

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



1999

Public hearing

held on Friday, 12 March 1999, at 10.00 a.m.

at the International Tribunal for the Law of the Sea, Hamburg,

President Thomas A. Mensah presiding

in the M/V “SAIGA” (No.2)

*(Saint Vincent and the Grenadines v. Guinea)*

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**Verbatim Record**

Uncorrected Non-corrigé
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*present:*

President	Thomas A. Mensah
Vice-President	Rüdiger Wolfrum
Judges	Lihai Zhao
	Hugo Caminos
	Vicente Marotta Rangel
	Alexander Yankov
	Soji Yamamoto
	Anatoli Lazarevich Kolodkin
	Choon-Ho Park
	Paul Bamela Engo
	L. Dolliver M. Nelson
	P. Chandrasekhara Rao
	Joseph Akl
	David Anderson
	Budislav Vukas
	Joseph Sinde Warioba
	Edward Arthur Laing
	Tullio Treves
	Mohamed Mouldi Marsit
	Gudmundur Eiriksson
	Tafsir Malick Ndiaye
Registrar	Gritakumar E. Chitty

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*Saint Vincent and the Grenadines is represented by:*

Mr. Carlyle D. Dougan Q.C., High Commissioner to London for Saint Vincent and the Grenadines,

*as Agent;*

Mr. Carl Joseph, Attorney General and Minister of Justice of Saint Vincent and the Grenadines,

*as Counsel;*

Mr. Richard Plender Q.C., Barrister, London, United Kingdom,  
Mr. Yérim Thiam, Barrister, President of the Senegalese Bar,  
Dakar, Senegal,  
Mr. Nicholas Howe, Solicitor, Howe & Co., London, United Kingdom,

*as Advocates.*

*Guinea is represented by:*

Mr. Hartmut von Brevern, Barrister, Röhreke, Boye, Remé & von Werder, Hamburg, Germany,

*as Agent;*

Mr. Maurice Zogbélérou Togba, Minister of Justice,  
of Guinea,  
Mr. Rainer Lagoni, Professor at the University of Hamburg and  
Director of the Institute for Maritime Law and Law of the Sea,  
Hamburg, Germany,  
Mr. Nemankoumba Kouyate, Chargé d'Affaires, Embassy of Guinea, Bonn,  
Germany,  
Mr. Mamadou Saliou Diallo, Naval Staff Officer, Conakry, Guinea,  
Mr. Mamadi Askia Camara, Director of the Division of Customs Legislation  
and Regulation, Conakry, Guinea,  
Mr. André Saféla Leno, Judge of the Court of Appeal, Conakry, Guinea,

*as Counsel.*

1 **THE PRESIDENT:** We will now resume. Mr von Brevern?

2

3 **MR VON BREVERN:** Mr President, Honourable Judges and colleagues from the  
4 delegation of Saint Vincent and the Grenadines, I have the great pleasure and honour to  
5 introduce to you the Head of the Delegation of the Republic of Guinea , the Minister of  
6 Justice, M. Maurice Zogbélémou Togba. The Minister of Justice intends to give a  
7 declaration, not now but later on.

8

9 **THE PRESIDENT:** Thank you very much. We are very pleased to welcome  
10 His Excellency. May I now ask you, Mr von Brevern, to indicate to us the witnesses whom  
11 you intend to call today? We will then proceed to call the first one.

12

13 **MR VON BREVERN:** Mr President, Honourable Judges, the delegation of the Republic of  
14 Guinea intends to call three witnesses. We would first like to call Mr Bangoura, who was the  
15 head of the mission in connection with *M/V SAIGA*. Thereafter, we would like to call  
16 Mr Manguè Camara, who was on the small patrol boat which first arrived at *The Saiga*.  
17 Thereafter, we would like to call Mr Sow, who was on the larger patrol boat. I will conduct  
18 the examination of Mr Bangoura and Mr Camara. Mr Sow will be questioned first by  
19 Mr Diallo and later on by Professor Lagoni. If you agree, I would like to start with the  
20 witness Mr Bangoura.

21

22 **THE PRESIDENT:** Thank you very much. Before you do that, I take it that these are the  
23 only three witnesses and that the other names on your communication of 4 March will no  
24 longer be coming to the Tribunal?

25

26 **MR VON BREVERN:** That is correct, Mr President.

27

28 **THE PRESIDENT:** The witness may be called to the witness stand.

29

30

31 **LEONARD BANGOURA, sworn**

32 **Examined by MR VON BREVERN**

33

34 Q Mr Bangoura, you are a witness today in connection with the *M/V SAIGA*. You have  
35 before you and I have before me a written declaration. Is that a declaration written by  
36 you?

37 A Yes.

38

39 Q Is everything in order and does it conform to the reality of what you have put down  
40 there?

41 A Yes.

42

43 Q Could you tell the Tribunal what function you have, or had, if it was different in  
44 October 1997, when *The Saiga* was arrested? What function did you have?

45 A In October 1997 I was the head of the Brigade of the Port Customs Authority of  
46 Conakry.

47

48 Q Did you receive an order, and from whom, to search for a vessel called *M/V SAIGA*?

49 A On 26 November 1997 we received from the Customs authority a mission, an order.

1  
2 Q What was your reaction after you had received that order? What orders did you give?  
3 A We prepared this mission by setting up logistics and getting in contact with the  
4 état-major of the National Marine Authority.  
5  
6 Q Why did you have to cooperate with the Navy?  
7 A We cooperated with the Navy because we did not have adequate logistical means in  
8 order to go out on to the sea. The Navy is the body which has the patrol boats for  
9 operations at sea and we always refer to the Navy if we need to go out on to the sea.  
10  
11 Q Is my understanding correct that the boats that you used were not Customs boats but  
12 were boats from the Guinean Navy?  
13 A Affirmative.  
14  
15 Q How many patrol boats did you ask for in order to execute the order?  
16 A We asked the Navy to prepare this mission and the Navy made available to us two  
17 patrol boats, one small one and one big one?  
18  
19 Q Can you indicate the difference between the two boats in relation to size, the number  
20 of crew members and speed?  
21 A I am unable to give the speed of these two boats. I know that the smaller one is faster  
22 than the big one.  
23  
24 Q Is it correct that the small boat did not have cabins?  
25 A It has no cabins, no, not like the big patrol boat.  
26  
27 Q Is it correct that it was a so-called open air boat?  
28 A Yes, that is correct.  
29  
30 Q Could the length of that vessel be about 6 metres?  
31 A Yes, about that.  
32  
33 Q After you had contacted the Navy, you had to organise the trip out. Did it take some  
34 hours before you could go?  
35 A Yes.  
36  
37 Q Why? What had to be organised?  
38 A This delay was due to logistics. We had to find fuel, we had to find food for those  
39 who were on board. It was due to logistics.  
40  
41 Q Did you also have to organise arms?  
42 A Yes.  
43  
44 Q I understand that on these two vessels the crew of the Navy was the ordinary crew and  
45 then your people from the Customs side. Is that correct?  
46 A That is correct.  
47  
48 Q Did all these people, including the Navy people and the Customs people, wear arms  
49 and have arms? Did you organise arms for everybody?

1 A No.  
2  
3 Q For whom did you or someone else organise arms?  
4 A We Customs officers on board numbered 14 for the entire mission. Seven had  
5 PMAK. As far as the Navy were concerned, the crews were in charge of the boats  
6 and they were not armed.  
7  
8 Q So I understand that seven members of that mission had PMAK. Is that a machine  
9 gun? Do you know the calibre?  
10 A These are 762 individual guns.  
11  
12 Q Is PMAK a short form for a Kalashnikov?  
13 A Yes, it is a pistol.  
14  
15 Q And besides that pistol of the seven crew members, did you have any further  
16 ammunition on board?  
17 A No, there was no ammunition.  
18  
19 Q Do you remember that one, or perhaps two, both patrol boats, had a cannon on board?  
20 A Could you repeat your question please?  
21  
22 Q On the patrol boat, was there installed constantly, firmly installed, a machine gun or a  
23 cannon?  
24 A On board the two patrol boats they have arms, yes.  
25  
26 Q Did you organise ammunition for these firmly installed machine guns?  
27 A No, these arms were not used, and they are part of the vessel and they are built in by  
28 the factory, by the builder of the ship.  
29  
30 Q Yes Mr Bangoura, but I understood that for you to use these you did not have  
31 ammunition and it was not organised, it was not taken on the mission.  
32 A Yes, we did not have any such ammunition on board.  
33  
34 Q What happened after you were then organised and the mission could start; can you tell  
35 us on which of the two patrol boats you were?  
36 A I was on the larger patrol boat.  
37  
38 Q Did you both leave Conakry?  
39 A No.  
40  
41 Q Which one left first?  
42 A The small patrol boat.  
43  
44 Q Do you know which aim the small patrol boat had, what should she do?  
45 A It was a reconnaissance mission to the north.  
46  
47 Q So the small patrol boat when leaving Conakry has received a position where to go?  
48 A Yes.  
49

1 Q And is it correct that it was the *M/V SAIGA* which the small patrol boat should go to?  
2 A Yes.  
3  
4 Q And is it correct that the small patrol boat went because it was faster, organised, it  
5 was ready before the large patrol boat was ready to go, and is it correct that there was  
6 another reason; that the small patrol boat has a greater speed to reach *The Saiga*?  
7 A Yes.  
8  
9 Q So is it correct that the idea was that the small patrol boat should stop *The Saiga*?  
10 A Yes.  
11  
12 Q Did the small patrol boat reach *The Saiga* after she left Conakry?  
13 A No.  
14  
15 Q What happened; why not?  
16 A From our ground base we were informed that *The Saiga* had moved, and this is why  
17 we recalled it in order to then go out on the big patrol boat.  
18  
19 Q So the small one was ordered back, and is it correct that then both vessels met at a  
20 point which was outside the port of Conakry?  
21 A Yes.  
22  
23 Q After that, do you remember what happened then? The order I understand was to  
24 look for *The Saiga*. Do you remember what the two patrol boats then did in order to  
25 get to *The Saiga*?  
26 A When the two patrol boats were together in parallel with one another, we made a  
27 southerly heading. At a certain point in time during the small hours of the morning  
28 I was informed by the Captain of the ship who had seen me on his radar, he took me  
29 to his radar and he showed me that there were many visible points on the radar, there  
30 were visible objects there. After a communication which we looked at together, and  
31 after the calculations which he had to do, he indicated an object to us which seemed to  
32 be the vessel we were searching for.  
33  
34 Q Do you remember about when that was? You speak of the morning, is that correct, of  
35 28 October. Do you remember at about what time?  
36 A It was about 3.30 in the morning.  
37  
38 Q I assume that before you went to that point you had been on the sea for several hours,  
39 and you had made quite a great distance to come to that point which you were just  
40 referring to, is that correct? Out of Conakry to that point.  
41 A Yes.  
42  
43 Q You also told us that you had taken the southern direction, is that correct? In the  
44 direction of the border of the neighbouring country Sierra Leone.  
45 A Yes.  
46  
47 Q By chance did you, when you received from the patrol boat the information that they  
48 had seen and now discovered *The Saiga* on the radar, did you by chance ask about the

1 position of the vessel, or more concrete, did you ask whether you are still in the  
2 Guinean waters?  
3 A Yes, I put the question to the Master of the patrol boat.  
4  
5 Q What was the answer?  
6 A He said that *The Saiga* was in Guinean waters.  
7  
8 Q And thereafter what did you and the other patrol boat do, after you had discovered  
9 *The Saiga*?  
10 A We continued on course towards the object.  
11  
12 Q Do you know about what distance it was from your position to the position of  
13 *The Saiga* at that moment when you discovered it there?  
14 A According to what I was told, because I am not a sailor myself, we were about 44 or  
15 45 nautical miles from *The Saiga*.  
16  
17 Q Is it correct that such a distance would be too long to leave the small patrol boat now,  
18 to go alone to *The Saiga*, and is it correct that there is another reason why she could  
19 not yet go alone, because she is not so able to operate on the high seas?  
20 A We could not leave the small patrol boat over a distance like this.  
21  
22 Q So you proceeded to the south, both patrol boats together?  
23 A Yes.  
24  
25 Q Did you finally come to a point where it was decided that the small patrol boat which  
26 could go much faster should now go alone?  
27 A Yes.  
28  
29 Q Do you remember about the distance from that point to *The Saiga*?  
30 A According to what I was told, we were between 10 and 11 miles from *The Saiga*.  
31  
32 Q What did you see in relation now to the small patrol boat which left you? You do not  
33 understand my question? If I understood you, the small patrol boat left you with  
34 *The Saiga* at a distance of 10 miles. One felt that this was a distance which the small  
35 patrol boat could go alone because you would not be so fast, but you would reach her  
36 in due time and then assist her, is that correct?  
37 A Yes.  
38  
39 Q The small patrol boat, when it left you, did it switch on any light, any sound? Have  
40 you seen something, have you heard something?  
41 A When the small patrol boat left us and headed for *The Saiga* I was on the deck, and  
42 I saw a blue rotating light and I heard its siren.  
43  
44 Q You yourself were on the big patrol boat. Do you remember about when you arrived  
45 at *The Saiga* time-wise from the time when the small patrol boat left you; how long  
46 did it take for you, about, for these 10 miles, to go to *The Saiga*.  
47 A I think that we arrived at the *The Saiga* at about 9 or 9.05, something like that.  
48  
49 Q What did you find there? What did you see?



1 A On arrival?  
2

3 Q Perhaps you could explain to the Tribunal what the situation was when you came  
4 there. What was with *The Saiga*? Was it already immobilised, what did you see  
5 about the crew? Can you explain a little bit?

6 A When we arrived at *The Saiga* we saw that it had already been stopped and that our  
7 people were on board. On the deck I saw some members of the crew who had been  
8 shown to me, who were presented to me, by those of us who were already on board.  
9 There were three of the crew members. After they had been presented to me, they  
10 then found others and brought them, again numbering three.  
11

12 Q You told us *The Saiga* had already stopped. Was the Captain with the people from  
13 the small patrol boat? Did you meet the Captain at once when you came on board?

14 A No.  
15

16 Q Did you finally talk to the Captain?

17 A When the second three were brought to me I asked who the Captain was. Nobody  
18 came forth. One of the two who were shown to me pointed the Captain out.  
19

20 Q When you arrived at *The Saiga* did you see that there might have been a fight? Did  
21 you see any damage to the vessel?

22 A No, at first sight when we boarded the vessel we were unable to see what had  
23 happened because I was on deck.  
24

25 Q I understand that. When finally the crew was found, also the Captain, did you explain  
26 to him that the vessel would have to go to Conakry and would be arrested?

27 A Yes.  
28

29 Q On your way then to Conakry, did you remain on board *The Saiga*, do you remember?

30 A No, I was in the big patrol boat on the return journey.  
31

32 Q Did you inspect the vessel before you returned to your patrol boat, vessel *Saiga* more  
33 deeply and did you realise, did you see, damage on the vessel?

34 A There was no major damage because when I asked the Captain to have his crew  
35 assemble on the deck there we went into his cabin and I saw that the first door was  
36 broken in order to go into the pilot house.  
37

38 Q I understand that after *The Saiga* arrived in Conakry you were often on board *Saiga*.  
39 At that time did you see -- perhaps there you had more chance to see more parts of the  
40 vessel -- more damage than at the first moment on the high seas?

41 A No.  
42

43 Q Can you tell us when you escorted *The Saiga* into the port of Conakry what was the  
44 status of the vessel? What was the status of the crew? Have they been in detention,  
45 have they been arrested, could they leave the vessel if they so wanted?

46 A The members of the crew were never in detention. They were free to leave the vessel  
47 at any point in time.  
48

1 Q As Customs, you had brought the vessel into the port of Conakry. Did you feel  
2 responsible for the vessel in any way and did you do anything in that connection?  
3 A Yes. We put guards on board for the security of the members of the crew and the  
4 vessel itself.  
5  
6 Q Have there been any representatives, agents representing the vessel, crew or owner  
7 contacting you with the wish to see the crew and go on board?  
8 A Yes. Mr Colin, who wrote a letter on this subject.  
9  
10 Q Is it correct that you have annexed this letter to your statement?  
11 A Yes.  
12  
13 Q It is the letter of the P & I Club correspondence to M Le Directeur Nationale of  
14 3 November 1997. Is that correct?  
15 A Yes.  
16  
17 Q Did these gentlemen for whom authorisation has been asked get the authorisation to  
18 go on board?  
19 A Yes, they had the authorisation.  
20  
21 Q Was it the next day to the date of that letter that they went on board?  
22 A Yes, 4<sup>th</sup>.  
23  
24 Q On another subject, did you talk to anybody or have you been contacted by anybody  
25 who wanted to have the vessel made free?  
26 A Yes. It is in the annex. We were contacted by the representative of Seascot.  
27  
28 Q What is his name? Perhaps I can help you.  
29 A It was Mr Laszlo.  
30  
31 Q What did you negotiate with him? What was and is the purpose of the annex you  
32 have annexed to your declaration? Could you enlighten the Tribunal?  
33 A Since the arrest of the vessel in Conakry, Mr Laszlo, the representative of the owner  
34 of the ship, came, accompanied by his lawyer, Maître Ivor Bakarbari. He contacted  
35 the Head of Customs and it is thus that, when he contacted the National Director of  
36 Customs in order to obtain the prompt release of his vessel, because according to him  
37 he was not interested in the cargo, that what he wanted was to obtain the release of the  
38 vessel. When he read the estimation of the value of the vessel, he had the possibility  
39 to discuss with the Customs. He came and approached Customs for this transaction.  
40 After preliminary discussions, he was received by the Director of Customs who asked  
41 him to lay this down in writing, to write something, to put down the agreed  
42 transaction in writing. It is thus that this correspondence, which is appended to my  
43 declaration and deposition in Annex 2, was done by Mr Laszlo Merenyi and it was  
44 submitted to the Head of the Mobile Brigade of Customs who were to submit it to the  
45 National Director of Customs.  
46  
47 Q So I understand that it was the representative of the shipowner that offered to the  
48 Guinean Customs, to you, an amount of 250 million Guinean francs. Is that correct?  
49

1 **DR PLENDER:** Mr President, I wish to register an objection and protest to this line of  
2 questioning. According to article 72 of the Court's Rules of Procedure, a party is obliged to  
3 communicate to the Registrar in sufficient time before the opening of the proceedings  
4 information regarding the evidence that it is to produce. Mr President, you directed that this  
5 should be done. The Respondent State indicated that it would call Mr Bangoura to provide  
6 evidence about the laws and regulation of Guinea, the enforcement rules of Customs laws,  
7 the applicability of the laws to *The Saiga* and the legal measures taken against fishing  
8 vessels.

9  
10 The evidence now given has nothing to do with any of those questions. It comes as  
11 a complete surprise. It raises issues which should have been put to Mr Merenyi. He was  
12 here; he could have been asked questions about this and he could have answered them. He  
13 has now been released. To present this account without any warning, written or oral, after  
14 the departure of Mr Merenyi, is in flagrant violation of the Rules of Procedure.

15  
16 **THE PRESIDENT:** Mr von Brevern, do you have any response to that?

17  
18 **MR VON BREVERN:** If I have understood my colleague Dr Plender correctly, he regrets  
19 the situation that Mr Merenyi is no longer present because otherwise he could have put  
20 questions to Mr Bangoura. As far as I know your Rules, it is in no way possible that a  
21 witness of a party puts questions to the witness of another party, and therefore I would like  
22 you not to follow the objections of my colleague.

23 **THE PRESIDENT:** Mr von Brevern, I think that the point made does not turn on  
24 Captain Laszlo. That is secondary. I must say that because there have been two Bangouras,  
25 my attention was not immediately drawn to the fact that Commander Léonard Bangoura, who  
26 is giving evidence now, is the person named in paragraph 5 of your communication to the  
27 Tribunal dated 4 March.

28  
29 That communication was given to the Tribunal in accordance with the requirements  
30 of article 72 of the Rules of the Tribunal. As Dr Plender quite rightly points out, in that you  
31 had indicated the line and the matters on which this witness was to be called. It has now been  
32 brought to my attention, and I think it is very pertinent, that in fact he has now been asked to  
33 give evidence on a completely different subject matter. I think that it is in that context that  
34 the issue of Captain Laszlo's presence or otherwise has been raised. This concerns not only  
35 the other party. If the Tribunal had been aware that information was to be given and  
36 evidence was to be addressed to matters involving his relationship with the authorities in  
37 Guinea, quite clearly the Tribunal would have been interested to know the reaction of Saint  
38 Vincent and the Grenadines. In the event, neither the Tribunal nor, I presume, the other  
39 party, could have known that this matter was going to be put in evidence. Therefore I believe  
40 that the evidence that you are now adducing from Léonard Bangoura is not the evidence that  
41 you informed the Tribunal you would be asking of him. That evidence cannot, therefore, be  
42 permitted to be given because it would be contrary to the Rules of the Tribunal.

43  
44 I think that it is also fair to say that it will be unfair not only to the other party but also  
45 to the Tribunal. It is, in effect, a surprise to all of us.

46  
47 **MR VON BREVERN:** Mr President, Honourable Judges, all the statements of the witnesses  
48 presented by Saint Vincent and the Grenadines we received only very recently before they  
49 were called. Therefore, so far there is no difference from the statement of Mr Bangoura,

1 which we have presented to you. We are on the same lines. The subject on which  
2 Mr Bangoura was, indeed, nominated to you, was the customs legislation. You will realise  
3 that we had nominated two witnesses to you. We thought that we would not call the other  
4 witness because it would be sufficient to have one. I am still firmly of the opinion that  
5 everything that Mr Bangoura has told us is in connection with the Customs legislative  
6 situation in Guinean waters.

7  
8 There is one point under the issues I have mentioned in connection with  
9 Mr Bangoura; that is, applicability of Guinean laws to *M/V SAIGA*. Mr President, I think that  
10 everything said here could be put under this heading.

11  
12 **THE PRESIDENT:** Mr von Brevern, the point I am making, which I think is the same point  
13 that was made by Dr Plender, is not the question of what Captain Bangoura knows or does  
14 not know. The question is that in your communication, which was required under our rules,  
15 you informed us that Captain Bangoura and Mr Mamadi Camara will be giving evidence on  
16 the laws and regulations of Guinea according to which offshore bunkering in the Customs  
17 radius is prohibited; the enforcement rules of Custom laws; applicability of Guinean laws to  
18 *M/V SAIGA* and legal measures taken against the fishing vessels after having been supplied  
19 by *M/V SAIGA*.

20  
21 This is expert evidence. In your letter you said there would be witnesses and experts  
22 and I have actually marked "experts". That would be the correct designation. The evidence  
23 that you are adducing now is not expert evidence but factual evidence relating to the events  
24 leading to the arrest of *M/V SAIGA*. This aspect was not, at any time, indicated for  
25 Mr Bangoura, although you had indicated that another of the witnesses that you intended to  
26 call, Sub-Lieutenant Manguè Camara, was going to give evidence about this. Dr Plender's  
27 point and my point is that this line of questioning now is completely contrary to the  
28 information that you gave. Since that information was not given within the time limit, that  
29 information cannot be given. You can question Mr Bangoura on the issues in respect of  
30 which you have previously informed the Tribunal. Therefore, the information that he has  
31 given and the evidence that he has given up until now will, in my view, be struck off the  
32 record because it is contrary to the Rules of the Tribunal. That is my ruling.

33  
34 **DR PLENDER:** Mr President, before Mr von Brevern replies, I am prepared to go some  
35 way in his direction. The point to which I raise particular objection is that Mr Bangoura  
36 should be asked about exchanges between him and Captain Merenyi. There is no indication  
37 whatever that he was to be asked about these points. Had we known that evidence was to be  
38 given about negotiations with Captain Merenyi, we would, of course, have asked Captain  
39 Merenyi about this and asked him to remain. If Captain Bangoura is, notwithstanding what  
40 the President has said, to be asked questions about the mission and his presence on the  
41 mission, I, for my part, am quite prepared to allow Mr von Brevern latitude on that. But we  
42 are placed at a serious disadvantage when the witness is asked to explain exchanges between  
43 himself and Captain Merenyi, without warning.

44  
45 **THE PRESIDENT:** Thank you very much. I am very grateful for that accommodation.  
46 However, I think that the issue is fundamental as far as the Tribunal's rules are concerned.  
47 We now have evidence of a completely novel kind. We have a situation in which the witness  
48 is being led to give evidence that the Tribunal has not been informed about. It is, of course,  
49 entirely for you, Mr von Brevern if you wish Captain Bangoura to give evidence of the type

1 that you said another witness was going to give. But, as I have said, I do not believe that this  
2 line of questioning at this time, to this witness, is permissible.

3  
4 As Dr Plender has said, it will create a very difficult situation. In the discussions  
5 between the agents, the issue was raised as to whether any of the witnesses should be  
6 permitted to stay. You have suggested that you might wish, in the light of evidence, to  
7 question the witnesses again. At that point it was entirely possible and appropriate for you to  
8 have indicated that this possibility existed. I am sure that if you had indicated the possibility  
9 of exchanges between one of your witnesses and one of the witnesses of Saint Vincent and  
10 the Grenadines, either Dr Plender or myself would have understood and appreciated the need  
11 for certain arrangement. Either an arrangement would have been made or some other  
12 solution would have been found.

13  
14 Unfortunately you did not give us this information. It is possible that you did not  
15 have it, but I think it would be totally contrary to our rules to permit this line of questioning  
16 to be given: first because insufficient notice has been given to the other party but, much more  
17 importantly, because it is entirely contrary to the information that you gave to the court as  
18 regards the line of evidence to be provided by this witness. This witness can, of course,  
19 continue to provide evidence on the lines that you suggested you were going to call; that is  
20 the circumstances leading to the arrest of *The Saiga*. But if you want this witness to deal  
21 with negotiations between the representatives of *The Saiga* after the arrest and the arrival in  
22 Conakry, I would respectfully tell you that this Tribunal would not be able to accept that  
23 evidence at this stage for the reasons given.

24  
25 **MR VON BREVERN:** I, indeed, had the wish, and I put it to the other party, that we would  
26 like Captain Laszlo to remain here after our witnesses have been heard so that we would have  
27 a chance to call Captain Orlov again.

28  
29 **PROFESSOR LAGONI:** Captain Laszlo?

30  
31 **MR VON BREVERN:** No, no, Captain Orlov It is quite a different story. We said that we  
32 would like to put questions to Captain Orlov later on in the proceedings. That has not been  
33 accepted by the agent of Saint Vincent and the Grenadines. Therefore, I am not too happy  
34 about this reaction now, but I was nearly at the end. It was really the very last question.  
35 Why I put this question – and I could not know this before when I nominated the agents and  
36 witnesses – is because I was very surprised during the presentation of the witness to hear  
37 about negotiations Captain Merenyi had in Guinea. I think that nobody knew that before.  
38 However, I will accept what you have said, but only if you will allow me --- We have heard  
39 this witness; we have received, at this stage an objection from Dr Plender. I am of the  
40 opinion that you have said that so far you accepted the objection; that as of now I am not  
41 allowed to put any further questions. However, I would very much like you not to strike out  
42 all the questions I have put before. Dr Plender could have objected before but he did not.  
43 Therefore, I am at the end of questioning the witness. Thank you very much, Mr President.

44  
45 **THE PRESIDENT:** Mr von Brevern, I think you have misunderstood me. I did not say that  
46 we have struck out the evidence given by the witness. I have repeated that since you have  
47 indicated that you are going to call evidence with regard to the circumstances leading to the  
48 arrest of *The Saiga*, you are perfectly within your rights to present that to us. I was talking  
49 about the evidence concerning the negotiations between the witness and Captain Laszlo.

1 That evidence was not foreshadowed in your communication to the Tribunal and it was not  
2 foreshadowed in the communications that you had with the other parties under my good  
3 offices. That is what I was referring to. If you wish to continue your line of questioning with  
4 regard to the circumstances leading to the arrest of the vessel, that is perfectly in order.  
5

6 **MR VON BREVERN:** Thank you very much, Mr President. I fully accept your decision,  
7 and I am indeed at the end of my examination.  
8

9 **THE PRESIDENT:** Thank you very much indeed. Dr Plender, would you like to cross-  
10 examine? Just a moment, Dr Plender. Professor Lagoni, please.  
11

12 **PROFESSOR LAGONI:** Mr President, would you allow me to ask the witness one or two  
13 short additional questions along the line that Mr von Brevern has taken?  
14

15 **THE PRESIDENT:** Yes, that will be perfectly all right.  
16

17 **PROFESSOR LAGONI:** Can I do it from *here*?  
18

19 **THE PRESIDENT:** No, I think it would be much better for you to do it from the podium.  
20

21 **MAITRE THIAM:** Mr President, I would like to take advantage of this matter which you  
22 have settled to raise another one. The Guinean party in the letter of 4 March 1999, to which  
23 you have referred, stated that Mr André Saféla Lenaud, the magistrate, should be heard as an  
24 expert. Now we have heard from the Guinean side that Mr André Saféla Lenaud was a  
25 member of the Guinean delegation, and we would like to have some more information on this  
26 point. We would like to know if the spelling of the name of M. Lenaud in the letter of  
27 Mr von Brevern is correct. In a judgment of the Court of Appeal of Guinea dated 3 February  
28 1998 which convicted Captain Orlov, we find another spelling – André Saféla Lenaud, but  
29 this time the name Lenaud is written L-e-n-o – and we would like to ask the Guinean party to  
30 explain this to us in order to see whether this is indeed one and the same person.  
31

32 **THE PRESIDENT:** Mr von Brevern, I would be grateful if you could clarify the matter  
33 raised by Maître Thiam.  
34

35 **MR VON BREVERN:** Mr President, I have no doubt that the name as I have mentioned it  
36 in the letter which Maître Thiam quoted is correctly written.  
37

38 **THE PRESIDENT:** Thank you very much. Maître Thiam, does that satisfy you?  
39

40 **MAITRE THIAM:** That is not a reply to my other question. Is it one and the same person  
41 who signed the judgment of the Court of Appeal of Conakry concerning Captain Orlov?  
42

43 **MR VON BREVERN:** Mr President, I am sorry to say that I have to correct myself. The  
44 correct spelling is L-e-n-o.  
45

46 **THE PRESIDENT:** The more important question as I see it, as asked by Maître Thiam, is  
47 whether M. André Saféla Leno (L-e-n-o) is one and the same person as the person who  
48 signed the judgment against the captain.  
49

1 **MR VON BREVERN:** I cannot see that this question is of so much importance, but I can  
2 answer this in the affirmative.

3  
4 **THE PRESIDENT:** This gentleman is not now going to appear as an expert on behalf of  
5 Guinea?

6  
7 **MR VON BREVERN:** No. It has been decided that Mr Lenaud would be part of the  
8 delegation and would address the Court in that capacity, instead of being an expert.

9  
10 **THE PRESIDENT:** I would suggest, Maître Thiam, that we cross the bridge when we come  
11 to it. It is, of course, entirely up to the agent of Guinea to call any person, and at that point it  
12 would be within the rights of the applicant and also the responsibility of the Tribunal to  
13 determine whether, in the light of antecedent facts, the appearance of the person for the  
14 purpose intended will be appropriate or not. I would therefore suggest that we leave the  
15 matter pending until the appropriate time.

16  
17 **MAITRE THIAM:** Thank you, Mr President. However, if I have understood it correctly,  
18 Mr Lenaud will not be called as an expert, because he is in the room, nor as a witness.

19  
20 **THE PRESIDENT:** That is correct.

21  
22 **MAITRE THIAM:** Even though he will come to address the Tribunal as a magistrate who  
23 has convicted Mr Orlov and he is going to support the position of the State of Guinea, is that  
24 correct?

25  
26 **THE PRESIDENT:** I understand that he will be addressing the Court in some capacity on  
27 some points which I think will become apparent later on. I think that Mr von Brevern is quite  
28 clearly going to take advice about this matter, in the light of this exchange.

29  
30 **MAITRE THIAM:** Thank you, Mr President.

31  
32 **THE PRESIDENT:** Professor Lagoni, please.

33  
34 **Examined by PROFESSOR LAGONI**

35  
36 Q Mr Bangoura, in addition to what Mr von Brevern asked you, I would like to ask you  
37 a few more questions. The first is in relation to a *procès-verbal*, number 29, the date  
38 of which is 31 October 1997. Who wrote this *procès-verbal*? You can see it here.  
39 Do you want to have a look at it?

40 A *...(missing English translation)..* was the head of the Mobile Brigade.

41  
42 Q Is it signed by you, or is it not from you?

43 A No. We, the Customs, worded it but it was the Head of the Mobile Brigade who  
44 signed it.

45  
46 Q The Mobile Brigade is from the Navy?

47 A No, it belongs to Customs.

48

1 **DR PLENDER:** Mr President, I think there may be a small translation point from German  
2 to English. The witness has been asked about a *procès-verbal* of the 31<sup>st</sup>. We have  
3 a *procès-verbal* of the 13<sup>th</sup>. I think that Professor Lagoni may be referring to the 13<sup>th</sup>  
4 and describing it as the 31<sup>st</sup>. Perhaps we may have that point checked.

5  
6 **PROFESSOR LAGONI:** Mr President, I think we are talking about the same *procès-verbal*  
7 which is annexe 19 to the Memorial, and the date as I read it is the 31<sup>st</sup>, but I think it  
8 does not make any difference. It is "Conakry le 31/10/97" on page 271 of your  
9 Memorial.

10  
11 **MAITRE THIAM:** Mr President, we are talking about the same document but it is certainly  
12 dated 13 November, and perhaps if you look at it closely you can see it for yourself.

13  
14 **PROFESSOR LAGONI:** Mr President, this may be right. I am looking at the signature in  
15 Conakry on page 271. This is obviously the signature of the captain on the 31<sup>st</sup>.  
16 Thank you very much.

17  
18 Q So it is not made by you. Who gave the information in this *procès-verbal*?

19 A I said that we, the Customs, drafted the document.

20  
21 Q In the *procès-verbal*, there were some specific times and hours given. *Inter alia*, it  
22 says in the English version "At about 4 o'clock on the following day." Was this given  
23 from your estimation?

24 A Yes.

25  
26 Q I have another question. How many officials from the Customs were on board the  
27 small patrol boat?

28 A Three.

29  
30 Q Were they all armed?

31 A The three, yes, with PMAK.

32  
33 Q Could the Customs officials use the mounted machine gun on the small patrol boat?

34 A No.

35  
36 Q When do Customs use weapons? You called them pistols. In which situations are  
37 you allowed to use them?

38 A If there is someone fleeing, for example.

39  
40 **PROFESSOR LAGONI:** I have no further questions. Thank you, Mr President.

41  
42 **THE PRESIDENT:** Thank you, Professor Lagoni. Dr Plender, please.

43  
44 **Cross-examined by DR PLENDER**

45  
46 Q Mr Bangoura, I want to ask you a few questions. Perhaps you will allow me first of  
47 all to inform you that the questions which I am going to ask you are not on my behalf,  
48 nor for the State of Saint Vincent and the Guineas, but in order to shed some light on  
49 this for the Tribunal. Do you understand me?



1 A (no reply)  
2  
3 Q Do you see any disadvantage in having such light shed on the subject?  
4 A Yes. You see, this is not appropriate. I would like to have my advocate here.  
5  
6 Q Mr Bangoura, I am asking you several questions to inform the Tribunal.  
7 A Yes, but I would like my advocate to be here to help me in my response.  
8  
9 Q You have your advocate and you are under the direction of the President.  
10  
11 **THE PRESIDENT:** Mr Bangoura, you do not have an advocate. You are a witness for this  
12 Tribunal. You are not charged with or accused of any offence. You are here to  
13 provide evidence to assist the Tribunal.  
14 A Thank you Mr President. I do apologise.  
15  
16 **MR PLENDER:** Mr Bangoura, for how long have been working for the Customs?  
17 A Me?  
18  
19 Q Yes.  
20 A 25 years.  
21  
22 **MR VON BREVERN:** Mr President I intervene, but is it correct that Mr Plender asked, or  
23 told the witness, I have not quite understood, that he puts questions to the witness not  
24 on behalf of St Vincent and the Grenadines, but for whom else? Perhaps I can ask for  
25 clarification. For whom does he put these questions?  
26  
27 **THE PRESIDENT:** Mr Plender?  
28  
29 **MR PLENDER:** If there is a misunderstanding I do apologise. I am an advocate of  
30 St Vincent, but I wanted to say is that the truth is important, not for me, not for  
31 St Vincent, but for the Tribunal. Have you understood?  
32 A Yes.  
33  
34 Q According to you, with your experience of 25 years you have undoubtedly been  
35 trained for your functions?  
36 A Please continue, because I have not heard the question.  
37  
38 Q The reply is yes, you did receive training?  
39 A Yes.  
40  
41 Q And this training informs you of certain elements concerning your competence?  
42 A. Yes.  
43  
44 Q In what zone of the sea are you competent?  
45 A Our competence extends to 150 km from the coast.  
46  
47 Q Thank you. This is the customs zone, maritime customs zone?  
48 A Yes.  
49

1 Q And what are the relations between this customs zone and the economic zone of  
2 Guinea?

3 A The relation between the economic zone? Could you rephrase your question please?  
4

5 Q Do you consider that you are competent beyond the exclusive economic zone if you  
6 are in the customs zone?

7 A I ask you with respect to see article 34 of the Code des Douanes. This will reply to  
8 your question.  
9

10 Q And it is article 35 which says that the Customs zone extends to 250 km, is it not?  
11 A No, not article 35; article 34. I did not say 35.  
12

13 Q I am sorry, it was my error. But the question is to know whether this article is the  
14 article which mentions the 250 km.

15 A Yes.  
16

17 Q So you consider that your competence is regulated by this article according to the  
18 national law.

19 A Yes.  
20

21 Q And if you embark on a mission you concentrate on this customs zone?  
22 A Yes.  
23

24 Q Your attention is not fixed to the limits of the exclusive economic zone, it is rather  
25 fixed on the customs zone, the maritime zone?

26 A Exactly.  
27

28 Q Thank you. Do you think that one of your duties is to prevent bunkering of fishing  
29 vessels in this customs zone?

30 A The vessels authorised may do so, but those which are not authorised must not.  
31

32 Q Do you consider that one of your functions is to prevent bunkering of those vessels  
33 which do not have a permit?

34 A Yes.  
35

36 Q Does bunkering of vessels in the economic zone pose a problem for Guinea?  
37 A It does pose an economic problem, yes.  
38

39 Q Is there in Guinea earth-bound radar to follow ships in the customs area?  
40 A The Customs does not have radar. I cannot reply to that question.  
41

42 Q So if a document in front of this Tribunal claims that there is terrestrial radar in  
43 Guinea then this would not have been exact?

44 A Could you rephrase your question please?  
45

46 Q If there is a document which claims that Guinea has terrestrial radar, this document  
47 would not be true?

48 A Of the Customs?  
49

1 Q No, if there is a document in front of this Tribunal which says that Guinea has  
2 terrestrial radar, such an affirmation would be imprecise?  
3 A I could not affirm this.  
4  
5 Q Thank you. How many foreign vessels have you arrested in the customs area of  
6 Guinea during your career of 35 years?  
7 A My career of 25 years does not only cover arresting vessels.  
8  
9 Q Well of course. But would you be so kind as to reply to my question. How many  
10 vessels have you arrested?  
11 A In the same case?  
12  
13 Q During your career. Could you give us a global number?  
14 A Well I have taken part in no operation of this kind.  
15  
16 Q So this was your first experience of such a matter. Are you saying to the Tribunal that  
17 this is the first time in your career of 25 years that you have participated in the arrest  
18 of a vessel in the Guinean economic zone?  
19 A In the maritime zone I have participated in one operation.  
20  
21 Q And this operation, this is the operation concerning the vessel *Saiga*?  
22 A No.  
23  
24 Q There was another operation?  
25 A I have been asked about my experience, and I said I participated in one operation.  
26 The second operation was *The Saiga*.  
27  
28 Q And the first one, could you give us the name of the vessel?  
29 A *AFRICA*.  
30  
31 Q Thank you. And you were not involved in the attack on the tanker *NAPETCO*?  
32 A No.  
33  
34 Q Were you informed of this attack?  
35 A No, there was no attack.  
36  
37 Q There was no attack on the *NAPETCO*?  
38 A No attack.  
39  
40 Q Was the *NAPETCO* arrested?  
41 A It was arrested, yes, but there was no attack.  
42  
43 Q So you were informed of an operation concerning the *NAPETCO*?  
44 A Yes.  
45  
46 Q And this operation, did it take place in the customs zone?  
47 A I do not know, I did not take part in the operation. I was informed by a Customs  
48 official.  
49

1 Q You were informed of the arrest of the vessel inside the customs zone of Guinea?  
2 A Well I said that I did not deal with this case. I was informed. When you are in this  
3 department and a problem arises, you will be informed, but I did not deal with this  
4 case, I do not know anything about it.  
5  
6 Q And your testimony was that you do not know whether this vessel was arrested inside  
7 or outside the Guinean zone?  
8 A No I am saying that I cannot affirm this because I did not take part in the operation. I  
9 was informed by an official of my administration, that was all, but if you ask me how  
10 it happened I cannot confirm this here.  
11  
12 Q Mr Bangoura, if you do not know, there is no objection to your replying "I do not  
13 know." But what I asked you was if the *NAPETCO* had been arrested beyond the  
14 Guinean zone?  
15 A Sir, I am telling you I do not know about this case of the *NAPETCO* because I did not  
16 deal with the file. I cannot reply what its position was when it was arrested, and what  
17 happened, I do not know.  
18  
19 Q Thank you. Do you have permanent instructions on the use of arms against  
20 commercial vessels?  
21 A Could you rephrase your question please?  
22  
23 Q Are there permanent instructions concerning operations of the Customs Service, in  
24 particular with regard to the use of weapons?  
25 A No, there are no special instructions, no permanent instructions either.  
26  
27 Q You have absolutely no instructions on the use of weapons?  
28 A The instructions concerning weapons, on the use of weapons? I do not understand  
29 your question, could you rephrase it please?  
30  
31 Q The Guinean Customs officials, do they have instructions concerning the  
32 permissibility of the use of weapons?  
33 A No. Within the powers of the officials they are authorised to carry weapons.  
34  
35 Q I am going to ask you some questions regarding the mission against *The Saiga*. Is it  
36 correct to say that you received the order of the mission on 26 November?  
37 A Yes, the order for the mission was drawn up on 26 November.  
38  
39 Q And this order was communicated to you on 26 November?  
40 A The head of the mission, yes.  
41  
42 Q What time?  
43 A I do not remember.  
44  
45 Q According to the information that you received, could *The Saiga* have entered the  
46 Guinean zone on 26 November?  
47 A No.  
48  
49 Q According to this information where was this vessel on 26 November?

1 A The 26 November?  
2  
3 Q 26 November, yes. I apologise, I should have said 26 October. I do apologise.  
4 A Repeat your question please?  
5  
6 Q Is it true that you received the order for the mission on 26 October?  
7 A The head of the mission received the order for the mission on 26 October.  
8  
9 Q And according to the information which you had at the time, where was *The Saiga*  
10 located?  
11 A *The Saiga* was located to the north.  
12  
13 Q Within the Guinean zone or beyond the Guinean zone?  
14 A Beyond the Guinean zone.  
15  
16 Q If the vessel were outside the Guinean zone, why did the Guinean authorities bother  
17 about it?  
18 A Well, they knew that they were going to continue and they were going to rendezvous  
19 with certain vessels.  
20  
21 Q On what date did you set out from the port of Conakry?  
22 A 27<sup>th</sup>.  
23  
24 Q On 13 November did you sign a *procès-verbal* concerning *The Saiga*?  
25 A Yes.  
26  
27 Q Was this *procès-verbal* precise?  
28 A Yes.  
29  
30 Q In the very first line you say that you set off from Conakry on 26 October. Is that true  
31 or not? We will show you a copy.  
32 A 26 October, is that what is written?  
33  
34 Q Yes?  
35 A No. In execution of the order of the mission of 26 October we did not leave Conakry  
36 on 26<sup>th</sup>.  
37  
38 Q The copy is not very legible. This mission against *The Saiga*, was it of a punitive  
39 nature or a preventative nature?  
40 A The mission was neither punitive nor preventative, no.  
41  
42 Q So in your opinion how would you describe this? What would you say was the object  
43 of the mission? The object of the mission was to look for and to combat fraud.  
44 A What type of fraud exactly?  
45  
46 Q You said that the point of the mission was to combat fraud.  
47 A I am talking about smuggling fuel.  
48  
49 Q Within Guinean territory?

1 A Yes, we are Guineans.  
2  
3 Q If I have understood you correctly, you say that fraud included bunkering of fishing  
4 vessels within the Guinean zone?  
5 A Yes.  
6  
7 Q Did you affirm in your *procès-verbal* that you had received information on the  
8 so-called clandestine presence of the tanker in the Guinean zone?  
9 A Yes.  
10  
11 Q Is it true that your authorities had listened to and recorded radio conversations  
12 between the tanker and the fishing vessels?  
13 A Yes.  
14  
15 Q In these conversations did *The Saiga* announce its precise position over the radio?  
16 A Did you say "renounce" or "announce"? Could you repeat?  
17  
18 Q Announce.  
19 A Yes.  
20  
21 Q At the time of departure did you precisely locate *The Saiga* or did you know only the  
22 locality of the vessel because of the radio conversations?  
23 A If I understand your question correctly, you are saying at the beginning: did we locate  
24 *The Saiga* or was the location of *The Saiga* due to the radio conversations?  
25  
26 Q Yes, that is the question.  
27 A I would say that it was the radio that enabled us to listen to *The Saiga* and her  
28 conversations.  
29  
30 Q How, therefore, would you judge the statement to the effect that the presence of the  
31 tanker was clandestine?  
32 A Well, the tanker had no authorisation.  
33  
34 Q Do you consider it normal for a tanker on a clandestine mission to announce over the  
35 radio its precise position?  
36 A Well, it did not announce to the authorities to say, "I am here". The ship was in  
37 conversation with its customers, its clients.  
38  
39 Q You refer to the presence of a ship as clandestine when it is not announced to the  
40 port?  
41 A When it is not announced to the port services, then it is a clandestine presence.  
42  
43 Q So by the word "clandestine" you are saying that it did not announce its position  
44 directly to the Guinean port?  
45 A Yes.  
46  
47 Q Is it true that you headed south of the Guinean zone?  
48 A No.  
49

1 Q Because *The Saiga* had a rendezvous at a position close to the point where you found  
2 the vessel.  
3 A We headed there because *The Saiga* changed direction.  
4  
5 Q But *The Saiga* had announced precisely where the next rendezvous would be, is that  
6 true?  
7 A I said that we, too, changed our heading because *The Saiga* changed its course and we  
8 heard the communication.  
9  
10 Q At what time in the morning did you have radar contact?  
11 A At about 3.30 in the morning.  
12  
13 Q Which was the heading of *The Saiga* at this precise moment?  
14 A I cannot tell you this because I am only a Custom officer on board.  
15  
16 Q Do you know on the basis of the radar the speed of *The Saiga*?  
17 A No, I do not know. I did not know myself.  
18  
19 Q Is it precise that you signed a *procès-verbal* according to which *The Saiga* was  
20 travelling at a high speed?  
21 A Where, in which place?  
22  
23 Q In your *procès-verbal* of 13 November? I can read the words to you. "We  
24 immediately moved forward in its direction, increasing the speed in order to catch up  
25 with it, but it seemed to go faster than us in the direction of the southern border".  
26 A This is after its detection?  
27  
28 Q You can see it was after the detection by radar.  
29 A Yes, this is what I said.  
30  
31 Q In your words "it seemed to go faster than us"?  
32 A Affirmative.  
33  
34 Q So the maximum speed of the small patrol boat is what?  
35 A The speed of the small patrol boat, no, I cannot say. It is the captain of the boat who  
36 can tell you this.  
37  
38 Q If I inform you that we have technical information according to which the maximum  
39 speed is 35 knots, would you then like to make us understand that *The Saiga* seemed  
40 to be going at a speed of 35 knots?  
41 A No, I do not think that this can be seen anywhere.  
42  
43 Q Is it precise that the vessel seemed to be going faster than you?  
44 A Affirmative.  
45  
46 Q Therefore you were going very slowly?  
47 A Yes.  
48  
49 Q In this *procès-verbal* you said that you increased your speed -- in the preceding line.

1 A Yes.  
2  
3 Q After increasing your speed, you went very slowly. Can you then please explain why  
4 you were not catching up?  
5 A Why?  
6  
7 Q Why you were not going even faster still?  
8 A It depends on the capacity of the engines.  
9  
10 Q Could you then make a guess of the speed of the tanker for the Tribunal?  
11 A The technician of the Navy will explain this to you. I am unable to do this as  
12 a Customs officer because I did not receive this information on board.  
13  
14 Q Mr Bangoura, is it not quite clear, even to a small child, that a tanker is not faster than  
15 an armed patrol boat?  
16 A I can neither confirm this nor not confirm it. It depends on the engines of the patrol  
17 boat.  
18  
19 Q According to your testimony, the tanker seemed to be going faster than your patrol  
20 boat?  
21 A Yes.  
22  
23 Q Was there any time or at any moment did the tanker stop and slow down and drift?  
24 A I cannot confirm this because I was not on board the tanker.  
25  
26 Q If I said that it stopped its engines at 4.25 in the morning, what would you say?  
27 A I cannot say anything about this.  
28  
29 Q Did you read the log of *The Saiga*?  
30 A Yes, I did then,  
31  
32 Q And the logbook says that the engines were stopped at 4.25 in the morning.  
33 A I cannot remember that because I read it a year ago and I have not re-read it.  
34  
35 Q Is it possible that before the arrival of the patrol boats *The Saiga* was drifting?  
36 A I cannot confirm this because I was not in the small patrol boat.  
37  
38 Q Would you like to indicate that it is possible?  
39 A No, I cannot mention this. I cannot say anything like that.  
40  
41 Q Because if the vessel was adrift, this would have been an extremely important  
42 element, would it not?  
43 A But I cannot say this because I was not in the small patrol boat.  
44  
45 Q But you signed a *procès-verbal* in which you said that the vessel seemed to be going  
46 faster than yours and you say nothing about the possibility that *The Saiga* was  
47 drifting.  
48 A I cannot say so because I was not in the small patrol boat which was the first one to  
49 reach *The Saiga*. I was not present.



1  
2 Q If, in truth, *The Saiga* was adrift for several hours, you should have mentioned it in  
3 the *procès-verbal*. Is that not so?  
4 A If it was proven that *The Saiga* was drifting, I would have mentioned it, if it had have  
5 been proven.  
6  
7 Q Therefore, there are two possibilities. Either *The Saiga* was not drifting during  
8 several hours and your *procès-verbal* is correct or your *procès-verbal* is not exact.  
9 Do you agree that there are only two possibilities?  
10 A I cannot say that the *procès-verbal* is not precise. There is not this possibility to say  
11 that a *procès-verbal* is not exact.  
12  
13 Q If the *procès-verbal* is precise, it follows, therefore, that the logbook is not exact.  
14 A This is what you are putting to me, not what I am putting to you.  
15  
16 Q M. Bangoura, according to the logbook, the vessel was drifting for a period of four  
17 hours. Is the logbook correct and precise or not?  
18 A Maître, I cannot say so because I was not party to making, putting things in the  
19 logbook and it was a year ago since I read the logbook, or two years.  
20  
21 Q If the logbook was incorrect, this would have been a very important point, would it  
22 not?  
23 A I am not able to say anything about the truthfulness or lack of truthfulness about the  
24 insertions in the logbook. I cannot say anything about this. I cannot make a judgment  
25 here.  
26  
27 Q If the Master of the vessel was taken to court, it would have been extremely  
28 important, would it not, to make it known to the Tribunal that the Captain had not  
29 kept a precise and correct logbook with correct entries?  
30 A You said "if".  
31  
32 Q If the logbook is incorrect, this is an important element. Is that not so?  
33 A I said that I cannot judge here about the logbook.  
34  
35 Q Why did you not draw the attention of the court in Conakry to the contents of the  
36 logbook?  
37 A (No reply)  
38  
39 **THE PRESIDENT:** Dr Plender, I would suggest that the witness cannot be asked why he  
40 did not do that because he has been at pains to say that he did not know anything  
41 about the truthfulness or otherwise of the contents of the logbook. If that is the case,  
42 he could not possibly be expected to draw this to the attention of the Tribunal.  
43  
44 **DR PLENDER:** That is right. I shall not persevere. The witness did say that he had seen  
45 the logbook.  
46  
47 **THE PRESIDENT:** Yes, but he says that he cannot say whether it was true or not true.  
48

1 **DR PLENDER:** (To the witness) In approaching *The Saiga*, did you look at it through your  
2 glasses, through your binoculars?  
3 A With which patrol boat? Which patrol boat are you referring to?  
4  
5 Q I asked whether you observed *The Saiga* from the patrol boat which you were  
6 stationed on.  
7 A We were not stationed on it, we were moving. We were in passage.  
8  
9 Q Yes, naturally, but did you observe *The Saiga* using binoculars?  
10 A First of all we were unable to observe *The Saiga* through binoculars at the full  
11 distance.  
12  
13 Q In approaching *The Saiga* did you use your binoculars?  
14 A I have not got any binoculars.  
15  
16 Q In approaching *The Saiga* did you observe persons on deck?  
17 A I said that *The Saiga* was first reached by the small patrol boat. I was in the big patrol  
18 boat and I cannot say anything about what happened because I was not present. Even  
19 when I was asked earlier on I did say that we arrived once the officers from the small  
20 patrol boat had already entered *The Saiga* and were already on board *The Saiga*.  
21  
22 Q All this has been well understood and I would like to put this question to you. When  
23 you arrived alongside *The Saiga*, did you see people on board?  
24 A When my patrol boat arrived, I said that there were three members of our crew and  
25 our officers on the deck.  
26  
27 Q Did you at this moment in time see members of the crew of *The Saiga*?  
28 A Yes.  
29  
30 Q Where were they and what were they doing at this moment?  
31 A I do not know whether we are able to understand one another. I said that the small  
32 patrol boat was the first one to come alongside. When we came alongside *The Saiga*  
33 they had already found some members of the crew numbering three who were on  
34 deck. But to say where they were at that time and what they were doing, this is  
35 something I cannot say, I cannot answer.  
36  
37 Q Is this because you do not remember?  
38 A I cannot remember an operation that I did not participate in. The first patrol boat,  
39 I was not on it. When we arrived in the second patrol boat I said, and I underscored,  
40 that there were three members of the crew who were already on deck, but to say now  
41 before our arrival at the boat – I cannot say what happened then. I cannot speak about  
42 this because I cannot lie.  
43  
44 Q M. Bangoura, did I understand correctly that according to your testimony, when you  
45 arrived near *The Saiga*, alongside *The Saiga*, before you went on board, you did not  
46 see any member of the crew of *The Saiga*?  
47 A Maybe I have been misunderstood on this point. I do not know what you are trying to  
48 achieve but I said that the first small patrol boat was the first one. When we arrived,

1 members of our team – members of the crew were already on deck. This is all that I  
2 can say, Maître.  
3

4 Q The members of the crew who were on deck, were they members of the crew of your  
5 patrol boats or were they members of the crew of *The Saiga*?

6 A When the big patrol boat arrived; when it arrived, yes.  
7

8 Q When the big patrol boat arrived with you at that moment, did you see members of  
9 *The Saga's* crew on board *The Saiga*?

10 A Yes.  
11

12 Q Thank you. Were they guarded? What were they doing?  
13 A Under the guard of whom?  
14

15 Q Of your soldiers, of members of Navy representatives.  
16 A No, not Navy guard.  
17

18 Q What were they doing, the *Saiga* crew members?  
19 A They were on deck waiting for the others to be found.  
20

21 Q These crew members, were they armed?  
22 A I did not see any weapons. I did not see them carrying any weapons.  
23

24 Q Before your arrival, did you have any serious reason to believe that they were armed?  
25 A We were unable to know anything about this.  
26

27 Q In approaching *The Saiga*, did you personally see any signals or hear any signals  
28 which were emitted by the small patrol boat?  
29 A Yes.  
30

31 Q Was there a radio message?  
32 A I was not in the radio room.  
33

34 Q Do you know whether a radio message was emitted?  
35 A I was not in the radio room.  
36

37 Q You repeated your answer and I repeat the question. Do you know, yes or no,  
38 whether there was a radio message?  
39 A I cannot know this. I was not in the radio room.  
40

41 Q Did you listen to any signals which were emitted?  
42 A I said at the beginning that I heard the siren signal from the small patrol boat. I saw  
43 the rotating blue light.  
44

45 Q Did you hear any empty shots being fired, blank shots?  
46 A At the distance I was at, I cannot confirm this, because I was not in the small patrol  
47 boat.  
48

1 **THE PRESIDENT:** It is now 12 o'clock and it is quite plain that it will not be possible for  
2 you to complete your cross-examination within the next minute. I suggest that we  
3 suspend the sitting and resume at 2 o'clock.

4

5 **DR PLENDER:** Thank you very much.

6

7 **THE PRESIDENT:** May I request the agents kindly to meet with me either immediately at  
8 12.15 or at quarter-to-2, at your convenience? Which would you prefer?

9

10 **DR PLENDER:** Immediately.

11

12 **THE PRESIDENT:** At 12.15 then. Thank you very much. The sitting is suspended.

13

14 **(Adjournment 12:00)**