

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



2004

Public sitting

held on Tuesday, 7 December 2004, at 10 a.m.,
at the International Tribunal for the Law of the Sea, Hamburg,

President L. Dolliver M. Nelson presiding

The “Juno Trader” Case
(Application for prompt release)

(Saint Vincent and the Grenadines v. Guinea-Bissau)

Verbatim Record

Uncorrected
Non-corrigé

Present:

President	L. Dolliver M. Nelson
Vice-President	Budislav Vukas
Judges	Hugo Caminos
	Vicente Marotta Rangel
	Alexander Yankov
	Soji Yamamoto
	Anatoli Lazarevich Kolodkin
	Choon-Ho Park
	Paul Bamela Engo
	Thomas A. Mensah
	P. Chandrasekhara Rao
	Joseph Akl
	David Anderson
	Rüdiger Wolfrum
	Tullio Treves
	Mohamed Mouldi Marsit
	Tafsir Malick Ndiaye
	José Luis Jesus
	Guangjian Xu
	Jean-Pierre Cot
	Anthony Amos Lucky
Registrar	Philippe Gautier

Saint Vincent and the Grenadines is represented by:

Mr Werner Gerds, 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,
Mr Fernando Domingos Tavares, Director, TCI Bissau/Transmar Services
Limited, Bissau, Guinea-Bissau,

as Advisers.

Guinea-Bissau is 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*, Ministry of Fisheries,

as Co-Agent;

and

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 Dominguez Perez, Assistant, S.J. Berwin, Brussels, Belgium,

as Counsel;

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

as Adviser.

1 THE PRESIDENT: Good morning. This morning we will continue hearing the
2 Respondent. I give the floor to Mr Ramón Garcia-Gallardo.

3

4 MR GARCIA-GALLARDO: Mr President, distinguished Members of the Tribunal, it is
5 an honour for me to come back before your Tribunal today after four years, when, on
6 7 December 2000, I had the pleasure to inaugurate the floor in this main courtroom
7 as Agent of the Applicant in the case of the *Monte Confurco*.

8

9 This Tribunal has had the opportunity in each case to state new principles of the
10 interpretation of Article 292. We consider that this time the Tribunal is confronted
11 with a similar situation to the *Grand Prince* case (Belize vs Republic of France, case
12 no. 8), although at that time you did not enter into that debate, since you found that
13 you did not have jurisdiction for other reasons.

14

15 The object of my oral explanation today is the reasonability of the bond and its form
16 and nature – a bond limited to the vessel and the cargo, since the fine imposed on
17 the Master has already been paid, and, as shown, he is not detained and was free to
18 leave Guinea-Bissau.

19

20 In this case, which is different from my personal experience, the Applicant is not
21 challenging a decision to fix a bond to release the vessel of an exorbitant value. In
22 this case, in contrast, the coastal state did not fix a bond, but the reasons for that are
23 completely different. In the present case, the speed with which the local proceedings
24 were conducted was within the spirit of Article 292. A formal decision on the merits
25 of the case was taken in a period of less than four weeks. As Mr Cot pointed out in
26 his Declaration in the *Grand Prince* case, the purpose of Article 292 and this
27 proceeding is to avoid the undue detention of a vessel. It is not intended to preclude
28 the application of national law to violations committed in the exclusive economic
29 area. I would just like to quote Mr Cot's ideas at paragraph 7 of his Declaration:

30

31 *"It would be (a) peculiar reading of this provision to see in it a kind of impunity*
32 *afforded to offenders by the payment of a bond. The 'reasonable bond' would thus*
33 *replace the penalties provided for by the law of the coastal state. It would no longer*
34 *serve to ensure the appearance of the offender, but to give him the option of an*

1 *alternative penalty to that defined by the national law. This would prejudice further*
2 *proceedings before the appropriate domestic forum.” (Paragraph 3, Article 292).*

3
4 In the cases of the *Camouco, Monte Confurco and Volga* (cases numbers 5, 6 and
5 11), your Tribunal was called upon to take a decision on requests for prompt release
6 which had been presented at a time when the proceedings at national level were still
7 under way. Those proceedings had not led to a decision on the merits.

8
9 A request for a reasonable bond made sense, since a decision on the merits had not
10 been adopted. Let us remember that in one of the cases involving the Republic of
11 France, after almost a year the case was not judged on the merits, there was a high,
12 exorbitant, unreasonable bond, and there were reasons to come to this Tribunal.
13 However, in the present case the posting of a bond is not possible, for the reasons
14 that my colleague, the Agent of the Applicant and the Adviser, explained to you
15 yesterday. These reasons are similarly reflected in the criteria retained in order to fix
16 the bond. For these reasons, we will inevitably have to stress questions on
17 admissibility, since they are extremely linked.

18
19 In this context, a prompt release is no longer possible and not even conceivable.
20 Subsequent to the confiscation, after a failure to pay within the legal requested
21 period of 14 days, without losing the opportunity to lodge an appeal on the
22 administrative decision, but after failure to pay within the deadline in all respective
23 countries in relation to questions of money, finance, to make an appeal, normally you
24 are bound to pay and later you claim, and sometimes in the end when the legal
25 proceedings have been heard, it is normal that if they revoke what was decided in
26 the earlier administrative proceedings, there will be consequences also on the part of
27 the assets that were confiscated for failure to pay at the time within the deadline set
28 to provide the payment.

29
30 Subsequent to this confiscation, in our opinion, the title of ownership is now within
31 the hands of the State of Guinea-Bissau. By ordering prompt release upon the
32 posting of a reasonable bond, the Tribunal would then be led to order the authorities
33 in Guinea-Bissau to return the vessel to its owner. If the Tribunal ordered
34 Guinea-Bissau to promptly release the vessel in favour of the former owner of the

1 vessel, then the Tribunal would be confronted with the problems of the
2 consequences that could result from the judgment of this Tribunal.

3

4 Mr President, no matter how you address this issue, you would always come to a
5 dead end, and the reason for that is easy to understand. The Application is moot
6 and the Tribunal should not accept it.

7

8 However, coming back to the purpose of my presentation, in the alternative, in case
9 your Tribunal considered that it has jurisdiction and the Application submitted by
10 St Vincent and the Grenadines was declared admissible, a reasonable bond or
11 security has to be fixed. First of all, one principle underlying Article 292 is that a
12 bond or financial security must be posted. In this regard, the request made by
13 St Vincent and the Grenadines at paragraph 131 of their Application that no bond or
14 financial security (or even a symbolic bond or security) should be posted, cannot be
15 accepted.

16 As your Tribunal has already stated in the *Saiga* case (case number 1), at paragraph
17 81, the posting of a bond or security seems necessary in view of the nature of the
18 prompt release proceedings.

19

20 The Applicant has spent much time yesterday trying to explain its views on the
21 circumstances of the arrest of the *Juno Trader*. However, your Tribunal has also had
22 the opportunity to make clear that its exclusive and sole task under Article 292
23 proceedings is just to deal with the question of prompt release, not the arrest –
24 paragraphs 81 to 83 of the *Volga* case, no. 11. The principle of non-prejudice to the
25 merits of any case applies equally to any other wider issues outstanding between the
26 parties (paragraph 4 of the Dissenting Opinion of Judge Anderson).

27

28 Once it is clear that a bond or a financial security must be posted and that the
29 circumstances surrounding the arrest of the *Juno Trader* are absolutely irrelevant to
30 these proceedings, we will go through the factors identified by your Tribunal in an
31 assessment of the reasonability of the bond, which are: the gravity of the alleged
32 offences; the penalties imposable under the laws of the detaining state; the value of
33 the detained vessel and of the cargo seized. That is related in paragraph 67 of the
34 *Camouco* case. Furthermore, in the *Monte Confurco* case, at paragraph 76, your

1 Tribunal noted that this list was by no means a complete list of factors, and that you
2 did not intend to lay down rigid rules as to the exact weight to be attached to each of
3 them.

4
5 Turning to the gravity of offences, yesterday the Agents of Guinea-Bissau and the
6 Counsel of Guinea-Bissau presented their submissions on very important issues
7 affecting this case. The first was the lack of jurisdiction and exceptions of
8 inadmissibility, but, also very important, a well founded description of the facts of the
9 case and the legal framework of the Guinea-Bissau law. I again remember Mr Cot's
10 words in the *Grand Prince* case. He mentioned that there was a necessity for the
11 legal team of a state coming before this Tribunal to be in close contact with the
12 authorities of the flag state. The credibility and the reliability of the information that
13 they provide to the legal position of the flag is extremely important.

14
15 The affidavit made by the Guinean lawyer of our delegation, a member of the legal
16 team seated in this room, on Guinea-Bissau law and related areas, both
17 administrative and procedural, together with the oral explanations made by my
18 colleague, a Portuguese lawyer belonging to one of the solely foreign law firms
19 established in Bissau, are fundamental to understand the difficulties of the famous
20 administrative decision and the issues of confiscation. I must say again that the
21 burden of proof in any event does not relate to the Respondent but just simply to the
22 Applicants.

23
24 Let us come back to the issue of the rationality of the bond. We were looking at the
25 gravity of the offences. In respect of the gravity of the offences, first of all, there is
26 an important factor to take into account. Yesterday a description was given of how
27 the gravity of the offence was conceded.

28
29 Let us move on to the penalties. The Tribunal looks at possible penalties that might
30 be decided, such as the possible amount of the fines and the possible confiscation of
31 a vessel and its cargo. The amount of the fines described yesterday by my
32 colleague was 50 per cent of the maximum fines that a ship owner and a master
33 could receive for a failure to comply with the provisions of the Guinean Fisheries Act.
34 It is by far not the application of a higher or a big amount.

1

2 When the Tribunal keeps in mind the possible fines, it considers that the bond is
3 aimed at giving the coastal states a guarantee that will enable it, if necessary, to
4 ensure the effective implementation of fines, if these are decided. Therefore, how
5 could one conceive of requesting proceedings before the Tribunal to fix a bond
6 providing such a warranty when the penalties have already been announced and,
7 above all, when the confiscation of the vessel and the cargo has operated *ex lege* for
8 failure to pay those penalties?

9

10 As explained, a decision on the merits was adopted one month prior to the
11 submission of the Application, and the following fines were imposed: a fine of the
12 vessel of €175,398; confiscation of the cargo (frozen fish and fish flour); and a fine of
13 the Master of about €7,000. Furthermore, the fine imposed on the Master has
14 already been paid. Guinean law, as explained previously, provides explicitly for the
15 fact that fines can be imposed by the administrative authorities, since, in contrast
16 with previous cases, the law applied is not of a criminal nature. There were no
17 criminal offences, as used to happen in Australia or France. It is of an administrative
18 nature.

19

20 I turn now to the value of the vessel, the third parameter used by the court. It is
21 astonishing that although the Applicant must know the clear case law from this
22 Tribunal, it has not provided a single piece of data on the value of the vessel. In the
23 past, either applicants or respondents have discussed this before this Tribunal,
24 showing written evidence and witnesses, when possible, were examined. Not only
25 has the Applicant in this case not provided any value, but it has even asked this
26 Tribunal at paragraph 123 of its application, to make the assessment itself based on
27 the characteristics of the vessel. The Applicant considers that the Tribunal may
28 become an expert itself in the valuation of vessels. This may be true because there
29 have been so many cases of arrest. I do not think we need to go into this.

30

31 Once again, we have to stress that the title of property of the vessel was transferred
32 to Guinea-Bissau on 5 November 2004. How can a bond be fixed for the prompt
33 release of a vessel that is no longer owned by the Applicant?

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The vessel, now the property of Guinea-Bissau, is around 35 years old; it is less than 100 metres long and is a reefer vessel. A reefer vessel is a refrigerated vessel with one part for the keeping of frozen fish and to stock other materials and also to provide bunkering and oil to fishing fleets. That is the usual description of a reefer. It is not just a refrigerated vessel with bananas coming from Central America to Europe; it is a real activity to provide full services to fishing fleets. That is why Guinea fishing law, like that of so many other countries – remember the *Saiga* case – includes in the definition of fishing operations the activities of fishing fleets.

No matter how old the vessel is, it is extremely important that the vessel is still classified by the prestigious international company, based in Hamburg, Germanische Lloyd's, one of the top five or six internationally well recognized classification societies for vessels. (Page 2 of Annex 2 of particulars of the vessel)

The Respondent has presented, lacking any other evidence presented by the Applicant, as Annex 14 of our set of documents, a purchase contract for a reefer vessel recently made (31 August 2004) of an age of 25 years, but smaller in gross tonnage and length, for a purchase price of \$1,600,000, which at the time was approximately €1,300,000. (€1 was equal at the time to \$1.2) With a minimum depreciation for the difference in age, a vessel with the characteristics of *Juno Trader* should have a market value of not less than, very conservatively, half the price, US\$800,000. In this regard, the contract of sale of that vessel was submitted yesterday. Only the details of the identification of purchaser and seller have been deleted for confidential reasons. This is just one bit of evidence that the Respondent should meet so that this Tribunal can evaluate the value of this vessel.

A second element relates to Annex 48 of the Applicant when describing the cost of keeping the vessel in Guinea-Bissau. It makes reference to the daily depreciation of the vessel. That means that the vessel to them is not just a vessel for scrap due to its age. On the contrary, it is a well-conserved vessel that must still hold a price in the market. The depreciation is €377 per day. (Annex 48 of the documents presented by the Applicant) Based on this, as a second conclusion, to secure the value of this reefer vessel, the value of the vessel will never be below approximately

1 €650,000 (\$800,000 equivalent) if we take into consideration today's exchange rates
2 of about €1 equal to US\$1.3.

3

4 The value of the vessel is the price presented by myself from the experience
5 obtained by the Guinea-Bissau Government which this year sold several vessels that
6 had previously been confiscated. Information about this is to be found in the
7 documents presented yesterday by the Respondent.

8

9 I turn now to the fourth element, the value of the cargo. The cargo consists of around
10 1,183 tonnes of frozen fish and 112 tonnes of fish flour. As your Tribunal knows, the
11 cargo was confiscated not only by the Decision on the merits by the appropriate
12 authority, but *ex lege* by failure to pay the fine on the vessel. Therefore, once again,
13 we cannot see how a bond could be posted for the release of something which is no
14 longer the property of the Applicant. In this case, in contrast to cases such as
15 *Comouco*, *Monte Confurco* and *Volga*, the cargo has not yet been sold in public
16 auction. Therefore, in order to release the vessel, a bond should also cover
17 eventually the value of the cargo.

18

19 The cargo has a specific estimated value of around half a million euro, as the
20 Applicant himself recognizes at paragraph 28 of this Application. (Annex 18)

21

22 The Applicant has, on several occasions, discussed the fact that the cargo is owned
23 by a company based in Ghana, Unique Concerns Limited. Your Tribunal knows very
24 well that the question of property is, for the purposes of these proceedings,
25 absolutely irrelevant to this forum and principles of public order prevail.

26

27 Finally, we cannot forget the value of the fuel and lubricants (bunkering and oil);
28 these are also the property of the Guinea-Bissau state. The bunkers have not been
29 unloaded, in contrast with the *Saiga* case. In this regard, paragraph 8 of the
30 Application recognized that the *Juno Trader* had just been refuelled by the bunkering
31 vessel *Amursk* before entering the economic exclusive zone of Guinea-Bissau. The
32 Respondent does not have data on the value of the bunkers. It is for the Applicant to
33 provide that value since the burden of proof is on their side. We can make an

1 estimate of not less than €60,000, a conservative figure. According to Annex 48 of
2 the Application, the consumption is €683 daily, and so we consider it reasonable that
3 the bunkers on board do not have less than fuel for 100 days (irrespective of
4 possible services that this vessel was supplying to other vessels).

5

6 In addition, what must be taken into account for the calculation of the bond is the
7 high cost of unloading operations and the minimum period of time requested for cold
8 storage of the cargo until its sale. This will represent a conservative figure of around
9 €30,000.

10

11 Therefore, and for the above-mentioned reasons, there should be a reasonable bond
12 to release the vessel with the cargo on board as it is now. There are two
13 possibilities. One, if you take the amount included in the unpaid administrative
14 decisions (fines and the value of the cargo) and you do not include the value of the
15 vessel and bunkers, in this case a bond of €705,398 should be reasonable,
16 calculated as follows: unpaid fines, €175,398; the value of the cargo, €500,000; and
17 the unloaded and cold storage before auction, €30,000. On the contrary, if there is
18 an issue over confiscation and the Tribunal takes into account the value of the
19 vessel, cargo and bunkers that have already been confiscated, that must be
20 excluded in the calculation of the bond. In this case, a higher bond of €880,398
21 should be considered reasonable, related again to the fine on the ship owner, the
22 value of the vessel (and as I mentioned, €615,000 would be a reasonable amount),
23 the bunkering and oil, €60,000, and the unloading operations and cold storage until
24 auction of the cargo, €30,000.

25

26 The Applicant will argue that they offered a reasonable bond to release the vessel.
27 First of all, we have already repeatedly noted that this alleged bond was offered
28 when the vessel had already been confiscated. However, if we come to discuss the
29 amount of the bond offered, it is not very difficult to conclude that this so-called bond
30 is clearly insufficient. The bond offered is limited to €50,000, which by far does not
31 cover the amount of the fine already imposed and the cargo already confiscated.

32

33 May I say one word in relation to the nature and form of the bond? As stated,
34 Guinea-Bissau would be satisfied with a bond of the characteristics that your

1 Tribunal has the opportunity to describe in its case law. In this regard, the bond
2 should be in the form of a bank guarantee from a bank present in Guinea-Bissau or
3 having corresponding arrangements with a Guinea-Bissau bank. The bank
4 guarantee should state that it is issued in consideration of Guinea-Bissau releasing
5 the *Juno Trader* in relation to the incidents dealt with in Minutes NO. 14 of
6 19 October, and that the issuer undertakes to pay to Guinea-Bissau such sums up to
7 the amounts that this Tribunal may consider, in its judgement, as determined by
8 a final judgment or by agreement of the parties. Payment under the guarantee
9 would be promptly after receipt by the issuer of a written demand by the competent
10 authority of Guinea-Bissau, accompanied by a certified copy of the final judgment or
11 agreement. That is simply the *Camouco* case law.

12

13 It is clear that Guinea-Bissau is not satisfied with the kind of bond allegedly offered
14 by the Applicant. It is just a simple letter by which the insurance company commits
15 to pay up to €50,000. The Applicant has repeatedly stressed that it is a bank
16 guarantee but it is not. Maybe the Applicant has a different notion of what a bank
17 guarantee constitutes. The alleged bond cannot be seen as a bank guarantee but
18 a simple letter. In particular, it is just a letter from an insurance company, which is
19 not an entity registered with the regulatory financial authority in the United Kingdom,
20 the FSA.

21

22 I shall terminate my representation by concluding that for the various reasons
23 explained this morning and yesterday, the Application of St Vincent and the
24 Grenadines should be set aside for lack of jurisdiction and/or inadmissibility and, as
25 a subsidiary, for the lack of a deposit of a reasonable bond.

26

27 THE PRESIDENT: We shall now have a 40 minute break. The proceedings will
28 resume at 11.15 am. The meeting is adjourned.

29

30 (Short adjournment)

31

32 THE PRESIDENT: We shall now hear from the Applicant. I give the floor to
33 Professor Karagiannis.

34

1 MR KARAGIANNIS (Interpretation): Being a professor in a law school sometimes
2 puts a heavy burden on my shoulders when narrow professional views, sometimes
3 undue – they may be undue; it is up to the Tribunal to decide – and reflections
4 emerge.

5

6 One thing I have observed since yesterday which I had not expected. As the
7 Tribunal will know, the Republic of Guinea-Bissau, the Respondent state, did not
8 submit a counter Memorial to our Application for prompt release. That is their right
9 according to the statute and rules of the Tribunal. However, I have noted the
10 following, which is peculiar. The Republic of Guinea-Bissau has had an opportunity
11 to study our arguments in depth from 18 November, the date of submission of our
12 Application, until 6 December, which was yesterday. To study their arguments we
13 had last night. The whole night spent on that had the infelicitous consequence upon
14 yours truly of losing some of my natural freshness. The Tribunal might perhaps want
15 to grasp this opportunity to review the rules of procedure so that greater or more
16 straightforward equity may be established between the parties.

17

18 Several members of the delegation of Guinea-Bissau took the floor yesterday and
19 again this morning. First, I very much appreciated the statement made by Mr Lopes
20 representing the Government of Guinea-Bissau. I was impressed by his statement.
21 He said some things that we already know, such as the fact that Guinea-Bissau is
22 among the 10 poorest countries in the world. Incidentally, I might add that the state
23 on whose behalf I am speaking, St Vincent and the Grenadines, alas, does not find
24 itself among the 10 richest states of the world. That state is also in the so-called
25 third world countries.

26

27 Furthermore, there has been confirmation of the fact that the Republic of Guinea-
28 Bissau depends to a great extent on fish resources in its exclusive economic zone.
29 This Portuguese speaking republic seeks to fight pillaging of its resources by foreign
30 ship owners or captains who act with few scruples. Naturally, that is not the case of
31 the *Juno Trader* vessel as we have said repeatedly and shall repeat again this
32 morning.

33

1 The representative of the Government, Mr Lopes, said that St Vincent and the
2 Grenadines is a flag of convenience. As to the meaning of a flag of convenience,
3 one might seek that in the consultative opinion of 1960 from the Court of Justice or,
4 more recently, the judgment of your Tribunal. In between, the Third Conference and
5 the Special Conference of the United Nations addressed the matter. Not much
6 needs to be added. However, it cannot be taken that a flag of convenience is equal
7 to a violation or probable violation of national law of a coastal state. Anyone flying
8 the flag of St Vincent and the Grenadines could thus be suspect.

9

10 The *Juno Trader*, the vessel whose name is attached to the case before your
11 Tribunal, belongs to Irwin & Johnson Limited, whose head office is in Cape Town,
12 South Africa. That is an important holding. There are legal and company channels
13 whereby it controls the *Juno Trader*, the *Juno Warrior* that catch the fish, Frozen
14 Foods International Limited and more. This company has a large fleet, fisheries,
15 vessels – reefers and others – and works with a large number of African states
16 including Mozambique, Namibia, Congo, Ghana and Mauritania, as we can see in
17 this case.

18

19 The vessels which are dependent one way or another on the holding Irving &
20 Johnson Limited, all have good fishing licences. Hitherto, the company, its vessels
21 or the companies controlled by it have never had any problem whatever with an
22 African authority. The *Juno Trader* has spent 10 years loading pelagic fish in
23 Namibia for delivery to Congo, Ghana and Cameroon without encountering any
24 problems. Its first problem is this case at hand.

25

26 The illicit fishing connection suggested or alleged by Guinea-Bissau could prove
27 disastrous for the reputation of Irving & Johnson, not to mention the reputation of the
28 flag of St Vincent and the Grenadines. Yesterday, some counsel inadvertently,
29 perhaps initially, sought to distort my words. I never qualified Guinea-Bissau as a
30 pirate state. Another counsel of Guinea-Bissau more vehemently, possibly because
31 he was younger, went one step further accusing us of qualifying Guinea-Bissau as a
32 rogue state. As the Tribunal may recall, I began my statement paying sparkling
33 tribute to the men and women of Guinea-Bissau who fought so hard for the liberation
34 of Africa from colonialism, and repeatedly I paid tribute to the men and women who

1 risk their lives seeking to protect the biological resources of the exclusive economic
2 zone of Guinea-Bissau.

3

4 I should take a stand with regard to some of the arguments expressed by my
5 distinguished colleague, Ricardo Silva. He told us that there was confusion on the
6 side of the *Juno Trader*. The ship owner apparently did not know who his local
7 representatives were so yesterday he told us that the Minister of Fisheries of
8 Guinea-Bissau hesitated to take up any contact with anyone. In passing, I should
9 like to say that the Ministry of Guinea-Bissau never had any doubts as to the fact that
10 the *Juno Trader* had and still is flying the flag of St Vincent and the Grenadines. At
11 least he could have applied Article 73 and notified the flag state about the detention
12 of the vessel.

13

14 If Guinea-Bissau forgot that convention, which might be normal under some
15 practices, at least the members of the Ministry always had the decree law of 2000 of
16 their country, which states that it is obligatory to notify any attention or arrest to the
17 flag state. In any case with respect to the representation of the *Juno Trader*, on
18 20 October 2004, FISCAP, the relevant and competent authority within the Fisheries
19 Ministry, addressed the Transmar company, whose leader is Mr Tavares, from whom
20 you heard briefly yesterday. It addressed Mr Tavares as representative of the
21 *Juno Trader* and mentioned Minute 14, which is attached to our Application, which is
22 the one which is causing all the problems.

23

24 On 3 December 2004, that is, four days ago, FISCAP once again addressed the
25 same representative of Transmar, Mr Tavares, still as representative of the
26 *Juno Trader* vessel, to notify him of the change of ownership et cetera. The quality of
27 Transmar and Mr Tavares as representatives of the *Juno Trader* is not being
28 challenged by Guinea-Bissau. It had never been challenged until yesterday in front
29 of you, so it is up to you to appreciate that.

30

31 Another argument put forward by Mr Silva concerns the quality of the *Juno Trader* as
32 a fishing vessel. Article 3, paragraph 3, of the Guinean Decree Law of 2000, the
33 relevant legislation, states that vessels conducting linked or annexed fishing
34 operations are also qualified as fishing vessels. We must say that that national

1 qualification does not necessarily hold internationally speaking, and in particular
2 before your Tribunal.

3

4 In that respect, I would like to point out once again that the *Juno Trader* was a reefer.
5 It loads frozen fish, but it could also hold other frozen products such as meat,
6 chicken, maybe bananas, or apparently anything that can be frozen. Therefore,
7 according to Mr Silva's argument, the *Juno Trader* would change its quality
8 depending on its cargo. If it is carrying fish, then it is a trawler, a fishing vessel. If its
9 cargo is not fish, if it is not holding fish, then it is some other ship. I am therefore
10 wondering what the qualification of the competent authority of Guinea-Bissau would
11 be if this ship was also carrying four or five containers, or if a container ship was
12 carrying a few containers of fish, would it then also be a fishing vessel? Let us
13 imagine that the vessel is not always in the EEZ of Guinea-Bissau and could change
14 maritime waters. In that case, at one point it could be considered to be a fishing
15 vessel in Guinea-Bissau and it could be considered to be a cargo ship carrying
16 cereal in another country's waters. It would constantly change, and that does not
17 seem serious at all.

18

19 Then it was said that there may have been an illegal transshipment of fish on to the
20 *Juno Trader* within the exclusive economic zone of Guinea-Bissau. It is also said
21 that Article 3, paragraph 3, of the Decree Law of 2000 states, "wherever the fish was
22 caught", but we must protest quite vehemently against such an extension, because
23 in any case the first paragraph of the Montego Bay Convention is very clear and it
24 merits being read out and heard. It states:

25

26 "In the EEZ, all states, be they coastal or not, in the conditions provided for by the
27 relevant provisions of the Convention, enjoy freedom of navigation under Article 87".

28

29 I recall that Article 87 concerns the high seas, so it is the freedom of using the sea
30 for other internationally illicit considered operations compatible with other provisions
31 of the Convention. In particular, within the framework of the exploitation of vessels,
32 the exploitation of the *Juno Trader* is indeed in actual fact to be loaded and unloaded
33 with frozen products.

34

1 At another point in time in Mr Silva's arguments, we were told that the *Juno Trader*
2 was seen alongside a vessel named *Flipper* within the EEZ – hence something
3 seems to be going on between the *Flipper* and the *Juno Trader*. Here, in the English
4 introduction, I would like to mention the Minutes taken by the Agents of Guinea-
5 Bissau. I will read it out:

6

7 "The *Juno Trader* was discovered anchored parallel to *Flipper*, which was fishing".

8

9 It was the *Flipper* that was fishing. We must realize that if a trawler is fishing, it is not
10 the *Flipper*. It necessarily will be moving and it has fishing gear, fishing nets, behind
11 it, so it is impossible for another vessel, our vessel, to be anchored alongside a
12 trawler that is fishing for more than two minutes, simply because the trawler that is
13 fishing will continue to progress at a speed of usually five knots. We can therefore
14 ask how transshipment could then take place and how we can see the two vessels
15 anchored in parallel, side by the side.

16

17 The Master of the *Juno Trader* and some of the crew members said in their written
18 statements that they saw several trawlers, which they were trying to avoid when they
19 were manoeuvring the ship. It is easier for the reefer to manoeuvre and avoid the
20 trawlers. In the EEZ of Guinea-Bissau, which is close to the EEZ of Senegal, there
21 are fields that are very rich in fish. What is important is that we are not told which
22 ship transshipped its fish to the *Juno Warrior*. There were controls and they did not
23 show anything. We cannot inflict a fine and confiscate a cargo, and then in the end
24 confiscate the entire vessel, on the basis of suspicion when there is no attempt to
25 justify that suspicion. Yesterday, I was relatively pleased to note that Guinea-Bissau
26 does not challenge the authenticity of the delivery/acceptance reports of several
27 private inspection documents, official documents of Mauritania, bills of lading et
28 cetera. Therefore, Mr President, this really is progress.

29

30 However, Mr Silva claims that the CIPA report, that is, the report of the scientific
31 committee, the local biologists, confirms that the species on board the *Juno Trader*
32 can only be found in the EEZ of Guinea-Bissau. I would like to refer to page 20 of
33 the French version of yesterday's verbatim record. If you have the curiosity to read
34 the conclusions of CIPA, then you will see this in the English translation:

1

2 “The species identified aboard the *Juno Trader* are species that are found in our
3 waters”.

4

5 There is nothing about “exclusive” here. There is a similarity. As I said yesterday,
6 fish, like vessels, are constantly on the move.

7

8 CIPA’s report also states:

9

10 “...in our waters, except for the species *Brama*, of the *Bramidae* family, which is
11 occasionally found”.

12

13 In spite of this, the *brama* was also confiscated, and, of course, Mr Silva was not
14 very accurate here. I am not trying to say that he did it intentionally.

15

16 Yesterday morning, if I remember correctly, the Counsel of Guinea-Bissau, while
17 counter-interrogating the Master of the *Juno Trader*, Mr Potarykin, pointed out
18 something that was strange on board the *Juno Trader*. Reference was made to the
19 cartons that are still on board. “*Juno Warrior*” is stamped on those cartons, with all
20 the various appropriate figures that were mentioned in another context, but those
21 cartons do not state where the fish were caught.

22 I can tell the Representative of Guinea-Bissau that that is not necessary and not
23 even usual. What is of interest is the name of the vessel that was fishing, that is,
24 *Juno Warrior*, its identification number and other elements that you will find in the
25 annexes. I can also tell the Representative of Guinea-Bissau that it is not necessary
26 for the original bills of lading to be on board the vessel. Moreover, the SGS
27 Company, the Société Générale de Surveillance, and several of the documents
28 come from that company, which you will find in the Annexe to our Application. It is
29 a company of Swiss law, independent, very well seen, with a good reputation in
30 maritime fishing circles, and it is interested, on behalf of possible buyers, in
31 monitoring the quantity and quality.

32

33 Yesterday morning, the Counsel for Guinea-Bissau was able to speak about
34 certificates of origin which cannot be found. It is not true. They are in our boxes.

1 We just did not think that it was necessary to submit them to your Tribunal, for the
2 very good reason that those certificates of origin have been established by the
3 trawler fishing the fish, which here is the *Juno Warrior*, and it is a contractual
4 specification. We are not making any proposal, but, if the Tribunal wishes to see
5 those documents, we will, of course, comply with that wish.

6

7 Mr Silva in his brilliant presentation yesterday afternoon asked an innocent question.

8 I apologise for reading my notes and I did not check the minutes, but I do not think

9 I made a mistake. Is it abnormal for an inspector to be dressed in civilian clothes?

10 In the face of such innocence, we might be tempted to say, "Of course not. Why

11 should everyone have to wear a uniform that is more or less military in nature?"

12

13 Along the same lines, Mr Silva, with a great deal of talent, told us that nobody,

14 except for the crew of the *Juno Trader*, mixed the inspectors up with pirates. Very

15 well, except for the fact that our distinguished colleague Mr Silva did not previously

16 read the report from FISCAP; that is, the competent body with respect to the

17 fisheries of Guinea-Bissau. This document is the report on the maritime inspection

18 mission. We did not have that report. We received it yesterday and I can even tell

19 you at what time: it was after our morning's pleadings. But we must thank Mr Silva

20 for having given this document to us and to the Tribunal. It is dated

21 28 September 2004; that is two days after the detaining of *Juno Trader* by the

22 FISCAP officials. The sentence is the following, the last of the document, and I will

23 read it out to you in the English translation:

24

25 (In English) "We suggest that inspectors wear uniforms on missions since some

26 captains say that they took them for pirates."

27

28 (Interpretation) No comment, Mr President, but the misadventure of *Juno Trader*

29 and its crew will at least have been good for something. Nonetheless, while the

30 FISCAP report with its good sense suggestions is not enough to convince your

31 Tribunal that a man in civilian clothes and unarmed might be taken to be a pirate, if

32 FISCAP's suggestions are not convincing enough, there is something else, and that

33 is a beautiful excerpt that I will read out to you in the English translation of the

34 decision of the regional court of Bissau.

1

2 (In English) “It was proved that the launch belonging to the Maritime Control
3 Commission does not possess any maritime identification. Moreover, neither does it
4 have a radio or any means of communication, a fact which obliged the Applicant to
5 continue his normal course, despite having been hailed by the former because he
6 did not know if it was a pirate ship or an official vessel. Thus, there was no attempt
7 at flight, as suggested in the decision of the Defendant.”

8

9 (Interpretation) I would like to add, furthermore, that it was just after few minutes,
10 four or five minutes according to the evidence, that the men from the zodiac started
11 shooting with an undeniable level of violence, which reminds us of another case that
12 you have dealt with in the same area.

13

14 One thing that is rather sad is that the minutes of Guinea-Bissau challenged the fact
15 that there was one member of the crew who was injured during the shooting. In that
16 respect, I would like to refer you to the text, the original in Spanish and the
17 translation is also available, of the Spanish hospital ship, *Esperanza del Mar*, which
18 had to take on board the crew member who was injured and provide emergency
19 medical services to that member.

20

21 Mr Silva blames us for one more thing in yesterday’s pleadings. I would like to draw
22 your attention, Judges, to this blame, which is totally new. You cannot find it
23 anywhere, either in Minute 12 or in Minute 14, the two minutes of the competent
24 local authorities which inflict the fine and confiscate the cargo and so on. What is
25 this argument? The *Juno Trader* apparently did not notify anyone of its entry into the
26 EEZ of Guinea-Bissau.

27

28 At my university, Robert Schuman in Strasbourg, I teach my students that vessels in
29 the framework of their passage in territorial waters have neither to notify their
30 passage nor, *a fortiori*, to request the authorization of the coastal state with a view to
31 that passage. If Mr Silva requires prior notification for crossing the EEZ, you can
32 imagine, Mr President, what Mr Silva would request for crossing territorial waters.

33

1 In a text submitted by Guinea-Bissau yesterday at around 10 a.m., as I have said,
2 but we finally received it in the afternoon after our pleadings, signed Dr Malal Sané,
3 the author of that text who, moreover, is the co-ordinator of FISCAP (that is the
4 competent authority with respect to fisheries and fisheries inspection) said the
5 following. I will read out the translation.

6

7 (In English) did not receive any information regarding the entrance of the
8 *Juno Trader* into Guinean waters.

9

10 (Interpretation) A bit further along in the same text the same author also states that
11 under Article 31 of the Guinean Decree Law of 2000,

12

13 (In English) ...foreign fishing vessels must advise the Guinean authorities of their
14 entry into the country's EEZ and subsequent exit.

15

16 (Interpretation) In the English translation you have the verb "advise". In the original
17 of Mr Malal's text it is "informa" in Portuguese.

18

19 Let us suppose that the Decree Law of 2000 of Guinea-Bissau does state all of that.
20 That national regulation can only be taken for what it is – that is a national regulation
21 which imperatively would have to be compared by all legal experts, and all the more
22 so by your Tribunal, with international law of the sea, and in particular with the
23 Montego Bay Convention, which, the way I see it, is a bit more liberal with respect to
24 navigating in the EEZ than what Mr Silva or Mr Malal claim.

25

26 I have already said this several times since yesterday. It is unpleasant for me to
27 have to plead against the Republic of Guinea-Bissau. To tell you the truth, I am not
28 really pleading against Guinea-Bissau, either its people or its republic. I am pleading
29 against some government officials of the Ministry of Fisheries of that republic. In
30 fact, the legislators of Guinea-Bissau know much more about the international law of
31 the sea than do Mr Malal or the counsel of Guinea-Bissau.

32

33 The text of Article 31 of the Decree Law of 2000 in the original Portuguese is as
34 follows. This is an unpleasant moment both for you and myself, and I will try to

1 pronounce this very slowly, but I must read out some of the words in Portuguese,
2 with your leave, Mr President, because it is extremely important to us. Article 31:

3

4 “As embarcações de pesca industrial estrangeiras autorizadas a operar na zona
5 economica exclusive da Guiné-Bissau....”

6 (Interpretation) ..and so forth, shall notify their entry and exit of the zone.

7

8 “autorizadas a operar na zona economica”

9

10 (Interpretation) Thus, in this set of documents given to us yesterday, following our
11 pleadings which were submitted to you here, there is no Portuguese original,
12 whereas almost all texts are set out in the original with an English translation. What
13 we have here is only the English translation of the beginning of Article 31 that you
14 have permitted me to read in Portuguese. The English reads:

15

16 ”industrial fishing vessels operating in the exclusive economic zone of Guinea-
17 Bissau”

18

19 (Interpretation) There is a tremendous difference between foreign vessels operating
20 in the EEZ and, as the Portuguese text reads, “vessels authorized to operate”.

21

22 Evidently the *Juno Trader* was not authorized to fish in the EEZ of Guinea-Bissau.
23 The *Juno Trader* is not in any way concerned by this provision. I can understand
24 that Guinea-Bissau imposes the rule of notification for fishing vessels, trawlers in
25 other words, with a proper due licence for fishing. I would say it is essential for the
26 coastal state to know at all times what is close to its fishing resources in the EEZ.

27

28 Thus, I would urge the Tribunal not to take into account the English language
29 translation of this country. The Portuguese text, which has not been translated by us
30 into English or French, is clear to a non-Portuguese speaker. I would say that even
31 an English speaker could understand that text.

32

33 I would also draw your attention to the third page of the bundle of documents given
34 to us yesterday by Guinea-Bissau. It is signed by Ricardo Silva, Counsel for the

1 Republic of Guinea-Bissau, and states “that the translations hereunder are exact and
2 that they correspond to the documents attached to this bundle”. I cannot fully agree
3 with Mr Silva’s confirmation.

4
5 Further, it has been alleged that the Master of the *Juno Trader*, Mr Nikolay Potarykin,
6 refused to submit the documents to the authorities or agents of Guinea-Bissau.

7 Frankly, I am sorry but that is a lie. Despite panic, threats and bad treatment, the
8 Master co-operated. The minutes established by the Agents of Guinea-Bissau state
9 in English, “The captain declared that he had on board a total of 1,183 tonnes and
10 112 tonnes of fish for flour and 334 tonnes of diesel.” That is co-operation.

11 According to Mr Silva, Georges, the famous officer who wanted to intimidate people
12 and struck someone as important as Captain Portorykin, spoke Russian, which might
13 be true, and Mr Silva is surprised that no one understood him on the *Juno Trader*.
14 Let us say that Georges did not really need to speak Russian to make himself
15 understood. His Kalashnikov, as Russian as they come, in its threatening way spoke
16 for itself. Georges was not in any way interested in the documents presented to and
17 by the Master.

18
19 The Master is affirmative in his written statement. All the officer knew is that the
20 *Juno Trader* was there. Captain Potarykin refused to change route for Guinea-
21 Bissau, the reason being that he did not have the maritime chart for the coastal
22 waters of Guinea-Bissau. It would be suicidal to cover the territory from the point of
23 boarding to the coast. All you have to do is to look at a map of the country to
24 understand that navigation is extremely difficult. There are many little islands, islets,
25 rocks, channels and difficult waters to navigate.

26
27 The officers of the *Cacine* vessel, who ultimately arrived at the area, submitted to the
28 Master the charts he requested after which the Master conducted his vessel to the
29 port. So, his refusal was not outright.

30
31 There was a further reproach from Mr Silva. The representative of the *Juno Trader*
32 allegedly waited for a month and a half to transmit the documents on transshipment.
33 Once again, as is written in our Application, we must bear in mind that the
34 *Juno Trader* representative did not know what to do. No charge or accusation was

1 addressed to them or the Master. Several letters were addressed by Mr Tavares to
2 FISCAP: the first communication and Minutes 12 and 14, which condemn. You first
3 condemn and then you charge.

4

5 We never received the Minutes drawn up on 6 September. Well, we received it but
6 around noon after our pleading in the morning. Better late than never, of course.

7 The Master refused to sign the records drawn up by officer Georges and his men.

8 As the Tribunal can see, the record is written only in Portuguese, which is unknown
9 to the Master. Georges did summarily tell him about the record in Russian, but can
10 you rely 100 per cent on an interpreter with a Kalashnikov, who comes and “buffles”
11 you about? That might be a little difficult. In any case, let us assume that the

12 translation may have met the Master’s needs and requirements. There is an
13 inaccuracy that the Master objected to, which was in the record; that is, that the *Juno*
14 *Trader* allegedly cast anchor close to the area of boarding or the area where it was
15 first spotted and more or less where the shooting began. We will not insist on this
16 point.

17

18 As regards casting anchor in the EEZ, the EEZ is not territorial waters. In any case it
19 is technically possible for the *Juno Trader* to have cast anchor considering the
20 timing, which is easy to calculate. If the International Tribunal for the Law of the Sea
21 wishes, it can, even late in the day, appoint experts in navigation, should it choose to
22 do so. It can consult any experts it deems necessary. It can also ask us and we
23 shall submit the logbook, charts and any records. We have not hidden anything. We
24 did not take the initiative to submit such documents because it seemed pointless
25 from a practical point of view but also, I might add as an academic, from the point of
26 view of international law. One can stop in the exclusive economic zones. It is in the
27 territorial waters that passage should be prompt and continuous, not in the EEZ.

28

29 I would not choose to go back on what Mr Silva said yesterday on the matter of the
30 letters and Mr Rosa, who is the President of the Republic of Guinea-Bissau. I cannot
31 recognize Mr Rosa’s signature but nonetheless the papers submitted to the Tribunal
32 are marked Rosa. The Ghanaian company, the owner of the cargo, addressed
33 Mr Rosa, Government of Guinea-Bissau. That is all somewhat vague. Furthermore,
34 Mr Silva said that it is not true that the crew was detained. That might depend on

1 what my honourable colleague intends by “detention”. Under the terms of Articles
2 292 and 73, it is to prevent a person from fully enjoying freedom, coming and going.
3 Without a passport, there is not much one can do – especially if one is Russian or
4 Ukrainian – in an African country. It is true that some seamen were given shore
5 passes; documents that allowed them to go ashore for possible distraction and, last
6 but not least, to buy food and drink.

7

8 Furthermore, it is said that the passports were handed over. Some were and some
9 were not. Yesterday evening, once again, we heard that six members of the
10 *Juno Trader* crew were deprived of their passports. Mr Silva said that even the
11 Master, Mr Potarykin, had his passport returned. Yes, that is true. That was done on
12 2 December so that he could come and give testimony before this Tribunal. That is
13 a rather strange or curious view of freedom and detention.

14

15 It is said that the fine under Minutes 12 and 14 is not disproportionate. The
16 confiscation of the cargo of the *Juno Trader*, lest it be forgotten, was sold on 23
17 September through bills of lading to the Ghanaian company, Unique Concerns
18 Limited, for an approximate value of US\$ 460,000. Mr Silva says that the 50,000
19 bond is not an appropriate sum. Why wait until yesterday to announce that? Would
20 that not be some kind of distortion? That is up to the Tribunal to decide.

21

22 The regional court’s decision, according to what was stated, is irrelevant. To a
23 certain extent, that might be what we wanted to hear. The administration of
24 Guinea-Bissau flouted the decisions from the judiciary in its own country, as we
25 know, and now we hear that the legal experts employed by the fisheries
26 administration of Guinea-Bissau do not give great regard to the judiciary decision.

27

28 Mr Silva and Mr Gallardo made great efforts this mornings to explain that the
29 decision of the regional court judge is null and void and that the local judge knows
30 nothing whatever of Guinea-Bissau law. For some in Guinea-Bissau the law may not
31 be what the court says it is but they may see it as what they say it is. It worries me
32 when I hear people say that the courts in Guinea-Bissau know nothing of the local
33 law.

34

1 At the end of his pleading Mr Silva said that to seek to condemn Guinea-Bissau to
2 pay the procedural costs goes too far or is blackmail. This is not blackmail. If the
3 Tribunal accepts our conclusions, this is an article in the state of the International
4 Tribunal for the Law of the Sea.

5
6 Mr Staker says that we adopt a position only on the substance of this case. We are
7 not confusing 292 (prompt release) with the substance of this case. We know that
8 your Tribunal, under this Article, does not have jurisdiction to say once and for all
9 who might be right and who might be wrong. However, the Hamburg Tribunal should
10 calculate the bond or other financial security on the basis of something. The
11 *Camouco, Volga* and other judgments state this. As Mr Gallardo said this morning,
12 the main criterion is the gravity of the offences. In our Application and in our two
13 pleadings, we have taken the trouble to explain that there is no gravity of offence.
14 Thus, there is no breach. There is no illegal fishing. It was impossible to fish. The
15 cargo has its origin with so many documents certifying that.

16
17 Further, the regional court in Guinea-Bissau, which Mr Silva stated was ignorant of
18 local law and possibly acting illegally -- if I have misunderstood, I apologize --
19 explicitly states that the Applicant asking for a stay of execution should be the
20 possessor of a right. If there is no possessor of such a right in this case, of course,
21 the court would not have had to pass judgment. As I said yesterday, this is all *prima*
22 *facie*. We are not in any way challenging the possibility of a Guinea-Bissau judge to
23 adopt a decision that may be to the contrary.

24
25 The fisheries administration of Guinea-Bissau ruled out the application for a stay. If
26 it were so convinced of its rights, it might have had at its disposal some form of
27 appeal. In the same decision, which is of interest to us, you can read once again in
28 English:

29
30 "In the present case, based on the stated facts, this court is in no doubt that failure to
31 suspend the decision of the Defendant, the Interministerial Maritime Control
32 Commission at the time caused serious or not easily reparable injury to the
33 Appellant. As shown in paragraph 1, the vessel *Juno Trader*, belonging to the
34 Appellant, loaded all the fish that was on board in Mauritania. All the relevant

1 formalities required by that country were satisfied in respect of its voyage to Ghana,
2 where the respective cargos would be delivered to their respective consignees,
3 clients. It was thus obvious that the fish on board the ship was not caught in Guinea
4 and, moreover, nor was the ship itself a fishing vessel as the Defendant tried to claim
5 in its reports.”

6 Mr President, another argument put by Mr Staker concerns the jurisdiction of the
7 Tribunal and the admissibility of our Application. With variance, to be frank, the
8 argument of my esteemed colleague Mr Staker applies in either case. The
9 *Juno Trader* supposedly changed owner, with St Vincent and the Grenadines no
10 longer being the flag state of the *Juno Trader* because it was automatically
11 confiscated by the administration if by a certain deadline the fine had not been paid.
12

13 Mr Tavares, the local representative of the *Juno Trader*, asked for an extension of
14 the deadline for payment. In the meantime, St Vincent and the Grenadines had the
15 unfortunate idea of addressing the International Tribunal for the Law of the Sea. The
16 letter announcing confiscation is dated 3 December. There is no doubt that the
17 stamp is that of Bissau. Could the origin possibly be Hamburg to be seen? The
18 extension requested by Mr Tavares was necessary, *inter alia*, not so much for the
19 amount to be found -- it is such a small one -- but mainly in order to clarify in the
20 following days the practical and legal situation of the cargo, which had been
21 confiscated.
22

23 In a document signed by Mr Malal Sané, the Co-ordinator of FISCAP, not bearing a
24 date, the author acknowledges that the ship owner’s representative requested an
25 extension of the payment deadline for the fine of 15 days, adding that such an
26 extension was not granted. This is from my personal translation from the
27 Portuguese, and you have the English translation as well. Under the Decree, the
28 Guinea-Bissau administration is thus free to grant or not grant such an extension.
29

30 Very basic reasons of equity and probity are such that the administration should take
31 the trouble to respond to the ship owner who is awaiting such a response to the
32 request for an extension, especially if the threatened penalty could be confiscation.
33 No step was taken to inform anyone by the fisheries administration in Guinea-
34 Bissau. Confiscation or change of ownership allegedly took place on 5 November.

1
2 What happened afterwards? Let us take a look. It is interesting. On 18 November,
3 the ship owner submitted a P&I bond. A €50,000 bond was posted to the Minister for
4 Justice and the Minister for Fisheries, with a copy to FISCMAR, the original being
5 submitted to the relevant court. All those people accepted openly the deposit of the
6 letter on the bond. Nobody, not even the competent authorities in the Fisheries
7 Ministry, possibly noticed that the party posting the bond for the prompt release of its
8 vessel just no longer happened to be the owner of such vessel? In addition, with
9 regard to the order for a stay of execution, the Bissau regional court, following an
10 examination of the case, ordered the stay of execution, with the specific results that
11 we now have. Could it be possible that the regional court judge did not notice the
12 change of ownership of the *Juno Trader* either, assuming that he had at his disposal
13 all documents, and I would assume that the local judge is familiar with the Decree of
14 2000 – *jure movit curiae*, as we are often told; all rather strange.

15
16 Now, on 3 December a letter announces that the *Juno Trader* has a new owner due
17 to confiscation, and that is addressed to Transmar Services, Mr Tavares, whom you
18 know. Mr Tavares and his company are qualified as the local representatives of the
19 ship *Juno Trader*. That leads us to believe that the Ministry of Fisheries at the
20 outset, we are told, is not aware of the fact that the *Juno Trader* no longer has the
21 same owner. The least one can say is that Mr Tavares remained the local
22 representative of the *Juno Trader*, while the *Juno Trader* now, we are told, for one
23 month already has been in the ownership of the government of Guinea-Bissau. At
24 least, Mr Tavares, you will have to send your invoices to someone else, because
25 your employer would have changed, and the Master and his crew members will no
26 longer request their salaries from Juno Reefers Limited. It is high time that those
27 poor sailors realized that their employer is no longer the same. We also wonder why
28 the flag of St Vincent and the Grenadines continued to be flying aboard the
29 *Juno Trader* and why the registration and other documents were not changed.
30 There are many other similar questions that arise.

31
32 The letter announcing the confiscation of the *Juno Trader* is not signed by the
33 representatives of the Interministerial Fisheries Commission. I would also like to add
34 that that letter was given either to Mr Tavares personally or to his local office -- I am

1 not longer sure which -- on 3 December, and at what time? At 5.30 p.m., while the
2 officials of the Republic of Guinea-Bissau, as in many other hot countries, continue
3 only until half-past-two. It is surprising that the officials stay in the Ministry building.
4 But what a predicament in which to put the Tribunal in the face of a new *de facto*
5 situation?

6

7 Now let us be a bit more practical and down to earth. As the French saying goes,
8 the threat is a bit too thick. Against all expectations, we are told that the owner of
9 *Juno Trader* is no longer its owner. Not only is this a good month after the transfer of
10 ownership, the change of owner, based on the date of the event, so not only while
11 the local authorities, including the judicial ones, are still considering we are the
12 owner, but even two days after the date of the beginning of the hearings, initially
13 planned for 1 December 2004, it is being said that if the state of St Vincent and the
14 Grenadines had not referred to the International Tribunal of the Law of the Sea, then
15 Juno Reefer Limited would still be the owner of the *Juno Trader*.

16

17 It is only one little step to move from one allegation to the next. We are not really the
18 ones who took that step but an anonymous individual who came here yesterday
19 afternoon at the brilliant pleadings of my colleague Mr Staker, and he said in English,
20 translating what I heard, "the International Tribunal of the Law of the Sea accepts
21 that argument, that of the change of owner. All it has left to do is to close shop with
22 respect to prompt release". That is not what I said.

23

24 Now let me translate in a more polite and legal way what I heard murmured. The
25 proceedings of Article 292 no longer have any meaning whatsoever if any coastal
26 state could stop such proceedings by ordering the confiscation of a detained vessel
27 and, moreover, in a very short period, subsequently to plead the jurisdiction of the
28 Hamburg Tribunal, since the request for prompt release apparently was introduced
29 by a non-flag state and on behalf of a non-ship owner and, in any case, the first
30 paragraph Article 73, which is what we are interested in, provides for a list of
31 measures that the coastal state could take. Amongst those measures is included
32 seizure, which is close to confiscation. In any case, this list of measures is not
33 complete, not comprehensive. It says "including". Another expression here is "such

1 measures". In the official French version it says "toutes mesures"; in the English
2 version it says "such measures".

3

4 Of course a question arises for the Tribunal and for us: are there not any national
5 measures that could empty the meaning of the request and the procedure of prompt
6 release before your Tribunal? Mr President, I think there are, and that would be to
7 burn the vessel or drown it, if possible in extremely deep waters, which would make
8 it impossible to recover it, but I will stop here. I do not want to give any additional
9 bad ideas to the Agents of Guinea-Bissau

10

11 THE PRESIDENT: Thank you very much, Professor Karagiannis.

12

13 We shall resume at 3 o'clock this afternoon when we will hear further from
14 Professor Karagiannis.

15

16 (The luncheon adjournment)

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