

DISSENTING OPINION OF JUDGE *AD HOC* TREVES

1. To my regret I could not concur with the Tribunal in considering admissible Guinea-Bissau's counter-claim.
2. According to article 98, paragraph 2, of the Rules of the Tribunal, "a counter-claim shall be made in the counter-memorial of the party presenting it and shall appear as part of the submissions of that party". In conformity with this provision Guinea Bissau's counter-claim was included in the counter-memorial and appears in the submissions set out in therein. It is in my view correct to take the submissions set out in paragraph 268 of Guinea Bissau's counter-memorial as the basis for assessing whether the requirements set out in paragraph 1 of article 98 of the Rules are satisfied. I will limit myself to the requirement of the direct connection of the counter-claim with the subject-matter of the claim of the other party.
3. The relevant part of Guinea Bissau's submissions in the counter-memorial is as follows:
 1. Panama has violated Article 91 of the Convention;
 2. Panama is to pay in favour of Guinea-Bissau compensation for damages and losses caused as a result of the aforementioned violation . . .

Submission Nr. 1 is clearly the principal one, as Submission Nr. 2 is logically subordinated to the well-foundedness of Submission Nr. 1.

4. In my view the claim set out in Submission Nr. 1 lacks the "direct connection with the subject-matter of the claim of the other party" required by article 98, paragraph 1, of the Rules. The alleged violation of the Convention's article 91 regards, as explained in paragraph 257 of the counter-memorial, Panama's "granting of the nationality to a ship without any genuine link to Panama".
5. To challenge the exercise of the sovereign right of Panama to grant its flag to a vessel because such a vessel has allegedly caused damage and losses to the challenging State is in my view disproportionate and devoid of direct connection with Panama's claims. These claims (as set out in the submissions in

Panama's Memorial, paragraph 442) are all linked to alleged violations on the part of Guinea-Bissau of its obligations as a coastal State under various rules of the Convention concerning the exclusive economic zone. These rules are completely disconnected from article 91.

6. It is true that both the claim and counter-claim are based on alleged violations of the Convention, and that reference to the same convention might be seen as sufficient to establish connection for the purposes of admissibility of counter-claims. The Law of the Sea Convention is not, however, an ordinary convention. Its text has three hundred and twenty articles and about four hundred including the annexes that form an integral part of it. It has rightly been called "the constitution of the oceans" because it deals with all aspects of the law of the sea. To consider directly connected two claims just because they are based on provisions of the Convention does not take into consideration the broad coverage of the Convention.

(*signé*) T. Treves