

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



1999

Public hearing

held on Tuesday, 9 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)

Verbatim Record

Present:

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

1 *Saint Vincent and the Grenadines*

2 *represented by*

3

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

6

7 *as Agent;*

8

9 Mr. Richard Plender Q.C., Barrister, London, United Kingdom,

10

11 *as Deputy Agent and Counsel;*

12

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

15

16 *and*

17

18 Mr. Yérim Thiam, Barrister, President of the Senegalese Bar, Dakar, Senegal,

19 Mr. Nicholas Howe, Solicitor, Howe & Co., London, United Kingdom,

20

21 *as Counsel and Advocates.*

22

23

24

25 *Guinea*

26 *represented by*

27

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

29

30 *as Agent and Counsel;*

31

32 Mr. Maurice Zogbélemou Togba, Minister of Justice and Attorney General of Guinea,

33

34 *and*

35

36 Mr. Namankoumba Kouyate, Chargé d'Affaires, Embassy of Guinea, Bonn, Germany,

37 Mr. Rainer Lagoni, Professor at the University of Hamburg and Director of the Institute for

38 Maritime Law and Law of the Sea, Hamburg, Germany,

39 Mr. Mamadi Askia Camara, Director of the Division of Customs Legislation and Regulation,

40 Conakry, Guinea,

41 Mr. André Saféla Leno, Judge of the Court of Appeal, Conakry, Guinea,

42

43 *as Counsel.*

44

45

46

47

48

1
2 **THE PRESIDENT:** Yesterday before we broke, Dr Plender, you indicated that you had
3 completed your examination-in-chief of the witness Captain Orlov. Is that still the position?
4

5 **DR PLENDER:** Mr President, it is. I have one formal question to put to the witness and,
6 with your permission, I will simply put it before offering him for cross-examination.
7

8 **THE PRESIDENT:** Very well. Could the witness Captain Orlov be produced in court,
9 please. Mr von Brevern.
10

11 **MR VON BREVERN:** Mr President, before Dr Plender continues, may I tell you that I have
12 the honour to present two more members of the Delegation of the Republic of Guinea who
13 you see on my left. They are M. Mamadi Askia Camara, Director de la Division Législation et
14 Documentation douanier, and Mamadou Salion Kona Diallo, Officier de l'Etat-Major de
15 l'Armée de Mer. Merci, M. le President.
16

17 **THE PRESIDENT:** Thank you very much, Mr von Brevern. I welcome the two gentlemen
18 to the Tribunal. Could Captain Orlov please be called in?
19
20

21 **CAPTAIN MIKHAYLO ALEXANDROVICH ORLOV, recalled**

22
23 **THE PRESIDENT:** Captain Orlov, may I remind you that the declaration that you made
24 yesterday as to the truth of the evidence you give still applies to the evidence that you give
25 today. Dr Plender, you may continue.
26

27 **Examined by DR PLENDER (Continued)**

28
29 Q Captain Orlov, do you see before you a copy of a telex?

30 A (Interpretation from Russian) Yes, I have this copy.
31

32 Q Is that telex dated 22 October warning of oil hunters that you described to the court
33 yesterday?

34 A Yes. I received this telex on 22 October. Its meaning that was the minimal distance to
35 the shore where one could work in the area Guinea Conakry was not less than 100
36 miles because over there, as I mentioned already, there was a possibility of an attack
37 on the tankers supplying fishing trawlers.
38

39 **DR PLENDER:** Please stay where you are. You may now be cross-examined.
40

41 **THE PRESIDENT:** Thank you. Mr von Brevern, would you like to cross-examine the
42 witness? If so, will you please do so now?
43

44 **Cross-Examined by MR VON BREVERN**

45
46 Q Captain Orlov, you have prepared a statement which I have before me and you have
47 before you. I would like to ask you whether, in preparing this statement, you had any
48 papers, any documents, any diaries before you?

1 A What papers do you have in mind? Copies of the documents I am not quite in.
2

3 Q My question is, did you write down this statement just out of your memory or did you
4 look into some papers and, if so, in which papers?
5 A Of course, I had about me the papers and when I left the ship I made copies of all
6 statements which I sent, and also I prepared the copies of my correspondence. This
7 statement was made on the basis of my papers which I took from the ship.
8

9 Q When did you write this paper, and where?
10 A This document I prepared beforehand when I was at home, because I knew that I will
11 be called to the Court of Justice, and I arrived here already practically having my own
12 paper, and I signed it yesterday.
13

14 Q Did you write the paper in English?
15 A Yes.
16

17 Q There is no Russian original of this paper?
18 A The Russian original is not at all here because I did not make it up.
19

20 Q Captain Orlov, I understand that your employer is a company, Seascot, in Glasgow and
21 you have signed on the *M/V SAIGA* on 3 August 1997. Is that correct?
22 A What was exactly the date in August?
23

24 Q 3 August.
25 A Yes, I signed my contract and arrived to the ship on 3 August in Dakar.
26

27 Q When you boarded *The Saiga*, did you receive any instructions on the coming
28 employment of *The Saiga*, and by whom?
29 A I did not get concrete instructions. I talked with the captain who passed the ship to me
30 and I talked with him about the position of the ship, for where, and about the cargo.
31 In other words, the captain who was leaving the ship gave me full information about
32 the ship, its hullages and shore. He gave me certain data of the charterer with whom
33 I would be in contact, and also an operator who would be guiding the ship. Further
34 on, I held correspondence and talked with my operator and sent messages to him, and I
35 later on knew more from him about whereabouts the ship and its operations; so I got
36 the full and complete information.
37

38 Q You refer to the charterer on the one side and to the operator on the other side. Can
39 you tell us who was the charterer and who was the operator?
40 A The ship worked on time charter and was chartered for two years. The charterer is up
41 till now Addax Bunkering Service, which is located in Geneva, and directly operates
42 the work of the ship. The shipowner officially is Tabona Shipping Company, and I was
43 employed, and the technical management of the ship was done, by the company
44 Seascot Ship Management Ltd.
45

46 Q Have you seen the charter party to which you have just referred, the two years charter
47 party?
48 A At Dakar there is an affiliation of the charterer and I met many a time with
49 Mr. Mark Vervaet, and naturally I talked with him about the work of the ship and the

1 plans of work and prospects and the details which were available before my entering
2 into the – taking this job.

3
4 Q So you have not seen a charter party?

5 A Perhaps this is a charter.

6
7 Q Well my direct question is, have you seen who is the charterer according to the charter
8 party?

9 A This is charterer. When I worked on the ship and was there I did not see the
10 representative of a charterer, he did not visit the ship.

11
12 Q My last question to this subject, I am sorry that I insist a little bit; do you know that
13 the company from which you received the instructions, I think that was ABS Geneva,
14 might not be the same company as the charterer of the vessel? Do you know that?
15 Can you inform about who was the charterer?

16 A ----Addax Bunkering Service and the ship was chartered by the Lemania company.

17
18 Q Okay, thank you. Then, is it correct that the instructions you received came from ABS
19 Geneva did not come from the charterers but from the cargo owners. ABS Geneva, as
20 you know was the cargo owner. So you received instructions not from the charterer
21 but from the cargo owner, is that correct?

22 A Would you please repeat?

23
24 Q As you just told us, the charterer is Lemania, a shipping group and as you also told us,
25 you received instructions from ABS Geneva. Would you agree that you received your
26 instructions from ABS Geneva being the cargo owner?

27 A There seems to be all instructions were coming to me from the operator in Geneva,
28 who worked for the company ABS in Geneva.

29
30 Q As to another subject, when you boarded the vessel did you check any documents,
31 certificates of the vessel?

32 A Naturally, this is an accepted practice. When I take a ship from another captain I
33 check up all the documents on board, the terms being in force, the reports from the
34 officers about the condition of the ship and the cargo and equipment etc.

35
36 Q Did you also inspect, or have you seen, the certificate of registration of the vessel?

37 A Yes, I saw it. It was together with other ship's papers.

38
39 Q Did you realize when inspecting this certificate that the date of expiry was already
40 some days or some weeks later, namely on 12 September 1997?

41 A I did not understand. Do you mean that when I was entering the ship as commander
42 the certificate was not valid any more, it has expired?

43
44 Q No. You boarded the vessel on 3rd August and my question was if you have realized
45 that the certificate, the provisional certificate of registration went out of force on 12
46 September 1997 and if you notified anybody of that?

47 A I do not remember at present when was the date of expiry of that document and I am
48 not sure that it was expiring on 12th September 1997.

49

1 Q Okay. I have to accept that you do not remember the exact date, but normally when
2 you inspect the certificate of registration, do you look at the date until when such a
3 certificate is valid?

4 A Of course when I take the documents I watch all the dates and if the certificate expires
5 or certificates expire in the near future, I notify the charterer.
6

7 Q But in this case you do not remember that the expiry date was rather near?

8 A I do not think it was expiring on 12th September 1997, and if it were so that it expired,
9 I do not remember at the moment, perhaps I spoke with the ship's owner about this
10 certificate and perhaps he had an intention to bring you this document. I cannot say,
11 but definitely I can say that when I take the ship from another captain, if in the near
12 months a certificate document is expiring I notify, obligatory and without doubt, I
13 notify the ship's owner and all the people concerned.
14

15 Q Coming back to the question of the charterer, please. In your statement, you mention
16 in various points charterer, for example "I received by charterers", and so on. Who did
17 you mean by mentioning "charterers"; is it correct that you meant ABS Geneva?

18 A Yes, I told you already that directly I was under the command or in contact with an
19 operator from Geneva.
20

21 Q Another subject Captain Orlov. You left the Port of Dakar on 24 October and you
22 explained that when you were on the open sea you normally did not fly a flag. Did you
23 fly a flag when you left the port of Dakar, and what were your orders with respect to
24 the flag when leaving Dakar?

25 A Usually, as a rule, it was a rule on the former Soviet ships we hoisted the national flag
26 of the ship when we entered the port of the country, and leaving the territorial waters,
27 naturally afterwards we lowered the flag of the country. At sea we do not show our
28 flag and we are not supposed to show our flag the open sea.
29

30 Q You mention that this was your normal practice in the Soviet marine. Now you are
31 employed with a Scottish company, Seascot. Does there exist a company rule not to
32 show the flag on the open sea, or was it your own decision?

33 A Such an entry from the company or instruction I did not have, and also one cannot find
34 such an entry, such a statement in any book, and I could not see such an entry in the
35 papers of the ship which made it obligatory for us to raise the flag.
36

37 Q In your former employment with Seascot did you do the same thing with the flag when
38 you were on board other vessels?

39 A The Kilchem company was my first contract and it was my first ship. If you have in
40 mind my work on other ships of other companies, I did the same thing there.
41

42 Q Captain Orlov, another issue: how was your bridge organized at days and who was on
43 the bridge, which persons?

44 A We navigation officers on board were: the Captain, First Officer, Second Officer and a
45 cadet, a man who at that moment was a cadet at a sea academy. The watch was
46 carried on from 0 hours to 4 hours and from 12 to 16 hours. (Interpreter: I asked him
47 to repeat the time schedules.) The first Officer was on watch from 4 to 8 and from 16
48 hours to 20 hours. The Second Officer was on watch from 0 till 4 and from 12 to 16
49 hours. The cadet, under my control, was on watch from 8 till 12 hours and from 20 till

1 24 hours, but mainly he was on watch from 20 to 24 and the morning watch he was
2 mainly working on the deck of the ship. If I needed him, I just called him.

3
4 Q So I understand that you yourself were also on watch, as you have just mentioned,
5 from 8 to 12 and from 20 to 24?

6 A Yes, practically. One cannot say that it was the whole time from 8 to 12 that I was on
7 the bridge, but, if the situation was normal, I could attend to my own businesses and
8 the cadet was on the bridge and he was fully instructed, and if something was not clear
9 to him, he immediately phoned, called me up.

10
11 Q I understand that. The entries in the logbook: is it correct that normally they have
12 been done by the respective officer at the end of a watch and, in case you and the cadet
13 were on watch, who then has made the entry?

14 A Mainly the entries were made by the cadet and he signed. When I was there, I signed
15 but in any case I always checked up the logbook and signed it.

16
17 Q Captain Orlov, could please tell us whether in the three days between 26 and 28
18 October, you remember 28 October 1997 there was the arrest, you have the logbook
19 before you, for these three days, is there any entry from yourself and, if so, at which
20 date and at what time?

21 A Here is a signature by the cadet and the First Officer. On the last three pages there is
22 not my own signature. I can explain it by the fact that at that time there was a lot of
23 fishing trawlers and we were always moving and bunkering and boarding and then
24 passing over the cargo.

25
26 Q Can you explain the 28 October? We find on the right side at 4 o'clock a signature
27 from the Officer of the Watch. Who was that at 4 o'clock on 28 October, in the
28 morning? The lookout is Mr Stanislaus and the Officer on Watch?

29 A From 0 till 4 the Second Officer was on watch.

30
31 Q 0 to 4: so he signed at 4 o'clock. He made the position at 4 o'clock?

32 A Yes, at 4 o'clock it is the signature of the Second Officer.

33
34 Q Then the next entry is at 8 o'clock. Who has signed that?

35 A This is the signature of the First Officer.

36
37 Q That was the watch which has then been signed by the First Officer, and it was,
38 according to your regular schedule, your own watch. You told us that you took the
39 watch normally from 8 to 12 and this time you changed it?

40 A Perhaps. I told you that I was on watch from 8 to 12 and from 16 to 20.

41
42 Q No, 20 to 24. To which day do you refer?

43 A I was normally on watch on these hours.

44
45 Q OK. Let us come back to 28 October and the watch from midnight to 4 o'clock. You
46 mentioned that the Second Officer was on watch. It was the first four hours in the
47 morning. Where have you been at that time? Were you asleep?

48 A I was in my cabin at this time and I was resting. I slept.

49

1 Q Do you remember when you got up, the normal time for breakfast?

2 A As a rule I got up at 6.30 or at the latest at 7 o'clock.

3

4 Q Would you agree that all the entries which have been signed at 4 o'clock on
5 28 October by the Second Officer have been made by the Second Officer?

6 A Yes. The Second Officer was on watch and it is his signature.

7

8 Q Now, Captain Orlov, my last question. How have you communicated from your vessel
9 to other vessels? I understand you have had communications with fishing boats.
10 Which communication media did you use?

11 A I want to understand the question. Is it in relation only to the fishing trawlers or with
12 other objects?

13

14 Q No, with all objects?

15 A On the bridge when we have navigation equipment, we have had two stations, two
16 frequencies, and one was always switched on on this extension and the second was
17 switched on additionally on certain channels. We knew from our own experience the
18 channels of Chinese or other fishermen and we used their channels. Apart from that,
19 the Radio Officer used the short-wave radio for long-distance connections with
20 fishermen in that region.

21

22 Q You explained that you were sometimes otherwise engaged on your watch and the
23 cadet's watch and that the watch has then been done by the cadet. Was he then the
24 only person to make use of these channels? Did he hear channel 16 and did he
25 communicate at the same time with fishing boats or did you have, besides the Officer
26 on Watch, someone else to do this and to hear, for example, channel 16?

27 A As a rule, I gave him instructions and when somebody called us on this extension he
28 called for me. I went to the bridge and I myself was engaged in negotiations.

29

30 **MR VON BREVERN:** Thank you, Captain Orlov.

31

32 Mr President, these were my questions to the witness. Now my colleague,
33 Professor Lagoni, would like to continue with further questions, if you would allow that.

34

35 **THE PRESIDENT:** We will allow it.

36

37 **PROFESSOR LAGONI:** Mr President, distinguished Members of the Tribunal, this is the
38 first time that I appear before this Tribunal. Please allow me to assure you that I feel
39 honoured and delighted to have this opportunity in this case which is so important for the
40 country of which I am Counsel, and which is also so important for the development of the new
41 law of the sea.

42

43 Mr President, Members of the Tribunal, I proceed with the questioning of
44 Captain Orlov.

45

46 **Cross-examined by PROFESSOR LAGONI**

47

1 Q Captain Orlov, I refer you to your statement you handed in. In point 6 of your
2 statement you mentioned that it might not be safe to supply fishing vessels off the
3 Guinean coast. What did that mean, "not safe"?

4 A As I have already mentioned, I had had information from the charterer, telexes,
5 concerning the area of Guinea, Conakry, that it was not safe and I heard also that an
6 accident took place where the *ALFA I* tanker was also shot at.
7

8 Q From whom did you learn about the *ALFA I* incident?

9 A Mr Li, an interpreter. He was sailing with the *ALFA I* tanker and had to have
10 communications with the Chinese fishermen and the captain of *ALFA I*.
11

12 Q Did your charterer, or ABS, the operator, inform you about enforcement actions by
13 Guinean authorities against offshore bunkering tankers?

14 A I received only a telex communication message and, if you like, I can read it out for
15 you - about the position of the ship in that area and how far from the shoreline it
16 should be.
17

18 Q Dr Plender yesterday showed you the telex of 27th October 1997 at 1842 hrs. This is
19 in the Memorial at annex 16, page 25. This telex says:
20

21 "Understand port authorities from Conakry are sending out patrol boats"
22

23 I repeat, patrol boats --
24

25 "tonight and we advise you that the above position is not repeat not safe."
26

27 It proceeds, later on:
28

29 "check any vessel which could approach (normally fast navy speed boat)"
30

31 So, did you expect that you would be attacked by official navy boats or authorities
32 from Guinea?
33

34 A Can I have a look at the telex? I remember the general content of the telex message,
35 but can I see it right now? (Same handed) In this telex there is mention about the
36 navy boats and also about the port boat. As it was stated by Mr Li, when the *ALFA I*
37 had been fired at, he told that it was possible that official Guinean representatives took
38 part in the attack.
39

40 Q So do I understand you right when you mean that the area is not safe, it is not safe
41 because of patrol boats, navy boats, authorities of Guinea?

42 A No, it is not that. I had in mind that the area of West Africa, the coastal area
43 altogether, was not safe in terms both of piracy and, as it was stated by Mr Li, that it
44 was possible that *ALFA I* was attacked with the representatives of Guinea on board.
45 In this case I was afraid of both possibilities, of being attacked by the pirates or by
46 some official representatives.
47

1 Q But, Captain Orlov, referring again to this telex, at no place does it talk about pirates.
2 It talks about patrol boats, normal navy speed boats. Did you have any experiences
3 with pirates in West African waters?

4 A There is guidance where it says concerning the unsafe regions of the piracy and, in
5 particular, mention is made of West Africa, Brazil and the south east. Cases are
6 known that pirates attacked in those regions. It is more often that it happens in these
7 regions.
8

9 Q Would you consider measures taken by military craft against foreign ships as piracy?

10 A I cannot qualify. In this particular case, there was no warning. There was no signal.
11 There was no call by us, on the part of these boats. I have experience and I worked
12 with ships and I was on course by Italy, and we were called by navy channels, aircraft,
13 on the 16th channel and we gave them information about our ship and about its cargo.
14 In this particular case there was no call, there was no warning, there was nothing. I
15 actually understood that it was the naval force of Guinea only by the time when I met
16 with them personally.
17

18 Q So do I understand you right that you would say that you had no personal encounters,
19 no experience with pirate attacks during the time that you worked in West African
20 waters?

21 A I did not have such an experience.
22

23 Q What is, in your view, a pirate boat?

24 A A pirate boat – it can be any kind of boat, any kind of cutter, which attacks a ship
25 without warning, without being in contact, without notification.
26

27 Q So you would include the possibility that a naval ship could be a pirate boat as well?

28 A In those areas it is not excluded. I mean, in the regions which I mentioned, West
29 Africa, Brazil and the south east.
30

31 Q Captain Orlov, we received this morning, from Dr Plender, the telex of 22 October
32 1997 sent at 1658 hrs. You saw that. Is that right?

33 A This telex was sent on 22 October. I received it before we left Dakar.
34

35 Q There is mentioned:

36
37 "We have been advised there are gasoil suppliers hunters".
38

39 What are gasoil suppliers hunters? Can you explain this?

40 A Assuming on the basis from this text, I thought that possibly an attack by pirates was
41 not to be excluded.
42

43 Q Do pirates hunt gasoil? How could they do that?

44 A Would you please repeat once again your question?
45

46 Q Do pirates hunt for gasoil? How can they do that? How can they manage that? What
47 are they doing with the gasoil?

1 A I cannot say that it is a systematic practice of hunting for the tanker. I just had gotten
2 information, and it was a concrete case, that a possible attack was pending and when I
3 heard about the oil supplier hunters, I thought that possibly such people can be pirates.
4

5 Q But you would not conclude that gasoil supplier hunters could be authorities from the
6 coastal State as well?

7 A I cannot qualify. I made a statement on the basis of the information which I had, based
8 on the experience about work and based on what I heard in Dakar.
9

10 Q The information came from ABS, the operator in Geneva?
11 A Yes, this information was sent by these people.
12

13 Q Let me turn to another topic. Did you have any other contacts with fishing boats for
14 bunkering purposes within the Guinean exclusive economic zone after you had
15 supplied *GIUSEPPE PRIMO*, *KRITTI* and *ELENI G*, the Greek vessels?
16 A What exactly is your question?
17

18 Q Did you have contacts with *POSEIDON 1*, *POMOREITIS*, *PANORMITITS(?)*,
19 *TREBBA*, *SALVATORE PRIMA*, *POSEIDON 2*, *POSEIDON 3*? Do you remember
20 these names of ships, fishing vessels?
21 A I do not remember all the names. The fishing boat *TREBBA* was, and perhaps there
22 were other ships, but I cannot say at the moment because I do not remember.
23

24 Q Do you remember a conversation on radio with *POSEIDON 1*? May I read it to you:
25
26 "Poseidon 1 Poseidon 1 Saiga. Saiga, this is Poseidon 1. Well please contact
27 again tomorrow, tomorrow at 8 o'clock, 8,0. Tomorrow, tomorrow I call you
28 again at 8 o'clock, 8 o'clock, 8,00 tomorrow, I call again. Okay, okay. and
29 please note that I will not proceed 100 leagues from the shore, 100 leagues
30 from the shore. So in that case you should proceed at this point at the position
31 9° N, repeat 9.50 north, and longitude, 16°15 -16.15 west, because I have
32 orders from my charterers, don't come closer than 100 miles from the country".
33

34 Is it possible that this is a conversation between *M/V SAIGA* and *POSEIDON 1*?
35 A Possibly. I say I do not remember at the moment, but it is quite possible that I was
36 talking with *POSEIDON* and perhaps it was my talk with them and, working in this
37 area and bunkering the fishing trawlers, it was quite often that we handled a ship, and
38 then after the end of our work the charterer gives us an order to go to another place
39 and wait for the following orders.
40

41 Q This is a transcript of a radio conversation which is in Annex number 9 to the Reply.
42 Mr President, may I request Dr Plender to have the map again which we saw
43 yesterday? Can you indicate on the map roughly where the positions 9° 50 North and
44 16° 15 west are? Can you indicate on the lighted map where it is roughly 9.50 north
45 and 16.15 west? The question is, is this within the exclusive economic zone?
46 A Yes, this position is in the exclusive economic zone.
47

48 Q The new meeting point where you got orders to go to is at 9° 00 North and 15° 00
49 West. This is slightly beyond the boundary to Sierra Leone. Could you indicate it on

1 the map? Who were you waiting for there, Captain Orlov, when you were at this new
2 position south of the boundary line to Sierra Leone?
3 A We were waiting, as I have already said, we were drifting and we were waiting for the
4 orders from our charterer.
5
6 Q So you did not supply *POSEIDON I*, did you?
7 A I cannot tell you exactly, because I do not remember, but most probably we did not
8 bunker *POSEIDON I*.
9
10 Q From where should the vessels come which you were supposed to supply with fuel?
11 A What ships do you have in mind?
12
13 Q I have ships in mind such as other fishing vessels under the Greek or Italian flags, such
14 as *SALVATORE PRIMA*, *TREBBA*, *POSEIDON I*, with whom you had contacts and
15 you were waiting south of the boundary?
16 A It is possible that I was in contact with those ships, but in any case I obtained the order
17 from my charterer to work in this area not closer than 100 miles from shore, and later
18 on got a message to go to 9 degrees North 15° West, and there I was adrift and waited
19 for the following orders, and where the fishing trawlers were at that time I cannot tell
20 you, because it was possible that they could be anywhere.
21
22 Q The new meeting point south of the boundary was considered to be safe, was it?
23 A Perhaps based on the order from the charterer to go to that point and work there,
24 perhaps it was so, and if the telexes which I received, in these telexes it is stated that as
25 a rule there are Greek ships working there and they also make bunkering of the fishing
26 trawlers.
27
28 Q They also possibly come from the Guinean exclusive economic zone, do they?
29 A Who do you mean – the fishing trawlers?
30
31 Q Yes.
32 A I do not know where they were working and, quite naturally, they could approach us
33 from any side.
34
35 Q Let us come to another point. Do you see points 7, 8 and 9 on the map? I may give
36 you the map. (*handed*) This is exactly the map which is up there. Could you indicate
37 7, 8 and 9 on the map? 7 is the uppermost. Are these points correct on the map?
38 A They are indicated correctly, and there is an entry in the logbook making a statement.
39
40 Q It is 20 hours on 27th October, point 7. Point 8, zero hours or 24 hours on 27th
41 October, and 9 is 4 o'clock in the morning of the 28th. This is correct, is it not?
42 A Would you please once again repeat point 7?
43
44 Q Points 7, 8 and 9, these are the geographical positions of *The Saiga* on the 27th. Point
45 8 is at 24 hours and point 9 is at 4 o'clock in the morning of the 28th?
46 A The 7th point was at 20 hours on the 27th October. Point 9 is at 24 hours on the 27th.
47
48 Q This data is taken by you from your logbook?

1 A Point no. 9 at 24 hours on the 27th and coordinate 9. On 27th October at 24 hours our
2 coordinates were 9.27 and 15. In other words, these coordinates were above the point
3 9.
4
5 Q Could you indicate it again?
6 A At 24 hours according to the log book the ship was at point no. 8.
7
8 Q Could you indicate it again?
9 A 24 hours.
10
11 Q And 4 o'clock
12 A On the map, this point is on the map, and the coordinates are 9.27 and 15.26.
13
14 Q This is point 8. And 4 o'clock?
15 A And point no. 9 was at 4 o'clock on 28th October.
16
17 Q Could you indicate 9 again please, thank you? So Captain Orlov, if you have these
18 three geographical positions at those times given, 20 hours, 24 hours, 4 o'clock, can
19 you figure out the speed of *The Saiga* over the ground?
20 A By measuring the distance on a map we can determine the speed of the ship on a given
21 stretch.
22
23 Q The speed of the ship over the ground is the real, the actual speed, you will agree that?
24 A Would you please repeat your question?
25
26 Q The speed of the ship over the ground is the real, the actual speed of the ship? It
27 includes possible currents?
28 A Naturally in this area there are currents and the general speed relating to the ground
29 will be together.
30
31 Q Thank you . How did you take the geographical positions on *The Saiga*? Which
32 means?
33 A In this case, in this area far from the shore, we used GPS.
34
35 Q You can confirm that GPS is very precise?
36 A It has its own force, but it is quite sufficient to determine the geographical position of
37 the ship at sea.
38
39 Q In point 8 of your statement you have noted that you crossed the border line between
40 Guinea and Sierra Leone at about 3.45 in the morning of the 28th. Do you know
41 where this border line is drawn? Do you know the position of this border line?
42 A The boundary was not indicated and I did not know --- Concerning the boundary,
43 I came to know about it when I was shown this boundary at the first trial, when there
44 were meetings with customs officials at Conakry and the naval officers told me the
45 map, and showed me the boundary, and of course based on this I approximately
46 determined the point when we crossed the southern boundary.
47

1 Q So you did not check the time when you crossed the border line, but you were
2 counting later on that you might have crossed the boundary line at approximately that
3 time?
4 A Yes. This line point was not stated in the logbook and I could not at the moment of
5 the crossing this line, it was not possible to mark it on the map, and it was done only
6 later on.
7
8 Q Thank you. Can you explain to me the entries in your logbook relating to the
9 geographical situations say behind the minutes. They say they indicate the degrees,
10 they indicate the minutes and then they have a comma, so it is 9 degrees, 2 minutes,
11 comma 7. What does this mean, is the "7" 7 seconds, or is that seven of ten, comma
12 7?
13 A What is of interest to you, the coordinates, speed or the place?
14
15 Q The way you figure out the entries of the geographical coordinates, the coordinates are
16 usually in degrees, minutes and seconds. Your entries are in degrees, minutes and
17 seconds?. Your entries are in degrees, minutes, comma 7, or 6. What does this
18 comma mean, are these seconds or parts of tenth?
19 A For example, on 27 October 10.32, 1032 and 1, this means 10 degrees, 32 minutes and
20 after the comma there are the tenths of a minute.
21
22 Q Thank you very much. I just wanted to know this. To come to another topic in point
23 11 of your statement, you mention that you remembered a funny sound when the
24 patrol boats approached you. Can you explain what a funny sound is?
25 A There were claps. Initially I could not understand what this clapping meant.
26
27 Q There were claps on the side or sounds from the patrol boats?
28 A I think that the translation of the claps, or the word "claps" is not quite adequate.
29 I heard claps and initially I could not understand their origin, what was the nature of
30 this sound.
31
32 Q Had you been, during this time when you heard the claps or knocks, alone on the
33 bridge?
34 A I was together with the radio officer.
35
36 Q Since when was the radio officer with you?
37 A I cannot tell you the exact time, but at that precise moment he was present on the
38 bridge.
39
40 Q Did the two patrol boats bear marks or numbers on their hull?
41 A I do not remember.
42
43 Q Did you see whether or not the patrol boats had a flag hoisted?
44 A I cannot tell you exactly concerning the flags, I do not remember, I did not take notice
45 because my ship was fired at.
46
47 Q But you cannot exclude that they had a flag hoisted?
48 A Of course. Perhaps it is most probable that they had flags hoisted.
49

1 Q Which colours did the patrol boats have?
2 A I do not remember about the flags themselves and what kind of flags they were.
3 I cannot say.
4
5 Q Which colours did the hull of the boats have, not the flag?
6 A When they approached and we could see them they were grey coloured on the hull.
7
8 Q You mentioned also in your statement that you saw soldiers on board the patrol boats.
9 How did you discover that they were soldiers?
10 A When the boats approached one to two miles one could see through the binoculars the
11 armed people with sub machineguns.
12
13 Q Did they wear uniforms?
14 A Yes, they were in military uniform.
15
16 Q You mentioned at point 10 of your statement that you located two targets by radar at
17 a distance of about 11.5 miles. What kind of radar did you use?
18 A Should I explain what the distance should be on our radar? I do not understand the
19 question.
20
21 Q Was that the usual navigation radar you used on board *The Saiga*?
22 A Yes. It was a common type of navigational radar.
23
24 Q How far is the reach of this radar?
25 A The maximum on this radar was 48 miles. This data is taken from its technical
26 passport.
27
28 Q How come that you discovered the approaching targets only when they were about
29 11.5 miles away from you?
30 A During the night from 27th to 28th in the near distance there were a few fishing trawlers.
31 The officers were watching whether they were approaching us or not. In the morning
32 when I took up my watch I saw two new objects on the radar screen.
33
34 Q Who was in charge before you came on the bridge: who was on the watch?
35 A The First Officer from 4 to 8 o'clock.
36
37 Q He apparently did not watch the radar, otherwise he would have seen the approaching
38 objects much earlier. Do you agree with this?
39 A No. I do not agree. At that moment most probably the radar was fixed at a scale of
40 12 miles and the maximum distance was 12 miles. Most probably he did not switch
41 over to another distance.
42
43 Q So you have different distances on the radar into which you can switch. Can you say
44 anything about these distances?
45 A Of course the radar has different scales of distance and the maximum is 48, 24 and
46 12 miles. These are 2 miles and there are also lesser degrees on the scale.
47
48 Q You mentioned that you assume that the approaching vessels were a pirate attack.
49 How come that that you had the idea this was a pirate attack?

1 A I suggested, I suppose, that because the regions were not safe concerning the pirate
2 attacks and from information which I had.
3

4 Q But from the information you had you could not exclude that it could also be officials
5 from the coastal State?
6 A Of course I cannot exclude this possibility.
7

8 Q Why did you try to escape when the patrol boats approached you? Did you have any
9 chance to escape?
10 A I suggested that it was a pirate attack and naturally tried to run away and I gave an
11 order to switch on the engine and go to open sea.
12

13 Q Did you have any real chance, with your speed, to escape from the patrol boats if they
14 had wanted to take you over?
15 A At that particular point I could not tell exactly because I did not know the technical
16 data of both boats and up till now I do not know how speedy they are, how much fuel
17 they have on board, and therefore I cannot assess whether we could go away from
18 these chasing boats.
19

20 Q But you had seen before that there were soldiers on board, had you?
21 A I saw people wearing uniform and I cannot exclude that a uniform can be worn by any
22 person and any ship can be painted in grey colour.
23

24 Q Is it usual in international shipping that a merchant vessel which is approached by naval
25 or government vessels does not show its flag and does not stop?
26 A I understand in the case of a naval ship and on duty it should have its flag raised.
27

28 Q Who should have its flag raised – the naval ship or the merchant ship, or both?
29 A Depending on the circumstances, the naval boat should show the colour when on duty
30 and arresting another ship, but a merchant ship is not obliged to show its colour.
31

32 Q Do you mean a merchant ship which is approached on the high seas by a naval ship or
33 a Government ship must not identify itself by showing its flag? Is that what you mean?
34 A Depending on the region of the floating of a ship, here is no order for a merchant ship
35 being at sea to show its colours when approached by a naval boat.
36

37 Q Now, let us come to the question of the alleged force. You allege that the patrol boats
38 fired at *The Saiga*. From which side did they shoot?
39 A The boats were approaching *The Saiga* on the port side.
40

41 Q And so they shot from the port side: is that right?
42 A Yes. There was an angle. It was not a 90 degree angle. Perhaps the angle was
43 45 degrees from the bow side and mainly the bullets hit the port side and also the front
44 side of the ship, the hull, the bow.
45

46 Q Which parts of the ship were hit by bullets; can you explain, roughly: the upper parts
47 or the lower parts?
48 A One can see once again, on the pictures shown yesterday, in particular the upper part
49 was damaged and the left side was hit from the bridge, one deck and then the second

1 deck where the third officer lives and where the safe boats are - the third officer, or
2 third mechanic, in his cabin. The bulkhead was pierced by bullets and it was already
3 stated that the bullets could also change their direction.
4

5 Q What do you mean by "change their direction"? Do you mean, ricochet what?

6 A Yes, I mean exactly ricochet, that the bullets ricocheted.
7

8 Q Yesterday, it was mentioned that there was a machine gun and a submachine gun on
9 the patrol boats – machine guns on the boats and submachine guns carried by the
10 soldiers. Did you see that the machine gun was used on the patrol boats?

11 A I saw a man who stood by a machine gun. He was wearing a uniform. I saw the
12 soldiers with submachine guns who fired at us and when I went to the portside of the
13 ship I did not scrutinize the thing. I only had a brief glance and then I locked the door
14 or closed the door to the bridge.
15

16 Q So you did not actually see that the machine gun was used against *The Saiga*?

17 A I cannot say because I was out only a couple of seconds, and whether the fact is that
18 the machine gun fired at us, I cannot say, but that it was aimed at our ship and that it
19 was manned by a man in a uniform, that is definite – definitely.
20

21 Q Captain Orlov, under which circumstances would you have stopped and co-operated
22 with the soldiers?

23 A Please, your question once again?
24

25 Q Captain Orlov, what should the soldiers do in your view to stop you and to co-operate
26 with you?

27 A I do not know what the soldiers should do in order to stop my ship, but I gave an
28 order to stop our ship. I was there in the engine room and saw that the second officer
29 was wounded, and needed help and they fired below at the engine room. The oil was
30 leaking and therefore the engine could be spoiled and the further movement was
31 senseless. Therefore, I ordered to stop the machine.
32

33 **THE PRESIDENT:** We are only ten minutes from the normal break. Are you sure that you
34 will be able to complete before then?
35

36 **PROFESSOR LAGONI:** I shall be able to complete by then. (To the witness) So you
37 stopped the engine of *The Saiga* after the force was used? That is correct?

38 A Yes, after we were fired at, directly at the machine room from above, and when the
39 second officer was wounded, then the engine was stopped.
40

41 Q You would not have stopped the engine without the force used?

42 A I cannot say what would be the outcome because at that moment I still thought it was
43 a pirate attack and what would happen later on, it is difficult for me to say.
44

45 Q When the soldiers came on board, were the doors locked to the engine room?

46 A I do not know exactly. At the moment when they were boarding us and further on,
47 when part of the people went down to the engine room, I was on the port side of the
48 door. We did not have time to lock the door to the engine room from the port side.
49

1 Q Were the crew's cabins locked?

2 A I do not know whether they were locked or just closed. Concretely speaking about my
3 cabin, the door was just closed. It was not locked, but for some reason they tried to
4 break it.

5

6 Q Do you usually lock the cabin doors on *The Saiga*?

7 A As a rule, I do not lock the door of my cabin. Moreover, at sea I do not do that.

8

9 Q Not all of the crew members were in the engine room. Where were the rest of the
10 crew members: the second officer, the cook and the radio officer?

11 A I do not know exactly where they were. As far as the cook is concerned, he was in his
12 kitchen and perhaps he did not hear the alarm. The radio officer was at the engine
13 room. The second officer was also there. Approximately 15, 16 people are gathered
14 together in the engine room.

15

16 Q It is alleged that two crew members were injured. Were you present when this took
17 place? Did you see it?

18 A I saw with my own eyes - I saw how the second officer was wounded. Concerning
19 the other member, he was not there. I saw him later on when the crew was gathered at
20 the deck, then I saw the second crew member.

21

22 Q Was the second officer directly shot or was he injured by a ricochet?

23 A I believe that it was most probably a ricochet. I could not see whether it was a direct
24 shot. I did not see the people who were shooting because all our people, all our crew
25 members, they tried to hide, just to find a position not to be seen by the attackers.

26

27 Q You said yesterday that you considered the injuries sustained as serious. Why did you
28 not mention these injuries in your memoranda of 29 October and 9 November 1997,
29 the memoranda to ABS, the operator?

30 A I do not know the memoranda mentioned by you, but in those which I sent over to
31 ABS, it was mentioned that the second officer was wounded. Here is my memorandum
32 of 29 October. Here it is stated that the second officer was injured twice in his left
33 hand and therefore I mentioned it.

34

35 Q When did Mr Naisse receive first aid?

36 A I cannot tell you exactly, but most probably when he already was on a boat. So we
37 had taken from a medical bag, and I gave to the first officer, this case, so when that
38 member of the crew was on the boat.

39

40 **PROFESSOR LAGONI:** Thank you, Captain Orlov. Mr President, Members of the
41 Tribunal, that ends my cross-questioning. I expect that Mr von Brevern will proceed with his
42 in the afternoon.

43

44 **MR VON BREVERN:** Mr President, would you allow me to just do that now? I think that
45 I do not need more than five minutes.

46

47 **THE PRESIDENT:** No, it is one minute to our closing time. In any event, I would like to
48 meet the agents. For logistical reasons I suggest that two from each side meet me as soon as

1 possible after the suspension of the sitting in my room on the 5th floor. The sitting will be
2 suspended and we will resume at 2 o'clock, as normal.

3

4 **(Adjournment 12.00)**

5

6

7