NOTIFICATION OF SPECIAL AGREEMENT

Letter dated 4 July 2011 from Mr García-Gallardo to the Registrar notifying about special agreement, transmitting:
- Letter No. 1456/A.J dated 10 June 2010 from the Vice-President of the Republic of Panama to the President of the Tribunal authorizing Mr García-Gallardo, Ms Arias Diaz and Mr Mizzi as representatives of Panama, with apostille dated 15 June 2010 (in Spanish) (not reproduced)
- English translation of letter and apostille (reproduced as annex 7 of the Memorial)

Brussels
Ramón García-Gallardo

International Tribunal for
The Law of the Sea (ITLOS)
M. Philippe Gautier
Registrar
Am Internationalen Seegerichtshof 1
22609 Hamburg
Germany

sjberwin

RECEIVED
06 JUL 2011
BY:

Date	4 July 2011
Our ref	G24472.1/BRUS1:274249.1/SAVL
Your ref	PMGB/LTR/017/11
From	Ramón García-Gallardo Counsel/Agent for the Republic of Panama

Dear Registrar,

Pursuant to article 55 of the Rules of the Tribunal, I have the honour to notifiy the International Tribunal for the Law of the Sea of a Special Agreement to submit a dispute to the Tribunal, concluded between the Republic of Panama and the Republic of Guinea Bissau on dates 29 June and 2011 and 4 July 2011 regarding a damages claim for the arrest of vessel VIRGINIA G. Please find enclosed a copy in pdf of our Notification of submission of the VIRGINIA G dispute to arbitration dated 3 June 2011.

The address for service to which all communications concerning the case are to be sent in accordance with article 56, paragraph 1, of the Rules is as follows: SJ Berwin LLP - Kurfürstendamm 63 - 10707 Berlin – Germany – Tel. number: +49 (0)30 88 71 71 50 – Fax number: +49 (0)30 88 71 71 66 – Email: berlin@sjberwin.com

Could you also please send any communication to my following emails: ramon.garciagallardo@sjberwin.com and brussels@sjberwin.com .

Yours faithfully,

Marc VAN BENEDEN
Notaire associé - IXELLES (Brabant)

Pour la légalisation de la signature de Ramon Garcia
Ixelles, le 5 juillet 2011
Marc Van Beneden, notaire associé

Ramón García-Gallardo
Counsel/Agent for the Republic of Panama

SJ Berwin LLP
Square de Meeûs 1
1000 Brussels
T +32 (0)2 511 5340
F +32 (0)2 511 5917
E brussels@sjberwin.com
www.sjberwin.com

- Letter dated 4 July 2011 from Mr García-Gallardo to the Permanent Representative of Guinea-Bissau confirming proposal to submit dispute to Tribunal

Brussels
Ramón García-Gallardo

Ambassador Soares de Gama
Permanent Representative
of Guinea-Bissau to the
United Nations
New York

sjberwin

CERTIFIED A TRUE COPY OF THE ORIGINAL
Signed
Date 04.07.11
S J BERWIN LLP

Date	4 July 2011
Our ref	G24472.1/BRUS1:274151.1/ALEM
Your ref	PMGB/LTR/017/11
From	Ramón García-Gallardo Counsel/Agent for the Republic of Panama

Dear Ambassador de Gama,

We thank you for your letter dated 29 June 2011 (with the reference number in caption) of which we acknowledge delivery.

We have noted the agreement of the Republic of Guinea-Bissau to transfer the case to the International Tribunal of the Law of the Sea (ITLOS) and the acceptance of jurisdiction in that respect.

We confirm that our proposal to submit the matter to ITLOS, as contained in our letter dated 3 June 2011, and Guinea-Bissau's acceptance thereto, as contained in your letter dated 29 June 2011, is sufficient to consider that the two governments have come to a Special Agreement to submit the case to ITLOS, in accordance with article 55 of the Rules of ITLOS.

To this end, we shall notify the Register a certified copy of your letter dated 29 June 2011 and a copy of this letter.

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We will also approach the President of ITLOS H.E. José Luis Jesus in order to ask him to convoke the parties for a consultation meeting by teleconference. Should it be convenient for all parties, we will suggest to hold the consultation as early as possible.

Yours sincerely

Ramón García-Gallardo
Counsel/Agent for the Republic of Panama

CC **H.E. Pablo Antonio Thalassinós**
Ambassador, Permanent Representative of Panama to the United Nations
New York

Ambassador of the Republic of Panama to Germany
Berlin

H.E. José Luis Jesus
President of International Tribunal for the Law of the Sea
Berlin

M. Philippe Gautier
Registrar of the ITLOS

- Letter dated 29 June 2011 from the Permanent Representative of Guinea-Bissau to Mr García-Gallardo conveying agreement for submission of the case to the Tribunal

PERMANENT MISSION OF THE REPUBLIC OF GUINEA-BISSAU TO THE UNITED NATIONS

PMGB/LTR/017/11

New York, June 29th 2011

Dear Sir,

I refer to your to your letter of June 2011, notifying my country, Guinea-Bissau, that you have instituted Annex VII Arbitral Tribunal against Guinea-Bissau in the dispute concerning the M/V Virginia G. Upon instructions of my Government I would like to convey to you the agreement of the Republic of Guinea-Bissau with your proposal to transfer the case to the International Tribunal of the Law, whose jurisdiction in this case Guinea-Bissau accepts fully.

My government therefore takes it that your afore-mentioned proposal and this letter constitute a special agreement between the two Parties for the submission of the case to ITLOS.

My Government equally takes it that having acquiesced to your proposal to submit the case to ITLOS, the Anenex VII Arbitral Tribunal will therefore be determined and no further steps are needed to be taken by Guinea-Bissau for appointment of the arbitrator it should appoint within 30 days.

405 Lexington Ave. Suite 2631 New York, NY 10174 Tel# 1.212.541.2494

My Government would very much appreciate it to receive your confirmation of this understanding as soon as possible.

Sincerely Yours,

João Soares da Gama
Ambassador, Permanent Representative

REPÚBLICA DA GUINÉ-BISSAU
MISSÃO PERMANENTE JUNTO DA ONU

Sr. Ramon Garcia Gallardo
Counseller/Agent for the Republic of Panama

CC/- H.E. Mr. Pablo Antonio Thalassinós
Ambassador, Permanent Representative of Panama
To the United Nations
New York

- **Ambassador of the Republic of Panama to Germany**
Berlin

- **H.E. Mr. José Luís Jesus**
President of International Tribunal for the Law of Sea
Berlin

405 Lexington Ave. Suite 2631 New York, NY 10174 Tel# 1.212.541.2494

- Letter dated 3 June 2011 from Mr García-Gallardo to the Minister of Foreign Affairs, International Cooperation and Communities of Guinea-Bissau, attached Annexes 1 to 3

sjberwin

TO **Mr. Adelino Mano Queta**
Minister of Foreign Affairs, International Cooperation & Communities
Avenida Amilcar Cabral, Nº 190, Bissau, Guinea Bissau

CC Mr. Carlos Gomes Junior, Prime Minister of Guinea Bissau.
Fax number: 00 245 320 43 00.

Mr. Enrique Da Silva, Embassy of the Republic of Guinea-Bissau in Belgium.
70, Avenue F. Roosevelt. 1050 Brussels. Belgium.

Mr. Alfredo Lopes Cabral, Permanent Representative to the UN (New York).
211 East 43rd Street, Room 704, New York, NY 10017. Fax: (914) 636-3007

3rd June 2011

Dear Mr Mano Queta,

Object: Notification of submission of VIRGINIA G dispute to arbitration – Initiation of Arbitration Proceedings

I am writing upon the instruction of the Government of the Republic of Panama (hereinafter "Panama"), as duly authorised (in terms of the attached Power of Attorney), and in relation to the dispute with the Republic of Guinea-Bissau (hereinafter "Guinea-Bissau") relating to the vessel bearing Panamanian flag MV "VIRGINIA G", with Permanent Patent of Navigation N° 29418-A and IMO number 8135681.

On behalf of Panama, we present our complements to the Guinea-Bissau Ministry of Foreign Affairs, International Cooperation and Communities and refer to all previous correspondence concerning the abovementioned dispute, arising from the arrest of the VIRGINIA G by the maritime authorities of Guinea-Bissau in its Exclusive Economic Zone ("EEZ") on the 21 August 2009 when the vessel was carrying out an operation to supply fuel to four fishing vessels (Rimbal I, Rimbal II, Amabal I and Amabal II) (at Latitude 11 48' 0N; Longitude 17 31' 6W).

We believe that in so doing, Guinea-Bissau breached its international obligations set out in the United Nations Convention on the Law of the Sea (UNCLOS). Such breach has led to substantial damages and losses being incurred on the vessel during its period of detention.

Panama has formally set out its position with respect to this dispute in a series of correspondence, most recently in its letter (sent by us as Counsel/Agent for Panama) dated 15 February 2011 and headed "Exchange of letters in accordance with Article 283 of UNCLOS", to which, it is noted, no reply has been afforded by the competent authorities if Guinea-Bissau.

Panama notes that Guinea-Bissau failed to reply to other recent correspondence. Furthermore, previous attempts made by Panama to seek amicable settlement have not resulted in a positive outcome.

Panama notes that the vessel was released on the 22 October 2010 without penalty. However, from the 21 August 2009 until 22 October 2010 (14 months) the ship was detained in the Bissau Port and no ship maintenance, or running of the main engines and generators was carried out. Consequently, the VIRGINIA G suffered serious damages during the extended period of detention. The owners of the vessel commissioned a Condition Survey and Internal Audit which shows that the vessel had serious deficiencies in terms of certification of the vessel, equipment, certificates of the crew and the overall structural integrity of the vessel.

Despite the release of the vessel by the Guinea-Bissau authorities, the legal, economical and logistical repercussions, including, without limitation, damages and loss of earnings, that arose owing to the detention and also during the protracted period of detention (as mentioned several times in past correspondence) remain unresolved.

In the circumstances, Panama can only conclude that the dispute cannot be settled by negotiation and that there is no basis for further exchange of views.

Accordingly:

(a) **Pursuant to Article 286 UNCLOS** Panama hereby refers the dispute to arbitration and is hereby giving Guinea-Bissau written notice thereof. Both States being parties to UNCLOS and neither State having made any choice of procedure pursuant to Article 287 UNCLOS, the applicable procedure is that of arbitration in accordance with Annex VII UNCLOS.

(b) **Pursuant to Article 1 of Annex VII UNCLOS** the dispute is **hereby submitted to the arbitral procedure provided for in Annex VII UNCLOS**. Panama attaches a statement of the claim and the grounds on which that claim is based.

(c) **Pursuant to Article 3(b) of Annex VII UNCLOS** Panama hereby appoints **Jean-Pierre COT**, a French national and a judge at the International Tribunal of the Law of the Sea (ITLOS), as a member of the tribunal provided for in Annex VII UNCLOS. Judge Cot's *curriculum vitae* is attached.

(d) **Pursuant to Article 3(c) of Annex VII UNCLOS**, and Guinea-Bissau being notified of this appointment, Panama notes that Guinea-Bissau is required to appoint one member of the arbitral tribunal within 30 days of the receipt of this notification. In the absence of an appointment made by Guinea-Bissau within 30 days of the receipt of this notification, Panama shall take the necessary measures afforded under the relevant provisions of UNCLOS.

Panama reiterates and respectfully submits to the Guinea-Bissau Ministry of Foreign Affairs, International Cooperation and Communities that there is the possibility of submitting this dispute to ITLOS, or a special chamber within ITLOS, as a way of resolving the dispute contentiously, yet in a less costly manner.

Panama remains available to discuss this option through its Counsel and Agent. By way of indication, it is suggested that the two governments agree to submit the dispute between them concerning the VIRGINIA G to ITLOS through an exchange of letters. It is suggested that the two governments agree that a submission of the dispute to ITLOS shall be on the following conditions:

1. That the dispute shall be deemed to have been submitted to the International Tribunal for the Law of the Sea upon agreement between the two governments and on a date so agreed.

2. That the written and oral proceedings before ITLOS shall comprise a single phase dealing with all aspects of the merits (including damages and costs).

3. That the written and oral proceedings shall follow the timetable set out in a schedule to be agreed by the governments.

4. That ITLOS shall address all claims for damages and costs and shall be entitled to make an award on the legal and other costs incurred by the successful party in the proceedings before it.

This notwithstanding, Panama affirms its continued willingness to seek to resolve this dispute in an amicable manner.

Through its Counsel and Agent, Panama takes this opportunity to renew to the Guinea-Bissau Ministry of Foreign Affairs, International Cooperation and Communities the assurances of its highest consideration.

Ramón García-Gallardo
Counsel/Agent of the Republic of Panama

Annex 1: Copy of Power of Attorney granted by the Republic of Panama
Annex 2: Copy of *curriculum vitae* of Judge Jean-Pierre Cot
Annex 3: Statement of the claim and grounds

Annex 1 to letter dated 3 June 2011
Letter No. 45/A.J dated 5 January 2011 from the Vice-President of the Republic of Panama to the President of the Tribunal authorizing Mr García-Gallardo, Ms Arias Diaz and Mr Mizzi as representatives of Panama (in Spanish) (not reproduced)
- English translation of letter

FREE TRANSLATION (Spanish to English)

Republic of Panama

Ministry of Foreign Affairs
Minister's Office

January 5, 2011
No. 45/A.J

Dear President:

I have the honour to address you in the context of the letter S/N sent to you on the 13th October 2010 in which we inform you in relation to the power of attorney given to JOSE RAMON GARCIA-GALLARDO GIL-FOURNIER, of Spanish nationality, with passport number N°XD20B32; to MARIA ARIAS DIAZ, of Spanish nationality, bearer of the personal identity number N°47725302-1A; and to ALEXANDER MIZZI, of Maltese nationality, bearer of the identity document N°0351380M.

We would like to know if this power of attorney gives them the possibility to act before the International Tribunal of the Law of the Sea, as well as to take provisional measures according to article 290 paragraph 5 of the United Nations Conventions on the Law of the Sea.

Concerning this matter, I inform you that the power of attorney given by the Government of Panama to these persons to act as representatives of the Republic of Panama can be equally used for the proceedings brought before the International Tribunal of the Law of the Sea or before an arbitrary tribunal that would be constituted. This power of attorney also gives them authority to bring claims concerning the provisional measures established in article 290 paragraph 5 of the United Nations Convention on the Law of the Sea, and to assert a claim of international arbitration and, eventually, according to article 292 of the abovementioned Convention, to assert a claim for prompt release and any other international legislation linked to it.

According to what has been previously stated, I reaffirm that the mentioned lawyers will represent before the International Tribunal of the Law of the Sea and/or the arbitrary tribunal that will be established, the interests of the Republic of Panama against the Republic of Guinea-Bissau in the abovementioned proceedings concerning the Panamanian flagged vessel VIRGINIA G, bearer of the navigation licence N°29418-03-A, valid until the 14th May 2011, and letters of radio HO303, its owner being Pen Lilac Trading SA; without prejudice of the legal proceedings pending before the tribunals of Guinea-Bissau that involve this vessel.

I take this opportunity to assure you my highest consideration

(signed)
JUAN CARLSO VARELA R.
Vice President of the Republic and Ministry of Foreign Affairs

To the Honourable Sir JOSE LUIS JESUS
President
International Court of the Laws of the Sea
Hamburg

Annex 2 to letter dated 3 June 2011
Curriculum vitae of Jean-Pierre Cot (not reproduced)

Annex 3 to letter dated 3 June 2011
Statement of claim and grounds on which it is based, 3 June 2011

SUBMISSION OF DISPUTE TO ARBITRATION

"VIRGINIA G"

THE REPUBLIC OF PANAMA

- v -

THE REPUBLIC OF GUINEA-BISSAU

STATEMENT OF CLAIM AND GROUNDS ON WHICH IT IS BASED

3 June 2011

United Nations Convention on the Law of the Sea 1982

ANNEX VII – ARBITRATION

I. SUBJECT MATTER OF THE DISPUTE

- The dispute being submitted to arbitration by the Republic of Panama ("Panama") relates to the Panamanian flagged oil tanker *Virginia G*, which was arrested by the authorities of the Republic of Guinea-Bissau (Guinea-Bissau) on 21 August 2009 in the Exclusive Economic Zone (EEZ) of Guinea-Bissau, whilst carrying out refuelling operations.

- The *Virginia G* remained detained in the port of Bissau until 22 October 2010 (for 14 months) and started operating again in December 2010 (16 months after its detention commenced).

- Panama claims that in this case Guinea-Bissau breached its international obligations set out in the 1982 United Nations Convention on the Law of the Sea (UNCLOS), which breach led to a prejudice being caused to the Panamanian flag and to severe damages and losses being incurred by the vessel and other interested persons and entities because of the detention and the length of the period of detention.

II. PROCEDURAL MATTERS

A. Panama has formally appointed and authorised its Counsel and Agent in terms of a Power of Attorney, as attached.

B. Panama has set out its position to Guinea-Bissau through various types of correspondence and notes including those dated 28 July 2010, 15 September 2010, 19 October 2010 and 15 February 2011. Guinea-Bissau has not replied to any of the correspondence.

C. Prior to Panama's involvement, several exchanges took place between the owner of the *Virginia G* (Lilac Penn Trading SA, registered in Panama) and the Guinea-Bissau authorities, including written correspondence, meetings and conference calls, in which the owner sought to reach an amicable resolution.

D. Despite these exchanges, no settlement was reached. The owner of the *Virginia G* resorted to the national courts of Guinea-Bissau for release of the vessel. The proceedings before the courts of Guinea-Bissau have had no outcome, and were ineffective at securing the release of the vessel (during its detention) and/or at obtaining the appropriate compensation/reparation.

E. Panama intervened to safeguard the interests of its flag and nationals, as is its right under international law.

F. Jurisdiction:

(i) Panama and Guinea-Bissau are, and at all relevant times were, Parties to UNCLOS 1982;

(ii) Part XV UNCLOS establishes a regime for the settlement of disputes concerning its interpretation or application;

(iii) Neither Panama nor Guinea-Bissau has availed itself of the power under Article 298 UNCLOS to make exceptions to the applicability of Section 2 of Part XV UNCLOS excluding the jurisdiction or competence of an arbitral tribunal constituted in accordance with Annex VII. Furthermore, Neither Panama nor Guinea-Bissau has made a written declaration pursuant to Article 287(1) UNCLOS with respect arbitration in accordance with Annex VII UNCLOS;

(iv) Accordingly, Section 2 of Part XV applies to the dispute, and under Article 287(3) both States have accepted arbitration in accordance with Annex VII as a means of settling disputes between them concerning the interpretation or application of the Convention;

(v) The procedures set out under UNCLOS have been respected by Panama, specifically, but without limitation, in relation to the exchange of views required under Article 283 UNCLOS and the initiation of arbitration in terms of Article 286 UNCLOS and Articles 1 and 3 of Annex VII UNCLOS.

(vi) Consequently, an arbitral tribunal constituted in accordance with Annex VII UNCLOS would have jurisdiction, in terms of Article 288(1) UNCLOS.

G. Panama has nominated Mr Jean-Pierre Cot as a member of the arbitral tribunal.

H. Panama has prepared and submitted the necessary notifications of commencement of arbitration, including this statement of facts and grounds on which the claim is based.

I. Panama reserves all rights to further develop and supplement its arguments and claims, to add additional arguments as may be necessary, and to present additional documents during the course of the proceedings.

III. STATEMENT OF FACTS

The entities and activities involved

1. The *Virginia G* is a fuel oil tanker registered under the Panamanian Flag with Permanent International Patent of Navigation No. 29418-03-A. The vessel's IMO number is 8135681 and its Call Sign is HO3031.

2. The *Virginia G* is both owned and operated by the Panamanian company Penn Lilac Trading SA ("Penn Lilac"). The *Virginia G* is used to supply gasoil to fishing vessels, in particular those operating off the West African coastal areas.

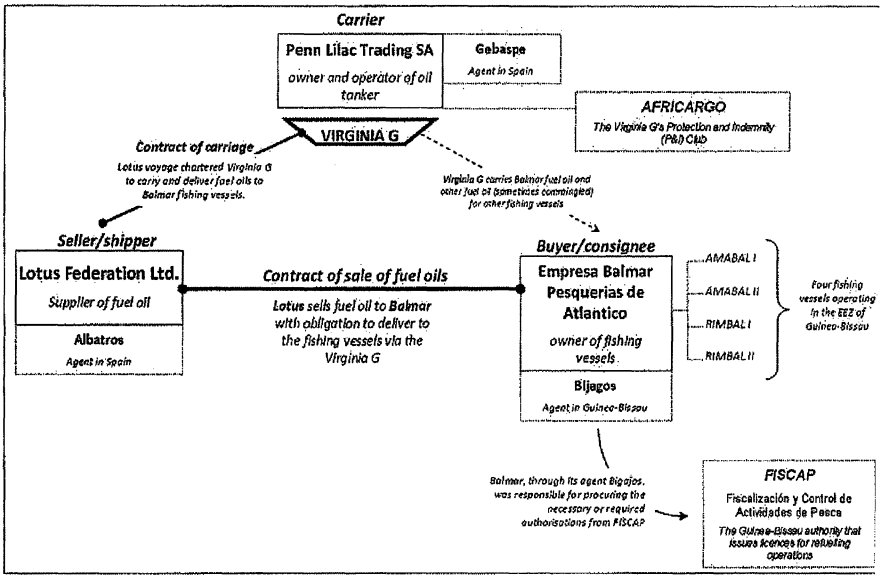
3. This particular matter dates back to August 2009 when the Spanish company *Empresa Balmar Pesquerías de Atlántico* ("Balmar") purchased gasoil from the Irish company Lotus Federation Limited ("Lotus") for the refuelling of Balmar's fishing vessels, operating in the EEZ of Guinea-Bissau.

4. As is normal practice, in such agreements a third party carrier (oil tanker) is engaged by the seller/shipper to carry the gasoil cargo to its destination, with the cost of the carriage (freight) for delivery to the fishing vessels being included in the price. Furthermore, the buyer/consignee typically undertakes to procure any necessary or otherwise required authorisations for the supply of gasoil.

5. Therefore, in terms of its agreement with Balmar, Lotus (as seller/shipper) engaged Penn Lilac (carrier) to carry the already purchased gasoil on board its vessel *Virginia G* and to deliver it to Balmar (buyer/consignee), or more precisely, its fishing vessels *Amabal I*, *Amabal II*, *Rimbal I* and *Rimbal II* ("the fishing vessels"), which were operating in the EEZ of Guinea-Bissau. Balmar was responsible for procuring the necessary authorisations from the Guinea-Bissau authorities.

6. The facts set out in the above paragraphs are reflected in the attached *proforma* invoice for the amount of US$ 216.810,00 (dated 7 August 2009) and the accompanying statement by Lotus Federation (dated 14 September 2009) (Annex 1).

7. In order to provide further clarity, the below chart seeks to illustrate the dynamics between the entities involved:



The request for authorisation to carry out refuelling operations

8. In line with normal procedure, Balmar, through its agent in Guinea-Bissau, Bijagos Lda ("Bijagos"), requested authorisation from the Guinea-Bissau authority Fiscalización y Control de Actividades de Pesca ("FISCAP") to carry out refuelling operations in the EEZ of Guinea-Bissau. FISCAP is the agency responsible for granting such authorisations (within the auspices of the Guinea-Bissau Fisheries Ministry). The authorisation was requested by Bijagos on 14 August 2009.

9. By letter with the same date, that is 14 August 2009, FISCAP granted authorisation for refuelling services to be carried for the fishing vessels on condition that the coordinates of the refuelling operation and the date and time of refuelling and the name of the fuel oil tanker were provided. This can be seen in the letter sent by FISCAP to Bijagos with reference number 180/GCFISCAP/09 and signed by Hugo Nosoliny Viera (Annex 2.1).

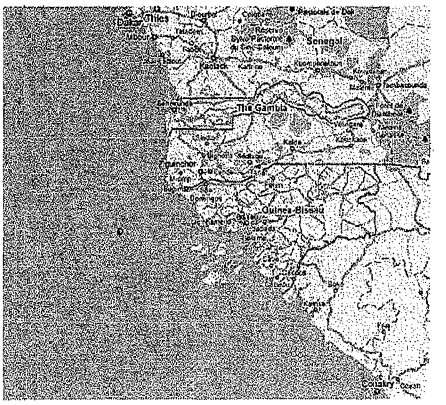
10. Prior to the commencement of the refuelling operations, Balmar sent all requested information to its agent, Bijagos, so as to satisfy the conditions in the authorisation granted by FISCAP. In turn, Bijagos sent a letter to FISCAP, dated 20 August 2009, containing the coordinates of the refuelling operation, the name of the vessel (*Virginia G*) and the time and date on which refuelling was to take place (Annex 2.2).

11. Refuelling was to take place at 1600 hrs on 21 August 2009, at stated geographical co-ordinates, by the vessel *Virginia G*. This is evidenced by letter dated 20 August 2009, sent by Bijagos to FISCAP, which was received by FISCAP (stamp 1106/2009) on the same date. The geographical location plots outside the contiguous zone and territorial waters of Guinea-Bissau, but within its EEZ.

12. Bijagos then confirmed to the fishing vessels that the refuelling operations had been authorised. In turn, the captains of the fishing vessels also informed the FISCAP observers on board. This is evidenced by the correspondence between the fishing vessels and Balmar (Annex 3).

The arrest

13. On the 21 August 2009 the *Virginia G* was boarded in a without prior notice of visit and in a violent manner by Guinea-Bissau authorities off the coast of Guinea-Bissau. At the time, the Rimbal I, Rimbal II and Amabal I had already been refuelled; the Amabal II was in the process of being refuelled.



(A more precise map and location will be provided during the proceedings)

14. The *Virginia G* was escorted to the port of Bissau in perilous conditions and was arrested without allowing the captain to contact the owner (Penn Lilac) at the time of arrest. The crew of 12 was detained, and passports were confiscated.

15. Later the same evening of the arrest, the master of the *Virginia G*, Eduardo Blanco, managed to send scant information to the owner, mentioning that the vessel had been boarded unannounced, then arrested for carrying out refuelling operations allegedly without a licence, and that the master was not allowed to contact anyone. This first report gave the coordinates of the vessel at the time of arrest as Lat: 11° 48N; Log 017° 31W, 52 nautical miles off the coast of Guinea-Bissau.

16. By note dated 30 September 2009, a more detailed report was sent by the master informing the owners with more precision as to how the events unfolded (Annex 4) which is outlined in the immediately following paragraphs.

17. The master mentioned that at 1900hrs on the 21 August 2009, at geographical location Lat:11 48 ° N; Log: 017 31° 6W - 60 miles from the Guinea-Bissau coast (outside the territorial waters and contiguous zone), a number of persons violently boarded the vessel, three of which were carrying firearms. The persons reached the *Virginia G* using a powerful boat, and boarded as though it were an assault. At no time was there any radio communication or other form of prior notice that the persons were expected to board the *Virginia G.*

18. The fire arms were aimed at the crew and at the officials on the deck. The master later commented to the owners that the situation very much resembled one of taking prisoners in an ambush. The persons did not offer information as to their identity, and, when asked, "Mr John" replied that they were Guinea-Bissau officials from FISCAP.

19. The master was informed that the vessel had to enter port for investigation (for allegedly carrying out an unauthorised refuelling operation); until the vessel was in port, he was not informed that the vessel would be, or was already effectively, arrested or detained.

20. The master was forced to navigate in very difficult conditions, putting at risk the vessel, its crew and the cargo. He was made to sail for 14 hours towards the port of Bissau in the dark, without any nautical maps and without prior practice whilst blinded by the rain.

21. In a later communication to the owners of the vessel, the master stated that he had no evidence to show that he signed certain documents during the journey of 21 August 2009 as there was no copy on board. The master stated that he signed documents under pressure of the circumstances and under the threat of a rifle. He, therefore, told the owners that he deemed such procedures as not legal and the said documents as null and void.

22. The master stated to the owners that he felt coerced by the circumstances: the presence of an armed group of Guinea-Bissau authority personnel, being made to sail without any map and without prior practice of the route in very reduced visibility (rain). The master told the owners that he was never informed that the vessel was, or would be, arrested. He stated that under such circumstances, important documents would normally be in a language which the person signing understands – which was not the case here. Furthermore, even if it is not possible to provide a copy at the

moment of signature, a copy would normally be sent to the notified party; yet there is no such copy on board.

23. The information contained in the above paragraphs is reflected in the series of correspondence between the master of the *Virginia G*, Eduardo Blanco, and the owner, Penn Lilac (Annex 4).

24. The Amabal I and the Amabal II were also arrested on the same day as the *Virginia G*. It later came to the knowledge of Penn Lilac that on 29 August 2009, the Amabal I and Amabal II (as well as a further two vessels) were released on payment of €50,000. Penn Lilac was told that before being released, the army took part of the catches which were still on board.

The period of detention

25. The use of communication devices (by which the Master could have contacted the owner) was not permitted until the 22 August 2009 at 1200 hrs, and only after several requests were made.

26. No sooner did Penn Lilac become aware of the arrest, it immediately contacted the vessel's Protection and Indemnity Club ("P&I Club"), Africargo, in order to inform it of the event. The contact person was Domingos Carvalho Alvarenga.

27. The day following the arrest, that is on the 22 August 2009, the *Virginia G*'s P&I Club tried contacting FISCAP to clarify the facts. However, finding it impossible to get in touch with the Director of FISCAP, the P&I Club sent a letter, dated 28 August 2009, addressed to Mr Hugo Nosoliny Viera (the FISCAP Coordinator and the same person who had originally granted the authorisation to the *Virginia G* to perform its refuelling activities).

28. The letter asked for an explanation of the situation and attached documents showing that authorisation had in fact been granted for the *Virginia G* to carry out refuelling operations. The letter was received by FISCAP on the same day it was sent, as evidenced by the stamp (Annex 5).

29. Also on the 28 August 2009, at approximately 1300hrs, a group of FISCAP inspectors arrived on board the *Virginia G* and stated that they were to carry out an investigation or search of the vessel - a kind of Port State control.

30. All the equipment on the bridge was inspected. The inspectors asked for information and characteristics of the equipment, and, with the certificates of the vessel in hand, they took a reading of the contents of the tanks. The inspectors also took pictures of the vessel from different angles.

31. When the master inquired about the purpose of the exercise, the reply was that it was being done to understand the technical state of the vessel and to check the amount of gasoil on board.

32. The master informed the inspectors that the documents they held were issued after the last inspection under the Paris MOU (carried out the month before – July 2009).

33. At the end of the inspection the master was asked to sign a document. When he asked for a copy, the inspectors told him that it was not possible to provide him with one since the inspection was an internal matter. In reaction, the master informed them that from that moment onwards he would not sign any documents unless signed by his representative. No further documents were forthcoming.

34. By letter dated 31 August 2009, ten days after the *Virginia G* was arrested, FISCAP purported to explain the reasons for the arrest to the representative of the *Virginia G*.

35. In a 7-line paragraph, Mr Hugo Nosoliny Viera (the FISCAP Coordinator and the same person who originally granted the authorisation for the *Virginia G* to carry out refuelling operations) explained that the *Virginia G* and all her equipment, engines and cargo were being held in favour of the State of Guinea-Bissau for the allegedly repeated practice of fishing-related activities and the unauthorised sale of gasoil to fishing vessels (specifically the Amabal II) in the EEZ of Guinea-Bissau (Annex 6).

36. Just before the receipt of the official communication from FISCAP, the FISCAP coordinator and a senior army commander informed the media (newspapers and radio) that the *Virginia G* had been detained. No mention was made of the other vessels that had been detained on the same day as the *Virginia G*, and which were released a few days later.

The correspondence exchanged

37. By letter dated 4 September 2009 the *Virginia G*'s P&I Club replied to the FISCAP letter dated 31 August 2009, rejecting the allegations and requesting information on how to solve the situation as swiftly as possible through procedures stated by law to immediately release the vessel, its crew and cargo (Annex 7).

38. On the 9 September 2009, a further letter was sent by the *Virginia G*'s P&I Club, attaching eight sets of supporting documents, including a statement by the owners, Penn Lilac, with a specific request to establish security or a bond for the release of the vessel (Annex 8).

39. In particular, the owners of the *Virginia G* set out their understanding of the facts and circumstances of the matter, emphasising that the *Virginia G* always carried out refuelling operations under licence from the Guinea-Bissau authorities and that there was no actual sale of gasoil involved – indeed, the gasoil had already been sold to Balmar, and was merely being carried by the *Virginia G*. In addition, the owners highlighted that the crew on board were going through a particularly unpleasant experience.

40. By letter dated 11 September 2009, FISCAP replied to the letter sent by the *Virginia G*'s P&I Club, dated 4 September 2009. The letter listed a number of grounds, or so-called justifications, which FISCAP claimed to have warranted the arrest of the vessel. Amongst other things, the letter stated that the *Virginia G* was found to be providing gasoil to fishing vessels without a licence, and not having fulfilled the required conditions (despite the correspondence with FISCAP relating to the obtaining of authorisation) when these procedures were known the captain (the full text of the letter is attached as Annex 9).

41. By letter dated 14 September 2009, Penn Lilac replied to FISCAP's letter stating that it could not see how a decision of an inter-ministerial body to sanction the *Virginia G* could be acceptable, legal, fair and adequate. Penn Lilac also requested all measures against the vessel to be annulled and for the vessel, crew and cargo to be released (Annex 10).

42. On the 15 September 2009, the *Virginia G*'s P&I Club submitted a request to the Inter-ministerial Commission for Maritime Control for an extension before legal proceedings are commenced, pending a reply from FISCAP to the letter dated 14 September 2009 (Annex 11).

43. By letter dated 23 September 2009, the *Virginia G*'s P&I Club received a notification from FISCAP, stating that 30 days had lapsed since the notification date of the decision of "CIFM" and that they would proceed with the auctioning of the cargo if no reaction is received from the owners within 72 hours (Annex 12).

44. In fact, the owners received the first notification on the 31 August 2009, 23 days earlier (see Annex 6). In any case, the date of the decision was the 27 August 2009, 4 days before the date of the notification sent to the owners of the *Virginia* G.

45. By letter dated 25 September 2009 (Annex 13), the owners, through their representatives, were notified by FISCAP of the seizure of the vessel and all cargo on board owing to the failure by the owner to reply to the notification of decision No 07/CIFM/09 dated 27 August 2009 (referred to as Annex 12).

46. Penn Lilac sent a reply, dated 28 September 2009, denying the statements made by FISCAP in its letter dated 25 September 2009. Penn Lilac strongly denied the alleged failure to react to the notification of arrest, referring to the correspondence sent thereafter, together with the supporting documents. Penn Lilac reiterated the importance of avoiding further damage and liability and the intervention of the courts, including international tribunals. Penn Lilac also solicited FISCAP to release the vessel, its crew and the cargo (Annex 14).

47. On the 5 October 2009, the *Virginia G*'s P&I Club received a reply from FISCAP, dated 30 September 2009, apologising for a typing error made in an earlier letter. The letter stated that the vessel's gasoil would be auctioned. The owners were invited to partake of the auction and were notified that, under the law of Guinea-Bissau, they were entitled to first refusal (Annex 15).

Proceedings in Guinea-Bissau

48. Subsequent to the arrest, and whilst correspondence with FISCAP was ongoing, the owners of the *Virginia G* engaged lawyers to file an application for the suspension of the seizure and confiscation measures taken against the *Virginia G.*

49. On 5 November 2009, the Regional Court of Guinea-Bissau issued an interim order suspending the measures and ordered the release of 4 crew members (Annex 16).

50. However, on the 6 November 2009, the master informed the owner of the vessel that the army forced him to berth the vessel in port in order to take the products (gas oil) from the vessel. The vessel's lawyers were immediately informed and through swift action the army desisted.

51. Nevertheless, on the 20 November 2009 the army once again forced the owner to berth the vessel to take the products (gas oil) from the vessel, handing the master a letter signed by the Secretary of State dated 30 November 2009 (Annex 17).

52. Faced with the situation, the master could not prevent the army form proceeding with taking the products (gas oil). The legal advisors of the vessel were informed and claims were filed before the courts of Guinea-Bissau. The proceedings before the courts of Guinea-Bissau have had no outcome, and were ineffective at securing the release of the vessel (during its detention) and/or at obtaining the appropriate compensation/reparation (Annex 18).

IV. PROVISIONAL ESTIMATE OF DAMAGES SUFFERED OWING TO DETENTION

53. This section sets out a provisional estimate, in summary, of some of the damages and losses suffered by the vessel and its owners owing to the detention of the *Virginia G* as reflected in the below report(s). The amount mentioned refers to certain damages in relation to the vessel only, and is not final. The amount is intended as an indication, which amount remains subject to revision in accordance with the rights of Panama to claim reparation for further damages and losses under UNCLOS and under international law, as better set out in the next section).

54. The ship was arrested by the Guinea-Bissau authorities (FISCAP) on 21 August 2009 when the ship was in refuelling operation at sixty (60) miles from the Guinea-Bissau coast.

55. On 22 October 2010 the ship was released without penalty.

56. From the 21 August 2009 until 22 October 2010 (14 months) the ship was detained in Bissau Port and no ship maintenance, or running of the main engines and generators was carried out. The crew was also held on board.

57. The *Virginia G* suffered serious damages during the extended period of detention. The owners of the vessel commissioned a Condition Survey and Internal Audit from Capt. Pedro Olives Socas of Panama Shipping Registrat Inc.

58. The report shows that the vessel had serious deficiencies in terms of certification of the vessel, equipment, certificates of the crew and the overall structural integrity of the vessel.

59. The report concluded as follows:

> *"According this condition survey and internal audits our conclusions are that the ship is not in good conditions and very important repairs must be carried out and spare part must be supplies.*
>
> *For to enter in Class and that the new Statutory Certificates can be issued it is necessary to carried out all necessary repairs and to supply the spare parts.*
>
> *Penn Lilac Trading has to informs to Panama Shipping Registrar for the control of the repairs works."*
>
> *Bissau a 31 October 2010*
> *Fdo: Pedro Olives Socas*

60. In order to restore the vessel to a seaworthy state, it was necessary to carry out substantial works on the vessel, as better described in the report.

61. In order to bring the vessel to operation as soon as possible, on the 10 December 2010, the owners of the *Virginia G* entered into a charter party agreement with the company Fleyvecom SL.

62. Furthermore, the owners of the *Virginia G* commissioned the compilation of a damages report from Mr Alfonso Moya Espinosa, and economist and auditor, and member or the official registry of auditors of Spain (*Registro Oficial de Auditores de Cuentas de España*).

63. Mr Moya Espinosa submitted his findings in a report dated and signed on the 16 March 2011, entitled *Informe del Perjuicio Economico Causado a la Empresa "Penn-Lilac Trading S.A." por la Retencion del Buque Tanque "VIRGINIA G" el 21 de Agosto de 2009 (Report on the economic damage caused to the company "Penn-Lilac Trading S.A." by the detention of the tanker vessel "VIRGINIA G" on the 21 August 2009).*

64. The details of the report presented by Mr Moya Espinosa as well as the breakdown and explanation of the total amount of damages incurred will be provided during the proceedings. However, this part provides a summary of the findings of Mr Moya Espinosa.

65. As a consequence of the arrest of the *Virginia G*, the provisional (and, therefore, non-final and subject to review) damages totalled €3.628.880,38. This amount can be broken down as follows:

    a. Direct damages resulting from arrest and duration of arrest of *Virginia G*
    €1.162.529,99

    b. Losses incurred during detention period
    €1.333.296,59

    c. Losses incurred owing to consequential termination of contract with Lotus
    €1.200.000,00

(a) + (b) + (c) = €3.695.826,58

To which a 10% increment (€369.582,65) should be added to compensate for the cost of the period of inactivity of the *Virginia G*

Total = **€4.065.409,23**

The amount is exclusive of any taxes, charges, duties or other impositions which may be charged at law, and is exclusive of any interest which may be due at law by Guinea-Bissau to Panama, and determined by the arbitral tribunal. Panama reserves all rights thereto.

V. LEGAL BASES

66. In general terms – and as further detailed hereunder – Panama contends that the arrest of the Virginia G was unlawful because the ship (or its owners) did not violate any laws or regulations that Guinea-Bissau cited as being applicable to the vessel or its activities. It further contends that even if the laws cited by Guinea-Bissau did apply to the vessel and its activities, those laws, as applied by Guinea-Bissau are incompatible with UNCLOS.

67. On the basis of the facts set out above and the legal bases set out hereunder, Panama submits that Guinea-Bissau violated its obligations and Panama's rights, and is, therefore, responsible and liable for damages under UNCLOS and under international law – which applies by virtue of Article 304 UNCLOS:

> *The provisions of this Convention regarding responsibility and liability for damage are without prejudice to the application of existing rules and the development of further rules regarding responsibility and liability under international law.*

Reparation

68. On the basis of established international law and case-law, Panama will, therefore (and reserves all rights thereto) claim reparation and compensation for material damage in respect of natural and juridical persons, including, without limitation, compensation for damage to the *Virginia G*, financial losses of the owner and operator of the vessel, the owners of the cargo, the Master, members of the crew, loss of liberty and personal injuries (including pain and suffering).

69. International case-law has established that the injured State is entitled to reparation for damage suffered directly by it as well as for damage or other loss suffered by the vessel, including all persons involved or interested in its operation. Damage or other loss suffered by the vessel and all persons involved or interested in its operation comprises injury to persons, unlawful arrest, detention or other forms of ill-treatment, damage to or seizure of property and other economic losses, including loss of profit. It is further submitted that Panama's right to obtain reparation from Guinea-Bissau is irrespective of the nationality of the crew since the vessel is considered as a single unit. (*The Saiga (No.2) case)*

70. It is a well-established rule of international law that a State which suffers damage as a result of an internationally wrongful act by another State is entitled to obtain reparation for the damage suffered from the State which committed the wrongful act, and that "*reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed. [...] Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it – such are the principles which should serve to determine the amount of compensation due for an act contrary to international law.*" *(The Factory at Chorzów case (Merits))*

71. *It is a principle of international law that the breach of an engagement involves an obligation to make reparation in adequate form. Reparation therefore is the indispensable complement of a failure to apply a convention and there is no*

necessity for this to be stated in the Convention itself. (The Factory at Chorzów case (Jurisdiction))

72. Furthermore, it is an elementary principle of international law that a State is entitled to protect its subjects, when injured by acts contrary to international law committed by another State, from whom they have been unable to obtain satisfaction through the ordinary channels. By taking up the case of one of its subjects and by resorting to diplomatic action or international judicial proceedings on his behalf, a State is in reality asserting its own rights - its right to ensure, in the person of its subjects, respect for the rules of international law *(The Mavrommatis Palestine Concessions case)*

Guinea-Bissau's Breach of UNCLOS obligations

The law of Guinea-Bissau

73. Decree Nº 6-A/2000 (as amended in 2005) (the "Decree") is the national legislation of Guinea-Bissau that purports to reflect the obligations of Guinea-Bissau pursuant to UNCLOS.

74. Article 13.1 of the Decree stipulates that a vessel must obtain a licence to fish in the EEZ from the Guinea-Bissau authorities before commencing fishing operations in the EEZ. Article 13.2 of the Decree stipulates that a licence from the Guinea-Bissau authorities is also required prior to carrying out bunkering/refuelling operations in the EEZ.

75. Before and at the moment of arrest by the Guinea-Bissau authorities, the *Virginia G* **had the permission required by the law of Guinea-Bissau** for the performance of "fishing related activities", including bunkering/refuelling operations, as described above. This was obtained by Bijagos, the agent of the owner of the fishing vessels, as was always done.

76. The *Virginia G* was a third party carrier, engaged by Lotus to carry on board gasoil which had already been purchased (from Lotus) by the owner of the fishing vessels, Balmar. As was customarily the case, Balmar, through its agent Bijagos, obtained the required authorisation for the *Virginia G* to provide refuelling services to the fishing vessels.

77. The documents presented in support of the facts and arguments contained herein are clear proof that the allegations of fraud and negligence made by FISCAP and the Guinea-Bissau authorities against the *Virginia G*, her owner and her flag are incorrect.

78. Consequently, it is submitted that the arrest and subsequent actions by the Guinea-Bissau authorities in respect of the *Virginia G*, her owner and her flag were ill-founded and, moreover, in breach of the law of Guinea-Bissau and of international law.

Breach of Articles 56 and 58

79. Panama contends that in the EEX, Guinea-Bissau is not entitled to exercise powers that go beyond those provided for in Articles 56 and 58 UNCLOS. It further asserts that Guinea-Bissau violated its rights to enjoy the freedom of navigation or other internationally lawful uses of the sea in the EEX since the supply of gas oil by the Virginia G falls within the exercise of those rights.

80. The exclusive rights afforded to coastal States in respect of their EEZs are set out in Article 56 of UNCLOS as follows:

> *1. In the exclusive economic zone, the coastal State has:*
>
> *(a) sovereign rights for the purposes of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds*
>
> *(b) jurisdiction as provided for in the relevant provisions of this Convention with regard to:*
>
> *(i) the establishment and use of artificial islands, installations and structures;*
> *(ii) marine scientific research;*
> *(iii) the protection and preservation of the marine environment;*
>
> *(c) other rights and duties provided for in this Convention.*
>
> *2. In exercising its rights and performing its duties under this Convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention.*
>
> *3. The rights set out in this article with respect to the seabed and subsoil shall be exercised in accordance with Part VI.*

81. The qualification contained within Article 56(2) is designed to ensure that coastal States do not ignore or usurp the rights of other States active in a given EEZ.

82. The powers of a coastal State over its EEZ are not, therefore, based solely upon sovereignty.

83. Indeed, an EEZ is an area where the State actually or potentially shares its rights with other States, as opposed to territorial waters, in which a given coastal State has exclusive rights.

84. It is submitted, and shall be adequately demonstrated at a later stage, that Guinea-Bissau exercised powers that went beyond those afforded by Article 56 and, furthermore, did not give any, or at any rate adequate, consideration to Article 56(2) in its treatment of the *Virginia G* and, therefore, failed to respect the rights of the Panama at every stage.

85. In addition, or alternatively, Article 58 stipulates that:

> *1. In the exclusive economic zone, all States, whether coastal or land-locked, enjoy, subject to the relevant provisions of this Convention, the freedoms referred to in Article 87 of navigation and overflight and of the laying of submarine cables*

and pipelines, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of this Convention.

2. Articles 88 to 115 and any other pertinent rules of international law apply to the exclusive economic zone in so far as they are not incompatible with this Part.

3. In exercising and performing their duties under this Convention in the exclusive economic zone, States shall have due regard to the rights and duties of the coastal State in accordance with the provisions of this Convention and other rules of international law in so far as they are not incompatible with this Part.

86. In addition, or alternatively, given that "freedoms...such as those associated with the operation of ships" are enshrined within Article 58(1) of UNCLOS, the *Virginia G* or the consignee (Balmar and its fishing vessels) should not have needed the licence to provide, or receive, refuelling services, which are essential to the continued operation of vessels at sea – in this case, the four fishing vessels.

87. By legislating that licences are required to provide or receive refuelling services, Guinea-Bissau breached and continues to breach its obligations pursuant to UNCLOS because it denied and continues to deny freedoms "associated with the operation of ships" (Article 58(1) of UNCLOS) and/or because the Decree is "not compatible with the provisions of this Part" (Article 58(2) of UNCLOS).

88. In addition, or alternatively, notwithstanding the contention in the immediately preceding paragraph, the owner still respected its obligations pursuant to Article 58(3) of UNCLOS.

89. The owner of the fishing vessels and the *Virginia G* had "due regard to the rights and duties" of Guinea-Bissau as evidence by the fact that Balmar still obtained refuelling permission for the *Virginia G*.

90. By seizing the *Virginia G*, Guinea-Bissau therefore further breached its obligations under to Article 56(2) of UNCLOS, particularly because it acted against the very rights that it had granted and because it acted in a manner that was "not compatible with the provisions of this Convention".

Guinea-Bissau's allegation of fishing related activities

91. Guinea-Bissau alleges that the *Virginia G* was engaging in "fishing related activities" in breach of Guinea-Bissau law when providing refuelling services to the fishing vessels (Rimbal I, Rimbal II, Amabal I and Amabal II).

92. Firstly, it is denied that the *Virginia G* was engaged or about to engage in "fishing related activities" in the EEZ at any time. Indeed, Panama contends that supplying gasoil in the EEZ of a coastal State by vessels flying its flag constitutes the exercise of the freedom of navigation and other internationally lawful uses of the sea related to the freedom on navigation provided in Articles 56 and 58 UNCLOS.

93. Consequently, the *Virginia G* or the owner of the fishing vessels should not have been required to obtain prior permission from Guinea-Bissau to perform or receive

refuelling services, and were seriously prejudiced in being required to do so, even more so, in the way the authorities of Guinea-Bissau subsequently carried out enforcement measures in further violation of the rights of the *Virginia G* without basis in law and in fact.

94. In any event, and to avoid unnecessary complications - as already explained - the *Virginia G,* through Bijagos, requested, **and was granted** the required licence, which was kept throughout the time it spent in the EEZ.

95. Secondly, and without prejudice to the preceding paragraphs, under international law, and in instruments dealing with the subject of fishing (such as the Report on the International Labour Conference on Work in Fish), the provision of refuelling operations is not considered to be a fishing related activity.

96. Indeed, gasoil does not serve only one purpose on a vessel – it is required for navigation; the operation of auxiliary engines; the supply of electric power; provision of heating and hot water, all of which are essential for life on the seas, safe navigation and traffic monitoring (positioning systems, radar, communications, etc.). Hence, in terms of practicality, Guinea-Bissau breached its obligations pursuant to UNCLOS.

97. Thirdly, and without prejudice to the preceding paragraphs, there is no customary international rule that considers the provision of refuelling operations in the EEZ of coastal States as breaching international law.

98. Indeed, some coastal States, such as Namibia, have amended their national legislation to ensure compliance with UNLCOS by more clearly distinguishing between the rights that those coastal States have in their contiguous zones from those enjoyed in their EEZs.

99. In this respect, ITLOS has clearly established a position. In the **Saiga** case (Saint Vincent and the Grenadines v. Guinea Conakry), the defendant argued that the EEZ is a sea space endowed with a *sui generis* legal status, distinct from the high seas and the territorial sea, where the rights and obligations that UNCLOS has not expressly attributed to coastal States in the EEZ cannot automatically fall under the freedom of the high seas. The Tribunal noted that under UNCLOS, a coastal State is entitled to apply customs laws and regulation in its territorial seas in terms of Articles 2 and 21; in the contiguous zone a coastal State may exercise the controls envisaged under Article 33(1); in the EEX, a coastal State has jurisdiction to apply [customs] laws and regulations in respect of artificial islands, installations and structures in terms of Article 60(2). The Tribunal's view was that UNCLOS does not empower a coastal State to apply its [customs] laws in respect of any other parts of the EEX which are not artificial islands, installations and structures.

100. Fourthly, and in any case, there was no sale of gasoil, only delivery or provision. The *Virginia G* was merely a carrier acting on the instruction of Lotus in terms of the contract between Lotus and Balmar.

Breach of Article 73 in the enforcement actions taken by Guinea-Bissau

101. Without prejudice to the preceding paragraphs, even aside from the breaches of UNCLOS by Guinea-Bissau and/or the incompatibility of its national legislation with

UNCLOS, the **enforcement actions** taken by Guinea-Bissau fall outside the justifications stated in Article 73(1) UNCLOS.

102. Article 73 UNCLOS states:

> 1. *The Coastal State may, in the exercise of its sovereign rights to explore, exploit, conserve, and manage the living resources in the exclusive economic zone, take such measures, including boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with this Convention.*
>
> 2. *Arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security.*
>
> 3. *Coastal State penalties for violations of fisheries laws and regulations in the exclusive economic zone may not include imprisonment, in the absence of agreements to the contrary by the States concerned, or any other form of corporeal punishment.*
>
> 4. *In the cases of arrest or detention of foreign vessels, the coastal state shall promptly notify the flag State, through appropriate channels, of the action taken and of any penalties subsequently imposed.*

103. It is clear that:

a. Article 73(2) UNCLOS, interpreted in good faith in accordance with the ordinary meaning to be given to the Article, puts Guinea-Bissau under an obligation to fix a reasonable bond or other security in respect of arrested vessel and its crew and to release the arrested vessel promptly upon the posting of such bond or security;

b. Article 73(4) UNCLOS, interpreted in good faith in accordance with the ordinary meaning to be given to the Article, puts Guinea-Bissau under an obligation to notify the flag state, through appropriate channels, of the action taken and of any penalties subsequently imposed. In this case, not only were the master and the owner not notified, but the Guinea-Bissau authorities did not allow the master of the *Virginia G* to inform the owner and the flag of the arrest – thus denying the owner and the flag to take timely measures.

104. In relation to Article 73(2), the owner of the vessel was ready and willing to post bonds or other security necessary for the vessel and its crew to be released, provided that it was reasonable. In fact, correspondence to this effect was sent by the owner to the Guinea-Bissau authorities. However, no reply in relation to the posting of such bond or other security was ever set by Guinea-Bissau – and this, despite the fact that the Guinea-Bissau authorities confiscated the gasoil on board the vessel. Panama contends that this was a seriously prejudicial shortcoming by Guinea-Bissau, clearly in breach of UNCLOS.

105. In relation to Article 73(4), by not taking the essential step of notifying the flag state, Guinea-Bissau hindered Panama in becoming involved, denied its right to defend its interests and those of its nationals and effectively concealed its violation of the flag state's right.

Breach of Article 226

106. UNCLOS specifically addresses the issue of unjustified delays with respect to the investigation of foreign vessels. Article 226 states:

Article 226

Investigation of foreign vessels

1.(a) States shall not delay a foreign vessel longer than is essential for purposes of the investigations provided for in articles 216, 218 and 220. Any physical inspection of a foreign vessel shall be limited to an examination of such certificates, records or other documents as the vessel is required to carry by generally accepted international rules and standards or of any similar documents which it is carrying; further physical inspection of the vessel may be undertaken only after such an examination and only when:

(i) there are clear grounds for believing that the condition of the vessel or its equipment does not correspond substantially with the particulars of those documents;

(ii) the contents of such documents are not sufficient to confirm or verify a suspected violation; or

(iii) the vessel is not carrying valid certificates and records.

(b) If the investigation indicates a violation of applicable laws and regulations or international rules and standards for the protection and preservation of the marine environment, release shall be made promptly subject to reasonable procedures such as bonding or other appropriate financial security.

(c) Without prejudice to applicable international rules and standards relating to the seaworthiness of vessels, the release of a vessel may, whenever it would present an unreasonable threat of damage to the marine environment, be refused or made conditional upon proceeding to the nearest appropriate repair yard. Where release has been refused or made conditional, the flag State of the vessel must be promptly notified, and may seek release of the vessel in accordance with Part XV.

2. States shall cooperate to develop procedures for the avoidance of unnecessary physical inspection of vessels at sea.

107. In addition to the serious shortcomings under Article 73(2) and 73(4), but without prejudice to the other contended breaches of UNCLOS, even if Guinea-Bissau had been "investigating" the activities of the *Virginia G*, this was done without basis under Article 226 and, in any case, drastically outside the limits of reasonableness called for by Article 226 (*States shall not delay a foreign vessel longer than is essential ...*").

Use of force and unreasonable measures

108. International law – applicable by virtue of Article 293 UNCLOS, requires that the use of force must be avoided as far as possible and, where force is unavoidable, it must not go beyond what is reasonable or necessary in the circumstances.

109. Panama contends that the authorities of Guinea-Bissau used intimidation and/or force unnecessarily and unreasonably in arresting the *Virginia G* and in their treatment of the crew. As better explained in the facts, the *Virginia G* was boarded without warning, in a violent and intimidating manner (without resistance) and under the threat of fire arms. Furthermore, the master was made to navigate the vessel to the port of Bissau under perilous conditions and was made to sign documents under coercion without being given copies and without being given the opportunity to contact the owner.

110. Panama further contends that the confiscation by the authorities of Guinea-Bissau of the cargo (gasoil) from on board the vessel was done in an abusive, forceful and illegal manner.

111. Moreover, it is submitted that the treatment of the *Virginia G* was discriminatory in comparison to the treatment of other foreign vessels, similarly detained by the authorities of Guinea-Bissau in the same period, and seemingly in breach of UNCLOS.

VI. REQUESTS TO THE ARBITRAL TRIBUNAL

For the reasons and legal bases abovementioned, Panama respectfully requests the arbitral tribunal to adjudge and declare that:

(a) the laws or regulations that Guinea-Bissau cited as being applicable to the vessel and its activities were not in fact applicable or enforceable against the vessel in the EEZ of Guinea-Bissau; and if they were, then as applied by Guinea-Bissau are incompatible with UNCLOS;

(b) the actions of Guinea-Bissau, *inter alia* its interpretation of "fishing related activities" and other laws, rules and concepts on which its actions were based; the forceful treatment of the Master and crew in the EEZ of Guinea-Bissau; the subsequent arrest of the vessel; its detention and the removal of the cargo of gasoil, were incorrect and unlawful, and violated the rights of Panama and the vessel to enjoy the freedom of navigation and/or other internationally lawful uses of the sea related to the freedom of navigation as set out in Articles 56 and 58 UNCLOS and the related provisions of UNCLOS;

(c) the actions of Guinea-Bissau, *inter alia* the exercise of powers beyond those warranted in terms of Article 73(1); the refusal to acquiesce to the willingness of the vessel's owner to post security in terms of Article 73(2) and the failure by Guinea-Bissau to notify the flag State of the action taken and enforcement measures or penalties subsequently imposed, prejudiced the rights of Panama and the vessel; prevented an effective safeguarding of the interests of Panama and the vessel, including, without limitation, minimising the losses; and caused serious financial damages and physical distress;

(d) the delay or length of time during which Guinea-Bissau held the *Virginia G* under arrest or detention was drastically outside the limits of reasonableness called for by

Article 226 – especially in view of the fact that the vessel's owners had expressly requested the setting up and posting of security – and that the length of the detention led to serious damages and losses incurred by the vessel;

(e) the authorities of Guinea-Bissau used intimidation and/or force unnecessarily and unreasonably in arresting the *Virginia G* and in their treatment of the crew, and that compensation is due under international law;

(f) the confiscation by the authorities of Guinea-Bissau of the cargo of gasoil from on board the vessel was done in an abusive, forceful and illegal manner and that Guinea-Bissau immediately return the gasoil, or gasoil of an equivalent or superior quality; or an amount representing the value of the gasoil so confiscated and sold by Guinea-Bissau;

(g) the treatment of the *Virginia G* was discriminatory in comparison to the treatment of other foreign vessels;

(h) as a result of the above violations, Panama is entitled to reparation for damage suffered directly by it as well as for damage or other loss suffered by the *Virginia G*, including all persons involved or interested in its operation, including injury to persons, unlawful arrest, detention or other forms of ill-treatment, damage to or seizure of property and other economic loss, including loss of profit, with interest thereon;

(i) Guinea-Bissau shall pay all damages and losses suffered as a result of all the violations set out above (which amount is indicated herein, but which is not final), with interest thereon; and that in the event of the arbitral tribunal finding against the amount quantified as compensation, that the arbitral tribunal determine the compensation due as it sees fit and proper, with interest thereon.

(j) Guinea-Bissau shall pay for all costs of these proceedings, including those incurred by Panama.

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3 June 2011

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