

# INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



2013

Public sitting

held on Friday, 6 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)*

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**Verbatim Record**

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

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*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. The Tribunal will now hear the second round of  
2 oral arguments by Guinea-Bissau in the case concerning the vessel *Virginia G*.

3  
4 I wish to inform you that Judge *ad hoc* Treves, for reasons duly explained to me, will  
5 be absent for the remainder of the day.

6  
7 I give the floor to the Agent of Guinea-Bissau, Mr Leitão, to make his statement.

8  
9 **MR MENEZES LEITÃO:** Mr President, distinguished Members of the International  
10 Tribunal for the Law of the Sea, I am now going to present my closing remarks about  
11 this case in the second round.

12  
13 Within our team, it is my responsibility to address the issues related to the facts of  
14 the case and the enforcement of the legislation of Guinea-Bissau. I will present the  
15 position of Guinea-Bissau on six issues: the violation by the *Virginia G* of Guinea-  
16 Bissau fisheries legislation; no use of force in the arrest of the *Virginia G* in the  
17 exclusive economic zone of Guinea-Bissau; the treatment of the crew of the  
18 *Virginia G* during their stay in Bissau; the decisions of the Guinean authorities to  
19 confiscate the ship and its cargo; the absence of any injury caused by the decisions  
20 of Guinea-Bissau to any Panamanian individual or entity; the damage caused to the  
21 State of Guinea-Bissau by the granting of the registration of this ship by Panama.

22  
23 Firstly, it is clear that the vessel *Virginia G* violated the General Fisheries Law of  
24 Guinea-Bissau, because she did not have written authorization for performing the  
25 operation of bunkering of oil in the exclusive economic zone of Guinea-Bissau. The  
26 fuelling of fishing vessels is considered to be a fishing-related operation in the whole  
27 region in which Guinea-Bissau is included, therefore subject to prior authorization by  
28 the authorities, which, in this case, is the member of Government responsible for  
29 Fisheries (article 23(1) of Decree Law 6-A/2000, and article 39(1) of Decree  
30 Law 4/96).

31  
32 Guinea-Bissau would like to point out that the *Virginia G* was perfectly aware of the  
33 need for a formal written document to perform the operations of refuelling fishing  
34 vessels, so much so that she had requested these authorizations on two previous  
35 occasions and had operated under them in May and June of 2009. The *Virginia G*  
36 did not, however, obtain the necessary authorization and the formal written  
37 document in August of 2009 to perform fishing vessel refuelling operations.

38  
39 I will now examine the question of the use of force during the arrest.

40  
41 As expressed in Case No. 18 ("*Louisa*"), this International Tribunal holds the view  
42 that States are required to fulfil their obligations under international law, in particular  
43 human rights law, and that considerations of due process of law must be applied in  
44 all circumstances (see "*Juno Trader*" (*Saint Vincent and the Grenadines v. Guinea-*  
45 *Bissau*), *Prompt Release, Judgment*, and "*Tomimaru*" (*Japan v. Russian*  
46 *Federation*)). Guinea-Bissau entirely upholds this view and argues that there was no  
47 use of excessive force during the arrest of the *Virginia G*. Therefore, there was no  
48 violation of human rights or violation of the due process of law. The best proof of this

1 assertion is the fact that there were no physical injuries during the operation or  
2 during the journey of the *Virginia G* to the port of Bissau.

3  
4 The arrest of the *Virginia G* was made in accordance with current domestic law and  
5 the enforcers used only the force they considered appropriate and proportional to the  
6 danger of the operation.

7  
8 All the officials and members of FISCAP confirmed here that there was no torture or  
9 threat of the use of force. That was also confirmed by the crewmen presented by  
10 Panama. The officials merely arrested the *Virginia G*, not its crew, and ordered it to  
11 go to the port of Bissau without any danger during the voyage, as was confirmed by  
12 the navy pilot, and as can be seen from the photographs that were presented.

13  
14 For that reason, Guinea-Bissau stresses that it did not violate articles 224 or 110 of  
15 the Convention, as the *Virginia G* was arrested by uniformed officials in conformity  
16 with its rights as a coastal State to monitor illegal activities in its exclusive economic  
17 zone.

18  
19 Guinea-Bissau also reaffirms that it did not violate article 225 of the Convention as it  
20 did not endanger the safety of shipping, nor did it create any risk to the *Virginia G*,  
21 which remained safely moored in the port of Bissau. When a risk occurred, which  
22 was due to the poor condition of the ship and the lack of maintenance by the  
23 shipowner, Guinea-Bissau immediately decided to release the vessel, even with the  
24 loss of an asset which was already public property according to the laws of Guinea-  
25 Bissau.

26  
27 Now I will examine the question of the treatment of the crew of the *Virginia G* during  
28 its stay in Bissau.

29  
30 Guinea-Bissau upholds that the conditions in which the crew of the *Virginia G* were  
31 kept in the port of Bissau did not constitute a violation of their human rights. Again  
32 the best proof of this assertion is the fact that there were no claims of any physical  
33 harm during the time the crew stayed in the port of Bissau. No one asked for medical  
34 assistance at any time in Guinea-Bissau.

35  
36 There was never any imprisonment and, much less, any corporal punishment of the  
37 vessel's crew, the only "arrest" declared being that of the vessel *Virginia G*. The  
38 members of the crew could have left Guinea-Bissau whenever they wished to, as the  
39 guards were simply preventing the vessel from leaving and were not holding the  
40 members of its crew, who were always free to leave when they wanted.

41  
42 As was clear from the statements by Mr Gamez Sanfiel and Alfonso Moya, the  
43 shipowner had a lot of financial problems at the time. He owed the wages due to the  
44 workers on another ship, the *Iballa G*, from January 2009. The crew therefore  
45 appealed for intervention by a non-governmental organization, Stella Maris. There is  
46 news on the internet referring to €189,000 in unpaid wages since the beginning of  
47 2009.

1 I must now say that I was personally touched by the information from our esteemed  
2 colleague that the *Virginia G* and *Iballa G* were named after the names of the  
3 daughters of Mr Gamez Sanfiel, but I am much more impressed with this debt to the  
4 workers not being paid since January in this situation. That is because of the  
5 financial problems of the shipowner, that he was unable to post a bond to release the  
6 ship or even to pay for supplies for her. Of course, this situation has nothing to do  
7 with Guinea-Bissau's authorities. Guinea-Bissau's authorities have only arrested the  
8 ship; they are not liable to pay for the supplies of the owner.

9  
10 The fact that the crew decided to stay on board cannot be considered Guinea-  
11 Bissau's responsibility. The reason that they did not leave the country is very clear  
12 from the statement of Chief Mate Fausto Ocaña Cisneros. The true reason for the  
13 crew staying on board is clear: "I was told that the vessel would hopefully be  
14 released and that no ticket funds were allocated for the time being". (Panama's  
15 Memorial, Annex 1). Therefore, the only reason the crew did not leave Guinea-  
16 Bissau immediately was precisely that the shipowner had no funds to pay for tickets  
17 for them to leave.

18  
19 Guinea-Bissau stresses that it did not violate article 73, paragraph 3, of the  
20 Convention, inasmuch as it did not use any measures involving prison or corporal  
21 punishment on the crew of the *Virginia G*. It is absurd that Panama should wish to  
22 classify the temporary apprehension of passports as a *de facto* prison sentence.

23  
24 As Mr Carlos Nelson Sanó said here, the passports were taken only for security  
25 purposes, such as for the purpose of identification and control of the crew within the  
26 territory, but the passports are returned to their owners at the request of the captain  
27 or the shipowner's representative whenever they want to leave the vessel or the  
28 country. It is perfectly normal for a coastal State to want to control the movements in  
29 its country of foreigners who have not applied for a visa and are only in the country  
30 due to the arrest of the vessel on which they were operating. The normal situation  
31 after the confiscation of the vessel would be for the crew to leave the country, in  
32 which case the passports would be returned immediately.

33  
34 There was no evidence presented of any delay in the return of the passports. In any  
35 case, Guinea-Bissau reaffirms that a delay in the return of a passport can never be  
36 considered equivalent to a period of imprisonment. It is therefore clear that there was  
37 no violation of article 73, paragraph 4, of the Convention.

38  
39 Now I will examine the decisions of the Guinean authorities to confiscate the ship  
40 and its cargo.

41  
42 According to article 52 of Decree Law 6-A/2000, with the wording of Decree  
43 Law 1-A/2005, the offence of unauthorized fishing-related operations, in this case  
44 fuel transfer, is punished by the maximum sanction of confiscation of the vessel,  
45 gear and all the product aboard. Thus Decision No. 7/CIFM/2009 of the  
46 Interministerial Commission for Maritime Supervision regarding the *Virginia G* is  
47 absolutely legal.

1 Article 52 of Decree Law 6-A/2000, in the wording of Decree Law 1-A/2005, provides  
2 for a judicial appeal against that decision on condition of payment of a bond. In the  
3 meantime, pursuant to article 65 of Decree Law 6-A/2000, the shipowner can  
4 judicially appeal with the purpose of releasing the vessel and the crew upon payment  
5 of a bond: “At the request of the ship owner, the vessel is immediately released  
6 before trial provided a sufficient bond is paid.” (article 65(1)).  
7

8 In this case the shipowner had no money to pay the bond. Therefore, he wanted to get  
9 the prompt release of the vessel from the Guinean authorities without any payment  
10 through a proceeding that is considered inadequate, as was explained by the experts  
11 Mussa Mané and Carlos Pinto Pereira. That is why he brought a preliminary injunction  
12 seeking the suspension of Decision 7/CIFN/2009 and requested a waiver of a  
13 preliminary hearing by FISCAP and the Interministerial Commission on Maritime  
14 Supervision.  
15

16 **THE PRESIDENT:** Mr Leitão, I am sorry to interrupt. Would you please slow down?  
17 Our interpreters have some difficulty following you.  
18

19 **MR MENEZES LEITÃO:** I am sorry. The presiding judge of the case ended up  
20 deciding hastily to that effect, without hearing the opposing party or the prosecutor,  
21 who should have a say in the proceedings, which means that this decision is invalid  
22 and therefore void under Guinean procedural law. As the experts stated yesterday, it  
23 is totally against the case law of the highest court of Guinea-Bissau to admit that the  
24 State itself can be found guilty *in absentia*. In this case the hearing of the other party  
25 is mandatory, according to article 400(2) of the Civil Proceedings Code, so the  
26 decision of the court was null and void. This was why the Public Prosecutor, who is  
27 an independent authority whose job is to ensure legality in the legal system of  
28 Guinea-Bissau, informed the Government that it could disregard the order, as an  
29 appeal with suspensive effect would be presented by him, which in fact he did.  
30

31 My esteemed colleague has claimed today that the appeal has no suspensive effect,  
32 based on a communication from his colleagues of Bissau. He decided not to present  
33 any expert before this International Tribunal. He even decided not to cross-examine  
34 the experts presented by Guinea-Bissau, but now he claims that the appeal has no  
35 suspensive effect, only based in evidence not produced.  
36

37 The documents submitted by Panama prove that the appeal was admitted. In fact,  
38 although the judge, in an *obiter dicta*, stated that the deadline had been exhausted,  
39 he decided to submit the case to the Superior Court of Bissau. This was the correct  
40 decision, as the deadline to appeal was not exhausted. You can see in front of you  
41 article 279 of the Guinea-Bissau Civil Code, which is identical to the Civil Code of  
42 Portugal – but in some parts the version of Guinea-Bissau is on a website of the Law  
43 Faculty of Bissau – and which provides that in calculating any period neither the day  
44 nor the hour is included if the time is expressed in hours from the event from which  
45 the period begins to run. So when we present an appeal after a notification we do not  
46 count the day of the notification. If the notification was on the 11<sup>th</sup>, the 19<sup>th</sup> would be  
47 the last day for appeal. As you can see from article 296 of the Civil Code of Guinea-  
48 Bissau, they say that the rules in article 279 shall apply in the absence of a specific

1 provision to the contrary, the terms and conditions laid down by law, by the courts or  
2 by any other authority. So, as you can see, this is how the deadline to an appeal is  
3 counted, and it is perfectly clear that the appeal was in time at that decision. It was  
4 so much so that it was admitted by the Court, although with the reference because it  
5 sent the appeal to the Superior Court of Bissau.

6  
7 Therefore, as the Public Ministry, and it is clear according to the laws of Guinea-  
8 Bissau, the article, now that we are passing to the Civil Proceedings Code, this is  
9 article 401 of the Civil Proceedings Code of Bissau, which says when an interim  
10 measure is inactive, and you can see in number 2 the applied may aggravate, or  
11 appeal – we have two kinds of appeals, the *apelação* and the *agravo*, this is the case  
12 of an *agravo* – may appeal the order that grants the interim measures or imposes  
13 embargos to this applicability clause. So there is surely a possibility of appealing this  
14 decision.

15  
16 What are the consequences of that appeal? That appears in article 740, which is the  
17 reference in this case to the situation of the appeal of an *agravo*, which was the one  
18 that established, which says in paragraph 1, “The appeals that come up immediately  
19 in their own cases have suspensive effect.” So it was this situation. The appeal came  
20 up in the own case, so it has a suspensive effect immediately when it is presented.

21  
22 Clearly, that is the situation according to the laws of Guinea-Bissau. My colleague  
23 stated that today, based on, he says, the expert opinion from colleagues in Bissau,  
24 but I prefer to exhibit the precise text of the statutes of Guinea-Bissau. From a  
25 reading of the statutes it is very clear that in this case they have a suspensive effect.

26  
27 The appeal was present, as results from the evidence submitted by Panama  
28 yesterday, from 19 November. Therefore, on 30 November, when the decision was  
29 made to discharge the cargo, the judicial order was already suspended by the  
30 immediate automatic effect of the appeal. The lawyers in Bissau decided to make  
31 another suspensive order because they knew perfectly that the previous one was  
32 already suspended due to the effect of the appeal.

33  
34 The Public Prosecutor informed the Government of the appeal he will present, and  
35 the Government acted in conformity with this information. Contrary to what Panama  
36 asserts, this is not the substitution of a judicial order by an internal opinion, but  
37 instead an official indication of the illegality of a decision and the fact that it would be  
38 suspended, as clearly indicated in the law.

39  
40 After that preliminary injunction, the owner of the *Virginia G* brought his main suit  
41 against the State, according to the internal law of Guinea-Bissau. These proceedings  
42 were suspended by the court because, in that system, an interim measure is  
43 dependent on the main action, and so if a main action is brought and there is no  
44 continuation the interim measure also loses its effect. That is what happened. When  
45 the main action was presented, the shipowner decided not to pay the judicial costs  
46 established by the tribunal. Therefore the main action and the interim measures were  
47 suspended; and in this situation the action is still pending in the courts of Bissau  
48 awaiting the shipowner to pay the costs that are necessary for this action to  
49 continue.



1  
2 It is therefore clear that the authorities of Guinea-Bissau applied its law and that local  
3 remedies in Guinea-Bissau were not exhausted.

4  
5 Therefore the Tribunal should consider that there was no previous exhaustion of  
6 local remedies, so these claims cannot be presented according to article 295 of the  
7 Convention. But in any case, it is clear that there was no violation of the UNCLOS  
8 Convention.

9  
10 I will now examine the question of the damage allegedly caused by the decisions of  
11 Guinea-Bissau to any Panamanian individual or entity.

12  
13 We claim that no damage was caused by the authorities of Guinea-Bissau to any  
14 Panamanian individual or entity. In fact Penn Lilac Trading S.A. cannot be regarded  
15 as being a Panamanian company, as it has no substantive link with Panama  
16 whatsoever, but is rather of Spanish origin and has Spanish management. Even  
17 Panama indicates that in its certificates. Even here, the official representative of the  
18 shipping register industry in Panama said that he has no knowledge of activity in  
19 Panama but only in the office in Seville, Spain. It is a Spanish company.

20  
21 The financial situation in which the company found itself is of no interest to the State  
22 of Guinea-Bissau, this being no reason for the regulations on the EEZ ceasing to  
23 apply due to concern over the financial health of foreign companies that own vessels  
24 that operate illegally in that area. In fact, if the shipowner of the *Virginia G* chooses  
25 not to pay the fee established by law, he has to be prepared to suffer the  
26 consequences if the ship is discovered performing unauthorized operations. It would  
27 therefore be clear that it misses totally a link of causality in the damage claim by  
28 Panama against Guinea-Bissau.

29  
30 Furthermore, Panama states that Penn Lilac entered into an agency commission  
31 agreement with Gebaspe SL, a Seville-based Spanish company (like Penn Lilac),  
32 and Gebaspe SL chartered the ship to Lotus Federation, an Irish company.

33  
34 As, in this case, there is not a single person or entity related to the *Virginia G* who is  
35 of Panamanian nationality, Panama is not entitled to present claims for damages in  
36 respect of anyone. No State may claim protection of persons under international law  
37 who are not its own nationals without having any link with this case.

38  
39 In any case, the damages claimed by Panama are totally unsubstantiated, insofar as  
40 they have been amended several times during these proceedings. In its Memorial  
41 Panama claimed €4,065,409.23, but in the Rejoinder increased its value to  
42 €5,636,222.54. *Virginia G* was bought for €600,000, as has been testified, and its  
43 current value should be around €500,000. Therefore, the amount of the claim is  
44 more than ten times the value of the ship from Guinea-Bissau. It has to be  
45 considered as a fruitless claim in that matter.

46  
47 These damages don't result from the arrest of the *Virginia G* which is the only case  
48 over which the Tribunal has jurisdiction. In fact, the only direct losses resulting from  
49 the arrest of the *Virginia G* are those allegedly caused to the ship, its owner and the  
50 crew. Panama, however, has claimed damages for losses allegedly suffered by other

1 entities, such as Gebaspe and Penn World, which have nothing to do with the  
2 *Virginia G*.

3  
4 Panama cannot make claims during the proceedings that it has not mentioned in the  
5 application. As the Tribunal decided in Case No.18 ("*Louisa*"), paragraph 143:

6  
7 In this context, the Tribunal wishes to draw attention to article 24,  
8 paragraph 1, of its Statute. As noted earlier, this provision states, inter alia,  
9 that when disputes are submitted to the Tribunal, the 'subject of the dispute'  
10 must be indicated. Similarly, by virtue of article 54, paragraph 1, of the  
11 Rules, the application instituting the proceedings must indicate the 'subject  
12 of the dispute'. It follows from the above that, while the subsequent  
13 pleadings may elucidate the terms of the application, they must not go  
14 beyond the limits of the claim as set out in the application. In short, the  
15 dispute brought before the Tribunal by an application cannot be  
16 transformed into another dispute which is different in character.

17  
18 In this case the formal owner of the ship, Penn Lilac, is a ghost company. Mr Gamez  
19 Sanfiel writes in his statement provided by Panama as Annex 5 that, "In January  
20 1998 the company Penn Lilac Trading was created for the operation of the  
21 *Virginia G*."

22  
23 The intention is therefore clear. When a company is created solely for the purpose of  
24 having an oil tanker, its real owner gets a bullet-proof shield against claims related to  
25 the activity of that tanker, including claims for environmental liability or non-payment  
26 of wages to the crew. The creditors would therefore have only one asset to seize: the  
27 vessel itself. As a result, it makes no sense that when the intention is to claim  
28 damages on behalf of the owner, the ownership that is established is ignored and  
29 damages are claimed on behalf of third parties that are not owners of the ship.

30  
31 Mr Moya Espinosa confirmed in his report that the alleged €8,400,000 sales figure of  
32 the company (as in the translation) was actually a reference to the whole group of  
33 companies including, naturally, Gebaspe and probably the Lotus Federation. He was  
34 not able to state, when I asked, the sales figure of Penn Lilac before this Tribunal. It  
35 might even be zero, so not one single piece of evidence of losses actually suffered  
36 by the shipowner has been submitted to this Tribunal.

37  
38 Contrary to the reports provided by Panama, there is not one single piece of  
39 evidence of losses, expenses paid and damage suffered by Penn Lilac. Panama  
40 failed to exhibit one single invoice of Penn Lilac's costs or losses to these  
41 proceedings. What it has attached to the reports presented in Annex 4.2 of the Reply  
42 of Panama are "invoices of Penn Lilac", which are internal documents, irrelevant for  
43 any public body, such as the tax authorities. It is therefore clear that an international  
44 tribunal cannot rely on such documents in a decision about damages. Therefore we  
45 have just received questions from the Tribunal asking for the invoices from the  
46 parties.

47  
48 The Moya Report (page 1 of the translation) affirms that the group's billing was done  
49 by Lotus Federation of Ireland. The real invoices therefore could only come from this  
50 company, which never appeared before this Tribunal. The so-called "invoices"

1 presented are therefore mere declarations by the claimant, which cannot be the  
2 basis for any report.

3  
4 Therefore the reports presented do not warrant credibility. Mr Moya Espinosa is not  
5 an independent reporter, as he works for this group of companies, and Mr Ken Arnott  
6 limited himself to confirming the figures in Mr Moya's report. But it is clear that these  
7 figures are not correct and in many cases have even been totally invented.

8  
9 For instance, the value of the ship is considered to be €1,000,000 when it is actually  
10 half that. On this basis, the reports consider that Guinea-Bissau has to pay €50,000  
11 a month for the depreciation of the ship. That makes no sense at all as the  
12 depreciation of a ship is a cost that the shipowner always bears. The same applies to  
13 the salaries of the crew, and even to the company personnel, as well as travel  
14 expenses of the board and even the legal fees for these proceedings. According to  
15 the reports, all these expenses have to be paid without a single invoice being  
16 presented.

17  
18 Panama also claims losses due to termination of the contract with Lotus Federation  
19 but has not provided this court with any evidence why this contract ended. The  
20 Tribunal will recall that this contract involved two ships, including the *Iballa G*, which  
21 was already immobilized for non-payment of the crew since January. The reason  
22 why the contract with Lotus Federation ended has not been presented to the  
23 Tribunal; there was not a single piece of evidence submitted on that and therefore  
24 there is no causal link between this termination and the arrest of the *Virginia G*.

25  
26 In any case, we must read clause 4 of the contract, which sets out the consequences  
27 in the event of immobilization of the ship, which have nothing to do with the losses  
28 claimed by Panama. Clause 4 of the contract sets out the consequences, should the  
29 ship be immobilized and it is nothing to do with the losses claimed by Panama.

30  
31 As to the losses to the crew resulting from the immobilization of the ship, Guinea-  
32 Bissau has no liability at all for them

33  
34 What happened to the workers is exclusively due to the fact that the shipowner had  
35 no money to apply for a bond, so he decided to leave his workers in Bissau without  
36 payment, precisely the same thing as he did in Las Palmas. There is therefore no  
37 link of causality between the actions taken by Guinea-Bissau, which were totally  
38 legal, and the damages claimed by Panama. As my colleague stated this morning, to  
39 receive the compensation there must have been an injury and a link of causality  
40 between the injury and the loss. No proof of anything like that has been presented to  
41 this Tribunal.

42  
43 Therefore Panama is not entitled to claim damages.

44  
45 Let us now examine the damage caused to the State of Guinea-Bissau by the  
46 granting of the registration of this ship by Panama.

47  
48 The *Virginia G* was built in 1982 and after that she had a number of different names  
49 and previous registrations before being registered in Panama. There is reference to  
50 this in my Counter-Memorial to the reference to the ship on a website. Panama has

1 not presented any evidence that the previous registration has been cancelled. It  
2 could present it immediately in the Reply with a certificate, proving cancellation of the  
3 previous registration. No evidence was presented at all so we do not know whether  
4 the ship has other registrations. However, we understand that dual registration in  
5 Panama is only so that it has the advantage of a flag of convenience, as the ship has  
6 no genuine link with Panama.

7  
8 In fact, although sailing under the flag of Panama, the vessel is Spanish, as it  
9 belonged to a Spanish company, which was stressed to the Guinea-Bissau  
10 authorities by the continuous diplomatic intervention of the Spanish Ambassador  
11 about the issue and the release of the vessel.

12  
13 The control that Panama actually exerts over ships sailing under its flag is commonly  
14 described as corresponding to a flag of convenience. In the advertising that I  
15 exhibited it is stated that Panamanian ship registration is a mere formality and does  
16 not require any substantial link to that State. That is in the annex to the Counter-  
17 Memorial.

18  
19 In cases of the lack of a genuine link between the flag State and the ship, the coastal  
20 State should not be bound to acknowledge the right of such a ship to sail in its  
21 exclusive economic zone. This results by analogy with article 92, paragraph 2, of the  
22 Convention, which states:

23  
24 A ship which sails under the flags of two or more States, using them  
25 according to convenience, may not claim any of the nationalities in question  
26 with respect to any other State, and may be assimilated to a ship without  
27 nationality.

28  
29 In this case we have reference to the previous registration of the ship. We did not  
30 receive any evidence of the cancellation of the previous registration. I cannot confirm  
31 that the ship has two registrations but, as I say, this situation is very similar to the  
32 one under the Convention.

33  
34 Therefore we must consider that Guinea-Bissau had no obligation to notify the flag  
35 State, contrary to what my esteemed colleague said this morning.

36  
37 However, an official of the Panama registry was in Guinea-Bissau in September,  
38 shortly after the arrest of the ship, and he chose to take no provisions whatsoever  
39 with reference to the ship, just an inspection. I question if this is the way a flag State  
40 should act even when it did not receive any communication.

41  
42 Guinea-Bissau considers that by granting a flag of convenience to the *Virginia G*,  
43 without there being the least connection between this vessel and Panama, Panama  
44 facilitated fishing-related operations by an unseaworthy vessel in [Guinea-Bissau's]  
45 waters.

46  
47 The testimony of Mr Pedro Olives presented by Panama was very clear about the  
48 way Panama exercised its control as a flag State over the *Virginia G*. It delegated its  
49 authority to a private company, Panama Shipping Registry Inc., and inspections are  
50 performed in Las Palmas or even Guinea-Bissau by a single person, of Spanish

1 nationality, who also has interests in the shipping transport industry. In fact, he is a  
2 member of the board of the Transworld Canarias SA, which is a private entity in  
3 maritime transportation. This is clearly not the way a flag State should exercise  
4 control over ships flying its flag, especially in this case when it is a very old oil tanker,  
5 bought in a public auction a long time ago, which still has a single hull, and was  
6 constantly being repaired. In fact, as was said by the witnesses of Panama, the last  
7 repair occurred in Las Palmas in July, just before the arrest of the *Virginia G* in a  
8 situation, we must recall, where the owner also had a lot of financial problems. It is  
9 therefore clear that the ship could not have been in good condition when she was  
10 arrested in the waters of the exclusive economic zone of Guinea-Bissau.

11  
12 Panama produced reports from Mr Pedro Olives, which are attached to its Reply, but  
13 what we can see from these reports is that they do not look like official reports at all.  
14 They have not even been signed and I question if any official authority would hand  
15 over an official report without even signing it. In fact, it is impossible to believe that  
16 the ship was in a marvellous condition when she was repaired in Las Palmas in July  
17 and was in such bad condition just one year after staying in Guinea-Bissau  
18 according to the description of Panama. It is clear that these reports are not  
19 evidence for attributing the bad condition of the ship to the authorities of Guinea-  
20 Bissau. It is very likely that the bad condition of the ship was previous, as it needed  
21 constant repairs. But in any case, if the ship stayed in Bissau, with its crew on board,  
22 it was for them to provide the maintenance.

23  
24 When Guinea-Bissau decided to arrest this vessel in conformity with its laws, it was  
25 obliged to keep her under surveillance in the port of Bissau, which had high  
26 occupation costs, both of berthing and of its official and military personnel. The ship  
27 was in such a poor condition that the risk of it sinking in the port of Bissau arose.

28  
29 Guinea-Bissau was therefore prevented from auctioning the ship, as was its right,  
30 due to the poor condition it was in, caused by the inefficient supervision by Panama  
31 of the vessels to which it grants flags of convenience. Guinea-Bissau was obliged to  
32 release it without obtaining the adequate revenue as payment against the plundering  
33 of its marine resources, which the operation of the *Virginia G* led to, its high  
34 environmental costs, and loss of fishing resources. We must stress also that the ship  
35 was confiscated by a definitive decision, so the ship was, at the time she was  
36 liberated, an asset that already belonged to the Republic of Guinea-Bissau.

37  
38 Your Honours, you now have elements that permit you to evaluate the losses  
39 suffered by Guinea-Bissau due to the behaviour of Panama. We therefore ask the  
40 Tribunal to adjudge a compensation for the losses caused, damage caused to the  
41 environment and the plundering of the marine resources of Guinea-Bissau.

42  
43 Mr President, learned Members of the International Tribunal, thank you very much  
44 for your attention. I will now pass the floor to my colleague Mr Loureiro Bastos.

45  
46 **THE PRESIDENT:** Thank you very much, Mr Leitão.

47  
48 I now give the floor to the Co-Agent of Guinea-Bissau, Mr Bastos.

49  
50 **MR LOUREIRO BASTOS:** Thank you very much.

1  
2 Mr President, distinguished Members of the International Tribunal for the Law of the  
3 Sea, esteemed colleagues, after five days of sessions Guinea-Bissau considers that  
4 it is important to summarize what divides the two parties in this dispute.

5  
6 It is not possible to say what still divides the two parties, and I underline “still”, as, in  
7 fact, there are no points of contact between the versions of the same facts and the  
8 same applicable international law of the sea and domestic law of Guinea-Bissau that  
9 must be considered in this case.

10  
11 The difference of positions between Guinea-Bissau and Panama can be dealt with  
12 by considering twelve issues where their positions do not coincide.

13  
14 These twelve issues are:

- 15  
16 a) Jurisdiction of the International Tribunal for the Law of the Sea about claims  
17 related to the bareboat chartered *Iballa G*;  
18  
19 b) The lack of a genuine link between Panama and the vessel *Virginia G*;  
20  
21 c) The exercise of diplomatic protection by Panama in respect of entities or persons  
22 that do not have a real connection with that State;  
23  
24 d) The use of internal mechanisms of dispute resolution;  
25  
26 e) The objectives of the fisheries laws of Guinea-Bissau;  
27  
28 f) The regulation of the activity of bunkering under international law;  
29  
30 g) The violation of the rights of enforcement under the Convention by Guinea-  
31 Bissau;  
32  
33 h) The use of force during the arrest of the vessel *Virginia G*;  
34  
35 i) The treatment of the crew of the vessel *Virginia G* during its detention in the Port  
36 of Bissau;  
37  
38 j) The physical condition of the vessel *Virginia G* at the moment of arrest;  
39  
40 k) Compensation for damages and losses;  
41  
42 l) The presentation and content of the counter-claim.

43  
44 It is important to reiterate the position of Guinea-Bissau regarding some of these  
45 issues.

46  
47 Firstly, Guinea-Bissau argues that it does not agree with the jurisdiction of the  
48 International Tribunal with regard to considering any claims related to the *Iballa G*,  
49 even as a side-effect of the damages and losses caused by Guinea-Bissau to the  
50 detriment of the owners of the *Virginia G* as a result of the arrest and prolonged

1 detention of the *Virginia G*, in relation to the fact that the arrest and detention  
2 affected the operations and solvency of the owners in respect of both the *Virginia G*  
3 and of the chartered bareboat *Iballa G*.

4  
5 Secondly, Guinea-Bissau argues that the request made by Panama to the  
6 International Tribunal is not admissible because there is no genuine link between the  
7 vessel *Virginia G* and Panama, in violation of article 91, paragraph 1, of the  
8 Convention.

9  
10 The vessel *Virginia G* was built in 1982, and, after that, it had a number of different  
11 names and previous registrations before being registered in Panama in 2007. These  
12 name changes and various registrations were effected, naturally, in order to have the  
13 advantages of a flag of convenience, considering that Penn Lilac Trading SA cannot  
14 be regarded as being a Panamanian company. The company owning the vessel  
15 *Virginia G* has no substantive link with Panama whatsoever, but it is, rather, of  
16 Spanish origin and has Spanish management.

17  
18 For these reasons, Guinea-Bissau stresses that it has never recognized the  
19 *Virginia G*'s connection with Panama because, although sailing under the flag of  
20 Panama, the vessel is Spanish, as it belonged to a Spanish company. This opinion  
21 was reinforced, in the view of the Guinea-Bissau authorities, by the continuous  
22 diplomatic intervention of the Spanish Ambassador about the issue and the release  
23 of the vessel.

24  
25 The control that Panama actually exerts on ships sailing under its flag is commonly  
26 described as corresponding to a flag of convenience. Guinea-Bissau highlights the  
27 fact that the Panamanian authorities advertise that Panamanian ship registration is a  
28 mere formality and does not require any substantial link to that State.

29  
30 Any position that may be taken by the International Tribunal on the matter of the  
31 genuine link should take into account the fight against the "sponsoring States of  
32 convenience" in the exploitation of mineral resources in the area that was expressed  
33 in the Advisory Opinion of 1 February 2011.

34  
35 In the Advisory Opinion of 1 February 2011, the Seabed Disputes Chamber of the  
36 International Tribunal for the Law of the Sea decided that:

37  
38 Equality of treatment between developing sponsoring States is consistent  
39 with the need to prevent commercial enterprises based in developed States  
40 from setting up companies in developing States, acquiring their nationality  
41 and obtaining their sponsorship in the hope of being subjected to less  
42 burdensome regulations and controls. The spread of sponsoring States of  
43 'convenience' would jeopardize uniform application of the highest  
44 standards of protection of the marine environment, the safe development  
45 of activities in the Area and protection of the common heritage of mankind.  
46 (paragraph 159)

47  
48 On the issue of the fight against flags of convenience, Robin Churchill commented  
49 on possible future action of the International Tribunal after the *M/V "SAIGA" Cases*,  
50 and the "*Grand Prince*" Case, in the following terms: "It is thus possible that if given  
51 the opportunity, the Tribunal may in future help make article 91 more effective".

1  
2 Guinea-Bissau believes that, after the strong position taken in relation to “sponsoring  
3 States of convenience”, the International Tribunal is now also able to start the battle  
4 against flags of convenience. The existence of flags of convenience is very harmful  
5 in general terms, and its perverse effects are manifest in this case.  
6

7 Thirdly, the exercise of diplomatic protection by Panama in respect of entities or  
8 persons that do not have a real connection with that State is not possible from an  
9 international law perspective. Guinea-Bissau reaffirms that there is no genuine link  
10 between the nationality of the owner of the vessel *Virginia G* and Panama. Guinea-  
11 Bissau also argues that no crew member of the vessel *Virginia G* has any connection  
12 with Panama.  
13

14 Fourthly, Guinea-Bissau argues that the request made by Panama to the  
15 International Tribunal is not admissible because the persons or entities involved in  
16 this case have not exhausted all internal mechanisms of dispute resolution, contrary  
17 to what is stipulated in article 295 of the Convention.  
18

19 Fifthly, Guinea-Bissau reaffirms that its national fisheries law has, in addition to other  
20 provisions, the objective of the protection and conservation of natural resources,  
21 employing a precautionary approach and, for that reason, bunkering is regulated as  
22 a fishing-related activity.  
23

24 Guinea-Bissau reaffirms that prior authorization to conduct refuelling operations in its  
25 national fisheries law is not a customs duty or other tax in disguise, and it was not  
26 intended to extend a customs-type radius beyond the territorial seas and the  
27 contiguous zone, but is merely a payment for a service rendered by its  
28 administration.  
29

30 Sixthly, Guinea-Bissau states that the regulation of bunkering is included in the rights  
31 of the coastal State to regulate the capture of biological resources in its exclusive  
32 economic zone, according to article 61 of the Convention, because off-shore  
33 bunkering of fishing vessels is an activity that goes against, or otherwise hinders, the  
34 conservation of living resources.  
35

36 Guinea-Bissau asserts, in its exclusive economic zone, an exclusive competence in  
37 relation to the conservation and exploration of its natural resources, living or non-  
38 living, and, as a consequence, an exclusive competence over certain “fishing-related  
39 operations”, which include refuelling services of fishing vessels provided at sea,  
40 employing a precautionary approach.  
41

42 Guinea-Bissau totally disagrees that the bunkering activity carried out by the  
43 *Virginia G* in the exclusive economic zone of Guinea-Bissau falls within the freedom  
44 of navigation and other international lawful uses of the sea in terms of article 58,  
45 paragraph 1, of the Convention, and that it required no prior authorization against  
46 payment.  
47

48 In seventh place, Guinea-Bissau argues that it had no obligation to notify Panama,  
49 as the flag State, through the appropriate channels, of action taken and of any  
50 penalties subsequently imposed on the vessel *Virginia G*, according to article 73,



1 paragraph 4, of the Convention because there were no genuine links between the  
2 vessel *Virginia G* and Panama, nor any genuine links between the shipowner and  
3 Panama.

4  
5 The eighth point is that Guinea-Bissau argues that there was no use of excessive  
6 force during the arrest of the vessel *Virginia G*.

7  
8 Finally, the ninth point, Guinea-Bissau argues that the conditions in which the crew  
9 of the *Virginia G* was kept in the port of Bissau did not constitute a violation of their  
10 human rights.

11  
12 Trying to observe high levels of environmental protection, applying a precautionary  
13 approach, Guinea-Bissau considers bunkering to be a fishing-related operation. The  
14 International Tribunal asked, before starting these oral proceedings, on 30 August,  
15 about “the risks posed to marine environment by bunkering”. Panama replied during  
16 the first round that there were no risks to the marine environment resulting from this  
17 activity, without giving any example or relevant practice or specific cases about it.

18  
19 Guinea-Bissau would like to give a more detailed answer, using two sources related  
20 with the bunkering industry: the *International Tanker Owners Pollution Federation*  
21 and the online journal *Ship & Bunker - News and Intelligence for the Marine Fuels*  
22 *Industry*.

23  
24 The International Tanker Owners Pollution Federation Limited provides information  
25 gathered from both published sources, such as the shipping press and other  
26 specialist publications, as well as from vessel owners and their insurers. According  
27 to the booklet *Oil Tanker Spill Statistics 2012*, published by The International Tanker  
28 Owners Pollution Federation Limited, ITOPF maintains a database of oil spills from  
29 tankers, combined carriers and barges. That database contains information on  
30 accidental spillages since 1970 and 1974, apart from those resulting from acts of  
31 war. Oil spills are generally categorised by size: <7 tonnes, 7-700 tonnes and >700  
32 tonnes, although the actual amount spilt is also recorded. The International Tanker  
33 Owners Pollution Federation Limited have information on nearly 10,000 incidents,  
34 the vast majority of which (81%) fall into the smallest category (<7 tonnes).

35  
36 Data on oil spills from bunkering are the following: (i) below 7 tonnes, 564 cases,  
37 between 1974 and 2012; (ii) between 7 and 700 tonnes, during the period of 1970 to  
38 2012, 33 cases; and (iii) above 700 tonnes, between 1970 and 2012, 1 case.

39  
40 Most of the reported cases of oil spills caused by bunkering occurred in developed  
41 states: Australia, 18 cases; France, 15 cases; Germany, 14 cases; Italy, 22 cases;  
42 Japan, 56 cases; Netherlands, 31 cases; United Kingdom, 28 cases; and United  
43 States of America, 180 cases. In this database there are no reported cases that  
44 occurred in West African countries.

45  
46 Is it possible to assume that no oil spills caused by bunkering have occurred in West  
47 African countries? The answer must be in the negative, but it is not possible to  
48 confirm it with examples. This is the reason why Guinea-Bissau applies a  
49 precautionary approach in its fisheries law.

1 The type of fuel spilled in the seas is not important for the living species. Whether  
2 gas oil or any other type of diesel fuel, fish cannot survive in an environment polluted  
3 by any kind of oil.

4  
5 Three recent cases can be given as examples of oil spills caused by bunkering  
6 operations.

7  
8 The first oil spill caused by bunkering operations occurred in Gibraltar. According to  
9 *Ship & Bunker: News and Intelligence for the Marine Fuels Industry* of Tuesday,  
10 12 June 2012, with the title “Bunkering Accident Confirmed Responsible For Spill”, it  
11 was reported that:

12  
13 A “bunkering accident” was responsible for a spill off the North Mole,  
14 Gibraltar at approximately 7 p.m. Friday evening, Her Majesty’s  
15 Government of Gibraltar (HMGOG) and Gibraltar Port Authority (GPA) has  
16 confirmed in a joint press release.

17  
18 “The source of the oil was a bunkering accident which is being investigated  
19 and followed up with the relevant parties”, the statement said.

20  
21 Local media reported around three tonnes of fuel had been spilt and the  
22 incident had involved the refrigerated vessel *Frio Dolphin* and the bunker  
23 tanker *Vermaoil XX*.

24  
25 (...)

26  
27 Gibraltar’s Environmental Safety Group (ESG) said it recognized the spill  
28 was ‘minor’ but nevertheless served ‘as a reminder of Port impact on the  
29 marine environment’.

30  
31 “With bunkering taking place at four separate ports in the Strait of Gibraltar  
32 all minor oil spills add up and impact on the natural environment stressing  
33 the need for utmost vigilance and practice to be applied on all such activity”,  
34 the ESG statement said.

35  
36 ESG also suggested the location of the incident had a role in the speed  
37 and effectiveness of the authorities’ response, and “had bunkering  
38 operation taken place at a greater distance to shore, the results could have  
39 been very different”.

40  
41 HMGOG says it will now consider the lessons learnt from the spill in order  
42 to “improve procedures even further to both prevent and deal with oil spills  
43 and liability for them”.

44  
45 The second oil spill example caused by bunkering operations occurred in Algeciras,  
46 Spain. According to *Ship & Bunker: News and Intelligence for the Marine Fuels*  
47 *Industry* of Monday, 18 June 2012, with the title “Bunker Spill in Algeciras Reported”,  
48 it was reported that:

49  
50 “A spill resulting from bunkering has been reported off Algeciras”, the  
51 Government of Gibraltar (GOG) has said in a statement.  
52

1 The GOG said they were alerted to what was reported as a 50 litre spill  
2 during the bunkering of the 10,545 dwt Cook Islands registered reefer  
3 *Fegulus* by the Spanish press, but ‘the size of the slick would indicate  
4 considerably more.

5  
6 (...)

7  
8 The spill could potentially affect beaches and marine life in the Southern  
9 Waters of Gibraltar, which under the EU Habitats Directive are a dual  
10 marine Special Area of Conservation (SAC) and Special Protected Area  
11 (SPA).

12  
13 The third oil spill example caused by bunkering operations is one related to one of  
14 the United Arab Emirates, the Emirate of Ras Al-Khaimah. According to *Ship &*  
15 *Bunker: News and intelligence for the Marine Fuels Industry* of Tuesday, 30 April  
16 2013, with the title “Unusually High” Number of Bunker Spills at UAE’s Sarq Port”, it  
17 was reported that:

18  
19 Sarq Port in the UAE emirate of Ras Al-Khaimah has had “an unusually  
20 high number of bunker spills” lately, the West of England P&I club told its  
21 members.

22  
23 The club said the spillage has mainly occurred when ships were  
24 disconnecting road tankers’ hoses from the vessels’ bunkering manifolds.

25  
26 “The local Port Authority imposes fines of AED 10,000 (\$2,700) or more for  
27 such a spill on both the supplier and receiver regardless of fault in the  
28 accident”, the club said, “and one owner was recently ordered to pay just  
29 over \$ 40,000 before the vessel was released”.

30  
31 “Members planning to bunker vessels at Sarq Port are advised to ensure  
32 that crew members are alerted to the circumstances surrounding the recent  
33 spills”, the club said.

34  
35 “When preparing to disconnect bunker lines the crew should check that the  
36 supply hose is fully drained prior to disconnection, and they should not rely  
37 solely on the supplier’s assertions that the hose is ready to be  
38 disconnected”.

39  
40 The club also urged members to position drip trays to collect any residue  
41 remaining in the supply hose and secure overboard scuppers and gaps in  
42 fish plates to avoid any spillage.

43  
44 “As far as practicable Members should also consider including suitable  
45 clauses in the bunker supply contract to protect their interests”, the club  
46 said.

47  
48 Guinea-Bissau argues that the freedom of navigation of ships with the flag of third  
49 States through the exclusive economic zone of coastal States should not include the  
50 right to be involved in the economic activity of bunkering of fishing vessels, according  
51 to an evolutionary interpretation of articles 58 and 61 of the Convention, given that  
52 the activity has a much stronger connection to the exercise of fishing than with the  
53 freedom of navigation.

1  
2 David Anderson, a former Judge of this International Tribunal, states that:

3  
4 [I]n my analysis, bunkering at sea in the EEZ can be subject to different  
5 legal regimes, depending on the circumstances. What is required is a case-  
6 by-case approach. Bunkering is a service: when it serves navigation, the  
7 rules on navigation in the EEZ apply; when it serves fishing, the rules on  
8 fishing and fisheries operations in the EEZ apply. Leaving aside the  
9 environmental aspects, the applicable legal regime is determined by the  
10 nature of the recipient vessel's activity in the EEZ at the relevant time.

11  
12 In the same sense, Donald Rothwell and Tim Stephens advocate that:

13  
14 [I]n its decision on the merits in *M/V Saiga (No 2)*, ITLOS concluded that a  
15 coastal state is entitled to apply customs laws and regulations in its  
16 territorial sea, and that it also has enforcement jurisdiction in the continuous  
17 zone to ensure that these laws are complied with. In the EEZ, however,  
18 there was no such entitlement. Guinea had argued that under article 58(3)  
19 it could apply "other rules of international law" not incompatible with LOSC,  
20 which enabled it to apply and enforce domestic laws directed at securing  
21 the "public interest" of Guinea, which extends to preventing economic  
22 activities including bunkering, which has impacts on fisheries and  
23 environmental matters. The Tribunal rejected this argument, finding that  
24 reference to a principle of "public interest" to justify laws within the EEZ  
25 would "curtail the rights of other States" and would be incompatible with  
26 articles 56 and 58 of the LOSC. Once again the Tribunal did not, however,  
27 venture a definitive view as to whether bunkering within the EEZ could be  
28 regulated by coastal states, holding that it was unnecessary to consider the  
29 issue because of the particular circumstances of the case. Nonetheless,  
30 despite this equivocal analysis, both state practice and a plain reading of  
31 the LOSC suggests coastal state powers of fisheries regulation do extend  
32 to include incidental matters such as bunkering or processing fish caught  
33 within the EEZ.

34  
35 Mr President, distinguished Members of the International Tribunal for the Law of the  
36 Sea, esteemed colleagues, the essence of this case, from the perspective of the  
37 international law of the sea and international law, is to know what the current extent  
38 of the powers of a coastal State is in its exclusive economic zone.

39  
40 Using an evolutionary interpretation of the Convention that takes into due account  
41 the developments of environmental law in past decades and the progressive  
42 relevance of a precautionary approach, Guinea-Bissau argues that the regulation of  
43 fishing-related activities, like bunkering of fishing vessels, is an integral part of the  
44 powers of coastal States in their exclusive economic zone.

45  
46 Contrary to what Panama asserts, Guinea-Bissau has the right to contest the  
47 admissibility of the claims of Panama and its right is not precluded by article 97,  
48 paragraph 1, of the Rules of the Tribunal.

49  
50 In fact, as the International Tribunal decided in the *M/V "SAIGA" (No. 2) Case*:

1 the article applies to an objection “the decision upon which is requested  
2 before any further proceedings on the merits”. Accordingly, the time-limit in  
3 the article does not apply to objections to jurisdiction or admissibility which  
4 are not requested to be considered before any further proceedings on the  
5 merits.  
6 (paragraph 53).  
7

8 This interpretation of the Tribunal is totally in conformity with the wording of article 97  
9 of the Rules of the Tribunal. It appears evident that Panama is acting in bad faith by  
10 invoking article 79 of the Rules of the International Court of Justice, but without  
11 referring to the fact that the jurisprudence of this same Tribunal clearly indicates that  
12 exceptions to admissibility may be presented in the Counter-Memorial, as  
13 demonstrated in the *Avena Case* of 2004.  
14

15 In paragraph 24 of the Judgment of that case, the International Court of Justice  
16 expressly stated that:  
17

18 An objection that is not presented as a preliminary objection in accordance  
19 with paragraph 1 of article 79 does not thereby become inadmissible. There  
20 are of course circumstances in which the party failing to put forward an  
21 objection to jurisdiction might be held to have acquiesced in jurisdiction  
22 (...). However, apart from these circumstances, a party failing to avail itself  
23 of the article 79 procedure may forfeit the right to bring about a suspension  
24 of the proceedings on the merits, but can still argue the objection along with  
25 the merits. That is indeed what the United States has done in this case;  
26 and, for reasons to be indicated below, many of its objections are of such  
27 nature that they would in any event probably have had to be heard along  
28 with the merits. The Court concludes that it should not exclude from  
29 consideration the objections of the United States to jurisdiction and  
30 admissibility by reason of the fact that they were not presented within three  
31 months from the date of filing of the Memorial.  
32

33 The legal writers also confirm this position. In fact, as Christian Tomuschat says:  
34

35 In other words, a respondent remains free to come up with its preliminary  
36 objections in its counter-memorial. This alternative strategy has the  
37 advantage of saving time. No separate incidental proceedings, which  
38 necessarily entail a delay of many months as a minimum, will then take  
39 place. Once a respondent has filed its counter-memorial without raising  
40 preliminary objections, it will in any event be deemed to have acquiesced  
41 to the jurisdiction of the Court.  
42

43 It is therefore clear that even in the jurisprudence and doctrine of the International  
44 Court of Justice it is well established that Guinea-Bissau could present its objections  
45 in its Counter-Memorial.  
46

47 To finalize my statement it is necessary to reaffirm that Guinea-Bissau totally rejects  
48 the allegations of Panama that it has violated the Convention or general international  
49 law.  
50

1 Firstly, Guinea-Bissau reaffirms that it has not violated article 58 of the Convention  
2 as bunkering is an economic activity, which is not included in freedom of navigation  
3 or other international lawful uses of the sea.

4  
5 As stated above, Guinea-Bissau never extended its tax legislation to the exclusive  
6 economic zone, given that it merely charges a small amount for the issue of the  
7 refuelling licence, which is well below what it would obtain by way of tax revenue if  
8 the refuelling had taken place on land.

9  
10 Secondly, contrary to what Panama asserts, Guinea-Bissau reaffirms that there was  
11 also no violation of articles 56, paragraph 2, and 73 of the Convention.

12  
13 In relation to article 56, paragraph 2,) of the Convention, Guinea-Bissau behaved  
14 appropriately by demanding the authorization established by the law, which the oil  
15 tanker *Virginia G* did not have, and decreed the sanction accordingly allowed for in  
16 its law for this violation, which does not collide with the rights of other States or with  
17 the Convention.

18  
19 Guinea-Bissau's actions were also in full conformity with article 73, paragraph 1, of  
20 the Convention, which expressly legitimizes its action, and there was no abuse of  
21 discretion in applying its law.

22  
23 Guinea-Bissau did not violate article 73, paragraph 22 of the Convention by applying  
24 the sanction of confiscation allowed for in its law.

25  
26 The seizure of the fuel was therefore perfectly legal, with regard to Guinea-Bissau's  
27 domestic legislation. Contrary to what Panama states, it is evident that fuel is  
28 covered in the seizure of the ship, something which is permitted by article 52 of  
29 Decree Law 6-A/2000, which allows for the seizure of the vessel with all of its  
30 fixtures, fittings and fishing products.

31  
32 Although in fact fuel is not a fishing product, it is actually covered by the general  
33 concept of vessel, and as article 23 of Decree Law 6-A/2000 brings fishing-related  
34 operations under that same legislation, it is evident that the vessels that perform  
35 such operations are covered by this legislation, including oil tankers which fuel  
36 fishing vessels.

37  
38 Regarding the setting of the security deposit, this has to be requested from the  
39 competent entity, something that the owners of the vessel *Virginia G* never did.

40  
41 In fact, article 65(1) of Decree Law 6-A/2000 expressly states, in conformity with  
42 article 292 of the Convention, that:

43  
44       Upon the decision of the competent court, the fishing vessels or craft and  
45       their crew will be immediately released, upon the request of the ship owner,  
46       the captain, or the master of the vessel or craft or of its local representative,  
47       before the trial, provided that the payment of sufficient security deposit is  
48       made.

1 Guinea-Bissau did not violate article 73, paragraph 3, of the Convention inasmuch as  
2 it did not apply any measures involving prison or corporal punishment to the crew of  
3 the *Virginia G*, it being absurd that Panama should wish to classify the temporary  
4 apprehension of passports or the failure to provide a security deposit as *de facto*  
5 prison.  
6

7 The passports were delivered upon request and, in any case, a delay in the delivery  
8 of a passport can never be considered to be equivalent to a measure of  
9 imprisonment. It is, therefore, clear that there was no violation of article 73,  
10 paragraph 4, of the Convention.  
11

12 Guinea-Bissau also did not violate article 73, paragraph 4, of the Convention,  
13 inasmuch as it did not find a single person or entity related to Panama. The owner of  
14 the vessel was Spanish, the captain and most of the crew were Cuban, and there  
15 were also crew members who were Ghanaians and one Cape Verdean.  
16

17 It is clear that article 73, paragraph 4, of the Convention has to be interpreted in  
18 connection with article 91, such that any obligation concerning communication in  
19 cases of flags of convenience ceases as from the time when the State that has an  
20 effective connection with the vessel assumes diplomatic protection.  
21

22 Thirdly, it is totally false that Guinea-Bissau violated other rules of the Convention or  
23 other rules of international law, contrary to what Panama states in this dispute.  
24

25 As is confirmed by the witnesses of Guinea-Bissau, there was never any violence or  
26 any threats made to the crew, it being clear that the legitimate exercise of authority,  
27 which represses violations committed in its exclusive economic zone, does not  
28 constitute violence.  
29

30 There was no excessive use of force, as the officials merely arrested the vessel and  
31 ordered it to go to the port of Bissau, there being no danger on this journey, thus  
32 making it absurd to consider this situation as an excessive use of force.  
33

34 Fourthly, Guinea-Bissau did not violate articles 224 and 110 of the Convention, as  
35 the ship was arrested by uniformed officials in conformity with its rights, as a coastal  
36 State, to monitor activity in the exclusive economic zone.  
37

38 Fifthly, Guinea-Bissau did not violate article 225 of the Convention as it did not put  
39 the safety of navigation in danger nor did it create any risk for the ship, which could  
40 remain perfectly moored in the port of Bissau.  
41

42 Finally, sixthly, Guinea-Bissau did not violate article 300 of the Convention as it  
43 always exercised its rights in good faith and in a non-abusive manner.  
44

45 Mr President, learned Members of the International Tribunal, thank you very much  
46 for your attention.  
47

48 **THE PRESIDENT:** Thank you, Mr Bastos. I understand that this was the last  
49 statement made by Guinea-Bissau during this hearing. Article 75, paragraph 2, of the  
50 Rules of the Tribunal, provides that, at the conclusion of the last statement made by

1 a party at the hearing, its Agent, without recapitulation of the arguments, shall read  
2 that party's final submissions. A copy of the written text of these submissions, signed  
3 by the Agent, shall be communicated to the Tribunal and transmitted to the other  
4 party.

5  
6 I now invite the Agent of Guinea-Bissau to take the floor to present the final  
7 submissions of Guinea-Bissau.

8  
9 **MR MENEZES LEITÃO:**

10  
11 Case No. 19 *Virginia G*;  
12 ITLOS Hamburg, 6 September.

13  
14 **Submissions in relation to the claim**

15  
16 For the reasons given in writing and in oral argument, or any of them, or for  
17 any other reason that the International Tribunal deems to be relevant, the  
18 Government of the Republic of Guinea-Bissau respectfully requests the  
19 International Tribunal to adjudge and declare that:

- 20  
21 1. The International Tribunal has no jurisdiction about claims related to the  
22 vessel *Iballa G*.  
23  
24 2. The claims submitted by Panama are inadmissible due to the  
25 nationality of *Virginia G*, the absence of a right of diplomatic protection  
26 concerning foreigners, or the lacking exhaustion of local remedies, and  
27 should therefore be dismissed.

28  
29 Alternatively that:

- 30  
31 1. The actions of the Republic of Guinea-Bissau did not violate the right  
32 of Panama and of the vessels flying her flag to enjoy freedom of  
33 navigation and other internationally lawful uses of the sea, as set forth  
34 in terms of article 58(1) of the Convention.  
35  
36 2. Guinea-Bissau laws can be applied for the purpose of controlling the  
37 bunkering to fishing vessels in the exclusive economic zone.  
38  
39 3. Guinea-Bissau did not violate article 56(2) of the Convention.  
40  
41 4. Guinea-Bissau did not violate article 73(1) of the convention.  
42  
43 5. Guinea-Bissau did not violate article 73(2) of the Convention.  
44  
45 6. Guinea-Bissau did not violate article 73(3) of the Convention.  
46  
47 7. Guinea-Bissau did not violate article 73(4) of the Convention.  
48  
49 8. Guinea-Bissau has not used excessive force in boarding and arresting  
50 the *Virginia G*.  
51  
52 9. Guinea-Bissau did not violate the principles of articles 224 and 110 of  
53 the Convention.



- 1  
2 10. Guinea-Bissau did not violate neither article 225 of the Convention nor  
3 the SUA convention, not even the principles of safety of life at sea and  
4 collision prevention.  
5  
6 11. Guinea-Bissau did not violate article 300 of the Convention.  
7  
8 12. The Republic of Guinea-Bissau has no obligation to immediately return  
9 to Panama the discharged gas oil or to pay any compensation for it.  
10  
11 13. The Republic of Guinea-Bissau has no obligation to pay in favour of  
12 Panama, the *Virginia G*, her owners, crew and any persons or entities  
13 with an interest on the vessel's operations any compensation for  
14 damages and losses.  
15  
16 14. The Republic of Guinea-Bissau has no obligation to give apologies to  
17 the Republic of Panama.  
18  
19 15. The Republic of Guinea-Bissau has no obligation to pay any interest.  
20  
21 16. The Republic of Guinea-Bissau has no obligation to pay costs and  
22 expenses incurred by Panama.  
23  
24 17. The Republic of Guinea-Bissau has no obligation to pay any  
25 compensation or relief to Panama, the *Virginia G*, her owners,  
26 charterers or any other persons or entities with interest in the vessel's  
27 operation.  
28

29 **Submissions in relation to the counter-claim**

30  
31 The Government of the Republic of Guinea-Bissau respectfully requests  
32 the International Tribunal to adjudge and declare that:  
33

34 A. Panama violated article 91 of the Convention.  
35

36 B. Panama is to pay in favour of Guinea-Bissau compensation for  
37 damages and losses caused as a result of the aforementioned violation, in  
38 the amount quantified and claimed by Guinea-Bissau in paragraph 266 of  
39 its Counter-Memorial, or in an amount deemed appropriate by the  
40 International Tribunal.  
41

42 C. Panama is to reimburse all legal and other costs the Republic of  
43 Guinea-Bissau has incurred with this case.  
44

45 Luís Menezes Leitão, Fernando Loureiro Bastos, Agents and Counsels for  
46 the Republic of Guinea-Bissau. Hamburg, 6 September 2013.  
47

48 **THE PRESIDENT:** Thank you, Mr Leitão.  
49

50 This brings us to the end of this hearing. On behalf of the Tribunal, I would like to  
51 take this opportunity to express our appreciation for the high quality of the  
52 presentations of the representatives of both Panama and Guinea-Bissau. I would

1 also like to take this opportunity to thank both the Agent of Panama and the Agent of  
2 Guinea-Bissau for their exemplary spirit of cooperation.

3  
4 The Registrar will now address questions in relation to documentation.

5  
6 **THE REGISTRAR:** Thank you, Mr President.

7  
8 Pursuant to article 86, paragraph 4, of the Rules of the Tribunal, the parties may,  
9 under the supervision of the Tribunal, correct the transcripts of speeches and  
10 statements made on their behalf, but in no case may such corrections affect the  
11 meaning and scope thereof. These corrections relate to the verified versions of the  
12 transcripts in the official language used by the party in question. The corrections  
13 should be submitted to the Registry at the latest by Wednesday, 18 September at  
14 5.00 p.m. Hamburg time.

15  
16 Mr President.

17  
18 **THE PRESIDENT:** Thank you, Mr Registrar.

19  
20 The Tribunal will now withdraw to deliberate. The judgment will be read on a date to  
21 be notified to the Agents. The Tribunal currently plans to deliver the judgment in  
22 spring 2014. The Agents of the parties will be informed reasonably in advance of the  
23 precise date of the reading of the judgment.

24  
25 In accordance with the usual practice, I request the Agents to kindly remain at the  
26 disposal of the Tribunal in order to provide any further assistance and information  
27 that it may need in its deliberations prior to the delivery of the judgment.

28  
29 The hearing is now closed.

30  
31 *(The sitting was closed at 4.30 p.m.)*