

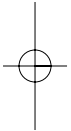
INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

REPORTS OF JUDGMENTS,
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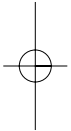
THE “JUNO TRADER” CASE
(Saint Vincent and the Grenadines v. Guinea-Bissau)
List of cases: No. 13

JUDGMENT OF 18 DECEMBER 2004

2004



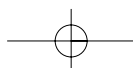
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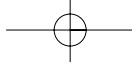


RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

AFFAIRE DU « JUNO TRADER »
(Saint-Vincent-et-les Grenadines c. Guinée-Bissau)
Rôle des affaires : No. 13

ARRÊT DU 18 DÉCEMBRE 2004



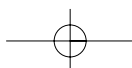
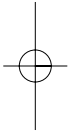
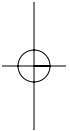


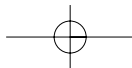
Official citation:

*“Juno Trader” (Saint Vincent and the Grenadines v. Guinea-Bissau),
Prompt Release, Judgment, ITLOS Reports 2004, p. 17*

Mode officiel de citation :

*« Juno Trader » (Saint-Vincent-et-les Grenadines c. Guinée-Bissau),
prompte mainlevée, arrêt, TIDM Recueil 2004, p. 17*

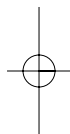




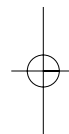
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**THE “JUNO TRADER” CASE
(SAINT VINCENT AND THE GRENADINES v. GUINEA-BISSAU)**

PROMPT RELEASE

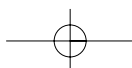


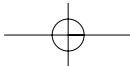
**AFFAIRE DU « JUNO TRADER »
(SAINT-VINCENT-ET-LES GRENADINES c. GUINÉE-BISSAU)**



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18 DÉCEMBRE 2004
ARRÊT





INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

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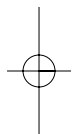
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List of cases:
No. 13

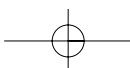
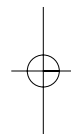
THE “JUNO TRADER” CASE

(SAINT VINCENT AND THE GRENADINES *v.* GUINEA-BISSAU)

APPLICATION FOR PROMPT RELEASE



JUDGMENT



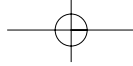
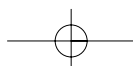
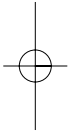
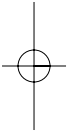
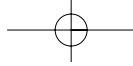


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“JUNO TRADER” (JUDGMENT)

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JUDGMENT

Present: *President* NELSON; *Vice-President* VUKAS; *Judges* CAMINOS, MAROTTA RANGEL, YANKOV, YAMAMOTO, KOLODKIN, PARK, BAMELA ENGO, MENSAH, CHANDRASEKHARA RAO, AKL, ANDERSON, WOLFRUM, TREVES, MARSIT, NDIAYE, JESUS, XU, COT, LUCKY; *Registrar* GAUTIER.

In the “Juno Trader” Case

between

Saint Vincent and the Grenadines,

represented by

Mr Werner Gerdts, Managing Director, Döhle Assekuranzkontor GmbH & Co KG, Hamburg, Germany,

as Agent;

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

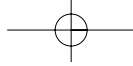
as Deputy Agent;

and

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

as Counsel;

Mr Lance Fleischer, Manager, Juno Management Services, Monaco,



“JUNO TRADER” (JUDGMENT)

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Mr Fernando Tavares, Director, Transmar Services Shipping and Transit Limited, Bissau, Guinea-Bissau,

as Advisers,

and

Guinea-Bissau,

represented by

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

as Agent, Counsel and Advocate;

Mr Octávio Lopes, *Chef de Cabinet* of the Minister of Fisheries, Ministry of Fisheries, Guinea-Bissau,

as Co-Agent;

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

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

as Counsel and Advocates;

Ms Dolores Domínguez Pérez, Assistant, S.J. Berwin, Brussels, Belgium,

as Counsel;

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

as Adviser.

THE TRIBUNAL

composed as above,

after deliberation,

delivers the following Judgment:

Introduction

1. On 18 November 2004, a letter dated 17 November 2004 from the Attorney-General of Saint Vincent and the Grenadines authorizing Ms Najla Dabinovic, Commissioner for Maritime Affairs of Saint Vincent and the Grenadines, to make an application under article 292 of the United Nations Convention on the Law of the Sea (hereinafter "the Convention"), on behalf of Saint Vincent and the Grenadines, and a letter dated 18 November 2004 from Ms Dabinovic authorizing Mr Werner Gerdts, Managing Director, Döhle Assekuranzkontor GmbH & Co KG, Hamburg, Germany, to act as Agent of Saint Vincent and the Grenadines, were transmitted by facsimile. On the same day, an Application on behalf of Saint Vincent and the Grenadines under article 292 of the Convention was filed by electronic mail with the Registry of the Tribunal against the Republic of Guinea-Bissau (hereinafter "Guinea-Bissau") concerning the release of the *Juno Trader* and its crew.

2. A certified copy of the Application was sent, by courier, by letter dated 18 November 2004 to the Minister for Foreign Affairs of Guinea-Bissau and a copy delivered by bearer on 19 November 2004 to the Embassy of Guinea-Bissau in Brussels. A copy of the Application was also sent by facsimile on 18 and 19 November 2004 to the Permanent Mission of Guinea-Bissau to the United Nations in New York.

3. By letter from the Registrar dated 18 November 2004, the Minister for Foreign Affairs of Guinea-Bissau was informed that the Statement in Response of Guinea-Bissau, in accordance with article 111, paragraph 4, of the Rules of the Tribunal (hereinafter "the Rules"), could be filed with the Registry not later than 96 hours before the hearing.

4. In accordance with article 112, paragraph 3, of the Rules, the President of the Tribunal, by Order dated 19 November 2004, fixed 1 and 2 December 2004 as the dates for the hearing with respect to the Application. Notice of the Order was communicated forthwith to the parties.

5. The Application was entered in the List of cases as Case No. 13 and named the "*Juno Trader*" Case.

6. Pursuant to the Agreement on Cooperation and Relationship between the United Nations and the International Tribunal for the Law of the Sea of 18 December 1997, the Secretary-General of the United Nations was notified by the Registrar on 19 November 2004 of the receipt of the Application.

7. On 19 November 2004, the Agent of Saint Vincent and the Grenadines submitted by bearer the original of the Application. The original of the letter from the Attorney-General of Saint Vincent and the Grenadines was transmitted by bearer on 23 November 2004 and the original of the letter from Ms Dabinovic was transmitted by bearer on 22 November 2004.

8. By letter dated 19 November 2004, the Agent of Saint Vincent and the Grenadines requested the incorporation of a new document as part of annex 11 to the Application. A copy of this document was transmitted by the Deputy Registrar to Guinea-Bissau by letter dated 22 November 2004.

9. In accordance with article 24, paragraph 3, of the Statute of the Tribunal (hereinafter "the Statute"), States Parties to the Convention were notified of the Application by a note verbale from the Registrar dated 24 November 2004.

10. On 26 November 2004, the Registrar was notified of the appointment of Mr Christopher Staker, Barrister, Bar of England and Wales, London, United Kingdom, as Agent of Guinea-Bissau, by a letter from the Minister for Foreign Affairs, International Cooperation and the Communities of Guinea-Bissau, transmitted by facsimile.

11. On 26 November 2004, the Agent of Guinea-Bissau requested a postponement of the hearing. A copy of the letter of the Agent of Guinea-Bissau was transmitted forthwith to the Agent of Saint Vincent and the Grenadines. On 29 November 2004, the Agent of Saint Vincent and the Grenadines transmitted his observations on the request for postponement of the hearing.

12. On 26 November, 29 November, 1 December and 3 December 2004, the Registrar and Deputy Registrar sent letters to the Agent of Saint Vincent and the Grenadines requesting the completion of documentation. On 30 November and 3 December 2004, the Agent of Saint Vincent and the Grenadines submitted documents in order to complete the documentation, in accordance with article 63, paragraph 1, and article 64, paragraph 3, of the Rules. Copies of the documents presented by the Applicant were forwarded to the Respondent.

13. On 29 November 2004, the Agent of Saint Vincent and the Grenadines transmitted by electronic mail an addendum to the Application together with annexes. A copy of the addendum was transmitted forthwith to the Respondent. The original of the addendum was transmitted by bearer on 1 December 2004.

14. On 1 December 2004, the Tribunal opened the oral proceedings at a public sitting. By an Order of the same date, the Tribunal postponed, in accordance with article 69, paragraph 1, of the Rules, the continuance of the hearing until 6 December 2004 and extended to 2 December 2004, 1000 hours, the time-limit for the filing of a statement by Guinea-Bissau. By the same Order, the time-limit for the filing of any additional documents was extended to 6 December 2004, 1000 hours. Notice of the Order was communicated to the parties.

15. By letter dated 2 December 2004, the Agent of Guinea-Bissau informed the Tribunal that Guinea-Bissau was not in a position to file a statement within the time-limit fixed by the Tribunal's Order of 1 December 2004.

16. In accordance with articles 45 and 73 of the Rules, the President held a teleconference with the Agents of the parties on 2 December 2004, during which he ascertained their views regarding the order and duration of the presentation by each party and the evidence to be produced during the oral proceedings.

17. On 3 December 2004, Saint Vincent and the Grenadines and Guinea-Bissau submitted information regarding witnesses whom they intended to call before the Tribunal pursuant to article 72 of the Rules.

18. Prior to the opening of the oral proceedings, the Tribunal held initial deliberations on 30 November and 1 December 2004, in accordance with article 68 of the Rules.

19. On 3 and 5 December 2004, the Agent of Saint Vincent and the Grenadines submitted additional documents. Copies of these documents were communicated to the other party.

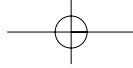
20. On 6 December 2004, Guinea-Bissau submitted a bundle of documents. Copies of these documents were communicated to the other party.

21. On 6 December 2004, the Registrar was notified by a letter of the same date from the Commissioner for Maritime Affairs of Saint Vincent and the Grenadines of the appointment of Mr Vincent Huens de Brouwer, Lawyer, Eltvedt & O'Sullivan, Marseilles, France, as Deputy Agent of Saint Vincent and the Grenadines.

22. On 6 and 7 December 2004, the President held consultations with the Agents of the parties in accordance with article 45 of the Rules.

23. Pursuant to article 67, paragraph 2, of the Rules, copies of the pleadings and documents annexed thereto were made accessible to the public on the date of the opening of the oral proceedings.

24. On 7 December 2004, the Registrar was notified of the appointment of Mr Octávio Lopes, *Chef de Cabinet* of the Minister of Fisheries, as Co-Agent of Guinea-Bissau, by a letter dated 25 November 2004 from the Minister for Foreign Affairs, International Cooperation and the Communities of Guinea-Bissau, transmitted by hand.



25. Oral statements were presented at four public sittings held on 6 and 7 December 2004 by the following:

*On behalf of Saint Vincent
and the Grenadines:*

Mr Werner Gerdts, Agent,
Mr Vincent Huens de Brouwer,
Deputy Agent,
Mr Syméon Karagiannis, Counsel,
Mr Fernando Tavares, Adviser,
Mr Lance Fleischer, Adviser.

On behalf of Guinea-Bissau:

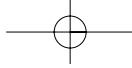
Mr Christopher Staker, Agent,
Mr Octávio Lopes, Co-Agent,
Mr Ricardo Alves Silva, Counsel,
Mr Ramón García-Gallardo, Counsel.

26. On 6 December 2004, Mr Nikolay Potarykin, Master of the *Juno Trader*, was called as a witness by Saint Vincent and the Grenadines pursuant to article 78 of the Rules, and, after having made the solemn declaration under article 79, sub-paragraph (a), of the Rules, was examined by Mr Karagiannis and cross-examined by Mr Staker and Mr García-Gallardo. Mr Potarykin gave evidence in Russian. The necessary arrangements were made for the testimony of Mr Potarykin to be interpreted into the official languages of the Tribunal.

27. On 6 December 2004, a list of questions which the Tribunal wished the parties to address was communicated to the Agents. At the hearing held on 7 December 2004, Counsel for Saint Vincent and the Grenadines and Counsel for Guinea-Bissau replied orally to the questions. Written responses to these questions were subsequently submitted by both parties to the Tribunal on 8 December 2004.

28. Further to consultations with the parties, on 7 December 2004 the Agent of Saint Vincent and the Grenadines submitted copies of pages from the logbook and engine log of the *Juno Trader*. Copies of these documents were communicated to the other party.

29. During the hearing on 7 December 2004, Guinea-Bissau submitted two additional documents of the same date, being a declaration by the General Director for Fisheries of Guinea-Bissau concerning the passports of the members of the crew of the *Juno Trader* and a facsimile from the



Commissioner for Maritime Affairs of Saint Vincent and the Grenadines acknowledging receipt of a communication concerning the *Juno Trader*. Pursuant to article 71 of the Rules, copies of the documents were communicated to the other party. On 7 December 2004, Saint Vincent and the Grenadines submitted observations on the contents of these documents.

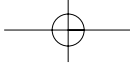
30. In the Application of Saint Vincent and the Grenadines, the following submissions were presented:

On behalf of Saint Vincent and the Grenadines,
in the Application:

[Translation from French]

Saint Vincent and the Grenadines requests the Tribunal to make the following orders and declarations:

- (a) a declaration that the International Tribunal for the Law of the Sea has jurisdiction, pursuant to article 292 of the United Nations Convention on the Law of the Sea of 1982 (hereinafter the "Convention") to hear the Application
- (b) a declaration that the Application is admissible
- (c) a declaration that the Respondent has violated article 73, paragraph 2, of the Convention in that the conditions set by the Respondent for the release from detention of the vessel "Juno Trader" and the release of 19 members of its crew are not authorized pursuant to article 73, paragraph 2, and are not reasonable in terms of article 73, paragraph 2
- (d) an order requesting the Respondent to release the "Juno Trader" from detention and to release its officers and its crew without posting a bond or any other financial security and, in that event, requesting the Respondent to return the bond or security posted
- (e) alternatively, an order requesting the Respondent to release the "Juno Trader" from detention and to release its officers and its crew as soon as the owner of the vessel posts a bond or other security in an amount determined to be reasonable by the Tribunal in view of the particular circumstances of the present case
- (f) an order, in that last event, prescribing the form of the aforementioned bond or other security
- (g) an order requesting the Respondent to rescind the confiscation of the cargo of fish found on board the vessel "Juno Trader"



- (h) an order requesting the Respondent to pay the Applicant's costs.

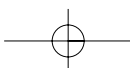
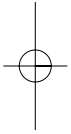
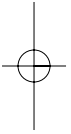
31. In accordance with article 75, paragraph 2, of the Rules, the following final submissions were presented by the parties at the end of the hearing:

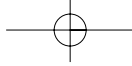
On behalf of Saint Vincent and the Grenadines,

[Translation from French]

Saint Vincent and the Grenadines requests that it may please the Tribunal to make the following orders and declarations:

- (a) a declaration that the International Tribunal for the Law of the Sea has jurisdiction, pursuant to article 292 of the United Nations Convention on the Law of the Sea of 1982 (hereinafter the "Convention") to hear the Application.
- (b) a declaration that the Application is admissible.
- (c) a declaration that the Respondent has violated article 73, paragraph 2, of the Convention in that the conditions set by the Respondent for the release from detention of the vessel "Juno Trader" and the release of all the members of its crew are not authorized pursuant to article 73, paragraph 2, and are not reasonable in terms of article 73, paragraph 2.
- (d) an order requesting the Respondent to release the "Juno Trader" from detention and to release all the members of its crew without posting a bond or any other financial security and, in that event, requesting the Respondent to return the bond or security posted.
- (e) alternatively, an order requesting the Respondent to release the "Juno Trader" from detention and to release all the members of its crew as soon as the owner of the vessel posts a bond or other security in an amount determined to be reasonable by the Tribunal in view of the particular circumstances of the present case.
- (f) an order, in that last event, prescribing the form of the aforementioned bond or other security.
- (g) an order requesting the Respondent to rescind the confiscation of the cargo of fish found on board the vessel "Juno Trader".
- (h) an order requesting the Respondent to pay the Applicant's costs.





On behalf of Guinea-Bissau,

Guinea-Bissau requests the Tribunal:

1. To declare:

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

in the alternative,

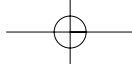
- (b) that the Application of St Vincent and the Grenadines in this case is inadmissible;

in the further alternative,

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

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

- (a) that the bond shall be no less than EUR 1,227,214.00 (one million two hundred and twenty seven thousand two hundred and fourteen Euros);
- (b) that the bond shall be in the form of a bank guarantee from a bank present in Guinea-Bissau or having corresponding arrangements with bank in Guinea-Bissau;
- (c) that the bank guarantee shall state that it is issued in consideration of Guinea-Bissau releasing the *Juno Trader* in relation to the incidents dealt with in Minute No. 14/CIFM/04 dated 19 October 2004, and that the issuer undertakes to pay on first demand to the State of Guinea-Bissau such sums as may be determined by a final judgment, award or decision of the competent authority of Guinea-Bissau.



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

32. On 8 December 2004, the Registrar sent a letter to the Agent of Guinea-Bissau requesting information on the legislation of Guinea-Bissau. On 10 December 2004, the Agent of Guinea-Bissau submitted the requested information, a copy of which was forwarded to the Applicant.

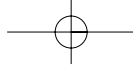
Factual background

33. The *Juno Trader* is a refrigerated cargo vessel (hereinafter "reefer vessel") flying the flag of Saint Vincent and the Grenadines. Its owner is Juno Reefers Limited, a company incorporated in the British Virgin Islands and a branch of the South African seafood company Irvin and Johnson Limited, based in Cape Town. The Master of the *Juno Trader* is Mr Nikolay Potarykin, a Russian national.

34. According to the Certificate of Registry, the *Juno Trader* was registered in Saint Vincent and the Grenadines on 14 February 1994, and is authorized to transport refrigerated dry products. The validity of the Certificate is permanent.

35. The Applicant states that, from 19 to 23 September 2004, the *Juno Trader* received a transshipment in Mauritanian waters of 1,183.8 tonnes of frozen fish in packages and 112 tonnes of fish meal, from its sister ship, *Juno Warrior*, a trawler operating under Mauritanian licence in the exclusive economic zone (hereinafter "EEZ") of Mauritania. The packages were each marked "JW N8607268", being the International Maritime Organization Number of the *Juno Warrior*. Photographic evidence was submitted showing that the packages on board the *Juno Trader* in Bissau were all marked in that way. The transshipment was confirmed by the authorities of Mauritania by a certificate dated 9 November 2004. After completing the transshipment, the *Juno Trader* left Mauritanian waters bound for Ghana, where it was to discharge its cargo.

36. According to the Application, at approximately 1400 hours on 26 September 2004, the *Juno Trader* crossed into the EEZ of Guinea-Bissau at a distance of about 40 nautical miles from the coast. The logbook of the vessel showed that the voyage was "from Nouadhibou towards Takoradi" and that the average speed was approximately 10 knots.

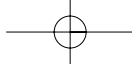


37. At 1655 hours, according to the Application, the Master of the *Juno Trader* stated that a zodiac approached the *Juno Trader*. The persons on board the zodiac were gesturing with their hands and arms. Approximately five minutes later, it is alleged that shooting commenced from the direction of the zodiac and lasted approximately five to ten minutes. In response to the shooting, during which one crewman on board the *Juno Trader* was injured in the leg, the Master, fearing that the vessel was under pirate attack, ordered that distress signals be sent by the vessel’s Radio Operator. A hospital-ship, the *Esperanza del Mar*, which was sailing approximately seven miles from the *Juno Trader*, responded to the distress signals. A launch from the *Esperanza del Mar* arrived at approximately 1800 hours and the injured crew member was taken on board the *Esperanza del Mar*, where he received first aid treatment. The injured crew member remained on board the *Esperanza del Mar* and was evacuated to Las Palmas.

38. According to the Respondent, on 26 September 2004, Guinea-Bissau’s navy vessel *Cacine* was performing routine control and surveillance operations in the EEZ of Guinea-Bissau. On the afternoon of 26 September 2004, the inspectors of Guinea-Bissau observed a reefer vessel, whose presence in the EEZ of Guinea-Bissau was unknown and undeclared. According to the notice of serious fishing infraction (“auto de notícia de infracção de pesca grave”), “the vessel was discovered at 16:05, anchored parallel to [the fishing vessel] *Flipper* [1], which was fishing; the vessel weighed anchor when it spotted the inspection vessel and fled.” Given the *Juno Trader*’s reaction to the presence of a navy patrol vessel, the Respondent states that the *Cacine* sent out a zodiac to intercept the *Juno Trader*. The Respondent further asserts that the vessel repeatedly disobeyed the zodiac’s signals to cut its engines and permit the boarding of the inspection team.

39. At approximately 1800 hours, the *Juno Trader* was boarded by officers of the Fisheries Inspection Service of Guinea-Bissau. At the time of boarding, the *Juno Trader* was at the approximate position 11°29N, 17°13W, which is a point located within the limits of the EEZ of Guinea-Bissau. According to the notice of serious fishing infraction “there were threatening shots fired, but it was not easy, and after two hours and thirty minutes and intense intimidation, it was stopped and boarded”. Upon being boarded, the Master of the *Juno Trader* was invited to sign this notice. The notice recorded that the Master of the *Juno Trader* refused to sign it.

40. After being apprehended, the *Juno Trader* was conducted to the port of Bissau, Guinea-Bissau, where it arrived on 27 September 2004 at approximately 1600 hours. The Applicant alleges that, on the same date, the Master and the crew on board the *Juno Trader* were detained on board under the surveillance of armed personnel.

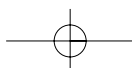
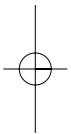
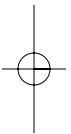


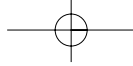
41. On 5 and 8 October 2004, an inspection team from the Centre for Applied Fisheries Research, formed at the request of the National Fisheries Inspection and Control Service (hereinafter "FISCAP"), inspected the cargo on board the *Juno Trader* and took random samples of fish from the packages found on board for analysis. The inspections were made with the authorization of the Master of the vessel. The report of the inspection and analysis concluded that "the species identified aboard the M/V *Juno Trader* are species that are found in [our] waters, except for the species *Brama brama* of the Bramiidae family, which is occasionally found."

42. On 18 October 2004, the Fisheries Control Technical Committee of Guinea-Bissau (hereinafter "the Committee") met to consider the notice of serious fishing infraction and the inspection reports concerning the arrest of the *Juno Trader*. The Committee found in Minute No. 12/CIFM/04 of 18 October 2004 (hereinafter "Minute No. 12") as follows:

[Translation from Portuguese]

1. On 26 September 2004, inspectors from the Fisheries Inspection Service on board the vessel *Cacine* came across the vessel *Juno Trader* anchored in the fishing zone of Guinea-Bissau at the position of 11° 42' and 017° 09', alongside the vessel *Flipper 1*.
2. As the vessel *Juno Trader* noticed the approach of the inspection vessel, it weighed anchor and fled and was arrested at the position of 11° 29' and 017° 13', after 2 hours and 30 minutes of hot pursuit.
3. During the boarding, the captain of the vessel refused to present the logbook and the engine log, as requested by the inspectors, with a view to determining the reason for the vessel being stopped at the position where it had been found.
4. No documentary or other evidence was found concerning the destination of the vessel and the fishing products on board.
5. According to the report on the inspection of the catch found on board, prepared by the CIPA technicians at the request of FISCAP, the species identified (*sardinela*, *sareia*, *carapau*, *bonito*, *cavala* and *dentão*) are similar to those existing in our waters.





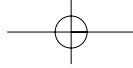
Having analysed and discussed all the points referred to above, the Committee proposes that:

1. The vessel *Juno Trader* be found to have violated the provisions of the fishing legislation of Guinea-Bissau, regarding operations related to fishing;
2. A fine in CFA francs corresponding to the amount of 175,398 (one hundred and seventy five thousand, three hundred and ninety-eight) euros be imposed on the vessel *Juno Trader*, on account of what is stated in the previous paragraph and in accordance with article 56 of the General Law on Fisheries;
3. A fine in CFA francs corresponding to the amount of 8,770 (eight thousand, seven hundred and seventy) euros be imposed, in accordance with article 58 of the General Law on Fisheries, on the captain of the vessel *Juno Trader* for lack of cooperation with the inspectors as evidenced by the flight of the vessel;
4. All the products on board the vessel (around 1,183.8 tonnes) be declared reverted to the State of Guinea-Bissau on suspicion of having been transhipped in the waters of Guinea-Bissau without due authorization.

43. On 19 October 2004, the Interministerial Maritime Control Commission (hereinafter "IMCC"), meeting to consider Minute No. 12, adopted the following decisions as contained in Minute No. 14/CIMF/04 of 19 October 2004 (hereinafter "Minute 14"):

[Translation from Portuguese]

1. To impose a fine of 175,398 (one hundred and seventy five thousand, three hundred and ninety eight) euros on the said vessel which was seized on the 26 September 2004 within the maritime waters of Guinea-Bissau for infractions to our fishing legislation;
2. To impose a fine of 8,770 (eight thousand, seven hundred and seventy) euros on the captain of the *Juno Trader* in accordance with Article 58 of the General Law on Fisheries for lack of cooperation with the inspectors as evidenced by the attempt of the vessel to flee;
3. To declare as reverted to the State of Guinea-Bissau all the catch found on board the arrested vessel, considering it to have been caught and transhipped in the maritime waters of Guinea-Bissau, without proper authorization;



4. To order that the total amount of the fine (184,168 euros) be deposited in the account no. 305.1000.5001.S00 of the Public Treasury of Guinea-Bissau at the main office of the BCEAO in Bissau, within fifteen (15) days counted from the notification of the present deliberation.

44. Article 56 of the Decree-Law No. 6–A/2000 concerning Fisheries Resources and Fishing Rights in the Maritime Waters of Guinea-Bissau (hereinafter "the Decree-Law") provides as follows:

[Translation from Portuguese]

ARTICLE 56
(Other infractions)

1. Infractions of the provisions of the present [Decree-Law] and its implementing regulations not expressly defined by this Decree-Law shall be punishable with a fine of up to twice the amount of the annual licence fee.
2. In setting the amount of the fine, all relevant circumstances shall be taken into account, namely the characteristics of the vessel, the author of the infraction and the type of fishing carried out.

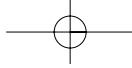
45. Article 58 of the Decree-Law provides as follows:

[Translation from Portuguese]

ARTICLE 58
(Lack of cooperation with inspectors)

The captain or master of a fishing vessel who fails to cooperate during an inspection shall be punished with a fine of up to 10 per cent of the amount of the annual licence fee.

46. By letter dated 20 October 2004, the Coordinator of FISCAP notified Transmar Services Limited, the local representative of the shipowner, of the decision of the IMCC "for the purpose of the immediate and precise implementation of the decisions made therein."



47. In a letter dated 18 October 2004 addressed to the IMCC, the local representative of the shipowner demanded to be informed of the reasons for the detention of the *Juno Trader*. Having been informed of Minute No. 14, the local representative, in letters dated 20 October, 27 October and 29 October 2004 addressed to the IMCC, affirmed that there was no illegality relating to the cargo on board the vessel, and, in the letter of 29 October 2004, requested the IMCC to reconsider its decision and to release the ship and the cargo "on the basis of a clarification of the facts".

48. On 27 October 2004, the Coordinator of FISCAP notified Transmar Services Limited of the unloading of fish from the vessel, "in compliance with the decision of the IMCC concerning the confiscation of the fish on board". The public sale of approximately 1,200 tonnes of fish from the *Juno Trader* was announced to take place on 29 October 2004. During the hearing on 7 December 2004, the Respondent stated that the fish had not yet been sold at public auction and remained on board the vessel.

49. By letter dated 1 November 2004, the local representative of the shipowner requested an extension of 15 days in which to pay the fine imposed on the vessel.

50. On 3 November 2004, the fine of 8,770 euros that was imposed on the Master of the *Juno Trader* was paid by the shipowner "without any admission of liability on the part of the Master".

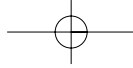
51. The Shipowners Protection Limited, acting as the P&I Club of the owners of the *Juno Trader*, in a letter dated 10 November 2004, undertook to pay the Government of Guinea-Bissau, on demand, "any sum not exceeding € 50,000 (fifty thousand Euros)" in return for the release from arrest or detention of the *Juno Trader* and its crew. On 18 November 2004, a security in the amount of 50,000 euros was posted, in the name of the shipowner, with the competent authorities of Guinea-Bissau.

52. On 23 November 2004, the Regional Court of Bissau, upon application by the shipowner, adopted the following decision:

[Translation from Portuguese]

Decision

- (a) For the above-mentioned reasons, I find the present procedure well-founded and consequently I order the immediate suspension of the execution of Minute No. 14/CIFM/04 of the Inter-Ministerial Commission on Maritime Inspections (defendant) of the Government of Guinea-Bissau, pending a definitive settlement of the present case, with all legal consequences, including:



1. The immediate cancellation or annulment of any procedure aimed at selling the fish and fishmeal which are found on board the vessel of the plaintiff, *Juno Trader*;
2. The immediate lifting of the prohibition imposed on the members of the crew of the said vessel from leaving the Port of Bissau, and the immediate return of their passports;
3. The immediate suspension of the payment of the fine imposed on the captain of the said vessel and the non-invocation of the bank guarantee posted to that effect, pending the definitive settlement of the said case.

53. FISCAP, in a letter dated 3 December 2004 addressed to Transmar Services, stated that "pursuant to paragraph 3 of article 60 of Decree-Law No. 6-A/2000 of 22 August, ownership of the ship JUNO TRADER reverted to the State of Guinea-Bissau with effect from 5 November 2004 for failure to pay the fine imposed by the decision of the Interministerial Fisheries Control Committee of 19 October 2004."

54. Article 60 of the Decree-Law provides as follows:

[Translation from Portuguese]

ARTICLE 60
(Period for payment of fines)

1. Fines for infractions of the present [Decree-Law] shall be paid within 15 days from the date upon which no further appeal can be made against the sentence or from the date of its application by the Interministerial Fisheries Commission, as the case may be.
2. The period referred to in the preceding paragraph may be extended for the same period at the request of the shipowner or his representative.
3. In the event of non-payment of all or part of the fine within the period of extension referred to in the preceding paragraph, any assets which may have been apprehended shall revert to the State.

Jurisdiction

55. The Tribunal will, at the outset, examine the question whether it has jurisdiction to entertain the Application.

56. Article 292 of the Convention reads as follows:

Article 292
Prompt release of vessels and crews

1. Where the authorities of a State Party have detained a vessel flying the flag of another State Party and it is alleged that the detaining State has not complied with the provisions of this Convention for the prompt release of the vessel or its crew upon the posting of a reasonable bond or other financial security, the question of release from detention may be submitted to any court or tribunal agreed upon by the parties or, failing such agreement within 10 days from the time of detention, to a court or tribunal accepted by the detaining State under article 287 or to the International Tribunal for the Law of the Sea, unless the parties otherwise agree.
2. The application for release may be made only by or on behalf of the flag State of the vessel.
3. The court or tribunal shall deal without delay with the application for release and shall deal only with the question of release, without prejudice to the merits of any case before the appropriate domestic forum against the vessel, its owner or its crew. The authorities of the detaining State remain competent to release the vessel or its crew at any time.
4. Upon the posting of the bond or other financial security determined by the court or tribunal, the authorities of the detaining State shall comply promptly with the decision of the court or tribunal concerning the release of the vessel or its crew.

57. Saint Vincent and the Grenadines and Guinea-Bissau are both States Parties to the Convention. Saint Vincent and the Grenadines ratified the United Nations Convention on the Law of the Sea on 1 October 1993 and Guinea-Bissau ratified it on 25 August 1986. The Convention entered into force for both States on 16 November 1994. Saint Vincent and the Grenadines and Guinea-Bissau have not agreed to submit the question of release from detention to any court or tribunal within 10 days from the time of detention.

58. In the view of the Applicant, the Tribunal has jurisdiction. The Respondent for its part maintains that the Applicant has not discharged its initial burden of establishing that it was the flag State of the *Juno Trader* at the time of the filing of the Application in these proceedings. The Respondent contends that the Tribunal has no jurisdiction, because, in its opinion, pursuant to article 60, paragraph 3, of the Decree-Law, the ownership of the vessel *Juno Trader* reverted to the State of Guinea-Bissau, with effect from 5 November 2004.

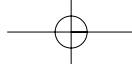
59. The Respondent further maintains, relying upon the Judgment of the Tribunal in the "*Grand Prince*" Case, that "the Tribunal has jurisdiction only if the Applicant state is the flag state of the detained vessel at the time of the filing of the Application. It is not sufficient that the Applicant was the flag state at the time of the initial arrest or detention".

60. The Applicant maintains that the vessel continues to fly its flag and rejects the Respondent's argument concerning the confiscation of the vessel for non-payment of the fine. The Applicant contends that the execution of the decision of the IMCC contained in Minute No. 14, which includes a fine on the vessel, the non-payment of which led to its confiscation, has been suspended by a decision of the Regional Court of Bissau.

61. The Applicant further maintains that it was only informed of the alleged confiscation of the vessel by letter dated 3 December 2004 and that this issue was not raised when the shipowner posted a bond of 50,000 euros on 18 November 2004 in the form of a P&I letter of guarantee, or when the Regional Court of Bissau adopted its decision on 23 November 2004.

62. In its reply of 8 December 2004 to the question posed by the Tribunal, the Respondent stated that both the fines imposed by the decision of the IMCC and the legal consequences of that decision are subject to challenge in the courts of Guinea-Bissau. The Tribunal notes that the decision of the Regional Court of Bissau, as referred to in paragraph 52, suspended the execution of Minute No. 14 "pending a definitive settlement of the present case". The Tribunal also notes that, by suspending the execution of the fine imposed on the vessel, the decision of the Regional Court of Bissau has therefore rendered inapplicable any sanction for non-payment, including its confiscation.

63. In any case, whatever may be the effect of a definitive change in the ownership of a vessel upon its nationality, the Tribunal considers that there is no legal basis in the particular circumstances of this case for holding that there has been a definitive change in the nationality of the *Juno Trader*.



64. Accordingly, the Tribunal finds that there is no legal basis for the Respondent's claim that Saint Vincent and the Grenadines was not the flag State of the vessel on 18 November 2004, the date on which the Application for prompt release was submitted.

65. For these reasons, the Tribunal holds that it has jurisdiction.

Admissibility

66. The Tribunal will now examine the question whether the Application is admissible.

67. The Respondent, in its oral pleading, submits that these prompt release proceedings are inadmissible for the following reasons. In the first place, the Respondent, reiterating the argument raised in relation to jurisdiction, states that the *Juno Trader*, its equipment and cargo were presently the property of Guinea-Bissau and therefore Guinea-Bissau is not detaining the vessel but rather is in possession of the vessel as lawful owner. The Respondent further argues that the Application has become moot because the possibility of proceedings under article 292 of the Convention has now been superseded by developments at the national level in Guinea-Bissau. The Respondent also maintains that "there [was] no serious allegation that the arrest was [made] pursuant to article 73, paragraph 1, [of the Convention and that] there can therefore be no violation of article 73, paragraph 2", of the Convention.

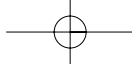
68. The Tribunal notes that the objections to admissibility based on the change of ownership of the vessel are similar to the argument raised by the Respondent in the context of jurisdiction. For the reasons stated in paragraph 63, the Tribunal rejects these objections.

69. Regarding the last objection to admissibility referred to in paragraph 67, the Tribunal notes that, according to the Application, the vessel was detained for alleged infractions of fisheries laws applicable in the EEZ of Guinea-Bissau and that this is not disputed by the Respondent.

70. Accordingly, the Tribunal holds that the Application is admissible.

Non-compliance with article 73, paragraph 2, of the Convention

71. The Applicant requests the Tribunal to declare that the Respondent has violated article 73, paragraph 2, of the Convention in that "the conditions set by the Respondent for the release from detention of the vessel '*Juno Trader*'



and the release of all the members of its crew are not authorized pursuant to article 73, paragraph 2, and are not reasonable in terms of article 73, paragraph 2".

72. Article 73, paragraph 2, reads as follows:

Arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security.

73. The Applicant, in its Application, alleged that a bond "in the amount of 50,000 euros, was posted, in the name of the shipowner, with the competent authorities of Guinea-Bissau" and that "[to] date, neither the release of the detained vessel nor of its crew has been obtained".

74. The Respondent contends that the vessel cannot be considered as "detained" for the purposes of article 292 of the Convention since the ownership of the vessel has reverted to the State of Guinea-Bissau. The Respondent further challenges the Applicant's allegation of non-compliance with the provision of article 73, paragraph 2, contending that the bond offered in the amount of 50,000 euros was not enough and "does not meet the requirements of the internal law of Guinea-Bissau nor of the Law of the Sea Convention."

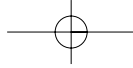
75. The Tribunal notes that a bond for the release of the vessel and its crew was not requested by the detaining State and that the detaining State did not react to the posting of the bond referred to in paragraph 51 on behalf of the shipowner and failed to inform the shipowner that the bond, in its opinion, was not reasonable. The Tribunal further notes that the vessel is still detained in the port of Bissau and that the Applicant has not withdrawn its request concerning the release of the crew.

76. In the present case it is not contested that the notification to the flag State, as provided for in article 73, paragraph 4, had not been made. The connection between this paragraph and paragraph 2 of the same article has been noted by the Tribunal in the "*Camouco*" Case. The Tribunal stated:

[T]here is a connection between paragraphs 2 and 4 of article 73, since absence of prompt notification may have a bearing on the ability of the flag State to invoke article 73, paragraph 2, and article 292 in a timely and efficient manner.

(*ITLOS Reports 2000*, pp. 29–30, para. 59).

77. The Tribunal considers that article 73, paragraph 2, must be read in the context of article 73 as a whole. The obligation of prompt release of vessels and crews includes elementary considerations of humanity and due



process of law. The requirement that the bond or other financial security must be reasonable indicates that a concern for fairness is one of the purposes of this provision.

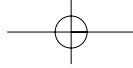
78. The parties are in disagreement whether the crew of the *Juno Trader* is being detained. According to the Applicant, while some passports have been returned, as of 7 December 2004 the passports of six crew members have not been returned. The Respondent contended that Guinea-Bissau did not detain any crew members of the *Juno Trader* and returned passports on request. In a letter dated 15 December 2004, received during the Tribunal's deliberations, the Respondent informed the Tribunal that "the Guinea-Bissau authorities (FIS-CAP) have already delivered the remaining passports and all members of the crew can freely leave Guinea-Bissau". The letter added that "the remaining passports have already been delivered without any formal conditions (such as posting of a bond) and are free to leave Guinea Bissau". On 16 December 2004, the Applicant, whilst confirming the information regarding delivery of passports, did not withdraw its request for an order from the Tribunal concerning the release of the members of the crew.

79. In this respect, the Tribunal notes that the members of the crew are still in Guinea-Bissau and subject to its jurisdiction. The Tribunal places on record the undertaking given by the Respondent in its letter dated 15 December 2004 and declares that all members of the crew should be free to leave Guinea-Bissau without any conditions.

80. For these reasons, the Tribunal finds that the Respondent has not complied with article 73, paragraph 2, of the Convention, that the Application is well-founded, and that, consequently, Guinea-Bissau must release promptly the *Juno Trader* including its cargo and its crew, in accordance with paragraph 104.

Relevant factors for determining a reasonable bond

81. According to article 113, paragraph 2, of the Rules, when the Tribunal finds that the Application is well-founded, it has to "determine the amount, nature and form of the bond or financial security to be posted for the release of the vessel or the crew." In carrying out this task, it must apply the provisions of the Convention and other rules of international law not incompatible with the Convention.



82. In the “*Camouco*” Case, the Tribunal stated the following:

The Tribunal considers that a number of factors are relevant in an assessment of the reasonableness of bonds or other financial security. They include the gravity of the alleged offences, the penalties imposed or imposable under the laws of the detaining State, the value of the detained vessel and of the cargo seized, the amount of the bond imposed by the detaining State and its form.

(*ITLOS Reports 2000*, p. 31, para. 67).

83. In the “*Monte Confurco*” Case, the Tribunal added that:

This is by no means a complete list of factors. Nor does the Tribunal intend to lay down rigid rules as to the exact weight to be attached to each of them.

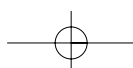
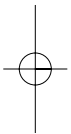
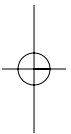
(*ITLOS Reports 2000*, p. 109, para. 76).

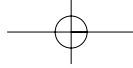
84. In the same case, the Tribunal stated that:

71. [. . .] the object of article 292 of the Convention is to reconcile the interest of the flag State to have its vessel and its crew released promptly with the interest of the detaining State to secure appearance in its court of the Master and the payment of penalties.

72. The balance of interests emerging from articles 73 and 292 of the Convention provides the guiding criterion for the Tribunal in its assessment of the reasonableness of the bond. [. . .]

74. The proceedings under article 292 of the Convention, as clearly provided in paragraph 3 thereof, can deal only with the question of release, without prejudice to the merits of any case before the appropriate domestic forum against the vessel, its owner or its crew. Nevertheless, in the proceedings before it, the Tribunal is not precluded from examining the facts and circumstances of the case to the extent necessary for a proper appreciation of the reasonableness of the bond. Reasonableness cannot be determined





in isolation from facts. It should, however, be emphasized that a prompt release proceeding . . . is characterized by the requirement, set out in article 292, paragraph 3, of the Convention, that it must be conducted and concluded “without delay” . . . This, too, suggests a limitation . . . on the extent to which the Tribunal could take cognizance of the facts in dispute and seek evidence in support of the allegations made by the parties.

(*ITLOS Reports 2000*, pp. 108–109, paras. 71, 72 and 74).

85. The assessment of the relevant factors must be an objective one, taking into account all information provided to the Tribunal by the parties.

86. Considering first the question of the gravity of the alleged offences, the Tribunal notes that the IMCC decided that the *Juno Trader* had committed violations of the fishing laws of Guinea-Bissau and that the Master had failed to cooperate with the inspectors as required by article 58 of the Decree-Law. The inspectors found 1,183.8 tonnes of frozen fish in packages and 112 tonnes of fish meal on board the *Juno Trader*. After consulting scientific experts, the Committee found in Minute No. 12 that the species identified on board the *Juno Trader* “are similar to those existing in our waters”. The IMCC, in Minute No. 14, considered that the fish on board had “been caught and transhipped in the maritime waters of Guinea-Bissau without proper authorization”.

87. The Respondent points out that illegal, unregulated and unreported fishing in the EEZ of Guinea-Bissau has resulted in a serious depletion of its fisheries resources. The Tribunal takes note of this concern. During the hearing on 7 December 2004, the Applicant expressed its understanding regarding the action taken by coastal States to fight illegal fishing but denied that the *Juno Trader* had been engaged in any illegal activity.

88. The Applicant, relying on the statement of facts contained in paragraphs 35 to 37 denies that any offence was committed by the *Juno Trader* or its Master in the EEZ of Guinea-Bissau. The Applicant points out that the quantity of fish found on board the *Juno Trader* in Guinea-Bissau was the same as the quantity loaded in Mauritania.

89. It is by reference to the penalties imposed or imposable under the law of the detaining State that the Tribunal may evaluate the gravity of the alleged offences, taking into account the circumstances of the case and the need to avoid disproportion between the gravity of the alleged offences and the amount of the bond.

90. With regard to the fines actually imposed, by the decision of the IMCC in Minute No. 14, an administrative fine of 175,398 euros was imposed on the *Juno Trader* and the fish was confiscated on the grounds that it had "been caught and transhipped in the maritime waters of Guinea-Bissau without proper authorization." At the same time, a fine of 8,770 euros was imposed on the Master for failure to cooperate with the inspectors. This fine was paid without admission of guilt, but the fine on the vessel was not paid. The Decree-Law provides that any assets which may have been apprehended shall revert to the State in the event that fines are not paid within 15 days.

91. With regard to the penalties imposable, the Respondent states that "in this case, the authorities [of Guinea-Bissau] decided to spare the vessel from the application of a fine under the 'serious offence' article, having resolved to apply a lighter fine under the 'other offence' rules. As a result, the *Juno Trader* was fined the equivalent of the annual fees that should be paid for the permit, in the value of 175,398 euros, not the double thereof".

92. The parties differ on the value of the *Juno Trader*. During the hearing on 7 December 2004, the Applicant stated that "the net book value of the *Juno Trader* on our account is US\$ 460,000" and that the market value of the vessel "could be the subject of considerable debate and [is] affected by the potential doubts over flagging and ownership". The Respondent, relying upon a purchase contract for a similar reefer vessel recently made for a purchase price of US\$ 1,600,000 (at the time approximately 1,300,000 euros), argues that the market value of the *Juno Trader*, with minimum depreciation, should be approximately US\$ 800,000 or approximately 650,000 euros.

93. Turning now to the value of the cargo, the Applicant states that the cargo of the *Juno Trader* was sold to Unique Concerns Limited, a company incorporated in Ghana, on 23 September 2004 for a total of US\$ 459,938.65, of which US\$ 63,280 represented the value of 112 tonnes of fish meal. The Applicant further states that the Ministry of Fisheries announced the sale by auction on 29 October 2004 of the "approximately 1,200 tonnes" of frozen fish and informed the owner's representative that it was preparing to discharge the cargo of fish on 27 October 2004. However, the discharge and sale by auction have not taken place and to date the crew has taken care to keep the cargo frozen on board the vessel. The Applicant contends that the *Juno Trader* has been a floating cold storage off Guinea-Bissau since 27 September 2004 and that its running costs are nearly US\$ 3,600 per day. The Applicant adds that, "given the

frozen fish cargo remains unsold at this late stage, there is a good chance that its market value has been considerably reduced, perhaps even to zero".

94. The Tribunal is of the view that these considerations should be taken into account in determining the amount of a reasonable bond.

95. The relevant factors for determining the reasonableness of the bond have been noted in paragraphs 82 to 94. In this respect, it is the view of the Tribunal that matters relating to the circumstances of the seizure of the *Juno Trader* as described in paragraphs 37 to 39 are not relevant to the present proceedings for prompt release under article 292 of the Convention. The Tribunal therefore cannot take into account the circumstances of the seizure of the *Juno Trader* in assessing the reasonableness of the bond.

96. The Applicant requests the Tribunal to order the release from detention of the vessel *Juno Trader* and the release of the members of its crew without the posting of a bond or other financial security and, in that event, to request the Respondent to return the security already posted.

97. The Tribunal recalls its Judgment in the case of the *M/V "SAIGA"*, in which it stated the following:

Such release must be effected upon the posting of a reasonable bond or other financial security. The Tribunal cannot accede to the request of Saint Vincent and the Grenadines that no bond or financial security (or only a "symbolic bond") should be posted. The posting of a bond or security seems to the Tribunal necessary in view of the nature of the prompt release proceedings.

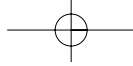
(*ITLOS Reports 1997*, p. 35, para. 81).

The Tribunal reaffirms this finding.

Amount and form of the bond or other financial security

98. For these reasons, the Tribunal finds that the amount of the bond or other financial security should be 300,000 euros and that, unless the parties decide otherwise, the bond or security should take the form of a bank guarantee.

99. The Tribunal also finds that the amount of 8,770 euros previously paid to the Respondent for the fine imposed on the Master should be considered as bond or financial security since the payment of the said fine was



suspended by the decision of the Regional Court of Bissau of 23 November 2004. The Tribunal further finds that the letter of guarantee in the amount of 50,000 euros and in a form not acceptable to the Respondent should be returned to the Applicant upon the posting of the bond referred to in paragraph 104.

100. The Respondent argues that to be in an appropriate form the bank guarantee should be issued by a bank present in Guinea-Bissau or by one that has corresponding arrangements with a bank in Guinea-Bissau.

101. The Tribunal finds that the bond or other financial security should be posted in the form of a bank guarantee issued by a bank present in Guinea-Bissau or that has corresponding arrangements with a bank present in Guinea-Bissau, unless the parties decide otherwise.

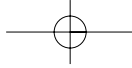
102. The bank guarantee should, among other things, state that it is issued in consideration of Guinea-Bissau releasing the *Juno Trader* and its cargo, in relation to the incidents that occurred in the exclusive economic zone of Guinea-Bissau on 26 September 2004, and that the issuer undertakes and guarantees to pay to Guinea-Bissau such sum, up to 300,000 euros as may be determined by a final judgment or decision of the appropriate domestic forum in Guinea-Bissau or by agreement of the parties. Payment under the guarantee would be due promptly after receipt by the issuer of a written demand by the competent authority of Guinea-Bissau, accompanied by a certified copy of the final judgment or decision or agreement.

Costs

103. The rule in respect of costs in proceedings before the Tribunal, as set out in article 34 of its Statute, is that each party bears its own costs, unless the Tribunal decides otherwise. In the present case, the Tribunal sees no need to depart from the general rule that each party shall bear its own costs.

Operative provisions

104. For these reasons,



THE TRIBUNAL,

(1) Unanimously,

Finds that the Tribunal has jurisdiction under article 292 of the Convention to entertain the Application submitted on behalf of Saint Vincent and the Grenadines on 18 November 2004.

(2) Unanimously,

Finds that the Application with respect to the allegation of non-compliance with article 73, paragraph 2, of the Convention is admissible.

(3) Unanimously,

Finds that the allegation made by the Applicant that the Respondent has not complied with the provisions of article 73, paragraph 2, of the Convention for the prompt release of the *Juno Trader* and its crew upon the posting of a reasonable bond or other financial security is well-founded.

(4) Unanimously,

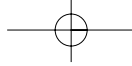
Decides that Guinea-Bissau shall promptly release the *Juno Trader*, together with its cargo, upon the posting of a bond or other security to be determined by the Tribunal, and that the crew shall be free to leave Guinea-Bissau without any conditions.

(5) Unanimously,

Determines that the bond or other security shall be (a) 8,770 euros already paid to Guinea-Bissau and (b) 300,000 euros to be posted with Guinea-Bissau; and that, in consequence, the letter of guarantee referred to in paragraph 51 shall be returned to the Applicant.

(6) Unanimously,

Determines that the bond of 300,000 euros shall be in the form of a bank guarantee from a bank present in Guinea-Bissau or having corresponding arrangements with such a bank or, if agreed by the parties, in any other form.



(7) Unanimously,

Decides that each party shall bear its own costs.

Done in English and in French, both texts being authoritative, in the Free and Hanseatic City of Hamburg, this eighteenth day of December, two thousand and four, in three copies, one of which will be placed in the archives of the Tribunal and the others transmitted to the Government of Saint Vincent and the Grenadines and the Government of Guinea-Bissau, respectively.

(Signed) L. Dolliver M. NELSON,
President.

(Signed) Philippe GAUTIER,
Registrar.

Judge KOLODKIN, availing himself of the right conferred on him by article 125, paragraph 2, of the Rules of the Tribunal, appends his declaration to the Judgment of the Tribunal.

(Initialed) A.K.

Judges KOLODKIN, ANDERSON and COT, availing themselves of the right conferred on them by article 125, paragraph 2, of the Rules of the Tribunal, append their joint declaration to the Judgment of the Tribunal.

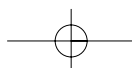
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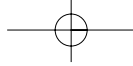
(Initialed) D.H.A.

(Initialed) J.-P.C.

Judge PARK, availing himself of the right conferred on him by article 30, paragraph 3, of the Statute of the Tribunal, appends his separate opinion to the Judgment of the Tribunal.

(Initialed) C.-H.P.





"JUNO TRADER" (JUDGMENT)

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Judges MENSAH and WOLFRUM, availing themselves of the right conferred on them by article 30, paragraph 3, of the Statute of the Tribunal, append their joint separate opinion to the Judgment of the Tribunal.

(Initialed) T.A.M.
(Initialed) R.W.

Judge CHANDRASEKHARA RAO, availing himself of the right conferred on him by article 30, paragraph 3, of the Statute of the Tribunal, appends his separate opinion to the Judgment of the Tribunal.

(Initialed) P.C.R.

Judge TREVES, availing himself of the right conferred on him by article 30, paragraph 3, of the Statute of the Tribunal, appends his separate opinion to the Judgment of the Tribunal.

(Initialed) T.T.

Judge NDIAYE, availing himself of the right conferred on him by article 30, paragraph 3, of the Statute of the Tribunal, appends his separate opinion to the Judgment of the Tribunal.

(Initialed) T.M.N.

Judge LUCKY, availing himself of the right conferred on him by article 30, paragraph 3, of the Statute of the Tribunal, appends his separate opinion to the Judgment of the Tribunal.

(Initialed) A.L.