Guinea-Bissau requests the Tribunal:

17

1. To declare:

18

(a) that the Tribunal lacks jurisdiction under Article 292 of the United
19 Nations Convention on the Law of the Sea to entertain the Application
20 of St Vincent and the Grenadines in this case; in the alternative,

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(b) that the Application of St Vincent and the Grenadines in this case is
22 inadmissible; in the further alternative,

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(c) that the Application of St Vincent and the Grenadines in this case is
24 not well founded.

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2. As a subsidiary submission, if the Tribunal decides that the *Juno Trader*
26 and its cargo are to be released upon the deposit of a bond or other
27 financial guarantee, to order:

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(a) that the bond shall be no less than €1,227,214.00 ;

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(b) that the bond shall be in the form of a bank guarantee from a bank
30 present in Guinea-Bissau or having corresponding arrangements with
31 bank in Guinea-Bissau;

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(c) that the bank guarantee shall state that it is issued in consideration of
33 Guinea-Bissau releasing the *Juno Trader* in relation to the incidents
34 dealt with in Minute No. 14/CIFM/04 dated 19 October 2004, and that

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1 the issuer undertakes to pay on first demand to the State of
2 Guinea-Bissau such sums as may be determined by a final judgment,
3 award or decision of the competent authority of Guinea-Bissau.

4 3. To decide that St Vincent and the Grenadines shall pay the costs of
5 Guinea-Bissau incurred in connection with these proceeding, less any
6 amount of financial assistance that may be provided to Guinea-Bissau by
7 the Law of the Sea Trust Fund in connection with this case.

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9 Mr President, that is the case for Guinea-Bissau.

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11 THE PRESIDENT: I thank the Agents of Guinea-Bissau. I give the floor to
12 Professor Karagiannis, the Agent for the Applicant.

13

14 MR KARAGIANNIS (Interpretation): Thank you very much, Mr President. There is
15 just one small problem. Earlier the representative for the Government of
16 Guinea-Bissau, Mr Lopes, read out to you the entirety of a document which is a very
17 new one. We know nothing of the existence of such a document. I can understand
18 that Mr Lopes is not a jurist. Thus, he does not know that all documents should have
19 been submitted to this Tribunal by yesterday at 10 o'clock in the morning. Thus, we
20 have a new document brought to your attention. We have never seen it and we
21 would like to see it. A simple photocopy may be sufficient. We may possibly
22 challenge it and that could be done in writing, so as not to cause the Tribunal any
23 trouble.

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25 THE PRESIDENT: Thank you very much. That should be done in writing.

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27 This brings us to the end of the oral proceedings in the *Juno Trader* case. On behalf
28 of this Tribunal, I would like to take this opportunity to thank the Agents and Counsel
29 of both parties for their excellent presentations made before the Tribunal over the
30 past two days. I would also like to take this opportunity to note with appreciation the
31 professional competence and personal courtesies exhibited so consistently by the
32 Agents and Counsel on both sides.

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34 The Registrar will now address questions in relation to documentation.

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THE REGISTRAR: Mr President, in conformity with Article 86, paragraph 4, of the Rules of the Tribunal, the parties have the right to correct the transcripts in the original language of their presentations and statements made by them in the oral proceedings. Any such corrections should be submitted as soon as possible but in any case not later than noon Hamburg time on 10 December 2004.

A list of questions which members of the Tribunal would like to address to parties was transmitted yesterday to both parties, and the Agents are requested to submit any written response by tomorrow noon.

In addition, the parties are requested to certify that all the documents that have been submitted and which are not originals are true and accurate copies of the originals of those documents. For that purpose, they will be provided by the Registry with a list of the documents concerned.

THE PRESIDENT: The Tribunal will now withdraw to deliberate on the case. The judgement will be read on a date to be notified to the Agents. The Tribunal has tentatively set a date for the delivery of judgment. That date is 18 December 2004. The Agents will be informed reasonably in advance if there is any change to this schedule.

In accordance with the usual practice, I request the Agents kindly to remain at the disposal of the Tribunal to provide any further assistance or information that it may need in its deliberations prior to the delivery of the judgment.

The hearing is now closed.
