



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

Press Release

JUDGMENT IN THE M/V "VIRGINIA G" CASE (PANAMA/GUINEA-BISSAU)

The International Tribunal for the Law of the Sea delivered its Judgment today in The *M/V "Virginia G"* Case (Panama/Guinea-Bissau). The Judgment was read by President Shunji Yanai at a public sitting.

The dispute concerns the *M/V Virginia G*, an oil tanker flying the flag of Panama, arrested on 21 August 2009 by the authorities of Guinea-Bissau for carrying out refuelling operations for foreign vessels fishing in Guinea-Bissau's exclusive economic zone. The vessel and the gas oil on board were confiscated on 27 August 2009. Subsequently, the vessel was released by decision of the authorities of Guinea-Bissau, which was notified to the ship-owner on 6 October 2010. Proceedings were instituted before the Tribunal on 4 July 2011 through the notification of a special agreement concluded between the Parties. The hearing in the case was held from 2 to 6 September 2013.

Jurisdiction and admissibility

In its Judgment, the Tribunal finds that it has jurisdiction over the dispute and rejects the objections raised by Guinea-Bissau to the admissibility of Panama's claims based on the alleged lack of genuine link between the *M/V Virginia G* and *Panama*, the nationality of claims and the alleged failure to exhaust local remedies.

Articles 56, 58 and 73, paragraph 1, of the Convention

In examining whether Guinea-Bissau violated the United Nations Convention on the Law of the Sea when it arrested, and later confiscated, the *M/V Virginia G*, the Tribunal emphasizes at the outset that its task is to deal with a dispute relating to bunkering activities in support of foreign vessels fishing in the exclusive economic zone of a coastal State. In this regard, the Tribunal holds that "the regulation by a coastal State of bunkering of foreign vessels fishing in its exclusive economic zone is among those measures which the coastal State may take in its exclusive economic zone to conserve and manage its living resources under article 56 of the Convention, read together with article 62, paragraph 4, of the Convention" and notes that "[t]his view is confirmed by State practice which has developed after the adoption of the Convention" (see paragraph 217 of the Judgment). The Tribunal also holds that

article 58 of the Convention does not prevent coastal States from regulating, under article 56, bunkering of foreign vessels fishing in their exclusive economic zones.

The Tribunal also addresses the question of the conformity of the relevant laws and regulations of Guinea-Bissau with the Convention. After dealing with issues such as the definition of “fishing-related activities” contained in that legislation, the imposition of fees for granting authorization for bunkering and the procedure for obtaining such authorization, the Tribunal concludes that the relevant national legislation of Guinea-Bissau conforms to articles 56 and 62, paragraph 4, of the Convention.

The Tribunal then deals with the question whether the application of the relevant laws and regulations of Guinea-Bissau in the case of the *M/V Virginia G* violated the Convention. It concludes that the fisheries laws and regulations of Guinea-Bissau provide for the possibility of confiscating bunkering vessels. The Tribunal emphasizes that, according to article 73, paragraph 1, of the Convention, the coastal State may take such measures “as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with this Convention”. It adds that it is within its competence to establish whether the legislation promulgated by Guinea-Bissau for the exclusive economic zone is in conformity with the Convention and whether the measures taken in implementing this legislation are necessary. The Tribunal states that providing for the confiscation of a vessel offering bunkering services to foreign vessels fishing in the exclusive economic zone of Guinea-Bissau is not *per se* in violation of article 73, paragraph 1, of the Convention, and that whether or not confiscation is justified in a given case depends on the facts and circumstances.

In examining whether the confiscation of the vessel and the gas oil on board was justified, the Tribunal first notes that article 73, paragraph 1, of the Convention refers to the right of coastal States to board, inspect and arrest the vessels concerned. It finds that neither the boarding and inspection nor the arrest of the *M/V Virginia G* violated article 73, paragraph 1, of the Convention. It then reiterates that, pursuant to article 73, paragraph 1, of the Convention, the enforcement measures taken have to be “necessary” to ensure compliance with the laws and regulations adopted by the coastal State in conformity with the Convention. Having determined that the *M/V Virginia G* did not have the written authorization required by the legislation of Guinea-Bissau for bunkering, the Tribunal observes that the failure to obtain a written authorization was rather the consequence of a misinterpretation of the correspondence between the representatives of the fishing vessels and the relevant authorities of Guinea-Bissau than an intentional violation of the laws and regulations. The Tribunal finds, in the light of the circumstances of the case, that the confiscation of the vessel and the gas oil on board was not necessary either to sanction the violation committed or to deter the vessels or their operators from repeating this violation. The Tribunal, therefore, finds that the confiscation by Guinea-Bissau of the *M/V Virginia G* and the gas oil on board was in violation of article 73, paragraph 1, of the Convention.

Article 73, paragraphs 2, 3, and 4, of the Convention

The Tribunal then addresses the allegations of Panama that Guinea-Bissau violated article 73, paragraphs 2, 3, and 4, of the Convention.

The Tribunal considers that the applicable law of Guinea-Bissau concerning the prompt release of arrested fishing vessels and their crews upon the posting of a reasonable bond or other financial security is consistent with the provisions of article 73, paragraph 2, of the Convention. Therefore, the Tribunal finds that Guinea-Bissau did not violate article 73, paragraph 2, of the Convention.

With regard to Panama's allegation that, by de facto imprisoning the crew, Guinea-Bissau was in breach of article 73, paragraph 3, the Tribunal finds that in the present case there was no penalty of imprisonment imposed on members of the crew of the *M/V Virginia G* and that Guinea-Bissau therefore did not violate article 73, paragraph 3, of the Convention.

The Tribunal finds that, by failing to notify Panama as the flag State of the detention and arrest of the *M/V Virginia G* and subsequent actions taken against the vessel and its cargo, Guinea-Bissau violated the requirements of article 73, paragraph 4, of the Convention and thus deprived Panama of its right as a flag State to intervene at the initial stages of actions taken against the *M/V Virginia G* and during the subsequent proceedings.

Other relevant provisions of the Convention and the SUA Convention

The Tribunal proceeds to examine the allegations of Panama that Guinea-Bissau violated the principles of articles 110, 224, 225 and 300 of the Convention and that Guinea-Bissau used excessive force in boarding and arresting the vessel.

The Tribunal finds that neither article 110 of the Convention nor article 224 of the Convention is applicable to the enforcement activities undertaken by the coastal State pursuant to article 73, paragraph 1, of the Convention. With respect to the circumstances relating to the boarding of the *M/V Virginia G*, the Tribunal considers that the standards referred to by the Tribunal in the *M/V "SAIGA" (No. 2) Case* were met and does not find that Guinea-Bissau used excessive force leading to physical injuries or endangering human life during the boarding and the sailing of the *M/V Virginia G* to the port of Bissau. The Tribunal also concludes that Guinea-Bissau did not violate article 225 or the fundamental principles of safety of life at sea and collision prevention. It further decides that the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA Convention) is not applicable in the case. Concerning the claim based on the violation of article 300 of the Convention, the Tribunal notes that Panama invoked this provision without making reference to specific obligations and rights under the Convention and concludes that it is therefore not required to deal with the alleged violation of that article.

Counter-claim

The Tribunal examines the counter-claim of Guinea-Bissau based on the alleged violation by Panama of article 91 of the Convention. The Tribunal notes that

a genuine link existed between Panama and the *M/V Virginia G* at the time of the incident and, therefore, concludes that the counter-claim presented by Guinea-Bissau is unfounded.

Reparation

In light of its findings that Guinea-Bissau violated article 73, paragraph 1, and article 73, paragraph 4, of the Convention, the Tribunal then considers the issue of reparation due to Panama.

In assessing the compensation claims made by Panama, the Tribunal finds that only damages and losses related to the value of the gas oil confiscated and the cost of repairing the vessel are direct consequences of the illegal confiscation. The Tribunal then decides to award Panama compensation as follows:

- (a) value of 532.2 tonnes of gas oil confiscated at a price of US\$ 730 per tonne in the amount of US\$ 388,506.00; with interest at the rate of 2.862 per cent, compounded annually and payable from 20 November 2009 until the date of the Judgment;
- (b) costs of repairs to the vessel in the amount of €146,080.80; with interest at the rate of 3.165 per cent, compounded annually and payable from 18 March 2011 until the date of the Judgment.

Costs

The Tribunal sees no need to depart from the general rule that each party shall bear its own costs.

Operative provisions

The operative provisions read as follows:

For the above reasons, the Tribunal

(1) Unanimously,

Finds that it has jurisdiction over the dispute concerning the oil tanker *M/V Virginia G*.

(2) Unanimously,

Finds that Guinea-Bissau is not precluded from raising objections to the admissibility of the claims of Panama.

(3) Unanimously,

Rejects the objection raised by Guinea-Bissau to the admissibility of the claims of Panama based on the alleged lack of genuine link between Panama and the *M/V Virginia G*.

(4) By 22 votes to 1,

Rejects the objection raised by Guinea-Bissau to the admissibility of Panama's claims based on the fact that the owner of the vessel and the crew are not nationals of Panama;

IN FAVOUR: *President* YANAI; *Vice-President* HOFFMANN; *Judges* MAROTTA RANGEL, NELSON, CHANDRASEKHARA RAO, AKL, WOLFRUM, NDIAYE, JESUS, COT, LUCKY, PAWLAK, TÜRK, KATEKA, GAO, BOUGUETAIA, GOLITSYN, PAIK, KELLY, ATTARD, KULYK; *Judge ad hoc* TREVES;

AGAINST: *Judge ad hoc* SÉRVULO CORREIA.

(5) By 14 votes to 9,

Rejects the objection raised by Guinea-Bissau, based on the non-exhaustion of local remedies, to the admissibility of the claims made by Panama in the interests of individuals or private entities;

IN FAVOUR: *President* YANAI; *Judges* NELSON, AKL, WOLFRUM, COT, LUCKY, PAWLAK, TÜRK, GOLITSYN, PAIK, KELLY, ATTARD, KULYK; *Judge ad hoc* TREVES;

AGAINST: *Vice-President* HOFFMANN; *Judges* MAROTTA RANGEL, CHANDRASEKHARA RAO, NDIAYE, JESUS, KATEKA, GAO, BOUGUETAIA, *Judge ad hoc* SÉRVULO CORREIA.

(6) Unanimously,

Finds that Guinea-Bissau did not violate Panama's right in terms of article 58, paragraph 1, and article 56, paragraph 2, of the Convention by regulating bunkering of foreign vessels fishing in the exclusive economic zone of Guinea-Bissau.

(7) By 22 votes to 1,

Finds that by boarding, inspecting and arresting the *M/V Virginia G*, Guinea-Bissau did not violate article 73, paragraph 1, of the Convention;

IN FAVOUR: *President YANAI; Vice-President HOFFMANN; Judges MAROTTA RANGEL, NELSON, CHANDRASEKHARA RAO, AKL, WOLFRUM, NDIAYE, JESUS, COT, PAWLAK, TÜRK, KATEKA, GAO, BOUGUETAIA, GOLITSYN, PAIK, KELLY, ATTARD, KULYK; Judges ad hoc SÉRVULO CORREIA, TREVES;*

AGAINST: *Judge LUCKY.*

(8) By 14 votes to 9,

Finds that by confiscating the M/V Virginia G and the gas oil on board, Guinea-Bissau violated article 73, paragraph 1, of the Convention;

IN FAVOUR: *President YANAI; Judges NELSON, AKL, WOLFRUM, COT, LUCKY, PAWLAK, TÜRK, GOLITSYN, PAIK, KELLY, ATTARD, KULYK; Judge ad hoc TREVES;*

AGAINST: *Vice-President HOFFMANN; Judges MAROTTA RANGEL, CHANDRASEKHARA RAO, NDIAYE, JESUS, KATEKA, GAO, BOUGUETAIA, Judge ad hoc SÉRVULO CORREIA.*

(9) Unanimously,

Finds that Guinea-Bissau did not violate article 73, paragraph 2, of the Convention.

(10) By 20 votes to 3,

Finds that Guinea-Bissau did not violate article 73, paragraph 3, of the Convention;

IN FAVOUR: *President YANAI; Vice-President HOFFMANN; Judges MAROTTA RANGEL, NELSON, CHANDRASEKHARA RAO, WOLFRUM, NDIAYE, JESUS, PAWLAK, TÜRK, KATEKA, GAO, BOUGUETAIA, GOLITSYN, PAIK, KELLY, ATTARD, KULYK; Judges ad hoc SÉRVULO CORREIA, TREVES;*

AGAINST: *Judges AKL, COT, LUCKY.*

(11) Unanimously,

Finds that by failing to notify Panama, as the flag State, of the detention and arrest of the M/V Virginia G and subsequent actions taken against the vessel and its cargo, Guinea-Bissau violated the requirements of article 73, paragraph 4, of the Convention.

(12) Unanimously,

Finds that Guinea-Bissau did not violate principles of articles 110 and 224 of the Convention.

(13) Unanimously,

Finds that Guinea-Bissau did not use excessive force leading to physical injuries or endangering human life during the boarding and sailing of the *M/V Virginia G* to the port of Bissau.

(14) Unanimously,

Finds that Guinea-Bissau did not violate article 225 of the Convention and that the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation is not applicable in the present case.

(15) Unanimously,

Finds that the counter-claim presented by Guinea-Bissau is unfounded.

(16) By 14 votes to 9,

Decides to award Panama compensation in the amount of US\$ 388,506.00 with interest, for the confiscation of the gas oil, as indicated in paragraph 446 (a);

IN FAVOUR: *President* YANAI; *Judges* NELSON, AKL, WOLFRUM, COT, LUCKY, PAWLAK, TÜRK, GOLITSYN, PAIK, KELLY, ATTARD, KULYK; *Judge ad hoc* TREVES;

AGAINST: *Vice-President* HOFFMANN; *Judges* MAROTTA RANGEL, CHANDRASEKHARA RAO, NDIAYE, JESUS, KATEKA, GAO, BOUGUETAIA, *Judge ad hoc* SÉRVULO CORREIA.

(17) By 13 votes to 10,

Decides to award Panama compensation in the amount of € 146,080.80 with interest, for the costs of repairs to the *M/V Virginia G*, as indicated in paragraph 446 (b);

IN FAVOUR: *President* YANAI; *Judges* NELSON, AKL, WOLFRUM, COT, LUCKY, TÜRK, GOLITSYN, PAIK, KELLY, ATTARD, KULYK; *Judge ad hoc* TREVES;

AGAINST: *Vice-President* HOFFMANN; *Judges* MAROTTA RANGEL, CHANDRASEKHARA RAO, NDIAYE, JESUS, PAWLAK, KATEKA, GAO, BOUGUETAIA, *Judge ad hoc* SÉRVULO CORREIA.

(18) By 18 votes to 5,

Decides not to award Panama compensation for the loss of profit;

IN FAVOUR: *President* YANAI; *Vice-President* HOFFMANN; *Judges* MAROTTA RANGEL, NELSON, CHANDRASEKHARA RAO, WOLFRUM, NDIAYE, JESUS, PAWLAK, TÜRK, KATEKA, GAO, BOUGUETAIA, GOLITSYN, KELLY, ATTARD, KULYK; *Judge ad hoc* SÉRVULO CORREIA;

AGAINST: *Judges* AKL, COT, LUCKY, PAIK, *Judge ad hoc* TREVES.

(19) Unanimously,

Decides not to award Panama compensation for its other claims, as indicated in paragraphs 439 and 440.

(20) Unanimously,

Decides that each Party shall bear its own costs.

Judges Nelson, Gao, Attard and Kelly, Kulyk and Judge *ad hoc* Treves have appended declarations to the Judgment. Judges Akl, Cot and Kelly, Lucky, Paik have appended separate opinions to the Judgment. Vice-President Hoffmann, Judges Marotta Rangel, Chandrasekhara Rao, Kateka, Gao and Bouguetaia have appended their joint dissenting opinion to the Judgment. Judges Ndiaye, Jesus and Judge *ad hoc* Sérvulo Correia have appended dissenting opinions to the Judgment.

The text of the Judgment is available on the [website](#) of the Tribunal and a recorded webcast of the reading is available under [Webcast Archives](#).

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