

**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 2.00 p.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)

Verbatim Record

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

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:** Will the witness Mr Bangoura please take the stand? Dr Plender, you
2 may proceed.

3

4 **LEONARD BANGOURA, recalled**

5 **Cross-examined by DR PLENDER continued**

6

7 Q Mr Bangoura, before lunch I was asking you some questions about the state of
8 *The Saiga* when you arrived, do you remember?

9 A Yes.

10

11 Q When your men boarded *The Saiga*, were there men on the bridge of this ship?

12 A When our men boarded *The Saiga*, is that what you mean?

13

14 Q Yes, exactly.

15 A As I said, I was not on board the first launch. I was not on the first launch. It was
16 after we arrived on board the big patrol boat.

17

18 Q You signed a *procès-verbal*, did you not?

19 A *(no reply)*

20

21 Q I would like to read to you some lines from this *procès-verbal*: "Our men succeeded
22 in going aboard but they found the bridge empty." Is this true? "They found the
23 wheelhouse empty"?

24 A Yes.

25

26 Q "The vessel was thus sailing on automatic pilot." Is this true?

27 A Yes, it was on automatic pilot.

28

29 Q If it were on automatic pilot, it then would have been proceeding in a constant
30 direction, would it not?

31 A I cannot know that.

32

33 Q You do not know if a vessel on automatic pilot follows a constant direction?

34 A I cannot say that to you here because I am not a member of the Navy.

35

36 Q You declared in the same *procès-verbal* that *The Saiga* tried to sink the small patrol
37 boat. Is that true or not?

38 A Yes, it is true.

39

40 Q Did you see this?

41 A Did I see it?

42

43 Q Did you see *The Saiga* trying to sink the small patrol boat?

44 A Well, this was according to the report that was given to me by the people who were
45 on board.

46

47 Q If I have understood you correctly, your testimony is that you did not see for yourself,
48 but someone informed you to this effect. Is that true?

49 A Yes.

1
2 Q You would like the Tribunal to believe that a tanker loaded with 5000 tonnes of oil is
3 going to try to sink your fast launches?
4 A Could you repeat your question, please?
5
6 Q Do you seriously wish this International Tribunal to believe that a tanker loaded with
7 5000 tonnes of oil could try to sink a small, armed launch with a maximum speed of
8 35 knots?
9 A The small launch was armed but it had men on board who had weapons. It was not
10 the launch that was armed and attacking *The Saiga*. When the ship did this
11 manoeuvre, there were waves caused by the ship and these waves were hitting the
12 small patrol boat.
13
14 Q Are you trying to lead the Tribunal to believe that these manoeuvres were done at the
15 time when the bridge was empty and the ship was on automatic pilot?
16 A Yes.
17
18 Q It is true that the tanker was completely loaded?
19 A I cannot say that it was fully loaded, but it was loaded.
20
21 Q Did you see perhaps its Plimsoll line?
22 A I do not know what this waterline is.
23
24 Q Was it not fairly simple to board the vessel?
25 A Was it not simple to...?
26
27 Q To board the vessel, to enter on board the vessel?
28 A I do not know. To board the vessel?
29
30 Q You did this yourself, did you not?
31 A No.
32
33 Q You were never on board *The Saiga*?
34 A Yes, I entered on board *The Saiga*.
35
36 Q So boarding *The Saiga*, did you have any problems? Did you have to climb a ladder?
37 A When I arrived?
38
39 Q Yes, when you arrived?
40 A There were difficulties to board *The Saiga*.
41
42 Q It had a ladder?
43 A No.
44
45 Q So it was fairly simple, was it not?
46 A For whom?
47
48 Q When the ship was detained, everything was in order when you arrived?
49 A Yes, everything was in order.

1
2 Q The distance between the launch and the deck of the tanker was not vast, was it?
3 A The distance between the tanker and what launch?
4
5 Q The launch from which you boarded *The Saiga*?
6 A Yes, it is a large launch.
7
8 Q It was not very difficult to step on board the tanker from this launch?
9 A It is a large launch. It was bigger than the smaller one.
10
11 Q Is your answer *yes* or *no*?
12 A It was larger than the first one.
13
14 Q Mr Bangoura, perhaps you do not understand me. The question is: was it difficult to
15 board the tanker from your launch?
16 A No, it was not difficult at that time.
17
18 Q Thank you. Once aboard *The Saiga*, did you see any damage, did you see any debris?
19 A Could you repeat the question, please?
20
21 Q Once you were on board *The Saiga*, did you see any bullet holes?
22 A Bullet holes?
23
24 Q Yes, that is the question.
25 A Yes, when you say 'bullet holes.'
26
27 Q The question is whether you saw bullet holes or other damage on *The Saiga*?
28 A No. What do you mean?
29
30 Q Did you see any holes or damage to *The Saiga* or anything that did not seem normal?
31 A I must say that when I arrived on deck I was not yet on the bridge. It was on the
32 bridge, where we saw that the door had been broken.
33
34 Q You did not see anything else, only a broken door?
35 A At that time, yes.
36
37 Q Later, perhaps?
38 A Yes.
39
40 Q What did you see?
41 A I saw in the inside of the vessel one or two broken doors.
42
43 Q Is that all?
44 A That is what I saw at the time, yes.
45
46 Q And later?
47 A When we left for Conakry, the captain said that they needed time to change something
48 which had been broken.
49

1 Q I am going to show you some photographs. The first one is number 12. First of all, I
2 must explain that according to Saint Vincent these holes were photographed when
3 *The Saiga* arrived in Dakar after some repair work. The first question is, have you
4 seen on board *The Saiga* holes which look like the holes in the photograph?
5 A I did not see these holes.
6
7 Q What part of the vessel is it?
8 A I only see the black paint and in the middle I see a point which is blacker than that,
9 and that is all. It may be some sort of panel which has been painted.
10
11 Q But you do not accept that what you can see in the photograph is a hole?
12 A I am saying that what I am seeing with my eyes, I do not think that this looks like a
13 hole.
14
15 Q I will show you another photograph, number 13. Is this a hole or not?
16 A I cannot say that. This is a photo.
17
18 Q Is it a photo of a hole?
19 A I cannot confirm that. I am not a photographer. I did not take the photograph. I do
20 not know whether it is a hole or not. When you take a photograph of a hole and
21 reproduce it like this, you might come up with something like this.
22
23 Q When you were on board *The Saiga*, you did not see holes like this?
24 A No, I did not see holes like that.
25
26 Q I will show you other photographs. Number 15. What can you see here?
27 A On the photo?
28
29 Q Yes.
30 A I see something which looks like a zodiac, a drawing, a design.
31
32 Q Is it fully blown up or not?
33 A I do not know, because I am only looking at the photograph and I do not know
34 whether this boat is inflated or not.
35
36 Q We will look at other photographs. Number 3. Here you see the bridge?
37 A Yes.
38
39 Q Can you see marks or damage on the bridge?
40 A With my eyes I can see from here two points in the painting of the ship which are
41 different from the other painted parts, and I see things which look like windows, and
42 I see that there is writing which says *No Smoking*.
43
44 Q Can we see no. 7. Can you see a hole in this photo?
45 A Well I did not see any hole with my eyes.
46
47 Q Do you wear glasses sir?
48 A Glasses?
49

1 Q If you cannot see, I am wondering if you need glasses.
2 A I wear glasses only for reading.
3
4 Q No. 9, no. 11, no. 23 and no. 30. If I said, Mr Bangoura, that the vessel was covered
5 with bullet holes from the Master to the engines, outside and inside, large calibre,
6 small calibre bullets, what would you say?
7 A I could not confirm this because I couldn't see this on the basis of the photographs that
8 you have shown me. I did not see these holes and for me on board, we did not use
9 large calibre bullets because we did not have any.
10
11 Q If I said that you could not have failed to see these holes and that you knew very well
12 that these people are under your control and they fired several times at the ship ---
13 A No, they did not fire at the ship.
14
15 Q No-one?
16 A No.
17
18 Q Not a single shot?
19 A There was a warning shot in front of the ship, but not against the ship.
20
21 Q In this case, why does your *procès-verbal* and the testimony in front of the Tribunal
22 of first instance talk about the need to fire? Can you reply?
23 A Repeat your question please.
24
25 Q If no-one fired, can you explain how you signed a *procès-verbal* which talked about
26 shots being fired?
27 A I think that I did not say here that no-one shot, as you said. You said they fired at the
28 ship. I said no, they fired in the ship, on board the ship, on deck.
29
30 Q One can check this against the *procès-verbal*. In front of this Tribunal you said there
31 were shots fired when the armed people were on board the ship, is that true?
32 A Yes.
33
34 Q And did you see people firing?
35 A People firing?
36
37 Q Yes.
38 A What people?
39
40 Q That was my next question. Who was firing?
41 A But you are the one who is saying did I see anyone firing. But who?
42
43 Q The first question was did you see anyone firing a shot?
44 A No. You are saying that if I saw people firing, I am telling you what people?
45
46 Q No matter who. Did you see any person firing?
47 A I said yes.
48
49 Q So who fired?

1 A I told you that our men.
2
3 Q How many men were firing?
4 A No, I am not saying how many men. Two or three shots were fired for warning.
5
6 Q Blank shots, in that case? Were these blank shots being fired?
7 A No, they were real bullets.
8
9 Q Could you explain then why ---
10 A No blank shots were fired because we did not have these available.
11
12 Q On the vessel did you see any members of the crew wounded?
13 A There were two wounded people, as mentioned in our report.
14
15 Q Do you recall a wounded Senegalese, Mr Niasse?
16 A Mr Niasse had the side of his eye, I do not remember which side, but he was wounded
17 at the side of one eye.
18
19 Q The side of one eye?
20 A The side of one eye, yes.
21
22 Q If I said that the blood was flowing from both of his eyes ---
23 A No. The other had his arm in a bandage.
24
25 Q I am sorry, wait a moment, I am talking about Mr Niasse. You said that he had only
26 a small wound in one of his eyes?
27 A Yes.
28
29 Q He had projectiles in his throat?
30 A No.
31
32 Q No?
33 A No.
34
35 Q He had other projectiles in his chest?
36 A No. Because when we arrived at the port of Conakry we took him to the hospital, and
37 the hospital cleaned his eye and his vision became normal once more, and the same
38 night he returned on board.
39
40 Q Mr Bangoura, I must inform you that the Tribunal has received the testimony to the
41 contrary, including X-rays from the hospital in Dakar.
42 A I would like to inform you also Maître that at Conakry we took him to the hospital,
43 the doctor in charge did not say that. When we took him back for a second visit to the
44 hospital they gave him medicine for his eyes, that is all. He was given a prescription
45 and we bought the medicine, but there was no other complaint.
46
47 Q I suggest to you Mr Bangoura that it was absolutely obvious that the wounds of this
48 gentleman were serious. Is this true or not?
49 A No. Not as far as we know.

1
2 Q Were there insults proffered to this gentleman?
3 A There were never insults proffered to this gentleman.
4
5 Q Are you sure?
6 A Very sure.
7
8 Q In a wounded condition, he was threatened, insulted by the men under your control?
9 A No.
10
11 Q No?
12 A No.
13
14 Q Do you know how Mr Niasse was wounded?
15 A According to his explanations, or my explanations, because I was not there when he
16 was wounded. I saw him on deck, but I cannot give you a version now which I am not
17 sure of.
18
19 Q Did you say to anyone that he had hit his head against a window?
20 A If I said this to anyone?
21
22 Q Yes.
23 A To whom did I say that he had hit his head?
24
25 Q I could be more precise. Did you inform the advocates for the Guinean government
26 that there had been a minor accident with a window?
27 A Yes.
28
29 Q I suggest to you then that it was perfectly obvious that the wounds he received were
30 so serious that it would have been impossible for this to be the result of hitting his
31 head against a window?
32 A Well, if the hospital has not informed us as to any other effect, then I cannot say to the
33 contrary here.
34
35 Q I would like to ask you therefore some questions concerning the other wounded
36 person. Can you describe the wounds of the other person?
37 A I cannot describe wounds of the other person because I was not there when he was
38 operated on. It is a report that I received.
39
40 Q In your *procès-verbal* you signed that this person was wounded. Were you informed
41 of the fact that he was wounded?
42 A Yes. You said yourself that this was in the *procès-verbal* that he was wounded.
43
44 Q So would you be so kind as to inform the Tribunal what you saw with your own eyes
45 with regard to the second wounded person?
46 A What I saw, I saw him on deck with his arm in a bandage, and when we came back to
47 Conakry in the evening we took him to the hospital.
48
49 Q You were in charge of the mission?

1 A Yes, from the Customs.
2
3 Q Did you ask anyone to inform you how this person was wounded in the arm?
4 A Well it is at the hospital that this question was raised.
5
6 Q You did not ask anyone at all on board the vessel?
7 A No-one could have known how he injured himself.
8
9 Q If he had been fired upon by someone under your command, you should have known?
10 A If he had been fired upon by one of our men his arm would have been broken.
11
12 Q Do you suggest to the Tribunal that the arm was not broken and that bullets were not
13 found in his arm?
14 A Well in Conakry in the hospital they did not find any bullets in his arm.
15
16 Q The cook on board *The Saiga*, was he threatened with a gun against his head
17 A I do not know anything about that.
18
19 Q The Captain, was he handcuffed?
20 A No.
21
22 Q Are you sure?
23 A The Captain was never handcuffed.
24
25 Q Did I understand correctly from your testimony this morning that you said to the
26 Tribunal that the crew was free to leave Guinea as soon as you returned to Conakry; is
27 this true?
28 A Yes.
29
30 Q The passports were not seized?
31 A The passports of whom?
32
33 Q Of the crew.
34 A No.
35
36 Q No?
37 A No.
38
39 Q The passport of the Captain of the vessel and the others?
40 A They were never seized until 17 November, they were not seized because no-one
41 asked for them.
42
43 Q There were soldiers of policemen on board *The Saiga* for several weeks after the
44 arrival in Conakry.
45 A Police?
46
47 Q I am talking about soldiers?
48 A Soldiers? There were Customs officials and naval officials who were there to ensure
49 the safety of the vessel and its crew.

1
2 Q And these people, were they armed?
3 A Yes.
4
5 Q How many?
6 A For the guard?
7
8 Q How many people were there armed on the vessel?
9 A Every day? The first days?
10
11 Q No, not the first days.
12 A When the tanker came to Conakry the guard was provided by the Customs people and
13 the Navy.
14
15 Q How many people were there?
16 A I cannot say that because I was not in charge of this guard.
17
18 Q If I suggest to you that it was 14 or 15, is it possible?
19 A No, it is not possible.
20
21 Q Is it true, Mr Bangoura, that you said this morning, replying to a question from the
22 Advocate of Guinea, that you contacted *The Saiga* at 3.20 in the morning?
23 A Around then.
24
25 Q But in the *procès-verbal* you said that the contact was done at 4 o'clock?
26 A No, towards 4.
27
28 Q You know, do you not, that this change in time is extremely important?
29 A No. I did not say that the contact was exactly at 4 o'clock or the contact was exactly
30 at 3 o'clock. I said "towards".
31
32 Q Because if *The Saiga* had left the limits of the exclusive economic zone of Guinea at
33 3.35 it would have been embarrassing to suggest that the contact had not been made
34 until 4 o'clock? This means that you are changing your testimony.
35 A What do you mean "changed my testimony"?
36
37 Q Have you changed your testimony because you know now that *The Saiga* was not
38 within the limits of the exclusive economic zone at 4 o'clock?
39 A I am sorry, Maître, but I did not change my testimony because this is what you are
40 saying, not what I am saying.
41
42 Q What would you say to the Tribunal if I said to you that you, the soldiers and the
43 Customs officers accompanying you had attacked a peaceful commercial vessel
44 outside of your territorial sea, that you riddled it with bullet holes, knowing that this
45 could put into danger the lives of the people on board, that the crew was brutalised,
46 wounded, traumatised, threatened and handcuffed through your fault, and that your
47 testimony in front of this Tribunal is just as full of holes as *The Saiga*?
48

1 **MR VON BREVERN:** I would like to ask whether this is a question. I thought that in
2 a cross-examination the advocate can put questions to a witness. I do not think this was a
3 question and I would strongly ask that perhaps you ask Dr Plender to restrict himself to
4 questions.

5
6 **THE PRESIDENT:** Thank you, Mr von Brevern. I think that perhaps it is not
7 unreasonable for you to be worried about it but it was a question because the question was:
8 what would he say to the Tribunal if he made all those allegations, and it is entirely within
9 the right of the witness to reject that suggestion. The question is: what would you say to a
10 tribunal if I said this, and he could say whatever his response is. I think it is a question. Let
11 us hear what the witness says first.

12
13 **DR PLENDER:** This is my last question. I would like to know whether you accept this
14 question or not?

15 A No.

16
17 **DR PLENDER:** Thank you. Please wait there. Maître Thiam would like to put a few
18 supplementary questions to you.

19
20 **Cross-examined by MAITRE THIAM**

21
22 Q (Interpretation) Mr Bangoura, with your collaboration, I would like to try and fill in
23 the lacuna in your testimony which Maître Plender alluded to earlier on. I would like
24 to ask you whether there is a link between the fact that the Government of your
25 country invokes article 300 of the Customs Code, which allows it to escape from its
26 responsibility for the acts committed by its officers which might be illegal. Is there a
27 link between this fact and the fact that you asked to have a lawyer earlier on?

28 A Could you repeat your question, please?

29
30 Q Why did you ask earlier on to have a lawyer at your side?

31 A Could you repeat your question, please? You spoke about article 300 of the Customs
32 Code.

33
34 Q I am changing my question right now, Mr Bangoura. Why did you ask to have an
35 advocate in front of this Tribunal?

36 A The question has already been debated and answered by the President of the Tribunal.

37
38 Q I do not think that the President answered this question. Is there a link.

39 A I presented my excuse to the Tribunal because I am here as a witness.

40
41 Q I am sure that the Tribunal accepted your excuses. Is there a link between the fact
42 that you asked for an advocate and the fact that the Republic of Guinea invokes article
43 300 of the Code?

44 A I have no answer to this question.

45
46 Q Thank you very much. Mr Bangoura, I do not know what your training has been.
47 Maybe you are not a lawyer but you can tell the Tribunal what you know about the
48 laws of Guinea in the exclusive economic zone and in the contiguous zone.

49 A This question will be discussed by one of my colleagues here in this room.

1
2 Q What do you know about this, Mr Bangoura?
3 A From my Customs experience?
4
5 Q Yes, if you so wish, or any other experience that you wish to draw on.
6 A Thank you.
7
8 Q What is your knowledge of the rights of Guinea in these two zones that I have just
9 mentioned?
10 A I only know one thing; that is, the extension of the maritime zone or area, and
11 I defined it earlier on, and I can refer you to the article in the Customs Code.
12
13 Q You are referring to the Customs area but you have no knowledge of the rights of
14 Guinea in the contiguous zone, in the exclusive economic zone?
15 A The Code mentions this.
16
17 Q What does it say?
18 A I cannot say anything here because I have not got it here.
19
20 Q Do you have further training in the course of your work?
21 A Yes, we do have continuous training.
22
23 Q In your continuous training are the questions of the extent of your rights taught and
24 mentioned in these various zones?
25 A They are.
26
27 Q Could you explain to the Tribunal what you think the rights of Guinea are in these
28 various zones?
29 A Their rights in which area?
30
31 Q You take the area you want and give an answer to the Tribunal, if you so wish.
32 A Could you please repeat your question, Maître?
33
34 Q I can repeat it until tomorrow if you want. What is your knowledge of the rights of
35 Guinea in the exclusive economic zone and in the contiguous zone?
36 A I am saying that this is laid out in the Merchant Marine Code, which I do not have
37 a copy of here.
38
39 **MR VON BREVERN:** Mr President, I have the feeling that at least the last question is
40 really of no relevance to the subject the witness is called for, at least not in the form that he is
41 asked: what do you know of. We are not at school here. I think if Maître Thiam formulates
42 a concrete question, then that would be fine but just to ask "what do you know of" is not of
43 relevance.
44
45 **THE PRESIDENT:** Maître Thiam, I think we will get the same result if you could perhaps
46 ask for the information that you want. Is it particular information that you want about
47 a particular point or do you want to find out about his state of knowledge of the legal
48 situation? Could you ask a more concrete question?
49

1 **MAITRE THIAM:** Mr President, I will then put a more concrete question.
2

3 Q Mr Bangoura, it has been presented to the Tribunal that you were going to be held as
4 an expert and you have said that you are going to appear here as an expert on the laws
5 of Guinea and the applicability of Guinean laws to *M/V SAIGA*. As we are now in
6 front of this Tribunal and we are speaking about the laws of Guinea in the exclusive
7 economic zone and also in the contiguous zone, I thought that you had knowledge of
8 this matter. If you do not have, other than saying that you can divulge this
9 information only if you have the Code with you, I would like to thank you for coming.
10 Did you understand the question? You were called to this Tribunal. It was
11 announced that you were being called as an expert on Guinean laws and the
12 application of these laws concerning the *M/V SAIGA*. This was your capacity for
13 being summoned here, as an expert. If you are expert, I would like you to enlighten
14 the Tribunal on your knowledge in this field. Could you do this? You are an expert
15 who does not work this afternoon?

16 A I am not an expert who is not working this afternoon, who is not functioning this
17 afternoon. I am here to be a witness concerning a situation.
18

19 **THE PRESIDENT:** The Tribunal perceives that there is a misunderstanding. I will explain
20 it this way. Maître Thiam is absolutely right in assuming that, on the basis of the information
21 that we had, you are an expert in the laws of Guinea, because that is how you were
22 advertised. However, this morning it became clear that you were giving evidence on the facts
23 of the arrest of *The Saiga*. The misunderstanding is quite easy to perceive. Maître Thiam
24 was operating on the basis that you were giving the evidence that you were supposed to give
25 and you expected to be questioned on the evidence that you have actually given. I think that
26 the situation is very clear now. Maître Thiam, you are entitled to reach your conclusion, but
27 the facts are that in fact Mr Bangoura has been brought here not as originally advertised, but
28 merely to give evidence on the facts of the arrest of *The Saiga*.
29

30 Mr von Brevern, would that be your understanding of the situation?
31

32 **MR VON BREVERN:** Yes, Mr President. Thank you very much.
33

34 **MAITRE THIAM:** I understand that the witness is not an expert. (To the witness) Can
35 M. Bangoura tell us what he believes the difference is that is made in the Customs Code
36 between the Customs radius and the Customs zone?

37 A The difference between the Customs radius and the Customs territory? I do not
38 understand what you are saying.
39

40 Q You do not understand that there is a distinction between the Customs radius and the
41 Customs territory?

42 A The Customs radius is included and is part of the Customs territory.
43

44 Q You have a Guinean law that says this?

45 A Yes, there is a decision.
46

47 Q Not a decision, no, it is the Customs code.

48 A The Customs code?
49

1 Q What does the Customs code say about this, until such time as we have the decision.
2 Article No 1, what does it say?
3 A Is it this:
4
5 "The Customs territory includes the whole of the national territory, the islands located
6 along the coastline and the Guinean territorial waters. However, free zones, exempt
7 from all or some of the Customs legislation and regulations, may be created within the
8 Customs territory."
9
10 Q This Customs territory which you have just read and which is defined in article no 1
11 of your code, how would you define this in comparison to the definition given of the
12 Customs radius in article 34?
13 A This is the definition in article 34. This is the definition of the Customs radius which
14 includes a marine area and a terrestrial area.
15
16 Q Can Customs violations be committed in the Customs radius or a part of it which is
17 not covered by the Customs territory?
18 A No, the Customs territory covers all national territory. The Customs radius at this
19 time was defined as a zone.
20
21 Q Now the definition, after this ministerial decision, is the entirety of national territory,
22 but does it include the Customs radius?
23 A Yes.
24
25 Q It includes the Customs radius?
26 A Yes.
27
28 Q Therefore, you consider that any import within the Customs radius must be submitted
29 to declarations foreseen in your code?
30 A The Customs territory?
31
32 Q No, I am speaking about the Customs radius.
33 A You said that the Customs radius is the same as the territory, and I am talking about
34 the radius.
35
36 Q Let us speak about the Customs radius. If I import goods, if I pass the borders of the
37 Customs radius with goods, I have to declare it to Customs? As soon as you pass into
38 the Customs radius, you enter this territory, you have to make a declaration?
39 A Yes.
40
41 Q Thank you very much for having given explanations to the court of your knowledge
42 of the Customs radius. When, Mr Bangoura, did you start pursuing *The Saiga*?
43 A The Captain of the ship will come and give you this information.
44
45 Q But you must have an idea because you were on board the launch.
46 A Yes, but I was a passenger.
47
48 Q You do not know when the pursuit started, the time? The pursuit started when?
49 A It started when we discovered the ship on the radar.

1
2 Q When you discovered the ship on the radar you started the pursuit?
3 A The first launch started, it was ahead of us. Our base was informed of the movement.
4 It returned and we towed it out to continue.
5
6 Q When you leave on a mission like that, do you have alcohol on board your vessels?
7 A No.
8
9 Q Could your men bring alcohol on board without your knowing?
10 A No, not at all.
11
12 Q You searched the boat, the launch?
13 A Our boat?
14
15 Q You searched it to make sure there was no alcohol?
16 A We prepare the mission; yes, we prepare it.
17
18 Q So you are absolutely sure that nobody could have had anything to drink?
19 A Nobody could have had anything to drink.
20
21 Q Do you know article 111 of the United Nations Convention on the Law of the Sea?
22
23 **THE PRESIDENT:** It appears that the exchanges are so quick that the interpreters are
24 finding it difficult to follow.
25
26 **MAITRE THIAM:** I shall start again. Are you familiar with the provisions of article 111 of
27 the Convention of the United Nations Law of the Sea?
28 A As I do not have the book in front of my eyes --
29
30 Q Do you know, in a general manner, what the Convention says on the right of hot
31 pursuit?
32 A In a general manner?
33
34 Q Yes.
35 A If I had the time to prepare a document, I could produce it, yes, if I had the time to do
36 it.
37
38 Q But you know article 111?
39 A Yes.
40
41 Q You read it in French?
42 A My sight is not good. Maybe you could read it. I cannot see, I am not good at
43 reading.
44
45 Q Would you like to explain to the Tribunal that your glasses allow you to read the
46 Customs code but not the Convention on the Law of the Sea? I saw you reading
47 earlier on the first article of the Customs code.
48 A Yes, but I had difficulties.
49

1 **MR VON BREVERN:** Mr President, I do not understand why the witness should be
2 obliged to read something out. Maître Thiam could do it himself. I do not understand
3 the question and I would like to object to it.
4

5 **MAITRE THIAM:** I can answer, Mr President. I did not ask the witness to read the text,
6 but the witness said himself that if he had the document he could answer. Therefore,
7 I gave him the document. I am asking him whether he can now respond. If he does
8 not want to take it ---
9

10 Q Would you like to take this?

11 A I will leave it up to you to read. I am not going to read this Convention.
12

13 Q I will read you a little passage. It says, in paragraph 4:
14

15 "Pursuit can only be commenced after a visual or auditory signal to stop has been
16 given at a distance which enables it to be seen or heard by the foreign ship."
17

18 You said to the Tribunal that you started hot pursuit as soon as you had pinpointed
19 *The Saiga* on the radar. You also said to the Tribunal that at this time you were at
20 a distance of 40 miles. Do you think that under these conditions you could start hot
21 pursuit, on conditions which pre-suppose that you give a signal to stop, a visual or
22 auditory signal first of all, at a distance which would enable *The Saiga* to have seen
23 it?

24 A At this distance it was a radio signal but at a closer distance, once the smaller launch
25 had approached *The Saiga*, we started with other signals.
26

27 Q You said earlier on that you personally were unable to hear a radio call. Do you still
28 agree to this or would you like to change your testimony on this point?

29 A When the question was put to me I said that I was not in the radio room. This was
30 when we left, parted company from the small patrol boat. The question was put to me
31 and I said that I was not in the radio room.
32

33 Q I must inform you, Mr Bangoura, that here things are very well done - thank God -
34 and that later on you will see the verbatim reports. These are the minutes of the
35 hearings. I am persuaded that I, and anyone present in this room, will be able to read
36 a question there which has been put to you: "Did you personally hear radio signals,
37 radio messages?" You said, "I was not in the radio room when the small patrol boat
38 left.

39 A I said – I will explain this to you. When the question was put to me, this was when
40 I said that when the small patrol boat left I saw its blue light and I heard the siren.
41 The communication --- I was not in the radio room of the big launch. I said this here.
42

43 Q Did you hear radio calls to *The Saiga*?

44 A When the small patrol boat left I was not in the radio room.
45

46 Q At any point in time, before or after the small launch left, to take up your expression,
47 did you hear a radio call?

48 A When we went into the cabin we followed the communication of the small patrol boat
49 calling *The Saiga*.

1
2 Q Was there an answer from *The Saiga*?
3 A No.
4
5 Q Are you sure that *The Saiga* heard?
6 A I cannot confirm this because I was not on board *The Saiga*.
7
8 Q You said that 26 October was the day that you received your orders for the mission
9 and at that point in time *The Saiga* was outside of Guinean waters. Do you confirm
10 this?
11 A Yes.
12
13 Q Does this mean, as a result, that it was outside of the Customs radius?
14 A Absolutely.
15
16 Q You said too that when you received this order, it was that you received it because
17 *The Saiga* had the intention of bunkering oil to fishing vessels.
18 A Yes.
19
20 Q And you were informed that these deliveries should take place in Guinean waters,
21 generally speaking?
22 A Yes.
23
24 Q My question is, in which part of Guinean waters? If I should be more precise, were
25 you told that *The Saiga* was going to enter into the territorial waters? Were you told
26 that it was going to enter into the contiguous zone; or were you told that it was going
27 to be in the exclusive economic zone; or were you told that it was going to be on the
28 high seas? Were you informed by our land-based radio services that it was entering
29 into the maritime zone? I think, in order for you to prevent violation or state that
30 there is a violation you have to have an idea of the precise idea where the ship is
31 going – heading.
32 A Yes, but its position has already been given.
33
34 Q Was it in the contiguous zone? Was it in the territorial seas? Was it in the high seas?
35 A It was in the maritime zone. It was in the Customs territory.
36
37 Q So at no point in time were you, independently of the fact that it was going to enter
38 into the maritime zone of the Customs radius, ever able to assume that it was going to
39 enter into some specific part of the marine area?
40 A No.
41
42 Q Thank you. Your mission: was it preventive in nature or punitive in nature?
43 A I said that the mission was neither preventive nor punitive.
44
45 Q You are absolutely sure of that?
46 A In order to be clearer, when you say that it was preventive or punitive, what do you
47 mean?
48

1 Q Did you want to punish infractions and violations of Customs laws that had already
2 been done or did you want to prevent violations of Customs law being committed?
3 A We wanted to punish. We wanted to suppress. It was the preparation of the mission.
4
5 Q You had an order for the mission?
6 A It is a strategy that we have when we are preparing a mission. It is an internal
7 strategy because these people were committing fraud, and they have accomplices.
8
9 Q So what you were trying to do was to suppress a violation or did you want to prevent
10 it?
11 A We could not prevent it. We do not have the means to prevent it.
12
13 Q If I said the following: "On 27 October 1997, after the three fishing vessels had been
14 bunkered in the contiguous zone of Guinea, the Guinean launches F and P received
15 the order to inspect *The Saiga* because of a violation of Guinean legislation" -- I
16 repeat that if you need to have a break or a drink, there is absolutely no drawback,
17 please go ahead; I have nothing against this. On 27 October 1997 -- so we are
18 speaking about 27 October 1997 -- after three fishing vessels had been bunkered in the
19 contiguous zone of Guinea, the Guinean launches F328 and P35 received the order to
20 inspect *The Saiga* because of a violation of Guinean legislation. Is that true or false?
21 If I put this to you - I am making this affirmation to you -- is it true or false?
22 A I did not write this.
23
24 Q Is it true or false?
25 A (No reply)
26
27 Q I confirm that it is 27 October that you received the order to inspect *The Saiga*
28 because it had already violated Guinean legislation. I am confirming this to you. Is
29 this true or false?
30 A I cannot say because we did not receive an order to inspect this. We did not receive
31 an order to inspect it.
32
33 Q Your mission order is on the 26th?
34 A It is on the 26th but I tell you that we did not receive an order to inspect it.
35
36 Q Your order for your mission is on the 26th?
37 A Affirmative.
38
39 Q If you then were not to inspect the vessel, what were you supposed to do?
40 A First of all, we had to find it. How can we be asked to inspect it? Why?
41
42 Q I do not know. What I want to know is, what did your mission order state exactly?
43 A It was detection and suppression.
44
45 Q So it was for suppression purposes that you had your mission. You explained to the
46 Tribunal that at this date on 26 October there was ---
47 A No, I will tell you and you can see. I would like to say that the order for the mission
48 was established on the 26th. For logistic reasons and internal reasons, the mission
49 could only venture forth on the 27th. This is for internal reasons.

1
2 Q We will continue. For your information, I would like the passage that I have just
3 read. This figures in paragraph 16 of the Counter-Memorial of Guinea, in the French
4 version which I have in front of me. You said earlier to the Tribunal that the small
5 launch set forth on a recognisance voyage before you left yourself. Is this true?
6 A Yes, I said that.
7
8 Q Its mission was one of recognisance, it was exploratory?
9 A When I said that it was a recognisance mission, it had the mission to go to the north
10 on the basis of the position we had received. If it was to continue, it would have been
11 supported by a base which is elsewhere. Now that we received the information that
12 *The Saiga* had changed its position, it was called back.
13
14 Q You wrote in your *procès-verbal* –and I think you can read the *procès-verbal* –
15
16 "At 1705 we towed P-35 which, before that, had set forth to wait for us at Iles Sorro
17 with a group of our crew members." Was this launch to wait for you, or had it left on
18 a recognisance voyage and was it recalled?
19 A It was after returning from its mission that it left again for Sorro.
20
21 Q So your *procès-verbal* is not completely truthful?
22 A Yes. It does not say that the launch had left on a recognisance voyage towards the
23 north. It was drawn up by those who were on board the large launch.
24
25 Q But you signed it?
26 A Yes.
27
28 Q Those who were on the larger launch, why them?
29 A It is them.
30
31 Q Excuse me, Mr Bangoura, you were on board the large launch, you signed this
32 *procès-verbal* and you gave instructions for the small launch to go north. Why did
33 you not mention this in this *procès-verbal* ?
34 A It was not necessary, because the most important basis here was the big patrol boat.
35
36 Q As an agent entrusted with an official mission of research and looking for violations,
37 which I suppose is kept informed of bunkering, you choose which elements you are
38 going to place in your *procès-verbal* and which you are not?
39 A I said that we are not doing this.
40
41 Q What allows you to judge what is important to include and not to include concerning
42 facts which are true, according to you?
43 A We do not judge the facts here.
44
45 Q I will go to another point. When they put the question to you this morning about what
46 point in time radar was established with *The Saiga*, you said "Late in the night or in
47 the early hours of the morning." Is this the sentence that you used?
48 A Yes.
49

1 Q Could you explain to the Tribunal if, in the knowledge that you have of French, "the
2 early hours of the morning" is 3.30 in the morning?
3 A Yes.
4
5 Q Could you explain to the Tribunal why there is a difference of half an hour between
6 your testimony today and what you wrote in the *procès-verbal* ?
7 A I have not got the precise hour. I said "around". In the *procès-verbal* I said "around."
8
9 Q Do you have the precise word now?
10 A "Around."
11
12 Q Could you explain to the Tribunal what this answer means?
13 A I said "around" because I do not remember exactly the time. Therefore, I cannot say
14 exactly which hour it was.
15
16 Q It was 3.30 or 4?
17 A More or less.
18
19 Q When you wrote your *procès-verbal* , why did you say "4 o'clock in the morning"?
20 A No, I said "around 4 o'clock".
21
22 Q Why did you prefer to say "around 4 o'clock"?
23 A Allow me to finish, please.
24
25 Q You cannot answer a question which has not yet been formulated, not yet been
26 worded, Mr Bangoura. I suppose that when you question others in your capacity as a
27 Customs officer you leave them time to answer. Why did you choose in the *procès-*
28 *verbal* to say "around 4 in the morning" and why today are you saying "around 3.30"?
29 Why do you choose to say "around 3.30"?
30 A Because I have not got the precise time.
31
32 Q Why?
33 A The reference time is different in one case and in the other. In one case the reference
34 time is 4 o'clock and in the other case 3.30.
35
36 Q 3.30, around 3.30/4 o'clock, and from 4 you go towards 4.30 and from 4.30
37 towards 5?
38 A This is so.
39
40 Q Why in the *procès-verbal* did you choose to quote 4, and why are you only referring
41 in front of the Tribunal to 3.30?
42 A Because I did not have the precise time.
43
44 Q Mr Bangoura, you do not have the precise time any more today than you did on the
45 day when you wrote this *procès-verbal* , is that true?
46 A That is what I said. I did not see the exact time.
47
48 Q I am sure, Mr Bangoura, that the Tribunal has perfectly understood that you did not
49 have the precise time at the time and that today you still do not have the precise time,

1 but my question is nonetheless clear and simple, it seems to me. Why at that time did
2 you refer to 4 o'clock and today you refer to 3.30?
3 A I said "approximately 3.30 in the morning".
4
5 Q So it could also be approximately 4?
6 A I cannot confirm that. I said "We left towards 4 o'clock."
7
8 Q Who was in command of your launch?
9 A The chief of the mission.
10
11 Q Who was giving orders to whom? Who is the person who received no orders from
12 anyone else other than a superior on land?
13 A You know, there are two teams. There is one team from the Customs and one from
14 the Navy, and I was in charge of the Customs.
15
16 Q The Navy also had a chief?
17 A Yes, he was the captain of the vessel, because this was the crew.
18
19 Q You were on board a naval vessel but you are the head of the mission of the Customs
20 under the orders of the commander of the ship?
21 A No, I was not under his orders.
22
23 Q Consequently, we are dealing with a ship where there were several crews or several
24 teams?
25 A No, there is one crew.
26
27 Q The crew was of the Navy "and we were passengers on a mission"?
28 A We were not passengers. We were on a mission.
29
30 Q When Maître Plender was questioning you, it seems that you said "passenger"?
31 A No, sorry, I may have been mistaken.
32
33 Q But you were on a mission on board. You are not under the orders of the
34 commander?
35 A No.
36
37 Q Which means that you can do what you like?
38 A What do you mean, for example? I do not know. When you say that we can do what
39 we like, I do not understand what you are getting at.
40
41 Q I am asking you the question but I am not changing anything from what I have just
42 said. If you were not under the orders of the commander, then you can do what you
43 like?
44 A No, the mission is not a mission of the type that you can do what you like.
45
46 Q Tell me, Mr Bangoura, can you explain to the Tribunal who are the people who were
47 on board the small, fast launch to intercept *The Saiga*?
48 A The small launch?
49

1 Q Exactly.
2 A There were three Customs officers and three members of the crew.
3
4 Q Who were exactly the Customs officers?
5 A There was Sulet Non(?), Manguè Camara, Sogbè Soumah and Ali Abi. This was on
6 behalf of the Customs.
7
8 Q And the Navy?
9 A I do not recall the name of the lieutenant in charge on behalf of the Navy.
10
11 Q So there were men who were not officers or sub-officers on this small launch?
12 A No, apart from the lieutenant, there were sub-officers.
13
14 Q But I am saying that apart from these Customs officers that you have mentioned and
15 the officers of the Navy to sail the vessel, there were other people who were neither
16 officers nor sub-officers?
17 A Well, I do not know the crew. There were three people there to guide the vessel.
18
19 Q You said that you had no blank bullets?
20 A No.
21
22 Q Are you sure?
23 A Yes.
24
25 Q I am going to read another passage:
26
27 "When the target, the Guinean vessels approached *The Saiga* one or two miles,
28 I heard shots and there were no blank shots, which is the normal signal on
29 board to stop a vessel."
30
31 Is this statement true or false?
32 A I cannot say, sir, because I do not know the origin of this written statement.
33
34 Q It does not matter what the origin is. I am just making this statement for the moment.
35 I am stating that you fired blank shots, while you said that you did not have any blank
36 bullets. Am I stating the truth if I say that you fired blank shots?
37 A I have already made my declaration and I am saying that there were no blank bullets.
38
39 **PROFESSOR LAGONI:** Mr President, with my apologies, I may shed some light on this
40 matter of the blank shots. It is an error which I made in getting information from Guinea.
41 I misunderstood that they in fact sent blank shots, but they declared that they shot above the
42 ship. It was a misuse of the English term. I did not know that "blank shot" is a very specific
43 term in this situation. The question is caused in the Counter-Memorial by my remark. So it
44 should be clear that Guinea did not submit that there were blank shots, there were shots
45 above the ship. Thank you.
46
47 **THE PRESIDENT:** Thank you very much Mr Lagoni. Maître Thiam, I think what is being
48 suggested is that the statement that they were not blank shots, from the witness, does not

1 contradict the statement that you are reading, because the first statement was based on an
2 error.

3

4 **MAITRE THIAM:** Thank you Professor Lagoni for this point of clarification. Now
5 I would like to read the *procès-verbal* passage. "Some of our armed people intervened, but in
6 spite of the shots, they were not able to arrest the vessel." I am asking you if they fired above
7 the vessel or at the vessel?

8

9 A We fired above the vessel.

10

11 Q How can you say that if you were not there?

12 A Well this is according to the report that was made.

13

14 Q The judgment of the Tribunal from Conakry said that you fired at the deck.

15 A I think Mr President I would like to point out to the Tribunal there is an error in
16 translation in the English of this document, that is the document you have. I mention
17 here the judgment of Conakry of 17 December 1997. It said on page 2, but in fact it is
18 I believe page 3, when talking about Customs officials that they should have fired at
19 the vessel breaking the windows of this vessel, and I am sorry, Mr President and
20 Members of the Tribunal, but what is written in this document, I am not responsible
21 for the errors of drafting, but it is said that they should have fired at the vessel
22 breaking the windows, and I think reading this text correctly it should say "they fired
23 at the deck of the vessel breaking the windows."

24

25 Q So if you fired above the ship, Mr Bangoura, how can the Magistrate writing this
26 judgment draw the conclusion that in fact the ship was fired upon breaking the
27 windows?

28 A These windows which were broken, I do not know the windows can be broken firing
29 above the vessel. This has to do with the person who drafted the document.

30

31 Q I think this judgment was appealed against?

32 A Yes, of course, but this is what was said in an official document, and these writings
33 are authentic writings, and consequently you think we would have to accuse the
34 Magistrate who wrote this of committing an error.

35

36 Q Thank you very much. I am going to make another statement, a personal statement.
37 The launches emitted audible signals - I am talking about your launches - and also
38 rang bells on board. Is this true?

39 A Yes. On board the one that I was on.

40

41 Q Yes, OK. But the first one to board *The Saiga*. Did you hear any bells?

42 A I cannot say that because I was not on board.

43

44 Q But your launch when you arrived, did you ring bells?

45 A Before our arrival we rang the bells and also when we arrived we rang the bells.

46

47 Q Can you explain to the Tribunal what is the need to ring bells and issue a warning if
48 the vessel had already been detained and arrested?

1 A Well we produced this signal to inform the members of the crew, and this signal is
2 also to assemble.
3

4 Q The smaller launch, did it ring bells for the same reasons?
5 A I do not know.
6

7 Q So how can you confirm that bells are rung by way of issuing a warning to *The*
8 *Saiga*?
9 A I do not know, because I can only talk about the larger vessel.
10

11 Q Did *The Saiga* attempt to manoeuvre to sink your vessel?
12 A No, I am saying that I cannot reply to that because I was not on board the small vessel
13 when it approached *The Saiga*.
14

15 Q Thank you very much, I have understood very well, but I am talking about your patrol
16 boat.
17 A No, we arrived when the boat was already arrested.
18

19 Q So there was no attempt made to sink your vessel?
20 A No.
21

22 Q The large patrol boat, was any attempt made to capsize it?
23 A No. Once the ship is immobilised it cannot sink another vessel.
24

25 Q But I am talking about the large vessel, not the small one. Was an attempt made to
26 capsize the large vessel?
27 A No.
28

29 Q Thank you very much. If I confirm that *The Saiga* on two occasions tried to sink the
30 launches and the crew prevented this, is this true?
31 A No, I am saying that it was the small launch which arrived, and there were two turns
32 and on the second turn there was a large wave.
33

34 Q Mr Bangoura, I am only looking for a short answer, yes or no. Is it true what I have
35 just said to you or not? I am talking about the small launch. So Mr President,
36 Members of the Tribunal, it seems that the statements in the counter memorial of
37 Guinea in paragraph 16 are also erroneous. There seem to be many errors. After how
38 much time did you arrive on the large vessel?
39 A I do not know.
40

41 Q Can you tell us approximately?
42 A I cannot give you an approximation.
43

44 Q One hour?
45 A I do not know.
46

47 Q Two hours?
48 A I do not know. I cannot confirm something which I do not know.
49

1 Q At the moment of the arrest of *The Saiga* by the smaller launch, could you see what
2 was happening through your binoculars?
3 A I did not have any binoculars, and I do not wear binoculars.
4
5 Q Was it at a certain distance that you were able to notice it?
6 A I am saying that I do not have binoculars and I cannot confirm this.
7
8 Q OK. When you arrived on site you were within the exclusive economic zone of
9 Sierra Leone?
10 A I cannot confirm that.
11
12 Q The ship had not crossed the limits at the time when it was arrested? At the time
13 when it was arrested, had the vessel crossed the limits or not?
14 A Yes, it had passed the limits.
15
16 Q So consequently where you within the customs radius of Guinea? I am asking at this
17 precise time were you in the customs radius of Guinea. That is from the time it
18 crossed the limit.
19 A It was no longer within the customs radius, no.
20
21 Q Thank you. What do you say of the formalities of article 231 (3)(a). What do you say
22 about this? Do you have the Customs Code?
23 A Yes, but the writing is very small. Please, I am not obliged to read it to you.
24
25 **THE PRESIDENT:** Mr Bangoura, I did not intervene earlier, but you have read from this
26 Code earlier, and I think you should be able to read from the Code.
27 A This text is to do with arrest outside the customs radius, and this is precisely the case
28 in point because you said we were outside the customs radius.
29
30 **MAITRE THIAM:** That is not this case?
31 A No.
32
33 Q But you said you agreed to interpret this text along with me as being a text which
34 applies to seizure outside the customs area.
35 A This is nothing to do with the pursuit that we were involved in . We did not leave the
36 Guinean territory to go elsewhere.
37
38 Q Does this text not also apply to pursuit? If you read the first two lines of paragraph 3
39 to the Tribunal. Paragraph 3.
40 A Which article?
41
42 Q We are talking about article 231, 2 and 3, paragraph 3, the first two lines.
43 A In the case of chase on sight the report must state ---
44
45 Q Was this a chase on sight beyond the customs radius?
46 A No.
47
48 Q So you do not have to respect the formalities of this text?
49 A Yes.

1
2 Q Do you have to respect this, or not?
3 A Yes.
4
5 Q Did you respect this?
6 A Yes.
7
8 Q Show us where in the *procès-verbal* mention has been made of this?
9 A Well here it is within the radius, and we are not talking about the customs territory.
10
11 Q But you explained to the Tribunal that according to a new decree, of which we are
12 unaware, the territory and the radius are one and the same thing.
13
14 **MR VON BREVERN:** Mr President, I object to the question, if it was a question. What
15 Maître Thiam said when he said he was quoting the witness, we at least have not heard the
16 witness having said before, namely that customs territory would be identical to customs
17 radius.
18
19 **THE PRESIDENT:** Maître Thiam, do you have a response to that before I say something?
20
21 **MAITRE THIAM:** Mr President I feel that I am always under the protection of the
22 Tribunal, and what I confirm, I think I heard this the same as everyone else, and I submit to
23 the wisdom of the Tribunal. I would like to ask another question of Mr Bangoura. Does he
24 think that he has to respect the provisions of article 230 of the Codes des Douanes?
25 A Yes.
26
27 Q Did you respect them?
28 A Yes.
29
30 Q Where did you mention this in the *procès-verbal*, that you note the number of
31 markings and numbers of packages, boxes and barrels on the unloading and place
32 seals on the ship's covers and hatchways? I am talking about the continuous
33 unloading and you mentioned this. Did you place the seals on the covers and
34 hatchways?
35 A Yes.
36
37 Q Where is this mentioned in the *procès-verbal*?
38 A No, we did not mention this in the *procès-verbal*. This was done when the cargo was
39 discharged and this is done at the office of the Douanes des Hydrocarbures and so for
40 this reason we thought it was not necessary to place the seals on the ship.
41
42 Q Well, the unloading had already started so you preferred to take all of the crew.
43 A You mean, to keep them under escort with the weapons, no.
44
45 Q Thank you. Talking of weapons, you said that you are authorised to use these if there
46 is any resistance. Could you give details to the Tribunal?
47 A What reasons?
48

1 Q Under which circumstances do the instructions that you have allow you to use
2 weapons and fire them at people who themselves are not armed?
3 A I would like to refer to the provisions of article 41 of the Customs Code.
4
5 Q Maybe this time you can read it? I hope, Mr Bangoura, that it is not the first time that
6 you are reading this text. I said that I hope it is not the first time that you are gaining
7 familiarity with this text?
8 A No.
9
10 Q Then I think that you can explain to the Tribunal when you are authorised to use arms.
11
12 **MR VON BREVERN:** Mr President, I really would appeal to you to ask Maître Thiam to
13 preserve the dignity of this witness.
14
15 **THE PRESIDENT:** I think that every witness has their dignity and that that should be
16 preserved, but the situation is a little difficult because Mr Bangoura said he was referring to
17 a particular provision. Then he was asked to read it and we are waiting for him to read it.
18 But I think the difficulty we are having is that Mr Bangoura is able to read at certain times
19 and not able to read at other times, and that is creating problems for the Tribunal itself, too.
20
21 I think it is a very simple matter. If he has to read a paragraph, all he has to do is to
22 read it. If he chooses to be able to read at certain times and not at others, it creates problems
23 for all concerned.
24
25 Mr von Brevern?
26
27 **MR VON BREVERN:** I consider it must unusual to ask a witness several times to read out
28 an article. This is not what Maître Thiam wants as fact. He has to ask about facts and not
29 whether he can read out.
30
31 **THE PRESIDENT:** I think we should stop this exchange. The present situation is that it is
32 the witness who said, in answer to a question as to under which conditions are they allowed
33 to use arms, "I am referring to article 41". In that circumstance I think it is not only fair but
34 necessary that the witness should tell us what article he is referring us to. He does not have
35 to read it. He can give us the gist of it.
36
37 Mr Bangoura, please?
38 A Article 41:
39
40 "Customs officials have the right to bear arms in the performance of their duties.
41 (2) Apart from cases of self-protection, they may use these: (a) where violence or
42 assault is used against them or where they are threatened by armed persons;
43 (b) where they cannot otherwise stop vehicles, vessels and other means of transport,
44 the drivers of which fail to obey the order to stop; (c) where they cannot otherwise
45 prevent the passage of a band of individuals, armed or otherwise, who fail to stop
46 when called upon to do so; (d) where they cannot capture alive any animals used for
47 smuggling or which are being smuggled in or out of the country or which are
48 operating illegally."
49

1 **MAITRE THIAM:** In the case of *The Saiga* which is the paragraph which you are
2 invoking?
3 A Paragraph (b) is the answer.
4
5 Q In other words, you believe that it was impossible to stop *The Saiga* by other means
6 than using firearms? Do you think that?
7 A Yes.
8
9 Q You did not use submachine guns; you only used small calibre guns?
10 A Yes.
11
12 Q Do you think that a small calibre arm can stop a tanker which is sailing at great
13 speed?
14 A Yes.
15
16 Q How?
17 A By the method that we used. That is to say, those who are on board will describe to
18 the Tribunal how it happened.
19
20 Q You said earlier on that you fired above the vessel?
21 A Yes, we fired above the vessel.
22
23 Q Did you fire to stop the vessel?
24 A I cannot tell you. I can say that those who were present will be able to explain this.
25
26 Q Thank you very much, but it is you who invoked paragraph (b) of article 41, you
27 yourself, so please explain to the Tribunal in what way paragraph (b) of article 41 was
28 applicable in the circumstances?
29 A I cannot explain to the Tribunal here something which I did not experience myself.
30 I said that those who were there, when they come and at the pertinent moment, will
31 tell us what they did and how they tried to stop the vessel.
32
33 Q You are the Head of the Mobile Brigade of the Customs.
34 A No.
35
36 Q What is your function or was your function then?
37 A The Head of the Brigade of the Customs of the Port of Conakry.
38
39 Q Good. When your men use weapons they have to report to you, I think?
40 A Yes.
41
42 Q If they used their arms in circumstances which the law does not authorise, do you
43 undertake an inquiry?
44 A Yes.
45
46 Q Would you yourself conduct an inquiry?
47 A Yes, we have to conduct an inquiry.
48
49 Q Did you undertake an inquiry?

1 A No, because it was legitimate.
2
3 Q You concluded that it was legitimate?
4 A Yes.
5
6 Q Therefore a report was submitted to you verbally?
7 A Yes.
8
9 Q If you were given a verbal report, you should be able to say to the Tribunal why it was
10 necessary to use arms to immobilise *The Saiga* because it was you yourself who
11 invoked the provisions of this particular text.
12 A I said that those who were involved, since they have to come here, will explain to the
13 Tribunal how it happened.
14
15 Q And you, their superior, were the Head at the time?
16
17 **THE PRESIDENT:** Maître Thiam, it appears that the line of questioning is not going to get
18 us anywhere, and I say that without any inferences. I would suggest that we draw the right
19 inferences, both you and the Tribunal, and that you proceed to other lines of questioning.
20
21 **MAITRE THIAM:** Thank you, Mr President. I think that your reply shows that I have
22 achieved my objective. I want to ask the witness whether he knows the provisions of
23 article 226. I am sorry, Mr Bangoura, it is not 226 but 236 of the Customs Code and,
24 Mr Bangoura, more specifically, the provisions at the end of the first paragraph. This time
25 I will read, if you so wish.
26
27 "The reports drawn up by two Customs officers or in accordance with article 223 (1)
28 above of other competent departments are to be taken as authentic accounts of events
29 until they are challenged by material facts to which they relate."
30
31 You are familiar with these provisions? That is my question.
32 A Yes.
33
34 Q Do you know in general why a legislator puts such a provision in the Customs Code
35 concerning the reports of the Customs officers or other reports which are authentic by
36 nature? Do you know why these provisions are included?
37 A Please repeat your question.
38
39 Q You read this article. Do you know why legislators protect Customs officers by
40 saying that reports which they draw up hold until challenged? Why is this placed in
41 the law?
42 A It is to protect the officers.
43
44 Q What is the other side of this favour that the legislator is granting to the officers?
45 Does it not seem to you that the other side is, like elsewhere, that you can only sign
46 what you have personally been able to state?
47 A Yes.
48
49 Q It is that?

1 A Yes.
2
3 Q You explained to the Tribunal earlier on that there are many mentions in the
4 *procès-verbal* which you signed and which you did not personally state yourself.
5 A The *procès-verbal* has been drawn up by all of those involved in the mission. It is all
6 the facts which took place in the mission which are recorded in the *procès-verbal*.
7 That is why you see that it is signed by all those who participated in the mission.
8
9 Q But the *procès-verbal* contains facts which you yourself have not personally
10 experienced.
11 A It is the overall report. It is a summary of all the facts.
12
13 Q So you transmitted the facts?
14 A Each of us had a role to play and it is all the facts that have been laid down and
15 recorded.
16
17 Q For the time being, you are the first witness of the Republic of Guinea. Can you
18 confirm to the Tribunal that you have signed for something that you have not
19 personally observed?
20 A What I did is what I explained to the Tribunal, and somebody else who signed this
21 *procès-verbal* can come here and explain what they saw.
22
23 Q So you personally cannot confirm that *The Saiga* was travelling faster to the south and
24 to the borders than you? Did I understand in your answer that you stated this yourself
25 but on the basis of the radar?
26 A Yes, on the basis of what the radar operator told me.
27
28 Q In the National Guinean Navy there is a radar operator who was able to specify that
29 a tanker which had 7,000 tons of oil on board at a certain point in time was sailing
30 faster than the launches of the Navy?
31 A The launches of our Navy, yes.
32
33 Q Was the radar not then broken?
34 A I cannot say that here.
35
36 Q You said personally that you caught up and that an order was given to the vessel to
37 stop.
38 A Yes.
39
40 Q Now you have stated this. You experienced it yourself?
41 A I explained here that when the small launch left us I heard the siren. I saw the blue
42 flashing light. As far as the radio-hailing was concerned, I was not in the radio room.
43
44 Q What is written in the *procès-verbal* is this:
45
46 "The vessel was caught up and it was requested to stop."
47
48 According to this *procès-verbal*, the launch caught up with the vessel. We are not
49 speaking about the departure, we are speaking about when it caught up. When it did

1 catch up, according to the *procès-verbal* it was fired at and requested to stop. So,
2 from where you were, you were able to see that it was fired at to stop?
3 A No, it is only in the *procès-verbal*. It is the small launch. I cannot speak on behalf of
4 what happened to the small launch.
5
6 Q So you cannot personally confirm to the Tribunal that what is written here is
7 something that you experienced?
8 A No, me not, but somebody else will explain it to the Tribunal.
9
10 Q My question is: did you yourself experience this? Were you able to state it yourself,
11 what we are speaking about here?
12 A (No reply)
13
14 Q It does not matter, Mr Bangoura. It says:
15
16 "We continued to request the vessel to stop."
17
18 You cannot confirm to the Tribunal that you experienced this yourself?
19 A (No reply)
20
21 Q I put a question to you.
22 A It is the same person.
23
24 Q When you write:
25
26 "When we boarded it, it tried to sink our patrol boat twice. We barely avoided this" --
27
28 you personally are unable to confirm that you experienced this. Is this right?
29 A Yes, it is the same person here.
30
31 Q So,
32
33 "We had an intervention by some of our armed personnel who fired at the vessel but
34 in spite of this they were unable to make it stop."
35
36 A Yes, here again I was unable to state this myself.
37
38 Q The vessel changed direction, it headed towards the high seas and you cannot
39 confirm, yourself, that this is true?
40 A (No reply)
41
42 Q You said that you cut the leads?
43 A Yes, this is what I was told.
44
45 Q When the vessel was to take course for Conakry, you were unable to stop the vessel in
46 any other way except by using arms?
47 A At that time, no. We had no possibility.
48

1 Q Finally, you said that you had to cut the tubes and cut the leads in order to stop the
2 vessel from progressing further. So you had to cut leads in order to immobilise the
3 vessel and not arms?
4 A (No reply)
5
6 Q Do you have a certain period of time to draw up your *procès-verbal* ?
7 A It must be drawn up immediately without any other intervening acts after the deposit
8 of the impugned goods.
9
10 Q Your *procès-verbal* carries the date of 13 November.
11 A The end of drawing it up was 13 November.
12
13 Q You did other tasks in between?
14 A No
15
16 Q From 28 October to 13 November all the officers who participated in the arrest of *The*
17 *Saiga* did nothing other than drawing up this *procès-verbal*?
18 A (No reply)
19
20 Q How many days do you need to write these few lines?
21 A The *procès-verbal* is only drawn up after having arrested the means of transport and
22 the goods.
23
24 Q But *The Saiga* was in the port.
25 A On the 28th it went to anchor and it was brought into the port on the 29th.
26
27 Q Is the port not an office, a Customs office?
28 A No, it is the brigade.
29
30 Q The vessel, I think, was confiscated. It was a confiscated object. Do you have to
31 move it from the dockside and take it into an office?
32 A The office here is the office for fuel.
33
34 **MAITRE THIAM:** I am not going to continue along these lines, Mr President. I am going
35 to follow your recommendation.
36
37 Q The logbook: you confiscated it?
38 A It was not confiscated. We took it.
39
40 Q You took it with you physically. This is what I am saying.
41 A This logbook -- as Dr Plender said this morning, the vessel stopped its engines at 4
42 am.
43
44 Q You confirm something to the contrary. Manifestly - and I do not want to be
45 excessive here when I say this – somewhere there is a false declaration, either in the
46 *procès-verbal* or in the logbook. Do you agree with me, until this stage?
47 A I do not know where you are going. I will let you continue.
48

1 Q What I am trying to say, Mr Bangoura, is that if you confiscated the logbook and the
2 Captain was not under arrest, when could he have put a false insertion into his
3 logbook?
4 A I think that since this morning I have not said in any of my declarations that there was
5 a false entry in the logbook. I do not support this. I remember saying here that I do
6 not confirm - I cannot confirm - this because I do not have the possibility to confirm
7 this.
8
9 Q Thus the logbook, you cannot confirm that the entries in it are false?
10 A I cannot confirm this. I did not do it and I cannot do it.
11
12 Q Do you want to go back on your declaration then and accept that the vessel had
13 stopped at four in the morning?
14 A I cannot come back on my declaration in order to say that the vessel had stopped
15 because I was not next to the vessel, nor was I in it at 4 am.
16
17 Q Thank you very much. The Tribunal will weigh this up. You said earlier on that
18 there was one shot above the vessel to stop it. Could you be more precise and tell us
19 what this means?
20
21 "Until *de sommation dans le navire*"
22
23 One shot – *dans le navire* – in the vessel, what does it mean?
24 A It means at the deck of the vessel - not at the bridge, but at the deck.
25
26 Q This means that the person who issued this shot was on the deck?
27 A Yes.
28
29 Q Did they shoot at *The Saiga* before this? This was not with blank shots, this one shot?
30 A No.
31
32 Q Where was it directed, into the air?
33 A Ah-ha, it was into the air.
34
35 Q So it was not liable to wound or to cause any damage on the vessel?
36 A I cannot say this because I was not at this position. I do not know what the position
37 was in comparison to the vessel.
38
39 Q Mr Niasse was wounded.
40 A I did not see his wounds.
41
42 Q Earlier on you said to the Tribunal that you saw that he had a wound in one eye.
43 A It is not a wound that was there. He said that it was hurting. He said he had a pain in
44 his eye - I do not know which side - and it was at the hospital that his eye was treated
45 and he was able to see again.
46
47 Q How do you think that he was wounded?
48 A I cannot explain it because I was not there when it happened.
49

1 Q Who can confirm that he was hurt by throwing himself out of a window?
2 A It seems out of fear.
3
4 Q But you cannot confirm it now. You say now that it would seem.
5 A I have never confirmed that since this morning.
6
7 Q M. Bangoura, you were at the head of a polite group of men, a courteous group of
8 men but they were armed. Why do you say that he was frightened and he threw
9 himself out of a window?
10 A Because nobody was on deck and when our people came on board everyone hid.
11
12 Q Dr Plender put the question to you earlier on and you said that he was wounded, he
13 was injured. According to which version, you said? It seems as if there was a version
14 according to M. Niasse and another version. Did I understand that from where I was
15 sitting over there or was I distracted?
16 A There were no versions, no.
17
18 Q You never heard M. Niasse, his injury?
19 A Yes, I remember what I said. I said that when there was panic on board, that was at
20 the moment when he knocked against a pane of glass.
21
22 Q You did not go and ask him what happened when he was at the hospital? What was
23 his version?
24 A Yes, it is his version that I have given you.
25
26 Q He said that he threw out of a window –
27 A No, he said not out of a window. He said when he went into his cabin because
28 everyone was afraid and they ran away.
29
30 Q You searched the whole of the boat and there were no drugs?
31 A I did not see any drugs.
32
33 Q There were no arms?
34 A It would have been put in the *procès-verbal*. The members of the crew only did their
35 work. I do not know what they were doing when we arrived.
36
37 Q But they were not doing anything illegal -- the sailors. I am not talking about the
38 Captain and the owner. What were the crew doing? They were not doing anything
39 illegal?
40 A No.
41
42 Q Maybe the Captain was right. Maybe he could have been afraid if he thought that he
43 was doing something illegal. Could you explain to us what could have justified such
44 a fright in the case of M. Niasse, such a fear?
45 A I was not there, as I have said. I cannot explain to you why he was so afraid. I can
46 only say what was reported to me by M. Niasse and this is what I am saying. I was
47 not there at the very point in time when there was this fear that took the crew. I was
48 not there.
49

1 Q I imagine the scene, that very well-behaved officers go on board, they put questions,
2 they ask for books. Is there a single reason why a sailor who is not involved by the
3 trade of the ship is so afraid that he hits his head against a pane?

4 A I cannot answer this question.

5

6 Q Who cooked for your men?

7 A Our men? Our cook on board. On board *The Saiga*?

8

9 Q No, on board P28.

10 (No reply)

11

12 Q You said that the passports were not confiscated because –

13 A We did not ask them for the passports.

14

15 Q Please let me finish. "The passports were not confiscated because we did not ask
16 them for this" This is what you said if my notes are correct and my memory is good.
17 Who is "they"?

18 A The members of the crew.

19

20 Q So you had the passports?

21 A To control them.

22

23 Q And you do not think that it was more natural that you were going to give them back
24 because you took them?

25 A We gave them to the ship's agent.

26

27 Q When?

28 A Each time he asked.

29

30 Q So he had to go and ask for passports that you had taken?

31 A He was not forced to do this, no.

32

33 Q Why did you not spontaneously give the passports back?

34 A We cannot give the passports spontaneously because we did not know to whom to
35 give them, only when we knew who the ship's agent was.

36

37 Q Mr Bangoura I have come to the end and I regret to say that the lacuna and holes
38 which were mentioned by Dr Plender earlier on have still not been filled in by you.

39

40 **THE PRESIDENT:** Thank you very much. It is quite plain, Mr von Brevern, that you will
41 not be able to undertake re-examination tonight. The Tribunal will also have a few questions
42 to put before re-examination. Mr Bangoura, you will have to come back tomorrow to the
43 witness stand.

44

45 Before we adjourn I would like to urge counsel on both sides -- We have had this
46 experience on both occasions when witnesses on each side have been cross-examined. I do
47 appreciate that we want to arrive at the truth, but as I said a little earlier, where witnesses are
48 either unable or unwilling to give information or explain apparent contradictions, I would

1 suggest that after one or two attempts the matter should be left there and the Tribunal will
2 draw its own conclusions.

3
4 I say this not merely because it may appear that witnesses are being harassed, but it
5 will also help, perhaps, to keep up with the time schedule that we have set which, as you
6 know, is very tight. I think that this happened three or four days ago in respect of a witness
7 from the other side and it has happened here. It is the function of counsel to ensure that they
8 receive the right answers. However, where witnesses are either unwilling or unable to give
9 them, for some reason, I think that we should perhaps stop a little earlier and leave the
10 conclusions to be drawn by the other side and by the Tribunal.

11
12 Thank you very much. The sitting is closed. We will meet tomorrow at 10 o'clock.

13 **(Adjourned at 1600 hrs until 1000 hrs on Saturday 13 March 1999)**

14