

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



2013

Public sitting

held on Wednesday, 4 September 2013, at 3 p.m.,
at the International Tribunal for the Law of the Sea, Hamburg,

President Shunji Yanai presiding

THE M/V “VIRGINIA G” CASE

(Panama/Guinea-Bissau)

Verbatim Record

<i>Present:</i>	President	Shunji Yanai
	Vice-President	Albert J. Hoffmann
	Judges	Vicente Marotta Rangel
		L. Dolliver M. Nelson
		P. Chandrasekhara Rao
		Joseph Akl
		Rüdiger Wolfrum
		Tafsir Malick Ndiaye
		José Luís Jesus
		Jean-Pierre Cot
		Anthony Amos Lucky
		Helmut Türk
		James L. Kateka
		Zhiguo Gao
		Boualem Bouguetaia
		Vladimir Golitsyn
		Jin-Hyun Paik
		Elsa Kelly
		David Attard
		Markiyana Kulyk
	Judges <i>ad hoc</i>	José Manuel Sérvulo Correia
		Tullio Treves
	Registrar	Philippe Gautier

Panama is represented by:

Mr Ramón García-Gallardo, SJ Berwin LLP, Brussels, Belgium,
as Agent and Counsel;

Mr Alexander Mizzi, SJ Berwin LLP, Brussels, Belgium,
as Co-Agent and Counsel;

and

Ms Janna Smolkina, Ship Registration Officer, Consulate General of Panama,
Hamburg, Germany,
as Counsel;

Ms Veronica Anzilutti, Administration Department, Consulate General of
Panama, Hamburg, Germany,
as Advisor.

Guinea-Bissau is represented by:

Mr Luís Menezes Leitão, Full Professor, Faculty of Law, University of Lisbon,
Portugal,
as Agent and Counsel;

Mr Fernando Loureiro Bastos, Professor, Faculty of Law, University of Lisbon,
Portugal, and Fellow, Institute for International and Comparative Law in Africa, Faculty
of Law, University of Pretoria, South Africa,
as Co-Agent and Counsel;

and

Mr Rufino Lopes, Lawyer, Assessor to the Government,
as Advisor.

1 **THE PRESIDENT:** Good afternoon. We will now continue the examination of the
2 witness Mr da Silva.

3
4 Mr García-Gallardo, you intended to cross-examine the witness. You now have the
5 floor.

6
7 **MR GARCÍA-GALLARDO:** Mr President, your Honours.

8
9 **Cross-examination by MR GARCÍA-GALLARDO**

10
11 Mr da Silva, I did not hear very well this morning. I apologize. Are you the Minister for
12 Education?

13
14 **MR DA SILVA** (*Interpretation from Portuguese*): No. I am no longer a member of the
15 Government.

16
17 **MR GARCÍA-GALLARDO:** I was a little confused, because I saw your affidavits at
18 the time, and later I saw the summary that was prepared by the representative of
19 Guinea-Bissau on the profile of Mr da Silva.

20
21 Basically, I have some questions that I would be glad if you could answer. First of all,
22 based on publicly available information, I have to say that you have a reputation,
23 primarily during your period as Minister of Defence, that has been recognized
24 internationally at all levels, including your Embassy, in the WikiLeaks messages, that
25 they reflect that most people like you are aiming to improve governance and to
26 develop the country as someone with respect. I am sorry. I had not realized that. You
27 were mentioned by the representative of Guinea-Bissau in the papers, that you spent
28 roughly 20 years as a specialist in fisheries. I am glad to learn this because probably
29 I will have some key questions to ask you. At the time of the events in August 2009
30 you were a member of the Interministerial Commission of Fisheries. Is this correct?

31
32 **MR DA SILVA** (*Interpretation from Portuguese*): Yes.

33
34 **MR GARCÍA-GALLARDO:** The first decision related to this vessel made by the
35 Interministerial Commission – I referred to decision number 7 of 2009 already –
36 announced the intention to confiscate the vessel *Virginia G* and the equipment and
37 the cargo. Was this the case?

38
39 **MR DA SILVA** (*Interpretation from Portuguese*): Yes.

40
41 **MR GARCÍA-GALLARDO:** This morning I raised questions with some other
42 witnesses and, reading your witness report, I am a little surprised at the way you
43 drafted the affidavit and at the way you simply summarize the way that you settled
44 the release of the *Amabal I* and *Amabal II* when they were arrested for the first time
45 on 12 August 2009. You simply say that the vessels were arrested and that it was
46 absolutely normal to offer them the possibility to pay via a credit line. What was the
47 reason for offering this facility to some vessels and not to others? Is there any basis
48 in law that allows you, the Interministerial Commission, to settle like this? I can
49 imagine that there was an administrative proceeding, there were FISCAP officers,

1 *relatórios* – probably not *anuncio de llegada* or *detenção* – on these vessels, that
2 there was any meaningful basis to consider this different to other cases.

3
4 **MR DA SILVA** (*Interpretation from Portuguese*): First, I would like to say we do not
5 give credit to any vessels. There was no credit. The fine was imposed, \$150,000,
6 and that was the fine. No credit was given to those vessels. The shipowner has a tax
7 number in Bissau and the intervention of the Spanish Embassy speeded up the
8 process.

9
10 **MR GARCÍA-GALLARDO**: Already at the time, in the administrative proceedings
11 following the detention of the *Virginia G*, you were a member of the Committee – in
12 fact, you were leading the Committee because the Minister of Fisheries was absent,
13 as you reflect in your affidavit. Those vessels, one of them was accused of
14 transshipping of oil by the *Virginia G* in the month of June. What was the
15 consideration to treat those vessels in one category and the *Virginia G* in another
16 category?

17
18 **MR DA SILVA** (*Interpretation from Portuguese*): The Interministerial Commission to
19 which I belonged, the documents were submitted by the inspection secretariat. In the
20 analysis we found that the two *Amabal* vessels had fishing permits and the
21 *Virginia G* had no authorization to operate. We analyzed the events that led to the
22 arrest of the *Virginia G*.

23
24 **MR GARCÍA-GALLARDO**: There was an accusation on the table, one related to
25 and reflected in this case in particular, and I will raise some questions with the last
26 witness on this, where it was reflected that there was an accusation of refueling
27 operations on the *Amabal* and suddenly, three months later, based on the report of
28 the fishing observer that spent three months on board, who is the witness the
29 defence has decided not to invite to come to this hearing, not only there was a
30 second time that the vessels were arrested, but certainly you were for the second
31 time, based on the so-called good relationship with Spain or with the former Consul,
32 or with the new Ambassador – certainly, I have to say I did not very well understand
33 this morning your point – you decided that for the first time those vessels only spent
34 a couple of weeks, and suddenly, on the contrary, the vessel *Virginia G* to remain for
35 14 months. Not only that, you decided – and it is a document attached by the
36 representatives of Guinea-Bissau in this case – not to impose any fine. So I would
37 like to clarify a little today the role played by the Interministerial Commi[ssion],
38 because when reading accurately the wording of the legislation, it has nothing to do
39 with the practice applied by some members of the administration during the period in
40 this country, and this is a pity because I was thinking that you, with the reputation
41 you have, are certainly not leading the debate, because it was the Minister of
42 Fisheries, as reflected enough in publicly available information, who did not say
43 anything and the vessels *Amabal* were released for the third time, and maybe with
44 another intention that we will maybe raise later on.

45
46 **MR DA SILVA** (*Interpretation from Portuguese*): If you will allow me, the Supervisory
47 Committee analyzes the reports and takes an administrative decision. Therefore, the
48 facts that were submitted to us were the ones that we analyzed. Regarding the
49 *Virginia G*, we analyzed the facts that were submitted to us at the Committee. That is
50 what we based our decision on. Regarding the *Amabal* vessels, the Guinea-Bissau

1 Government decided that, because of the relationship and the agency work in
2 Guinea-Bissau, the fine was imposed and the vessels were released when the
3 authorities requested.

4
5 **MR GARCÍA-GALLARDO:** In the end, there was not any particular difference,
6 because those vessels did not have the flag of Spain. Those vessels, as reflected in
7 the Memorial, were Mauritanian, so I do not really understand how a senior person
8 like you, with the reputation you have, would allow, as a leading member of this
9 Interministerial Commi[ssion], to take such a decision. Is it because of the friendship
10 with Spain you decided, as if you were the President of the country, to allow the
11 pardon?

12
13 **MR DA SILVA** (*Interpretation from Portuguese*): I can say that the ship was released
14 and the fines were imposed, and then the *Amabal* vessels were released, while there
15 was no representative for the *Virginia G*, either for the shipowner or his
16 representative.

17
18 **MR GARCÍA-GALLARDO:** The only communications sent by the *Amabal* vessels
19 were through a local agent called Bijagós, and there is enough evidence in the file to
20 confirm this point, while the situation of the *Virginia G* was very similar. There was a
21 senior representative and well-reputed, qualified person locally, acting as local agent
22 through the company Africargo-Bissau LDA.

23
24 **MR DA SILVA** (*Interpretation from Portuguese*): When we took the *Virginia G* it had
25 absolutely no representative that we were aware of, so I am speaking when the
26 confiscation decision was taken.

27
28 **MR GARCÍA-GALLARDO:** I received the power of attorney from Panama in here
29 before receiving the instruction from the Republic of Panama to institute legal
30 proceedings, and there are in the file a lot of letters asking to know more about the
31 way these types of cases were handled by the judicial and the legislative powers in
32 your country?

33
34 **MR DA SILVA** (*Interpretation from Portuguese*): That is exactly it. I am not sure that
35 I understand the question. Could you repeat it, please?

36
37 **MR GARCÍA-GALLARDO:** I was saying that, and you raised the same point this
38 morning, there were no representatives of the *Virginia G* in Guinea-Bissau. In this
39 room we heard two days ago that the shipowner, Mr José Antonio Gamez Sanfiel,
40 never came to Bissau before the arrest of the vessel but now has his personal
41 residence in Guinea-Bissau, so I am still afraid that there was not very much interest
42 in this type of case. Maybe there were other interests involved?

43
44 **MR DA SILVA** (*Interpretation from Portuguese*): I do not know if there was any
45 interest but we on the Committee had the facts from the Technical Committee and
46 we took our decision on the basis of the information that we had about the
47 *Virginia G*.

48
49 **MR GARCÍA-GALLARDO:** The next question is related to the financial cost of such
50 authorizations that have been reflected in different orders. Could you please put on

1 the screen the Portuguese version of the Order of 2001, which has been attached by
2 the Respondent? Here on the first page, this is 2013 – no, the previous page, please
3 – here we have based, on article 23(2), the financial conditions. In Portuguese it is
4 *pagamentos ou contrapartidas*, that the *Departamento do Governo responsável pela*
5 *área das pescas* adopted apparently in 2001. So when reading the third paragraph,
6 now I invite you to read this paragraph. This is a Joint Order of the *Ministério das*
7 *Pescas* and the *Ministério da Economia e Finanças*. Would you please read the
8 paragraph?
9

10 **MR DA SILVA** (*Interpretation from Portuguese*): Taking account of the fact that the
11 implementation of this policy requires a reduction in the tariffs for licences for fishing
12 in effect and a simplification of the conditions of access to fishing resources by
13 companies or firms from Guinea-Bissau operating with their own ships or with
14 chartered ships.
15

16 **MR GARCÍA-GALLARDO**: (*In Portuguese*) Can we see if there is any reference –
17 you were a member of the Interministerial Commi[ssion] – to the (*Spanish spoken*) –
18 in Portuguese I think it is *Embarcações de pesca* – in article 7 of the law 6-A/2000?
19 Will you please let us know – first of all, I do not know, maybe you were not familiar
20 with this, but if you are familiar with this Order, will you please let me know where
21 there are any references to the fees or levies or any other financial contribution to
22 develop certain activities as we will now see on page 2, please? (*No reply*) So Annex
23 3 relates to *Taxas de operações de apoio logístico e de transbordo de pescado* and
24 here the Guinea-Bissau legislation identifies the set of fees and the way to calculate
25 the yearly fee. Were you familiar with this legislation?
26

27 **MR DA SILVA** (*Interpretation from Portuguese*): I ceased to be connected to
28 fisheries in the year 2000, so this was after I ceased my connection to fisheries.
29

30 **MR GARCÍA-GALLARDO**: You're no longer connected to fisheries. So, if we take
31 into consideration the gross tonnage of the *Virginia G*, which is below 900, using the
32 currency in 2001 this makes a figure of a fee per week of less than €400-500. So my
33 question is perhaps, although you certainly cannot consider details which are the
34 technical team's remit, do you consider that the fee of €400-500 a week allows
35 Guinea-Bissau to take a decision without the right to be heard, just simply to
36 confiscate *ex officio* a ship, its cargo and equipment? Whether this order would apply
37 to foreign vessels is another question.
38

39 **MR DA SILVA** (*Interpretation from Portuguese*): Let me say that when I start
40 analyzing a question, if a ship does not have authorization on board, it is seized. I
41 cannot speak about this legislation because it came into force after I left my position
42 in Fisheries, so I cannot answer this question in full.
43

44 **MR GARCÍA-GALLARDO**: We'll just show other legislation that was published early
45 this year precisely amending or revoking the one of 2001 where certainly the
46 conditions changed. There is not any reference to "national", and if you move to the
47 second page – this is the second page, this was the first page – so the word
48 "national" in the third recital is not anymore, and in Annex 3 related to logistic supply
49 operations in the way the legislation defines this itself as substantially a distinct
50 increase in the yearly fees of gross tonnage to a level of €21,000 a year. So my

1 question is: certainly you do not know the details, but the relation has not changed
2 substantially from the moment you were a member of the Interministerial
3 Commission. There are very good principles in the law on proportionality but was this
4 sufficient to consider a different treatment between vessels, because, if I understand
5 well, if a fishing vessel does not request a service, there is no service, so you need
6 two parties, so who would give the authorization? (*No reply*) Let us move to other
7 types of question.

8
9 **MR DA SILVA** (*Interpretation from Portuguese*): I was going to repeat again that I
10 was in the Government until 2012 but I ceased to be connected with fisheries in
11 2000, so anything related to fisheries I am not up to date on. They were doing their
12 work and I was not involved, so I cannot tell you anything about it. This was not my
13 job any more and my duties were different from the ones that I had then. I was not
14 even in the Government in 2013 when this tariff came out.

15
16 **MR GARCÍA-GALLARDO**: I have one question in relation to the period that
17 Mr Antonio was sitting at this Interministerial Commi[ssion]. The vessel was arrested
18 in August 2009 and you have both international and local provisions that impose the
19 authorities to communicate via the Ministry of Foreign Affairs the notification of the
20 arrest to the flag State. Was this matter treated in the Interministerial Commi[ssion]
21 or not?

22
23 **MR DA SILVA** (*Interpretation from Portuguese*): No, because at ministerial level we
24 only know the data, the case that we receive. We are handed the information by the
25 Inspection Committee.

26
27 **MR GARCÍA-GALLARDO**: My next question was linked to the other, this in relation
28 to the allegations of lack of transparency and governance. Certainly Guinea-Bissau
29 is a small country where you probably know locally each other, but just some weeks
30 after you left the position as Minister of Defence with the reshuffle of the Government
31 and you became Minister of Education, there were many important events that
32 occurred in the Ministry of Fisheries and there was an investigation conducted by the
33 Prosecutor's Office – I do not know if it is the same as attorney-general depending
34 on the countries – and were you aware, and what is your opinion on this, of the
35 creation of a formal committee in December 2009 where the *Procurador-geral da*
36 *República*, Mr Amine Saad, issued an order determining the creation of an
37 observatory of the Prosecutor's Office together with the Secretary of State for
38 Fisheries granting full competence – I will say this in Portuguese – *o*
39 *acompanhamento da fiscalização do processo de emissão de licenças de pescas,*
40 *de despachos sobre prorrogações de licenças e de autorizações de qualquer tipo de*
41 *transbordo*. Had you been aware about this important event in the administration that
42 you held just a few months ago, an important position in the Interministerial
43 Committee of Fisheries?

44
45 **MR DA SILVA** (*Interpretation from Portuguese*): No. As a minister I take decisions
46 but the most important decisions are taken by the Council of Ministers, so I am not
47 aware of anything of this nature. This is a maritime inspection matter and I do not
48 know any other information about this. I am no longer a member of the executive.
49 This is a matter to which I did not have access.

1 **MR GARCÍA-GALLARDO:** Because, based on the experience reflected by a
2 representative of Guinea-Bissau in the paper – the summary is sent to the parties –
3 with 20 years' experience in fisheries I thought you were more familiar with the
4 details, but certainly you have provided an explanation that it is not the case. Thank
5 you.

6
7 **THE PRESIDENT:** Thank you, Mr Gallardo.

8
9 May I ask the Agent of Guinea-Bissau whether he wishes to re-examine the witness?
10 Mr Leitão?

11
12 **MR MENEZES LEITÃO:** No.

13
14 **THE PRESIDENT:** Thank you very much.

15
16 Mr da Silva, thank you very much for your testimony. Your examination is now
17 finished and you may withdraw.

18
19 Now I would like to ask, Mr Leitão, how do you wish to continue? Are you ready to
20 call the next witness?

21
22 **MR MENEZES LEITÃO:** If it pleases the Tribunal, I will call Mr Djata Janga.

23
24 **THE PRESIDENT:** Thank you. The Tribunal will proceed to hear the witness
25 Mr Djata Janga. He may now be brought into the courtroom. I call upon the Registrar
26 to administer the solemn declaration to be made by the witness.

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

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

39
40 **MR MENEZES LEITÃO:** Thank you, Mr President.

41
42 **Examination by MR MENEZES LEITÃO**

43
44 Mr Djata Janga, could you say to this Tribunal what is your profession?

45
46 **MR JANGA** (*Interpretation from Portuguese*): I am a sailing pilot.

47
48 **MR MENEZES LEITÃO** (*Interpretation from Portuguese*): How long are you
49 exercising that professional activity?

50

1 **MR JANGA** (*Interpretation from Portuguese*): I have 18 years of professional
2 experience.
3
4 **MR MENEZES LEITÃO** (*Interpretation from Portuguese*): Have you participated in
5 the enforcement mission... (*Continued in English*)... which ended with the arrest of
6 the *Virginia G*?
7
8 **MR JANGA** (*Interpretation from Portuguese*): Yes, I took part.
9
10 **MR MENEZES LEITÃO**: One question I would like to ask is, is this a photo of the
11 operation?
12
13 **MR JANGA** (*Interpretation from Portuguese*): Yes, it is.
14
15 **MR MENEZES LEITÃO**: Where was the crew at that time, because they were not in
16 the photo?
17
18 **MR JANGA** (*Interpretation from Portuguese*): The crew was aboard but when we
19 were at the bridge with the inspector I, as a pilot – they were there.
20
21 **MR MENEZES LEITÃO**: This photo refers only to a small part of the ship, as I
22 understand. Can you confirm this?
23
24 **MR JANGA** (*Interpretation from Portuguese*): Explain, please.
25
26 **MR MENEZES LEITÃO**: The entire ship or only a part of it?
27
28 **MR JANGA** (*Interpretation from Portuguese*): It is a part of the ship.
29
30 **MR MENEZES LEITÃO**: Could you say to this Tribunal what were the weather
31 conditions at that time?
32
33 **MR JANGA** (*Interpretation from Portuguese*): At the time the weather was good.
34
35 **MR MENEZES LEITÃO**: Were they good, the climatic conditions?
36
37 **MR JANGA** (*Interpretation from Portuguese*): The weather conditions were good.
38 The sea was calm and it promised to do everything in good order.
39
40 **MR MENEZES LEITÃO**: The state of the sea that we can see in this picture?
41
42 **MR JANGA** (*Interpretation from Portuguese*): Yes, it was really this. The sea is
43 calm.
44
45 **MR MENEZES LEITÃO**: We see on the right side of the picture something in the
46 sea. What is it?
47
48 **MR JANGA** (*Interpretation from Portuguese*): It is a boat. It is a boat of ours.
49

1 **MR MENEZES LEITÃO:** Was there any torture or any threats against the crew
2 during the enforcement of operation?
3

4 **MR JANGA** (*Interpretation from Portuguese*): No, there were not – no torture, no
5 threats – because the ship’s captain cooperated with us.
6

7 **MR MENEZES LEITÃO:** How did you enter in the ship?
8

9 **MR JANGA** (*Interpretation from Portuguese*): We entered through a ladder that was
10 put aboard, and we climbed on board through the ladder.
11

12 **MR MENEZES LEITÃO:** It is disputed in this Tribunal if the trip to Bissau was
13 performed in safe conditions. What do you say about that?
14

15 **MR JANGA** (*Interpretation from Portuguese*): About safety conditions of the ship?
16 They were good. The weather was good. The wind was not blowing. The sea was
17 calm and I have assured everything that I could address the ship until Bissau.
18

19 **MR MENEZES LEITÃO:** Did you discuss the conditions with the captain of the ship?
20

21 **MR JANGA** (*Interpretation from Portuguese*): No. There was the following exchange
22 of opinions. I explained to the captain that even if he did know the area, this is my
23 valid job and I could address the ship until the port of Bissau with no difficulties.
24

25 **MR MENEZES LEITÃO:** Do you have experience of sea navigation in this precise
26 route to Bissau?
27

28 **MR JANGA** (*Interpretation from Portuguese*): How?
29

30 **MR MENEZES LEITÃO:** I was asking if you were experienced of the sea navigation
31 in this precise route to the port of Bissau.
32

33 **MR JANGA** (*Interpretation from Portuguese*): Yes, I have experience. I have made
34 this several times.
35

36 **MR MENEZES LEITÃO:** Did you have a chart with you?
37

38 **MR JANGA** (*Interpretation from Portuguese*): Yes, I have a maritime chart. I was
39 with it and I was with it in the vessel to bring the ship into the port of Bissau.
40

41 **MR MENEZES LEITÃO:** Did the ship have any problem in travelling to the port of
42 Bissau? Was the journey conducted without any problem or do you want to report
43 anything that happened during the voyage to the port of Bissau?
44

45 **MR JANGA** (*Interpretation from Portuguese*): During the journey to Bissau there
46 were no problems. We navigated in good conditions. The weather was good and we
47 arrived at Bissau with no problems.
48

49 **MR MENEZES LEITÃO:** No further questions.
50

1 **THE PRESIDENT:** Thank you, Mr Leitão.
2
3 I ask the Agent of Panama whether he wishes to cross-examine the witness.
4
5 **THE PRESIDENT:** Mr Mizzi, you have the floor.
6
7 **Cross-examination by MR MIZZI**
8
9 **MR MIZZI:** Thank you – just a couple of questions. My colleague used photo 15.
10 Mr Janga, the agreement seems to be that the arrest of the *Virginia G* happened at
11 around seven o'clock in the evening. Do you agree?
12
13 **MR JANGA** (*Interpretation from Portuguese*): No – 6.30 p.m.
14
15 **MR MIZZI:** So we are speaking about the end of the day, dusk. Could I have
16 photo 15? Can you confirm that the conditions of the sea in the top photo – and the
17 amount of light – is in fact approximately 60 kilometres off the coast of Bissau at 6.30
18 in the evening? Is the water in the EEZ as calm as that? If indeed the photo says that
19 this photo was taken during the arrest, this photo was taken, at earliest, at 6.30 in the
20 evening.
21
22 **MR JANGA** (*Interpretation from Portuguese*): Yes, it does correspond. I am looking
23 at the weather and the sea is calm and it was not evening. You are seeing another
24 part of the ship.
25
26 **MR MIZZI:** You are now referring to the situation, the condition of the sea – how
27 calm it is, in fact, and the amount of light. The second photo, at the bottom, similarly
28 seems to show land in the background.
29
30 **MR JANGA** (*Interpretation from Portuguese*): That is not land on the bottom -
31 because the weather mistakes when we are at sea. When you are far away the
32 weather makes mistakes. It seems land, but it is not.
33
34 **MR MIZZI:** In the top photo again the caption says on the sea is visible the boat
35 *Baleia V*. In my opinion on the sea is visible – something.
36
37 **MR JANGA** (*Interpretation from Portuguese*): Something is visible on the side – our
38 boat that we take on missions. This is our boat.
39
40 **MR MIZZI:** Are you a navy pilot or a merchant pilot?
41
42 **MR JANGA** (*Interpretation from Portuguese*): Navy pilot of the national navy.
43
44 **MR MIZZI:** Therefore you felt competent and subject to the same regulations as a
45 merchant pilot.
46
47 **MR JANGA** (*Interpretation from Portuguese*): Yes, yes.
48
49 **MR MIZZI:** How did you arrive at the *Virginia G*, on which vessel?
50

1 **MR JANGA** (*Interpretation from Portuguese*): I arrived in Bissau with no problems,
2 without problems.
3
4 **MR MIZZI**: From Bissau to the *Virginia G* – how did you get there, on which vessel?
5
6 **MR JANGA** (*Interpretation from Portuguese*): I was on board the *Baleia V*. I was
7 there. That conducted me until the destination when we found *Virginia G*.
8
9 **MR MIZZI**: You say in your witness statement that you were commander of the
10 vessel *Cacine*.
11
12 **MR JANGA** (*Interpretation from Portuguese*): No, that was my occupation at the
13 time when I left Bissau. That was my occupation at the time. It doesn't mean that I
14 was aboard the *Cacine* vessel. I am commander of the *Cacine* vessel but I was in
15 charge of the mission at the high sea.
16
17 **MR MIZZI**: A navy vessel?
18
19 **MR JANGA** (*Interpretation from Portuguese*): Yes, from the navy fiscalization, and I
20 am commander of that navy boat but I was in charge of this mission.
21
22 **MR MIZZI**: Did you plan your voyage from Guinea-Bissau to the *Virginia G*? As I
23 understand, over such a distance and given the different conditions at sea – land,
24 islands – you would normally plan several waypoints using different charts
25 specifically designed for those waypoints. Did you have that mission plan or voyage
26 plan prepared?
27
28 **MR JANGA** (*Interpretation from Portuguese*): Sorry, how? There was another
29 person at that vessel who is in charge. We left Bissau and went into the high sea
30 where we accomplished our mission.
31
32 **MR MIZZI**: By you in advance, as a pilot of the voyage from Bissau to the *Virginia G*
33 and back.
34
35 **MR JANGA** (*Interpretation from Portuguese*): I am there to guide the people who are
36 there. We are at the *Baleia V* and I am there as a pilot and to see whether things are
37 going right, orientated to guide the people who are at the boat.
38
39 **MR MIZZI**: That was not my question. One last question: we have heard that the
40 map you used on board was in tatters or in very bad condition, and that the latitudes
41 and longitudes were not synchronized. The map was torn, patched, taped or sewn.
42 In fact, this seems to be the case because you gladly accepted the offer from the
43 master of a brand-new map, more suited for the route.
44
45 **MR JANGA** (*Interpretation from Portuguese*): Yes. In fact, the master saw that my
46 chart was old, but I guided him, whatever the mission was. He could offer me a new
47 chart but if he wants to offer me a new one I receive it. That chart that he promised
48 to offer is different from the one I had. That is the chart I was given to sail the
49 channel. The chart number 1724 is different from the other one.
50

1 **MR MIZZI:** Thank you, your Honour.

2

3 **THE PRESIDENT:** Thank you, Mr Mizzi.

4

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

6

7 **MR MENEZES LEITÃO:** No, thank you, Mr President.

8

9 **THE PRESIDENT:** Mr Janga, your examination is now finished. You may withdraw.

10

11 Now, Mr Menezes Leitão, may I ask you how you wish to continue?

12

13 **MR MENEZES LEITÃO:** Yes, Mr President. I will now call Mr Ildefonso Barros.

14

15 **THE PRESIDENT:** Thank you. The Tribunal will now proceed to hear the witness
16 Mr Ildefonso Barros. He may now be brought into the courtroom.

17

18 I now call upon the Registrar to administer the solemn declaration to be made by the
19 witness.

20

21 *(The witness made the solemn declaration)*

22

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

33

34 Mr Leitão, you have the floor.

35

36 **MR MENEZES LEITÃO:** Thank you, Mr President.

37

38 **Examination by MMENEZES LEITÃO**

39

40 Mr Ildefonso Barros, could you please say to the Tribunal what your profession is.

41

42 **MR BARROS** *(Interpretation from Portuguese):* I am a mechanical engineer. I have
43 over 25 years of professional experience in the fisheries sector, where I have been in
44 the position as a director, *chef de cabinet*. My last job was Secretary General of
45 Fishery and coordination of inspections.

46

47 **MR MENEZES LEITÃO:** At the time of the release of the vessel *Virginia G* in 2010,
48 what was your position?

49

1 **MR BARROS** (*Interpretation from Portuguese*): I was Secretary General of Fishery
2 and National Coordinator of Fishery Inspection.

3
4 **MR MENEZES LEITÃO**: Why was it decided to release the ship?

5
6 **MR BARROS** (*Interpretation from Portuguese*): There were two reasons for that.
7 The first and main reason was that the ship had sunk in the port and it could pose a
8 risk to ships sailing in the channel and risks to the marine environment. The second
9 reason was that the relations with Spain that are fundamental for us meant that the
10 Government decided and gave instructions to the Interministerial Commi[ssion] to
11 release the ship, and it was on that basis that this was done.

12
13 **MR MENEZES LEITÃO**: How did you get knowledge of the risk of the ship sinking in
14 the port of Bissau?

15
16 **MR BARROS** (*Interpretation from Portuguese*): We received information from the
17 port authorities and our services went to the ship to see what was happening. That
18 was when we were able to obtain the information about the risk that we were running
19 of the ship sinking in that area.

20
21 **MR MENEZES LEITÃO**: What is the formal process by which the ship was
22 released?

23
24 **MR BARROS** (*Interpretation from Portuguese*): The procedure after the
25 Commission's decision – and they are the ones who have to analyze violations and
26 decide on releases – is that FISCAP, which is the secretariat of the Interministerial
27 Commi[ssion], was informed of the decision and did its job of informing the ship's
28 representative of the decision and to issue the release order. That is what we did.

29
30 **MR MENEZES LEITÃO**: The term of delivery is a document like the one you can
31 see on your screen?

32
33 **MR BARROS** (*Interpretation from Portuguese*): This document is not a term of
34 delivery. The release document is what we used to release the ship. This is a receipt
35 for delivery of documents, which is released after the release order. This is not one
36 of the models that we use.

37
38 **MR MENEZES LEITÃO**: But was this document issued at your services in Bissau or
39 not?

40
41 **MR BARROS** (*Interpretation from Portuguese*): Not in the terms that are here in
42 English. We never issue a document with anything on it in English. It is written in
43 Portuguese and we hand it over in accordance with our form. This is not one of the
44 documents that we use. I do not know where this document came from and I would
45 never issue a document with reservations in English. Our working language is
46 Portuguese. I do not have the power to issue or authorize reservations to
47 representatives, or especially not to the person who wrote this document. The issue
48 of reservations or complaints is the competence of the Interministerial Commission.

49

1 **MR MENEZES LEITÃO:** How do you assume this kind of text in English was put in a
2 different document, the document different from the release notice, that is here now?
3 How do you think it is possible that it appears here?
4

5 **MR BARROS** (*Interpretation from Portuguese*): I think somebody may have forged
6 this, because the normal documents that we have never have this kind of reservation
7 on it, in totally different fonts from the ones that we use.
8

9 **MR MENEZES LEITÃO:** I have no further questions.
10

11 **THE PRESIDENT:** Thank you, Mr Menezes Leitão.
12

13 I would like to ask the Agent of Panama whether he wishes to cross-examine the
14 witness. Mr Mizzi, you have the floor.
15

16 **Cross-examination by MR MIZZI**
17

18 **MR MIZZI:** Good afternoon, Mr Barros. I have two questions. You say that the vessel
19 was released because of its rather bad condition in or around October 2010.
20

21 **MR BARROS** (*Interpretation from Portuguese*): Yes. We received that information,
22 and the Government had the information too, and its guidelines were that the ship
23 was in bad condition, there was a huge risk for ships and for the marine
24 environment.
25

26 **MR MIZZI:** Therefore the condition of the ship is apparently confirmed by Guinea-
27 Bissau. Next question: you were looking at this delivery record, or *termo de entrega*.
28 Your colleague who signed this document apparently chose not to be here today but
29 in his statement he says that the original, or the version he had, was lost.
30

31 **MR BARROS** (*Interpretation from Portuguese*): As I said, we never used a
32 declaration.
33

34 **MR MIZZI:** If I could interrupt you because our time is very limited, for comparative
35 purposes, do you have the document you think is authentic with you and why has it
36 not been submitted to the proceedings?
37

38 **MR BARROS** (*Interpretation from Portuguese*): As I said, in the case files we have
39 normal documents, normal forms that we use. This document does not correspond
40 to the ones that we use. That was the only one that we use.
41

42 **MR MIZZI:** I have no more questions.
43

44 **THE PRESIDENT:** Thank you, Mr Mizzi.
45

46 I ask the Agent of Guinea-Bissau whether he wishes to re-examine the witness.
47

48 **MR MENEZES LEITÃO:** No, thank you, Mr President.
49

50 **THE PRESIDENT:** Thank you.

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Mr Barros, thank you for your testimony. Your examination is now finished. You may withdraw.

Mr Menezes Leitão, do you wish to call the next witness, Mr Mário Dias Sami?

MR MENEZES LEITÃO: Yes, if it pleases the Tribunal.

THE PRESIDENT: The Tribunal will then proceed to hear the witness Mr Mário Dias Sami. He may be brought into the courtroom.

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

(The witness made the solemn declaration)

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

Mr Leitão, you have the floor.

Examination by MR MENEZES LEITÃO

MR MENEZES LEITÃO: Mr Sami, could you inform the Tribunal of your profession?

MR DIAS SAMI (*Interpretation from Portuguese*): I am Mário Sami, born 15 August 1957, and I am an economist as a profession.

MR MENEZES LEITÃO: What is your professional experience in the fisheries sector?

MR DIAS SAMI (*Interpretation from Portuguese*): I have more than 20 years of experience in the fisheries sector. I have held several positions until I reached the Secretary of State of Fisheries, and then I was Secretary of State of the Environment in Bissau.

MR MENEZES LEITÃO: When did you become Secretary of State for Fisheries?

MR DIAS SAMI (*Interpretation from Portuguese*): I was appointed to that job in October 2009 until August 2011.

1 **MR MENEZES LEITÃO:** Due to that quality, you also belong to the Interministerial
2 Commission of Maritime Surveillance. Can you confirm that?
3

4 **MR DIAS SAMI** (*Interpretation from Portuguese*): That is true. My position was
5 preceded by the holder of the fisheries position, and when I was appointed I was the
6 President of the Commission, the Interministerial Commission for Maritime
7 Surveillance.
8

9 **MR MENEZES LEITÃO:** As I understood, at that time there was no Ministry of
10 Fisheries, so you were the top officer of the fisheries sector in the Government.
11

12 **MR DIAS SAMI** (*Interpretation from Portuguese*): That is true, because there was a
13 governmental reorganization in 2009 and there was a change in the holder of the
14 fisheries sectors. I responded directly to the Prime Minister.
15

16 **MR MENEZES LEITÃO:** In that quality, have you taken care of the process of the
17 ship we are discussing here, *Virginia G*?
18

19 **MR DIAS SAMI** (*Interpretation from Portuguese*): From that date when I entered the
20 fisheries sector I began to receive information about the vessel.
21

22 **MR MENEZES LEITÃO:** Was there any contact from the Spanish Embassy about
23 this ship?
24

25 **MR DIAS SAMI** (*Interpretation from Portuguese*): We had several communications
26 with the Embassy of Spain within the framework of our cooperation and amicable
27 relationships between the two peoples and the two States, so the seizure of the
28 *Virginia G* was worrying not only the Guinean authorities but also the Spanish ones,
29 and in our contacts we had the intention to talk about this matter. I had contacts with
30 the Ambassador and the Consul of Spain.
31

32 **MR MENEZES LEITÃO:** Was there any contact from the Panamanian authorities?
33

34 **MR DIAS SAMI** (*Interpretation from Portuguese*): As far as the Panamanian
35 authorities are concerned, I received the representatives of the shipowner on a date
36 when they sent me a letter on 16 November asking to schedule a meeting on
37 16 November. On that same date I convened a meeting for the 18th of that same
38 month.
39

40 **MR MENEZES LEITÃO:** But were they the Panamanian authorities or only the
41 representatives of the shipowner?
42

43 **MR DIAS SAMI** (*Interpretation from Portuguese*): Only the cabinet that the agent
44 contacted. They were there saying that they represented the shipowner. I had no
45 contact with the Panamanian authorities directly; only through their representatives.
46

47 **MR MENEZES LEITÃO:** Were you notified of the alert received about the risk of the
48 ship sinking in the port of Bissau?
49

1 **MR DIAS SAMI** (*Interpretation from Portuguese*): Yes, after the ship had unloaded
2 the product there was a note from the Minister of Finance and then we followed the
3 situation closely. After having unloaded the product, it was brought to another place
4 at the canal and this canal cannot be obstructed by any vessel that can eventually
5 sink at that site, because we have a very large experience from vessels that have
6 sunk in the port of Bissau and to remove them was costly and very expensive.
7

8 **MR MENEZES LEITÃO**: After the release of the ship it was possible for Guinea-
9 Bissau to renovate the cooperation memorandum in the field of fisheries with Spain.
10 Can you inform the Tribunal about the negotiation of this cooperation memorandum
11 in the field of fisheries?
12

13 **MR DIAS SAMI** (*Interpretation from Portuguese*): The protocol, which is the
14 memorandum in the partnership of the fisheries sector, is within the framework of the
15 European Union and Guinea-Bissau for the research and the supervision and
16 reinforcement of capacities of human resources in the fisheries sectors, so the
17 Consul told me that the delay for that memoranda was going to end by December
18 2010; and then I went to Spain on an official visit from 26 to 30 January to extend the
19 cooperation memorandum in the field of fisheries concretely.
20

21 **MR MENEZES LEITÃO**: Was the Government of Guinea-Bissau worried about the
22 possibility of Spain, as retaliation, not agreeing to the extension of the
23 memorandum?
24

25 **MR DIAS SAMI** (*Interpretation from Portuguese*): No. Because Spain, as a partner
26 within a joint framework, would have changed the conditions for renewing the
27 protocol that was to end on 15 June 2011, and we started to prepare the new
28 protocol in October 2010. We were in Brussels preparing the text for the new
29 protocol. The protocol that was to end on 15 June was dated June 2007 and was to
30 last for four years.
31

32 **MR MENEZES LEITÃO**: Did Guinea-Bissau maintain a good relationship with Spain
33 in the fisheries sector or not?
34

35 **MR DIAS SAMI** (*Interpretation from Portuguese*): Of course. Within the framework of
36 cooperation with the European Union, Spain has a large fleet, and our relationships
37 were very special and not by any chance. We saw Spain opening an embassy in our
38 country and that confirmed our amicable relationships that are based upon respect
39 and common interests.
40

41 **THE PRESIDENT**: Thank you, Mr Leitão.
42

43 I ask the Agent of Panama if he wishes to cross-examine the witness. Mr Gallardo,
44 you have the floor.
45

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

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

1 **MR GARCÍA-GALLARDO:** Mr Mário Dias Sami, we do not have too much time, so I
2 will try to raise some key questions. Would you consider that the fuelling of gas oil by
3 a small tanker like the *Virginia G* is a fishing-related activity if this service is provided
4 within the EEZ of Guinea-Bissau but outside the territorial sea?
5

6 **MR DIAS SAMI** (*Interpretation from Portuguese*): Yes, any vessel that is not fishing,
7 the remaining activities are called fishing-related activities. They have to do with
8 fuelling the vessels because foreign vessels that make these activities within the
9 waters of Guinea-Bissau make their preparations within the waters of Guinea-
10 Bissau.
11

12 **MR GARCÍA-GALLARDO:** (*Interpretation from Portuguese*): I heard, if I am not
13 wrong, that you have talked about maritime waters of Guinea-Bissau. Would you
14 please explain what you understand by this concept of maritime waters of Guinea-
15 Bissau?
16

17 **MR DIAS SAMI** (*Interpretation from Portuguese*): It is, I understand, not only the
18 coastal sea and the EEZ area of our country that is extending to 200 miles in the
19 Convention, but also the outside sea.
20

21 **MR GARCÍA-GALLARDO:** The definition complies with the International Convention
22 on the Law of the Sea?
23

24 **MR DIAS SAMI** (*Interpretation from Portuguese*): I am giving my definition and the
25 right terms, and the vessel *Virginia G* committed a serious infraction of the law of
26 fisheries, even though it was not within the 200 miles, as counted from Unhocomo
27 Island, because it had no authorization for that operation.
28

29 **MR GARCÍA-GALLARDO:** Like Namibia, having adopted similar provisions to the
30 one you can read on the screen, article 2 of the Decreto 6-A/2000, had been
31 reviewed voluntarily when the United Nations – I do not know exactly which body
32 within the law, the parliament or following advice from professors – and the reality is
33 that they amended the wording on the maritime waters of Namibia in this case. Are
34 you aware of this amendment made by Namibia?
35

36 **MR DIAS SAMI** (*Interpretation from Portuguese*): I am not a legal adviser. I am only
37 occupied with economic features.
38

39 **MR GARCÍA-GALLARDO:** You were at the *Secretaria das Pescas* or *Ministério das*
40 *Pescas* because, following the problems that arose before your appointment as
41 Secretary for Fisheries, you were one of the top officers in this Secretariat for
42 Fisheries that provided advice on the conditions for unloading cargo by force. I am
43 talking about the cargo of the *Virginia G* and about the decision taken, and now I can
44 show you Annex 56 of our Memorial. If you look, this decision is signed I think by the
45 *Ministério das Finanças* and you are in copy. It is a decision taken on 20 September
46 and there is an error again – it happens – on the date of the letter, 30 November.
47 Then what was your role played to implement this decision?
48

49 **MR DIAS SAMI** (*Interpretation from Portuguese*): It is correct. That date is correct,
50 because it deals with the date when all the ---

1
2 **MR GARCÍA-GALLARDO:** I am sorry to interrupt you, Mr Sami. You mentioned that
3 this is a correct date. Which one, the one of 30 November or the one of
4 20 November?

5
6 **MR DIAS SAMI** (*Interpretation from Portuguese*): That document was signed by the
7 Secretary of State of the Treasury giving allowance following the attorney's office
8 decision to unload the ship.

9
10 **MR GARCÍA-GALLARDO:** In preparation for the hearing, summarizing the scope of
11 your witness deposition, I wanted to touch upon some points that are not reflected in
12 your witness statement - and there is no problem with that of course - but could you
13 confirm whether or not you agree that it was not fuel, it was gas oil, carried by the
14 *Virginia G* that was ordered to be unloaded by the Minister of Finance, who is
15 responsible for the management of the State's assets, following the decision to seize
16 the products on board the vessel? At the time there were military problems on the
17 north border of the country and the Minister did not want to spend any money on fuel
18 for the armed forces. Do you confirm this or not?

19
20 **MR DIAS SAMI** (*Interpretation from Portuguese*): That information is written in what
21 document?

22
23 **MR GARCÍA-GALLARDO:** A document in a letter sent by my esteemed colleague to
24 the attention of the Registrar on – I do not think I can see a date on the letter but
25 certainly a couple of months ago. I can show you the letter.

26
27 **MR DIAS SAMI** (*Interpretation from Portuguese*): I would like you to mention that
28 letter with those details, that the public treasury of Guinea-Bissau had no resources
29 to deal with the features of national sovereignty.

30
31 **MR GARCÍA-GALLARDO:** Because you were already appointed as Secretary for
32 Fisheries, were you aware of the existence of an order letter that was served to you,
33 to the Minister of Finance, on 10 November suspending the confiscation of
34 everything – the ship, the cargo, the equipment?

35
36 **MR DIAS SAMI** (*Interpretation from Portuguese*): It was with those on that document
37 that the Public Attorney has given his affidavit, his statement.

38
39 **MR GARCÍA-GALLARDO:** Does the Public Attorney have the right to decide on a
40 judgment, on an order rendered by a judge in Guinea-Bissau?

41
42 **MR DIAS SAMI** (*Interpretation from Portuguese*): The Public Attorney, yes, is the
43 State's attorney according to our law, the State's attorney, so his position as the
44 Public Attorney is valid.

45
46 **MR GARCÍA-GALLARDO:** I do not know if I am hearing you well. Do you mean that
47 the executive power can impose its own decision on a judicial order rendered by the
48 judicial power in Guinea-Bissau?

1 **MR DIAS SAMI** (*Interpretation from Portuguese*): There are several parts. What you
2 are dealing with is a restraining order not specified, and that unspecified order has
3 been submitted to the Public Attorney. According to his statement, the letter that has
4 been before shown is from the Secretary of State of the Treasury to proceed with the
5 unloading of the cargo.
6

7 **MR GARCÍA-GALLARDO**: It is article 52 as amended in 2005, which makes part of
8 our Annex 9 in the Memorial. It is at the bottom. It is an amendment (as before). If
9 you look to the column on the right side, article 52(3): *A decisão prevista no*
10 *número 1 – confiscado ex officio – e susceptível de recurso*. Now I would not like to
11 elaborate more because I think that there will be legal experts from Guinea-Bissau
12 but do you still think that the decision of an Attorney General in Guinea-Bissau can
13 change a decision taken by a judge even, like in this case, an interim relief measure
14 imposing the suspension on any action on the ship, on the cargo, on the equipment
15 of the *Virginia G*?
16

17 **MR DIAS SAMI** (*Interpretation from Portuguese*): As a public attorney who has been
18 shown this opinion, I think so.
19

20 **MR GARCÍA-GALLARDO**: I have no more questions.
21

22 **THE PRESIDENT**: Thank you, Mr García-Gallardo.
23

24 **MR MIZZI**: May I have one question?
25

26 **THE PRESIDENT**: We have reached four-thirty. I do not know if you wish to
27 continue.
28

29 **MR MIZZI**: It will not last longer than a minute or a minute or a half.
30

31 **THE PRESIDENT**: Can you do that after the break?
32

33 **MR MIZZI**: Yes.
34

35 **THE PRESIDENT**: The Tribunal will withdraw for a break of thirty minutes and we
36 will continue at five o'clock.
37

38 (*Break*)
39

40 **THE PRESIDENT**: Now we will continue the cross-examination of the witness. I
41 would like to know who will speak on behalf of Panama.
42

43 Mr Mizzi, you have the floor.
44

45 **Cross-examination (continued) by MR MIZZI**
46

47 **MR MIZZI**: Thank you.
48

49 Mr Sami, we need to be rather quick with this question because of the time-limit. I
50 am referring now to Annex 56 of our Memorial which is the letter on the basis of

1 which the confiscation of the oil took place. This letter was handed to the captain on
2 20 November 2009 and the oil was confiscated thereafter. This letter is dated
3 30 November 2009 and the first line of the second paragraph says, “notwithstanding
4 the judicial order suspending the decision”, which you have now confirmed on the
5 basis of what we have called an internal appeal – you nevertheless disregarded it.
6 Do you confirm that?

7
8 **MR DIAS SAMI** (*Interpretation from Portuguese*): If it wasn’t ignored we would
9 proceed according to the restraining order.

10
11 **MR MIZZI**: Can I have the translation again, please?

12
13 **THE PRESIDENT**: Yes.

14
15 **THE INTERPRETER**: If it wasn’t ignored then we would proceed according to the
16 restraining order.

17 Do you want me to repeat? Could the witness please repeat what he has just
18 said?

19
20 **THE PRESIDENT** (*Interpretation from French*): Would you please repeat the
21 question?

22
23 **MR DIAS SAMI** (*Interpretation from Portuguese*): Would you please repeat the
24 question?

25
26 **THE PRESIDENT**: Mr Mizzi, I am sorry – would you repeat the question?

27
28 **MR MIZZI**: The letter that is being shown to you is dated 30 November. It was
29 handed to the captain of the *Virginia G* on 20 November; therefore the letter is
30 forward-dated by ten days; and this letter was the basis on which the oil was
31 confiscated; and the basis on which the oil was confiscated was a complete
32 disregard to the suspension order that had already been obtained by the owner of
33 the vessel, which you said previously you felt justified in ignoring on the basis of an
34 opinion of the Public Prosecutor, who apparently has more powers than the judiciary.
35 I just need to clarify that this is indeed your understanding.

36
37 **MR DIAS SAMI** (*Interpretation from Portuguese*): I would like you to show me that
38 letter, please. The letter that is on screen is showing 30 November. If there is
39 another one from the 20th I would like it to be shown on the screen.

40
41 **MR MIZZI**: Your Honour, we have testimony that the oil was confiscated on
42 20 November, and it is not contested. This letter was forward-dated.

43
44 The second point I need to raise is that your appeal, or Guinea-Bissau’s appeal, was
45 considered out of time and appealed in the wrong form. Therefore, I put it to you –
46 and we have the decision, which is publicly available – that all actions taken by your
47 Government from this date, at minimum – possibly even retrospectively – until the
48 date of release of the *Virginia G*, were completely against the court order. That is my
49 last question.

1 **MR DIAS SAMI** (*Interpretation from Portuguese*): I have already spoken about the
2 opinion of the Public Attorney. You have not shown me the letter of 20th or the
3 witnesses. Where are the records of the witnesses about the letter of 20th?
4

5 **MR MIZZI**: There was no letter of 20th; this is the letter that was handed to the
6 captain on 20th. This is it.
7

8 **MR DIAS SAMI** (*Interpretation from Portuguese*): Could you please show me the
9 signature of receipt of the letter, received on – show me this on the document when
10 the letter was received.
11

12 **MR MIZZI**: If you scroll down to the bottom right-hand corner of the letter, there is a
13 stamp by the company Petromar, dated 20 November 2009, the company with which
14 the Prime Minister was associated.
15

16 **MR DIAS SAMI** (*Interpretation from Portuguese*): No, I believe that it is not
17 appropriate not show these documents. If you want to rely on this document, I have
18 to study it to establish the facts. The court of Bissau must have received the letter
19 on the unloading of the goods. It would be for the court, not Petromar, which is a
20 company. Do you agree? The letter was not very clear. Petromar is not the
21 addressee of the letter.
22

23 **MR MIZZI**: The addressee of the letter is CLC, which is a company associated with
24 Petromar. My next question is very brief, “yes” or “no”: did you notify Panama, the
25 flag State of the *Virginia G*, about the measures taken against the vessel and the
26 sanctions in terms of article 73, paragraph 4, of the United Nations Convention on
27 the Law of the Sea? Yes, or no?
28

29 **MR DIAS SAMI** (*Interpretation from Portuguese*): We informed Panama in
30 accordance with the proper laws, mainly the general law of fisheries of Guinea. That
31 is inspired by the Convention on the Law of the Sea.
32

33 **MR MIZZI**: Thank you. It is curious that this notification has not appeared.
34

35 Thank you, Mr President.
36

37 **THE PRESIDENT**: Thank you, Mr Mizzi.
38

39 I would like to ask the Agent of Guinea-Bissau whether he wishes to re-examine the
40 witness.
41

42 **MR MENEZES LEITÃO**: Yes.
43

44 **THE PRESIDENT**: You have the floor.
45

46 **Re-examination by MR MENEZES LEITÃO**
47

48 **MR MENEZES LEITÃO**: Thank you, Mr President.
49

1 Mr Sami, I will be very brief. My colleague stated that I have presented in the
2 annexes of the Rejoinder your deposition and your written statement and in that
3 written statement was made reference to the necessity of the treasury about the use
4 of the oil for military purposes. Can you read without saying in loud voice the
5 statement which is presented in the Rejoinder and tell me if you find any statement
6 of you saying this is something like my colleague said? Did you sign this statement?
7

8 **MR DIAS SAMI** (*Interpretation from Portuguese*): I have signed the deposition, that
9 statement.

10
11 **MR MENEZES LEITÃO**: Can you point there any information like the one my
12 colleague says it was presented in this case?
13

14 **MR DIAS SAMI** (*Interpretation from Portuguese*): I am not saying it.
15

16 **MR MENEZES LEITÃO**: The second question I would like to ask is – I understand
17 you are not a lawyer but my question is this one. Is the Public Prosecutor according
18 to the system of Guinea-Bissau a person who is dependent of the Government or is
19 he totally independent of the Government?
20

21 **MR DIAS SAMI** (*Interpretation from Portuguese*): He is independent. The Public
22 Prosecutor is not a member of the Government.
23

24 **MR MENEZES LEITÃO**: The Government cannot make any orders to the Public
25 Prosecutor relating to proceedings in cases or anything like that?
26

27 **MR DIAS SAMI** (*Interpretation from Portuguese*): In this case, no, it was not. The
28 Government has required the opinion of the Public Prosecutor as a State entity to
29 give an opinion about the restraining order to be executed.
30

31 **MR MENEZES LEITÃO**: The Public Prosecutor can receive any order from the
32 Government in any situation how to conduct some proceedings?
33

34 **MR DIAS SAMI** (*Interpretation from Portuguese*): It is not possible, that.
35

36 **THE PRESIDENT**: Thank you, Mr Leitão.
37

38 I thank Mr Sami for your testimony. Your examination is now finished. You may
39 withdraw.
40

41 Mr Leitão, do you wish to call the next witness, Mr Hugo Nosoliny Vieira?
42

43 **MR MENEZES LEITÃO**: If it pleases the Tribunal, yes.
44

45 **THE PRESIDENT**: Thank you.
46

47 The Tribunal will then proceed to hear the witness Mr Hugo Nosoliny Vieira. He may
48 now be brought to the courtroom. I call upon the Registrar to administer the solemn
49 declaration to be made by the witness.
50

1 (The witness made the solemn declaration)
2

3 **THE PRESIDENT:** Good afternoon, Mr Vieira.
4

5 I wish to remind you of the following. The work of the interpreters and the verbatim
6 reporters is a complex task. This is even more so when, as it will be the case now,
7 not only English and French are used, but also when a third language such as
8 Portuguese is used. Therefore, I must urge you to speak slowly and please leave
9 sufficient time after someone else has spoken to you before you answer. The
10 statement or question of someone else before you will be translated into English and
11 then into French, so you have to wait until the interpretation into French has been
12 completed. When the interpretation into French has been finished, I will give you a
13 sign to this effect, by a gesture like *this*. Only then you can be followed.
14

15 Mr Leitão, you have the floor.
16

17 **MR MENEZES LEITÃO:** Thank you, Mr President.
18

19 **Examination by MR MENEZES LEITÃO**
20

21 Mr Vieira, could you say to this Tribunal what is your profession?
22

23 **MR NOSOLINY VIEIRA (Interpretation from Portuguese):** I am a biological engineer
24 and fisheries expert.
25

26 **MR MENEZES LEITÃO:** What is your professional experience in fisheries?
27

28 **MR NOSOLINY VIEIRA (Interpretation from Portuguese):** Twenty-two years.
29

30 **MR MENEZES LEITÃO:** Were you national coordinator of FISCAP between 2007
31 and December 2009?
32

33 **MR NOSOLINY VIEIRA (Interpretation from Portuguese):** Yes, I was.
34

35 **MR MENEZES LEITÃO:** Could you tell us anything about the arrest of the *Amabal I*
36 and the *Amabal II* on 11 August 2009?
37

38 **MR NOSOLINY VIEIRA (Interpretation from Portuguese):** On 11 August 2009, the
39 *Amabal I* and *Amabal II* were surprised on a routine mission by the national
40 inspection service, fuelling each other. They were taken to the port of Bissau and in
41 an inspection of conformity we collected the documents aboard and saw that on
42 20 June *Amabal II* received 87 tonnes of gas oil from the ship *Virginia G*.
43

44 **MR MENEZES LEITÃO:** Could you look at this document which the *Virginia G*
45 obtained for an operation in the week between 17 and 24/6/2009 about the situation
46 of the bunkering of oil to the ships. Can you read what is the agency, the enterprise,
47 that she requested authorization to perform these operations in June?
48

49 **MR NOSOLINY VIEIRA (Interpretation from Portuguese):** Looking at the documents
50 we know that the company that requested the related operation was Afripêche. It

1 was only the vessels belonging to that company which could be supplied by the
2 *Virginia G*.

3
4 **MR MENEZES LEITÃO:** The *Virginia G* at 17 to 24 June did not involve other
5 vessels. Do you confirm that?

6
7 **MR NOSOLINY VIEIRA** (*Interpretation from Portuguese*): That is correct. The
8 vessels of flipper ships – those are the ones that belong to Afripêche, and the
9 authorization only covered them and it did not extend to the *Amabal* vessels.

10
11 **MR MENEZES LEITÃO:** Can you confirm this is the normal document that is
12 requested by an oil tanker when she needs to do an operation of bunkering in the
13 EEZ? Do you confirm that this document is the document that is normally issued to
14 authorize this kind of operation?

15
16 **MR NOSOLINY VIEIRA** (*Interpretation from Portuguese*): Exactly, yes, I do. It is an
17 authorization signed by the head at the Ministry of Fishery.

18
19 **MR MENEZES LEITÃO:** Who is the Minister? Can you read the signature and the
20 stamp in this document?

21
22 **MR NOSOLINY VIEIRA** (*Interpretation from Portuguese*): Yes, I can read it. It is
23 Carlos Mussa Baldé, Minister of Fishery. I also know him personally.

24
25 **MR MENEZES LEITÃO:** What is the process for getting an authorization like that?
26 What should an oil tanker do if it needs to do such operations and get this document
27 of authorization?

28
29 **MR NOSOLINY VIEIRA** (*Interpretation from Portuguese*): The representative of the
30 shipowner or the shipowner himself writes a letter to the Minister, requesting
31 coverage of the related operation for a certain ship or group of ships, and on the
32 basis of this letter the Minister gives instructions to the Industrial Fishery Department
33 to proceed according to the rules. Then there is a fee that has to be paid to the
34 national treasury and then the Minister signs the authorization for the related
35 operation.

36
37 **MR MENEZES LEITÃO:** Does this fee have to be paid through an account of the
38 State bank or is it possible to pay this fee to anyone else?

39
40 **MR NOSOLINY VIEIRA** (*Interpretation from Portuguese*): The Minister only signs
41 authorization for oil bunkering when the money is paid into the Central Bank and
42 there is a receipt which is attached to the case file. That means this is the only way
43 that the Minister will sign the licence.

44
45 **MR MENEZES LEITÃO:** When the two *Amabal* vessels were arrested you became
46 conscious, as you say, of the common practice of the *Virginia G* of infringing the laws
47 that regulate the bunkering of oil in the EEZ. Do you confirm that?

48
49 **MR NOSOLINY VIEIRA** (*Interpretation from Portuguese*): Would you repeat the
50 question, please?

1
2 **MR MENEZES LEITÃO:** When you made an inspection of the *Amabal* vessels you
3 became conscious that the *Virginia G* was already infringing the rules regarding the
4 bunkering of oil in the EEZ.

5
6 **MR NOSOLINY VIEIRA** (*Interpretation from Portuguese*): Yes, I can confirm that. It
7 was actually the sixth voyage that they were making.

8
9 **MR MENEZES LEITÃO:** So you concluded that a more intensive control was
10 needed to avoid this situation?

11
12 **MR NOSOLINY VIEIRA** (*Interpretation from Portuguese*): Yes.

13
14 **MR MENEZES LEITÃO:** You received this letter, as I understand – it was produced
15 by Panama – that asks you for an authorization from the *Amabals* to supply oil to the
16 vessels *Amabal I*, *Amabal II*, *Rimbal I* and *Rimbal II*. Do you confirm having received
17 this letter? I am talking about the request. You received a communication from the
18 agency of the *Amabals* and they asked for permission to do an operation of
19 supplying fuel. This is a letter you sent on 14 August. What did you ask for the
20 operation?

21
22 **MR NOSOLINY VIEIRA** (*Interpretation from Portuguese*): The answer was signed
23 by me in the correspondence that we had with the Bijagós agency. They asked to
24 receive fuel and we, as usual, as it has to be done in the presence of inspectors,
25 asked about the date, the place and time that they were going to take on the fuel.

26
27 **MR MENEZES LEITÃO:** You received a letter from the Bijagós agency. Can you
28 read what the agency answered to you, please?

29
30 **MR NOSOLINY VIEIRA** (*Interpretation from Portuguese*):

31
32 The management of the agency in reply to your correspondence
33 N180/GCFISCAP/09 of 14 August would like to inform you that the
34 coordinates for fuelling operations are 17,35 and 12,00. This operation will
35 be done at 1600 hours on 21 August 2009. The tanker is called the *Virginia*
36 *G*.

37
38 **MR MENEZES LEITÃO:** Could you also read the note you wrote in this letter?

39
40 **MR NOSOLINY VIEIRA** (*Interpretation from Portuguese*): “I have read the contents
41 and I would like to know whether or not the ship in question has authorization for a
42 related operation to sell fuel in the EEZ of Guinea-Bissau.”

43
44 **MR MENEZES LEITÃO:** So it is not the position according to the laws of Guinea-
45 Bissau and you communicated that to the agency Bijagós. Was your decision
46 communicated to the Bijagós agency?

47
48 **MR NOSOLINY VIEIRA** (*Interpretation from Portuguese*): Yes.

1 **MR MENEZES LEITÃO:** This decision was communicated to the Bijagós agency.
2 Can you confirm that?
3

4 **MR NOSOLINY VIEIRA** (*Interpretation from Portuguese*): Yes, I can. It was
5 communicated in the same way that they received the first note.
6

7 **MR MENEZES LEITÃO:** My question is, is it possible for a fishing vessel when it
8 demands the authorization to simultaneously get the authorization for the oil tanker
9 to do a fishing-related operation in the EEZ?
10

11 **MR NOSOLINY VIEIRA** (*Interpretation from Portuguese*): The tanker, in order to
12 bunker, has to have a licence. The place of fuelling has to be reported so that the
13 inspectors can be present.
14

15 **MR MENEZES LEITÃO:** So when you ask for the name of the vessel that will
16 perform this kind of operation, you have an interest in knowing that the vessel is
17 licensed to perform that operation or not. Is that so?
18

19 **MR NOSOLINY VIEIRA** (*Interpretation from Portuguese*): That is correct.
20

21 **MR MENEZES LEITÃO:** You were not interested in getting the name of the vessel to
22 know if the vessel had a beautiful name, for instance?
23

24 **MR NOSOLINY VIEIRA** (*Interpretation from Portuguese*): No. I wanted to know the
25 name of the ship because I have a list of ships that have authorization to perform this
26 operation, so I asked the agency to give us the name of the donor ship and to learn if
27 it had authorization for the operation.
28

29 **MR MENEZES LEITÃO:** After that there was a decision of the Interministerial
30 Commission of Maritime Surveillance to confiscate the vessel with all its products
31 and cargo. Was it possible for the *Virginia G* to appeal this decision?
32

33 **MR NOSOLINY VIEIRA** (*Interpretation from Portuguese*): The *Virginia G* was
34 arrested on the 21st, it arrived in Bissau on the 22nd, and it was only on 28 August
35 that a person appeared with full powers from Penn Lilac Trading who was the
36 appointed representative of the *Virginia G*. Before that date we did not know who the
37 owner of the ship was.
38

39 **MR MENEZES LEITÃO:** Was the owner anonymous according to the registration?
40 Did you only have information about the Penn Lilac company based in Panama?
41

42 **MR NOSOLINY VIEIRA** (*Interpretation from Portuguese*): There was no reaction
43 after what we did, so what we did was to find out from the crew. We questioned the
44 crew, we found that most of them were Cuban, and contacted the Cuban Embassy.
45 There were three from Ghana and one from Cape Verde. It was only after six days
46 that Mr Alvarenga came from Africargo claiming to be the representative of the
47 *Virginia G*.
48

49 **MR MENEZES LEITÃO:** When that happened you notified the representative of the
50 shipowner of the decision about the vessel – is that so?

1
2 **MR NOSOLINY VIEIRA** (*Interpretation from Portuguese*): That is true. It was after
3 that date that we knew who we needed to contact. So that is when we submitted the
4 notification to the representative, Alvarenga.
5
6 **MR MENEZES LEITÃO**: Did Mr Domingos Alvarenga decide to put in an appeal
7 against the decision of the CIFM?
8
9 **MR NOSOLINY VIEIRA** (*Interpretation from Portuguese*): Not that I know of, no. It
10 was only after 15 September that he asked to submit an appeal but he was doing it
11 out of time, as the time-limit was 15 days.
12
13 **MR MENEZES LEITÃO**: He could put in an appeal after being notified before the
14 courts of Bissau, but he did not put in any appeal against the decision of the
15 Interministerial Commission?
16
17 **MR NOSOLINY VIEIRA** (*Interpretation from Portuguese*): No, he never did.
18
19 **MR MENEZES LEITÃO**: So, having passed the deadline to appeal from this
20 decision, the Interministerial Maritime Surveillance Commission decided to reconfirm
21 the decision. Can you confirm that?
22
23 **MR NOSOLINY VIEIRA** (*Interpretation from Portuguese*): Yes, I confirm that.
24
25 **MR MENEZES LEITÃO**: When was this reconfirmation of the decision disclosed to
26 the shipowner's representative?
27
28 **MR NOSOLINY VIEIRA** (*Interpretation from Portuguese*): It was communicated on
29 19 September, as far as I can remember, but I can have a look at the document.
30
31 **MR MENEZES LEITÃO**: I think it is correct. We have not much time. Let me ask this.
32 Afterwards, have you any recollection when they put an interim measure against the
33 decision to confiscate the oil of the ship? Have you any knowledge of this situation?
34
35 **MR NOSOLINY VIEIRA** (*Interpretation from Portuguese*): Yes. After two months
36 Mr Alvarenga came with a lawyer, then after that they scheduled a meeting with us
37 so that we could – all the time-limits had been exceeded and that was when they
38 introduced a suspension order. That suspension order was immediately objected to
39 by the National Attorney's Office.
40
41 **MR MENEZES LEITÃO**: The Attorney of State was not even notified about this
42 interim measure. Do you confirm that?
43
44 **MR NOSOLINY VIEIRA** (*Interpretation from Portuguese*): What I know is that the
45 Public Prosecutor sent his opinion to the Secretary of State for Fishery. It was then
46 sent on to the supervisory services, who objected to the suspension order.
47
48 **MR MENEZES LEITÃO**: According to the law of Guinea-Bissau, the decision of the
49 Interministerial Commission to confiscate the vessel was definitive. Is that so?
50

1 **MR NOSOLINY VIEIRA** (*Interpretation from Portuguese*): Yes, it was.
2
3 **MR MENEZES LEITÃO**: Has the shipowner at any time requested a bond or
4 anything to release the vessel?
5
6 **MR NOSOLINY VIEIRA** (*Interpretation from Portuguese*): Not while I was in the
7 inspection service, no.
8
9 **MR MENEZES LEITÃO**: One last question. Is it possible to get an authorization or
10 fishing licence or fishing-related operations authorization in Guinea-Bissau by
11 telephone or radio?
12
13 **MR NOSOLINY VIEIRA** (*Interpretation from Portuguese*): As I explained at the
14 beginning, there must be a letter sent to the Minister of Fisheries, and he sends it to
15 the appropriate department, and that department writes a *pro forma* invoice and that
16 goes to the Bank of Bissau to the account of the public treasury.
17
18 **MR MENEZES LEITÃO**: Payment can be made by radio or telephone or to anyone
19 else for this authorization?
20
21 **MR NOSOLINY VIEIRA** (*Interpretation from Portuguese*): That is correct.
22
23 **MR MENEZES LEITÃO**: Was there any payment of *Virginia G* to anyone that you
24 know referring to the August operation?
25
26 **MR NOSOLINY VIEIRA** (*Interpretation from Portuguese*): No.
27
28 **MR MENEZES LEITÃO**: No further questions.
29
30 **THE PRESIDENT**: Thank you, Mr Leitão.
31
32 I would like to ask the Agent of Panama whether he wishes to cross-examine.
33 Mr Gallardo, you have the floor.
34
35 **MR GARCÍA-GALLARDO**: Thank you, Mr President.
36
37 **Cross-examination by MR GARCÍA-GALLARDO**
38
39 **MR GARCÍA-GALLARDO**: Mr Hugo Nosoliny, what is your current position? Do you
40 have employment in a company?
41
42 **MR NOSOLINY VIEIRA** (*Interpretation from Portuguese*): I am the CEO of the
43 fishing port of Guinea-Bissau.
44
45 **MR GARCÍA-GALLARDO**: Since when?
46
47 **MR NOSOLINY VIEIRA** (*Interpretation from Portuguese*): For the last three months.
48
49 **MR GARCÍA-GALLARDO**: (*In Spanish*) Are you a party to any civil or criminal
50 proceedings in the courts of Guinea-Bissau?

1
2 **THE PRESIDENT:** Mr Gallardo, would you repeat the question, please? We did not
3 have the translation.
4
5 **MR GARCÍA-GALLARDO:** I was just asking Mr Hugo Nosoliny whether he still has
6 any open criminal, civil or administrative proceedings for any activity undertaken
7 during his position as coordinator of FISCAP.
8
9 **MR NOSOLINY VIEIRA** (*Interpretation from Portuguese*): I was investigated by the
10 Public Prosecutor's Office and I was placed in preventive custody. The case has not
11 yet been tried. I was arrested so as not to interfere with the investigation by the
12 Public Prosecutor.
13
14 **MR GARCÍA-GALLARDO:** Is it normal that the Prosecutor's Office decides to issue
15 a *despacho*, in Portuguese – I believe it is an order — to create an *Observatório do*
16 *Ministério Público* with the Fisheries Department, the Secretary for Fisheries,
17 granting this new body the competence and the measures to *fiscalização do*
18 *processo de emissão de licenças de pescas, de despachos sobre prorrogações de*
19 *licenças e de autorizações de qualquer tipo de transbordo?*
20
21 **MR NOSOLINY VIEIRA** (*Interpretation from Portuguese*): The Public Prosecutor of
22 Guinea-Bissau is competent to investigate any citizen of Guinea-Bissau. I am a
23 citizen. I am not above the law, and when there is a warrant from the Public
24 Prosecutor I must obey it, but I also have the right to be presumed innocent until
25 proven otherwise.
26
27 **MR GARCÍA-GALLARDO:** Have you ever been on board the *Virginia G*?
28
29 **MR NOSOLINY VIEIRA** (*Interpretation from Portuguese*): I was on board the
30 *Virginia G*. I went to visit the ship with a parliamentary delegation of Guinea-Bissau,
31 the Committee of Agriculture and Fisheries, because around that time there were
32 five ships under arrest in the port of Bissau. They went to see how the supervision
33 was going of unlawful fishing and I went with the members of the delegation to the
34 *Virginia G*.
35
36 **MR GARCÍA-GALLARDO:** Mr Hugo Nosoliny, what do you understand when
37 reading the provisions of the Decree of 2000, article 3(3)(c), as “activities of logistic
38 support to fishing vessels at sea” – in Portuguese *actividades de apoio logístico ás*
39 *embarcações de pesca no mar?* (*No reply*) You hear my question, Mr Nosoliny?
40
41 **MR NOSOLINY VIEIRA** (*Interpretation from Portuguese*): I understood, yes. Fishing
42 itself is a connected activity, a related activity, i.e., the extraction of fish from the
43 water, and there are other related activities which are support activities, maybe
44 fishing gear.
45
46 **MR GARCÍA-GALLARDO:** Has the *Virginia G* capacity to tranship fish catches?
47
48 **MR NOSOLINY VIEIRA** (*Interpretation from Portuguese*): We surprised the
49 *Virginia G* with its hose inside the *Amabal II* supplying fuel, and it was quite obvious
50 what it was supplying. It was not fish; it was gas oil.

1
2 **MR GARCÍA-GALLARDO:** Is that the type or products or services that can be
3 provided by a fishing logistical support vessel as defined in your legislation?
4

5 **MR NOSOLINY VIEIRA** (*Interpretation from Portuguese*): There is a clause in our
6 legislation that says all logistical support requires licensing, and the *Virginia G* twice
7 had licences to supply fishing vessels, but it did not have any licence on board on
8 21 August, unlike the previous two times.
9

10 **MR GARCÍA-GALLARDO:** The *Virginia G* needed the licence, a licence, in this case
11 an authorization, using the wording of your law, or not?
12

13 **MR NOSOLINY VIEIRA** (*Interpretation from Portuguese*): It needed authorization –
14 you can call it an authorization or a licence – for fishing-related operations.
15

16 **MR GARCÍA-GALLARDO:** Would you agree with me that article 7 of Decree 6-
17 A/2000 related to the *Embarcações de pesca nacionais e estrangeiras* –
18 article 7(2)(a). Would you read the paragraph, please?
19

20 **MR NOSOLINY VIEIRA** (*Interpretation from Portuguese*): “National fishing vessels
21 belonging to Guinean natural persons”.
22

23 **MR GARCÍA-GALLARDO:** This is in relation to the implementation of the general
24 provisions of the main Fisheries Act or Decree. I am putting on the screen the first
25 page of the Joint Order, which was in force for 12 years until early 2013, this year,
26 and was issued by the *Ministério das Pescas e do Mar* and the *Ministério da*
27 *Economia e Finanças*. Could you please read the third paragraph and explain to me
28 the scope of this legislation? Does it apply to national fishing companies operating
29 their own vessels or charter vessels?
30

31 **MR NOSOLINY VIEIRA** (*Interpretation from Portuguese*): In view of the fact that the
32 implementation of policies requires fees for fishing and a simplification of the
33 conditions for national companies, that is Guinea-Bissau companies, who operate
34 their own or chartered ships. It is written down.
35

36 **MR GARCÍA-GALLARDO:** The next page, please. This is the annex reflecting the
37 levies to be paid. When reading this document and looking to the latest case that you
38 mention of refuelling operations between two fishing vessels with a fishing licence in
39 Guinea-Bissau to operate within the EEZ to exploit marine living resources, what
40 type of levy would be applied if those vessels had the flag of Guinea-Bissau?
41

42 **MR NOSOLINY VIEIRA** (*Interpretation from Portuguese*): If they were flying the flag
43 of Guinea-Bissau, these would be the charges. Every ship flying the Guinea-Bissau
44 flag refuels in Guinea-Bissau, which is their port of origin. They do not need to
45 remain permanently in the fishing area.
46

47 **MR GARCÍA-GALLARDO:** Could you please explain to this Tribunal at once – any
48 witness has been unable to relate, or the Guinea-Bissau representative at least –
49 what was the purpose of such a wider definition of *apoio logístico*, logistic support,
50 when there are thousands of ships much bigger than the *Virginia G* every day – not

1 every day, certainly not, but a lot – according to publicly available information,
2 lawfully traversing under the principles of freedom of navigation and related rights?
3 What is the risk for these types of vessel that our experts have been able to explain
4 in this room? Is there any reason to impose such a levy for an environmental
5 reason? Is it a reason to improve the sustainable fisheries? Is it customs legislation?
6 What is the level of risk for such tankers that are providing a service that,
7 unfortunately, to date only a few companies own, one of them directly or indirectly by
8 the Prime Minister of this country, called Petromar, public accounts available in Galp,
9 which is now the main shareholder of the company, allowing the country to develop
10 these types of activities? What is the finality of its levy in the case as was applied to
11 *embarcações estrangeiras*, a point that I cannot see in this paper, in this order?
12

13 **MR NOSOLINY VIEIRA** (*Interpretation from Portuguese*): The *Virginia G* twice in
14 2009 paid for the right to provide logistical support to fishing vessels. In the general
15 fishery law article 23 says that a logistical support operation requires a licence, so
16 the *Virginia G*, as it has a tare of less than 1,500, pays 4,800 a year.
17

18 **MR GARCÍA-GALLARDO**: This is the one paid by *Virginia G*, in this case Penn Lilac
19 Trading or the management company Lotus Federation – I am sorry, Gebaspe – or
20 the charter company at the time of the arrest, and not maybe the one paid by the
21 local agent, to avoid a discussion that has no sense.
22

23 But, to finalize my intervention and my questions to the witness, I would really like to
24 come back to Annex 42, which is, unfortunately for this case, the well-known
25 evidence where neither the shipowner of the *Virginia G* nor the charterer of the
26 *Virginia G*, but the local agent of the fishing company who was wishing to receive
27 those services within the economic exclusive zone outside the territorial sea as an
28 ancillary activity to the activity of fishing – and certainly we will elaborate a lot on this
29 on Friday – and then when reading this letter and listening to the explanations that
30 you have provided to the representative of Guinea-Bissau, you have confirmed that
31 this letter was well received by you and that by this second letter, this is the letter
32 from the local agent of the fishing vessels, it is never in the letter of the local agent of
33 the shipowner of the *Virginia G*, you authorize the realization of this supply not for
34 365 days but particularly for some days – one day in this case – where you agree
35 upon two preconditions.
36

37 Then if we move to Annex 16 and we see the letter where you request a position
38 where the bunkering supply of fuel oil or gas oil was being supplied, please retain
39 this position and the date, the hour and the vessel that was making the supply. What
40 is the reason, Mr Hugo Nosoliny, to draft this letter, handwritten, together with
41 another letter on the same date, stating something very ambiguous, where you say:
42 “The content of this correspondence was analyzed and in the conclusion of FISCAP
43 all the differences in the information requested. It proposed that your agency certify
44 whether the vessel supplying fuel” – it is not fuel – “is duly authorized for this
45 operation in the EEZ of Guinea-Bissau”. So the tracking record of companies that
46 had requested in the past to avoid further local problems but contested the
47 interpretation that your country is making of the international provisions of UNCLOS
48 in particular in relation to the activities in the EEZ, you were confusing because – we
49 need to put this in context. Can you please confirm that the vessels *Amabal I* and *II*
50 left the port of Bissau in the night of August 20 after having committed, if I follow your

1 interpretation, different subsequent infringements on refuelling with no imposition of
2 a single fine, allowing them to pay with a credit and informing you whenever they
3 leave that they will come again to apply for bunkering? Do you agree that the vessels
4 were released in the evening of this date?

5
6 **MR NOSOLINY VIEIRA** (*Interpretation from Portuguese*): I am coordinator of
7 maritime inspection. What I have to do is supervise fishery in the waters of Guinea-
8 Bissau. My job is to make sure all the ships abide by the rules. On the *Virginia G*, on
9 21 August, at 18.00 hours the inspection team surprised the *Virginia G* supplying
10 fuel. The procedures are that the shipowner or his representative has to ask for
11 authorization, but our job was to supervise and check everything, so that is why we
12 asked the agency if it confirmed whether the *Virginia G* was legally licensed to
13 perform this operation. Did it have a licence? Did it have the same licence that it had
14 in June to bunker the *Amabal* without having authorization to supply them? On
15 21 August it did not have authorization, and so we took the ship to Bissau.

16
17 **THE PRESIDENT**: I am sorry to interrupt you, Mr García-Gallardo. I was advised
18 that you have already exhausted the time allotted to Panama for cross-examination,
19 and we have passed already six o'clock, so could you conclude?

20
21 **MR GARCÍA-GALLARDO**: Thank you.

22
23 The only thing I would ask is that this morning the inspector of FISCAP confirmed
24 that the vedettes left the port of Bissau in the evening of 20 August, and it is maybe a
25 coincidence that there was a difference of less than four nautical miles between the
26 position that was reported to you by the local agent of the fishing companies and the
27 position where the vessel was arrested by FISCAP and the navy. It is curious what
28 happened to the *Virginia*, when some days later the *Amabal* vessels were released
29 again without any penalty. Do you have any comment on this?

30
31 **MR NOSOLINY VIEIRA** (*Interpretation from Portuguese*): The inspection ships, the
32 *Baleia II* and *V* have 500 horsepower engines, 34 miles an hour. We knew the
33 position where the operation was going to take place and we went looking for them
34 because the *Virginia G* systematically supplied ships in our waters without
35 authorization. When it had authorization with a group of companies, it did it for
36 others; so we were watching its movements in our waters.

37
38 **THE PRESIDENT**: This is the last question and answer.

39
40 **MR GARCÍA-GALLARDO**: Thank you very much.

41
42 **THE PRESIDENT**: Thank you.

43
44 I would like to know if the Agent of Guinea-Bissau wishes to re-examine now we
45 have already passed six o'clock

46
47 **MR MENEZES LEITÃO**: No, your Honour.

48
49 **THE PRESIDENT**: Thank you very much.

1 Mr Nosoliny Vieira, thank you for your testimony. Your examination is now finished
2 so you may withdraw, please.

3

4 This seems to exhaust your list of witnesses for today, Mr Leitão. Since we have
5 already passed six o'clock this brings us to the end of today's hearing. The hearing
6 will be resumed at ten o'clock tomorrow morning. Have a nice evening.

7

8

(The sitting was closed at 6.08 p.m.)