

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



1999

Public hearing

held on Wednesday, 10 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

English Version

ITLOS/PV.99/5/Rev.1

Non-corrigé

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 Warioba
	Edward Arthur Laing
	Tullio Treves
	Mohamed Mouldi Marsit
	Gudmundur Eiriksson
	Tafsir Malick Ndiaye
Registrar	Gritakumar E. Chitty

Saint Vincent and the Grenadines
represented by

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

as Agent;

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

as Deputy Agent and Counsel;

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

and

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

as Counsel and Advocates.

Guinea
represented by

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

as Agent and Counsel;

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

and

Mr. Namankoumba Kouyate, Chargé d'Affaires, Embassy of Guinea, Bonn, Germany,
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. 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:** Mr von Brevern, I take it that you wish to continue with the
2 cross-examination.

3
4 **MR VON BREVERN:** Yes, Mr President, my colleague Professor Lagoni will continue.

5
6 **THE PRESIDENT:** Could the witness Mr. Laszlo be invited to the witness stand.

7
8 **MR LASZLO MERENYI, recalled**

9
10 **THE PRESIDENT:** Professor Lagoni, before you commence I would like to state that
11 yesterday during the giving of testimony by the witnesses certain remarks were made which, in
12 the view of the Tribunal, do not meet the standard of decorum and diplomatic etiquette
13 expected of an international tribunal of this kind, where matters involving the rights of
14 sovereign States are at stake. I do not want to go into details because I am quite sure that
15 both Counsel and witnesses are fully aware of this. I hope that in future proceedings Counsel
16 will call the attention of witnesses to any remarks that do not reach the standard that we
17 normally expect in these matters. Thank you very much. You may proceed now.

18
19 **Cross-examined by PROFESSOR LAGONI, continued**

20 **MR VON BREVERN:** Thank you Mr President. May I say that I am most glad that you
21 refer to these remarks, because otherwise I would have questioned the witness on
22 these topics again. I will avoid that now. Otherwise I understand that the Guinean
23 delegation would have a statement on these things again, but I understand that they are
24 settled with your statement now. Thank you. Nevertheless, I have very few additional
25 questions for the witness.

26
27 Q Captain Merenyi, you mentioned in point 8 of your statement, and I assume you have
28 it, "What I did see was evidence of shots of fairly large calibre about 20 mm at the top
29 of the bridge, the forward side of the bridge", etc. etc. It goes on. Do you know the
30 greatest calibre of the machine guns on board of the patrol boats, and I hope this
31 expression meets the standards of British English this morning, was 12.7 mm?

32 A That I do not know. Just visually the trace of the bullets seems to me to be 20 mm.

33
34 Q So it was a rough ---

35 A Estimate.

36
37 Q Estimation.

38 A Yes, the trace of the bullets.

39
40 Q In point 9 you state in fact, and I quote, Mr President: "In fact the crew were
41 a floating prison". How can you be sure that the armed guards on board *The Saiga*
42 were not for the protection of the vessel and the crew?

43 A I did not like to point this question. My, let us say, word "floating prison", because the
44 crew were not allowed to go to shore and they were not allowed to communicate with
45 their families. That was the point.

46
47 Q But you would not exclude that the guards on board were also for the protection of the
48 vessel and the crew?

1 A They could be.
2
3 Q I do not want to change tack here, but rather jibe an order to sail in perhaps more
4 peaceful waters with my following questions. Captain Merenyi, you are acting as
5 a marine superintendent of the ship management company which managed *The Saiga*,
6 I understood?
7 A Yes.
8
9 Q From the point of view of the management company, could Captain Orlov have left
10 *The Saiga* in Conakry without replacement?
11 A No, because what the officers said was that the Master must stay on board until the
12 end of the process.
13
14 Q Could the crew have left *The Saiga* in Conakry without replacement?
15 A Yes, at the end of negotiation with the Customs and head of Customs -- if he was
16 really understanding the tension of the crew, and then I requested to disembark the
17 crew in their own ---. He agreed and gave back the passports for this paper.
18
19 Q Excuse me, my question was: could the whole crew have left the ship behind without
20 replacement?
21 A No, because it should be abandoned vessel, and according the local rule it was a high
22 risk to confiscate the vessel.
23
24 Q Is it a matter of a local rule or can you leave a ship in a foreign port without any crew
25 at all?
26 A No.
27
28 Q So it is required by the owner –
29 A By international law.
30
31 Q That you have at least.
32 A Yes.
33
34 Q So did the Master and crew get their pay during the time in Conakry?
35 A Yes.
36
37 Q You mentioned in your statement, in your cross-examination, yesterday that you paid a
38 bonus to the crew for these 14 remaining crew members.
39 A Yes.
40
41 Q How high was this bonus?
42 A If I remember 20% of the basic salary.
43
44 Q So I understand that the 14 remaining members remained deliberately on the boat?
45 A No, not deliberately actually because, when we reduce the number of the crew, in this
46 case they have more jobs to carry out, some maintenance, so therefore we have to give
47 them some compensation.
48

1 Q So you, by your standards, and you say also by international law, required at least
2 a rump crew, a minimum crew on board?
3 A Yes.
4
5 Q And you paid additional money that they felt better?
6 A Yes.
7
8 Q I see. Could crew members have otherwise have signed off in Conakry without such
9 payment do you think?
10 A I am sorry, I do not understand.
11
12 Q Could they cancel there and leave, could they sign off from the ship, or can they sign
13 off from the ship only at the end of the voyage?
14 A No, after 17th they could leave, they were requested, yes.
15
16 Q Could they sign off the contract with the employer as a seaman ?
17 A Yes.
18
19 Q If they wanted, they could have?
20 A Yes, that was just the cook who had been on board just for one month.
21
22 Q Do I understand you correctly that you could have managed, that crew members who
23 wanted to leave the vessel could have left earlier if you would have liked it. I had
24 understood if you would have liked it you were interested that the crew remains on
25 board. Page 21 line 42 of yesterday's cross-examination. I do not know whether you
26 have the cross-examination now.
27 A No.
28
29 Q But I can show you what you said. This is line 42, "but earlier we did not like." Could
30 you please read out what you said, just briefly?
31 A "Earlier we did not request the crew".
32
33 Q They did not. But you allude that if they would have requested, you could have
34 managed that they could go.
35 A Yes, but here there is something which I do not remember. "If you had perhaps given
36 a little more...". I did not give.
37
38 Q No, it is only the potential situation. If you would have given more, they could have
39 been left. This is what you said.
40 A Here in this matter we would have been able, but here in this matter I would like to
41 make something clear, that no Guinean official received a single dollar from me. Then
42 I failed the helping hand of the P&I, we just employed a local adviser who helped me
43 at a meeting when I asked Mr. Bangoura to release this crew because of tension, and
44 nobody knows what his --- and he agreed and he gave me the passport.
45
46 Q Thank you. I understand that you have long experience in managing ships.
47 A In managing ships no, because I stopped navigation five years ago.
48
49 Q But as a ship's manager, superintendent?

1 A Yes, if five years is a long experience, we can say that, but normally not.

2

3 Q Did you gain experience in Africa as well?

4 A Yes.

5

6 Q Have you gained particular experience in Guinea?

7 A No, that was for the first time.

8

9 Q The first case in Guinea?

10 A Yes.

11

12 Q Have you any idea of Guinean Customs law?

13 A We saw the Customs law over there and we had a copy as well.

14

15 Q If I refer to article 251 of the Guinean Customs Code, and I will show it to you, have
16 you seen that before? This is Annex 23 page 357 in the English version. It says: "The
17 Customs Authorities shall be authorized to negotiate settlements with persons
18 proceeded against for customs offences."

19 A That is right.

20

21 Q You were referring to these proceedings yesterday in your references to Mr Bangoura
22 I think?

23 A Yes.

24

25 Q Thank you. But otherwise this was your first experience in Guinea?

26 A Yes.

27

28 Q So I must not ask that you had any experience and information about Guinean courts?

29 A No.

30

31 **PROFESSOR LAGONI:** Thank you very much Mr President, that ends my
32 cross-examination.

33

34 **THE PRESIDENT:** Thank you very much, Professor Lagoni. Dr Plender, would you like to
35 re-examine?

36

37 **Re-examined by DR PLENDER**

38

39 **DR PLENDER:** Mr President, my re-examination will be short. Before I turn to it, may
40 I correct two small points on the transcript, one of which is relevant to my re-examination.
41 The one which is relevant to my re-examination is in the English version at page 21 line 10.
42 The English version reads: "At first we wanted to follow the officialry". My recollection,
43 which may be tested against the tape if necessary, is that the witness said: "At first we wanted
44 to follow the official way".

45

46 The second point refers to the *procès-verbal*, page 20. The English witness mentioned
47 damage to what he called the monkey island. The simultaneous translation in French was
48 "*Île*", and after consultation with the translation services in the evening, we substituted the

1 "navigation bridge", but I have been informed that this is not exact. The monkey island is a
2 part of the roof of the navigation bridge, as we will see in a few moments in the photographs.

3
4 Q Captain Merenyi, I remind you that in examination yesterday you stated: "At first we
5 wanted to follow the official way". What did you understand the official way to be?

6 A The official way normally should be when such a kind of situation happens we ask the
7 P&I to come on board to make investigation, and actually the P&I is acting on behalf
8 of the owner. Then the same time relating to the crew matters the local agent to be
9 charged to sort it out and settle the problems.

10
11 Q Did your attempt to use the P&I Club and the agent succeed?

12 A Yes, I asked him and unfortunately they could not succeed.

13
14 Q You state "At the end of a complete day he came back". What was said when the
15 agent came back?

16 A He said that tomorrow we have to try again and he had no result of all the paper
17 requesting.

18
19 Q Was it then that you went to see the lady that you called Olga?

20 A The next morning.

21
22 Q What advice did she give you?

23 A When we had no chance to deal with the P&I and the agent, I found a local adviser
24 there who advised me to go to Madam Olga.

25
26 Q And did you then use that local agent?

27 A Actually, I used this local agent all the time by the time when I was down in Conakry.

28
29 Q Did the local agent put you in touch with Mr Bangoura?

30 A Yes.

31
32 Q What was the position of the Guinean authorities with respect to the release of the
33 crew before 17 November? Do you know?

34 A Because all the passports were in the hands of Mr Bangoura, actually, and the crew
35 had no shore pass – actually the crew were retained on board.

36
37 Q What event, if any, on 17 November led to the release of the crew?

38 A That was the same situation. They requested crew members their passport, they went
39 home, signed off, but the remaining crew still remained on board because, the same
40 reason, no shore pass and no passport in their hand.

41
42 Q Was it your impression that the crew could have left, had they wished?

43 A Actually, we could have arranged that because Mr Bangoura had some kind of
44 sympathy with the crew and when I asked, he gave permission, but not to go ashore,
45 and not to move free.

46
47 **DR PLENDER:** Mr President, before I proceed to the next question, I bear very much in
48 mind your comments this morning which we, on our side, warmly welcome. I want to repeat
49 some words used by Mr von Brevern. If it is your instruction that I shall not put the question,

1 I will not ask the witness to answer. Mr von Brevern used the following words from the
2 transcript:

3
4 "if it would only be the ship and crew and you on the other side and the Guineans on
5 the one side, you would have come to an agreement rather sooner."
6

7 The witness answered:

8
9 "I would not be the first person."
10

11 May I proceed with that question?
12

13 **THE PRESIDENT:** Yes.
14

15 **DR PLENDER:** (To the witness) You will remember that Mr von Brevern said to you
16 yesterday:

17
18 "If it would be only the ship and crew and you on the other side and the Guineans on
19 the one side, you would have come to an agreement rather sooner."
20

21 You replied:

22
23 "I would not be the first person."
24

25 What type of agreement were you then contemplating?

26 A It is according to the local custom regulation, it is allowed to negotiate to release the
27 vessel. Both parties are allowed, taking into consideration the seriousness of the
28 defence, the value of the vessel, the value of the cargo. And it is legally allowed
29 negotiation.
30

31 Q You stated that the owners and charterers were not in favour of following that course.
32 Is that correct?

33 A That is correct, and that was the reason why I had to stop negotiation, because the
34 owners, the charterers and the State requested the legal channel, and using the
35 international tribunal.
36

37 Q At the material time, was the vessel damaged?

38 A Yes.
39

40 Q Was there a claim for damage?

41 A Yes.
42

43 Q Was the cargo still aboard the vessel?

44 A No.
45

46 Q Was there a claim in respect of the cargo?

47 A No - from our side, no.
48

1 Q Do you know whether the owners, charterers and the State of Saint Vincent were, at
2 that time, formulating a claim?

3 A -- at the end of December – no, the end of November, and that was the reason why
4 I left Conakry.
5

6 Q Was anything said to you to lead you to believe that the owners, charterers and State
7 had wider concerns about navigation in the area?

8 A I was not aware of that.
9

10 **DR PLENDER:** Captain Merenyi, I have no further questions.
11

12 **THE PRESIDENT:** Thank you very much. I take it that that concludes Captain Merenyi's
13 evidence, unless, Mr von Brevern, you want to raise a new point?
14

15 **MR VON BREVERN:** No, just a question to the witness for clarification. When Dr Plender
16 just asked him, "Were there claims from the vessel for damages, "Mr Merenyi said, "Yes." I
17 would like to know what was meant by "claims". Have there been taken court measures?
18 Have there been taken any demands to the Government of the Republic of Guinea? My
19 recollection from yesterday's statement of the witness was of a negative answer to that
20 question.
21

22 **THE PRESIDENT:** I think that I shall ask Dr Plender, perhaps in the light of this remark, to
23 put the question again.
24

25 **DR PLENDER:** Mr President, I am happy to do that. The fault, no doubt, is mine in the
26 formulation of the question. (To the witness) Captain Merenyi, we are speaking of the time
27 when the owners and agents were not inclined to come to an arrangement with the Guinean
28 authorities. At that time, was the vessel damaged?
29

30 A Yes.
31

32 Q Do you know whether it was in the contemplation of the owners, charterers and State
33 to seek reparation for the damage?
34

35 A Can you repeat the question again, please.
36

37 Q Do you know whether the owners, charterers and State were thinking about
38 demanding compensation for the damage?
39

40 A They were thinking about demanding compensation of the damage because in that
41 time, the damage occurred on board.
42

43 Q Do you know whether at that date a claim had formally been lodged in this Tribunal?
44

45 A That, I do not know.
46

47 **DR PLENDER:** I hope that clarifies the point, Mr President.
48

49 **THE PRESIDENT:** Thank you very much. I think that that should be adequate for the
50 moment. Mr von Brevern?
51

52 **MR VON BREVERN:** I did not understand as to which period, time or dates Dr Plender
53 referred in his question.
54

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

DR PLENDER: I am referring back to the time put by Mr von Brevern in his own question. Mr von Brevern was questioning the witness yesterday afternoon, I believe, about the events at the end of November 1997, before the departure of Mr Merenyi early in January of the following year. Mr President, I do not think it is possible for me to put a date since Mr von Brevern's question was that if it was only you, you would have come to an agreement rather sooner. The expression, "rather sooner" is Mr von Brevern's. I do not think that it is an expression which permits me to put a date to it.

THE PRESIDENT: Mr von Brevern, what is the objection that you have to this question? Can you please explain?

MR VON BREVERN: No, I do not have any objection to this question, but I should like to re-examine, just two questions to the witness, if you would allow.

THE PRESIDENT: We normally do not allow cross-examination after re-examination, but you may think that it was a new point. You have suggested that your question was not clear. Dr Plender, who is technically still re-examining, has put the question again and referred to the time that you mentioned. Quite clearly you knew the time that you mentioned. He says that he is referring to that time. I think that as far as the issue goes, it is not new because you mentioned a time, you asked a question of the witness and Dr Plender is referring to that particular time. The answer relates to the time that you referred to in your question to him.

MR VON BREVERN: Mr President, I fully agree, but in my recollection, the answer of the witness to this question today was quite different from the answer I received yesterday. Therefore, I thought that I may, for the sake of clarification, put the same question again to the witness.

THE PRESIDENT: I think that we have had enough explanation. If, as you say, the witness has contradicted himself in the records, the Tribunal will take due account of that, but I think that the point has been clarified sufficiently. I suggest, in the circumstances, Mr Laszlo, that you are released from your duties. You may stay if you wish but the court does not need your services any longer. I wish to thank you for giving us the benefit of your information and advice.

(The witness withdrew)

DR PLENDER: Mr President, Members of the Tribunal, our next witness will be Mr Niasse. His evidence will be taken by Maître Thiam. Before he is called, may I remind the Tribunal that it does have medical certificates before it which show that this witness suffered, along with physical injuries, serious psychological trauma for which he is continuing to receive attention. Mr President, it is entirely within your discretion to direct any particular treatment of the witness that may be appropriate. I know that I can rely upon the Tribunal and Mr von Brevern to treat appropriately a witness in this condition.

THE PRESIDENT: Thank you.

1 **MR VON BREVERN:** Mr President, I have just been informed that a new member of the
2 delegation of the Republic of Guinea has just arrived. He is Mr Leno. I would like to have
3 him here before Maître Thiam starts his statement. It will take half a minute.

4
5 **THE PRESIDENT:** Maître Thiam is not going to make a statement now. We are going
6 to have a witness.

7
8 **MR VON BREVERN:** I am sorry.

9
10 **THE PRESIDENT:** Would you like the new member to come now?

11
12 **MR VON BREVERN:** No, President, then it is not necessary. I do not want to hurry him.

13
14 **THE PRESIDENT:** Let him take his time.

15
16 Will the witness Monsieur Djibril Niasse come to the witness stand.

17
18 **MONSIEUR DJIBRIL NIASSE, sworn**

19 **Examined by Maître Thiam**

20
21 **MAITRE THIAM:** Mr President, Judges of the Tribunal, I will have the opportunity later to
22 express the pleasure and honour I have of speaking before you. At the moment I wish to
23 question Monsieur Djibril Niasse, who has been called as a witness by Dr Plender. I am going
24 to try to conduct this examination of the witness.

25
26 Q (Interpretation from French) Mr Niasse, can you hear me?

27 A (Interpretation from Wolof) Yes.

28
29 Q I am going to submit to you a copy of the document that you have submitted. This is a
30 copy of your deposition. Can you tell the court if it is you who has signed this
31 document?

32 A (No reply)

33
34 Q Does this document reflect exactly your thoughts?

35
36
37 A What is written in this document is indeed what I believe myself and I have duly signed
38 the document.

39
40 **MAITRE THIAM:** Could you also look at the annexes?

41 A Yes, indeed, I have taken note of the annexes. I have looked at them. When I see
42 what is written in these annexes, everything that is said in these annexes corresponds to
43 my state of health and my physical state. These are real facts.

44
45 Q I am now going to show you a photograph of two persons and can you tell the
46 Tribunal if you recognize them.

47 A Yes, you can show me the photographs, please. (Photographs projected on screen)

48
49 Q Do you recognize these two persons? Who are these persons?

1 A On my right, that is myself. You see the wound and you also see from the wound in my
2 eyes and my thorax, that is me, Djibril Niasse. The other person is the Second Officer
3 and we were members of the crew and we were together in the hospital and in the
4 clinic. He was also wounded in the arm by a bullet. I recognize him perfectly well.
5

6 Q At what time were these photographs taken?

7 A This photograph was taken in the clinic, when I was in the clinic; that was the time
8 when the photograph was taken. I was found in the clinic; and the photograph was
9 taken.
10

11 Q What happened to you?

12 A When I left Guinea I was sent directly to the Pasteur Clinic . I was taken into hospital
13 at the Pasteur Clinic. I stayed for one month and a few days. When I arrived at night I
14 was given an injection and at that time I felt acute pain all over my body and in my
15 thorax. When I was admitted I was given an injection. This calmed me down and
16 I was able to sleep. All of my body was aching. My thorax, my back here, the
17 clavicle, the eyes, everything was hurting.
18

19 Q This was 28 October 1997.

20 A Yes, I was on *The Saiga*. Towards 9 o'clock what happened was really extraordinary.
21 We were on the bridge doing some paint work and also minor repairs and we were
22 working. The Chief called us and said, "Go and take shelter". Everyone fled. I fled. I
23 went into my cabin and I returned to my cabin. I fled and returned to my cabin.
24 I stayed about five minutes and then I heard bullets hitting the hull of the ship. At
25 some time I thought I would look out of the porthole to see what was happening.
26

27 Q You said that you heard bullet impacts. Were there many of them?

28 A Yes. There were many, many bullet impacts. I heard the noise and the impact of many
29 bullets.
30

31 Q You explained in your deposition that you were hit by a bullet. Under what
32 circumstances were you hit?

33 A The bullet which hit me -- and I will tell you today how it happened -- it happened
34 when I started looking through the porthole to see what was happening outside. When
35 I was looking outside, when I looked through the porthole, the bullet entered through
36 the thorax here and then fragments of glass hit me in the eyes. I could not see any
37 more. I fell down and I tried to get back into the cupboard. I was bleeding. I had
38 severe haemorrhages in my eyes and I felt fragments of glass and I had contusions all
39 over my body. I hurried to get into the cupboard. I hid in the cupboard. I hid there.
40 The door of course I had subsequently locked and I hid in the cupboard. I continued
41 to hear the bullets hitting the hull of the ship, many bullets, and I made myself as small
42 as possible in the cupboard to hide myself.
43

44 Q At point 14 of your deposition it says that you gave yourself up to the assailants. Can
45 you explain to the Tribunal if you were hit at that point and if you were injured?

46 A When I came out to the outside of the cabin, because when I was inside I stayed for
47 some time, I heard no further noise. There was absolute silence. I thought that I heard
48 people, soldiers, who were breaking open the doors of the cabin. They seemed to have
49 hammers or weapons forcing open the doors, so when I came out I put my hands in the

1 air. I opened the door of my cabin and I came out slowly. As soon as I came out
2 there was one person. When I came out I had my hands in the air and at that point one
3 of the Guinean officials hit me here with the butt of his weapon. (Witness points to
4 upper thorax) I fell down immediately. I collapsed. I was handcuffed and I was taken
5 to where the other people were and I sat down like everyone else.
6

7 Q Explain to us how you were insulted, M. Niasse.

8 A Yes, I was insulted. This same person insulted me. When I fell down and picked
9 myself up I was being insulted all the time and I did not reply because I thought if
10 I was going to reply I would put my life at risk, because there you have nothing to say.
11 If you say something that the assailants do not like, then of course you are putting
12 yourself at risk.
13

14 Q The French translation said that the same person had hit and insulted the witness, but
15 in the declaration of M. Niasse in Wolof this is not clear. I would like to ask him the
16 question if it is the same person who hit him and insulted him?

17 A Yes, the person who hit me was the one who insulted me, because we were the only
18 two people in the corridor. We were alone in the corridor. The others were at the
19 front of the vessel.
20

21 Q When were you transferred to the Guinean patrol boat?

22 A Yes, I was.
23

24 Q This officer was the chief?

25 A Yes, I think he was, because when we started talking I asked the question, I said "Why
26 are you asking me this question?" I said to him, "Are you the chief?" and he said "Yes,
27 I am the chief". Then when he was talking with me, obviously from his breath there
28 came a strong smell of alcohol, and he said to me "You Senegalese, you are strange".
29 I said, "How are we strange?" and then he added "If your captain had stopped, then we
30 would have come on board, we would have asked you what we wanted to ask you,
31 and then we would have let you go." I said "How? It is the same person", and he said
32 "Here we settle things". I thought "How they settle things, this does not really affect
33 me, because I was wounded, I was suffering, and it is not up to me to talk about things
34 like this." I said to him to go to speak to the captain to talk to him about these things.
35

36 Q M. Niasse, in your written deposition you talked about Mr Soukabé Fall. This is a
37 sailor, like you, on board *The Saiga*?

38 A Yes, we were in the same situation. Soukabé Fall had the same status on board *The*
39 *Saiga*. The Guinean assailants came on board. He came to me and he said "They have
40 broken open the doors of all the cabins and everything in the way of luggage on the
41 vessel was being taken away". He told me that they were in the process of removing
42 all the luggage, and I said "Can you bring me my bag?", because in my bag I had some
43 money. At that time, I could not see any more because of my wounds, but when I was
44 spoken to I heard very clearly. When he brought me my bag, I opened the bag and I
45 felt inside, I tried to find my wallet, but my money had disappeared. I said to him, "I
46 do not know what has happened to my money but this money has to be given back to
47 me". I gave him back the bag and I asked him to put this bag back where he had got it
48 from.
49

1 Q Is it possible that the wounds that you had were caused by the fact that you tried to get
2 out of a window to escape?

3 A No. I did not want to escape and get out of the window, because my cabin did not
4 have a window. The opening is a little porthole and a person could not get through the
5 porthole; the head perhaps, yes, but the rest of the body could not get through, so I
6 had no other way to escape. In fact, I said to myself "Hide yourself in the cabin, try to
7 make yourself as small as possible somewhere to save your life", but I never thought of
8 fleeing out of a window or in any other way.

9

10 Q Did you receive medical attention when you arrived in Conakry?

11 A When I arrived in Conakry, I arrived at about 11.30 and when I arrived I was not
12 treated immediately. I was in the customs office. I was taken out of there and I sat
13 outside. The person there came to say to me "We are going to fetch a doctor to
14 examine you". I did not say anything. I was sitting there waiting. When the doctor
15 arrived, it was at night and he came, he looked at my face and he said "I do not touch
16 the bodies of foreigners", that is someone from another country. He left and he said to
17 the person present, "Take him to the hospital". I was taken to the hospital. Before
18 leaving for the hospital, first of all I stayed for about 15 minutes before going to the
19 hospital. When I arrived at the hospital, a lot of time was wasted. When we arrived
20 at the hospital, I met the doctor. He said "Lie down on this table in this room". I was
21 obviously under military escort, who encircled me. When I was lying there, the doctor
22 came to examine my body. He examined my chest and eyes. Afterwards, he said "I
23 cannot do anything for this person at the moment." There were two doctors, a woman
24 doctor and a male doctor, and they examined me, but in any case they did not do
25 anything by way of medical treatment. They left me there for a long time. I was there
26 for a long time. Afterwards, I had to get off the table because when I was lying down
27 I was uncomfortable. I had pains in my thorax and my eyes, so I got down from the
28 table and said to the person present, "My whole body is aching". After that, he went
29 to talk to the doctors. They came back and they stayed there for a long time, then
30 afterwards they said "Listen, we are going to go back to the port". We went back to
31 the port. When we got back to the port, I stayed there for a long time because when
32 we got back I heard the call to prayer, the first prayer of the Muslims, and I stayed
33 there until 10 o'clock, in the street. Someone offered me bread and an omelette. He
34 had pity on me because of my face and the blood all over my body, and everyone
35 looking at me had pity on me.

36

37 Q Did you have a doctor to look at your eyes, an ophthalmologist?

38 A Yes, there were two ophthalmologists who examined me. The first one was a woman
39 ophthalmologist. She examined my eyes and she did not do anything, but then we
40 went back to the chief and the chief said "No, go and see another doctor, another
41 ophthalmologist, to see what is in your eyes." I did not want people touching my eyes
42 because I did not want to be treated in Guinea because I was afraid of losing my sight
43 if that had been the case. The chief said "No, you have to be treated." The soldier
44 took me in a car and I was taken to an ophthalmologist. When we arrived at the
45 ophthalmologist's, this was not a Guinean; it was an immigrant to Guinea. This doctor
46 had me lie down on a table, he took some instruments, he looked at my eyes and
47 extracted some fragments of glass, a lot of glass fragments. When he did this, I did not
48 see anything immediately, but he put something on my eyes and at the beginning this
49 clouded my vision, but he put a bandage on my eyes and I left the hospital. When I

1 arrived, I slept and then I took off gradually the bandage and started to see a little bit,
2 but my vision was still clouded, but in any case this is all that happened with this
3 doctor.

4
5 Q Then you went back to Dakar. Did you have x-rays?

6 A Yes. When I left Guinea, when we arrived in Dakar we arrived at night. When I
7 arrived in Dakar, I was taken to the Pasteur Clinic. When I was taken to the Pasteur
8 Clinic at night, I was given an injection. The doctors really did their best for me, and
9 even people who came to fetch me at the airport took me directly to the airport. I said
10 that I wanted to see my parents before I went to the hospital. I had an x-ray, I had
11 several x-rays. I was given x-rays before the operation and after the operation I also
12 had some further x-rays. When the doctor said to me "In your chest you have a
13 projectile, this is a projectile which has entered above the clavicle and there seem to be
14 two metal fragments", they extracted one, but the other one was lodged in a position
15 which was much too deep, "and if we look for it you are putting your life at risk", so I
16 said "You are my doctor and what you have found I have to believe". So I continued
17 with the treatment and accepted this state of affairs.

18
19 Q The x-rays are those which I have been asked to be projected now?

20 A Yes, this x-ray is that after the operation, and you have a point here which indicates the
21 projectile which is lodged in my clavicle.

22
23 Q On the x-ray, the name of the person who has been x-rayed, perhaps you can indicate
24 this? I cannot read it from here, but I think the Tribunal can affirm that this is indeed
25 the x-ray of Mr Niasse. Can you show the other x-ray to Mr Naisse and I will ask if
26 this is an x-ray of him?

27 A Yes, this is an x-ray of my body.

28
29 Q What about the projectile?

30 A There is a spot where you see precisely the place where the projectile is lodged, but
31 there is a white point above that. That is the projectile lodged below the clavicle.

32
33 Q Mr Niasse, if I have understood you correctly you still have some fragments of this
34 projectile in your chest.

35 A Yes, there are still some fragments of the projectile in my body and now when I am
36 talking to you at this moment I still have fragments in my body.

37
38 Q Dr Villan, he is a psychiatrist?

39 A Yes, I am continuing my treatment with him. I have an appointment with him in the
40 hospital in May. It is the principal hospital, one of the major hospitals in Dakar.

41
42 Q Have you brought with you to Hamburg any medicaments which were prescribed to
43 you by Dr Villan?

44 A Yes, I have taken some medicaments because the others I have forgotten them, at
45 home. But I have one medicament with me. I have left it in my place of
46 accommodation.

47
48 Q Perhaps you can explain to the Tribunal the state of your vision. Did you wear glasses
49 before?

1 A Yes, I have to wear glasses all the time because otherwise I would not see properly.
2 The glasses, if I did not wear them, I would have rather darkened vision. Even when I
3 watch television I have to wear glasses. If the sun is strong I have to wear glasses
4 otherwise my view is clouded. When I look, when I read, I have to wear glasses.
5

6 Q Did you wear glasses before?

7 A No, not at all, I did not wear glasses before. My sight was absolutely good. I had no
8 problem with my vision.
9

10 Q I have no more questions of this witness.
11

12 **THE PRESIDENT:** Mr Von Brevern?
13

14 **Cross-examined by MR VON BREVERN**
15

16 Q Thank you Mr President; Mr Niasse, I am greatly concerned, it is not only myself, but
17 also my colleagues of the delegation of Guinea, about the pains you have suffered. We
18 are sorry about that. I have some questions to put. Where do you live, Mr Niasse?

19 A I live in Dakar, in Senegal, and my precise address is 1200.
20

21 Q OK. Thank you very much. At the time you referred to, who was the company that
22 employed you?

23 A I was employed by Oryx. Oryx was my employer.
24

25 Q And what was the purpose of the contract with your employer? What kind of work
26 should you perform?

27 A The work that I was doing on board was to serve as a painter on *The Saiga*. I worked
28 there as a painter. This was the contract that I was given, and this was also the work
29 that I did on board together with others that had been recruited for the same purpose.
30

31 Q Did you have a contract just for the work on board of the M/V SAIGA, or have you
32 been employed with Oryx before also to do other work outside the vessel?

33 A I had other tasks which I did for Oryx. Not on *The Saiga* vessel. I was employed on a
34 day-to-day basis, paid by the day by Oryx.
35

36 Q Did you have a written contract with Oryx?

37 A Yes, I was employed and paid on a day to day basis. Before departure the person who
38 was in charge of employing workers who were paid on a daily basis had submitted to
39 me and put down in writing anything that had to be put down in writing.
40

41 Q Can you provide the Tribunal with a copy of that contract?

42 A I do not have a copy of this contract with me.
43

44 Q Where is the contract?

45 A It was not given to us. The conditions of employment were submitted to us in writing.
46 It was the head who did this. He gave it to us in writing and we went on board.
47

48 Q Mr Niasse, my question is where is the contract; do you have at home perhaps still a
49 copy of it, or where is the contract?

1 A I do not have a copy of this contract at home.
2
3 Q Did you receive a copy of the contract before you boarded *The Saiga*.
4 A I did not receive a copy of this contract actually myself, I was not given a copy.
5
6 Q Do you know what was stated in that contract?
7 A No, I must say that I am not aware of what was in the contract.
8
9 Q Mr Niasse, I did not understand you so far. Have you been employed with Oryx? Did
10 you perform any other work before you boarded *The Saiga*?
11 A Yes, I did other work and this is what I said earlier on. I go there and when there is
12 work, cleaning, sweeping, we are workers who are paid on a daily basis, and if there is
13 work we are employed and then we are paid.
14
15 Q Since when did you work for Oryx?
16 A Since 1998, this is when I started to work for Oryx.
17
18 Q And the work not on board of the vessel, what did you do? Where did you perform the
19 work? Did you have an office which you were cleaning or painting? What was your
20 work outside a vessel?
21 A When I am not on board *The Saiga* I work on the docks. I help the teams who work
22 there. I do cleaning work. When there are spills I clean them up. If there is dirt
23 around, I remove it. These are the tasks that I did for Oryx.
24
25 Q Can you just give short explanations concerning Oryx. What is Oryx doing? What do
26 they have; do they have a yard, do they have vessels, do they have houses? What is
27 such a company for?
28 A Oryx is an oil company. This is what I saw. They have ships for which they supply oil.
29 Also ships would come to take oil on board. This is what happened. This is how
30 things worked. There are other activities too that Oryx does.
31
32 Q When you performed your work on board of *M/V SAIGA*, , was there an agreement
33 between Oryx and the vessel, and the vessel was represented by whom? Have you any
34 idea about that?
35 A Oryx offered me a contract and asked me to go and work on board *The Saiga*. I
36 boarded *The Saiga* and I started working there.
37
38 Q When you boarded *The Saiga* who did you talk to, who received you; who gave you
39 instructions?
40 A Well when I boarded *M/V SAIGA* it was the head of the depot who called me and
41 explained to me which work I was to do on *The Saiga*. He said, "We are employing
42 you to do this work on board *The Saiga*". There were three of us involved, all three
43 were employed, and he employed us. He took us to see the Captain, the Master of the
44 vessel. The Master met us. He accepted us being there, and this is how it worked.
45 Then we went on board and we started doing our work.
46
47 Q Did you receive a Seaman's Book when you arrived at the vessel?

1 A No, we did not receive a Seaman's Book because it is the sailor himself who can ask
2 for a book like this. When I boarded *The Saiga* I had my national passport. I had a
3 certificate.
4

5 Q Now I would like to turn to the voyage you have then performed. Can you tell us how
6 many days you were employed on board of the vessel before the events to which you
7 have just referred occurred on 28 October.

8 A I cannot speak about the number of days. I had three voyages on *The Saiga* and it was
9 in the third one where the events that we are discussing took place.
10

11 Q No, my question was: how many days were you already at sea before the events
12 occurred. Do you remember that?

13 A It is very difficult for me to say. We first of all went to Guinea-Bissau. I did not know
14 where the voyage was taking us in advance. The Master speaks Russian. I do not
15 speak Russian, and I did not know where we were going, which our destination was.
16 We had to get to a destination in order for me to know that we left one place so that
17 we had arrived at another place. This was my only way of knowing where we were
18 going.
19

20 Q The Captain spoke Russian. You referred to the head of the depot - at least that was
21 the word in the translation. Who gave you the instructions? Which language did he
22 speak?

23 A He speaks Wolof, like I do.
24

25 Q Do you remember his name?

26 A Yes, I know his name.
27

28 Q What was his name?

29 A We called him M. Sylla.
30

31 Q Was he Ukranian or was he a colleague of yours from Senegal?

32 A He was Senegalese.
33

34 Q So he was one of three men from Senegal being on board the vessel – you and two
35 others. Is it correct that the head of the depot, to which you just referred, was the
36 boss of you three?

37 A M. Sylla, he was the head of the depot when we were working for Oryx, but when we
38 boarded the ship - when we are not on board he is our boss, but when we are on board
39 of a vessel, the vessel, of course, had its own chief, and this is the Master.
40

41 Q But is it correct that you told me that you received your instructions from M. Sylla
42 who is one of your colleagues from Senegal employed with Oryx?

43 A (No answer)

44 Q Thank you. You told us that you did not know exactly, or you do not remember
45 exactly how many days you were at sea before these events occurred. Do you know
46 the date of these sad events you referred to? Can you tell us the exact date?

47 A Yes, I remember the date. It was 28 October.
48

49 Q Of which year?

1 A Two years ago.
2
3 Q 1996 or three years ago from October? It was in October and you said three years
4 ago. Today we are March 1999.
5 A 28 October.
6
7 Q Yes, but you said three years ago. Today, as you know, we are 1999. Three years
8 ago would be 1996. Do you mean October 1996?
9 A I mean 1997, two years ago, 1997.
10
11 Q But is that three years ago?
12 A (No reply)
13
14 Q It is just a question because I was a little astonished. You said *en français* that it was
15 three years ago and then you said 1997. Which is correct, according to your
16 recollection?
17
18 **DR PLENDER:** Mr President, I believe that Mr von Brevern misheard and that the witness
19 said two years ago. If that is what the Tribunal heard, perhaps Mr von Brevern might be
20 corrected.
21
22 **MR VON BREVERN:** Dr Plender, I can only hear what the translator said and, indeed, I
23 heard three years.
24
25 **THE PRESIDENT:** Actually, Mr von Brevern, it was a mishearing. He said "two years
26 ago".
27
28 **MR VON BREVERN:** *en français*?
29
30 **THE PRESIDENT:** No. Were you listening in French or English?
31
32 **MR VON BREVERN:** I have channel 1, English, and I heard what the translator said, three
33 years.
34
35 **THE PRESIDENT:** Could you put the question to the witness again.
36
37 **A MEMBER OF THE TRIBUNAL:** Perhaps I can help with the problem. The witness
38 made a mistake in Wolof. It was three years ago. I heard in Wolof "daw", last year;
39 "dawjek", two years ago, "dawatjek", three years ago. So he must rectify what he said. It was
40 three years ago.
41
42 **THE PRESIDENT:** I think that regardless of the vagaries of the languages, the witness has
43 now said 1997. It could be three years in one language or four years in another language, but
44 it is 1997 in all languages.
45
46 **MR VON BREVERN:** Thank you, Mr President. I agree. (To the witness) Mr Niasse,
47 when you referred to the events you have been asked about, when did you realise for the first
48 time that something might occur, something unexpected, to the operation of the vessel from
49 outside? When was the first time you realized that?

1 A When we were given the order to flee to find shelter, I immediately said that if we are
2 given such instructions, something exceptional must be happening, so I fled and I went
3 to hide somewhere. In actual fact, I did not know exactly what was happening. I fled
4 and I sought shelter in my cabin.
5

6 Q I understand that, but did I understand you correctly? Before the Captain said, "Please
7 flee", you had not realized that anything was, perhaps, going wrong or that the Captain
8 might expect any unexpected events?

9 A Before the Captain said this, I did not think of anything. I did not hear anything. I was
10 doing my work. I was busy doing my work. I did not think that anything was
11 happening. I had not seen anything. I had not any thoughts along these lines.
12

13 Q Mr Niasse, as a general remark, for my purpose it would sometimes be sufficient if you
14 just said "Yes" or "No", to ease your task. Do you know what work you did when the
15 Captain gave you that instruction?

16 A Yes, I remember what I was doing. I was doing paint work. I was painting, as I said.
17

18 Q Where on the vessel? Inside or outside?

19 A I was doing work on the bridge.
20

21 Q Inside the bridge or outside the bridge?

22 A We were on the bridge.
23

24 Q I understand that you can be on the bridge, in the bridge-house or you can go outside
25 in the "knock". Where have you been?

26 A I was more or less in the middle of the bridge.
27

28 Q What did you do there? What did you paint?

29 A We were painting small traverses, thin ones in steel. That is what we were painting.
30

31 Q Do you remember the exact time when the Captain ordered you to flee?

32 A Yes, it was about nine o'clock – nine o'clock in the morning.
33

34 Q Nine o'clock on 28 October? Which date was it? Was it the same date you mentioned
35 before?

36 A (No answer)
37

38 Q Nine o'clock in the morning or in the evening?

39 A The morning.
40

41 Q Do you remember who else was on the bridge besides you at that time?

42 A I was on the bridge in the middle. We divided up the work. When we were doing
43 paint jobs, all three of us, each one had one part of the work to do and, as I said, I was
44 working in the middle on the bridge.
45

46 Q I understand your two colleagues – they, too, were on the bridge, doing other work on
47 the bridge, painting?

48 A Yes, they were also on the bridge and they were also doing paint work and they also
49 fled.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49

Q Besides you three painters, who else was on the bridge, do you remember?

A We were the only three on the bridge.

Q Was the vessel proceeding or was it at anchor? Do you remember that?

A (No English translation)

Q You said, "We were the only ones on the bridge". I would like to ask you whether you have an explanation for why you were the only ones. Was there not a chief officer or someone else from the navigational crew?

A I have an "explanation."

DR PLENDER: I think that there may be an error of translation which may lead to some confusion. I understand that the word "*pont*" from the French has been translated as "bridge".

THE PRESIDENT: Yes, it has been translated as "bridge".

DR PLENDER: Mr President, I am one of the last persons present to advise on the correct translation. My understanding would be that *passerelle* is "bridge" and *pont* is "deck".

MR VON BREVERN: And the French word was?

DR PLENDER: *le pont*.

MR VON BREVERN: For "bridge"?

DR PLENDER: I am told that "*le pont*" in French was translated as "bridge" in the English version by relay. If that is correct, it may have led to a misunderstanding.

MR VON BREVERN: Mr Niasse, could you repeat where you were with your two colleagues? What is the French wording for where you have been?

THE PRESIDENT: Mr Niasse is not giving evidence in French, so let him use the language and let the interpreters interpret.

MR VON BREVERN: Mr Niasse, would you be so kind to perhaps show the Tribunal on the picture where you have worked?

A Yes, I can show you where I was working but I do not know where the others were working; I cannot show you where they were working.

(Document produced, shown to witness)

THE PRESIDENT: What is the number of that picture?

MR VON BREVERN: Picture 2. Mr Niasse indicated that he would have worked in the middle of the deck, in the middle of the vessel on deck.

THE PRESIDENT: On deck.

1 (Photograph put on screen)

2
3 **MR VON BREVERN:** Could you show that there?

4
5 (Witness indicated)

6
7 **MAITRE THIAM:** Mr President, maybe it would be easier for Mr Niasse to go to the
8 screen and point directly.

9
10 **THE PRESIDENT:** Yes, because that equipment does not seem to be working. We cannot
11 tell where the light is.

12
13 Mr Niasse, would you go up to the map and point to exactly the spot where you were
14 working.

15
16 (Witness indicated)

17
18 **THE PRESIDENT:** Thank you for that clarification. It is plain that it was on the deck.

19
20 **MR VON BREVERN:** When the Captain instructed you to flee, how could you hear him?
21 Was he beside you or was he on the bridge and how could you hear him?

22 A He shouted his orders, his instruction.

23
24 Q In which language did he shout out his instructions?

25 A I do not understand his language. He speaks English; I do not speak English. He
26 speaks Russian; I do not speak Russian.

27
28 Q But you thought his instructions were that you should flee?

29 A Yes, that we should flee and seek shelter.

30
31 Q Is that normal, that if you hear the Captain saying or instructing something in Russian
32 you feel you have to flee? Did you have other instructions?

33 A The gestures were very expressive, they were clear. It was the language that we
34 understand when he calls us for meals. They were gestures that he did. There was
35 a gesture language and we understood that if he made such a sign, then we were being
36 called for a meal. We could not communicate through language so it was by gestures
37 that we communicated.

38
39 Q Before the Captain gave you these commands you have not felt like going away from
40 the deck and going into your cabin, for whatever reasons? You felt safe until the order
41 of the Captain?

42 A I had no idea. As usual, when I wake up in the morning I go and do my work. When
43 the hour comes, I stop working and I had no specific idea. There was peace on board.
44 There was no particular problem. There was no problem.

45
46 Q You told us that it was about 9 o'clock that the Captain commanded you. When did
47 you start your work that day?

48 A We started work at 8 a.m. We have breakfast at 7.30. At 7.30 breakfast until
49 8 o'clock and at 8 o'clock we start work.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48

Q Before you went to work after you had breakfast, did you meet anyone of the ship's command to talk to them?

A No, not at all. I did not meet anyone. I did not speak to anyone. I did not speak to anyone. There were no communications. We all knew when we went for breakfast. We all know what time work starts. Everyone knew this. Before going to work we went to the stores to pick up our paint and tools to work and then we would start work.

Q When the Captain spoke to you, you told us you went to your cabin. What did your two colleagues do?

A The others, Lat, also left. He went to his cabin, but I do not know where they went to hide. I did not know at that point in time. I went to my cabin. I was in my cabin; I was not in theirs.

Q Do you have a cabin of your own?

A No, this was not the case. There were three of us. One of us was given a cabin; that was Lat. The other one was berthed with me. We are Senegalese. We understand one another. We get on very well and sometimes he slept in my cabin and at other times elsewhere.

Q Did you see whether other crew members also fled?

A I did not see them; I did not see any of the other crew members fleeing. I went into my cabin and I hid there for the rest of the time. I did not see anything else.

Q Coming back to the order of the Captain, you were under the impression that it was rather urgent for you to flee. Was there any other reason for you, did you see anything outside the vessel, was there any noise which annoyed you and caused you to flee, or was it just the command of the Captain?

A I did not see anything. I did not see anything and I did not hear anything either. I was busy doing my work. If I had heard something, I would say that I had heard something but I did not hear anything. I only heard what the Captain said. The Captain called us. We understood that we should flee. I did not hear anything else apart from this.

Q Now I would like to ask you about your injuries. I understand: you have been in your cabin, you locked the cabin and finally there were some bullets and obviously one bullet broke the bull-eye of your cabin. Is that correct? What is the size of the cabin? Where have you been? Have you been directly behind the bullet or did you step aside to be safe? Can you just explain the cabin and where you were?

A I was in my cabin. When I entered my cabin before looking at the bull-eye, after having heard the noise, I lay down on the floor. Then I got up to look and see what was happening. This is normal. If there is a situation like this, you try and see what is happening. You try and find out, and this is why I got up. This is the reason why I got up. I got up and I wanted to look through the bull-eye to see what was happening.

Q When you laid down because you heard some noise, when you got up to look through the window, had the noise stopped, terminated?

1 A When I entered my cabin I heard the impact of the bullets on the hull of the ship. It
2 was on the side of the cabins. Thank goodness they did not shoot at the front of the
3 boat because this would have been a catastrophe. This was fortunate. It was
4 afterwards that I stood up in order to look out of the bull-eye and see what was
5 happening.
6

7 Q You have just said that that would have been a catastrophe. What do you mean by
8 that? What would have been a catastrophe?

9 A If there had been a firing at the front of the boat, it would have gone up in flames. It
10 would have caught fire.
11

12 Q Where was your cabin? We should have demonstrated that. Can you again perhaps
13 show us on one of the pictures where your cabin was? Which side of the vessel was it
14 on, on the front or the back? I will show you the picture. Can we have picture 1 or 2?

15 A It is going to be difficult on this photograph. My cabin is in the passageway from the
16 place where we took our meals.
17

18 Q Could you show it? Could you go closer to the picture?

19 A If we can see the other side of the photograph ---
20

21 **THE PRESIDENT:** Mr von Brevern, I do not want to interrupt your cross-examination, but
22 is this relevant to photograph 1?
23

24 **MR VON BREVERN:** Mr President, I am still of the opinion that we should know where
25 the cabin was, because we are talking about a bullet and I think that our witness, or the
26 other side, should have the possibility to comment later, and therefore I think we
27 should hear from the witness where his cabin was.
28

29 **THE PRESIDENT:** Thank you. Mr Niasse, could you go closer to the picture to point this
30 out?

31 A It will be difficult to do this, because there were two passageways. There was one on
32 the other side, one on each side.
33

34 **MR VON BREVERN:** On which side of the vessel was your cabin, port or starboard?

35 A I was on the side of the galley. This is the passageway which leads to the galley and to
36 the place where we took our meals.
37

38 Q For clarification, Mr Niasse, did you have a cabin from which, if you looked out of the
39 bull-eye, you could see the sea, or was it a cabin in the interior of the vessel?

40 A I could see outside, if I looked out of my bull-eye.
41

42 Q Was it the right side of the vessel or the left side of the vessel?

43 A Port/starboard, this depends from the way you see it. I would like to say that it is on
44 the right. If I move to another part of the boat, it might be the left. It depends how
45 you see this.
46

47 Q Could you please be so kind as to show us on the picture where your cabin was?

48 A I cannot do this, no.
49

1 Q Mr Niasse, on this picture you see the starboard, the right side of the vessel. I will
2 show you another picture with the left or port side of the vessel. I understand that
3 your cabin was not on the right side but it was on the left or port side. Is that correct,
4 and can you demonstrate on this picture 2, is that possible?

5 A Could you repeat the question, please?
6

7 Q Could you now demonstrate on this picture where about your cabin was?

8 A No, I cannot do it on this photograph. I have to have a photograph where I can see
9 where the galley is, which shows where the galley is, because from my cabin you can
10 see this from two different ways. I need to see the galley.
11

12 Q Our question is, where was your cabin seen from the outside of the vessel, not from
13 the inside of the cabin but from the outside if you look at the vessel, at which height?
14 (*Discussion off microphone*)
15

16 **THE PRESIDENT:** Please speak into the microphone.
17

18 **MR VON BREVERN:** Perhaps you could explain that. Do you find the picture the same
19 there?

20 A I said "If you go up there..."
21

22 **THE PRESIDENT:** Mr Niasse, could you go closer to the picture? (*Discussion off*
23 *microphone -*) Come back now. Mr von Brevern, does that give you an idea?
24

25 **MR VON BREVERN:** An idea, but, Mr Niasse, you showed us the right side of the vessel,
26 is that correct, the starboard side?

27 A I have said "the sides" – well, left and right.
28

29 Q OK. Mr Niasse, I conclude that it may really be difficult with such a vessel, that you
30 do not remember whether it was on the port or starboard side, is that correct?

31 A Yes. If you do not know a ship, you can become lost. It is like a building. It is very
32 large in size.
33

34 Q Coming back to the situation, you told us that you lay down and then came up in order
35 to look at what had happened. What did you see when you looked outside the
36 window?

37 A When I stood up, this was the precise moment when the bullet arrived and hit, so I did
38 not see anything. I was hit by the bullet.
39

40 Q The next situation is that you explained that someone knocked at your door. Did you
41 open it voluntarily or was it opened by a hammer?

42 A No, they could not open the door from the outside. I opened it. When you lock the
43 door from the inside, nobody can open it, otherwise you would need to use force, but
44 if I close the door behind me, nobody can open it from the outside.
45

46 Q Did you hear anything before you opened it? Was there a command to open it? Why
47 did you open it?

1 A I did not receive any instructions or orders to open the door. I did this because I no
2 longer heard any noise on the vessel and I thought "I will open the door", and this is
3 what I did. I opened the door. There were no orders.

4
5 Q Can you give us an idea of how long it took from the moment that you received the
6 instructions of the captain to the moment when you opened the door, so it was from
7 the time when you flew into your cabin and laid down, again stood up, received the
8 injuries and then opened the door – about the time period of that?

9 A No, I cannot say with any precision how long it took, because I was in a state that did
10 not allow me to exactly remember how much time passed. I could not say.

11
12 Q You also do not remember how long you were on the floor of your cabin? For
13 example, if it took ten minutes, it seems to be a rather long time. According to your
14 remembrance, do you think that it was some minutes or was it just a very short period?

15 A I cannot be precise on this.

16
17 Q You told us that someone who was there after you had opened the door hit and
18 insulted you. I understand how it could be possible to hit, do you understand that
19 correctly, with any arm. Do you know what arm it was?

20 A The arm was the butt of a sub-machine gun.

21
22 Q If I remember correctly, you said that you had been insulted. Was that orally? What
23 did he say to you, and in which language did he speak?

24 A They understand English, Soussou and French. When I was insulted, it was in French.
25 I understood insults because insulting in French and in Wolof is not exactly the same.
26 These were insults which inferred the mother. I heard him say "You Senegalese are
27 crooks". He said that we Senegalese are crooks, and I could not say anything. I was
28 being insulted. I cannot repeat this in Wolof. These were extremely grave insults in
29 Wolof. If you insult somebody in French, in Wolof we feel that this is very serious
30 because insults are insults. He spoke French and Soussou, but what hurt me most was
31 when he accused us Senegalese of being crooks. This really I felt was the worst insult.

32
33 Q Where did he know from that ---

34
35 **THE PRESIDENT:** Mr von Brevern, I think that this point, the point about the insults, is a
36 suitable time. It is now exactly 12 o'clock. Obviously you will need a little more time
37 to complete, so it will be convenient for us to adjourn now and to resume at 2 o'clock.
38 Mr Niassé will come back to the witness stand when we come back at 2 o'clock. The
39 sitting is suspended.

40
41 **(Adjournment 1200 hours)**

42
43
44
45
46
47
48
49